

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

PRESENT:

MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN
AND
MR. JUSTICE KHANDAKER DILIRUZZAMAN

CRIMINAL MISCELLANEOUS CASE NO. 41831 OF 2022

Md. Kamal HossainAccused-petitioner
-Versus-

The State and anotherOpposite parties
Mr. Muhammad Harunur Rashid, Advocate
.....For the petitioner

Mr. Md. Anisur Rahman (Raihan), Advocate
...For the opposite party No.2

Heard on: 01.08.2023

Judgment on: The 2nd August, 2023

ABU TAHER MD. SAIFUR RAHMAN, J.

This Rule was issued on an application filed by the accused-petitioner under section 561A of the Code of Criminal Procedure, 1898 calling upon the opposite parties to show cause as to why the proceedings of Sessions Case No. 331 of 2020, arising out of C.R. Case No. 329 of 2020 under section 138 of the Negotiable Instruments Act, 1881 now pending in the Court of Joint Sessions Judge, Court No.3, Patuakhali should not be quashed and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court was pleased to stay all further proceedings of the aforesaid Sessions Case No. 331 of 2020 for 6 (six) months which was time to time extended by this Court.

For disposal of this Rule, the relevant facts may briefly be stated as follows:

That the opposite party No. 2 as complainant filed a C.R. Case No. 329 of 2020 against the accused-petitioner under section 138 of the Negotiable Instruments Act, 1881 alleging inter alia that the accused-petitioner was a manager of his brick field, who sold out his bricks to the respective purchasers but did not deposit the said money to his office. On being demand, the accused-petitioner issued the impugned cheque dated 18.02.2020 in favour of the complainant amounting to **Tk. 1,05,00,000/-** (Taka One crore and Five lac) which was dishonored due to insufficient of fund. Accordingly, the complainant filed the aforesaid C.R. Case against the accused-petitioner under section 138 of the Negotiable Instruments Act, 1881. Thereafter, the accused-petitioner appeared before the Court below and obtained bail. Thereafter, the said case was transferred before the Joint Sessions Judge, Court No. 3,

Patuakhali for disposal which was registered as Sessions Case No. 331 of 2020. Thereafter, the charge was framed against the accused-petitioner under section 138 of the Negotiable Instrument Act, 1881. Being aggrieved, the accused-petitioner filed an application under section 561A of the Code of Criminal Procedure before this Court for quashing the proceedings of the aforesaid case and obtained the Rule and stay.

Mr. Muhammad Harunur Rashid, the learned Advocate for the accused-petitioner mainly submits that the complainant opposite party No. 2 has obtained the impugned cheque forcefully from the accused-petitioner. Regarding the said matter, the accused-petitioner filed a C.R. Case No. 220 of 2020 against the complainant opposite party under sections 323 /384 /386/ 362/ 406/ 420/ 506(II) of the Penal Code, 1860 which is still pending. Since, the complainant-opposite party No. 2 did not provided any consideration against the said cheque and as such the cheque in question cannot be treated as Negotiable Instrument under the Negotiable Instrument Act. Hence, the impugned proceeding is liable to be quashed.

As against this, Mr. Md. Anisur Rahman (Raihan), the learned Advocate for the opposite party No. 2 submits that after complying with all legal formalities under section 138 of the Negotiable Instrument Act, 1881, the opposite party No. 2 filed the instant case against the accused-petitioner. In the instant case, the accused-petitioner has no ground at all in invoke the provision of section 561A of the Code of Criminal Procedure and as such the instant Rule is liable to be discharged.

Heard the submissions of the learned Advocates of both sides and perused the petitioner's application along with other materials on record thoroughly.

In the instant case, the accused-petitioner mainly contended that the opposite party No. 2 has obtained the impugned cheque forcefully from the accused-petitioner and as such it is not a valid cheque and regarding this matter, the accused-petitioner also filed a C.R. Case No. 220 of 2020 against the complainant-opposite party under sections 323/384/386/362/406/420/506(II) of the Penal Code, 1860 which is still pending.

The contention as raised by the petitioner is absolutely a matter of evidence which cannot be decided

at this stage under section 561A of the Code of Criminal Procedure.

Under the given facts and circumstances, we do not find any substances of this Rule.

As a result, the Rule is discharged.

The order of stay granted earlier by this Court is hereby stand vacated.

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

Khandaker Diliruzzaman, J:

I agree