

**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. 12251 of 2025.

Md. Zahir Uddin Arif.

.....Petitioner.

-Versus-

The State and another.

..... Opposite parties.

Mr. Md. Fayzul Hasan, Advocate

..... For the petitioner.

Mr. Md. Towhidul Hossain, Advocate

..... For the opposite party No.2.

Heard on : 19.01.2026 and

Judgment on: 20.01.2026.

Md. Khairul Alam, j.

This Miscellaneous Case, under section 561A of the Code of Criminal Procedure, has been filed to quash the proceedings of Sessions Case No. 2840 of 2022, arising out of C.R. Case No. 1113 of 2021 (Doublemooring) under sections 138/140 of the Negotiable Instruments Act, 1881 now pending in the

Court of Joint Metropolitan Sessions Judge, 4th Court,
Chattogram.

Facts relevant for disposal of the Rule are that the present opposite party No. 2, Dutch-Bangla Bank Limited, as complainant, filed a petition of complaint before the Court of the Chief Metropolitan Magistrate, Chattogram, under sections 138 and 140 of the Negotiable Instruments Act, 1881, implicating U.F.M. (BD) Limited, a private limited company, along with its Managing Director, Chairman and Directors including the present petitioner, describing him as an acting director of the company alleging, *inter alia*, that U.F.M. (BD) Limited obtained loan facilities from the complainant bank. In adjustment of the said liability, the company issued three cheques bearing Nos. CDA 2401713, CDA 2401714 and CDA 2401715, all dated 13.09.2021, each amounting to Tk. 1,24,29,000, totalling Tk. 1,24,29,000, in favour of the complainant. Upon presentation, the cheques were dishonoured on 13.09.2021 with the endorsement "insufficient funds." Thereafter, on 15.09.2021, the complainant served

statutory notice upon the accused persons demanding payment of the cheque amount. As the accused failed to make payment within the stipulated period, the complaint was filed. On receipt of the complaint, the learned Magistrate examined the complainant under section 200 of the Code of Criminal Procedure, took cognizance under section 138 of the Negotiable Instruments Act, 1881 and issued process against the accused and the case was registered as C.R. Case No. 1113 of 2021. The petitioner obtained bail on 02.01.2022. Upon transfer to the Court of Sessions, the case was renumbered as Sessions Case No. 2840 of 2022, which is now pending before the Court of Joint Metropolitan Sessions Judge, 4th Court, Chattogram for trial.

Being aggrieved by the said proceedings, the petitioner moved this Court and obtained the present Rule along with an order of stay.

Mr. Md. Foyzul Hasan, learned Advocate for the petitioner, submits that the petitioner did not sign the dishonoured cheques, and at the time of commission

of the alleged offence, he was neither in charge of nor responsible for the conduct of the business of the company and therefore, the mandatory requirement of section 140 of the Negotiable Instruments Act, 1881, has not been *prima facie* satisfied and as such, continuation of the proceeding against the petitioner amounts to abuse of the process of the Court and is liable to be quashed.

Conversely, Mr. Md. Towhidul Hossain, learned Advocate for opposite party No. 2, submits that at the relevant time the petitioner was a director of the company which obtained the loan and, 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 proceeding.

It appears that U.F.M. (BD) Limited obtained loan facilities from Dutch-Bangla Bank Limited and that the petitioner was admittedly a director of the said company at the relevant time.

The petitioner 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 subsection 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 subsection (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."

A plain reading of the 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, a director cannot be held criminally liable merely by virtue of holding such office. Vicarious liability under section 140 arises only when it is proved that the accused director was in charge of and

responsible for the conduct of the business of the company at the time when the offence was committed.

The inherent power of this Court under section 561A of the Code of Criminal Procedure is to be exercised sparingly, cautiously and in exceptional circumstances, namely where continuation of the proceeding would amount to 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 present case, it is an admitted position that the petitioner is neither the signatory of the dishonoured cheques nor the Managing Director or Chairman of the company. He is a director of the company. For the purpose of fastening vicarious liability upon a director or officer of a company 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 in charge of and responsible for the conduct of the business of the company.

A plain reading of the petition of complaint reveals that clear and categorical statements have been made therein that at the relevant time of issuance and dishonour of the cheques, the petitioner was a director of the company and was in charge of and responsible for the conduct of its business.

Whether the petitioner was actually in charge of and responsible for the conduct of the company's business at the relevant time is essentially a question 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.

On perusal of the complaint, *prima facie*, it appears that the complaint discloses the essential ingredients of offences under sections 138 and 140 of the Negotiable Instruments Act, 1881.

Accordingly, we find no lawful ground to interfere with the impugned proceeding at this preliminary stage.

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 at once.

Md. Sagir Hossain, j.

I agree.