

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. 54543 OF 2018**

Mohammad Mozaher Sowdagor.....Accused-petitioner  
-Versus-

The State and another.....Opposite parties

None appears..... For the Accused-petitioner

Mr. Md. Faruk Hossein, 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: 02.08.2023 and 08.08.2023**

**Judgment on: The 22<sup>nd</sup> 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. 427 of 2017, arising out of C.R. Case No. 631 of 2016 under sections 138 and 140 of the Negotiable Instruments Act, 1881, now pending in the Court of Joint Metropolitan Sessions Judge, 7<sup>th</sup> Court,

Chittagong 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 the all further proceedings of the aforesaid Sessions Case No. 427 of 2017 for **3 (three)** months from the date so far as it relates to the petitioner 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, Janata Bank Limited as complainant filed a C.R. Case No. 631 of 2016 under section 138 of the Negotiable Instrument Act, 1881 against the accused-petitioner and others alleging inter alia that the accused-petitioner enjoyed LC revolving limited and CC facilities from the complainant bank. In order to partial adjustment of the aforesaid loan, the accused-petitioner issued the impugned cheques dated 10.12.2015 amounting to Tk. 13,00,00,000/- (Taka Thirteen crore) 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 sections 138 and 140 of the Negotiable Instrument Act, 1881. Thereafter, the accused-petitioner appeared

before this Court and obtained bail. Subsequently, the charge was framed against the accused-petitioner under sections 138 and 140 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 Rule and stay.

No one appears for the accused-petitioner to support the Rule. However, the accused-petitioner has stated in his application that the allegation as stated in the petition of complaint is of civil in nature. The complainant bank has already filed an Artha Rin Suit No. 01 of 2016 for realization the entire outstanding loan amount and as such the impugned proceeding is liable to be quashed.

Mr. Md. Faruk Hossein, the learned Advocate for the opposite party No. 2 submits that after complying with all legal formalities of section 138 of the Negotiable Instrument Act, 1881. The instant case was filed by the complainant bank 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 the materials on record thoroughly.

On perusal of the petitioner's application it transpires that the impugned cheque was issued by the accused-petitioner in favour of the complainant bank which was dishonored 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.”

We have further noticed that regarding the recovery of unpaid dues, the complainant bank has already filed an Artha Rin Suit No. 01 of 2016 before the Artha Rin Adalat No. 1, Chittagong for realization the unpaid dues amounting to **Tk. 60,14,11,821.90/-** 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