

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)**

**Writ Petition No. 5651 of 2019**

**In the matter of:**

An application under Article 102 of the constitution of the People's Republic of Bangladesh.

**-And-**

**In the matter of :**

Md. Shafiqul Islam @ Shafi

.....Petitioner

**-Versus-**

Government of the Bangladesh and others

.....Respondents

Mr. Faruque Alamgir Chowdhury, Advocate

.....For the petitioner.

Mr. Md. Jahangir Kabir, Advocate

.....For the respondent No. 07

Mr. Nawroz Md. Rasel Chowdhury, D.A.G. with

Mrs. Afroza Nazneen Akther, A.A.G with

Mrs. Anna Khanom (Koli), A.A.G with

Mr. Prince Al-Masud, A.A.G with

Mr. Al Mamun, A.A.G

..... For the respondent-government.

**Heard on 18.01.2024; 25.01.2024 and 28.01.2024**  
**Judgment on 31<sup>st</sup> January, 2024.**

Present:

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice SM Masud Hossain Dolon

In this application under article 102 of the constitution, the Rule  
was issued on 25.06.2019 in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the proceedings of certificate case No. 470 (জরিমানা) of 2018 and certificate case No. 471 (জরিমানা) of 2018 now pending before the Executive Magistrate and General Certificate Officer of Dhaka should not be declared to be without lawful authority and of no legal effect (Annexures-E and E1 to the writ petition respectively) and/or pass 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 certificate case No. 470 (জরিমানা) of 2018 and certificate case No. 471 (জরিমানা) of 2018 was stayed for a period of 01 (one) year

The relevant fact of the application for disposal of this Rule shortly is as follows.

The respondent No. 7 due to dishonor of cheque filed C.R Case No. 26(Ka)/2016 under section 138(1) of the Negotiable Instrument Act, 1881, corresponding to Sessions Case No. 1217/2016 for realizing of Tk. 11,50,000/-. After trial the learned Joint District Judge 3<sup>rd</sup> Court, Dhaka passed judgment and order of conviction and sentence on 07.02.2017. Respondent No. 7 filed another C.R. Case No. 25(K) of 2016 under section 138(1) of the Negotiable Instrument Act, 1881, corresponding to Sessions Case No. 1214 of 2016 for realization of Tk. 3,00,000/- lacs and the learned trial court passed judgment and give conviction and sentence on 07.02.2017. There after Respondent No. 7 filed certificate case for realization of said money

before the executive Magistrate which is illegal and unlawful in the eye of law.

Further it is stated in the application that as per provision of section 3(6) of Public Demand Recovery Act 1913 claim of respondent No. 7 does not come within the perview of the Public Demand Recovery Act, 1913. The respondent No. 7 did not take legal execution process as per judgment and order dated 07.02.2017 passed by the learned Joint Sessions Judge, in Session Case No. 1214 of 2016 and 1217 of 2016 and as such present proceeding of certificate cases does not lie against the petitioner hence the matter.

On the other hand the respondent No. 7 filed affidavit-in-opposition by opposing the statements of the petitioner and contended that he has no latches because he did not filed the aforesaid Certificate cases against the petitioner the aforesaid Certificate cases are in wrong forum and actually the sections 386/373 of the Code of Criminal Procedure would be applicable for recovery the aforesaid amounts of Taka against the instant petitioner.

At the time of hearing the learned Advocate for the respondent submits that the trial court below passed the judgment in the said Sessions case erroneously in part without giving the directions under sections 386/373 of the Code of Criminal Procedure for recovery of aforesaid judgmental amounts of Taka for the respondent No. 7 against the petitioner.

Further he submits that upon such the Rule of this Writ Petition may be absolute or disposed or a direction may be given to the learned

Trial Court below for passing the order for recovery of judgmental amount. Lastly he submits that money suit No. 23 of 2017 in respect of recovery of aforesaid amounts of taka has been withdrawal on 20.03.2019. So, there is no question of double jeopardy in this matter.

The learned Advocate for the petitioner in his submission contended that he has no objection upon the submission of the learned lawyer for the respondent.

Upon such fact and circumstances we have gone through the record and attached annexure papers submitted by both the parties. It appears that the respondent No. 7 filed the paper of withdrawing of the money suit and its order which is annexure F and F1. As per Negotiable Instrument Act, 1881 it appears there is no law and Rule prescribed in the Negotiable Instrument Act since the Negotiable Instrument Act in the quasi criminal proceeding. The trial courts/criminal court passed the order for recovery of money that is the fine under the Negotiable Instrument Act of section 138. It is held in section 386 of the Code of Criminal Procedure that:

“386. (1) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may-

- (a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the movable or immovable property, or both of the defaulter.”

In this case the writ petition has been filed challenging the proceeding of Section 3(6) of the Public Demand Recovery Act. On the other hand the respondent also admits by filing the affidavit-in-opposition. The provision of section 3(6) of the Public Demand Recovery Act 1913 will not be applicable to recovery the fine amount upon the case of Negotiable Instrument Act.

We have perused the Negotiable Instrument Act section 138 and the section 386 of the Criminal Procedure Code. It appears that there is merit in the Rule. Upon such the trial courts at the time of disposal of the cases under section 138 of the Negotiable Instrument Act should right the section that is section 386 along with 373 of the Criminal Procedure Code for recovering the money.

On the above discussion we are of the view that the matter should be disposed with direction.

It is held in “Section 386- Fine imposed by the Criminal Court upon an accused is of the nature of a financial punishment as distinguished from physical punishment and it must be realised from him under all normal circumstances. The accused has no option in the matter.”

It appears that the judgment of the Trial Court in the said case is against the petitioner. Now this matter proceeded for realising the money which is improper in an exercise in the law by the Collector. The Collector proceeds in a civil process under Public Demand Recovery Act.

On above fact and circumstances the Trial Courts are directed to mention the section 386 of the Cr. P.C for recovery of fine amount if any.

Upon considering the same submission of both the parties we are of the view that the matter became infructuous.

Hence the Rule is discharged.

Communicate the order at once.

Mr. Justice SM Masud Hossain Dolon

I agree