

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. 39018 OF 2017

Khondokar Foyjur Rahman.....Petitioner

-Versus-

The State and another.....Opposite parties

None appears.....For the petitioner

Mr. Md. Abul Kalam Azad, Advocate

.....For the opposite party No. 2

Mr. Md. Ahsan Ullah, AAG with

Mr. Mehadi Hasan (Milon), AAG and

Ms. Aleya Khandker, AAG

.....For the state

Heard on: 31.07.2023 and 08.10.2023

Judgment on: The 11th of October, 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 proceeding of Sessions Case No. 1256 of 2017, arising out of C.R. Case No. 1545 of 2016 under section 138 of the Negotiable Instrument Act, 1881 now pending in the Court of Metropolitan Sessions Judge, Sylhet, 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 the all further proceedings of the aforesaid Sessions Case No. 1256 of 2017 for **6 (six)** 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, National Bank of Pakistan, Sylhet Branch as complainant filed a C.R. Case No. 1545 of 2016 alleging inter alia that the accused-petitioner has obtained the various loan facilities from the complainant bank amounting to **Tk. 50,00,000/-** (Taka Fifty lac) vide its sanctioned letter dated 08.08.2011. Subsequently, in order to repay the said loan amount, the accused-petitioner issued a cheque amounting to **Tk. 70,08,668/-** (Taka Seventy lac, Eight thousand and Six hundred sixty eight) which was dishonored due to insufficient of fund. Hence, the instant case was filed against the accused-petitioner. Subsequently, the charge was framed against the accused-petitioner under section 138 of the Negotiable

Instrument Act, 1881. Being aggrieved, the accused-petitioner filed this application before this Court under section 561-A of the Code of Criminal Procedure for quashing the proceedings of the aforesaid case and obtained the Rule and stay.

None appears for the petitioner to support the Rule. The petitioner has stated in his application that the impugned cheque was given as a security cheque at the time of obtaining the loan which does not covered the provision of section 138 of the Negotiable Instrument Act, 1881 and as such the instant case is liable to be quashed.

As against this, Mr. Md. Abul Kalam Azad, the learned Advocate for the opposite party No. 2 submits that the contention as raised by the accused-petitioner is a matter of fact which needs to be decided at the time of trial and accordingly the instant Rule is liable to be discharged.

Heard the submissions of the learned Advocate for the opposite party No. 2 and perused the materials on record thoroughly.

The only issue for determination of this Rule is to see whether the proceeding of Sessions Case No. 1256 of

2017 under section 138 of the Negotiable Instrument Act, 1881 is liable to be quashed.

In the instant case, the accused-petitioner mainly contended that the impugned cheque was given as security cheque which does not covered the provision of section 138 of the Negotiable Instrument Act, 1881. However, this issue already been settled by the Hon'ble Appellate Division, in the case of Majed Hossain and others as reported in 17 BLC (AD) 177 wherein it was observed that-

“A reading of Sub-section (1) of section 138 of the Act, 1881 shows that an offence under the section shall be deemed to have been committed, the moment 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. Sub-section (1) of section 138 has not made any qualification of the cheque so returned unpaid either post dated given as a security for repayment of the loan availed by a loanee as

alleged by the accused or any other cheque issued by the drawer for encashment currently. When the legislature has not made any difference between a post dated cheque issued as security for the repayment of the loan availed by the loanee, here the petitioners, as argued by Mr. Chowdhury and cheque issued for encashment currently, we do not see any scope of making any such difference.”

In such view of the aforesaid observation as made by the Hon’ble Appellate Division we do not find any substance of this Rule.

As a result, the Rule is discharged.

Since it is a very old case, the trial Court is hereby directed to proceed with the case expeditiously without giving any unnecessary adjournment to the either party.

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

Communicate this judgment and order at once.

Khandaker Diliruzzaman, J:

I agree

