

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. 55057 of 2019

Rafiqul Islam.....Accused- petitioner

-Versus-

The State and another..... Opposite Parties

None appears.....For the accused-petitioner

Mr. Md. Jalal Uddin, Advocate

... For the opposite party No. 2

Heard on: 22.01.2024 and 24.01.2024

Judgment on: 30.01.2024

Abu Taher Md. Saifur Rahman, J

This Rule was issued on an application filed by the accused-petitioner under Section 561-A of the Code of Criminal Procedure, 1898 calling upon the opposite parties to show cause as to why the proceeding of Sessions Case No. 609 of 2015, arising out of C. R. No. 160 of 2015 under Section 138 of the Negotiable

Instruments Act, 1881, now pending in the Court of Joint Sessions Judge, 2nd Curt, Brahmanbaria 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 proceeding of the aforesaid Sessions Case No. 609 of 2015 for a period of **3 (three)** months from date which was time to time extended by this Court.

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

That the opposite party No. 2, one Nasima Akter as complainant filed C.R Case No. 160 of 2015 alleging inter alia that in order to purchase the land the complainant gave money amounting to **Tk. 24,00,000/-** (Taka twenty four lac) to the accused petitioner on condition that he will purchased the land within 90 (Ninety) days for the complainant but failed. Thereafter, the accused-petitioner pay back the said money to the complainant through the impugned cheque dated 14.06.2015 which was dishonoured due to insufficient of fund. Hence, the instant case was

filed against the accused-petitioner. Thereafter, the accused-petitioner appeared before the Court below and obtained bail. Later on, the charge was framed against the accused-petitioner under section 138 of the Negotiable Instrument Act, 1881. After conclusion of evidence, the date was fixed for judgment and at this stage, the accused-petitioner 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 press the Rule. However, the accused-petitioner has stated in his application that the accused-petitioner did not issue any cheque in favour of the complainant and as such the impugned proceeding is liable to be quashed.

Mr. Md. Jalal Uddin, 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 against the accused-petitioner. In the instant

case the accused-petitioner has no ground at all to invoke the provision of section 561A of the Code of Criminal Procedure and accordingly the instant Rule is liable to be discharged.

Heard the submissions of the learned Advocate for the opposite party and perused the petitioner's application along with other materials on record thoroughly.

On perusal of the Court order No. 47 dated 03.09.2019 passed by the trial Court (**Annexure-'F'**) it transpires that after conclusion of evidence, the date was fixed on 03.10.2019 for argument and at this stage, the accused-petitioner preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing the proceeding.

When there is a prima facie case for going trial and further the trial of the case has already been concluded and the case is pending for argument and at this stage the application for quashing the proceeding under section 561A of the Code of Criminal Procedure is not maintainable.

Our this view gets support from the decision in the case of Golam Mahamood and another reported in 19 BLT (AD), page-239.

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 Court below is hereby directed to dispose of the case expeditiously in accordance with law.

Communicate this Judgment and order at once.

Md. Bashir Ullah, J.

I agree