

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

Present:

Mr. Justice Md. Khairul Alam
 and
 Mr. Justice K.M. Emrul Kayesh

Criminal Miscellaneous Case No. 33473 of 2019

Sree Milon Sarker.

..... Accused-Petitioner.

-Versus-

The State and another.

..... Opposite parties.

No one appears.

..... For the petitioner.

Ms. Shiuli Khanom, D.A.G

..... For the state.

Heard and Judgment on: 27.02.2025.

Md. Khairul Alam, j.

This Rule, upon an application under section 561A of the Code of Criminal Procedure, was obtained seeking to quash the proceeding of Sessions Case No. 1060 of 2016 arising out of C.R. Case No. 315 of 2016 of the Additional Sessions Judge, 1st Court, Rangpur.

The case was initiated upon a petition of complainant filed by present opposite party No.1 against the present petitioner

making an allegation of committing the offence under section 138 of the Negotiable Instruments Act, 1881 (shortly, the NI Act) alleging, inter alia, that to disburse the liability the petitioner issued a cheque bearing No. CAI 223263 dated 03.03.2016 amounting to Taka 21,75,000/- in favour of opposite party No.1. On presentation, the cheque was dishonoured on 05.04.20216 for insufficiency of funds. Notice calling upon the drawer to pay the amount covered by the cheque was issued on 07.05.2016, but there was no positive response from the side of the drawer. Hence, opposite party No.1 as the complainant filed the petition of complaint through his constituted attorney namely, Md. Asaduzzaman Sujon. After receiving the complaint, the learned Magistrate following the provision of section 200 of the Code of Criminal Procedure recorded the statement of Md. Asaduzzaman Sujon on oath, and issued a process under section 138 of the NI Act against the petitioner. After issuance of the process, the accused petitioner obtained bail. Ultimately, the case record was transmitted to the Court of Additional Sessions Judge, 1st Court, Rangpur for trial and was renumbered as Sessions Case No. 1060 of 2016.

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 proceeding.

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

Ms. Shiuli Khanom, the learned Deputy Attorney General appearing for the state opposes the Rule.

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

It appears that the sole contention of the petitioner is that 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 and is liable to be quashed.

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

বাদী
মো: আনোয়ার হোসেন
পিতা মো: নবী হোসেন
সাং-ধাপ কটকীপাড়া
থানা-কোতয়ালী
জেলা-রংপুর
পক্ষে
ক্ষমতা প্রাপ্ত প্রতিনিধি
মো: আসাদুজ্জামান সুজন

পিতা মৃত আব্দুল মোতালেব
সাং-গুড়াতিপাড়া
থানা-কোতয়ালী
জেলা-রংপুর।

From the description of the petition of complaint, it is quite clear that the complaint was lodged by Md. Anowar Hossain through his constituted attorney, namely, Md. Asaduzzaman Sujon. Admittedly, Md. Anowar Hossain is the payee of the cheque. Section 141 of the NI Act provides that no Court shall take cognizance of any offence punishable under section 138 of the NI Act except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque. If we consider this provision with the provision of section 4 (f) of the Code of Criminal Procedure side by side it would be clear that the offence punishable under section 138 of the NI Act is non-cognizable because before issuance of the process under section 138 of the NI Act, some certain conditions like filing a written complaint by the payee is to be satisfied and therefore, the question of arrest without warrant does not arise. Now the question is despite the above-mentioned non-obstante provision of section 141 of the NI Act, taking cognizance upon a complaint filed by the payee of the cheque through the constituted attorney whether is maintainable or not. Admittedly, in the NI Act, there is no specific provision for filing the petition of complaint through the constituted attorney or the authorized person. However,

through several judicial pronouncements of this sub-continent, it has been settled that when a complaint is in the name of the payee and not in the name of the attorney such a complaint could be held as proper. Our apex Court settled the issue in the case of Hashibul Bashar vs Gulzar Rahman reported in 56 DLR(AD)17 holding that taking cognizance of an offence punishable under section 138 of the NI Act upon the petition of complainant filed by the attorney upon due examination under section 200 of the Code of Criminal Procedure is perfectly valid and appropriate.

In the above facts and circumstances, we do not find any merit in the Rule.

Accordingly, the Rule is discharged.

The order of stay granted earlier by this Court is hereby recalled and vacated.

Communicate a copy of this judgment and order at once.

K.M. Emrul Kayesh, J.

I agree.

