

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

Present

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

Criminal Miscellaneous Case No. 20224 of 2023

IN THE MATTER OF:

An application under section 561A of the Code
of Criminal Procedure

-And-

IN THE MATTER OF:

Ripon Roy alias Ripon Chandra Roy

...Accused- Petitioner

Versus

The State and another

...Opposite Parties

Mr. Goutam Kumar Roy, Advocate

... For the Petitioner

Mr. Mohammad Mehdi Hasan with

Mr. Shahed Ahmed Sadi, Advocates

...For the Complainant-Opposite Party No. 2

Mr. Rasel Ahmmad, DAG with

Mr. Md. Shahadat Hossain Adil, AAG

Mr. Md. Shamsil Arefin, AAG and

Ms. Zohura Khatoon (Jui), AAG

...For the State

Judgment on: 20.02.2025

Md. Riaz Uddin Khan, J:

By this Rule the opposite parties were asked to show cause as to why the proceeding of Sessions Case No. 1174 of 2021 arising out of C.R. Case No. 677 of 2020 under section 138 of the Negotiable Instruments Act, 1881, now pending in the Court of Joint Sessions Judge, 4th Court, Narayangonj should not be quashed and/or such

other or further order or orders should not be passed as to this Court may seem fit and appropriate.

At the time of issuance of Rule all further proceedings of Session Case No. 1174 of 2021 was stayed initially for the period of 6(six) months which was extended time to time.

Succinct facts for disposal of this Rule are that the opposite party No. 2 filed a complaint petition in the Court of Chief Judicial Magistrate, "Ka" Anchal, Narayangonj against the accused-petitioner to the effect that there being good relationship between the complainant and the accused-petitioner have monetary transactions between them and there was unpaid TK. 18,60,000/- (eighteen lac sixty thousand) from the accused-petitioner and against the said amount the accused-petitioner issued a Cheque being No. CDB0524474 dated 30.10.2019 of Account No.0320210000098 of Mutual Trust Bank Limited, Narayangonj Branch in favour of the complainant. The complainant for encashment presented the said cheque on 31.10.2019 to the concerned bank which was dishonoured for "Insufficient Fund". The complainant again presented the said cheque on 24.02.2020 to the concerned bank which was again dishonoured for "Insufficient fund". Thereafter the complainant on 26.02.2020 sent a legal notice by registered post with A/D and the accused-petitioner though received the said notice on

08.03.2020 but did not pay the cheque amount within stipulated period. Hence the complainant constrained to file the petition of complaint under section 138 of the Negotiable Instruments Act.

After examining the complainant's Attorney, the learned Magistrate took cognizance of the case and issued summons upon which the accused-petitioner obtained bail.

After completing all formalities the case was transferred to the court of Joint Sessions Judge, 4th Court, Narayangonj for trial. After hearing both the parties the Joint Sessions Judge on 21.10.2021 framed charge against the accused-petitioner under section 138 of the Negotiable Instruments Act, 1881 and on 29.11.2021 the case was fixed for examination of witness.

Against the order of framing charge dated 21.10.2021 passed by the Joint Sessions Judge, the petitioner filed Criminal Revision No. 133 of 2022 under sections 435/439A of the Code of Criminal Procedure in the Court of Sessions Judge, Narayangonj which was dismissed by the judgment and order dated 22.06.2022.

Against the said Judgment and order dated 22.06.2022 passed by the Sessions Judge, the accused-petitioner filed Criminal Miscellaneous application under section 561A of the Code of Criminal Procedure before this Court and a

Division Bench of this Court on 29.11.2022 was pleased to reject the same as being not pressed.

In the mean time, the complainant-opposite Party was examined as PW-1 and on 24.10.2022 was fixed for cross-examination and eventually the date was shifted on 09.01.2023 for cross examination of PW-1 and lastly date of the case was fixed on 12.03.2023 for cross-examination of PW-1.

At this stage the accused-petitioner moved this Court by invoking section 561A of the Code of Criminal Procedure for quashing the entire proceedings on the plea of securing ends of justice as well as for preventing abuse of process of the Court and obtained Rule and order of stay as stated at the very outset.

Mr. Goutam Kumar Roy, the learned Advocate for the accused-petitioner submits that the complainant opposite party filed a petition of complaint on 14.06.2020 before the learned Senior Judicial Magistrate, "Ka" Anchal, Narayangonj against the accused-petitioner under Section 138 of the Negotiable Instruments Act, 1881 whereupon C.R. Case No. 677 of 2020 was started and the learned Senior Judicial Magistrate, by order No. 1 dated 16.06.2020 was pleased to fix the date of the case on 25.08.2020 for examination of the complainant and after examining the complainant's alleged Attorney, Alamgir Kabir under section 200 of the Code of Criminal Procedure took Cognizance

of the case on 25.08.2020 against the accused petitioner under section 138 of the Code of Criminal Procedure by order No. 02 dated 25.08.2020 and issued summons upon the accused-petitioner. The petition of complaint was filed through the alleged Attorney but neither there was any description given in the recital of the petition of complaint as to Power of Attorney nor copy of the Power-Attorney was filed in the case and as such there is serious doubt as to authority of the constituted Attorney and thus filing of the case through the alleged Attorney amounts to abuse of process of the court and consequently the impugned proceeding is liable to be quashed. He then submits that in absence of filing power of Attorney in the petition of complaint and statements as to power of Attorney in the body of the petition of complaint, filing the case and taking cognizance thereof are not in accordance with law and as such the impugned proceeding amounts to abuse of process of the court and liable to be quashed.

