

In the Supreme Court of Bangladesh
High Court Division
(Criminal Miscellaneous Jurisdiction)

Present:

Mr. Justice Md. Khairul Alam
and
Mr. Justice K.M. Emrul Kayesh

Criminal Miscellaneous Case No. 15604 of 2018

Monwar Sadat and another
..... Accused petitioners.

-Versus-

The State and another.

..... Opposite parties.

Mr. Subrata Paul, Advocate

..... For the petitioners.

Mr. Khondaker Iqbal Ahmed, Advocate

..... For the opposite party No.2.

Heard and Judgment on 06.03.2025.

Md. Khairul Alam, J:

By filing this application under section 561A of the Code of Criminal Procedure the accused petitioners seek to quash the proceeding of Sessions Case No. 4813 of 2017 arising out of C.R. Case No. 2588 of 2016 under section 138 of the Negotiable Instruments Act, 1881 (shortly, the NI Act) now pending in the Court of Joint Metropolitan Sessions Judge, 4th Court, Chittagong.

The case arises out of a petition of complaint filed by opposite party No. 2-Sonali Bank Limited (shortly, the bank)

alleging, inter alia, that in the course of business, the accused took a loan from the bank. To adjust the loan the accused issued a cheque bearing No. 2043049 dated 30.06.2016 amounting to Taka 5,68,36,951/- in favour of the bank. On presentation, the cheque was dishonoured on 04.10.2016 for “Insufficient Fund”. Notice calling upon the drawer to pay the amount covered by the cheque was issued on 06.10.2016. But, there was no positive response from the side of the drawer. Hence, the complainant filed C. R. No. 2588 of 2016 (Kotwali Police Station) under section 138 of the NI Act before the Court of Chief Metropolitan Magistrate, Chattogram. Accordingly, the process was issued and the petitioner obtained bail. Ultimately, the case was renumbered as Sessions Case No. 4813 of 2017 and was transferred to the Court of Joint Sessions Judge, 4th Court, Chattogram for disposal wherein the case is now pending.

Being aggrieved by and dissatisfied with the aforesaid proceeding the petitioners moved before this Hon’ble Court and obtained the rule and an order of stay of the impugned proceedings.

Mr. Subrata Paul the learned Advocate appearing for the petitioners has submitted that the cheque is a post-dated blank

cheque that was given to the bank as security against the credit facilities, the impugned proceeding using the said blank post-dated cheque, according to the petitioners is illegal. He has next submitted that the bank, being a financial institute, is barred under the provision of the Artha Rin Adalat Ain, 2003 to file any case/suit except an Artha Rin Suit. He has finally submitted that since the bank has already filed an Artha Rin Suit against the petitioners claiming the amount covering the amount of the cheque, the impugned proceeding is double jeopardy.

Mr. Khondaker Iqbal Ahmed, the learned Advocate appearing for the bank has submitted that all the issues raised by the petitioners in this case have already been settled by this court, despite the fact the petitioners filed this case only to delay the disposal of the proceeding. In support of the said submission, he refers to the case of Eastern Bank Limited vs Md. Sirajuddula, reported in 72 DLR (AD) 79 and Majed Hossain vs State, reported in 17 BLC(AD)177.

We have carefully considered the submissions of the learned Advocates of the contending parties and perused other materials on record.

At first, we have to adjudicate whether a proceeding using a post-dated cheque given as security against credit facilities is maintainable or not.

Section 21C of the NI Act is regarding anti-dating and post-dating cheques. Therefore it would be necessary to peruse the provision of section 21C of the NI Act. The said section 21C runs 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 and post-dating does not involve any illegal or fraudulent purpose or transaction.”

On a plain reading of the said provision, it appears that a cheque will not be invalid because of that it is ante-dated or post-dated. When dealing with the issue our Apex Court in 17 BLC (AD) 177 decided 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 a security for repayment of the loan availed

by a loanee as alleged by the drawer for encashment currently. When the legislature has not made any difference between a post-dated cheque issued as security for the repayment of the loan availed by the loanee, here the petitioners, as argued by Mr. Chowdhury and a cheque issued for encashment currently, we do not see any scope of making any such difference.”

Therefore, we do not find any merit in the first contention of the petitioners that the impugned proceeding using the blank post-dated security cheque is illegal.

The next point to be decided is despite filing an Artha Rin Suit against the petitioners on the same issue whether this criminal case by a financial institution is maintainable or not.

In the case of Eastern Bank Limited vs. Md. Shirajuddula, reported in 72 DLR (AD) 79 the Apex Court deals with the issue. In the said case, Eastern Bank Limited, being a financial institution filed an Artha Rin Suit as well as a criminal case under section 138 of the NI Act for the same purpose and the same cause of action i.e. recovery of loan. The accused of that case prayed for quashing the proceeding contending the same as not maintainable

and double jeopardy. The Apex Court settled the issue holding that the pendency of a civil suit will not hinder the proceedings of a criminal case and vice versa.

In view of the above discussions, we do not find any 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.

Communicate a copy of the judgment and order to the concerned Court at once.

K.M. Emrul Kayesh, J.

I agree

Kashem, B.O