

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. 39295 OF 2018

Md. Abu Sayed Chowdhury (Samrat).....Accused-Petitioner
-Versus-

The State and another.....Opposite parties

None appears.....For the accused-petitioner

Mr. Faysal Hasan Arif, Advocate

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

Mr. Imran Ahmed Bhuiyan, DAG with

Mr. Mehadi Hasan (Milon), AAG and

Ms. Aleya Khandker, AAG

.....For the state

Heard on: 17.08.2023 and 20.08.2023

Judgment on: The 21st 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 proceedings of Sessions Case No. 2938 of 2014, arising out of C.R. Case No. 2324 of 2013 under section 138 of the Negotiable Instruments Act, 1881, now pending in the Court of Metropolitan Sessions Judge, 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, this Court was pleased to stay all further proceedings of the aforesaid Sessions Case No. 2938 of 2014 for 3 (three) months from the 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, the Premier Bank Limited as complainant filed a C.R. Case No. 2324 of 2013 alleging inter alia that the accused-petitioner has obtained the various loan facilities from the complainant bank. Subsequently, in order to partial adjustment of the aforesaid loan, the accused-petitioner issued the impugned cheque dated 28.02.2013 amounting to Tk. 4,49,36,000/- (Taka Four crore, Forty nine lac and Thirty six thousand) which was dishonored due to insufficient of fund. Hence, the aforesaid case was filed against the accused-petitioner under section 138s of the Negotiable Instrument Act, 1881. Thereafter, the accused-petitioner duly appeared before the Court below and obtained bail. Later on, the charge was framed against the accused-petitioner. Being aggrieved, the accused-petitioner has 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 Rule and stay.

No one appears for the accused-petitioner to support the Rule. However, the accused-petitioner has stated in his application that regarding the recovery of the entire outstanding loan, the complainant bank has already filed the Artha Rin Suit No. 440 of 2013 against the accused-petitioner before the Artha Rin Adalat, Chattogram and as such the impugned proceeding under section 138 of the Negotiable Instrument Act, 1881 is liable to be quashed.

Mr. Faysal Hasan Arif, the learned Advocate for the opposite party No. 2 mainly submits that after complying with all legal formalities of section 138 of the Negotiable Instrument Act, 1881, the instant case was filed against the accused-petitioner and as such the accused-petitioner has no ground at all to invoke the provision of section 561A of the Code of Criminal Procedure.

Heard the submissions of the learned Advocate for the opposite party No. 2 and perused the petitioner's application along with other materials on record thoroughly.

The only issue for determination of this Rule is to see whether the impugned proceeding of Sessions Case No. 2938 of 2014 under section 138 of the Negotiable Instrument Act, 1881 is liable to be quashed.

It is admitted fact that the impugned cheque was issued by the accused-petitioner in favour of the complainant bank which was dismissed due to insufficient of fund.

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. So, as per provision of section 138 of the Negotiable Instrument Act, 1881, there is a prima facie against the accused-petitioner.

We have further noticed that regarding the recovery of unpaid dues, the complainant bank has already filed an Artha Rin Suit No. 440 of 2013 against the accused-petitioner for realization the outstanding loan amounting to **Tk. 615,338,360.75/-** which is civil in nature. On the other hand, the impugned proceedings was filed under section 138 of the Negotiable Instruments Act, 1881 which is criminal in nature. The nature and character of both cases are completely different.

In the case of Amir Ali Mostofa Vs. Shah Md. Nurul Alam as reported in 74 DLR (AD) (2022) page-79 wherein the Hon'ble Appellate Division was held that-

“Only because of the subject matter of the criminal case and civil litigation being the same, it will not be a bar for continuation of the criminal proceedings, rather the criminal case will run in its own way.”

In the case of Khandoker Mahtabuddin Ahmed Vs. the State as reported in 49 DLR (AD) 132 wherein it was held that-

“Both the civil and criminal case may run simultaneously in respect of criminal offense as well as for recovery of the amount misappropriated.”

Regarding the aforesaid issue a numerous decisions have been passed by our Apex Court. 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 is hereby directed to proceed with the case expeditiously as early as possible in accordance with the law.

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

Khandaker Diliruzzaman, J:

I agree

