

**Present:**  
**Mr. Justice Md. Khairul Alam**  
and  
**Mr. Justice K.M. Emrul Kayesh**

**Criminal Miscellaneous Case No. 33811 of 2018**

Tareq Hossain.  
..... Accused-petitioner.  
-Versus-  
The State and another.  
..... Opposite parties.  
Mr. Md. Akram Uddin, Advocate  
..... For the petitioner.  
Ms. Shiuli Khanom, D.A.G  
..... For the State  
No one appears.  
..... For the opposite party No.2.

**Heard and Judgment on: 29.05.2024**

**Md. Khairul Alam, j.**

On an application under section 561A of the Code of Criminal Procedure Rule was issued to show cause as to why the proceedings of C.R. Case No. 1874 of 2017 (Kotwali Police Station) under sections 406/420 of the Penal Code, now pending in the Court of Metropolitan Magistrate, Court No. 4, Chattagram should not be quashing.

Relevant facts for the disposal of the Rule are that the present opposite party No. 2 as complainant filed a petition of complaint before the Court of Chief Metropolitan Magistrate, Chattagram implicating the present accused petitioner alleging,

inter alia, that the complainant entered into a partnership agreement with the accused petitioner and his brother Mosaddek Hossain on 16.01.2008. As per the agreement, the name of their partnership firm was “M/S Hossain Lighting and Furniture”. The accused violating the terms of the contract fraudulently obtained the trade licence, export-import licence, VAT registration, etc. of the firm in his sole name. The complainant was supposed to receive a 33% dividend, but the accused refrained from paying the dividend after March 2014. Therefore, the accused committed the offence of criminal breach of trust and cheating, hence the complainant filed the petition of complaint. Accordingly, the process was issued and the accused petitioner obtained bail.

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

Mr. Md. Akram Uddin the learned Advocate appearing for the petitioner has submitted that the complainant and the accused were the partners of a partnership business therefore the charge with an offence for the breach of trust and cheating under sections 406/420 of the Penal Code does not arise at all.

He has next submitted that since the complainant and the accused were partners in a partnership business, therefore, the allegations made, even if taken to be true, cannot form the basis of a proceeding for cheating in a Criminal Court, and the liability, if at all any, is civil in nature, hence, the impugned proceeding is an abuse of the process of the court and is liable to be quashed. In support of the submission, he has referred to the case of *Nasiruddin Mahmud and others vs Momtazuddin Ahmed* and another reported in 1984 BLD(AD)97.

Ms. Shiuli Khanom the learned Deputy Attorney General appearing for the State opposes the Rule, but no one appears for the opposite party No. 2.

We have carefully considered the submissions of the learned Advocates for the contending parties and perused the application along with the materials on record.

Admittedly, the complainant and the accused were the partners of a partnership business who entered into the partnership agreement on 16.01.2008. The complainant alleged that the accused violating the terms of the contract obtained the trade licence, export-import licence, VAT registration, etc. of the partnership firm in his sole name and refrained from paying

the dividend after March 2014 and thereby committed a criminal breach of trust and cheating.

Hence, the question is whether violating the terms of the partnership agreement by a partner to a co-partner creates any criminal liability.

It is now well settled that one partner cannot commit a criminal breach of trust against another partner. Mere failure to perform a contract is neither a criminal breach of trust nor cheating. For cheating, mens rea at the time of inducing the person deceived to deliver any property to any person is an essential ingredient. Breach of trust, in the absence of mens rea or criminal intention, cannot legally justify criminal prosecution. The allegation of obtaining the trade licence, export-import licence, VAT registration, etc. of the partnership firm in the sole name and refraining from paying the dividend, after 6 years of the partnership agreement, as alleged by the complainant, may constitute a civil liability, but it cannot legally justify a criminal liability.

In the case of Nasiruddin Mahmud and others vs Momtazuddin Ahmed and another reported in 1984BLD(AD)97, the question arose as to whether the partner can be charged by his co-partner with an offence for breach of

trust and cheating under sections 406/420 of the Penal Code in respect of partnership business entrusting the money for the purpose, wherein it was held that a partner could not be alleged to be misappropriated or cheated when an amount was entrusted to the accused for partnership business.

In the above facts and circumstances, we find substances in the rule and are inclined to make the rule absolute.

Accordingly, this rule is made absolute.

The proceedings in C.R. Case No. 1874 of 2017 (Kotwali Police Station) under sections 406/420 of the Penal Code, now pending in the Court of Metropolitan Magistrate, Court No. 4, Chattagram is hereby quashed.

Communicate a copy of this judgment and order at once.

**K.M. Emrul Kayesh, j.**

I agree.