

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

Present:

Mr. Justice Md. Khairul Alam
and
Mr. Justice Md. Sagir Hossain

Criminal Miscellaneous Case No. 15021 of 2023.

Md. Moniar Hossain.
.....Accused-petitioner.

-Versus-

The State and another.
..... Opposite parties.

No one appears
..... For the petitioner.

Mr. Monjur Elahi Porag, Advocate
..... For the opposite party No.2.

Heard on : 08.02.2026 and

Judgment on: 16.02.2026.

Md. Khairul Alam, j.

This Rule, at the instance of the accused-petitioner, was issued upon an application under section 561A of the Code of Criminal Procedure, 1898, seeking quashment of the proceedings in Metropolitan Sessions Case No. 19002 of 2018 arising out of C.R. Case No. 2309 of 2017 under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the NI Act), now pending

before the Court of Joint Metropolitan Sessions Judge, 2nd Court, Dhaka.

The facts relevant for disposal of the Rule are that the opposite party No. 2, National Credit and Commerce Bank Limited (hereinafter referred to as the Bank), is a commercial bank, and Paradise Cables Limited (hereinafter referred to as the Company), a private limited company, is admittedly a borrower of the Bank. The Bank, as complainant, filed a petition of complaint before the Court of the Chief Metropolitan Magistrate, Dhaka, implicating the Company along with four others, including the present petitioner, as accused, describing the petitioner as a Director of the Company alleging, inter alia, that the Company availed credit facilities from the Bank but failed to adjust its liabilities in terms of the sanction letter. In partial discharge of the said liability, the Company issued a cheque bearing No. 1306083 dated 08.11.2017 for an amount of Tk. 20,00,00,000/- in favour of the complainant. The said cheque, upon presentation, was dishonoured on the same date with the endorsement “insufficient funds.” Subsequently, on 19.11.2017, a

statutory notice was served upon the accused persons demanding payment of the cheque amount within the prescribed period. Admittedly, no payment was made in compliance with the said notice. Hence, the complaint was filed, and upon examination of the complainant under section 200 of the Code of Criminal Procedure, the learned Magistrate took cognizance of the offence under section 138 of the NI Act, and issued process against the accused and others. The case was registered as C.R. Case No. 2309 of 2017, and the petitioner obtained bail from the trial Court. Subsequently, the case, upon transfer to the Court of Sessions, was renumbered as Metropolitan Sessions Case No. 19002 of 2017 and is now pending before the Court of the Joint Metropolitan Sessions Judge, 2nd Court, Dhaka. On 12.11.2020, charge was framed against the accused, including the present petitioner, under section 138 of the NI Act.

Being aggrieved by and dissatisfied with the initiation and continuation of the said proceedings, the petitioner moved this Court and obtained the present Rule along with an order of stay.

No one appears to represent the Rule when the matter was taken up for hearing.

The petitioner in the petition mainly contended that since he is neither the drawer of the cheque in question nor was in charge of, or responsible to the company for the conduct of the business of the company at the time of commission of the alleged offence, therefore, the initiation and continuation of the proceedings against him is wholly misconceived and amounts to an abuse of the process of the Court, as the ingredients attracting liability under section 140 of the NI Act have not been satisfied in the present case.

Per contra, Mr. Monjur Elahi Porag, the learned Advocate appearing for the opposite party No. 2, the bank, submits that when the company took the loan and issued the cheque, the petitioner was the director of the company and was responsible for the affairs of the company; therefore, he has rightly been impleaded in the case.

We have heard the learned Advocates for the bank and perused the materials on record, including the impugned proceedings.

It appears that the company obtained loan facilities from the bank, and in discharge of the said liabilities, the company issued a cheque which was dishonoured and the bank filed the petition of complaint under sections 138/140 of the NI Act showing the petitioner as a director of the company.

The petitioner contends that since he neither signed the cheque nor was in charge of or responsible for the conduct of the company's business, the requirements of section 140 of the NI Act have not been fulfilled.

For proper appreciation, section 140 of the NI Act reproduced herein follows:

“140. Offences by companies (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the 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.

(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 person shall also be deemed to be guilty of the offence.”

A plain reading of the provision makes it clear that criminal liability under section 138 extends not only to the company but also to those persons who, at the relevant time, were in charge of and responsible for the

conduct of the business of the company. Therefore, a director cannot be held criminally liable merely by virtue of holding such office. Vicarious liability under section 140 arises only when it is proved that the accused director was in charge of and responsible for the conduct of the business of the company at the time when the offence was committed.

The inherent power of this Court under section 561A of the Code of Criminal Procedure is to be exercised sparingly, cautiously and in exceptional circumstances, namely where continuation of the proceeding would amount to abuse of the process of the Court or where the allegations, even if taken at their face value, do not disclose any offence.

In the present case, it is an admitted position that the petitioner is neither the signatory of the dishonoured cheque nor the Managing Director or Chairman of the company. The petitioner has been implicated in the case as an accused showing him as a director of the company. It is well-settled that, for the purpose of fixing vicarious liability upon a director or officer of a company under

section 138 read with section 140 of the NI Act, it is sufficient at the initial stage if the complaint merely contains an averment that, at the relevant time, such person was in charge of and responsible for the conduct of the company's business.

A plain reading of the petition of complaint reveals that clear and categorical statements have been made therein that at the relevant time of issuance and dishonour of the cheque, the petitioner was a director of the company and was in charge of and responsible for the conduct of its business.

Whether the petitioner was a director and actually in charge of and responsible for the conduct of the company's business at the relevant time is essentially a question of fact, which can only be determined upon consideration of evidence, both oral and documentary, during trial. In a proceeding under section 561A of the Code, this Court cannot embark upon an enquiry into disputed questions of fact, nor can it assess the truth or falsity of the allegations made in the complaint.

On perusal of the complaint, prima facie, it appears that the complaint discloses the essential ingredients of offences under sections 138 and 140 of the NI Act.

Accordingly, we find no lawful ground to interfere with the impugned proceeding at this preliminary stage.

However, the petitioner shall be at liberty to raise all permissible defences before the trial court in accordance with law.

In view of the foregoing discussions, we find no merit in the Rule.

Accordingly, the Rule is discharged.

The order of stay granted earlier by this Court is hereby recalled and vacated.

Let a copy of this judgment and order be communicated at once.

Md. Sagir Hossain, J.

I agree.

Kashem, B.O