In the Supreme Court of Bangladesh

High Court Division

(Criminal Miscellaneous Jurisdiction)

<u>Present:</u>

Mr. Justice K.M.. Hafizul Alam
and
Mr. Justice Abdur Rahamn

<u>Criminal Miscellaneous Case No. 48205 of 2021.</u>

Shahid Ul Hasan.
.........Petitioner.
-Versus-
The State and another.
.... Opposite parties.

None appears.
……. For the petitioner.

Mr. Mohammad Jamal Hossain, Advocate

……… For the opposite party No.02.

<u>Heard on 18.11.2025 and Judgment on 11.12.2025.</u>

Judgment:

Abdur Rahman, J:

The petitioner has filed the instant criminal miscellaneous case. The Court being satisfied issued a Rule calling upon the opposite parties to show cause as to why the proceedings of Sessions Case No. 17190 of 2020 arising out of C.R. Case No. 40 of 2020, under section 138 read with section 140 of the Negotiable Instruments Act, 1881 (shortly, the NI Act) now pending in the Court of Joint Metropolitan Sessions Judge, Court No. 4, Dhaka as it relates to the petitioner should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

1.0 Background of Facts:

1.1 Facts relevant for disposal of the Rule, are that the opposite party No.2 filed a petition of complaint under section 138 read with section 140 of the Negotiable Instruments Act, 1881 before the Metropolitan Magistrate, Cogniznce Court No. 28, Dhaka contending *inter-alia* that the accused petitioner is a Director of the Infinity Data and Power Limited that the complainant Bank has given various loan facilities to the Infinity Data and Power Limited and the Compay has drawn a cheque No. A5460836 dated 18.11.2019, for payment of BDT. 8,67,18,188.98 (Taka Eight Crore Sixty-Seven Lac Eighteen Thousand One Hundred Ninety-Eight Paisas); the said cheque was dishonoured on 18.11.2019, and the complainant Bank served legal notice demanding the cheque money, thus the said notice was not received by the accused, hence the complainant bank filed the case.

1.2 Learned Court of Metropolitan Magistrate, Cognizance Court No. 28, Dhaka, took cognizance of the offences thereunder and issued summons against the accused persons. Accordingly, the petitioner surrendered and obtained bail. The case was transferred to the learned Metropolitan Sessions Judge, Dhaka, concerned, and the learned Sessions Judge took cognizance of the alleged offences, and the case was renumbered as Sessions Case No. 17190 of 2020, and the case was transferred to the learned Joint Metro Session Judge, 4th Court, Dhaka, for holding trial. The accused petitioner applied under the provisions of section 265C of the Code of Criminal Procedure, 1898, for getting discharge from the offence alleged. But the learned Court was pleased to frame a charge against the accused petitioner along with others.

1.3 Being aggrieved by and dissatisfied with the aforesaid proceedings, the petitioner moved before this Hon'ble Court and obtained the Rule without any order of stay of the impugned proceedings.

1.4 The rule has been contested by the opposite party No. 2, stating *inter alia* that the resignation of the petitioner from the Board of Directors of the Company is a matter of fact. Moreover, the present opposite party No. 2 was not aware of the petitioner's resignation from the alleged company, and the action taken without prior approval from the Bank is ineffective as per Section 27A of the Bank Companies Act, 1991. Hence, the instant Rule is liable to be discharged.

2.0 **Submissions:**

2.1 The learned Advocate for the petitioner, Ms. Fariha Zaman, became absent at the time of the hearing, though she received a copy of the Counter Affidavit. She has also been informed of the matter fixed before this Court by the learned Advocate for the contesting opposite party No.2. However, on perusal of the petition, it appears that the petitioner mainly relied upon four separate grounds, which are as follows:

(i) That the accused petitioner is not a Director in the accused company, nor does he have any functions or attributions in the business of the company after he resigns from the post of Director on 14.10.2017 and hence the impugned cheque issued on 18.11.2019 was not at all binds the accused petitioner in any liability under section 138 of the Negotiable Instruments Act, 1881;

