

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION**

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

CRIMINAL MISCELLANEOUS CASE NO.21423 OF 2019

Didarul Alam, Managing Director, Rainbow
Sea Foods Limited.

.....Accused-Petitioner.

-VERSUS-

The State and another. ...Opposite Parties.

Mr. Mohammad Mijanur Rahman, Advocate
..... For the petitioner.

Mr. Tushar Kanti Das, 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: 23.11.2023.

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.8512 of 2018 arising out of C.R. Case No.1335 of 2016 under Section 138 of the Negotiable Instrument Act, 1881 read with section 140(1), 140(2) of

the Negotiable Instrument Act,1881, now pending before the learned Metropolitan Joint Sessions Judge, 1st Court, Chattrogram.

Material facts leading to this Rule are that the allegation brought against the accused-petitioner is punishable under Section 138 of the Negotiable Instrument Act,1881.

The learned Magistrate took cognizance of the offence and later the learned Magistrate transferred the case to the learned Metropolitan Sessions Judge for trial. The case is now pending for hearing of charge.

Being aggrieved and dissatisfied with the impugned proceedings the accused petitioner preferred the instant application and obtained the present Rule on 06.03.2019.

Mr. Mohammad Mijanur Rahman, the learned Counsel appearing for the petitioner submits that the accused petitioner Nos. 1 to 4 availed loan facility out of business necessity from the accused petitioner No.5. Subsequently with a view to adjust the outstanding loan liability. Accused petitioner Nos.1 to 4 issued three

cheques in the name of accused petitioner No.5 to opposite party No.2. Subsequently those cheques were dishonoured for insufficient of funds on 17.04.2016.

The learned Advocate further submits that subsequently, the opposite party No.2 issued legal notice dated 26.04.2016 to the accused-petitioners for paying the face value of those cheques. The accused petitioners received those legal notices on 28.04.2016 but no steps had been taken by the same. Then the opposite party No.2 proceeded to file the Complaint Registered Case No. 1335 of 2016 on 22.06.2016 before the learned Chief Metropolitan Magistrate Court, Chattogram.

On receipt of the same complaint, the learned Chief Metropolitan Magistrate, Dhaka examined the complaint under section 200 of the Code of Criminal Procedure and took cognizance of the offence under section 138 read with section 140(1) and 140(2) of the Negotiable Instruments Act, 1881.

He lastly submits that the alleged cheques were obtained without any valid consideration from the part of complainant. Therefore the alleged cheques cannot be

treated as a Negotiable Instruments Act under Section 138 of the said Act and the accused petitioner shall not be deemed to be guilty of the alleged offence under Section 138 of the Negotiable Instruments Act, 1881.

On the other hand Mr. Tushar Kanti Das, 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.

Heard the learned Advocates for both the sides 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. Moreso, 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. All that is required at the stage of framing charge is to see whether the prima-facie case regarding commission of certain offence is made out. 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. To that end in view we are at one with learned Judge of the Court below regarding framing of charge against the accused. 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