

**In the Supreme Court of Bangladesh  
High Court Division  
(Criminal Miscellaneous Jurisdiction)**

**Present:**

**Mr. Justice Farid Ahmed**

**And**

**Mr. Justice Md. Atoar Rahman**

**Criminal Miscellaneous Case No. 25451 of 2019.**

**IN THE MATTER OF:**

**Dost Mohammad Raju**

...Accused-petitioner.

**Versus**

The State and another.

... Opposite parties.

None appears...For the petitioner.

Mr. Mustafijur Rahman Shakil, Advocate.

...For the opposite party Nos.-2.

Mr. Abdul Wahab, D.A.G with

Mr. Prince Al Masud, with

Ms. Sabiha Yasmin and

Mr. Ashikuzzaman Bablu, A.A.Gs.

...For the opposite party Nos. 01-State.

**Heard and judgment on 24.05.2023.**

**Farid Ahmed, J:**

This Rule was issued at the instance of the accused-petitioner on an application under section 561A of the Code of Criminal Procedure 1898 calling upon the opposite parties to show cause as to why the proceedings of Sessions Case No. 1952 of 2016 arising out of C.R. Case No. 1036 of 2015 (Kotwali Thana) under section 138 of the Negotiable

Instruments Act, 1881, now pending in the court of the Joint Metropolitan Sessions Judge, 7<sup>th</sup> Court, Chattogram, should not be quashed and/r pass such other or further order or orders as to this court may seem fit and proper.

During issuance of the Rule a Division Bench of this Court was pleased to pass an order staying all further proceedings of the aforesaid case.

The complain case filed by the complainant as Social Islami Bank Limited, Head office Mothijheel, Dhaka Branch, on behalf of Social Islami Bank Limited one Tofazzal Hossain Chowdhury, Son of late Moudud Ali Chowdhury Executive Officer of the said Bank as complainant filed this complaint case. Facts as stated in the application that the accused-petitioner took loan facilities from the Social Islami Bank Limited Head office of Tk. 4,13,00,000/- on 20.04.2015 he issued a cheque of the said amount and place for encashment on 24.04.2015 and that cheque was dishonoured for the cause of insufficient fund, then it was circulated for information was dishonoured by way of publishing a news paper on 26.04.2015 the National Daily Dainak Sangram as per section 1A of the

Negotiable Instrument Act. But within 30 days according to section 138 sub section 1(c) the accused-petitioner failed to pay of the money and cause of action was arose, and accordingly the complainant Bank initiated the criminal proceedings under section 138 of the Negotiable Instruments Act. Subsequently the accused-petitioner voluntarily surrendered before the court below and took bail and case was fixed for framing of charge. Charge was framed and one of the witnesses was examination in chief only a filed an application for cross-examination of P.W 1. At this stage the accused-petitioner filed this present application under section 561A of the Code of Criminal Procedure and obtained the Rule.

The Rule issued on 2019 and the case was ready for hearing on 28.09.2020 but learned Advocate for the petitioner did not turn upto this court for pressing the Rule. Learned Advocate for the opposite parties Mr. Kazi Akhter Hossain along with Mr. Mustafizur Rahman Shakil appearing on behalf of the complainant opposite party very outset he submits that the grounds as taken by the accused- petitioner already decided by our Hon'ble Appellate Division. There are 2 grounds 1.

Cheque was given for security purpose not for encashment it is a clear violation of law and 2. there is a Artho Rin case filed, they will realize the money by selling out the property by way of execution case of the Artho Rin Court. On this two ground they have filed and also stated that self same transaction two proceeding criminal or civil cannot run together. But alleged our Appellate Division decided these above mentioned matters by decision the case of Eastern Bank Ltd ..Vs..Md. Sirajuddula reported 72 DLR (AD) page 79, in this decision it is held that, pendency of a civil suit will not hinder proceeding of a criminal case and vice versa, and matter of issuance of security cheque it is a matter of trial. The accused-petitioner has ample opportunity to cross-examine the witnesses why and under what's circumstances who signed the cheque, what should the name of the bearer, who fixed the date on the cheque everything will be decided before the trial court. But unfortunately he filed this application under section 561A of the Code of Criminal Procedure which is not sustainable in the eye of law at all section 561A means for preventing the abuse of process of the court and for securing justice and for ends of justice as it

contemplated in that section. It is unfortunate for us that what is the core meaning of section 561A of the C.R.Pc. It is inherent power of the court, just for preventing abuse of the process of the court and for securing justice. If the complaint petition disclose the offence this has nothing to interfere everything will be decided by the trial court. With this observation we find no substance in this Rule. The Rule is discharged without order any as to cost.

The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

Communicate this judgment to the court concerned immediately.

**Md. Atoar Rahman, J.**

I agree.

**Md. Abul Hossain, (A.B.O)**