

**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. 6817 of 2023.

Md. Mohiuddin Moin.
.....Petitioner.

-Versus-

The State and another.
..... Opposite parties.
Mrs. Syeda Nasrin, Advocate
..... For the petitioner.
Mr. Md. Jasim Uddin, Advocate
..... For the opposite party No.2.

Heard on : 02.02.2026 and

Judgment on: 09.02.2026.

Md. Khairul Alam, j.

This Rule, at the instance of the accused-petitioner, was issued upon an application under section 561A of the Code of Criminal Procedure, 1898, seeking quashment of the proceedings in Metropolitan Sessions Case No. 14654 of 2021 arising out of C.R. Case No. 241 of 2020 (Dhanmondi) under section 138 of the Negotiable Instruments Act, 1881, now pending before the Court of Metropolitan Joint Sessions Judge, 2nd Court, Dhaka.

The facts relevant for disposal of the Rule are that the opposite party No. 2, Mercantile Bank Limited, as complainant, filed a petition of complaint before the Court of the Chief Metropolitan Magistrate, Dhaka, implicating the present petitioner and another as accused alleging, inter alia, that the complainant is a banking company incorporated under the Bank Companies Act, 1991 and is carrying on banking business within Bangladesh through its various branches. The accused-petitioner is the representative of MBEL-SHIKOH JV, a joint venture and borrower of the complainant bank. In adjustment of the said liability, two cheques bearing Nos. 2859268 and 2859269, both dated 02.02.2020, totalling Tk. 30,54,52,100.00 were issued under the signature of accused No. 2, Alhaj Akbar Ali Morjee, the authorised signatory of the bank account of MBEL-SHIKOH JV, in favour of the complainant. Upon presentation, the cheques were dishonoured on 02.02.2020 with the endorsement “insufficient funds.” Thereafter, on 10.02.2020, the complainant served a statutory notice upon the accused persons demanding payment of the cheque amount.

However, upon the request of the accused and due to the general holiday/closure declared by the Government from 26.03.2020 to 30.05.2020 as a result of the COVID-19 pandemic, the aforesaid cheques were again presented to the bank on 10.06.2020, which were again dishonoured with the endorsement “insufficient funds”. Subsequently, on 22.06.2020, the complainant served a fresh statutory notice upon the accused persons demanding payment. As the accused failed to make payment within the stipulated period, the complaint was filed. Upon receipt of the complaint, the learned Magistrate examined the complainant under section 200 of the Code of Criminal Procedure, took cognizance of the offence under section 138 of the Negotiable Instruments Act, 1881, and issued process against the accused. The case was registered as C.R. Case No. 241 of 2020 (Dhanmondi). The petitioner obtained bail from the trial court. Upon transfer to the Court of Sessions, the case was renumbered as Sessions Case No. 14654 of 2021, which is now pending before the Court of Metropolitan Joint Sessions Judge, 2nd Court, Dhaka. On 04.04.2022, the learned trial Court rejected an

application filed by the accused under section 265C of the Code of Criminal Procedure for discharge and framed charge against both the accused, including the petitioner, under section 138 of the Negotiable Instruments Act, 1881.

At this juncture, the petitioner moved this Court challenging the entire proceedings and obtained the present Rule along with an order of stay.

Mrs. Syeda Nasrin, the learned Advocate appearing for the petitioner, submits that although a notification of award was issued in favour of MBEL-SHIKOH JV and the loan was sanctioned against the said notification, M/s Abir Trading Corporation, a sub-contractor of MBEL-SHIKOH JV, was fully responsible for the said loan and the petitioner has no connection with M/s Abir Trading Corporation. Therefore, he bears no liability either for the loan or for the cheques in question. She next submits that the petitioner did not sign the dishonoured cheques and that the petition of complaint contains no specific statement that, at the time of the alleged offence, he was in charge of, or responsible for, the conduct of the business

of the company. Consequently, the mandatory requirement of section 140 of the Negotiable Instruments Act, 1881 has not been prima facie satisfied and the continuation of the proceeding against the petitioner amounts to an abuse of the process of the Court, liable to be quashed. In support of her submission, she refers to the case of AKM Siddique vs. Md. Momenul Haque and others reported in 61 DLR 2009 (HC) 91, and some unreported judgments of this Court. She next contends that the issuance of a second show-cause notice vitiates the entire proceedings. Lastly, she submits that the authorisation letter does not contain the cheque numbers, rendering it defective, and thus the initiation of the proceedings pursuant to such defective authorisation amounts to an abuse of the process of the Court. Accordingly, she prays for making the Rule absolute.

