

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

**Present:**

Mr. Justice Md. Khairul Alam  
and  
Mr. Justice Md. Sagir Hossain

**Criminal Miscellaneous Case No. 13196 of 2023.**

Rowshan Hossain.  
.....Petitioner.

-Versus-

The State and another.  
..... Opposite  
parties.

No one appears  
..... For the petitioner.  
Mr. Monjur Elahi Porag with  
Mr. Kazi Alauddin, Advocates  
..... For the opposite party No.2.

Heard on : 03.02.2026 and  
**Judgment on: 15.02.2026.**

**Md. Khairul Alam, j.**

This Rule, upon an application under section 561A of the Code of Criminal Procedure, 1898, was obtained by the accused petitioner seeking to quash the proceedings of Metro. Sessions Case No. 18968 of 2018, arising out of C.R. Case No. 2310 of

2017 under section 138 of the Negotiable Instruments Act, 1881 (shortly, the NI Act), now pending in the Court of Special Joint Sessions Judge, Environment Court, Dhaka.

Facts relevant for disposal of the Rule are that the present opposite party No. 2, National Credit and Commerce Bank Limited (NCC Bank), as complainant, filed a petition of complaint before the Court of the Chief Metropolitan Magistrate, Dhaka, under sections 138 read with section 140 of the NI Act, implicating SBS Cables Limited, a private limited company, along with its Managing Director, Chairman and Directors including the present petitioner, describing him as an acting director of the company alleging, inter alia, that SBS Cables Limited obtained loan facilities from the complainant bank. In adjustment of the said liability, the company issued a cheque bearing No. 1076815 dated 08.11.2017, amounting to Tk. 36,00,00,000.00, in favour of the complainant. Upon presentation, the cheque was dishonoured on

08.11.2017 with the endorsement “insufficient funds.” Thereafter, on 19.11.2017, the complainant served statutory notice upon the accused persons demanding payment of the cheque amount. As the accused failed to make payment within the stipulated period, the petition of complaint was filed. On receipt of the complaint, the learned Magistrate examined the complainant under section 200 of the Code of Criminal Procedure, took cognizance under sections 138/140 of the NI Act, and issued process against the accused. The petition of complaint was registered as C.R. Case No. 2310 of 2017. The petitioner obtained bail on 24.11.2021. Upon transfer to the Court of Sessions, the case was renumbered as Sessions Case No. 18968 of 2018, which is now pending before the Court of Special Joint Sessions Judge, Environment Court, Dhaka for trial.

Being aggrieved by the said proceedings, the petitioner moved this Court and obtained the present Rule along with an order of stay.

No one appears in support of the Rule.

The petitioner mainly contended that since he is neither the drawer of the cheque in question nor was in charge of, or responsible to, the company for the conduct of the business of the company at the time of commission of the alleged offence, therefore, the continuation of the proceeding against him is wholly misconceived and amounts to an abuse of the process of the Court, since the ingredients attracting liability under section 140 of the NI Act have not been satisfied in the present case.

Conversely, Mr. Monjur Elahi Porag, learned Advocate for opposite party No. 2, submits that at the relevant time the petitioner was a director of the company which obtained the loan and, therefore, he has rightly been impleaded in the case.

We have heard the learned Advocates for the respective parties and perused the materials on record, including the impugned proceeding.

It appears that SBS Cables Limited obtained loan facilities from National Credit and Commerce Bank Limited (NCC Bank), Limited and in discharge of the said liabilities, the company issued a cheque which was dishonoured and the bank filed the petition of complaint under sections 138/140 of the NI Act showing the petitioner as a director of the company.

The petitioner contends that since he neither signed the cheques nor was in charge of or responsible for the conduct of the company's business, the requirements of section 140 of the Negotiable Instruments Act, 1881, have not been fulfilled.

For proper appreciation, section 140 of the NI Act reproduced herein follows:

“140. Offences by companies—(1) 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 the conduct of the business of the company, as well as the 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 subsection 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.

(2) Notwithstanding anything contained in subsection (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such person shall also be deemed to be guilty of the offence.”

A plain reading of the provision makes it clear that criminal liability under section 138 extends not only to the company but also to those persons who, at the relevant time, were in charge of and responsible for the conduct of the business of the company. Therefore, a director cannot be held criminally liable merely by virtue of holding such office. Vicarious liability under section 140 arises only when it is proved that the accused director was in charge of and responsible for the conduct of the business of the company at the time when the offence was committed.

The inherent power of this Court under section 561A of the Code of Criminal Procedure is to be exercised sparingly, cautiously and in exceptional circumstances, namely where continuation of the proceeding would amount to abuse of the process of the Court or where the allegations, even if taken at their face value, do not disclose any offence.

In the present case, it is an admitted position that the petitioner is neither the signatory to the

dishonoured cheques nor the Managing Director or Chairman of the company. The petitioner has been implicated in the case as an accused showing him as a director of the company. It is well-settled that, for the purpose of fixing vicarious liability upon a director or officer of a company under section 138 read with section 140 of the NI Act, it is sufficient at the initial stage if the complaint merely contains an averment that, at the relevant time, such person was in charge of and responsible for the conduct of the company's business.

A plain reading of the petition of complaint reveals that clear and categorical statements have been made therein that at the relevant time of issuance and dishonour of the cheque, the petitioner was a director of the company and was in charge of and responsible for the conduct of its business.

Whether the petitioner was a director and actually in charge of and responsible for the conduct of the company's business at the relevant time is

essentially a question of fact, which can only be determined upon consideration of evidence, both oral and documentary, during trial.

In a proceeding under section 561A of the Code, this Court cannot embark upon an enquiry into disputed questions of fact, nor can it assess the truth or falsity of the allegations made in the complaint.

On perusal of the complaint, prima facie, it appears that the complaint discloses the essential ingredients of offences under sections 138 and 140 of the NI Act.

Accordingly, we find no lawful ground to interfere with the impugned proceeding at this preliminary stage.

However, the petitioner shall be at liberty to raise all permissible defences before the trial court in accordance with law.

In view of the foregoing discussions, we find no merit in the Rule.

Accordingly, the Rule is discharged.

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

Let a copy of this judgment and order be communicated at once.

**Md. Sagir Hossain, j.**

I agree.

Kashem, B.O