

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

Present

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

Criminal Miscellaneous Case No. 66267 of 2023

With

Criminal Miscellaneous Case No. 67286 of 2023

IN THE MATTER OF:

Applications under Section 561A of the Code of
Criminal Procedure

-And-

IN THE MATTER OF :

Md. Tamzid-Ul-Islam

...Accused- Petitioner
(in Crl. Misc. no. 66267 of 2023)

Versus

S.M. Biazid Hossain and another

...Opposite Parties

M. Sorwar Hossain and another

...Accused-Petitioners
(in Crl, Misc. no. 67286 of 2023)

Versus

The State and another

...Opposite Parties

Mr. S.M. Shahjahan, with

Mr. Muhammad Salahuddin, Advocates

...For the Accused-Petitioner
(in Crl. Misc. no. 66267 of 2023)

Ms. Fatema Shahed Chowdhury, Advocate

...For the Accused-Petitioners
(in Crl. Misc. no. 67286 of 2023)

Mr. Mohammad Bakir Uddin Bhiyan, with

Ms. Kazi Tamanna Ferdush, Advocates

...For the opposite party
(in both Crl. Misc. nos. 66267 & 67286 of 2023)

Mr. Md. Jasim Sarker, DAG with

Mr. Md. Shahadat Hossain Adil, AAG,

Ms. Laboni Akter, AAG and

Ms. Zohura Khatoon (Jui), AAG

...For the State

Judgment on: 19.03.2025

Md. Riaz Uddin Khan, J:

Since both the Criminal Miscellaneous Cases arose from the same CR case and involve similar questions of facts and law, they are being disposed of by this single judgment.

In Criminal Miscellaneous Case No. 66267 of 2023 Rule was issued asking the opposite parties to show cause as to why the proceeding of C.R Case No. 257 of 2021 (Kafrul) under sections 420, 406, 506 of the Penal Code, 1860, pending in the Court of Metropolitan Magistrate, Court No. 9, Dhaka, should not be quashed and/or such other or further order or orders should not be passed as to this Court may seem fit and proper.

In Criminal Miscellaneous Case No. 67286 of 2023 Rule was issued asking the opposite parties to show cause as to why the impugned order No.6 dated 04.06.2023 passed in Criminal Revision Case No. 1579 of 2022 by the Additional Metropolitan Sessions Judge, 1st Court, Dhaka allowing the revision and thereby setting aside the order dated 01.08.2022 passed by the Metropolitan Magistrate, Court No. 9, Dhaka in C.R. Case No. 257 of 2021 (Kafrul) under sections 420, 406, 506 of the Penal Code by which the learned Magistrate discharged the accused-petitioners from the charge leveled against them should not be quashed and/or such other or further

order or orders should not be passed as to this Court may seem fit and proper.

At the time of issuance of rules ultimately the proceeding of the CR case was stayed by this Court.

Brief facts are that Opposite Party SM Biazid Hossain, Managing Director of Doctors Feeds Limited as complainant filed a petition of complaint being C.R. Case No.257 of 2021 (Kafrul) before the Chief Metropolitan Magistrate, Dhaka against the accused-petitioners alleging *inter alia* that the complainant is involved in production and marketing of fish and poultry feed; the accused no.2 used to come in the factory of the complainant and at one stage assured the complainant to provide him with foreign funds as the complainant could not run his factory for want of working capital; one day the accused came to his factory of Doctors Feeds Ltd. and said they will provide him big funds so that Doctors Feeds Ltd would be the biggest feed producing company of Bangladesh; the accused No.1 told the complainant to give all the documents of the company to him; accordingly the complainant went to the office of the accused no.1 on 26.08.2020 and two MOUs were signed by the accused No.1 and the complainant in presence of the accused No.2 and 3, one MOU in respect of providing 22 million US Dollar by the accused no.1 and another in respect of land and to that effect the accused No.1 received 2 cheques being No. CDB-4738220 of taka 10,00,000/ and