Conversely, Mr. Md. Jashim Uddin, the learned Advocate appearing for the opposite party No. 2, submits that the petitioner was the representative of the joint venture and obtained the loan in the name of the joint

venture; therefore, he has rightly been impleaded in the case.

We have heard the learned Advocates for the respective parties and perused the materials on record, including the impugned proceedings.

From the petition of complaint, it appears that the complainant specifically stated that the petitioner is the representative of the joint venture, namely MBEL-SHIKOH JV, and that he availed various loan facilities from the complainant bank on behalf of the said joint venture. Therefore, the petitioner's contention that M/s Abir Trading Corporation, a sub-contractor of the joint venture, was fully responsible for the loan raises a disputed question of fact which cannot be decided in a proceeding under section 561A of the Code of Criminal Procedure and can only be adjudicated at trial upon taking evidence.

The petitioner next contends that since he neither signed the cheques nor was in charge of or responsible for the conduct of the company's business, the requirements

of section 140 of the Negotiable Instruments Act, 1881 have not been fulfilled.

For proper appreciation, section 140 of the Negotiable Instruments Act, 1881 reads as follows:

“140. Offences by companies—

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or

is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such person shall also be deemed to be guilty of the offence.

Explanation. - For the purposes of this section-

(a) “company” means anybody corporate and includes a firm or other association of individuals; and

(b) “director” in relation to a firm, means a partner in the firm.”

A plain reading of the above provision makes it clear that criminal liability under section 138 extends not only to the company but also to those persons who, at the relevant time, were in charge of and responsible for the conduct of the business of the company. Therefore, vicarious liability under section 140 arises only when it is shown that the accused was in charge of and responsible for the conduct of the business of the company at the time the offence was committed.

In the present case, it is an admitted position that the petitioner is not the signatory of the dishonoured cheques. He is alleged to be the representative of the joint venture, and the petition of complaint further alleges that he availed

the loan on behalf of the joint venture. For the purpose of fastening vicarious liability upon a representative of a joint venture under section 138 read with section 140 of the Negotiable Instruments Act, 1881, it is sufficient at the initial stage if the complaint contains an averment that at the relevant time such person was acting as the representative of the joint venture concerned.

A plain reading of the petition of complaint reveals that clear and categorical statements have been made therein that, at the time of issuance and dishonour of the cheques, the petitioner was the representative of the joint venture which availed the loan.

Whether the petitioner was in fact the representative of the joint venture and whether he was involved in availing the loan are essentially questions of fact which can only be determined upon consideration of evidence, both oral and documentary, during trial. In a proceeding under section 561A of the Code, this Court cannot embark upon an enquiry into disputed questions of fact, nor can it assess the truth or falsity of the allegations made in the complaint.

Upon perusal of the complaint, it appears that the complaint discloses the essential ingredients of an offence under section 138 of the Negotiable Instruments Act, 1881, and the trial court, having found a prima facie case, framed charge against the petitioner under the said provision. Therefore, we find no scope to quash the proceedings on the petitioner's contention that the petition of complaint does not prima facie disclose any offence.

The third contention raised on behalf of the petitioner that the issuance of a second show-cause notice vitiates the entire proceedings has already been settled by our Apex Court. In the case of Nizam Uddin Mahmud Hossain vs. State, reported in 25 BLC (AD) (2000) 81, it has been held that there is no conflict between proviso (c) to section 138(1) and section 141(b) of the Act. The Appellate Division held that the holder of a cheque is not precluded from presenting the cheque again for payment, despite sending statutory notice earlier, provided that such subsequent presentation is made within six months from the date on which the cheque was drawn. If upon such subsequent presentation, the cheque is again dishonoured, a fresh cause of action will arise under proviso (c) to section 138(1) of the Act. In that event, the holder of the cheque is entitled to issue fresh notice demanding payment

and, upon failure of the drawer to make payment, to file a complaint in accordance with section 141 of the Act within the prescribed period.

The last contention of the petitioner, that the authorization letter does not contain the cheque numbers and is therefore defective, rendering the proceeding an abuse of the process of the Court, is also not *res integra*. In the case of *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.

The inherent power of this Court under section 561A of the Code of Criminal Procedure is to be exercised sparingly, cautiously and only in exceptional circumstances, namely where continuation of the proceeding would amount to an abuse of the process of the Court or where the allegations, even if taken at their face value, do not disclose any offence.

In the above facts and circumstances, we find no lawful ground to interfere with the impugned proceeding.

However, the petitioner shall be at liberty to raise all permissible defences before the trial court in accordance with law.

In view of the foregoing discussions, we find no merit in the Rule.

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 and order be communicated to the court below forthwith.

Md. Sagir Hossain, j.

I agree.