

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CRIMINAL MISCELLANEOUS JURISDICTION)

Present

**Mr. Justice Md. Iqbal Kabir**

**And**

**Mr. Justice Md. Riaz Uddin Khan**

**Criminal Miscellaneous Case No. 14341 of 2021**

**IN THE MATTER OF:**

An application under Section 561A of the Code of  
Criminal Procedure

-And-

**IN THE MATTER OF:**

Ms. Momtaj Begum (Ruma)

...Accused-Petitioner

Versus

The State and another

...Complainant-Opposite Parties

Mr. M. Moksadul Islam, Senior Advocate with

Mr. Shaikh Mohammad Zakir Hossain, and

Mst. Tohida Akter, Advocates

...For the Accused-Petitioner

Mr. Md Sawkat Ali Bhuiyan, Advocate

...For the Complainant-Opposite Party No. 2

Mr. Md. Jasim Sarker, DAG

...For the State

**Judgment on: 17.03.2025**

**Md. Riaz Uddin Khan, J.**

Upon an application filed under section 561A of the Code of Criminal Procedure the opposite party No.1 was asked to show cause as to why the proceedings of Special Sessions Case No. 66 of 2017 [arising out of CR Case No. 477 of 2011], filed under section 138 of the Negotiable Instruments Act, 1881, pending in the Court of Special Sessions Judge, Court No. 5, Dhaka should not be quashed and/or such other or further order

or orders should not be passed as to this Court may deem fit and proper.

At the time of issuance of Rule further proceeding of the instant Case was stayed initially for 6(six) months which was extended time to time.

Brief facts for disposal of this case are that on 27.10.2011 on behalf of Social Islami Bank Ltd the complainant Mr. Zahir Uddin, Senior Officer filed a C.R. Case being No.477 of 2011 in the Court of Chief Metropolitan Magistrate, Dhaka under section 138 of the Negotiable Instruments Act, 1881 stating *inter alia* that accused persons availed loan facilities for their business firm from the complainant Bank and in a view to discharge its loan liabilities as standing with the complainant bank, issued 01 (One) cheque being No.AWCD113393 dated 08.08.2011 amounting to Taka 6,73,40,285/- of Social Islami Bank Limited. The complainant presented the same on 09.08.2011 for encashment but the said cheque was dishonored due to insufficient fund in the account. The complainant served a Legal Notice on 19.09.2011 through his Lawyer with registered post with A/D requested to adjust money against dishonoured cheque within 30 (thirty) days. But the accused did not show any positive gesture to repay the cheque money of the complainant within the stipulated time which is an offence under section 138 of the Negotiable Instruments Act.

The Chief Metropolitan Magistrate, Dhaka took cognizance of offence against the accused-petitioner and others under section 138 of the Negotiable Instruments Act and issued summons and the petitioner surrendered before the Court and obtained bail.

Eventually, the case being ready for trial was transmitted to the Court of Special Sessions Judge, Dhaka, wherein the case was numbered as Special Sessions Case No. 66 of 2017. The trial Court framed charge under section 138 of the Negotiable Instruments Act against the accused petitioner rejecting her application filed under section 265C of the Code of Criminal Procedure.

At this stage the petitioner moved this Court and obtained the Rule and the interim order as stated at the very outset.

The learned Advocate Mr. M. Moksadul Islam, appearing for the accused-petitioner at the very outset submits that the complainant Social Islami Bank Limited also filed an Artho Rin Suit No.124 of 2011 on 03.11.2011 in the court of Artho Rin Adalat No.4 Dhaka for recovery of loan money and the Artho Rin Adalat on 30.08.2016 pronounced the judgment and decree against the accused petitioner for an amount of Taka 6,73,40,285/- (decree signed on 06.09.2016) and also filed the decree Execution Case No.53/2017. In that Artha Rin Case No.124 of 2011 the complaint did not disclose that cheque was given to the complainant Bank for payment of the outstanding loan by the

accused petitioner which creates serious doubt about the offence of the instant case. The loan was taken from the complaint bank by mortgaging properties and the bank has filed Artharin case against the accused petitioner but the instant case has been filed only for harassment.

He then submits that it is settled principle of law that no one can be punished twice on the self same occurrence and in the instant case the complainant recovered the loan by initiating proceeding under the Artha Rin Adalat Ain, 2003 and initiated the instant case under the Negotiable Instruments Act, 1881 which is barred by law as well as Article 35 of the Constitution of the Peoples Republic of Bangladesh. Recovery of loan is exclusively triable under Artha Rin Adalat Ain 2003 and therefore proceeding initiated under section 138 of the Negotiable Instruments Act, 1881 for recovery of loan is not permitted by law.