no. CDB-4738221 of Tk-15,00,000 and for expenses of Tk.2,00,000/- (two lac) more as cash and assured that he will provide with the fund within 15 days; after 2 days the accused no.2 came to the complainant and told him to pay Taka 5,00,000/- (five lac) in advance and on asking the accused No.1 over telephone requested to give a cheque of Taka 5,00,000/- (five lac) to accused No.2 which was encashed on 04.10.2020; then the accused No.1 got the complainant opened an account in Exim Bank Ltd, DOHS, Mohakhali and the complainant deposited taka 33,50,000/- and tk-500,000/ and handed over 2 cheques of the said amount to the accused no.1 for supplying 2500 metric tons maize but the accused no.1 failed to supply it; meanwhile, the complainant applied for loan in the Bank Asia and loan was sanctioned in his favour and thereafter on 26.08.2020 the complainant requested the accused to cancel the 2 MOUs and to returned the money but the accused did not do that rather made pressure to sign a new MOU and the complainant again signed another MOU on 16.02.2021 for supplying 2500 metric tons maize at the price US Dollar 5,37,500/- and handed over 5 cheques of various amounts as security on condition that the complainant will get the goods within 25.03.2021 and on pressure the complainant was compelled to pay tk-22,84,370/ in favour of STS Engineering owned by the accused no.1; beside these the complainant also gave various cheques of tk-1,37,06,250 dated 25.06.2021, tk-2,00,00,000/ dated

25.07.2021 and tk-1,19,81,250 dated 25.07.2021 as security but the accused failed to supply any maize; however, the accused no.1 in different times received taka 29,84,375/- from the complainant but failed to give him the goods according to MOU and misappropriated the said money; then the complainant sent a letter to the accused on 03.08.2021 to repay the money but in vain rather all the accused threatened him with dire consequence hence the case.

The Metropolitan Magistrate Court No.9, Dhaka examined the complainant on 19.08.2021 and sent the case to the Kafrul Police Station for inquiry and one Md. Sharifuzzaman, Sub-Inspector, inquired into the matter and submitted his inquiry report on 21.09.2021.

In course of time the case was sent for trial and the trial Magistrate fixed on 01.08.2022 for hearing on framing of charge and the accused petitioners filed an application before the trial Magistrate under section 241A of the Code of Criminal Procedure praying for discharging the accused-petitioners from the charge and the trial court after hearing both the parties allowed the application and thereby discharged the accused-petitioners by its order dated 01.08.2022.

Being aggrieved by the order dated 01.08.2022 passed by the trial Magistrate, the complainant-opposite party filed Criminal Revision No. 1579 of 2022 before the Metropolitan Sessions Judge, Dhaka which was subsequently, transferred to

the Additional Metropolitan Sessions Judge, 1st Court, Dhaka who upon hearing by his judgment and order dated 04.06.2023 was pleased to allow the revision and thereby set aside the order of discharge passed by the trial Magistrate.

At this stage the accused no.2 as petitioner moved this Court by filing Criminal Miscellaneous Case no.66267 of 2023 for quashing the proceeding and obtained Rule and order of stay of all further proceedings of the CR Case no.257 of 2021 while the accused nos.1 and 3 as petitioners moved this Court by filing Criminal Miscellaneous Case no.67286 of 2023 challenging the judgment and order dated 04.06.2023 passed by the revisional Court and obtained Rule and order of stay operation of the judgment and order 04.06.2023.

