

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)**

Present:

Mr. Justice Md. Khairul Alam

and

Mr. Justice Md. Sagir Hossain

Criminal Miscellaneous Case No. 13729 of 2017.

Mohammad Alauddin and others.
.....Petitioners.

-Versus-

The State and another.

..... Opposite parties.

None appears.

..... For the petitioner.

Mr. Saidul Alom Khan with

Mr. Abdullah Al Mamun, Advocates

..... For the opposite party No.02.

Heard on: 18.01.2026 &
Judgment on 25.01.2026.

Md. Khairul Alam, J:

On an application under section 561A of the Code of Criminal Procedure, 1898, at the instance of the petitioners, this Rule was issued calling upon the opposite parties to show cause as to why the proceedings of C.R. Case No. 751 of 2016 (Panchlaish), under section 138 of the Negotiable Instruments Act, 1881 (shortly, the Act), now

pending before the Court of the learned Metropolitan Magistrate, Cognizance and Trial Court No. 5, Chattogram, should not be quashed.

The relevant facts for disposal of the Rule are that the present opposite party No. 2, as complainant, filed a petition of complaint before the learned Chief Metropolitan Magistrate, Chattogram, impleading the present petitioners as accused, alleging, *inter alia*, that the complainant is a financial institution and the accused are the proprietors of Mak International, a business concern, who in the course of business, took loan facilities from the complainant. In discharge of the said liability, the accused persons issued six cheques bearing Nos. 7530903 dated 31.07.2016 for Tk. 1,58,00,000/-, 7530904 dated 16.08.2016 for Tk. 1,58,00,000/-, 7530905 dated 30.08.2016 for Tk. 1,58,00,000/-, 7530906 dated 15.09.2016 for Tk. 1,58,00,000/-, 7530907 dated 30.09.2016 for Tk. 1,58,00,000/- and 7530908 dated 15.10.2016 for Tk. 1,58,00,000/-, amounting in total to Tk. 9,48,00,000/-On 16.10.2016, the said cheques were presented to the concerned bank for encashment, but the same were dishonoured due to “ Account Closed/Dormant/Blocked.”

Thereafter, on 01.11.2016, a statutory legal notice was served upon the accused, but the accused failed to make payment of the cheque amounts. Consequently, the complainant filed the petition of complaint on 15.12.2016. Upon receipt of the said petition, the learned Magistrate examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance of the offence under section 138 of the Act, against the accused and issued process. On being informed thereof, the accused obtained bail on 15.12.2016.

Being aggrieved by and dissatisfied with the aforesaid proceedings, the accused, as petitioners, moved this Hon'ble Court and obtained the present Rule along with an order staying the impugned proceedings.

The Rule has been contested by the opposite party No. 2, but none appears to represent the petitioners when the matter was taken up for hearing.

The main contention of the petitioners, as appears from perusal of the application, is that the use of post-dated security cheques is beyond the purview of law and that the

complainant, being a financial institution, is barred from initiating criminal proceedings against the borrower.

Mr. Abdullah Al Mamun, learned Advocate appearing for the opposite party No. 2, submits that the issues raised in the Rule have already been settled by authoritative decisions of the Apex Court and that the petition has been filed merely to delay the trial.

Heard the learned Advocate for the opposite party No. 2 and perused the materials on record.

At first, we are to consider whether proceedings under section 138 of the Act, based on post-dated cheques issued as security against credit facilities, are maintainable Section 21C of the Act deals with anti-dating and post-dating of cheques. The provision reads as follows:

“21C. Anti-dating and post-dating-A promissory note, bill of exchange or cheque is not invalid by reason only that it is ante-dated or post-dated:

Provided that anti-dating or post-dating does not involve any illegal or fraudulent purpose or transaction.”

On a plain reading of the aforesaid provision, it is evident that a cheque does not become invalid merely because it is ante-dated or post-dated. Our Apex Court, in

17 BLC (AD) 177, has settled the issue in the following manner:

“Sub-section (1) of section 138 has not made any qualification of the cheque so returned unpaid either post-dated given as security for repayment of the loan availed by a loanee or a cheque issued for current encashment. When the legislature has not made any distinction, there is no scope for making such distinction by the Court.”

In view of the above, we find no substance in the first contention of the petitioners that the impugned proceedings based on post-dated security cheques are illegal.

The next issue to be considered is whether a financial institution is barred from instituting a criminal case against its borrower. In the case of Eastern Bank Limited vs. Md. Shirajuddula, reported in 72 DLR (AD) 79, the Apex Court categorically held that there is no legal bar for a financial institution to initiate criminal proceedings under section 138 of the Act against its borrower.

In view of the foregoing discussions and settled principles of law, we find no merit in the Rule.

Accordingly, the Rule is discharged without any order as to costs.

The order of stay passed at the time of issuance of the Rule is hereby recalled and vacated.

Let a copy of this judgment and order be communicated to the opposite parties at once.

Md. Sagir Hossain, J

I agree

Kashem, B.O