

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

**PRESENT:**

**MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN  
AND  
MR. JUSTICE KHANDAKER DILIRUZZAMAN**

**CRIMINAL MISCELLANEOUS CASE NO. 13843 OF 2008**

Md. Ayub Chowdhury.....Accused petitioner

-Versus-

The State.....Opposite party

None appears.....For the accused petitioner

Mr. Imran Ahmed Bhuiyan, DAG with

Mr. Mehadi Hasan (Milon), AAG and

Ms. Aleya Khandker, AAG

.....For the state

**Judgment on: The 10<sup>th</sup> of August, 2023**

**ABU TAHER MD. SAIFUR RAHMAN, J.**

This Rule was issued on an application filed by the accused petitioner under section 561A of the Code of Criminal Procedure, 1898 calling upon the opposite party to show cause as to why the proceeding of Non FIR prosecution No. 364 of 2003 under section 211 of the Penal Code now pending in the Court of Metropolitan Magistrate, Chittagong 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 all further proceedings of the aforesaid Non FIR Prosecution No. 364 of 2003 for 3 (three) months from the date which was time to time extended by the Court.

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

That the petitioner as informant lodged an FIR with local police station which was registered as Kotwali Police station Case No. 40 under sections 406/420/109 of the Penal Code against Md. Ataulah and others alleging inter alia that in order to be a share holder of SCL he deposited **Tk. 5,00,000/-** (Taka Five lac) in favour of Md. Ataulah, the manager of the said company. However, subsequently he was not included as a share holder of the said company, and denied to received the said money. Hence, the aforesaid case was filed against them. Subsequently, this matter was investigated by the police and submitted a final report No. 108 dated 20.06.2003 along with an application and prayed for submitting a non FIR prosecution against the petitioner informant under section 211 of the Code of Criminal Procedure which was allowed. Accordingly,

the aforesaid case was initiated against the informant petitioner under section 211 of the Penal Code. Thereafter, the accused petitioner appeared before the Court below and obtained bail. Later on, the charge was framed against the accused petitioner. Being aggrieved, the accused petitioner preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing the proceeding of the aforesaid case and obtained the instant Rule and stay.

No one appears for the accused petitioner to support the Rule.

Mr. Imran Ahmed Bhuiyan, the learned Deputy Attorney General for the opposite party submits that as per petition of complaint there is a specific allegation against the accused petitioner and as such the petitioner has no ground to invoke the provision of section 561A of the Code of Criminal Procedure. Accordingly, the instant Rule is liable to be discharged.

Heard the submissions of the learned Advocate for the opposite party and perused materials on record thoroughly.

On perusal of the petition of complaint it transpires that there is specific allegation against the accused

petitioner. Moreover, the contention as raised by the accused petitioner in his application as ground Nos. 1 to 12 are absolutely matter of fact which cannot be decided at this stage under the jurisdiction of section 561A of the Code of Criminal Procedure.

Under the given facts and circumstances of the case and the reasons as stated above, we do not find any substances of the Rule.

As a result, the Rule is discharged.

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

The trial Court is hereby directed to proceed with the case expeditiously in accordance with law.

Communicate this judgment and order at once.

**Khandaker Diliruzzaman, J:**

I agree