The complainant-opposite party in both the Criminal Miscellaneous cases entered appearance by filing counter affidavits wherein he stated *inter alia* that the complainant in paragraph Nos.2, 5 and 6 of the Complaint Petition has brought some specific allegations against the accused-petitioners alleging that accused no.2 induced the complainant to pay huge amount of money along with numbers of cheques to the accused no.1 which they misappropriated by committing criminal breach of trust and cheating and the inquiry officer in his report dated 21.09.2021 found the allegations *prima facie* true which required a full-fledged trial by taking evidence. The accused-petitioners in

connivance with each other have misappropriated huge amount of money of the complainant on various pleas. The complainant has paid the petitioners money and cheques on good faith but they were unable to arrange even a valid Letters of Credit (L/C) rather the accused no.1 handed over a forged L/C documents which have no use in any bank in Bangladesh for importation of any goods and all these fake, bogus attempts were shown to be taken by the petitioners only to misappropriate the huge amount of hard-earned money of the complainant-opposite party. The petitioners did not deny the facts of issuance of the cheques in question in their favour by the complainant and as such there were sufficient grounds to frame charge and accordingly charge was framed against these accused-petitioners.

Mr. S.M. Shahjahan, learned advocate for the accused petitioner in criminal miscellaneous case no. 66267 of 2023 (accused no.2) submits that the accused-petitioner is not the consultant of STS Engineering and he did never serve as its consultant. He has been serving as Deputy General Manager, Administration, General Affairs Unit, KEPZ on and from 01.06.2000 and as such the designation and first address of the petitioner stated in petition of complaint is false and also the case against the accused-petitioner is illegal, false, concocted, got up one, harassing and *malafide*. From the petition of complaint dated 19.08.2021 filed before the court, General Diary (GD) dated

03.08.2021 filed before the Police Station-Kafrul, and also Text Message dated 04.10.2021 sent by the complainant to the accused No.1 of the petition of complaint it is evident and clear that the allegations against the petitioner are so preposterous that if it is admitted to its entirety do not constitute any offence under section 420/406/506 of the Penal Code and from the statement it is clear that there is no ingredients of the said sections against the accused-petitioner so the institution and continuation of the proceeding against the accused-petitioner is an abuse of the process of the court and law, as such for securing the ends of justice the same is liable to be quashed.

He then submits that admittedly the complainant and the accused No.1 signed 03 MOUs in respect of their transaction and in the said MOUs the accused no.2, petitioner has no liability and in considering that the learned Metropolitan Magistrate stated at the time of hearing of charge on 01.08.2022 to the effect that “-----যেহেতু উভয়পক্ষের মধ্যে দুইটি MOU স্বাক্ষরের মাধ্যমে উভয়পক্ষের মধ্যে যে কোন (Dispute) আরবিট্রেশনের মাধ্যমে নিষ্পত্তির কথা উল্লেখ রয়েছে। সে ক্ষেত্রে অভিযোগকারী প্রথমে আসামীগণকে আরবিট্রেশনের নিমিত্তে নোটিশ দেওয়া আইনগত ভাবে সঠিক ছিল। -----অধিকন্তু বিরোধটি দেওয়ানী প্রকৃতির মর্মে দৃষ্ট এবং মূল প্রতিকার মানি স্যাটে বিদ্যমান মর্মে পরিলক্ষিত হয় কেননা এক্ষেত্রে উভয় পক্ষের দাবী ও পাল্টা দাবী রয়েছে।” and as such the complainant ought to have go for arbitration as per the provision of clause 18 of MOU dated 26.08.2020 which is admittedly a business transaction as such the criminal proceeding is not maintainable and these findings of the Magistrate has not been reversed and

also this aspect has not been considered by the revisional court.

The learned advocate lastly submits that in the petition of complaint there is no allegation against the petitioner (accused no.2) except to introduce the complainant with the accused no.1 as such there is no ingredient of offence under sections 406/420/506 of the Penal Code against the accused no. 2.

Ms. Fatema Shahed Chowdhury, learned advocate for the accused petitioners in criminal miscellaneous case no. 67286 of 2023 (accused nos.1 and 3) at the very outset submits that in the petition of complaint there is no allegation against the petitioner-accused no.3, a young lady, except her presence in her father's office and she has been made accused only to harass and humiliate.

