

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Miscellaneous Jurisdiction)**

Present:

Mr. Justice Md. Khairul Alam
and
Mr. Justice K.M. Emrul Kayesh

Criminal Miscellaneous Case No. 32436 of 2023.

M M Ehsan Nizami alias Tanim and another
.....Accused-petitioners.

-Versus-

The State

..... Opposite party.

Mr. S M Mahbubul Islam, Advocate.

..... For the petitioners.

Ms. Shiuli Khanam, DAG

..... For the state

**Heard on: 26.02.2025 &
Judgment on: 27.02.2025.**

Md. Khairul Alam, J:

This Rule, upon an application under section 561A of the Code of Criminal Procedure, was obtained seeking to quash the proceeding of G.R. No. 123 of 2020 arising out of Gulshan Police Station Case No.09 dated 10.06.2020 under sections 420/406/506 of the Penal Code of the Court of Metropolitan Magistrate, Court No. 31, Dhaka.

At the time of issuance of the Rule, all further proceeding of G.R Case No. 123 of 2010 was stayed. Against the ad interim

order of stay, the informant moved before the apex Court by filing Criminal Petition for Leave to Appeal No. 348 of 2025. Accordingly, the Judge-in-Chamber by the order dated 16.02.2025 sent this matter before this Bench for disposal.

Relevant facts for disposal of the Rule are that one Md. Abu Sadek as an informant lodged a First Information Report with the Golshan Police Station implicating the present accused petitioners alleging, inter alia, that the informant had been in the dredging business since 2003. At the relevant time, he needed to purchase a new dredging machine, but facing difficulty in purchasing the same due to a shortage of funds. In such a situation, petitioner No.1 introduced himself as a consultant and promised to help in purchasing the dredging machine. On the faith of the said promise the informant executed several contracts with the accused and others. As per the inducement of the accused, the informant paid Taka 2,22,89,125/- through the account payee cheque and Taka 10,75,000/- through the bearer cheque for opening the L.C. of the dredging machine, but the accused persons did not open the L.C. and misappropriated the money and thereby cheated the informant. On 06.06.2020, the informant through email and over the telephone informed the accused that his necessity to purchase the machine had been over and demanded the money back, then

on 06.06.2020 the accused called the informant to their office and threatened him. Hence, the case.

The police after holding an investigation submitted a charge sheet under sections 406/420/506 of the Penal Code against the petitioners. Finding the prima facie case, the learned Magistrate, by an order dated 17.05.2022 rejected the application of the petitioners filed under section 241A of the Code of Criminal Procedure and framed a charge against the petitioners under sections 420/406/506 of the Penal Code.

At this stage of the proceeding, the accused petitioners moved before this Court to quash the proceeding and obtained the Rule.

Mr. S M Mahbubul Islam, the learned Advocate appearing for the petitioners submits that the FIR does not disclose any fact as to receive any money of the accused from the informant, so the question of deception does not arise at all. He next submits that since there were several contracts between the parties, therefore, for argument's sake, if it holds that there were transactions based on the contracts, it gave rise to civil liability, not criminal liability. He lastly submits that due to the Covid pandemic situation the contract could not be executed and in the absence of any initial

intention to deceive, the impugned criminal proceeding, for the subsequent failure to perform the contract is an abuse of the process of the Court and is liable to be quashed. In support of the said submissions, he relied upon the authority of the case of A. Rahim vs. Begum A. Murshed reported in 34 DLR (HC)32.

On the other hand, Ms. Shiuli Khanam, the learned Deputy Attorney General appearing for the state submits that the accused persons intentionally deceived the informant into a belief that they would open an L.C. in favour of the informant and dishonestly induced the informant to pay the money and misappropriated the same which constituted the offence. She next submits that the acts of the accused clearly show that they had the initial intention to deceive the informant and hence, the accused cannot avoid the criminal liability. He lastly submits that the accused persons threatened the informant with injury to his person which can only be adjudicated in trial by taking evidence and this Rule under section 561A of the Code of Criminal Procedure is liable to be discharged.

We have gone through the criminal miscellaneous case and perused the materials on record as well as the cited case as referred to by the learned Advocate for the petitioners.

On perusal of the First Information Report, it appears that there are specific and clear allegations against the accused to the effect that the accused was entrusted money, but misappropriated the same dishonestly. It also appears that the accused intentionally deceived the informant into a belief that they would open an L.C. in favour of the informant which they did not intend, and thereby dishonestly induced the informant to advance money and misappropriated the same and when the informant demanded the money back the accused persons threatened the informant. Therefore, the allegations attract the ingredients of the offences under sections 405, 415, and 503 of the Penal Code which are punishable under sections 406, 420, and 506 of the Penal Code respectively. Finding prima facie, the police submitted a charge sheet and the trial court framed a charge against the petitioners.

In the case of A. Rahim vs. Begum A. Murshed reported in 34 DLR (HC)32 the accused received money for the import of sanitary pipes from India for the complainant. Accordingly, the accused opened a letter of credit but delivered local pipes instead of the imported pipes. On this allegation, the petition case was

filed. Their Lordships quashed the proceedings, holding that for breach of contract, a suit in civil court would lie. In the present case, the learned Advocate for the petitioners failed to show any such part performance of the contract from the side of the accused. Therefore, the decision of the said case does not apply to the facts and circumstances of the present case.

As we observed the first information report of the instant case prima facie discloses an offence under sections 405, 415, and 503 of the Penal Code. The petitioners do not make out a case of want of jurisdiction. The petitioners mainly contended that there was no initial intention to deceive. The initial intention to deceive must indeed be established to justify a conviction for cheating and the intention is to be gathered from the surrounding circumstances. The learned Advocate for the petitioners either from the First Information Report or from other materials on record failed to show any circumstances from which it conclusively be held that there was no initial intention of the accused to deceive the informant.

It may be mentioned that whatever observations we have made, made for the disposal of this Rule only and those will have no bearing in deciding the case on merit.

In the above facts and circumstances, we do not find any merit in the Rule, accordingly, the Rule is discharged.

The order of stay passed by this court staying further proceedings of the case is recalled and vacated.

Communicate a copy of the judgment and order to the concerned Court at once.

K.M. Emrul Kayesh, J

I agree

Kashem, B.O