

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

And

Mr. Justice A.K.M. Rabiul Hassan

Criminal Miscellaneous Case No.37494 of 2022

Md. Mizanur Rahman

.... Accused-Petitioner

-Versus-

The State and another

.... Opposite Parties

Mr. S. M. Mahbubul Islam, Advocate

.... For the petitioner.

Mr. Sujit Chatterjee, D.A.G. with

Mr. Moududa Begum, A.A.G.

Mr. Mirza Md. Soyeb Muhit, A.A.G.

Mr. Mohammad Selim, A.A.G.

Mr. Zahid Ahmed (Hero), AAG

.... For the State.

Non one appears

.... For the opposite party No.2.

Heard and Judgment on 23.05.2024

S M Kuddus Zaman, J:

On an application under section 561A of the Code of Criminal Procedure this Rule was issued calling upon the opposite parties to show cause as to why the proceedings of C.R. Case No.50 of 2021 (Motijheel) under Sections 420 and 406 of the Penal Code, now pending in the Court of learned Chief

Metropolitan Magistrate, Dhaka should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that opposite party No.2 as a complainant lodged a complaint alleging that on the assurance of transfer of bonus share of South Bangla Agricultural Bank and making the complainant a Director of above Bank accused obtained Taka 3,42,00,000/- in cash and Taka 1,66,000/- by four separate cheques for a total amount of Taka 5,08,00,000/-. The accused petitioner transferred bonus share of above Bank to the complainant. But the accused petitioner did not make the complainant a Director of the Board of above Bank.

The learned Metropolitan Magistrate examined the complainant under Section 200 of the Code of Criminal Procedure and sent the petition for inquiry and on receipt of the inquiry report took cognizance of the case against the accused petitioner. The accused petitioner entered appearance and obtained bail from the learned Metropolitan Magistrate and moved to this Court with the instant petitioner under Section 561A of the Code of Criminal Procedure for quashment of the above proceedings.

Mr. S.M. Mahbubul Islam, learned Advocate for the petitioner submits that in the complaint it has been stated that in course of a business transaction the petitioner obtained cash money as well as four cheques from the complainant on the assurance of transfer of his shares of South Bangla Agricultural Bank and it has been admitted in the complaint that the petitioner effected above transfer of shares in favour of the complainant.

On the basis of above mentioned four cheques the petitioner obtained from the opposite party-complainant the petitioner filed four separate cases under Section 138 of the Negotiable Instrument Act, 1881 and on conclusion of trial the opposite party-complainant was convicted in all above four cases. Since there is no element of initial deception this is a still born and preposterous proceedings which will cause unnecessary sufferings to the petitioner which amounts to abuse to the process of the Court.

No one appears on behalf of the opposite party No.2 when the matter is taken up for hearing although the matter appeared in the list for hearing today.

We have considered the submissions of the learned Advocates for the petitioner and carefully examined all materials on record including the petition of complaint.

It has been stated in the complaint that to sell out his shares of South Bangla Agricultural Bank the accused petitioner obtained cash Tk.3,42,00,000/- and four cheques for Taka 5,08,00,000/- in course of business transaction. It has been admitted in the complaint that pursuant to above business agreement the petitioner transferred his shares of above Bank in favour of the complainant. As such above agreement was enforced or made effective in part.

As far as the four cheques are concerned on the basis of above cheques the petitioner filed four separate criminal cases under Section 138 of the Negotiable Instrument Act, 1881 which after conclusion of trial resulted into conviction of the complainant.

We have carefully examined the averments made in the complaint but we are unable to find any element of initial deception or cheating or criminal breach of trust punishable under Sections 406 and 420 of the Penal Code.

In above view of the materials on record we hold that above proceedings is a still born and preposterous one and further continuation of the same would cause unnecessary plight and sufferings to the petitioner which amounts to abuse of the process of the court.

We find substance in this petition under Section 561A of the Code of Criminal Procedure and the Rule issued in this connection deserve to be made absolute.

In the result, the Rule is made absolute. The proceedings of C.R. Case No.50 of 2021 (Motijheel) under Sections 420 and 406 of the Penal Code, now pending in the Court of learned Chief Metropolitan Magistrate, Dhaka is hereby quashed.

Communicate this judgment and order to the Court concerned at once.

A.K.M. Rabiul Hassan, J:

I agree.