

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

Present

**Mr. Justice Ashish Ranjan Das**

**And**

**Mr. Justice Md. Riaz Uddin Khan**

**Criminal Miscellaneous Case No. 31586 of 2023**

**With**

**Criminal Miscellaneous Case No. 31588 of 2023**

**IN THE MATTER OF :**

Applications under Section 561A of the Code of  
Criminal Procedure

-And-

**IN THE MATTER OF :**

**Md. Kamruzzaman**

...Accused- Petitioner

Versus

**The State and another**

...Opposite Parties

Mr. Md. Rejaul Islam, Advocate

...For the Accused-Petitioner

Mr. Mohammad Ali, Advocate

...For the Opposite Party No.2

Mr. S.M. Asraful Hoque, D.A.G with

Ms. Fatema Rashid, A.A.G

Mr. Md. Shafiquzzaman, A.A.G. and

Mr. Md. Akber Hossain, A.A.G

...For the State

**Judgment on: 04.02.2024**

**Md. Riaz Uddin Khan, J:**

On similar facts and point of law, these two  
Rules are issued and are disposed of by this  
single judgment.

In Criminal Miscellaneous Case No. 31586 of  
2023 Rule was issued asking the opposite parties  
to show cause as to why the proceedings in  
Sessions Case No. 93 of 2022 arising out of C.R.

Case No. 91 of 2020 under section 138 of the Negotiable Instruments Act, 1881, pending in the court of Joint Sessions Judge, 2<sup>nd</sup> Court, Pirojpur, should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

In Criminal Miscellaneous Case No. 31588 of 2023 Rule was issued calling upon the opposite parties to show cause as to why the proceedings in Sessions Case No. 94 of 2022 arising out of C.R. Case No. 92 of 2020 under section 138 of the Negotiable Instruments Act, 1881, pending in the court of Joint Sessions Judge, 2<sup>nd</sup> Court, Pirojpur, should not be quashed and/or pass such other or further order or orders as to this Court may deem fit and appropriate.

At the time of issuance of Rules, further proceedings of both the Sessions cases were stayed.

Facts for disposal of these Rules are that one Md. Abu Jafor Howlader on behalf of Social Islami Bank Ltd as complainant filed CR Case No. 91 of 2020 and CR Case No. 92 of 2020 in the Court of learned Additional Chief Judicial Magistrate, Pirojpur under section 138 of the Negotiable Instruments Act, 1881 against the accused-petitioner alleging *inter alia* that the accused-petitioner in order to refund the loan money issued two cheques being No.CAB 2819020 dated 11.03.2020 maintained in the account No.

122133000169 in Social Islami Bank Ltd amounting to taka 55,00,000/- (fifty five lac) and No. CAB 2819069 dated 05.03.2020 maintained in the account No. 122133000215 in Social Islami Bank Ltd amounting to taka 28,00,000 (twenty eight lac) respectively in favour of the complainant Bank. Both the cheques were presented in the concerned branch of bank on 11.03.2020 and 05.03.2020 which were dishonored on the same day of presentation for insufficient fund. Then the complainant served legal notice through his learned lawyer upon the accused petitioner on 24.03.2020 which was received by the accused and the accused replied it on 13.04.2020. Accordingly, the complainant filed the C.R. cases on 16.06.2020 in the Court of learned Judicial Magistrate Cognizance Court, Pirojpur under section 138 of the Negotiable Instruments Act, 1881.

The Court recorded the statement of the complainant under section 200 of the Code of Criminal Procedure on 17.06.2020 and took cognizance of both the cases under section 138 of the Negotiable Instruments Act, 1881 and issued process against the accused petitioner.

Eventually, the case records were transmitted to the Court of learned Joint Sessions Judge, 2<sup>nd</sup> Court, Pirojpur for trial as Sessions Case Nos. 93 and 94 of 2022.

The trial Court framed charge against the accused petitioner under section 138 of the

Negotiable Instruments Act on 14.06.2022 and 16.06.2022 respectively and date is fixed for examining the witnesses. At this stage the accused petitioner moved this Court and obtained the instant rules and order of stay as stated above.

