

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

Present:

Mr. Justice Md. Khairul Alam
and
Mr. Justice Md. Sagir Hossain

Criminal Miscellaneous Case No. 19064 of 2019.

Mohammed Absar.

.....Petitioner.

-Versus-

The State and another.

..... Opposite parties.

Mr. Najmul Karim, Advocate

..... For the petitioner.

Mr. Abdullah Al- Masud Begh, Advocate

..... For the opposite party No.02.

Heard & Judgment on: 18.01.2026.

Md. Khairul Alam, J:

The petitioner has filed this criminal miscellaneous case for quashing the proceedings of Metropolitan Sessions Case No. 10902 of 2018 arising out of C.R. Case No. 564 of 2017 (Motijheel) under section 138 of the Negotiable Instruments Act, 1881 (shortly, the NI Act), now pending in the Court of Additional Metropolitan Sessions Judge, 2nd Court, Dhaka.

Relevant facts for disposal of the Rule are that the present petitioner is the proprietor of M/S Sogo International, a business concern, and the present opposite party No. 2, Al-Arafa Islami

Bank Limited, is a scheduled financial institution. The opposite party No. 2, as complainant, filed a petition of complaint before the Court of the Chief Metropolitan Magistrate, Dhaka, implicating the present petitioner as an accused, alleging, inter alia, that the accused obtained credit facilities from the complainant bank. In adjustment of the said liability, the accused issued a cheque bearing No. 5206929 dated 31.01.2017 for an amount of Taka 7,34,50,000.00 in favour of the complainant. Upon presentation, the cheque was dishonoured on 31.01.2017 due to “fund insufficient.” Thereafter, a statutory demand notice was issued on 16.02.2017, calling upon the drawer to make payment of the cheque amount within the prescribed period; however, no payment was made, hence the complainant instituted the petition of complaint under section 138 of the Negotiable Instruments Act, 1881. After receipt of the complaint, the learned Magistrate examined the complainant under section 200 of the Code of Criminal Procedure, took cognizance of the offence punishable under section 138 of the Negotiable Instruments Act, 1881, and issued process against the accused. The accused thereafter obtained bail, and the proceeding was registered as C.R. Case No. 564 of 2017 (Motijheel).

Since the offence is triable by the Court of Sessions, the case was subsequently renumbered as Metropolitan Sessions Case No. 10902 of 2018 and transferred to the Court of the Additional Metropolitan Sessions Judge, 2nd Court, Dhaka, where the case is presently pending.

Being aggrieved by and dissatisfied with the aforesaid proceedings, the petitioner moved this Court and obtained the present Rule along with an order of stay of further proceedings.

Mr. Najmul Karim, learned Advocate appearing for the petitioner, submits that the cheque in question was a blank post-dated cheque issued merely as security against the credit facilities and, therefore, initiation of the proceeding on the basis of such cheque is illegal. He further submits that the complainant, being a financial institution, is not authorized to institute any criminal proceeding except a suit under the Artha Rin Adalat Ain.

Conversely, Mr. Abdullah Al-Masud Begh, learned Advocate for the opposite party No. 2-bank, submits that the issues raised by the petitioner have already been conclusively settled by this Court as well as by the Appellate Division. According to him, the instant petition has been filed solely to delay the lawful disposal of the case.

We have gone through the application, perused the materials on record, and considered the submissions of the learned Advocates for the respective parties.

At first, we are required to examine whether a proceeding under section 138 of the Negotiable Instruments Act is maintainable on the basis of a post-dated cheque issued as security against credit facilities.

Section 21C of the Negotiable Instruments Act deals with anti-dating and post-dating of negotiable instruments. The provision reads 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.”

From a plain reading of the above provision, it is evident that a cheque does not become invalid merely because it is post-dated. While dealing with this issue, the Appellate Division in 17 BLC (AD) 177 held as follows:

“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. When the legislature has not made any distinction between a post-dated cheque issued as security and a cheque issued for present encashment, there is no scope for creating such distinction judicially.”

In view of the above authority of our apex Court, we find no merit in the contention of the petitioner that the impugned proceeding is illegal merely because the cheque was a blank post-dated security cheque.

The next issue to be decided is whether a financial institution is competent to institute a criminal proceeding under section 138 of the Negotiable Instruments Act instead of filing a suit under the Artha Rin Adalat Ain.

This issue has also been settled by the Appellate Division in Eastern Bank Limited vs. Md. Shirajuddula, reported in 72 DLR (AD) 79, wherein it has been categorically held that a financial institution is legally authorized to file a criminal case under section 138 of the Negotiable Instruments Act, notwithstanding the availability of remedy under the Artha Rin Adalat Ain.

In view of the discussions made above, we do not find any substance in the Rule.

Accordingly, the Rule is discharged without any order as to costs.

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

Let a copy of this judgment and order be communicated to the concerned Court at once.

Md. Sagir Hossain, J

I agree

Kashem, BO