

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION

Present
Mr. Justice Md. Salim
And
Mr. Justice Shahed Nuruddin

CRIMINAL MISCELLANEOUS CASE NO. 57913 OF 2018

A.K.M. Azizur Rahman
.....Accused-Petitioner.

-VERSUS-

The State and another. ...Opposite Parties.

Mr. Md. Taufiqul Islam, Advocate
..... For the opposite party No.2.

Mr. B.M. Abdur Rafell, D.A.G. with
Mr. Binoy Kumar Ghosh, AAG

Mr. A.T.M. Aminur Rahman (Milon), AAG

Ms. Lily Rani Saha, AAGFor the State.

Heard and judgment on: 24.04.2024.

SHAHED NURUDDIN,J

By this Rule, the accused-petitioner by filing an application under Section 561A of the Code of Criminal Procedure sought for quashing the proceedings of Sessions Case No.296 of 2017 arising out of C.R. Case No.344 of 2016 (Sadar) under Section 138 of the Negotiable Instrument Act,1881, now pending before the learned Sessions Judge, Barishal.

Material facts leading to this Rule are that, in order to discharge the loan liability the accused petitioner gave the cheque to the complainant 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,1881 the complainant filed the instant case.

The learned Magistrate took cognizance of the offence. The case is now pending for charge hearing.

Being aggrieved and dissatisfied with the impugned proceedings the accused petitioner preferred the instant application and obtained the present Rule on 05.12.2018.

Despite the matter appears in the cause list for hearing, no one appears on behalf of the petitioner to press the rule. However, in presence of Mr. Md. Taufiqul Islam, the learned Counsel appearing for the opposite party No.2 and the learned Deputy Attorney General, we are inclined to dispose of the rule on merit.

Mr. Md. Taufiqul Islam, the learned Counsel appearing for the opposite party No.2 by filing a counter affidavit submits

that the petitioner admitted that he issued the cheque in question voluntarily in favour of the opposite party No.2 in presence of local elite parsons. The petitioner shall get ample opportunity in the concern trial court to prove his case through a proper trial in which the concern trial Court weigh both parties evidence in support of their cases. Now, the case is pending for charge hearing and at this stage prior framing charge, the Hon'ble Court has lack of scope and jurisdiction to weigh the facts and evidence in this application, hence the Rule is liable to be discharged. In support of his contention he referred the decision reported in 13 MLR (AD) 184 and 62 DLR (AD) 233.

Heard the learned Advocate for the opposite parties and perused the record.

On exploration of the materials on record it transpires that the complainant categorically narrated the manner of crime committed by the accused. In defence the accused denied the entire allegations. So, when there is such denial, the question of innocence does not arise with this regard reliance has been placed in the case of Abdur Rahim alias A.N.M Abdur Rahman Vs. Enamul Haq and another reported in 43 DLR (AD) 173. Moreover, we can also rely upon the case reported in 68 DLR

(AD) 298 and 72 DLR (AD) 79. The truth veracity and effect of evidence which prosecution proposes to adduce is not to be meticulously judged at the stage of framing charge. In the instant case the accused stand indicted for offence punishable under the same section. Cognizance has been taken under the said section. We have meticulously examined the allegations made by the complainant and we find that the offence punishable under the above offence has been clearly disclosed in the instant case against the accused. We have gone through the grounds taken in the application under Section 561A of the Code of Criminal Procedure and we find that such grounds are absolutely the disputed question of facts and the same should be decided at the trial. The pleas of the petitioner is nothing but the defence plea. Be that as it may the proposition of law is now well settled that on the basis of defence plea or materials the criminal proceedings should not be stifled before trial; when there is a prima-facie case for going for trial. In view 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 been stifled inasmuch as the grounds advanced

before us are not correct or legal exposition of law. Therefore we hold that there are sufficient grounds for proceeding against the accused for going for trial under the same section. In view of the above we failed to discover any merit in this Rule. Thus the Rule having no merit fails.

Since the ground taken by the petitioner is disputed question of fact and all the submissions are settled principle by the Hon'ble Appellate Division.

In the light of discussions made above and the preponderant judicial views emerging out of the authorities refer to above we are of the view that the impugned proceedings suffers from no legal infirmities which calls for no interference by this Court.

In view of 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. SALIM, J:

I agree