The learned advocate then submits that the revisional court failed to consider the facts and circumstances of the case inasmuch as the dispute arose between the parties are completely civil in nature which would have been resolved through arbitration as there is arbitration clause in the Memorandum of Understanding (MOU). As per paragraph 12 of the Memorandum of Understanding if any dispute arises, that is to be resolved first mutually, if that cannot be done for any reason, then the thing to be solved through arbitration as per law of the land but the revisional court failed to consider

this legal aspect lawfully and therefore, the impugned order liable to be set aside.

She next submits that it is settled principle of law that to establish the offence of cheating under Section 420 of the Penal Code it must be shown that the petitioners' criminal intention to cheat exists from the very beginning but it would be evident from the petition of complaint that there was intention of the parties to do business based on mutual understanding and therefore, the impugned order is liable to be quashed.

The learned advocate lastly submits that it is a settled principle of law that criminal breach of trust in respect of business transaction is a civil liability that has no basis for criminal proceedings, civil claims are not to be brought in contrivance in criminal courts to put pressure upon the accused for repayment of dues and as such continuation of the same is abuse of the process of the court but the revisional court without considering this aspect passed the impugned order and therefore, the impugned order is liable to be quashed.

On the other hand Mr. Mohammad Bakir Uddin Bhuiyan, learned advocate for the complainant opposite party submits that power under Section 561A of the Code of Criminal Procedure being extraordinary in nature, should be exercised sparingly by this Court and where the allegations made in the FIR or petition of complaint constitutes specific

allegations the proceeding cannot be quashed and in the instant case in the complaint petition in paragraph Nos.2, 5 and 6 the complainant opposite party brought some specific allegations of criminal offence against the accused-petitioners alleging that accused no.2 induced the complainant to pay huge amount of money along with numbers of cheques to the accused no.1 which they in connivance with each other misappropriated by committing criminal breach of trust and cheating and that has been prima facie proved by the inquiry and therefore the accused must face trial and as such both the Rules are liable to be discharged for the ends of justice otherwise the complainant opposite party shall be highly prejudiced.

He then submits that the complainant-opposite party has paid the petitioner huge amount of money on good faith but the accused-petitioners failed to arrange even a valid Letters of Credit (L/C) rather the accused no.1 handed over a forged L/C documents which have no use in any bank in Bangladesh for importation of any goods and all these fake, bogus attempts were shown to be taken by the petitioners only to misappropriate the huge amount of hard-earned money of the complainant and thus the petitioners had initial intention to deceive the complainant and therefore, both the Rules are liable to be discharged for the ends of justice.

He next submits that the petitioners have dishonestly induced the complainant to be entrusted with the money of the complainant and has dishonestly misappropriated the money thus committed the offence punishable under 406/420 of Penal Code and therefore, the instant Rules are liable to be discharged.

He further submits that the accused-petitioners did not deny the claim of the complainant and also did not deny the facts and issuance of the cheques in question and as such there were sufficient grounds to frame charge and accordingly charge was framed against the petitioners. Moreover, the accused petitioners did not go for arbitration and thus cannot claim the remedy lies in arbitration.

The learned advocate for the complainant opposite party lastly submits that a careful study of the instant case reveals that the question of offence of cheating and criminal breach of trust do arise as there are sufficient ingredients to show that the accused-petitioners had dishonestly induced the complainant opposite party and as such both the instant Rules are liable to be discharged to secure the ends of justice.

However, the learned advocate for the complainant opposite party candidly conceded that in the four corner of the petition of complaint there is hardly any allegation against the accused no.3,

the daughter of the accused no.1 except her presence in the office of her father.

We have heard the submissions made at the Bar and perused applications along with annexures and counter-affidavit and the materials on record. According to the learned advocate for the accused petitioners there is no ingredient of cheating and/or criminal breach of trust in the petition of complaint. On the other hand according to the learned advocate for the complainant opposite party there is sufficient allegation of such offences committed by the accused petitioners in the petition of complaint which deserved to be tried by taking evidence and not to be interfered with at this stage of framing of charge.

