

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. 15747 of 2022

With

Criminal Miscellaneous Case No.15748 of 2022

With

Criminal Miscellaneous Case No. 15749 of 2022

With

Criminal Miscellaneous Case No. 15750 of 2022

With

Criminal Miscellaneous Case No. 15751 of 2022

With

Criminal Miscellaneous Case No. 15752 of 2022

With

Criminal Miscellaneous Case No. 15753 of 2022

With

Criminal Miscellaneous Case No. 15754 of 2022

With

Criminal Miscellaneous Case No. 15755 of 2022

With

Criminal Miscellaneous Case No. 15756 of 2022

With

Criminal Miscellaneous Case No. 15757 of 2022

With

Criminal Miscellaneous Case No. 15758 of 2022

With

Criminal Miscellaneous Case No. 15759 of 2022

With

Criminal Miscellaneous Case No. 15760 of 2022

With
Criminal Miscellaneous Case No. 15761 of 2022

With
Criminal Miscellaneous Case No. 15762 of 2022

With
Criminal Miscellaneous Case No. 15763 of 2022

With
Criminal Miscellaneous Case No. 15764 of 2022

With
Criminal Miscellaneous Case No. 15765 of 2022

With
Criminal Miscellaneous Case No. 15766 of 2022

With
Criminal Miscellaneous Case No. 15767 of 2022

With
Criminal Miscellaneous Case No. 15768 of 2022

With
Criminal Miscellaneous Case No. 15769 of 2022

With
Criminal Miscellaneous Case No. 15770 of 2022

With
Criminal Miscellaneous Case No. 15771 of 2022

-AND-

IN THE MATTER OF:

Taisir Rahman

....Accused-Petitioner

-Versus-

The State and another

....Opposite parties

[In Criminal Miscellaneous Case Nos. 15747 to 15770 of 2022]

-AND-

IN THE MATTER OF:

Shafiq Uddin

....Accused-Petitioner

-Versus-

The State and another
Opposite parties
 [In Criminal Miscellaneous Case No.15771 of 2022]

Mr. Saqeb Mahbub, Advocate
For the petitioner
 [In all Criminal Miscellaneous Cases]

Mr. Tushar Kanti Das, Advocate
 ...For the opposite party No. 2
 [In Criminal Miscellaneous Case Nos.15750 and 15756 of 2022]

Mr. Md. Toufiq Zaman, Advocate
 ...For the opposite party No. 2
 [In Criminal Miscellaneous Case Nos.15758 , 15764 and 15749 of 2022]

Mr. Md. Mustafizur Rahman, Advocate
 ...For the opposite party No. 2
 [In Criminal Miscellaneous Case Nos.15761 and 15765 of 2022]

Mr. Fahad Mahmood Khan, with
 Mr. Md. Al Kayum, Advocates
 ...For the opposite party No. 2
 [In Criminal Miscellaneous Case Nos.15768 and 15769 of 2022]

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 22.08.2023
Judgment on: The 23rd of August, 2023

Abu Taher Md. Saifur Rahman, J:

These Rules concern of facts akin to each other and involve common questions of law and, as such, taken up together for hearing and are being disposed of by this single judgment.

In Criminal Miscellaneous Case No. 15747 of 2022, the 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 proceedings of Session Case No. 8709 of 2017, arising out of C.R. Case No. 272 of 2017 under Sections 138 and 140 of the Negotiable Instruments Act, 1881, as amended, now pending before the Court of 4th Joint Metropolitan Sessions Judge, Chattogram 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 this Rule, the Court was pleased to stay the further proceedings of the aforesaid Session Case No. 8709 of 2017, arising out of C.R. Case No. 272 of 2017 for **6 (six)** months from date, which was time to time extended by this Court.

