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

Present:
Mr. Justice S M Kuddus Zaman
And
Mr. Justice A.K.M. Rabiul Hassan

Criminal Miscellaneous Case No. 12309 of 2024

Mohammad Jahangir Alam
.... Accused-Petitioner
-Versus-
The State
…. Opposite Party
None appears
…. For the petitioner.
Mr. Md. Miraj Uddin, Advocate
…. For the opposite party No.2.
Mr. Sujit Chatterjee, D.A.G. with
Mr. Moududa Begum, A.A.G.
Mr. Mirza Md. Soyeb Muhit, A.A.G.
Mr. Mohammad Selim, A.A.G.
Mr. Zahid Ahmed (Hero), A.A.G.
…. For the State.
Heard and Judgment on 11.07.2024.

S M Kuddus Zaman, J:

On an application under section 561A of the Code of Criminal Procedure this Rule was issued calling upon the opposite party to show cause as to why the proceedings of Sessions Case No.2113 of 2022 arising out of C.R. Case No.54 of

2022 (Fatikchahari) under Section 138 of the Negotiable Instruments Act, 1881, now pending in the Court of learned Joint Session Judge, 3rd Court, Chattogram should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party complainant filed above case through his constituted attorney under Section 138 of the Negotiable Instrument Act, 1881 for dishonor of Cheque No. AWCD NO.0134631 of Export Import Bank of Bangladesh LTd., Bahaddarat Brahch, Chattogram bearing Account No.4711100016491 issued by the accused to the complainant after presentation for encashment.

No one appears for the petitioner when the matter was taken up for hearing.

Mr. Md. Miraj Uddin, learned Advocate for the opposite party No.2 submits that the only ground taken by the petitioner in this petition under Section 561A of the Code of Criminal Procedure for quashment of above proceeding is that the complaint was filed not by the complainant himself but by his constituted attorney namely Md. Abu Sayed.

It has been held by the Appellant Division of Supreme Court of Bangladesh in the case of Kabir Reza Vs. Shah Mohammad Asraf Islam in Criminal Petition for Leave to Appeal No.798 of 2018 that no illegality be committed if a complaint under Section 138 of the Negotiable Instrument Act, 1881 was filed by the constituted attorney of the complainant.

We have considered the submissions of the learned Advocate for the opposite party and carefully perused above mentioned judgment of the Appellant Division passed in Criminal Petition for Leave to Appeal No.798 of 2018.

The Appellate Division has clearly held in above case that a complaint under Section 138 of the Negotiable Instrument Act, 1881 may lawfully be instituted by the constituted attorney of the complainant.

In view of above case law and materials on record we are unable to find any substance in this petition under Section 561A of the Code of Criminal Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

Let the order of stay granted at the time of issuance of the Rue is hereby recalled and vacated.

Communicate this judgment and order to the Court concerned at once.

A.K.M. Rabiul Hassan, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER