

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

PRESENT:
MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN
AND
MR. JUSTICE MD. BASHIR ULLAH

CRIMINAL MISCELLANEOUS CASE NO. 33888 OF 2014

Md. Mahmudul Haque and others

.... Accused-petitioners

-Versus-

The State and another

.....Opposite parties

Mr. M. A. Awal, Advocate

.....for the petitioners

Mr. Md. Jalal Uddin, Advocate

...for the opposite party No. 2

Heard on: 22.01.2024 and 31.01.2024

Judgment on: The 31st of January, 2024

ABU TAHER MD. SAIFUR RAHMAN, J:

This Rule was issued on an application filed by the petitioner under section 561A of the Code of Criminal Procedure, 1898 calling upon the opposite parties to show cause as to why the proceedings of Sessions Case No. 3836 of 2013, arising out of C.R. Case No. 1452 of 2013 (Kotwali Zone) under section 138 of the Negotiable Instrument Act, 1881 now pending before the Metropolitan Joint Sessions Judge,

1st Court, Chittagong should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court was pleased to stay all further proceedings of the aforesaid Sessions Case No. 3836 of 2013 for **3 (three)** months from 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 as complainant filed a C.R. Case No. 1452 of 2013 against the accused-petitioner under section 138 of the Negotiable Instrument Act, 1881 alleging inter alia that the impugned cheque dated 26.11.2012 amounting to **Tk. 9,50,000/-** was issued by the accused-petitioners which was dishonoured on 15.04.2013 due to insufficient of fund.

Being aggrieved, the complainant-opposite party No. 2 filed a C.R. Case No.1452 of 2013 against the accused-petitioners under section 138 of the Negotiable Instrument Act. Thereafter, the accused-petitioners duly appeared before the Court and obtained bail. Subsequently, the charge was framed against the accused-petitioners. Being aggrieved, the accused-petitioners 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.

Mr. M. A. Awal, the learned Advocate for the accused-petitioners mainly submits that the complainant-opposite party No. 2 did not mentioned in his complaint as to when the petitioners have received the demand of legal notice and as such the complainant-opposite party No. 2 has no cause of action to file a petition of complaint against the accused-petitioners under section 138 of the Negotiable Instrument Act.

As against this, Mr. Md. Jalal Uddin, the learned Advocate for the opposite party No. 2 submits that the contention as raised by the learned Advocate for the accused-petitioners is a matter of evidence which cannot be decided at this stage under section 561A of the Code of Criminal Procedure.

Heard the submissions of the learned Advocates of both sides and perused the petitioners' application along with other materials on record thoroughly.

On perusal of the petitioners' application, it transpires that admittedly the impugned cheque was issued in favour of the complainant-opposite party No. 2. We have further noticed that the complainant-opposite party No. 2 duly served a legal notice upon the accused - petitioners. However, the accused-petitioners contended that

the complainant-opposite party No. 2 did not mention in his petition of complaint as to when the accused-petitioners have received the demand of legal notice. So far this is concerned, we are of the view that whether the petitioner has received a legal notice or not is a question of fact, which can be decided at the time of trial. So the contention as raised by the accused-petitioners is not accepted.

Under the given facts and circumstances of this, 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 below is hereby directed to dispose of the aforesaid case expeditiously in accordance with law.

Communicate this judgment and order at once.

Md. Bashir Ullah, J:

I agree