

Present:
Mr. Justice Md. Iqbal Kabir
And
Mr. Justice Md. Riaz Uddin Khan

Criminal Miscellaneous Case No. 58578 of 2018

Mr. Maksufur Rahman
.....Accused-Petitioner

Versus

The State and another
....Opposite Parties

No one
.....For the Accused-Petitioner

Mr. Shaikh Mohammad Zakir Hossain, Advocate
with
Ms. Israth Jahan Ony, Advocate
.....For the Opposite Party No. 2

Judgment on 19.03.2025.

Md. Iqbal Kabir, J:

On an application under section 561A of the Code of Criminal Procedure, the Rule was issued by the Division Bench of this Court about quashing the proceeding of C.R Case No. 516 of 2018 under Section 138 and 140 of the Negotiable Instruments Act, 1881, now pending in the Court of learned Metropolitan Magistrate, 2nd Court, Chittagong should not be quashed so far it relates to the petitioner and/or to pass such other or further order or orders as to this Court may seem fit and proper.

Short facts, in brief, relevant for disposal of the case are that the accused petitioner took a loan from the opposite party Bank. In order to repay the loan amount, the Managing Director of the

company of accessed petitioner issued check bring No. 6219735 dated 30.06.2017 in favour of the opposite party No. 2/bank, and the same was dishonored on 20.12.2017 due to the reason of insufficient funds. Thereafter, the Bank sent a legal notice, through his lawyer, thereby demanding the alleged loan amount, and the same was received by the accused petitioner, but did not take any steps or make arrangements to repay the said loan. On that count, opposite party No. 2/Bank filed a complaint petition before the Court of Chief Metropolitan Magistrate, Chittagong under sections 138 and 140 of the Negotiable Instrument Act, 1881 (in short the Act, 1881).

The complaint petition was examined under section 200 of the Code of Criminal Procedure by the learned Magistrate, who issued a summons against the accused petitioner. The accused petitioner, however, voluntarily surrendered before the Court and was enlarged on bail.

The case was fixed for hearing, the accused petitioner preferred an application under section 561/A of the Code of Criminal Procedure thereby seeking to quash the proceeding of C.R Case No. 516 of 2018 filed under sections 138 and 140 of the Act, 1881.

It is at this juncture the accused petitioner moved to this Court and obtained the instant Rule.

In this case, Rule was issued vide its order dated 03.12.2018, at the time of issuance of the Rule the Court passed an interim order. Against such interim order being aggrieved opposite party No. 2, Bank preferred a Criminal Petition for Leave to Appeal No. 488 of 2020 along with an application for stay. However, the Judge-in-Chamber stayed the order passed by the High Court Division dated

03-12-2018. Subsequently, our Apex Court passed an order of continuation of the order of stay granted by the Judge-in-Chamber.

This matter is fixed for hearing at the instance of the opposite party. No one appears on behalf of the petitioner to press the Rule.

However, on perusal of the application, it appears that the petitioner brought this application wherein it has alleged that the instance proceedings have been challenged as the complain petition has fled after the expiry of the limitation period prescribed under the Act, 1881. In this context, it has been claimed that one of the conditions to commit an offense under section 138 is that the drawer of a cheque must fail to make the due payment within thirty days of the date of receipt of the legal notice. In this case, a legal notice was received on 14-01-2018, and the thirty-day limitation period would end on 12-02-2018, therefore, the cause of action arose on 13-03-2018. However, the opposite party, the Bank filed the case on 14-03-2018 i.e., two days after the expiry of the limitation period prescribed in law. According to the petitioner, such proceeding is barred by law to that effect.

It has alleged director of a company cannot be deemed to be in charge of the responsibility of the company for the conduct of its business.. The accused petitioner has shown mere a Director, but his responsibility, liability, and charge in the company have not been clearly mentioned which is required under section 40 of the Act, 1881. There is no deemed liability of a director in the case, therefore, the present accused is not responsible for the conduct of the business of the company at the relevant time, thus he will not be liable under the law.

