

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. 59447 OF 2022

Md. Forkanul Islam

.....Convict accused petitioner

-Versus-

The State and anotherOpposite parties

Mr. Golam Abbas Chowdhury with

Mr. Khan Mahamudul Islam, Advocated

.....For the accused petitioner

Mr. Md. Mizanur Rahman Khan, 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: 09.08.2023 and 10.08.2023

Judgment on: The 10th 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 impugned judgment and order of conviction and sentence dated 07.08.2022 passed by the learned Joint Metropolitan Sessions Judge, 5th Court, Chattogram in Sessions Case No. 1560 of

2020, arising out of C.R. Case No. 443 of 2019 convicting the petitioner under section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer simple imprisonment for 1 (one) year also to pay fine of Tk. 2,03,40,000/- (Taka Two crore, Three lac, and Forty thousand) only with a direction to pay the aforesaid amount to the complainant 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 enlarge the accused petitioner on ad-interim bail for 2 (two) months from the date, along with a direction to pay the 50% of the cheque amount to the complainant within the 2 (two) months from the date of release from the jail.

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

That the opposite party No. 2, Bangladesh Commerce Bank Limited as plaintiff filed a C.R. Case No. 443 of 2019 against the petitioner under section under section 138 of the Negotiable Instrument Act. 1881 alleging inter alia that the accused petitioner has obtained the loan facilities amounting to **Tk.**

1,60,00,000/- (Taka One crore and Sixty lac) from the complainant bank. Thereafter, to adjust the aforesaid loan, the petitioner issued two cheques amounting to **Tk. 2,03,40,000/-** which were 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. The petitioner duly appeared before the Court below and obtained bail. Later on, the charge was framed against the petitioner under sections 138 of the Act, 1881. After conclusion of evidence, the trial Court passed the impugned judgment and order of conviction and sentence dated 07.08.2022. Being aggrieved, the convict petitioner preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing the aforesaid judgment and order of conviction and sentence dated 07.08.2022 and obtained the instant Rule and stay.

Mr. Golam Abbas Chowdhury, the learned Advocate for the petitioner mainly submits that the trial Court without applying his judicial mind and considering the fact and circumstances of the case and without giving an adequate opportunity to make compromise passed the

impugned judgment an order of conviction and sentence dated 07.08.2022 which is liable to be quashed.

As against this, Mr. Md. Mizanur Rahman Khan, the learned Advocate for the opposite party No. 2 submits that the impugned judgment and order is appealable but without preferring an appeal, the convict petitioner filed this application before this Court under section 561A of the Code of Criminal Procedure which is not maintainable in the eye of law and as such the instant Rule is liable to be quashed.

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

On perusal of the petitioner's application it transpires that the impugned judgment and order of conviction and sentence is appealable as per provision of the Negotiable Instrument Act, 1881. The accused petitioner without preferring an appeal filed this application before this Court under section 561A of the Code of Criminal Procedure.

We have keep in mind that the jurisdiction under section 561A of the Code of Criminal Procedure is an extraordinary nature intended to be used only in

extraordinary cases, when there is no other remedy available and cannot be utilized when there is other express remedy provided by the statute.

In the instant case, the petitioner without preferring an appeal filed the instant application under section 561A of the Code of Criminal Procedure which is not maintainable.

We have further noticed that at the time issuance of the Rule, this Court was pleased to give a direction upon the petitioner to deposit 50% of the cheque amount to the complainant bank within the period of 2 (two) months. The accused petitioner did not comply the said order as directed by this Court.

Under the aforesaid 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 with the cost of **Tk. 50,000/-** (Taka Fifty thousand) through the treasury challan under the Government revenue.

Send down the lower Court records (LCR) and communicate the judgment and order at once.

Khandaker Diliruzzaman, J:

I agree