In this context, now let us look at section 415 of the Penal Code, the definition of cheating which is reproduced below:

“415. whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

In our plain understanding the ingredients of cheating are deception of one person by another

person and fraudulently or dishonestly inducing the person so deceived to deliver any property. It is therefore clear that the acts of deceiving and thereby dishonestly or fraudulently inducing the person deceived are acts which must precede the delivery of any property. The Indian Supreme Court in a case reported in AIR 1974 SC 1811 observed that essential ingredients of "cheating" are as follows: (i) there should be fraudulent or dishonest inducement of a person by deceiving him; (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii) (b) the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property. Therefore, to constitute an offence under section 420 of the Penal Code, there should not only be cheating, but as a consequence of such cheating the accused should have dishonestly induced the person deceived to deliver any property to any person, or to make, alter or destroy wholly or in part a valuable security or anything which is capable of being converted into a valuable security.

In committing offence of cheating the intention of the parties is very important and the intention of defrauding the other side or '*mens rea*'

can be seen or surfaced by any act or acts of parties and is to be gathered from surrounding circumstances. Thus, in the case of cheating the intention of the accused person can be found only at the time of commission of offence. Importantly, a transaction on its face though may apparently be of a civil nature may give and does many a time give rise to criminal liability. Each and every case depend upon the facts and circumstances of that particular case only and the offence alleged can be established by the prosecution or complainant on production of evidence at the time of trial. This view gets approval from a catena of cases set out in our jurisdiction as well as of this sub-continent. In the case of State Vs. Iqbal Hossain reported in 48 DLR (AD) 100 the Court observed:-

“Transaction based on contract ordinarily gives rise to civil liabilities but that does not preclude implications of a criminal nature in a particular case and a party to the contract may also be liable for a criminal charge or charges if elements of any particular offence are found to be present. The distinction between a case of mere breach of contract and one of cheating depends upon the intention of the accused at the time as alleged which may be judged by subsequent act.”

Therefore, the true position is that even in a transaction based on contract, apart from civil liability, there may be elements of an offence or offences for which a prosecution may be competent against a party to the contract and to find such offence the evidence has to be examined carefully to see whether there is any criminal liability. The distinction between a case of mere breach of contract and one of cheating depends upon the intention of the accused at the time as alleged which may be judged by his subsequent act. Our view gets support from the decision reported in 6 ADC 165 in the case of Haji Alauddin Vs. The state and another wherein the Appellate Division held:

“In order to gather the intention, the attending circumstances and the conduct of the parties has to be examined in the context of the transaction itself, necessarily requires evidence or materials which cannot be possible without examination of witnesses.”

In the case of Arifur Rahman alias Bablu Vs. Shantosh Kumar Sadhu and another reported in 46 DLR (AD) 180 the accused requested the complainant to supply two trucks of jute at Taka 83,059.00 and assured him that he would pay Taka 40,000 in cash at the time of delivery and the rest Taka 43,059.00 within three days thereafter. After the Accused paid Taka 40,000.00 the Complainant, in good faith, supplied the goods, but the Accused did not pay the

balance within three days. Speaking for the Court MH Rahman, J observed:-

"5. Here, the complainant's case is that he, in good faith, delivered the jute on the accused's inducement of part payment and specific promise to pay the balance within three days. From what has been alleged in the complaint it cannot be said that there was no prima facie case against the accused. The High Court Division correctly refused to quash the proceeding."

In the case of Khondakar Abul Bashar Versus The state reported in 63 DLR (AD) 79, our apex Court held:-

"There is no legal impediment to file a criminal case even if a civil suit is pending on the selfsame allegation provided the ingredients of offence are present".

While section 405 of the Penal Code defines criminal breach of trust, which reads as under:

"405. whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of

such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

Therefore, the ingredients of the offence of criminal breach of trust are:-- (1) the accused was entrusted with- (a) property, or (b) dominion over property; (2) the accused- (a) misappropriated, or (b) converted the property of his own use, or (c) used or disposed of the property or willfully suffered any person to do so dispose of the property; (3) the accused did so in violation of - (a) any direction of law prescribing the modes in which the entrusted property should be dealt with or (b) any legal contract express or implied which he had entered into relating to the carrying out of the trust or (c) the accused did so dishonestly.

