

In The Supreme Court of Bangladesh
High Court Division
(Criminal Miscellaneous Jurisdiction)

Present:

**Mr. Justice Abu Taher Md. Saifur Rahman
And
Mr. Justice S.M. Masud Hossain Dolon**

Criminal Miscellaneous Case No. 11374 of 2017

Md. Tofazzal Hossain.....Accused-Petitioner

-Versus-

The State and another.....Opposite parties
None appears.....For the accused-petitioner
Mr. Tushar Kanti Das, Advocate
.....For the opposite party No. 2
Mr. K.M. Masud Romy, DAG with
Mr. Mehadi Hasan (Milon), AAG and
Ms. Aleya Khandker, AAG
.....For the state

Heard on: 10.03.2024, 11.03.2024 and 13.03.2024

Judgment on: The 18th of March, 2024

Abu Taher Md. Saifur Rahman, J:

This Rule was issued on an application filed by the accused-petitioner under section 561-A of the Code of Criminal Procedure calling upon the opposite parties to show cause as to why the proceedings of Sessions Case No. 528 of 2016, arising out of C.R. Case No. 1067 of 2015 (Sadar) under section 138 of the Negotiable

Instruments Act, 1881 (as amended in-2006) now pending in the Court of Joint Sessions Judge, 3rd Court, Bogura 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 the Rule, this Court was pleased to stay the aforesaid proceedings of Sessions Case No. 528 of 2016 for **3 (three)** months from the date which was time to time extended by this Court.

For disposal of this Rule, the relevant facts may briefly be stated as follows:

That the opposite party No. 2, National Bank Limited as complainant filed a C.R. Case No. 1067 of 2015 against the accused-petitioner under section 138 of the Negotiable Instruments Act alleging inter alia that the accused-petitioner has obtained the loan facilities amounting to **Tk. 77,73,94,000/-** (Taka Seventy seven crore, Seventy three lac and Ninety four thousand) from the complainant bank. Subsequently, the accused-petitioner failed to repay the aforesaid loan. Thereafter, in order to rescheduling the aforesaid loan, the accused-petitioner issued the impugned cheque amounting to **Tk. 2,80,30,755/-** as down payment in favour of the

complainant bank which was dishonored due to insufficient of fund. Hence, the aforesaid cases were filed against the accused-petitioner under section 138 of the Negotiable Instruments Act. Thereafter, the accused-petitioner duly appeared in that case and obtained bail. Thereafter, the charge was framed against the accused-petitioner under section 138 of the Negotiable Instrument Act, 1881. Being aggrieved, the accused-petitioner preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing the aforesaid proceeding and obtained the Rule and stay.

None appears for the petitioner to support the Rule. The petitioner has stated in his application that the impugned cheque was given as a security cheque at the time of obtaining the loan which does not covered the provision of section 138 of the Negotiable Instrument Act, 1881 and as such the instant case is liable to be quashed.

It is further stated that to recover the unpaid dues, the complainant opposite party has already filed an Artha Rin Suit No. 24 of 2016 before the Artha Rin Adalat,

Bogura and as such the impugned criminal proceeding is liable to be quashed.

As against this, Mr. Tushar Kanti Das, the learned Advocate for the opposite party No. 2 submits that after complying with all legal formalities of section 138 of the Negotiable Instrument Act, 1881, the instant case was filed against the accused-petitioner and as such the accused petitioner has no ground at all to invoke the provision of section 138 of the Negotiable Instrument Act, 1881.

Heard the submissions of the learned Advocate for the opposite party No. 2 and perused the petitioner's application thoroughly.

The only issue for determination of this Rule is to see whether the impugned proceedings under section 138 of the Negotiable Instruments Act is liable to be quashed.

In the instant case, the accused-petitioner mainly contended that the impugned cheque was given as security cheque which does not covered the provision of section 138 of the Negotiable Instrument Act, 1881. However, this issue already been settled by the Hon'ble Appellate Division, in the case of Majed Hossain and

others as reported in 17 BLC (AD) 177 wherein it was held that-

“A reading of Sub-section (1) of section 138 of the Act, 1881 shows that an offence under the section shall be deemed to have been committed, the moment a cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account is returned by the bank unpaid on any of the grounds mentioned therein. Sub-section (1) of section 138 has not made any qualification of the cheque so returned unpaid either post dated given as a security for repayment of the loan availed by a loanee as alleged by the accused or any other cheque issued by the drawer for encashment currently.”

Moreover, the impugned proceeding was filed under section 138 of the Negotiable Instrument Act, 1881 which is criminal in nature.

On the other hand, the Artha Rin Suit No. 24 of 2016 was filed for recovery of the entire outstanding loan amount which is civil in nature. The nature and character of both the case are completely different.

In the case of Amir Ali Mostofa Vs. Shah Md. Nurul Alam as reported in 74 DLR (AD) (2022) page-79 wherein the Hon'ble Appellate Division was held that-

“Only because of the subject matter of the criminal case and civil litigation being the same, it will not be a bar for continuation of the criminal proceedings, rather the criminal case will run in its own way.”

In the case of Khandoker Mahtabuddin Ahmed Vs. the State as reported in 49 DLR (AD) 132 wherein it was held that-

“Both the civil and criminal case may run simultaneously in respect of criminal offense as well as for recovery of the amount misappropriated.”

Regarding the aforesaid issue a numerous decisions have been passed by our Apex Court. In such view of the aforesaid legal position, we do not find any substances of this Rule.

As a result, the Rule is discharged.

The order of stay granted earlier by this Court is hereby stand vacated.

Since it is a very old case, the concerned trial Court is hereby directed to proceed with the case expeditiously as early as possible in accordance with the law.

Communicate this judgment and order at once to the concerned Court below.

S.M. Masud Hossain Dolon, J:

I agree