

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

**PRESENT:**

**MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN  
AND  
MR. JUSTICE MD. ATABULLAH**

**CRIMINAL MISCELLANEOUS CASE NO. 44810 OF 2013**

S.M. Abdul Wadud and others.....Accused-petitioners

-Versus-

The State.....Opposite parties

Mr. Md. Abdur Rashid, Advocate

... ..For the accused-petitioners

None appears.....For the opposite parties

Mr. K.M. Masud Romy, DAG with

Mr. Mehadi Hasan (Milon), AAG and

Ms. Aleya Khandker, AAG

.....For the state

**Heard on: 20.05.2024**

**Judgment on: The 2<sup>nd</sup> of June, 2024**

**ABU TAHER MD. SAIFUR RAHMAN, J.**

This Rule was issued on an application filed by the accused-petitioners under section 561A of the Code of Criminal Procedure calling upon the opposite parties to show cause as to why the proceedings of Petition Case No. 2568 of 2010 initiated under sections 31/506 and 386 of the Penal Code now pending in the 4<sup>th</sup> Court of Additional Chief Metropolitan Magistrate, 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, this Court was pleased to stay all further proceedings of the aforesaid Petition Case No. 2568 of 2010 for 3 (three) months from the date so far as it relates to the accused-petitioners which was time to time extended by this Court.

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

That the opposite party No. 2 as complainant filed a Petition Case No. 2568 of 2010 against the accused-petitioners alleging inter alia that at the initial stage complainant started a business with Jamuna Electric Manufacturing Limited (herein referred as Jamuna Limited). In order to repay the unpaid dues amounting to **Tk. 1,15,00,000/-** (Taka One crore and Fifteen lac), the complainant issued 5 (five) separate cheques in favour of the accused-petitioners (Jamuna Limited) as a security cheques. Subsequently, the complainant adjusted the entire unpaid dues to the accused-petitioners (Jamuna Limited) and took back the aforesaid cheques from the accused-petitioners. On the date of occurrence, the accused-petitioners all of a sudden entered into the office of the complainant and forcefully took 5 (five) cheques

along with one undertaking on gun point from the complainant. Hence, the aforesaid case was filed against the accused-petitioners. Thereafter, the accused-petitioners appeared before the Court below and obtained bail. At the time of framing of charge, the accused-petitioners filed an application under section 241A of the Code of Criminal Procedure before the trial Court for discharged which was rejected. Being aggrieved, the accused-petitioners filed a Criminal Revision No. 205 of 2012 before the Metropolitan Sessions Judge which was also discharged vide its judgment and order dated 05.09.2013. Thereafter, the accused-petitioners 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.

Mr. Md. Abdur Rashid, the learned Advocate for the accused-petitioners mainly submits that regarding the cheque in question the accused-petitioners filed 5 (five) Petition Case being Nos. 2959 of 2010, 3211 of 2010, 3376 of 2010, 3517 of 2010 and 3093 of 2011 before the Chief Metropolitan Magistrate (North), Dhaka against the accused-petitioners under section 138 of the

Negotiable Instrument Act, 1881 which is still pending. The complainant opposite party are capable to see whether the cheque in question were taken away from the complainant against his will. So there is no apprehension of the complainant as to getting fair justice, rather the multiplicity case would be curbed if the impugned proceeding is quashed for the ends of justice.

He further contended that the allegation as made in the petition of complaint even if taken at their face value and accepted in their integrity do not constitute any offence against the accused-petitioners and as such the impugned proceeding is liable to be quashed.

No one appears for the opposite parties to opposes the Rule.

Heard the submissions of the learned Advocate for the accused-petitioners 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 is liable to be quashed.

In the instant case, the learned Advocate for the accused-petitioners contended that regarding the cheque in question, the accused-petitioners filed 5 (five) Petition Case

Nos. 2959 of 2010, 3211 of 2010, 3376 of 2010, 3517 of 2010 and 3093 of 2011 before the Chief Metropolitan Magistrate, (North) Dhaka against the complainant under section 138 of the Negotiable Instrument Act, 1881 which is still pending.

On the other hand, the complainant mainly contended that the impugned cheques in questions were forcefully taken from the complainant on gun point.

So, the nature of allegation of both the aforesaid cases are completely different which needs to be decided through evidence at the time of trial.

Under the given facts and circumstances of the case and the reasons as stated above, we do not find any substance of this Rule.

As a result, the Rule is discharged.

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

Communicate this order at once.

**Md. Atabullah, J:**

I agree

