

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. 13709 of 2019

Md. Mosharaf Hossain Chowdhury
..... Accused-Petitioner.

-Versus-

The State and another.

..... Opposite parties.

Mr. Shahjada Al Amin Kabir, Advocate

..... For the petitioner.

Mr. Palash Chandra Roy, Advocate

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

Heard and Judgment on 27.02.2025.

Md. Khairul Alam, J:

The accused petitioner has filed this criminal miscellaneous case praying to quash the proceeding of Sessions Case No. 736 of 2017 arising out of C.R. Case No. 54 of 2017 under section 138 of the Negotiable Instruments Act, 1881 (shortly, the NI Act), now pending in the Court of learned Sessions Judge, Dinajpur.

Relevant facts for disposal of the case are that the accused petitioner obtained credit facilities from opposite party No.2- The IFIC Bank Ltd. To adjust the liability the accused issued a cheque

bearing No. CAI 4658081 dated 24.05.2017 amounting to Taka 60,00,000/-. On presentation, the cheque was dishonoured on 24.05.2017 for “Insufficient Fund”. Notice calling upon the drawer to pay the amount covered by the cheque was issued on 25.05.2017. But, there was no positive response from the side of the drawer. Hence, the complainant filed C. R. No. 54 of 2017 under section 138 of the NI Act before the Court of Senior Judicial Magistrate, Cognizance Court No.3, Bochagong, Dinajpur. Accordingly, the process was issued and the petitioner obtained bail. Ultimately, the case was renumbered as Sessions Case No. 736 of 2017 and was transferred to the Court of Sessions Judge, Dinajpur for disposal wherein the case is now pending.

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

Mr. Shahjada Al Amin Kabir the learned Advocate appearing for the petitioner has submitted that the cheque is a post-dated blank cheque that was given as security against the credit facilities, the impugned proceeding using the said blank post-dated cheque, according to the petitioner is illegal. He has next submitted that the complainant, 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 complainant has already filed an Artha Rin Suit against the petitioner claiming the amount covers the amount of the cheque, the impugned proceeding is double jeopardy.

Mr. Palash Chandra Roy, the learned Advocate appearing for the opposite party No. 2 has submitted that all the issues raised by the petitioner in this case have already been settled by this court, despite the said fact the petitioner filed this case only to delay 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 the other materials on record.

At first, we have to adjudicate whether 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 petitioner 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 by a financial institution against the petitioner on the same issue whether this criminal case 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 proceeding 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