

Present:

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

**Criminal Miscellaneous Case No. 21091 of 2019**

Md. Tofazzal Hossain.

..... Accused-petitioner.

-Versus-

The State and another.

..... Opposite parties.

No one appears.

..... For the petitioner.

Mr. Touhidul Hasan, Advocate

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

Heard on 08.02.2026 and

**Judgment on: 16.02.2026.**

**Md. Khairul Alam, J.**

This Rule, upon an application under section 561A of the Code of Criminal Procedure, was obtained by the accused petitioner seeking to quash the proceedings of Sessions Case No. 7255 of 2018 arising out of C.R. Case No. 581 of 2018, under section 138 of the Negotiable Instruments Act, 1881 (shortly, the NI Act), now pending before the Court of Joint Metropolitan Sessions Judge, 4<sup>th</sup> Court, Chattogram.

The relevant facts leading to the issuance of the Rule are that the present opposite party No. 1, the City Bank Limited

(shortly, the bank), as complainant initiated the aforesaid case by filing a petition of complaint before the Court of Chief Metropolitan Magistrate, Chattogram implicating the present petitioner as an accused alleging, inter alia, that the complainant is a bank and the accused is the proprietor of PHM Business Link, a business concern, who, in the course of business, obtained credit facilities from the complainant. To disburse the liability, the accused issued a cheque bearing No.  $\frac{CB}{CD}$  3132251 dated 18.04.2018 amounting to Taka 19,00,00,000/- in favour of the complainant. On presentation, the cheque was dishonoured on 18.04.20218 for insufficiency of funds. Notice calling upon the drawer to pay the amount covered by the cheque was issued on 18.04.2018, which was received by the drawer on 19.04.2018, but there was no positive response from the side of the drawer. Hence, the complainant filed the petition of complaint through his constituted attorney namely, Jewel Dash. After receiving the complaint, the learned Magistrate following the provision of section 200 of the Code of Criminal Procedure, recorded the statement of Jewel Dash on oath and issued a process under section 138 of the NI Act against the accused and the case was

registered as C.R Case No. 581 of 2018. After issuance of the process, the accused obtained bail. Ultimately, the case record was transmitted to the Court of Joint Metropolitan Sessions Judge, 4<sup>th</sup> Court, Chattogram for trial and was renumbered as Sessions Case No. 7255 of 2018. On 01.11.2018, the trial Court framed charge against the accused under section 138 of the Ni Act, rejecting his application filed under section 265C of the Code of Criminal Procedure. In the meantime, the bank also filed Artha Rin Suit No. 578 of 2028 for the realization of the loan.

At this juncture, feeling aggrieved by the said proceeding, the accused of the case moved before this Hon'ble Court and obtained the Rule and an order of stay of the impugned proceedings.

None appears for the petitioner to support the Rule, though this matter appeared in the delay cause list for several days.

On perusal of the petition, it appears that the petitioner mainly relied upon three separate grounds, firstly, the complaint was not filed personally by the payee and therefore, the same is beyond the scope of the non-obstante provision of section 141 of the NI Act; secondly, the cheque is a post-dated cheque that was given to the bank as security against the credit facilities, the

impugned proceeding using the said post-dated cheque, according to the petitioner is illegal; thirdly, the bank has already filed a Civil Suit against the petitioner claiming the amount covering the amount of the cheque, therefore the impugned proceedings is double jeopardy.

Mr. Touhidul Hasan, the learned Advocate appearing for the opposite party No. 2, the bank, has submitted that all the issues raised by the petitioner in this case have already been settled by this court, despite of the said fact, the petitioner filed this case only to delay the proceedings.

We have gone through the application and perused the materials on record including the petition of complaint.

Before going into the details of the first issue, the description of the complainant in the petition of complaint is reproduced below:

Complainant :

The City Bank Limited, Jubilee Road Branch,  
Jubilee Road, P.S. –Kotwali, Chittagong.

