

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

PRESENT:

MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN
AND
MR. JUSTICE MD. BASHIR ULLAH

CRIMINAL MISCELLANEOUS CASE NO. 52935 OF 2017

Md. Yunus Mia.....Accused-petitioner

-Versus-

The State and another.....Opposite parties

Mr. Suvas Chandra Das with

Mr. Md. Shahnur Rahman (Shahin), Advocates

.....For the accused petitioner

Mr. Abdullah Al Mamun, Advocate

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

Mr. K.M. Masud Romy, DAG with

Mr. Mehadi Hasan (Milon), AAG and

Ms. Aleya Khandker, AAG

.....For the state

Heard on: 08.02.2024 and 18.02.2024

Judgment on: The 28th of February, 2024

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, calling upon the opposite parties to show cause as to why the proceedings of Sessions Case No. 1503 of 2017, arising out of C.R. Case No. 61 of 2017 under section 138 of the Negotiable Instruments Act, 1881 now pending in the Court of Joint Sessions

Judge, 3rd 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, this Court was pleased to stay all further proceedings of the aforesaid Sessions Case No. 1503 of 2017 for **3 (three)** months from the date which was subsequently extended till to disposal of the Rule.

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

That the complainant opposite party No. 2, Social Islami Bank Limited as complainant filed a C.R. Case No. 61 of 2017 against the accused-petitioner under section 138 of the Negotiable Instrument Act, 1881 alleging inter alia that the accused petitioner has obtained the loan amounting to **Tk. 75,00,000/-** (Taka Seventy-five lac) from the complainant bank. Thereafter, to adjust the aforesaid loan, the accused petitioner issued the impugned cheque in favour of the complainant bank which was dishonored due to insufficient of fund. Hence, the aforesaid case was filed against the accused petitioner under section 138 of the Negotiable Instrument Act, 1881. Thereafter, the accused petitioner

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 aforesaid proceeding and obtained the instant Rule and stay.

Mr. Suvas Chandra Das, 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 amounting to **Tk. 1,02,95,710/-**, the complainant bank has already filed an Artha Rin Suit No. 2164 of 2017 before the Artha Rin Adalat No. 4, Dhaka which is still pending, and as such the initiation of the impugned criminal proceeding is not maintainable.

As against this, Mr. Abdullah Al Mamun, 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, and as such the accused petitioner has no ground 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. 1503 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 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. 2164 of 2017 before the Artha Rin Adalat No. 4, Dhaka 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, 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.

Md. Bashir Ullah, J:

I agree

