

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

Present:

**Mr. Justice Abu Taher Md. Saifur Rahman
And
Mr. Justice S.M. Masud Hossain Dolon**

Criminal Miscellaneous Case No. 29750 of 2018

With
Criminal Miscellaneous Case No. 29751 of 2018

With
Criminal Miscellaneous Case No. 29753 of 2018

With
Criminal Miscellaneous Case No. 29754 of 2018

-AND-

IN THE MATTER OF:

Mohammad Shamsul Alam
....Accused-Petitioner
-Versus-

The State and another
....Opposite parties
Mr. Mohammad Abdul Karim, Advocate
....For the petitioner
[In all Criminal Miscellaneous Cases]

Mr. Md. Faizullah with
Mr. Nirupam Pandit, Advocates
...For the opposite party No. 2
[In all Criminal Miscellaneous Cases}
Mr. K.M. Masud Romy, DAG with
Mr. Mehadi Hasan (Milon), AAG and
Ms. Aleya Khandker, AAG
.....For the state

Heard on: 10.03.2024 and 11.03.2024
Judgment on: The 14th of March, 2024

Abu Taher Md. Saifur Rahman, J:

These Rules concern of facts akin to each other arising between the same parties and involve common questions of law and, as such, taken up together for hearing and are being disposed of by this single judgment.

In Criminal Miscellaneous Case No. 29750 of 2018, the 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 proceedings of Sessions Case No. 5263 of 2017, corresponding to C.R. Case No. 340 of 2016 (Kotwali Thana) under sections 138/140 of the Negotiable Instruments Act, 1881, now pending in the Court of Joint Metropolitan Sessions Judge, 2nd Court, 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, the Court was pleased to stay the further proceedings of the aforesaid Sessions Case

No. 5263 of 2017 for **3 (three)** months from date, which was time to time extended by this Court.

In Similar terms, the Rules were also issued in Criminal Miscellaneous Case Nos. 29751 of 2018, 29753 of 2018 and 29754 of 2018 and at the time of issuance of those Rules, the Court was also pleased to stay all further proceedings of the respective Sessions Case No. 5261 of 2017, arising out of C.R. Case No. 342 of 2016, Sessions Case No. 5262 of 2017, arising out of C.R. Case No. 341 of 2016, Sessions Case No. 5264 of 2017, arising out of C.R. Case N0. 339 of 2016 under section 138 of the Negotiable Instrument Act, 1881 which are now pending before the concerned Joint Metropolitan Sessions Judge, 2nd Court, Chittagong.

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

In all aforesaid cases, the opposite party No. 2, AB Bank Limited as complainant filed the all aforesaid criminal cases against the accused-petitioner alleging inter alia that the accused-petitioner No. 1 M/S. Mohammad Elias Brothers Private Limited has obtained the various loan facilities from the complainant

bank. Subsequently, in order to repay the aforesaid loan, the accused-petitioner as Managing Director of the said company issued several cheque on several dates in favour of the complainant bank which were dishonored due to insufficient of fund. Hence,, the aforesaid cases were filed against the accused-petitioners under section 138 of the Negotiable Instruments Act, 1881. Thereafter, the accused-petitioners appeared before the Court below and obtained bail. Later on, the charge was framed against the accused-petitioner under sections 138 and 140 of the Negotiable Instrument Act, 1881. Being aggrieved, the accused-petitioner filed an application before this Court under section 561A of the Code of Criminal Procedure for quashing the proceeding of the aforesaid cases and obtained the Rule and stay.

In support of those Rules, Mr. Mohammad Abdul Karim the learned Advocate for the accused-petitioners mainly submits that failure of repayment of loan is a civil liability and no criminal proceeding is sustainable in law. In the instant case, the alleged cheques were issued for repayment of the loan amount which was dishonored due to insufficient of fund. Since failure

to repayment of loan is civil in nature, the instant proceedings are liable to be quashed.

He further contended that regarding the entire outstanding loan amount, the complainant bank has already filed an Artha Rin Suit No. 91 of 2016 for realization the outstanding loan amounting to **Tk. 70,75,42,693.30/-** (Taka Seventy crore, Seventy five lac, Forty two thousand, Six hundred ninety three and Thirty paisa) before the Artha Rin Adalat, Chittagong which is still pending and as such the instant proceeding is nothing but an abuse of process of the Court.

As against this, Mr. Md. Faizullah, the learned Advocate for the opposite party submits that after complying with all legal formalities of section 138 of the Negotiable Instruments Act, 1881, all aforesaid cases were filed against the accused-petitioner. In the aforesaid cases, the accused-petitioner have no ground at all to invoke the provision of section 561A of the Code of Criminal Procedure and as such all aforesaid Rules are liable to be discharged.

He further contended that pendency of a civil suit cannot bar the proceedings of criminal case for criminal offence and relied upon the decision as reported in 14 MLR (AD) page-52.

Heard the submissions of the learned Advocates of both sides and perused the petitioner's applications along with other materials on record thoroughly.

It is admitted fact the impugned cheques were issued by the accused-petitioner in favour of the complainant bank which were dishonored due to insufficient of fund. A reading of sub-section (1) of section 138 of the Negotiable Instrument Act, 1881 shows that an offence under the section shall be deemed to have been committed, the movement a cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account is returned by the bank unpaid on any of the grounds mentioned therein. In all aforesaid cases, the impugned cheques were issued by the accused-petitioner and subsequently it was dishonored due to insufficient of fund and as such there is a prima facie case against the accused-petitioner.

We have to keep in mind that Artha Rin Adalat Ain, 2003 is a special law with an overriding provision over other laws and has prescribed a special procedure for recovery the loan amount. We have further noticed that as per provision of the Artha Rin Adalat Ain, 2003, the complainant bank also filed an Artha Rin Suit No. 91 of 2016 before the Artha Rin Adalat, Chittagong against the accused-petitioners for recovery the entire outstanding loan amounting to **Tk. 70,75,42, 693.30/-** (Taka Seventy crore, Seventy five lac, Forty two thousand, Six hundred ninety three and Thirty paisa) which is civil in nature.

The quashment of the proceeding is not permissible on the ground that a civil suit is pending on the self same matter. In the case of Khandker Abul Bashir Vs. the State and another as reported in 15 MLR (AD), page-404 wherein it was held:

“On the self same matter wherein the ingredients of criminal offence are present both the criminal case as well as the civil suit is maintainable”. So, pendency of a civil suit cannot bar the proceeding of criminal case for criminal offence.

In such view of the aforesaid legal positions, we do not find any substances of those Rules.

As a result, the Rules in Criminal Miscellaneous Case Nos. 29750 of 2018, 29751 of 2018, 29753 of 2018 and 29754 of 2018 are hereby discharged.

The order of stay granted earlier by this Court in connection with Sessions Case No. 5263 of 2017, arising out of C.R. Case No. 340 of 2016, Sessions Case No 5261 of 2017, arising out of C.R. Case No. 342 of 2016, Sessions Case No. 5262 of 2017, arising out of C.R. Case No. 341 of 2016 and Sessions Case No. 5264 of 2017, arising out of C.R. Case No. 339 of 2016 now pending in the Court of Metropolitan Sessions Judge, 2nd Court, Chittagong are hereby stands vacated.

The concerned trial Court below is hereby directed to proceed with the case expeditiously in accordance with the law without giving any unnecessary adjournments to either party.

Communicate this judgment and order at once.

S.M. Masud Hossain Dolon, J:

I agree