In Similar terms, the Rules were also issued in Criminal Miscellaneous Case Nos. 15748 of 2022, 15749 of 2022, 15750 of 2022, 15751 of 2022, 15752 of 2022, 15753 of 2022, 15754 of 2022, 15755 of 2022, 15756 of 2022, 15757 of 2022, 15758 of 2022, 15759 of 2022, 15760 of 2022, 15761 of 2022, 15762 of 2022, 15763 of 2022, 15764 of 2022, 15765 of 2022, 15766 of 2022, 15767 of 2022, 15768 of 2022, 15769 of 2022, 15770 of

2022 and 15771 of 2022 and at the time of issuing of those Rules, the Court was pleased to stay the further proceedings of the respective cases, which are now pending before the concerned trial court below.

For disposal of the Rules of all aforesaid cases, the relevant facts may briefly be stated as follows:

That the accused-petitioner Taisir Rahman has obtained various loan facilities amounting to **Tk. 366,92,83,985/-** (Taka Three Hundred Sixty-Six Crore Ninety-Two Lac Eighty Three Thousand Nine Hundred and Eighty-Five) from the Opposite party No. 2 National Bank Limited. Subsequently, in order to adjust the aforesaid loan amount, the accused-petitioner issued separate 24 (twenty-four) cheques on several dates in favour of the Opposite Party No. 2, National Bank Limited, which were all dishonored due to insufficient of funds. Thereafter, the Opposite Party No. 2, National Bank Limited, as a Complainant filed 24 (twenty-four) separate C.R. cases against the accused-petitioner under sections 138 and 140 of the Negotiable Instruments Act, 1881. After that the accused-petitioner appeared before the concerned Court below and obtained bail. At the time of the

framing charge, the accused–petitioner filed an application under Section 241A of the Code of Criminal Procedure before the trial court, which was rejected. Being aggrieved, the accused-petitioner-petitioner Taisir Rahman has preferred all aforesaid Criminal Miscellaneous cases (**Criminal Miscellaneous Case Nos. 15747 to 15770 of 2022**) before this court for quashment under Section 561A of the Code of Criminal Procedure and obtained the Rule and stay the proceedings of the respective cases under sections 138 and 40 of the Negotiable Instrument Act 1881.

So far the Rule in Criminal Miscellaneous Case No. 15771 of 2022 is concerned the relevant facts may briefly be stated as follows:

That the accused-petitioner Shafiq Uddin is the proprietor of M/s. S.R Corporation, who has obtained various loan facilities from the Opposite party No. 2 National Bank Limited. Subsequently, in order to adjust the said loan amount, the accused–petitioner issued the impugned cheque amounting to **Tk. 1,27,34,000/-** (Taka One crore, Twenty seven lac and Thirty four thousand) on 15.02.2017 in favour of the Opposite Party

No.2, which was dishonored due to insufficient of fund. Thereafter, the Opposite Party No. 2, National Bank Limited, as a Complainant filed a C.R. Case No. 402 of 2018 against the accused-petitioner under sections 138 and 140 of the Negotiable Instruments Act, 1881. At the time of the framing charge, the accused-petitioner filed an application under Section 241A of the Code of Criminal Procedure before the trial court, which was rejected. Being aggrieved, the accused-petitioner Shafiq Uddin has preferred a Criminal Miscellaneous Case Nos. 15771 of 2022 before this court for quashment under Section 561A of the Code of Criminal Procedure and obtained the Rule and stay.

In support of those Rules, Mr. Saqeb Mahbub, the learned Advocate for the petitioner of all the aforesaid Criminal Miscellaneous Cases mainly submits that as against the loan amount, the petitioner has already deposited a total amount of **Tk. 324,70,83,455/-** (Taka Three Hundred Twenty-Four Crore, Seventy Lac Eighty Three Thousand Four Hundred and Fifty-Five) which is more than the cheques amount and, as such, the aforesaid criminal cases are not maintainable.

He further contended that the cheques which were given to the Opposite Party No. 2 as security cheques and after payment made by the accused-petitioner the cheques in question are no longer remains as valid cheques and, as such, the proceedings of the aforesaid Session Cases are amounts to be an abuse of the process of the Court.

