

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. 15497 of 2020

Sayed Abdul Qayum.....Accused-petitioner

-Versus-

The State and another.....Opposite parties
None appears.....For the accused petitioner
Mr. Md. Mahbubur Rahman Kishore, 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: 29.02.2024 and 03.03.2024

Judgment on: The 4th 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 impugned proceeding of Sessions Case No. 715 of 2018, arising out of C.R. Case No. 131 of 2016 (Lohagara) under section 138 of the

Negotiable Instruments Act, 1881 now pending before the Court of learned Joint Metropolitan Sessions Judge, Court No. 4, Chattogram 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, the Court was pleased to stay all further proceedings of the aforesaid Sessions Case till to initiation of the Artha Rin Suit.

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

That the accused-petitioner has obtained the various loan facilities from the complainant opposite party No. 2, Social Islami Bank Limited. Subsequently, to adjust the aforesaid loan in part, the accused petitioner issued the impugned cheque dated 11.04.2016 amounting to **Tk. 1,60,73,000/-** which was dishonored due to insufficient of fund. Hence, the aforesaid case was filed against the accused petitioner under section 138 of the Negotiable Instrument Act, 1881. Thereafter, the accused petitioner duly appeared before this Court and obtained bail. Later on, the case was transferred to the Additional Sessions Judge, 4th Court, Chattogram for trial which was registered as Sessions Case No. 715 of

2018. After the conclusion of the evidence, the trial Court was pleased to fix the next date on 12.04.2020 for argument and at this stage, the accused petitioner filed the instant application before this Court under section 561A of the Code of Criminal Procedure for quashing the impugned proceeding and obtained the instant Rule and stay.

No one appears for the accused petitioner to support the Rule. However, the accused petitioner has stated in his application that the impugned cheque was given as a security cheque as against the loan is concerned which cannot be treated as a Negotiable Instrument Act, and as such the instant proceeding is liable to be quashed.

It is further stated that to recover the unpaid dues, the complainant bank has to an Artha Rin Suit as per provision of Artha Rin Ain, 2003. In the instant case, the complainant bank without initiating an Artha Rin Suit filed the instant case which is not maintainable.

Mr. Md. Mahbubur Rahman Kishore, the learned Advocate for the opposite party No. 2 submits that after complying with all legal formalities under section 138 of the Negotiable Instrument Act, the complainant bank

filed the instant case, and as such the accused petitioner has no ground at all to invoke the provision of section 561A of the Code of Criminal Procedure and as such the instant Rule is liable to be discharged.

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

The only issue for determination of this Rule is to see whether the impugned proceeding of Sessions Case No. 715 of 2018, arising out of C.R. Case No. 131 of 2016 under section 138 of the Negotiable Instrument Act, 1881 is liable to be quashed.

On perusal of the petitioner's application, it transpires that the trial has already been concluded and the case is now pending for argument as evident from **Annexure-‘B’** to the application. When the trial has been concluded and the case is pending for argument at this stage, the application filed by the accused petitioner under section 561A of the Code of Criminal Procedure for quashing the proceeding is not entertainable.

Our this view gets support from the decision in the case of Golam Mohammad and another as reported in 19 BLT (AD), page 239.

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 below is hereby directed to proceed with the case expeditiously in accordance with the law.

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

Md. Bashir Ullah, J:

I agree