Mr. Roy next submits that the instant case was filed in violation of the statutory provision of sections 138 and 141 of the Negotiable Instruments Act. Drawing our attention the learned Advocate submits that the legal notice was served on 26.02.2020 and the case was filed on 14.06.2020 which clearly shows that the

instant case has been filed beyond the statutory period.

The learned Advocate further submits that the case has been filed without any cause of action because the complainant failed to state when he received the Acknowledgement Due (AD) hence the proceedings should not be continued.

He also submits that sub-section (1A)(b) of section 138 of the Negotiable Instruments Act provides that the notice is required to be served by sending it by registered post with acknowledgement due to that person at his usual or last known place of abode or business in Bangladesh and in the instant case when acknowledgement due was return back to the complainant is absent in the petition of complaint as a result it is presumed that non mentioning of date of receipt of registered post with acknowledgment due in the petition of complaint has clearly violated the provision of section 138 (1A) (b) of the Negotiable Instruments Act and thus the case is barred by law.

The learned advocate finally submits that the case filed on 14.06.2020 is barred by section 141 (b) of the Negotiable Instruments Act, 1881 as the same having not been filed from date of action arises under clause (c) of the Proviso to section 138 of the Act, 1881 inasmuch as the cause of action for filing the case arose on

08.05.2020 and as such the initiation and continuation of the Impugned Proceeding amounts to abuse of process of the court and thus the impugned Proceedings is liable to be quashed.

The complainant opposite party No. 2 entered appearance by filing counter affidavit wherein it is stated that the petitioner earlier on similar points filed Criminal Miscellaneous Application under Section 561A of the Code of Criminal Procedure before this Court and the said application was rejected as being not pressed on 29.11.2022. In the instant case the cheque was dishonoured on 24.02.2020 and the legal notice was sent on 26.02.2020 and the same was received by the petitioner on 08.03.2020. Hence the last date of filing the case was on 08.05.2020. But the Complainant was unable to file the case within the stipulated time as specified by the Act due to Covid-19 Lockdown. In fact, the case was filed on 16.06.2020 and the next date was fixed on 25.08.2020 for recording statement under Section 200 of the Code of Criminal Procedure. The constituted attorney of the Complainant namely Alamgir Kabir after swearing affidavit along with the Power of Attorney, was examined by the learned Magistrate and the power of attorney was submitted before the learned court below with other documents which is evident from the Firisti Form dated 25.08.2020 and the same was exhibited in the instant case as Exhibit No.1. The learned

Magistrate has done so complying the Circular No. 03 dated 07.06.2020 issued by the office of Registrar General of Supreme Court of Bangladesh by the order of the Chief Justice of Bangladesh. As such the complainant filed the case in due time as per the decision of the Appellate Division of the Supreme Court of Bangladesh during the Covid-19 Lockdown in Civil Appeal No. 28 of 2019 vide Order dated 06.08.2020 wherein it is held: *"In Exercise of our power and the authority vested in us by the Constitution under article 104, it is thus ordered that any period of limitation in filing petitions/ applications/ suits/apparels/ revisions/ all other proceedings, civil, criminal or administrative under general or special laws, which expired on or after 26 March, 2020 stands extended till 31st August 2020"*. Since, the unwarranted delay in filing the case due to Covid-19 lockdown was condoned by the Appellate Division of the Supreme Court of Bangladesh, hence the time period for statutory requirement for filing the case under Section 141(1)(b) of the Negotiable Instruments Act was waived and as such the rule is liable to be discharged.

Mr. Mohammad Mehdi Hasan, the learned Advocate appearing for the complainant-opposite party submits that it seems that the complaint case was filed beyond the statutory period but at that time the whole world including Bangladesh

was under 'Lockdown' declared by the government because of a Pandemic called Covid-19. Considering that aspect our Appellate Division by its order dated 06.08.2020 reported in Civil Appeal No.28 of 2019 condoned the period when the country was under 'Lockdown' and the litigant people could not file any case.

He further submits that filing criminal case through the Attorney is permissible as the Appellate Division in the case of Hasibul Bashar Vs Gulzar Rahman and another reported in 56 DLR (AD) 17 held that taking of cognizance upon the petition of complaint filed by the Attorney upon due examination under section 200 of the Code of Criminal Procedure "Perfectly valid and appropriate".

We have heard the learned advocates for both the parties, perused the application, supplementary affidavits, counter affidavit along with the annexures and all documents.

It appears from record that legal notice was served on 26.02.2020 and the case was filed on 14.06.2020. And in this period the Court was closed because of the 'lockdown' declared by the Government and this period was condoned by the Apex Court of the land. [72 DLR (AD) 204 and 74 DLR (AD) 63] In that view of the matter the main point raised by the accused petitioner is devoid of merits. Regarding the other points such as submitting the Power of Attorney, whether the

accused-petitioner received the legal notice and in which date it was received or whether the complainant received the AD and on which date it was received are all matter of facts which is to be determined by the trial court and the accused petitioner has ample opportunity to raise this question of fact before the trial by adducing and producing witness and evidence court and at this stage this Court should not and cannot interfere on such highly disputed question of fact.

In such view of the matter and the position of law discussed above the points raised by the accused petitioner has no substance, are destined to fail.

In the result the Rule is **discharged**.

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

The learned Joint Sessions Judge, 4th Court, Narayangonj is at liberty to proceed with the Sessions Case No.1174 of 2021 arising out of C.R. Case No. 677 of 2020 in accordance with law.

Communicate the judgment and order at once.

Md. Iqbal Kabir, J:

I agree.