(ii) That the accused petitioner has no liability under Section 140 of the Negotiable Instruments Act, 1881 against any Director or Officer of the company lies only he is in charge of the business of the company but in the instant case the complainant did not assert that the accused petitioner in any way was involved in issuing the impugned cheque which creates cause of action against the accused and hence the impugned proceedings is liable to be quashed;

(iii) That the alleged complaint petition does not disclose any cause of action against the accused petitioner and hence the impugned proceedings are liable to be quashed; and

(iv) That the Negotiable Instruments Act, 1881 and Artha Rin Adalat Ain, 2003 are two special laws for recovery of money rather than recovery of money through ordinary civil court; when the question of loan recovery comes then Artha Rin Adalat Ain, 2003 has exclusive jurisdiction and thus Artha Rin Adalat Ain, 2003 has become Special Law and the Negotiable Instruments Act, 1881 for recovery of money has become a General Law andd as such the Artha Rin Adalat Ain, 2003 being special law in the instnat case has clearly barred by filing the case under Section 138 of the Negotiable Instruments Act, 1881 and as such the impugned proceedings is liable to be quashed.

2.2 Mr. Mohammad Jamal Hossain, the learned Advocate appearing for the opposite party No. 2 Bank, has made the following submissions:

(a) That the issues raised by the petitioner in this petition have already been settled by our Apex Court, and accordingly, it's nothing but a test case.

(b) That tthe present opposite party No.2 was not aware about the resignation of the petitioner from the accuseed No.1, Company, however mere resignation of any director of a loanee company shall not be effective without prior approval of the Bank and hence no director shall be entitled to trransfer or sell his shares without approval of the Bank authority, but in tthe instant case there was no prior approval regarding tthe reisgation of the petitioner without prior approval from the Bank is ineffectivee as per seection 27A of the Bank companies Act, 1991, moreover, it now settled principal of law whether a director of a compay knew issuancee of cheque or whether any director was a person in charge of a company or whether he or she is prima-facie responsible for day to day appears of the company are matters of fact.

(c) Learned Advocate has earnestly submitted that there is no bar to proceed with the case under section 138 of the Negotiable Instruments Act, 1881, arising out of the loan liabilities simultaneously with the suit under Artha Rin Adalat Ain, and as such, the instant Rule is liable to be discharged.

(d) That the learned Advocate for the opposite party No.2, in support of his submissions, cited some references of the Supreme Court of Bangladesh, likely, 74 DLR (AD) 40; Judgment passed in Criminal Petition for Leave to Appeal No. 1768-69 of 2019, etc.

3.0 **Deliberations and Findings:**

3.1 We have gone through the petition of the criminal miscellaneous case, annexures, and perused the other materials on record, as well as the cited cases as referred to by the learned Advocate for the opposite party No. 2.

At first, we want to mitigate the questions raised by the petitioner who took ground likely, Artha Rin Adalat Ain, 2003 has become Special Law and the Negotiable Instruments Act, 1881 for recovery of money has become a General Law andd as such the Artha Rin Adalat Ain, 2003 being special law in the instnat case has clearly barred by filing the case under Section 138 of the Negotiable

Instruments Act, 1881. In this context, our Apex Court deals with the matter of the case of Eastern Bank Limited vs. Md. Shirajuddula, reported in 72 DLR (AD) 79, whether the pendency of the Artha Rin Suit against the accused on the self-same issue is double jeopardy or not. In the said case, the bank filed an Artha Rin Suit as well as a criminal case under section 138 of the NI Act for the same purpose and the same cause of action, i.e., recovery of loan. The accused in that case prayed for quashing the proceeding contending that the same was barred on the point of double jeopardy. The Apex Court settled the issue, holding that the pendency of a civil suit will not hinder the proceedings of a criminal case and vice versa.

