

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. 43532 of 2017

Salma Chowdhury.....Accused-Petitioner

-Versus-

The State.....Opposite party  
None appears..... For the accused petitioner  
Mr. Md. Monzurul Karim, Advocate  
.....For the opposite party No. 2  
Mr. K.M. Masud Rummy, DAG with  
Mr. Mehadi Hasan (Milon), AAG and  
Ms. Aleya Khandker, AAG

.....For the state

**Heard on: 11.03.2024 and 13.03.2024**

**Judgment on: The 28<sup>th</sup> of April, 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 proceedings of Metro Sessions Case No. 1080 of 2007, arising out of C.R. Case No. 653 of 2007 under sections 138/140 of the Negotiable

Instruments Act, 1881 now pending in the Court of Metropolitan Joint Sessions Judge, 5<sup>th</sup> Court, Dhaka 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 Metro Sessions Case No. 1080 of 2007 so far as relates to the accused petitioner.

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

That the complainant opposite party No. 2 as a complaint filed a C.R. Case No. 653 of 2007, corresponding to Metro Sessions Case No. 1080 of 2007 under sections 138/140 of the Negotiable Instrument Act, 1881 against the accused petitioner alleging inter alia that to adjust the unpaid dues amounting to **Tk. 10,00,000/-** (Taka Ten lac), the accused petitioner issued the impugned cheque in favour of the complainant which was dishonored due to insufficient of fund. Hence, the aforesaid case was filed against the accused petitioner under sections 138 and 140 of the Negotiable Instrument Act, 1881. Thereafter, the accused petitioner duly

appeared before the Court and obtained bail. Later on, the charge was framed against the accused petitioner under section 138 of the Negotiable Instrument Act, 1881. Being aggrieved, the accused petitioner has preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing the aforesaid proceeding and obtained the instant Rule and stay.

No one appears for the accused petitioner to support the Rule.

The complaint opposite party No. 2 has mentioned in his petition of complaint that the complainant served a legal notice upon the accused petitioner on 28.01.2007 but did not mention when the said notice was received by the accused petitioner and as such no cause of action arises in the instant case. Hence, the instant proceeding is liable to be quashed.

Mr. Md. Monzurul Karim, 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, 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.

He further submits that regarding the impugned proceeding, the accused petitioner earlier filed a Criminal Miscellaneous Case No. 13516 of 2007 under section 561A of the Code of Criminal Procedure before the Hon'ble High Court Division which was subsequently discharged vide its judgment and order dated 09.11.2015 and produced the copy of the said judgment before this Court. By way of suppressing the aforesaid material fact, the accused petitioner filed the instant case which 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 the Rule is to see whether the impugned proceeding is liable to be quashed.

On perusal of the judgment and order dated 09.11.2015 passed in Criminal Miscellaneous Case No. 13516 of 2007 it transpires that regarding the same impugned proceeding, the accused petitioner earlier filed a Criminal Miscellaneous Case No. 13516 of 2007 under

section 561A of the Code of Criminal Procedure before the Hon'ble High Court Division which was discharged vide its judgment and order dated 09.11.2015. In the instant case, the accused petitioner did not mention the aforesaid fact in his application which is serious suppression of material fact.

On being asked, the learned Advocate for the accused petitioner finds difficulties in answering the question.

Since there is a serious suppression of facts, the Rule is liable to be discharged.

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 in accordance with the law.

Communicate this judgment and order at once.

**S.M. Masud Hossain Dolon, J:**

I agree