

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION**

**Present
Mr. Justice Md. Salim
And
Mr. Justice Shahed Nuruddin**

CRIMINAL MISCELLANEOUS CASE NO. 6004 OF 2023

Mofizur Rahman Taku
.....Accused-Petitioner.

-VERSUS-

The State and another ...Opposite Parties.

Ms. Suria Nasrin, Advocate
..... For the petitioner.

Mr. Hasan Al Mahmud Sumon, Advocate
.....For the Opposite Party No.2.

Mr. B.M. Abdur Rafell, DAG with
Mr. Binoy Kumar Ghosh, A.A.G.
Mr. A.T.M. Aminur Rahman (Milon), AAG
Ms. Lily Rani Saha, AAG
.....For the State.

Heard and Judgment on 28.02.2024

MD. SALIM, J:

By this Rule, the accused-petitioner by filing an application under Section 561A of the Code of Criminal Procedure sought to quash the proceedings of Sessions Case No. 516 of 2018 arising out of C.R. Case No. 36 of 2018 under Section 138 of the Negotiable Instruments Act, 1881, now pending before the learned Joint Metropolitan Sessions Judge, 2nd Court, Khulna.

Material facts leading to this Rule are that, in order to discharge the loan liability the accused petitioner gave the cheque to the complainant which on presentation to the bank for encashment was dishonored on the ground of insufficiency of funds. Following the procedure and in compliance with statutory provisions laid down in section 138 of the Negotiable Instruments Act 1881 the complainant filed the instant case.

The learned Magistrate took cognizance of the offense and subsequently, the charge was framed by the learned Joint Metropolitan Sessions Judge, 2nd Court, Khulna. The case is now pending for trial.

Feeling aggrieved the accused petitioner preferred the instant application and obtained the present Rule on 24.01.2023.

Heard the learned Advocate and the learned Deputy Attorney General and perused the record.

On exploration of the materials on record, it transpires that the complainant categorically narrated the manner of crime committed by the accused. The learned Judge after considering the entire materials on record rightly framed the charge under the same section

against the accused petitioner. Moreso, in defence the accused denied the entire allegations. So, when there is such denial, the question of innocence does not arise in this regard reliance has been placed on the case of Abdur Rahim alias A.N.M Abdur Rahman Vs. Enamul Haq and another reported in 43 DLR (AD) 173. Moreover, we can also rely upon the cases reported in 68 DLR (AD) 298, and 72 DLR (AD) 79. All that is required at the stage of framing charge is to see whether the prima-facie case regarding the commission of the certain offense is made out. The truth veracity and effect of evidence which prosecution proposes to adduce is not to be meticulously judged at the stage of framing charge. In the instant case, the accused stand indicted for an offense punishable under the same section. Cognizance has been taken as well the charge has been framed against the accused petitioner under the same section. We have meticulously examined the allegations made by the complainant and we find that the offence punishable under the above offence has been clearly disclosed in the instant case against the accused. We have gone through the grounds taken in the petition of Miscellaneous Case and we find that such grounds are absolutely the

disputed question of facts and the same should be decided at trial. The plea of the petitioner is nothing but the defense plea. Be that as it may, the proposition of law is now well settled that based on a defense plea or materials, the criminal proceedings should not be stifled before trial; when there is a prima facie case for going for trial. In view of such facts, the grounds taken in the petition of the miscellaneous case are not the correct exposition of law. Moreso interruption of the course of Justice will set up a wrong precedent by which the course of justice instead of being advanced readily is stifled inasmuch as the grounds advanced before us are not correct or legal exposition of law.

Nevertheless, it is a settled proposition of the law that whether any accused was in charge or not for the conduct of the business of the company at the relevant time is a disputed question of fact. This view gets support from a case of Phoenix Finance and Investment Limited (PFIL) Vs. Yeasmin Ahmed and another reported in XVIII ADC (AD) 490, our Appellate Division observed that-

Whether a person was in charge and was responsible for the conduct of the business of the company at the relevant point of time is a question of fact

and this fact cannot be entertained under section 561A of the Code of Criminal Procedure, 1898.

Notably, the cheque is an instrument issued by a drawer to pay a fixed amount to the drawee. The cheque namely cross cheque, MICR, or Non-MICR all are cheques as per provision so enumerated in sections 6, 13, and 138 of the Negotiable Instrument 1881. This view gets support from the case of Bangladesh Krishi Bank Vs Abu Sadat Md. Shamim passed in Criminal Petition for leave to Appeal No. 923 of 2018(unreported), our Appellate Division observed that--

The Cheque is an instrument issued by a person asking any financial institution to pay a fixed sum of money. It has not been given any extra qualification by giving any nomenclature. Crossed cheques, MICR, or Non MICR cheques all are cheques under Section 6 of the instrument 1881 and mentioned in sections 13, 138, and all other relevant sections of the said Act.

Therefore, we hold that there are sufficient grounds for proceeding against the accused petitioner for going to trial under the same section. To that end, view, we are at one with the learned Judge of the Court below regarding the framing of the charge against the accused.

In the light of the discussions made above and the preponderant judicial views emerging out of the authorities referred to above we are of the view that the impugned proceedings suffer from no legal infirmities which calls for no interference by this Court.

In view of the foregoing narrative, the Rule is discharged. The order of stay granted earlier stands vacated.

The office is directed to communicate the judgment at once.

SHAHED NURUDDIN, J

I agree.