

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

Present

**Mr. Justice Ashish Ranjan Das**

**And**

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

**Criminal Miscellaneous Case No. 16851 of 2021**

**IN THE MATTER OF :**

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

-And-

**IN THE MATTER OF :**

Farhana Amin and another

...Accused-Petitioners

Versus

The State and another

...Opposite Parties

Mr. Sazzad Hossain, with

Mr. Khan Mohammad Shameem Aziz

Mr. M Najmul Huda and

Mr. Tapan Kumar Biswas, Advocates

...For the Petitioners

Mr. Palash Chandra Ray, with

Mr. Md. Alauddin (Al-Azad) and

Mr. Kishore Kumar Modal, Advocates

...For the opposite party No. 2

Mr. S.M. Asraful Hoque, D.A.G with

Ms. Fatema Rashid, A.A.G

Mr. Md. Shafiquzzaman, A.A.G. and

Mr. Md. Akber Hossain, A.A.G

...For the State

**Judgment on 12.05.2024**

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

Rule was issued upon an application filed  
under section 561A of Code of Criminal  
Procedure asking the opposite parties to show  
cause as to why the Metro Sessions Case No.

22250 of 2019 arising out of the C.R. Case No. 524 of 2018 under sections 138/140 of the Negotiable Instruments Act, 1881, pending in the Court of learned Metropolitan Additional Sessions Judge, 1<sup>st</sup> Court, Dhaka should not be quashed and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of Rule all further proceedings C.R. Case No. 524 of 2018 was stayed till disposal of the Rule.

Succinct facts for disposal of this Rule are that one Dr. Md. Mozammel Haque Khan (Sohel), Managing Director of Promises Agriplus Trading House (PATH) Limited, Uttara, Dhaka filed a petition of complaint in the Court of Chief Metropolitan Magistrate, Dhaka on 03.05.2018 against the accused petitioners and others alleging inter alia that Shreshtho Feed Limited being a poultry feed business firm used to purchase poultry feed from Promises Agriplus Trading House (PATH) Limited on credit; to repay the liabilities the accused company under the signatures of accused nos.2 and 3 issued a cheque dated 31.12.2017 of Pubali Bank Ltd. of tk. 85,00,000/- in favour of the complainant; for encashment, the complainant

deposited the said cheque in Islami Bank Bangladesh Ltd., Paltan Branch, Dhaka on 06.03.2018 and the said cheque was dishonored due to insufficiency of fund; the complainant verbally informed the accused about the dishonoring of cheque and asked to repay but they did not pay any heed to it for which the complainant sent a legal notice on 07.03.2018 to the accused-company and others demanding the cheque amount; the accused didn't take any step to repay the dues; therefore, the complainant filed the case under sections 138/140/141 of the Negotiable Instruments Act, 1881.

After receiving the complaint the learned Magistrate examining the complainant issued process against the accused including the petitioners. The petitioners were enlarged on bail and in course of time the case was transmitted to the court of Sessions for trial. The learned Sessions Judge by his order dated 26.11.19 took cognizance of the case under section 138 of the Negotiable Instruments Act and sent the case for trial to the 1<sup>st</sup> court of Additional Metropolitan Sessions Judge, Dhaka who by his order dated 21.10.20 framed charge under section 138/140 of the said Act. Prosecution adduced one

witness (PW-1) who was cross-examined by the accused. At this stage two of the accused out of 9 accused moved this Court and obtained the Rule and order of stay as stated at the very outset.

This rule was issued on 24.03.2021 but before communication of the order of this Court the case was transferred for trial to the Court of 1<sup>st</sup> Joint Metropolitan Sessions Judge, Dhaka on 28.03.2021 and since then it is pending for trial before that Court.

The learned Advocate Mr. Sazzad Hossain appearing on behalf of the accused-petitioners submits that petitioner no.1 Farhana Amin resigned from the accused company from the post of director on 20.08.2017 while petitioner no.2 Kutub Uddin resigned on 13.08.2017 long before the issuance of the cheque in question by two co-accused. Drawing our attention of Annexure-D, D1 (Form-XII under section 115 of the Companies Act) and E (reply of the legal notice by the company-Exhibit-7), the learned advocate submits that it is an admitted position and in that view the petitioners at the time of committing offence were neither in charge of, nor responsible to, the company for the conduct of the business of the

company and as such they cannot be liable for the offence committed by the company.

Mr. Palash Chandra Roy, the learned Advocate appearing on behalf of the opposite party No. 2 complainant finds it difficult to oppose the contention of the learned advocate. However, he submits that other than the petitioners the proceeding under section 138/140 of the Negotiable Instruments Act should be continued against the other accused but the entire proceeding was stayed by this Court at the time of issuance of Rule and the order of stay should be vacated.

We have heard the learned Advocates of both the parties, perused the application, supplementary affidavit along with the annexure, counter affidavit and other documents available before us.

It appears from record that the Managing Director of the accused company who is the accused no.2 in reply to the legal notice issued by the complainant (Exhibit-7) clearly stated that long before the issuance of the cheque in question both the accused-petitioners resigned from the post of directors and according to the Companies Act, 1994 the accused petitioners had no connection with the accused company at the

time of alleged commission of offence under section 138/140 of the Negotiable Instruments Act. According to section 140 of the Negotiable Instruments Act if the person committing an offence under section 138 is a company , every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for conduct of the business of the company, as well as company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence. In the present case record shows that the accused-petitioners had no knowledge regarding the issuance of cheque which was dishonored due to insufficient fund. In such view of the facts the continuation of the proceeding against the petitioners would be abuse of the process of the court which is liable to be quashed so far it relates to the petitioners. In that view of the matter, we find substance

in the contention of learned advocate for the petitioners having merit in the Rule.

Resultantly, the Rule is made **absolute**.

The Metro Sessions Case No. 22250 of 2019 arising out of the C.R. Case No. 524 of 2018 under sections 138/140 of the Negotiable Instruments Act, 1881, now pending in the Court of learned Metropolitan Joint Sessions Judge, 1<sup>st</sup> Court, Dhaka is hereby quashed so far it relates to the accused-petitioners Farhana Amin and Md. Kutub Uddin. However, the proceeding against other accused shall continue in accordance with law. The order of stay granted earlier by this Court stands vacated and the trial court is directed to proceed with the case in accordance with law against the other accused.

The trial court is further directed to conclude the trial expeditiously keeping in mind that the CR Case was of the year of 2018.

Communicate the judgment and order at once.

**Ashish Ranjan Das, J:**

I agree.