Mr. Md. Rejaul Islam, the learned advocate appearing for the accused petitioner in both cases submits that according to petition of complaint the cause of action arose at Mathbaria under Pirojpur District. Since there is a cognizance court at Mathbaria to take cognizance of cases under Mathbaria Police Station but the instant cases have been filed before the cognizance court of Pirojpur Sadar and cognizance were taken in both the cases by the cognizance court of Pirojpur Sadar, hence it was without jurisdiction and bared under section 177 of the Code of Criminal Procedure. The learned Advocate then submits that admittedly legal notice was served on 24.03.2020 but the cases were filed on 17.06.2020 beyond the statutory period of limitation which is barred under section 141(b) of the Negotiable Instruments Act, 1881.

On the other hand the opposite party No.2 Bank filed counter affidavit denying the material facts as claimed by the accused petitioner. Mr. Mohammad Ali, the learned Advocate for the complainant opposite party No. 2 submits that the occurrence took place at Mathbaria Police Station under the territorial jurisdiction of Chief

Judicial Magistrate, Pirojpur. Hence, there was no violation under section 177 of the Code of Criminal Procedure. He then submits that both the cases were filed in time, hence there was no violation of provision of under section 141(b) of the Negotiable Instruments Act, 1881.

We have heard the submissions of the learned Advocates for both the parties, perused the applications, counter affidavits along with the annexures and other materials on record available before us.

It appears from both the petitions of complaint that all the transactions admittedly were held at Mathbaria and the case has been filed before the court of cognizance magistrate of Pirojpur Sadar. The accused petitioner could not show us that a cognizance court is set up at Mathbaria under Pirojpur district. However, even if there is a cognizance court in Mathbaria, at this stage of the case, it will not in any way affect the proceedings of instant cases only because cognizance was taken by the cognizance court of Pirojpur Sadar. Though according to section 177 of the Code of Criminal Procedure every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed but according to section 185 of the Code whenever a question arises as to which of two or more Courts subordinate to High Court Division ought to

inquire into or try any offence, it shall be decided by the High Court Division. Beside this, section 531 of the Code provides that no finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district or other local area, unless it appears that such error has in fact occasioned a failure of justice. So, there is no scope to quash the proceedings for taking cognizance of a case by a Court of wrong territorial jurisdiction, unless it appears that such error has in fact occasioned a failure of justice. The accused petitioner could not show us any such error which occasioned failure of justice in the present cases.

Moreover, the case under section 138 of the Negotiable Instruments Act is triable by Court of Sessions and admittedly both the instant cases are at present pending before the court of sessions (in the present case Joint Sessions Judge) for trial, within the same Sessions division of Pirojpur, hence we do not find any reason to interfere in the instant proceedings on the point of territorial jurisdiction.

Now, as regard the second submission on point of limitation--at the time of alleged occurrence of the instant cases the whole world including Bangladesh were suffering in a pandemic namely

Covid-19. At that time, the litigants faced difficulties to file cases within statutory limitation period. Considering this aspect our Appellate Division condoned the limitation period of all the suits and cases in the case of Fazlul Haque Sardar and others Vs Grameen Phone Ltd and others reported in 74 DLR (AD) 63 and wherein their lordships held-

“Therefore, 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/appeals/revisions/all other proceedings, civil, criminal or administrative, under general or special laws, which expired on or after 26 march, 2020 stands extended till 31<sup>st</sup> August, 2020.”

In such view of the matter the point of limitation also does not exists.

Therefore, in such facts and circumstances of the cases and the position of law as discussed above, we find that there is no merit in the instant Rules, for which we are constrained to discharge both the Rules.

In the result, both the Rules are **discharged**.

Stay granted earlier by this Court in both the cases stands vacated. The trial court is at liberty to proceed with both the cases in accordance with law.

Communicate this judgment and order at once.

**Ashish Ranjan Das, J:**

I agree.