Further, it has stated that continuation of the instant proceeding, which is barred by law as the prescribed period fixed under the law to bring the case has expired, would also deprive the petitioner of getting the protection of the law and would otherwise cause abuse of the process of the court and to prevent such abuse/secure justice the instant case is liable to be quashed.

Mr. Shaikh Mohammad Zakir Hossain learned Advocate for the opposite party No. 2 by filing an affidavit-in-reply submits that the company of the accused-petitioner availed credit facilities from the Complainant-Bank-Opposite Party No. 2, but failed to pay the outstanding money and subsequently issued a cheque which was dishonored and as such the cheque issuer, as well as the accused-petitioner as being Director of the said company is liable to the offence committed under section 138 and 140 of the Act, 1881. According to him when a cheque is given for discharge of any debt or liability and if such cheque is dishonored, the issuer of the cheque is liable for the consequence under section 138 of the Act, 1881. According to him the cheque itself has a presumptive value as to debt or liability. The accused petitioner is the Director of the borrower company and he had also the consent that the Managing Director of the said Company would issue a cheque to disburse the loan liabilities.

He brought to notice that the accused-petitioner as a Director of the said Company, is liable to the offence brought under sections 138 and 140 as the offence was committed with the consent of the accused-petitioner according to section 140(2) of the said Act 1881. In support of his submission, he cited the decision reported in 11 BLC 625 wherein it was observed that:

...from the plain reading of the aforesaid provisions of section 140 of the Negotiable Instruments Act, it appears that when any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance by any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence.

In the instant case, though the cheque was issued by the Managing Director of the company, the accused-petitioner as Director had the consent regarding the issuance of the cheque, therefore, the accused being a director is also responsible and the application is not tenable in the eye of law.

In reply to the other ground he brought notice that in order to recover the loan amount the Complainant-Opposite Party No.2 Bank served a legal notice vide dated 10-01-2018 to the accused-petitioner and others, present petitioner received legal notice on 14.01.2018. Therefore, the first 30 days to pay the money would end on 13.02.2018 and the cause of action arose on 14.02.2018 and it was exist till 15.03.2018. Bank filed the complaint petition on 14.03.2018 i.e. within the statutory period. According to him, there was no illegality to take cognizance against the accused.

Mr. Hossain in reply to the argument related to Artha Rin Suit submits that there is no bar to continue the C.R Case. The case though has brought on the same matter. In support of his submission, he cited a decision reported in 49 DLR (AD) 132 wherein it was observed that:

...there is nothing in law precluding a criminal case on account of a civil suit pending against the petitioners on the same facts. The criminal case stands for the offence, while the civil suit is for realization of money. Both can stand together.

Heard the learned advocate of the opposite party/Bank, perused the application filed under section 561A of the Code along with annexures, and also considered the facts and circumstances of the case including the law bearing on the subject.

Upon perusal of the materials on record, we find that the petition of the complainant contains allegations about the commission of offence under sections 138 and 140 of the Act, 1881 with reference to the issuance of the cheque by the Managing Director of the company and the date of dishonor thereof and issuance of the legal notice and ultimate filing of the CR Case.

The above-noted facts prima facie disclosed the offence under sections 138 and 140 of the Act, 1881, and compliance with the requirements of that section.

This Court finds substance in the submissions made by the Opposite Party No. 2, Bank and there is no scope to differ the same in presence of the decisions cited by the opposite party Bank.

However, the argument that has been taken into the petition is a defence plea, the accused petitioner is at liberty to take his defence plea in the trial and to produce supporting documents/evidence, if any, under the law.

In the context herein above, we find no merits in the Rule.

Accordingly, the Rule is discharged.

The order of stay granted earlier by this Court is hereby recalled and vacated.

The Court below is directed to proceed with the C.R Case No. 516 of 2018 and dispose of the same expeditiously following due process of law.

There will be no order as to cost.

Communicate the order.

Md. Riaz Uddin Khan, J:

I agree.