

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. 32936 of 2023.

Md. Hasan Chowdhury alias Sohel
 ...Petitioner.

-Versus-

The state and another
 ...Opposite parties.

No one appears
 ... For the petitioner

Mr. Muhammad Harunur Rashid, Advocate
 ..For the Opposite party No. 1.

Heard on 18.01.2026 and
Judgment on. 25.01.2026.

Md. Khairul Alam, j.

This Rule, upon an application under section 561A of the Code of Criminal Procedure, 1898, was obtained by the accused-petitioner seeking to quash the proceedings of Sessions Case No. 7933 of 2019, arising out of C.R. Case No. 510 of 2019 under section 138 of the Negotiable Instruments Act, 1881 (shortly, the Act), now pending before the Court of the Joint District and Sessions Judge, 7th Court, Chattogram.

The relevant facts leading to the issuance of the Rule are that the present opposite party No. 1 as complainant initiated the aforesaid case by filing a petition of complaint implicating the present petitioner as an accused alleging, inter alia, that the complainant is a bank and the accused is the proprietor of M/S Sohel and Brothers, a business concern, who, in the course of business, obtained credit facilities from the complainant bank. In discharge of the said liability, the accused issued Cheque No. CA-0130177 dated 03.03.2019 for an amount of Taka 9,43,26,000/- (Nine Crore Forty-Three Lakh Twenty-Six Thousand) in favour of the complainant. Upon presentation, the said cheque was dishonoured on 03.03.2019 due to “insufficiency of funds.” Thereafter, a statutory notice demanding payment was issued on the same date, but the drawer failed to make payment within the stipulated time. Consequently, the complainant, through its constituted attorney, lodged the petition of complaint. Upon receipt of the complaint, the learned Magistrate, following the provisions of section 200 of the Code of Criminal Procedure, examined the complainant’s attorney on oath and, being prima facie

satisfied, took cognizance and issued process under section 138 of the Act against the accused. The accused, upon surrender, obtained bail. Subsequently, the case record was transmitted to the Court of the Joint District and Sessions Judge, 7th Court, Chattogram, for trial, where it was renumbered as Sessions Case No. 7933 of 2019 and is presently pending.

Being aggrieved by and dissatisfied with the aforesaid proceeding, the accused, as petitioner, moved this Hon'ble Court and obtained the present Rule along with an order of stay of the impugned proceeding.

Despite the matter having appeared in the daily cause list on several occasions, none appeared on behalf of the petitioner to press the Rule.

The sole contention advanced in the petition is that the complaint was not filed personally by the payee of the cheque and, as such, falls outside the purview of the non obstante clause contained in section 141 of the Act, thereby rendering the proceedings liable to be quashed.

Mr. Muhammad Harunur Rashid, the learned Advocate appearing on behalf of the opposite party No. 1,

submits that the petition of complaint for an offence punishable under section 138 of the Act, filed through the attorney of the payee, is perfectly valid.

Before entering into the merit of the said contention, it is pertinent to examine the status of the complainant. On perusal of the petition of complaint, it appears that the case was instituted by Eastern Bank Limited, the payee of the cheque in question, through its constituted attorney, Ariful Haque.

It is well-settled that anyone may set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate competent to take cognizance. No court can refuse to take cognizance merely on the ground that the complainant was not personally competent to file the complaint. However, where a special statute prescribes specific conditions for taking cognizance of an offence, the complainant must satisfy the learned Magistrate about the eligibility criteria provided under that statute before taking cognizance.

For an offence under section 138 of the Act, the requirement under section 141 is that the complaint must be made in writing by the payee or the holder in due course of the cheque. Reading this provision side by side with section

4(f) of the Code of Criminal Procedure, it becomes evident that an offence under section 138 of the Act is non-cognizable, as initiation of the proceeding depends upon fulfillment of the condition of filing a written complaint by the payee.

The question that now arises is whether, despite the non obstante clause of section 141 of the Act, cognizance taken upon a complaint filed by the payee through a constituted attorney is maintainable.

Admittedly, the Act does not contain any express provision authorising filing of a complaint through a constituted attorney or authorised person. However, consistent judicial pronouncements across this sub-continent have firmly settled that where the complaint is filed in the name of the payee and not in the personal name of the attorney, such complaint is legally maintainable.

A juristic person, such as a company or corporation, being an incorporeal entity, is incapable of appearing physically before a court of law and must, of necessity, act through a natural person, and such person functions as a de facto complainant on behalf of the de jure complainant, namely the company itself. There is no statutory mandate that a complaint must be filed personally by any specified

officer of the company. The law permits the company to authorise any competent person, including a constituted attorney, to initiate and conduct proceedings on its behalf. The act of a duly authorised constituted attorney in filing the complaint and making statement on oath before the learned Magistrate is, in the eye of law, the act of the company itself. In *M/s M.M.T.C. Ltd. & another vs. M/s Medchl Chemicals & Pharma (P) Ltd. & others*, reported in AIR 2002 SC 182, the Supreme Court of India held that even if there exists any procedural irregularity relating to representation at the initial stage, such irregularity is curable at any subsequent stage of the proceeding. A curable defect, therefore, cannot constitute a valid ground for quashing a criminal proceeding.

In the case of *Hashibul Bashir vs. Gulzar Rahman*, reported in 56 DLR (AD) 17, our Appellate Division has held that taking cognizance of an offence punishable under section 138 of the Act upon a petition of complaint filed by a constituted attorney, after due examination under section 200 of the Code of Criminal Procedure, is lawful and valid.

In the present case, the statutory requirements under section 141 of the Act have duly been satisfied, as the complaint was filed in writing in the name and on behalf of the payee company. The company instituted the petition of

complaint through its constituted attorney, which is lawful and valid in view of the decisions of our apex Court. Even assuming that there was any defect in the authorisation, such defect is curable in nature, and for such curable defect, the criminal proceedings cannot be quashed.

In view of the foregoing discussion, we find no substance in the contention raised by the petitioner. The impugned proceeding suffers from no legal infirmity warranting interference in the extraordinary jurisdiction of this Court.

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 be sent down to the concerned court below at once.

Md. Sagir Hossain, j.

I agree.

Kashem, B.O