

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. 47667 OF 2018

Md. Jashim Uddin.....Accused-petitioner

-Versus-

The StateOpposite party

Mr. Rezaul Karim, Advocate

.....For the accused-petitioner

Mr. Md. Faruk Hossain, 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: 31.07.2023

Judgment on: The 8th 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. 3876 of 2018, arising out of C.R. Case No. 533 of 2013 under section 138 of the Negotiable Instrument Act, 1881 now pending in the

Court of Joint Metropolitan Sessions Judge, 6th Court, Chattogram should not be quashed and/or such other or further order or orders passed as to this Court may seem fit and proper.

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

That the opposite party No. 2, Janata Bank Limited as complainant filed a C.R. Case No. 533 of 2013 under section 138 of the Negotiable Instrument Act, alleging inter alia that the accused-petitioner has obtained the various LTR credit facilities from the complainant bank. Subsequently, in order to adjust the aforesaid loan, the accused-petitioner issued 3 (three) impugned cheques in favour of the complainant bank which was dishonored due to insufficient funds. Hence, the instant case was filed against the accused-petitioner under section 138 of the Negotiable Instruments Act, 1881 Thereafter, the accused-petitioner appeared before the Court below and obtained the bail. Subsequently, the charge was framed against the accused petitioner under section 138 of the Act, 1881. Being aggrieved, the accused-petitioner preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing

the aforesaid proceedings and obtained the Rule and stay.

Mr. Rezaul Karim, the learned Advocate for the petitioner submits that the impugned cheque was given as a security cheque against the loan availed by the accused-petitioner which does not cover the provision of section 138 of the Negotiable Instruments Act, 1881. He further contended that to recover the unpaid dues, the complainant bank has already filed an Artha Rin Suit No. 09 of 2013 before the Artha Rin Adalat No. 1, Chittagong which is now pending and as such the initiation of the impugned criminal proceeding is not maintainable.

Mr. Md. Faruk Hossain, the learned Advocate for the opposite party No. 2 submits that after complying with all legal formalities of section 138 of the Negotiable Instruments Act, 1881, the instant case was filed against the accused-petitioner under section 138 of the Act, 1881. There is a prima facie case against the accused petitioner. The accused petitioner has no ground at all to invoke the provision of section 561A of the Code of Criminal Procedure and as such the instant Rule is liable to be discharged.

Heard the submissions of the learned Advocates of both sides and perused the materials on record thoroughly.

The only issue for determination of this Rule is to see whether the impugned proceeding of Sessions Case No. 3876 of 2018 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 a security cheque which does not cover the provision of section 138 of the Negotiable Instrument Act, 1881. However, this issue has 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 held 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”.

We have further noticed that regarding the recovery of unpaid dues, the complainant bank has already filed an Artha Rin Suit No. 09 of 2013 before the Artha Rin Adalat No. 1, Chittagong which is civil in nature. On the other hand, the impugned proceedings were 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, 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