The first ingredient of the offence of criminal breach of trust is that there ought to be an entrustment with property or with dominion over property to the accused by the complainant. If there is such entrustment and the accused dishonestly uses or disposes of that property in violation of any legal contract express or implied which he has made touching the discharge of such trust or willfully suffers any other person so to do he is said to commit criminal breach of trust. The word 'entrustment' in section 405 connotes that the accused holds the property in a fiduciary capacity. According to ATM Afzal, J (as his lordship then was) in the case of Shamsul Alam & others Vs. AFR Hassan & others the expression 'entrustment' in section 405

is used in its legal and not in its figurative or popular sense. If the expression 'entrustment' is applied to a thing which is not money, it would indubitably indicate that such thing continues to remain the property of the prosecutor during the period in which the accused is permitted to retain its possession or is permitted to have any dominion over it. When money is 'entrusted' within section 405 to the accused it would be transferred to him under such circumstances which show that, notwithstanding its delivery, the property in it continues to vest in the prosecutor, and the money remains in the possession or control of the accused as a bailee and in trust for the prosecutor as bailor, to be restored to him or applied in accordance with the instructions. The word 'trust' is a comprehensive expression which has been used not only to cover the relationship of trustee and beneficiary but also those of bailor and bailee, master and servant, pledgor and pledgee, guardian and ward and all other relations which postulate the existence of a fiduciary relationship between the complainant and the accused.

The question is, therefore, arises for consideration in the present case, whether the material on record prima facie constitutes any offence against the accused-petitioners. Is there any ingredient of criminal offence under sections 420/406 of the Penal Code in the light of above decisions of our apex Court?

In the present case the complainant alleged that he is involved in production and marketing of fisheries and poultry feed and the accused no.2 used to come at the factory of the complainant Doctors Feeds Ltd who assured the complainant to provide with the foreign fund; at that time the complainant was in need of working capital and one day the accused no.1 who was introduced by the accused no.2 came to his factory and said they will provide him big fund and asked the complainant to give all the documents of the company; accordingly the complainant went to the office of the accused no.1 on 26.08.2020 with all the documents and two MOUs were signed by the accused No.1 and the complainant in presence of the accused No.2 and 3, one MOU in respect of providing 22 million US Dollar by the accused no.1 and another in respect of land and to that effect the accused No.1 received 2 cheques of Tk-10,00,000/ and Tk-15,00,000 and Tk-2,00,000/- (two lac) more as cash and assured that he will provide with the fund within 15 days; after 2 days the accused no.2 came to the complainant and told him to pay Tk-500,000/- (five lac) in advance and on asking the accused No.1 over telephone requested to give a cheque of Taka 5,00,000/- (five lac) to accused No.2 which was en-cashed on 04.10.2020; then the complainant handed over 2 cheques of tk-33,50,000/- and tk-500,000/ to the accused no.1 for supplying 2500 metric tons maize but the accused no.1 failed to supply it; on 26.08.2020 the

complainant requested the accused to cancel the 2 MOUs and to returned the money but the accused did not do that rather made pressure to sign a new MOU and the complainant again signed another MOU on 16.02.2021 for supplying 2500 metric tons of maize at the price US Dollar 5,37,500/- and handed over 5 cheques of various amounts as security on condition that the complainant will get the goods within 25.03.2021 and on pressure the complainant was compelled to pay tk-22,84,370/ in favour of STS Engineering owned by the accused no.1; beside these the complainant also gave various cheques of tk-1,37,06,250 dated 25.06.2021, tk-2,00,00,000/ dated 25.07.2021 and tk-1,19,81,250 dated 25.07.2021 as security but the accused failed to supply any maize; however, the accused no.1 in different times received taka 29,84,375/- from the complainant but failed to give him the goods and misappropriated the said money.