He further contended that after adjustment of the loan amount, the impugned cheques are rendered to be without consideration. Therefore, as per provision of section 43 of the Negotiable Instruments Act, 1881, the impugned cheque does not create any obligation of payment upon the accused-petitioner to pay the money in favour of the opposite party No. 2 and, as such, the proceedings of all the Session Cases against the accused-petitioner is an abuse of the process of the Court.

As against this, Mr. Tushar Kanti Das, Mr. Md. Toufiq Zaman, Mr. Md. Mustafizur Rahman and Mr. Fahad Mahmood Khan, the learned Advocates for the opposite party No. 2 submits that the contention raised by the petitioner is absolutely a matter of facts, which needs to be decided through the trial and, as such, the aforesaid Rules are liable to be discharged.

Heard the submissions of the learned Advocates of both sides and perused the petitioner's applications and other materials on record thoroughly.

In the all aforesaid cases, the accused-petitioner sought for quashment the proceeding of Sessions Case Nos. 8709 of 2017, arising out of C.R. Case No. 272 of 2017, Session Case No. 5964 of 2017. arising out of C.R. Case No. 1194 of 2016, Session Case No. 8707 of 2017, arising out of C.R. Case No. 280 of 2017, Session Case No. 3080 of 2018, arising out of C.R. Case No. 480 of 2017, Session Case No. 7906 of 2017, arising out of C.R. Case No. 1171 of 2016, Session Case No. 87061 of 2017, arising out of C.R. Case No. 281 of 2017, Session Case No. 5595 of 2017, arising out of C.R. Case No. 1193 of 2016, Session Case No. 5597 of 2017, arising out of C.R. Case No.1187 of 2016, Sessions Case No. 5600 of 2017, arising out of C.R. Case No. 1190 of 2016, Session Case No. 6209 of 2017, arising out of C.R. Case No. 1214 of 2016, Session Case No. 6694 of 2017, arising out of C.R. Case No. 1023 of 2016, Session Case No. 7307 of 2017, arising out of C.R. Case No. 1117 of 2016, Session Case No. 6224 of 2017, arising out of C.R. Case No.

1216 of 2016, Session Case No. 6225 of 2017, arising out of C.R. Case No. 1212 of 2016, Session Case No. 8714 of 2017, arising out of C.R. Case No. 284 of 2017, Session Case No. 6205 of 2017, arising out of C.R. Case No. 1215 of 2016, Session Case No. 3073 of 2017, arising out of C.R. Case No. 486 of 2017, Session Case No. 8715 of 2017, arising out of C.R. Case No. 282 of 2017, Session Case No. 8709 of 2017, arising out of C.R. Case No. 283 of 2017, Session Case No. 5598 of 2017, arising out of C.R. Case No. 1188 of 2016, Session Case No. 5599 of 2017, arising out of C.R. Case No. 1189 of 2016, Sessions Case No. 6218 of 2017, arising out of C.R. Case No. 1213 of 2016, Session Case No. 6208 of 2017, arising out of C.R. Case No. 1217 of 2017, Session Case No. 5596 of 2017, arising out of C.R. Case No. 1191 of 2016, Session Case No. 454 of 2018, arising out of C.R. Case No. 402 of 2018.

The only issue for determination of this Rule is to see whether the aforesaid proceedings are liable to be quashed under 561A of the Code of Criminal Procedure.

It is well settled principles of law that to bring a case within the purview of section 561A for the purpose of quashing a proceeding one of the following conditions must be fulfilled:

- (1) Interference even at an initial stage may be justified where the facts are so preposterous that even on admitted facts no case stands against the accused.
- (2) Where the institution and continuation of the proceeding amounts to abuse of the process of the court.
- (3) Where there is a legal bar against the institution or continuation of the proceedings.
- (4) In a case where the allegations in the FIR or the petition of complaint, even if taken at their face value and accepted in their entirety, do not constitute the offence alleged and
- (5) The allegation against the accused although constitutes an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduce clearly or manifestly fails to prove the charge.

Our this view gets support from the decision in the case of *Ali Akkas vs Enayet Hossain & Others* as reported in 17 BLD (AD) 44.

