

**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. 47531 of 2019.

Sathi Akter.

.....Petitioner.

-Versus-

The State and another.

..... Opposite parties.

Mr. Jafar Alim Khan, with

Mrs. Tanzila Kayum Santa, Advocates.

..... For the petitioner.

Mr. Md. Rois Uddin, Advocate

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

Heard & Judgment on: 18.01.2026.

Md. Khairul Alam, J:

This Rule was issued on an application under section 561A of the Code of Criminal Procedure, 1898, at the instance of the petitioner, Sathi Akter, calling upon the opposite parties to show cause as to why the proceedings of Sessions Case No. 1486 of 2017, arising out of C.R. Case No. 185 of 2017 (Dohar Thana) under section 138 of the Negotiable Instruments Act, 1881, now pending in the Court of Joint Sessions Judge, 5th Court, Dhaka, should not be quashed

and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The relevant facts for disposal of the Rule are that the present opposite party No. 2, Nirapotta Sromojibi Samabay Somiti Ltd. (shortly, the samity), as complainant, on 05.06.2017 filed a petition of complaint before the Court of the Chief Judicial Magistrate, Dhaka, implicating the present petitioner as accused, alleging, inter alia, that in order to adjust outstanding liabilities, the accused issued a cheque bearing No. 6220221 dated 22.12.2016, drawn on South East Bank Limited, for an amount of Tk. 10,00,000/- in favour of the complainant. On 05.04.2017, the complainant presented the cheque to the concerned bank for encashment, but the same was dishonoured with the remark "Insufficient Fund". Thereafter, on 12.04.2017, the complainant sent the statutory demand notice through a learned Advocate, the accused received the notice, but didn't make the payment within the stipulated period, compelling the complainant to file the petition of complaint. Upon receipt of the petition of complaint, the learned Magistrate examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance of the offence under section 138 of the Negotiable Instruments Act, 1881. As the offence is triable by the Court of

Sessions, ultimately, the record was transmitted to the Court of the learned Joint Sessions Judge, 5th Court, Dhaka, and the case was renumbered as Sessions Case No. 1486 of 2017. On 07.09.2017, charge was framed against the accused-petitioner under section 138 of the Negotiable Instruments Act, 1881, to which she pleaded not guilty and claimed to be tried. During the period from 10.01.2018 to 29.01.2019, one prosecution witness and one defence witness were examined.

At this stage of the proceedings, the accused-petitioner moved this Court and obtained the present Rule along with an order of stay.

Mr. Jafar Alim Khan, the learned Advocate appearing on behalf of the petitioner, submits that since the offence relates to a Samabay Samity and the petition of complaint was filed without complying with the mandatory provisions of section 86(2) of the Samabaya Samity Ain, 2001, rendering the entire proceeding illegal and not maintainable and to secure the ends of justice and to prevent abuse of the process of the Court, the impugned proceedings are liable to be quashed.

Per contra, learned Advocate Mr. Md. Rois Uddin, appearing for the opposite party No. 2, submits that the offences punishable under the Negotiable Instruments Act, 1881 and the

Samabaya Samity Ain, 2001 are distinct and therefore, the provisions of section 86 of the Samabaya Samity Ain, 2001 have no manner of application to the present proceedings initiated under section 138 of the Negotiable Instruments Act, 1881.

We have considered the submissions of the learned Advocates for both sides and perused the application along with the connected records.

It appears that the impugned case was filed by a Samabay Samity under section 138 of the Negotiable Instruments Act, 1881, alleging dishonour of a cheque issued by the accused-petitioner. The sole contention raised by the petitioner is that the proceedings are barred for non-compliance with section 86(2) of the Samabaya Samity Ain, 2001.

For proper appreciation of the issue, section 86 of the Samabaya Samity Ain, 2001 is reproduced below:

“৮৬। অপরাধ আমলে গ্রহণ, ইত্যাদি।

- (১) Code of Criminal Procedure, 1898 (Act V of 1898) এ যাহা কিছুই থাকুক না কেন, এই আইনের অধীন দণ্ডনীয় অপরাধ অ-আমলযোগ্য (Non-Cognizable) অপাধ হইবে।
- (২) নিবন্ধন বা তাহার নিকট হইতে ক্ষমতাপ্রাপ্ত কোন ব্যক্তির লিখিত অভিযোগ ছাড়া কোন আদালত এই আইনের অধীন কোন অপরাধ বিচারের জন্য গ্রহণ করিবে না।”

On a plain reading of the aforesaid provision, it is evident that the restrictions contained in section 86 apply only to offences punishable under the Samabaya Samity Ain, 2001.

In the present case, the alleged offence has been committed under section 138 of the Negotiable Instruments Act, 1881, which is a distinct and independent statutory offence, wholly separate from offences created under the Samabaya Samity Ain, 2001, therefore, the provisions of section 86 of the Samabaya Samity Ain, 2001 have no manner of application to the present proceedings.

Moreover, it appears from the record that one prosecution witness and one defence witness have already been examined. In the case of Hasina Akhter and others. Vs. Amena Begum and others, reported in 75 DLR (AD) 68 our apex Court held that after commencement of trial and recording of evidence, criminal proceedings should not ordinarily be quashed under section 561A of the Code, except in exceptional circumstances i.e. i) facts alleged not constituting any offence; ii) the proceeding is barred by law; iii) coram non-judice; iv) lack of legal evidence adduced; v) for ends of justice. No such exceptional circumstance has been shown in the present case.

In view of the facts and circumstances stated above, we find no 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.

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

Md. Sagir Hossain, J

I agree

Kashem, B.O