

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

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

CRIMINAL MISCELLANEOUS CASE NO. 71181 OF 2019

Md. Abdul Hye Tipu
.....Accused-Petitioner.
-VERSUS-
The State and another ...Opposite Parties.

No one appears
..... For the petitioner.
Mr. Habibul Islam Bhuiyan, Senior Advocate
.....For the Opposite Party No.2.
Mr. B.M. Abdur Rafell, DAG with
Mr. Binoy Kumar Ghosh, A.A.G.
Mr. A.T.M. Aminur Rahman (Milon), AAG
Ms. Lily Rani Saha, AAG
.....For the State.

Heard and Judgment on 28.02.2024.

SHAHED NURUDDIN, J:

By this Rule, the accused-petitioner by filing an application under Section 561A of the Code of Criminal Procedure sought to quash the proceedings of Sessions Case No.854 of 2018 arising out of Kotwali Model Police Station Case No.42 of 2018 under Section 138 of the Negotiable Instruments Act,1881, now pending before the learned Metropolitan Sessions Judge Court, Sylhet.

Material facts leading to this Rule are that, in order to discharge the loan liability the accused petitioner gave

the cheque to the complainant which on presentation to the bank for encashment was dishonored on the ground of insufficiency of funds. Following the procedure and in compliance with statutory provisions laid down in section 138 of the Negotiable Instruments Act, 1881 the complainant filed the instant case.

The learned Magistrate took cognizance of the offense and subsequently, the charge was framed by the Metropolitan Sessions Judge, Sylhet. The case is now pending for trial.

Feeling aggrieved the accused petitioner preferred the instant application and obtained the present Rule on 06.11.2019.

Despite the matter appears in the cause list for hearing, no one appears on behalf of the petitioner to press the rule. However, in presence of Mr. Habibul Islam Bhuiyan, the learned Senior Counsel appearing for the opposite party No.2 and the learned Deputy Attorney General, we are inclined to dispose of the rule on merit.

Mr. Habibul Islam Bhuiyan, 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 fixed for examination of witness and 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. In support of his contention he referred the decision reported in 13 MLR (AD) 184 and 62 DLR (AD) 233.

Heard the learned Advocate for the opposite parties 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. The learned Judge after considering the entire materials on record rightly framed the charge under the same section against the accused petitioner. Moreso, in defence the accused denied the entire allegations. So, when there is such

denial, the question of innocence does not arise in this regard reliance has been placed on 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 cases reported in 68 DLR (AD) 298, 72 DLR (AD) 79, and the case of Phoenix Finance and Investment Limited (PFIL) Vs. Yeasmin Ahmed and another reported in XVIII ADC (AD) 490. In the instant case, the accused stand indicted for an offense punishable under the same section. Cognizance has been taken as well the charge has been framed against the accused petitioner under the same 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 petition of Miscellaneous Case and we find that such grounds are absolutely the disputed question of facts and the same should be decided at trial. The plea of the petitioner is nothing but the defense plea. Be that as it may, the proposition of law is now well settled that based on a defense 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 the miscellaneous 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 is stifled inasmuch as the grounds advanced before us are not correct or legal exposition of law.

It is also notable whether the respondent of the company at the relevant time was a director or not and whether a person was in charge and was responsible for the conduct of the business of the company at the relevant point of time is a disputed question of fact. So the burden of proof lies upon the accused person as per provision so enumerated in section 102 of the Evidence Act, 1872.

Therefore we hold that there are sufficient grounds for proceeding against the accused petitioner for going to trial under the same section. To that end, view, we are at one with the learned Judge of the Court below regarding the framing of the charge against the accused.

In the light of the discussions made above and the preponderant judicial views emerging out of the authorities referred to above we are of the view that the impugned proceedings suffer from no legal infirmities which calls for no interference by this Court.

In view of the foregoing narrative, the Rule is discharged. The order of stay granted earlier stands vacated.

The office is directed to communicate the judgment at once.

MD. SALIM, J:

I agree.