

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. 5058 OF 2023

Ayesha Akhter
...Petitioner

-Versus-

The State
....Opposite party

Mr. Redwan Ahmed with
Mr. Muhammad Rokun Uddin,
Advocates
...For the petitioner

Mr. S.M. Kofil Uddin, Advocate
...For the opposite party Nos. 2

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 20.08.2023
Judgment on: **The 20th of August, 2023**

ABU TAHER MD. SAIFUR RAHMAN, J:

This Rule was issued at the instance of the accused-petitioner under section 561-A of the Code of Criminal Procedure, 1898 calling upon the opposite party to show cause as to why the proceeding of C.R. Case No. 2121 of 2022 (Kotowali) under sections 420/422 of the Penal Code,

1860, now pending in the Court of learned Metropolitan Magistrate, Cognizance and trial Court No. 1, Chattogram should not be quashed and/or 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, this Court was pleased to stay the aforesaid proceedings of C.R. Case No. 2121 of 2022 for a period of **6 (six)** months from the date which was time to time extended by this Court.

For disposal of this Rule, the relevant facts may briefly be stated as follows:

That the opposite party No. 2, Mofiz Ahmed, the Proprietor of M/S. July Motors as a complainant filed a C.R. Case No. 2121 of 2022 (Kotowali) against the accused-petitioner and others under sections 420/422 of the Penal Code alleging inter alia that the complainant and one Mahabubul Alam, the predecessor of the accused Nos. 1 to 3 in the aforesaid C.R. Case No. 2121 of 2022 are well known to each other. For the purpose of joint business, the

complainant has invested amounting to **Tk. 3,80,00,000/-** (Taka Three crore and Eighty lac) in the business of the said Mahabubul Alam. Regarding the said matter a contract was executed between them. In paragraph No. 4 of the petition of complaint, it has been categorically stated as follows:

“উক্ত চুক্তিপত্রের ৬ নং শর্ত মোতাবেক ১-৩ নং আসামীর পূর্ববর্তী মাহাবুবুল আলম বাদীকে ব্যবসার আয়-ব্যয় বিবরণী ত্রৈমাসিক অন্তে দাখিল করার এবং আয়-ব্যয় বিবরণী উভয় পক্ষের যৌথ অনুমোদনের পর অর্জিত লভ্যাংশ/লোকসান উক্ত মাহাবুবুল আলম ও বাদী যথাক্রমে ৮০:২০ অনুপাতে বন্টন করার সুস্পষ্ট শর্ত রহিয়াছে। অথচ, উক্ত মাহাবুবুল আলম কোন আয়-ব্যয় বিবরণী দাখিল না করিয়া মনগড়া হিসাবের মাধ্যমে মে, ২০১৯ পর্যন্ত অল্প পরিমাণে মুনাফা প্রদান করিয়া বাদীকে আর্থিকভাবে ক্ষতিগ্রস্ত করেন।”

As per the terms of the aforesaid contract, Mr. Mahabubul Alam did not pay any profit/interest to the complainant. Subsequently, Mr. Mahabubul Alam adjusted the amount of **Tk.78,00,000/-** through the pay order dated 22.11.2022 in favour of the complainant. Thereafter, said Mr. Mahabubul Alam died on 14.12.2020. Later on, the

heirs of said Mahabubul Alam also further adjusted the total amount of **Tk. 52,00,000/-** to the complainant on 07.04.2021. Thereafter, the complainant demanded the rest of the amount on several dates to the heirs of the said Mahabubul Alam but no action has been taken as yet. Being aggrieved, the complainant filed the aforesaid C.R. Case against the accused-petitioner and others under sections 420/422 of the Penal Code, which is now pending for disposal.

Mr. Redwan Ahmed, the learned Advocate for the petitioner submits that the nature of the allegation as stated in the petition of a complaint is absolutely arising from the business transaction, which is civil in nature and does not constitute any criminal offence, and, as such the impugned proceeding is liable to be quashed.

As against this, Mr. S.M. Kofil Uddin, the learned Advocate for the opposite party No. 2 submits that as per the petition of complaint, there is a specific allegation

against the accused-petitioner. Moreover, the charge is not yet framed, and, as such, the instant Rule is liable to be discharged.

Heard the submissions of the learned Advocates of both sides and perused the petitioner's application thoroughly.

On perusal of the petitioner's application it transpires that the alleged transaction between the complainant and the accused-petitioner is clearly and admittedly a business transaction. We have further noticed that regarding the aforesaid business, a contract was executed between the complainant and the husband of the accused – petitioner, Mr. Mahabubul Alam. We have also observed that as per the terms of the contract, Mr. Mahabubul Alam has already adjusted the amount of Tk.78,00,000/- to the complainant, and after the death of said Mamahbubl Alam, the petitioner as a wife of said Mahabubul Alam further deposited an amount of **Tk. 52,00,000/-** to the complainant. The failure on the part of the accused-petitioner to pay the complainant, the balance amount under the business

contract does not warrant any criminal proceeding as the obligation under the said contract is purely of a civil nature.

Mr. S.M. Kofil Uddin, the learned Advocate for the complainant contended that the impugned proceeding is still pending and the charge is not yet framed and at this stage, the application filed by the accused-petitioner under section 561-A Code of the Code of Criminal Procedure is not maintainable. So far as this issue is concerned, we are of the view that interference even at an initial stage may be justified when the facts are so preposterous that even on admitted facts no case stands against the accused.

Our this view gets support from the decision in the case of Ali Akkas Vs. Enayet Hossain and others report in 17 BLD (AD) (1997) 44.

In the instant case, if we admit the entire allegation as raised by the complainant even it does not constitute any criminal offence at all. So the contention as raised by the opposite party No. 2 is not accepted.

Under the given facts and circumstances of the case, we find substances in this Rule.

As a result, the Rule is made absolute.

The proceeding of C.R. Case. No. 2121 of 2022 (Kotowali) under sections 420/422 of the Penal Code, 1860, now pending in the Court of learned Metropolitan Magistrate, Cognizance and Trial Court No. 1, Chattogram is hereby quashed.

Communicate this judgment and order to the concerned court below at once.

Khandaker Diliruzzaman, J:

I agree