

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION**

**Present
Mr. Justice Md. Salim
And
Mr. Justice Md. Riaz Uddin Khan**

CRIMINAL REVISION NO.2928 OF 2018

Md. Rafiqul Islam
.....Accused-Petitioner.
-VERSUS-
The State and another
.....Opposite Parties.

Mr. Sk. Zulfiqur Bulbul Chowdhury, Advocate
----- For the petitioner.
Mr. Tushar Kanti Das, Advocate
..... For the opposite party No.2.

Mr. S.M. Golam Mostofa Tara, DAG with
Mr. Sheikh Muhammed Maju Miah, AAG
Mr. Md. Hafizur Rahman, A.A.G.
.....For the State.

Judgment on 14.12.2022.

MD. SALIM,J:

By this Rule, the accused-petitioner by filing an application under Section 439 read with Section 344 of the Code of Criminal Procedure sought to set aside the order dated 02.08.2018 passed by the learned Joint Metropolitan Sessions Judge, 3rd Court, Chattogram in Sessions Trial Case No.7032 of 2017 arising out of C.R. Case No.564 of 2016 rejecting an

application under Section 344 of the Code of Criminal Procedure.

Material facts leading to this Rule are that, in order to discharge the loan liability of TK. 38500000.00 the accused petitioners gave a cheque to the complainant opposite party No.2 which on presentation to the bank for encashment was dishonored on the ground of insufficiency of funds. Following the procedure and in compliance with statutory provisions laid down in section 138 of the Negotiable Instruments Act, of 1881 the complainant filed the instant case.

The learned Metropolitan Sessions Judge, Chattaragram after examining the complainant under section 200 of the code of criminal procedure took cognizance of the case against the accused petitioner under section 138 of the Negotiable Instruments Act, of 1881 and issued summons upon the accused petitioner. Subsequently, the case record was transferred to the learned Joint Metropolitan Sessions Judge, Chattagram for trial the case was renumbered

as Sessionn Case (STC) No.7032 of 2017, and the charge was framed by the learned Joint Metropolitan Sessions Judge, 3rd Court, Chattagram against the accused petitioner.

The accused petitioner surrendered before the Joint Metropolitan Sessions Judge and obtained bail. Thereafter filed an application under Section 344 of the Code of Criminal Procedure to stay further proceedings of S.T. Case No.7032 of 2017 of the instant case till disposal of the Artha Rin Suit No.179 of 2016. The learned Joint Metropolitan Sessions Judge, 3rd Court, Chattogram by the order dated 02.08.2018 rejected the said application.

Being aggrieved by and dissatisfied with the impugned order dated 02.08.2018 passed by the learned Joint Metropolitan Sessions Judge, 3rd Court, Chattogram the accused petitioner preferred this Criminal Revision and obtained the present Rule on 24.10.2018 and obtained an order of stay.

Mr. Sk. Zulfiqur Bulbul Chowdhury, the learned Counsel appearing on behalf of the petitioner submits that the complainant opposite party No.2 has initiated parallel proceeding of both criminal case and the Artha Rin Suit on the self same loan transaction in both criminal and civil courts, therefore the further proceeding of criminal case being Sessions (S.T.) Case No. 7032 of 2017 is required to be stayed under section 344 of Cr.P.C. till final disposal of the Artha Rin Suit No. 179 of 2016 for ends of justice, otherwise accused petitioner will be highly prejudiced, but the trial court failed to consider aforesaid facts in its true perspective, hence committed gross error.

Mr. Tushar Kanti Das, the learned Counsel appearing on behalf of the opposite party No.2 opposes the contention made by the learned counsel for the accused petitioner and submitted that since a prima facie case is made out in the petition of complaint the proceedings of the instant case cannot be stayed because of mere a civil suit.

We have given our anxious consideration to the submissions of the learned counsel for both parties perused the application, Petition of complaint, impugned order, and other materials on record.

It is revealed from that record that in order to discharge the loan liability of TK. 38500000.00 the accused petitioners gave a cheque to the complainant opposite party No.2 which on presentation to the bank for encashment was dishonored on the ground of insufficiency of funds. Following the procedure and in compliance with statutory provisions laid down in section 138 of the Negotiable Instruments Act, of 1881 the case was filed. So it is not possible to entertain any defense plea regarding the complainant filing up the undated blank security cheque by putting the amount of TK. 38500000.00 etc and then getting the impugned dishonoured cheque, and that the accused petitioner paid TK. 3,30,60,600.00 to the complainant Bank as of decretal amount. All these are disputed questions of facts which should be decided by the Court at the trial.

We have also perused the application under section 344 of the Code of Criminal Procedure and the plaint of the Artha Rin Suit No.179 of 2016. It manifests that after the mortgage of a series of properties, the defendants took the loan from the plaintiff-Bank. The Artha Rin Suit was decreed by the Judgment and order dated 22.10.2017. Thereafter Execution case No.32 of 2018 has been filed by the complainant Bank which is now pending for hearing. The Artha Rin Suit is of such a nature. The instant criminal proceeding is not dependent on the decisions of that Artharin Suit and it can be heard and disposed of independently. The proceeding under section 138 of the Negotiable Instrument Act is under a special law that appears to be independent in nature with a very limited to the issue involved in the Artharin Suit or any other suit/case. In this contexed, we may find support from the case of Eastern Bank Limited Vs Md. Sirajuddula report in 72 DLR(AD)79 held that---

“ The final conclusion of the High Court Division is contradictory to several decisions of this Division wherein it has been clearly held that the pendency of a civil suit will not hinder proceeding of a criminal case and vice versa. In this regard, reference may be made to the cases of Monzur Alam(MD) Vs State,55DLR(AD) 62. SAB Solaiman Ali Vs Rangs Industries Limited,2004 1 LAW Guardian(AD) 20.

In the light of the above decisions, we are constrained to hold that the impugned Judgments and orders of the High Court Division are palpably erroneous and are hereby set aside. Accordingly, the criminal petitions for leave to appeal are disposed of with direction that both civil and criminal cases shall proceed in accordance with Law”.

Moreover, at the end of the trial of a criminal case, such an application praying for an order of stay is not at all justified and entertainable. The object of section 344 of the code of Criminal procedure is not commensurate with the prayer for the stay of the instant case. According to the policy of the Law,

criminal cases should be resolved as quickly as possible. Even if there is a civil case related to the same matter that is pending, it is not a valid reason to delay the criminal proceedings that are initiated later. In this regard, we may refer to the case AB Siddique Rahman Vs AM Harunur Rashid reported in 3BLT(AD) 64 held that---

“The criminal case should be disposed of as quickly as possible so that justice may be available to the parties without unnecessary delay, that is by the conviction of the accused if guilty or by acquittal if they are not.”

Considering the above facts and circumstances it appears to us that the object of section 244 of the Code of Criminal is not commensurate with the prayer for stay in the present case. Because of such facts, the grounds taken in the petition of Misc. case are not the correct exposition of law. Moreso interruption of the course of Justice will set up a wrong precedent by which the course of justice instead of being advanced readily is stifled since the

grounds advanced before us are not correct or legal exposition of law. To that end, view, we are at one with the learned Judge of the Court below regarding the rejection of the application under section 344 of the Code of Criminal Procedure. Because of the above, we failed to discover any merit in this Rule.

In view of the foregoing narrative, the Rule is discharged. The order of stay granted earlier by this Court stands vacated.

The office is directed to communicate the judgment at once.

MD. RIAZ UDDIN KHAN,J

I agree