

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Criminal Miscellaneous Jurisdiction)**

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

CRIMINAL MISCELLANEOUS CASE NO. 34357 OF 2018

Mir Md. Amir Hossain
.....Accused-Petitioner.

-VERSUS-

The State and another. ...Opposite Parties.

Mr. A.M. Mahbub Uddin, Advocate
..... For the petitioner.

Mr. Najmul Karim, Advocate
..... For the Opposite Party No.2.

Mr. B.M. Abdur Rafell, DAG with
Mr. Binoy Kumar Ghosh
Mr. A.T.M Aminur Rahman, A.A.Gs.
.....For the State.

**Heard on: 08.05.2024 and
Judgment on: 16.05.2024.**

SHAHED NURUDDIN,J:

By this Rule, the accused-petitioner by filing an application under Section 561A of the Code of Criminal Procedure sought for quashing the proceedings of Metro. Sessions Case No.12356 of 2017 arising out of C.R. Case No.742 of 2012 under Section 138 of the Negotiable Instrument

Act,1881, now pending before the learned Metropolitan Additional Sessions Judge, 6th Court, Dhaka.

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 Additional Sessions Judge, 6th Court, Dhaka. The case is now pending for trial.

Being aggrieved and dissatisfied with the impugned proceedings the accused petitioner preferred the instant application and obtained the present Rule on 25.07.2018.

Mr. A.M. Mahbub Uddin, the learned Advocate appearing for the accused petitioner submits that as per section 31 sub-section (3) of the Deulia Bishoyok Ain, 1997 where a bankruptcy proceeding is pending, a creditor should not seek any remedies

against any debtor's exempt property and allotable assets, or any civil suit or other proceeding against any debt credible under this Act, but if the Court permits this and if any conditions is imposed the same, any suit or proceeding accordingly can be done. The creditor Bank has not any permission from the Bankruptcy Court. So the proceeding of Negotiable Instrument Act without the permission of Bankruptcy Court is illegal and liable to be quashed.

Heard the learned Advocate for both the 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. The charge has been framed against the accused petitioner under section 138 of the Negotiable Instrument Act, 1881. 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.

In the instant case the accused petitioner took a ground that a proceeding under Deulia Bishoyok Ain, 1997 has already been initiated against the accused petitioner and therefore the proceeding under section 138 of the Negotiable Instrument Act, 1881 cannot be initiated against the accused petitioner. Such ground is not tenable in the eye of law. It is settled by the apex court in a series of decisions that there is no bar in proceeding with any civil suit against the accused petitioner along with criminal case. The proceeding under Deulia Bishoyok Ain is a case of civil nature. The criminal case initiated against the petitioner for dishonour of cheque is a criminal offence. Merely because Deulia case is pending against the petitioner. The petitioner cannot be absolved from the criminal liability, which arises due to dishonour of cheque. As such the pending of Deulia Case is not a valid ground at least for quashing the proceeding under section 138 of the Negotiable Instrument Act, 1881.

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

Hanif/BO