Now, let us see whether the impugned proceedings of all aforesaid Session Cases are satisfied with the aforesaid test.

On perusal of all petitions of complaint of the respective C.R. cases filed by the opposite party No. 2 under Sections 138 & 140 of the Negotiable Instruments Act, 1881, we are of the view that there is a prima facie case against the accused-petitioners.

Moreover, the contention as raised by the accused-petitioners are absolutely a matter of evidence which needs to be decided at the time of trial. Therefore, the contention as raised by the accused-petitioners does not fall within the ambit of section 561A of the Code of Criminal Procedure.

Under the given facts and circumstances of these cases and the reasons as stated above, we do not find any substances of these Rules.

As a result, the Rules in Criminal Miscellaneous Case Nos. 15747 of 2022, 15748 of 2022, 15749 of 2022, 15750 of

2022, 15751 of 2022, 15752 of 2022, 15753 of 2022, 15754 of 2022, 15755 of 2022, 15756 of 2022, 15757 of 2022, 15758 of 2022, 15759 of 2022, 15760 of 2022, 15761 of 2022, 15762 of 2022, 15763 of 2022, 15764 of 2022, 15765 of 2022, 15766 of 2022, 15767 of 2022, 15768 of 2022, 15769 of 2022, 15770 of 2022 and 15771 of 2022 are hereby discharged.

The order of stay granted earlier by this Court in connection with all aforesaid Criminal Miscellaneous Cases are hereby stands vacated.

The concerned trial Court below is hereby directed to proceed with the aforesaid Session Case No. 8709 of 2017, arising out of C.R. Case No. 272 of 2017, Session Case No.5964 of 2017, arising out of C.R. Case No. 1194 of 2016, Session Case No. 8707 of 2017, arising out of C.R. Case No. 280 of 2017, Session Case No. 3080 of 2018, arising out of C.R. Case No. 480 of 2017, Session Case No. 7906 of 2017, arising out of C.R. Case No. 1171 of 2016, Session Case No. 8706 of 2017, arising out of C.R. Case No. 281 of 2017, Session Case No. 5595 of 2017, arising out of C.R. Case No. 1193 of 2016, Session Case No. 5597 of 2017, arising out of C.R. Case No.1187 of

2016, Sessions Case No. 5600 of 2017, arising out of C.R. Case No. 1190 of 2016, Session Case No. 6209 of 2017, arising out of C.R. Case No. 1214 of 2016, Session Case No. 6694 of 2017, arising out of C.R. Case No. 1023 of 2016, Session Case No. 7307 of 2017, arising out of C.R. Case No. 1117 of 2016, Session Case No. 6224 of 2017, arising out of C.R. Case No. 1216 of 2016, Session Case No. 6225 of 2017, arising out of C.R. Case No. 1212 of 2016, Session Case No. 8714 of 2017, arising out of C.R. Case No. 284 of 2017, Session Case No. 6205 of 2017, arising out of C.R. Case No. 1215 of 2016, Session Case No. 3073 of 2017, arising out of C.R. Case No. 486 of 2017, Session Case No. 8715 of 2017, arising out of C.R. Case No. 282 of 2017, Session Case No. 8709 of 2017, arising out of C.R. Case No. 283 of 2017, Session Case No. 5598 of 2017, arising out of C.R. Case No. 1188 of 2016, Session Case No. 5599 of 2017, arising out of C.R. Case No. 1189 of 2016, Sessions Case No. 6218 of 2017, arising out of C.R. Case No. 1213 of 2016, Session Case No. 6208 of 2017, arising out of C.R. Case No. 1217 of 2017, Session Case No. 5596 of 2017, arising out of C.R. Case No. 1191 of 2016, Session Case No. 454

of 2018, arising out of C.R. Case No. 402 of 2018 expeditiously in accordance with the law without giving any unnecessary adjournments to either party.

Communicate this judgment and order at once.

Khandaker Diliruzzaman, J:

I agree