The learned advocate lastly submits that the cheque in question was dishonored on 09.08.2011 and notice was served through registered post with A/D by the complainant on 19.09.2011. So the case is barred by law, since the legal notice was not served upon the complainant within 30 (thirty) days from the date of dishonor. The instant case has been instituted violating the mandatory provision of the section 138 of the Negotiable Instruments Act and as such the

proceeding is abuse of the process of the court and the case is liable to be quashed for ends of justice.

At the time of delivery of judgment the learned advocate Mr. Md. Sawkat Ali Bhuiyan on behalf opposite party bank filed a counter affidavit which we do not appreciate at all. However, it is considered for ends of justice.

It is stated in the counter affidavit that the accused petitioner availed loan for their business firm from the complainant bank and to repay the loan liabilities the petitioner issued the Cheque dated 08.08.2011 amounting to taka 6,73,40,285/-which was dishonored. Then the Opposite party No. 2 sent the legal Notice, but the Petitioner didn't pay the loan and the Opposite party filed the instant Case in proper way and charge was framed rightly under Section 138(1) of the Negotiable Instruments Act and there was no illegality. The petitioner has taken ground that there is bar to file the instant Case because of filing the Artha Rin Suit by the Opposite party bank but institution of the Artha Rin suit is not a valid ground for quashment or interference with the proceeding in the Sessions Case under Section 138 of the Negotiable Instruments Act. The issue raised in the Artha Rin suit is confined to the realization of money along with the interest thereon. The suit does not involve any criminal liability. On the other

hand, a Case under Section 138 of the Negotiable Instruments Act involves a strict criminal liability and institution of an Artha Rin suit does not exempt the offender from the criminal liability. The civil suit will not frustrate the case under Section 138 of the Negotiable Instruments Act. Pendency of a civil suit will not hinder proceedings of a criminal Case. Hence the Rule should be discharged. Two case is referred: the case of Eastern Bank Limited Vs Md. Shirajuddula, 72 DLR(AD) 79 and\_Nasir Uddin Umar Vs Chowdhury Jahangir Jahural Ambia Al-Baki, 73 DLR 638.

We have heard the submissions of the learned Advocate for both the parties, perused the application, supplementary affidavit and counter affidavit along with the annexures.

It will be relevant to refer the section 138(1) of the Negotiable Instruments Act, 1881, which runs as follows:

**"138. Dishonour of cheque for insufficiency, etc. of funds in the account--** (1) Where any cheque drawn by a person on an account maintained by him with a bock for payment of any specific amount of money to another person from out of the account is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that

bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to thrice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it was drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within thirty days of the receipt of the said notice."

It appears from the petition of complaint that the complainant claimed that the cheque in question was dishonor on 09.08.2011 and he has served legal notice on 19.09.2011. According to provision of section 138 read with 141 of the Negotiable Instruments Act if the disputed cheque is dishonored for insufficiency of fund the

complainant is to demand in writing of payment within 30 days from the date of knowledge of such dishonor giving 30 days time and if the accused failed to pay the cheque amount within that period the complaint is to be filed within 1 (one) month. In the present case the legal notice demanding payment was served by postal service with acknowledgement due beyond the period of 30 days from the date of dishonor of cheque. The complainant did not mention the date of knowledge of such dishonor of cheque which means he came to know such date on the very date of dishonor. Because, the cheque was dishonoured by the complainant bank itself. Admittedly, the cheque was dishonor on 09.08.2011 and demand in writing was made on 19.09.2011, beyond the statutory limitation period as mandated under section 138(1)(b) of the Negotiable Instruments Act, 1881.

Moreover, in the case of Nizam Uddin Mahmood Vs. Abdul Hamid Bhuiyan reported in 9 BLC (AD) 177 our Appellate Division held- *“In view of the non-disclosure of the date as to receipt of notice by the accused and failure to mention any legal cause of action in the petition of complaint, we are of the view that the proceeding cannot be allowed to continue and, as such, it is liable to be quashed.”* It is mentionable that in this reported case the complainant though mentioned the date of service of notice but did not mention the date of receipt of that notice by the accused which is the date of cause of action.



In that view of the above and the discussions made herein before, we are of the view, that the instant case is barred by limitation for which we are constrained to interfere in the proceeding.

We do not find it necessary to discuss the other grounds taken by the accused petitioner since we have already opined the instant case is liable to be quashed on the ground of limitation.

In the result, the Rule is made **absolute**.

The proceeding of the Special Sessions Case No. 66 of 2017 arising out of C.R. Case No. 477 of 2011 filed under section 138 of the Negotiable Instruments Act, 1881, pending in the Court of Special Sessions Judge, Court No. 5, Dhaka is hereby quashed. The order of stay granted earlier stands vacated.

Communicate the judgment and order at once.

**Md. Iqbal Kabir, J:**

I agree.