

Present

Mr. Justice A.S.M. Abdul Mobin

&

Mr. Justice Md. Mahmud Hassan Talukder

Criminal Miscellaneous Case No. 47867 of 2022.

Md. Didarul AlamPetitioner.

Vs.

The state and another.....Opposite Parties.

Mr. A.K.M. Fakrul Islam, Advocate

.....for the petitioner.

Ms. Mowshumi Chowdhury, Advocate

.....for the opposite party No.2.

Heard on: 23.11.2023.

Judgment on: 28.11.2023.

A.S.M.ABDUL MOBIN,J.

This Rule was issued calling upon the opposite parties to show cause as to why the proceedings of Sessions Case No. 9880 of 2018 arising out of Complaint Register Case No. 480 of 2018 (Kotwali) dated 12.03.2018 under section 138 of the Negotiable Instruments Act, 1881, now pending before in the Court of Metropolitan Joint Sessions Judge, 2nd Court, Chattogram should not be quashed.

The case was initiated by the complainant opposite party in filing a complaint petition against the accused petitioner under section 138 of the Negotiable Instruments Act, 1881 on 12.03.2018 stating that the accused petitioner being a client of the complainant bank enjoyed the credit facilities and he issued a cheque bearing No. 5311228 dated 28.01.2018 for Tk. 38,00,00,000/- for partial adjustment of

outstanding liabilities. The complainant bank deposited the cheque for encashment on 29.01.2018 but the cheque was bounced back with a remark of insufficient fund. Thereafter, the complainant bank issued notice upon the accused and asked him to make payment of the cheque amount. The accused petitioner did not make payment. The complainant then filed the complainant petition.

After receiving the complaint, the learned Magistrate examined the complainant and took cognizance and issued process against the accused petitioner under section 138 of the Negotiable Instrument Act, 1881.

The accused petitioner in compliance of the process surrendered in the Court blow and obtained bail. When the case was ready, it was sent to the Court of Joint Metropolitan Sessions Judge, 2nd Court, Chattogram for trial. In due course, charge was framed under the aforesaid section of law against him. After framing of the charge the accused petitioner moved this Court for quashing the proceedings and obtained the rule.

Mr. A.K.M. Fakhru Islam, the learned advocate appearing for the accused petitioner submits that bank is the original complainant but complaint was filed on its behalf by an employee of the bank. The complainant alleged that they he had authority to file the complaint. The learned

advocate submits that he should not be treated to be payee or holder in the course and he is not legally competent to file the complaint. The learned advocate further submits that if the complainant was an attorney, he could have filed the complaint and maintained the proceeding. Since the complaint was not filed by a competent person, the proceeding initiated on such complaint is an abuse of the process of the Court and liable to be quashed. In support of his contention, he refers to the case of ***Md. Nur Hussain Vs. Md. Alamgir Alam*** 37 BLD(AD)-2017 page 202.

Ms. Moushomi Rahman, the learned advocate appearing for the complainant opposite party, on the other hand submits that the complainant is an employee of the bank and he is an authorized and competent person to maintain the complainant. She submits that there is no illegality in the proceeding and as such it is not liable to be quashed but the rule is liable to be discharged.

We have considered the submissions of the learned advocates, perused the application and all other relevant papers annexed thereto. It appears that the complaint was filed on behalf of the bank by one of its employee. The bank is an artificial person. Therefore, some one needs to act on its behalf. Admittedly, the complainant is an employee of the bank. He is authorized person to file the complaint on behalf

of the bank. Therefore, he is a competent person to file and maintain the complaint. In the Case of ***Md. Nur Hussain Vs. Md. Alamgir Alam***, 37 BLD(AD)-2017- 202, a private person filed a complaint, who was neither a payee nor a holder in due course. In that facts and circumstances of the case, our Apex Court held that the complainant was an outsider and had no connection with the instant transaction. But facts of the instant case are altogether different.

The learned advocate does not raise any other point. In view of the matter, we do not find merit in this rule and the rule is liable to be discharged.

Accordingly, the rule is discharged.

The order of stay is hereby recalled and vacated.

The learned Judge of the trial Court is directed to proceed with the case in accordance with the law.

Communicate this order to the concerned court at once.

MD. MAHMUD HASSAN TALUKDER,J.

I agree.