The other contention of the petitioner is that he was not a Director in the accused company, nor did he had any functions or attributions in the business of the company after he resigned from the post of Director on 14.10.2017 and hence the impugned cheque issued on 18.11.2019 was not at all binds the accused petitioner in any liability under section 138 of the Negotiable Instruments Act, 1881. In this context, we examined the term 'Director' which has been defined in the Companies Act, 1994 as under:

> *"2(f) "director" includes any person occupying the position of director by whatever* name *called;*
>
> *According to explanation (b) to section 140 of the Negotiable* ***Instruments*** *Act, 1881, "(b) director" in relation to a firm, means a partner in the firm."*

The Companies Act, 1994, and the Negotiable Instruments Act, 1881, both imply that a director is a partner of a company and holds a pivotal position in the company concerned.

For a better understanding, we may examine the provisions of Section 140 of the Negotiable Instruments Act, 1881, which provides that-

"140. (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, <u>was in charge of, and was responsible to, the company for the conduct of the</u>

business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence. (Underline given by us)

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

For the case in our hand, the paramount consideration is whether the petitioner was 'in charge of, and was responsible for, and for the conduct of the business of the company', which definitely comes under the purview of the question of facts.

Indeed, merely a person being a director, manager, secretary, or other officer of a company does not make them liable for the offence under Section 138 of the Negotiable Instruments Act, 1881. But in case of offence committed under section 138 of the Act by a company, every person in charge of the company shall be liable until he/she can prove by dint of evidence that the offence was committed without his knowledge or he had exercised all due diligence to prevent the commission of such offence.

On the contrary, the opposite party, Bank, raised a reasonable question that mere resignation of any director of a loanee company shall not be effective without prior approval of the Bank, but in the instant case there was no prior approval regarding tthe reisgation of the petitioner without prior approval from the Bank is ineffectivee as per seection 27A of the Bank companies Act, 1991. To mitigate this point, we can examine the provision of Section 27A of the ut supra, as are-

"২৭ক। দেনাদার কোম্পানী বা প্রতিষ্ঠানের পরিচালক বা পরিচালনা কর্তৃপক্ষের সদস্যদের উপর বিধি-নিষেধ।- আপাততঃ বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, ঋণদাতা ব্যাংক বা আর্থিক প্রতিষ্ঠানের পরিচালক পর্ষদ বা, ক্ষেত্রমত, উর্ধ্বতন কর্তৃপক্ষের অনুমোদন ব্যতীত, কোন দেনাদার কোম্পানী বা প্রতিষ্ঠানের কোন পরিচালক বা পরিচালনা কর্তৃপক্ষের

কোন সদস্যের পদত্যাগ কার্যকর হইবে না এবং কোন পরিচালক তাহার শেয়ার হস্তান্তর বা বিক্রয় করিতে পারিবেন না।"

From a plain reading of the provisions of the aforesaid section, it looks like a gemstone that if any director of a company resigns or leaves the business or sells his share(s), he has to get sanction from the financial institution concerned with the affairs of his company. In the instant case, the petitioner failed to show such a kind of sanction. He claimed in paragraph No.5 of the instant application that he resigned from the directorship of the company, and the said resignation was accepted by the company before issuing the impugned cheque, which definitely falls under the purview of the question of facts, and resultantly, the petitioner has the scope to prove the materials in trial.

From the aforementioned facts, submissions, grounds taken by the petitioner, and the proposition of law, our considered view is that prior approval is not necessary, even subsequent approval of the bank or financial institution can suffice the purpose of section 27A of the Bank Companies Act, 1991, and moreso, to mitigate the question of facts, the best forum is the trial, unless it is shown that preposterous facts, barred by law or abuse of the process of the Court, are available *in flagrante delicto* in the case.

In view of the above discussions, we do not find any merit in the rule.

Accordingly, the Rule is discharged without any order as to costs.

Communicate a copy of the judgment and order to the concerned Court at once.

(Abdur Rahman, J)

K.M. Hafizul Alam**, J**

I agree.

(K.M. Hafizul Alam, J)