

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. 8571 OF 2023

Sardar Tofazzal Hossain Liakat.....Accused petitioner

-Versus-

The State and others.....Opposite parties

Mr. Md. Golam Rabbani, Advocate

.....For the accused petitioner

Mr. Syed Khalequzzaman with

Mr. Mohsin Jamader, Advocates

...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: 23.11.2023

Judgment on: The 28th of November, 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 calling upon the opposite parties to show cause as to why the judgment and order dated 31.05.2022 passed by the learned Senior Sessions Judge, Dhaka in Criminal Revision No. 196 of 2021, arising out of C.R. Case No. 139 of 2020 (Ashulia) disallowing the revision and thereby affirming the charge framing order

dated 11.10.2021 passed by the learned Senior Judicial Magistrate, 2nd Court, Dhaka in C.R. Case No. 139 of 2020 (Ashulia) under sections 406/420/506 of the Penal Code, 1860 now pending before the learned Senior Judicial Magistrate, 2nd Court, Dhaka should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

At the time of issuance of the Rule, the Court was pleased to stay the proceeding of the aforesaid C.R. case for 3 (three) months from the date which was time to time extended by the Court.

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

That the opposite party No. 2 as complainant filed a C.R. Case No. 139 of 2020 against the accused petitioner under sections 406/420/506 of the Penal Code alleging inter alia that the complainant is a businessman and used to sale the imported dyes and chemical in the open market. The accused petitioner often purchases dyes and chemicals from the complainant on balance and cash through bill challans. Up to 30.11.2019, the total unpaid dues remains at **Tk. 1,97,67,089.60/-** to the complainant which was recorded in their accounts book. The complainant requested several times to the accused petitioner to adjust the aforesaid unpaid dues but the petitioner did not take any positive step

regarding the said matter. Hence, the aforesaid case was filed against the accused petitioner under sections 420/406/506 of the Penal Code. Thereafter, the accused petitioner duly appeared before the Court below and obtained bail.

Later on, at the time of the framing charge, the accused petitioner filed an application under section 241A of the Code of Criminal Procedure for discharging him from the aforesaid case which was rejected vide its order dated 11.10.2021. As against the said order, the accused petitioner preferred a Criminal Revision No. 196 of 2021 before the learned Sessions Judge, Dhaka which was also rejected vide its judgment and order dated 31.05.2022 and thereby affirming the order of framing charge against the accused petitioner passed by the Senior Judicial Magistrate, 2nd Court, Dhaka in C.R. Case No. 139 of 2020. 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 impugned judgment and order dated 31.05.2022 passed in Criminal Revision No. 196 of 2021 and obtained the instant Rule and stay.

Mr. Md. Golam Rabbani, the learned Advocate for the accused petitioner mainly submits that the nature of the allegation as mentioned in the petition of complaint is purely

civil in nature which does not constitute any criminal offence, and as such the impugned order is liable to be quashed.

As against this, Mr. Syed Khalequzzaman, the learned Advocate for the opposite party No. 2 submits that there is a specific allegation against the accused petitioner and as such the accused petitioner has no ground to invoke the provision of section 561A of the Code of Criminal Procedure and hence 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.

On perusal of the petition of complaint, it transpires that the alleged transaction in between the complainant and the accused petitioner is clearly and admittedly a business transaction. The failure on the part of the accused petitioner to pay the complainant the balance amount under the bill does not warrant any criminal proceeding as the obligation to pay the money is of civil nature.

Our this view gets support from the decision as reported in 7 BLT (AD) 1999, page 227, 45 DLR (AD) 1993, page 27 and 56 DLR 2000, page 169 but both the Court below failed to appreciate the aforesaid legal aspects as involved in the instant case and thereby committed an error of law which is liable to be quashed.

Under the given facts and circumstances of the case and the reasons as stated above, we find substances of this Rule.

As a result, the Rule is made absolute.

The proceeding of C.R. Case No.139 of 2020 under sections 406/420/506 of the Penal Code, 1860 now pending in the Court of learned Senior Judicial Magistrate, 2nd Court, Dhaka is hereby quashed.

However, the petitioner is at liberty to file a civil suit for the realization the alleged unpaid dues along with compensation if so advice.

Communicate this judgment and order at once

Md. Bashir Ullah, J:

I agree