

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. 16240 OF 2023**

Md. Abdus Salam.....Complainant petitioner

-Versus-

The State and others.....Opposite parties

Mr. Md. Sajjadur Rahman with

Ms. Sarker Samema Sultana, Advocates

.....For the complainant petitioner

Mr. A.S.M.M. Kabir Khan, Advocate

...For the opposite party Nos. 2-4

Mr. Imran Ahmed Bhuiyan, DAG with

Mr. Mehadi Hasan (Milon), AAG and

Ms. Aleya Khandker, AAG

.....For the state

**Heard on: 01.08.2023, 02.08.2023 and 16.08.2023**

**Judgment on: The 16<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 parties to show cause as to why the impugned judgment and order dated 02.11.2022 passed by the learned Sessions Judge, Chapainawabganj in Criminal Revision No. 113 of 2022, arising out of C.R. Case No. 231 of 2021 (Nababganj) under sections 420/406 of the Penal Code, 1860 now pending in the Court of learned Senior

Judicial Magistrate, 1<sup>st</sup> Court, Chapainawabganj rejecting the order of framing charge dated 26.05.2022 passed by the learned Senior Judicial Magistrate, 1<sup>st</sup> Court, Chapainawabganj should not be quashed and/or such other or further order or orders passed as to this Court may seem fit and proper.

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

That the petitioner as complainant filed a C.R. Case No. 231 of 2021 against the opposite party Nos. 2 to 4 under sections 420/406/34 of the Penal Code alleging inter alia that during the joint business, the complainant petitioner issued 32 (thirty-two) cheques in favour of the accuseds opposite party Nos. 2 to 4 on condition that they will return the aforesaid cheques to the complainant within 2 (two) months after complete their internal audit. However, subsequently, they (the accused persons) did not return the aforesaid cheques to the complainant. Regarding the aforesaid matter, the complainant petitioner made a G.D. Entry No. 1290 dated 28.06.2016 to the police station against them. Later on, a salish was held between the parties, and as per decision of the said salish, the complainant petitioner

paid **Tk. 1,20,000/-** (Taka One lac and Twenty thousand) to the accuseds opposite party Nos. 2 to 4 but even though they did not return the aforesaid cheques to the complainant, rather they filed a C.R. Case No. 145 of 2021 against the complainant petitioner under section 138 of the Negotiable Instrument Act, 1881. Hence, the aforesaid case was filed against the accuseds opposite party No. 2 to 4 under sections 420/406/34 of the Penal Code. Thereafter, the accuseds opposite party Nos. 2 to 4 duly appeared before the Court below and obtained bail. Later on at the time of the framing charge, the accuseds opposite party Nos. 2 to 4 filed an application under section 241A of the Code of Criminal Procedure for discharge which was rejected vide its order dated 26.05.2022 and thereby charge was framed against accuseds opposite party Nos. 2 to 4 under sections 406/420 of the Penal Code. Being aggrieved, the accuseds opposite party Nos. 2 to 4 preferred a Criminal Revision No. 113 of 2022 before the Sessions Judge, Chapainawabganj which was allowed vide its order dated 02.11.2022 and thereby set aside the order of framing charge against the accuseds opposite party Nos. 2 to 4 dated 26.05.2022 passed by Senior Judicial

Magistrate, 1<sup>st</sup> Court, Chapainawabganj. Being aggrieved, the complainant as petitioner preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing the aforesaid impugned judgment and order dated 02.11.2022 passed in Criminal Revision No. 113 of 2022 and obtained the instant Rule and stay.

Mr. Md. Sajjadur Rahman, the learned Advocate for the complainant petitioner submits that there is a specific allegation against the accuseds opposite party Nos. 2 to 4 but the learned Sessions Judge without considering the materials on record passed the impugned judgment and order dated 02.11.2022 in Criminal Revision No. 113 of 2022 which is liable to be set aside.

Mr. A.S.M.M. Kabir Khan, the learned Advocate for the opposite party Nos. 2 to 4 submits that the nature of the allegation as stated in the petition of the complaint is absolutely civil in nature which does not constitute any criminal offence and as such the learned Sessions Judge rightly passed the impugned order which does not call for any interference by this Court.

Heard the submissions of the learned Advocates of both sides and perused the materials on records thoroughly.

On perusal of the petition of complaint, it transpires that the aforesaid dispute was arising from the business transaction which is civil in nature and does not constitute any criminal offence. Our this view gets support from the decision as reported in 7 BLT (AD) page-227, 45 DLR (AD)-1993, page-27 and 56 DLR-2000, page-169 but the trial Court below failed to appreciate the aforesaid legal aspects as involved in the instant case and thereby committed an error of law. In such view of the aforesaid legal position, the Revisional Court rightly rejected the order of framing charge against the accuseds opposite party Nos. 2 to 4 vide its judgment and order dated 02.11.2022 which does not call for any interference by this Court under the jurisdiction of section 561A of the Code of Criminal Procedure.

As a result, the Rule is discharged.

The proceeding of C.R. Case No. 231 of 2021 under sections 420/406 of the Penal Code, 1860 now pending in the Court of Senior Judicial Magistrate, 1<sup>st</sup> Court, Chapainawabganj is hereby quashed.

Communicate this judgment and order at once.

**Khandaker Diliruzzaman, J:**

I agree