Thus, we find it difficult to accept the submissions of the learned advocates for the accused-petitioner that no criminal liability arises by the conduct of the accused-petitioners particularly by the accused nos.1 and 2. And it cannot be said that there is no ingredient of cheating along with criminal breach of trust under sections 420/406 of the Penal Code. However, from the above petition of complaint we do not find any allegation against accused no.3, Samina Sorwar except her presence in the office of her father, the

accused no.1 and in this context the learned advocate for the complainant opposite party finds it difficult to make out a case of either cheating or criminal breach of trust against accused no.3.

In the present case we have already noticed that there is allegation that the Complainant-Opposite Party was dishonestly induced by the accused nos.1 and 2 to pay money and cheques in advance in order to secure the importation of goods i.e., maize and the Complainant-Opposite Party in good faith paid in advance but the Accused-Petitioners could not deliver the products accordingly. The complainant alleged that all the acts done by the accused was to deceive the complainant in order to misappropriate money and whether the failure on the part of the accused was mere breach of contract or was done with intent to deceive the complainant cannot be decided without trial by taking evidence. So, without taking evidence it cannot be said at this stage of framing charge that there is no ingredients of cheating in the petition of complaint or there was no intention to cheat at the time of transactions. The complainant brought prima-facie allegation of cheating and criminal breach of trust and the onus or burden of proof of the said prima-facie allegations against the accused-petitioners is heavily on the complainant and the accused-petitioners are at liberty to controvert all those allegations during trial by cross-examining the

prosecution witnesses and also by adducing and producing witnesses and documents before the trial court.

At the same time, it is also noticed that there is a growing tendency of complaints attempting to criminalization of matters which are essentially and purely civil in nature, either to apply pressure on the accused to gain benefit, or out of enmity or to harass the accused. Sometimes it may happen because the justice delivery system in civil court of our country is lengthy. Whatever may be the case, criminal proceedings should not be used for settling scores or to pressurize parties to settle civil dispute.

In view of the discussion made above and the reasons stated hereinbefore we hold that there is no reason for interference by this Court at this stage by invoking inherent jurisdiction under section 561A of the Code of Criminal Procedure so far it relates to the accused nos.1 and 2. We find that there is a prima-facie case to be tried by the trial court against the accused nos.1 and 2.

Rule and order of stay was obtained in Criminal Miscellaneous Case No.66267 of 2023 by the accused No.2 Md. Tamzid-Ul-Islam and we have already opined that the rule has no legs to stand being devoid of substance, is destined to fail.

In the result, the Rule issued in Criminal Miscellaneous Case No.66267 of 2023 is **discharged**.

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

The Rule and order of stay was obtained in Criminal Miscellaneous Case No.67286 of 2023 by the accused Nos.1 and 3, M. Sorwar Hossain and Samina Sorwar respectively and we have already found that that there is a prima-facie case to be tried by the trial court against the accused nos.1, M. Sorwar Hossain but there is no ingredients of either cheating or criminal breach of trust against accused no.3, Samina Sorwar. So, we are constrained to interfere with the impugned order of framing charge so far it relates to the accused no.3.

In the result, the Rule issued in Criminal Miscellaneous Case No.67286 of 2023 is made **Absolute-in-part.**

The impugned order No.6 dated 04.06.2023 passed in Criminal Revision Case No. 1579 of 2022 by the Additional Metropolitan Sessions Judge, 1st Court, Dhaka allowing the revision and thereby setting aside order dated 01.08.2022 passed by the Metropolitan Magistrate, Court No. 9, Dhaka in C.R. Case No. 257 of 2021 (Kafrul) under sections 420, 406, 506 of the Penal Code **is hereby quashed, so far it relates to the accused No.3 (Samina Sorwar).** The order of stay granted earlier stands vacated.

The trial court is at liberty to proceed with the C.R Case No. 257 of 2021 (Kafrul) in accordance with law against accused nos.1 and 2. The

trial court is directed to conclude the trial as early as possible.

Communicate the judgment and order at once.

Md. Iqbal Kabir, J:

I agree.