Represented by-

Jewel Dash, Age-28 years,

S/O- Prodyut Das,

Assistant Manager- Legal Division,

Chattogram Unit, The City Bank Limited,  
Chattogram.

From the description of the petition of complaint, it is quite clear that the complaint was lodged by the bank through its

constituted attorney, namely, Jewel Dash. Admittedly, the bank is the payee of the cheque.

It is well-settled that anyone may set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate competent to take cognizance. No court can refuse to take cognizance merely on the ground that the complainant was not personally competent to file the complaint. However, where a special statute prescribes specific conditions for taking cognizance of an offence, the complainant must satisfy the learned Magistrate about the eligibility criteria provided under that statute before taking cognizance.

For an offence under section 138 of the Act, the requirement under section 141 is that the complaint must be made in writing by the payee or the holder in due course of the cheque. Reading this provision side by side with section 4(f) of the Code of Criminal Procedure, it becomes evident that an offence under section 138 of the Act is non-cognizable, as initiation of the proceeding depends upon fulfillment of the condition of filing a written complaint by the payee.

The question that now arises is whether, despite the non obstante clause of section 141 of the Act, cognizance taken upon a

complaint filed by the payee through a constituted attorney is maintainable.

Admittedly, the Act does not contain any express provision authorising filing of a complaint through a constituted attorney or authorised person. However, consistent judicial pronouncements across this sub-continent have firmly settled that where the complaint is filed in the name of the payee and not in the personal name of the attorney, such complaint is legally maintainable.

A juristic person, such as a company or corporation, being an incorporeal entity, is incapable of appearing physically before a court of law and must, of necessity, act through a natural person, and such person functions as a de facto complainant on behalf of the de jure complainant, namely the company itself. There is no statutory mandate that a complaint must be filed personally by any specified officer of the company. The law permits the company to authorise any competent person, including a constituted attorney, to initiate and conduct proceedings on its behalf. The act of a duly authorised constituted attorney in filing the complaint and making statement on oath before the learned Magistrate is, in the eye of law, the act of the company itself. In the case of *M/s M.M.T.C. Ltd. & another vs. M/s Medchl Chemicals & Pharma (P) Ltd. &*

others, reported in AIR 2002 SC 182, the Supreme Court of India held that even if there exists any procedural irregularity relating to representation at the initial stage, such irregularity is curable at any subsequent stage of the proceeding. A curable defect, therefore, cannot constitute a valid ground for quashing a criminal proceeding.

In the case of Hashibul Bashir vs. Gulzar Rahman, reported in 56 DLR (AD) 17, our Appellate Division has held that taking cognizance of an offence punishable under section 138 of the Act upon a petition of complaint filed by a constituted attorney, after due examination under section 200 of the Code of Criminal Procedure, is lawful and valid.

In the present case, the statutory requirements under section 141 of the Act have duly been satisfied, as the complaint was filed in writing in the name and on behalf of the payee company. The bank, being a company, instituted the petition of complaint through its constituted attorney, which is lawful and valid in view of the decisions of our apex Court. Even assuming that there was any defect in the authorisation, such defect is curable in nature, and for such curable defect, the criminal proceedings cannot be quashed.

Secondly, we have to adjudicate whether proceedings using a post-dated cheque given as security against credit facilities are 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 provisions of section 21C of the NI Act, before adjudication of the issue, which 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 second contention of the petitioner that the impugned proceedings using the post-dated security cheque is illegal.

The last issue that is to be adjudicated is whether the pendency of the Artha Rin Suit against the accused on the self-same issue is double jeopardy or not.

This issue is also not a *res integra*, rather settled by our apex Court. 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, the bank 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 the loan. The accused in that case prayed for quashing the proceedings, contending the same as double jeopardy. The Apex Court settled the issue, holding that the pendency of a civil suit will not hinder the proceedings 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 opposite parties at once.

Md. Sagir Hossain, j.

I agree.