

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Present

Mr. Justice Sikder Mahmudur Razi

And

Mr. Justice Raziuddin Ahmed

Writ Petition No. 1791 of 2025

In the matter of:

An Application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

And

In the matter of:

Md. Monjurul Islam

.....Petitioner.

-Versus-

Bangladesh Basnk, represented by its Governor,
Bangladesh Bank Bhaban, Motijheel, Dhaka-1000
and others.

.....Respondents.

Mr. Muhammad Rejaul Husain (Morshed), Adv.

.....For the petitioner.

Mr. A.R.M. Kamruzzaman Kakon, Adv.

....For the respondent No. 4.

The 15th December, 2025

Sikder Mahmudur Razi, J:

Today, the matter is fixed for passing necessary order.

On an application under Article 102 of the Constitution of the
People's Republic of Bangladesh a *Rule Nisi* was issued in the instant matter
in the following terms:

অর্থস্বর্ণ আদালত আইন ২০০৩ এর বিশেষ করে ধারা ৫ এবং ১২ এর বিধানবলি

অনুসরণ করে দরখাস্তকারীর স্বর্ণ সমন্বয় করা প্রতিপক্ষগণের আইনানুযায়ী করণীয় কার্য

এবং উক্ত আইনগত কার্য করতে প্রতিপক্ষগণকে কেন নির্দেশ প্রদান করা হবে না এবং
 অত্র আদালত কর্তৃক সঠিক এবং যথাযথ মনে করলে অন্যান্য বা অতিরিক্ত আদেশ বা
 আদেশসমূহ কেন প্রদান করা হবেনা মর্মে প্রতিপক্ষগণের প্রতি কারণ দর্শানো পূর্বক রুল
 নিশি প্রেরণ করা হোক।

The petitioner before this Court is Md. Monjurul Islam. It is not disputed that he is a defaulter in repayment of the loan obtained from the respondent Bank. It is also admitted that the respondent, NRBC Bank Limited, Jubilee Road Branch, Chattogram, instituted a criminal proceeding against the petitioner under section 138 of the Negotiable Instruments Act, 1881 (as amended up to 2006), which stood fixed on 12.02.2025 for cross-examination. At this stage, the petitioner invoked the writ jurisdiction of this Court contending, inter alia, that the Bank initiated the said criminal proceeding without first resorting to the remedies provided under sections 12 and 5 of the Artha Rin Adalat Ain, 2003, that is to say, without instituting an Artha Rin suit, and that such initiation of the criminal case is, therefore, without lawful authority.

We have heard the learned Advocate for the petitioner and the learned Advocate representing the respondent Bank. We have also gone through the writ petition and the relevant statutory provisions.

The sole question that falls for determination is whether the initiation or continuation of a criminal proceeding under section 138 of the Negotiable

Instruments Act, 1881 is barred in the absence of, or without prior recourse to a suit under the Artha Rin Adalat Ain, 2003.

The legal position on this issue is no longer *res integra*. In a series of decisions, our Apex Court as well as this Division have consistently held that proceedings under section 138 of the Negotiable Instruments Act and proceedings under the Artha Rin Adalat Ain operate in distinct and independent fields. The remedy under the Artha Rin Adalat Ain is a civil remedy aimed at recovery of outstanding loan amounts, whereas a proceeding under section 138 of the Negotiable Instruments Act entails penal consequences arising out of the dishonour of a cheque, which itself constitutes a criminal offence.

Dishonour of a cheque for insufficiency of funds, followed by failure to make payment within the statutory period, attracts criminal liability under section 138 of the Negotiable Instruments Act, 1881 (as amended up to 2006) irrespective of the existence, pendency or otherwise of any civil or Artha Rin proceeding. There is no provision in the Artha Rin Adalat Ain, 2003, nor in the Negotiable Instruments Act, 1881, which mandates that a Bank/financial institution must first institute an Artha Rin suit as a condition precedent for initiating a criminal proceeding under section 138 of the Negotiable Instruments Act. Rather, the consistent judicial view is that both remedies may be pursued simultaneously, as they serve different purposes.

The pendency or non-pendency of an Artha Rin suit neither extinguishes nor suspends the criminal liability arising from dishonour of a cheque.

In view of the settled principles laid down in a catena of judgments, this Court finds no substance in the contention of the petitioner that the criminal case under section 138 of the Negotiable Instruments Act is without lawful authority merely because no Artha Rin suit was instituted prior thereto. The argument advanced on behalf of the petitioner is, therefore, misconceived and untenable in law.

As ready reference in support of the foregoing paragraphs we can rely on the decisions of the case of *Majed Hossain vs. The State*, reported in 17 BLC (AD) 117, *Mohammad Alauddin vs. The State*, reported in 24 BLC (AD) 139, *Khondaker Mahatab Uddin Ahmed vs. State*, 49 DLR (AD) 132, *Monzur Alam (Md.) vs. State*, 55 DLR (AD) 62, *Eastern Bank Ltd. vs. Md. Sirajuddula*, 72 DLR (AD) 79, *Fazal Ahmed vs. The State*, 17 LM (AD) 472 (2024), *Md. Nazim Uddin Chowdhury and others vs. Government of Bangladesh and others [Writ Petition No. 6786 of 2015]*, *Alhaj Md. Harun-Ur-Rashid vs. Government of Bangladesh and others [Writ Petition No. 4926 of 2017]*

It is also well-established that one cannot use writ jurisdiction to quash or choke a criminal proceeding that is otherwise lawful and within jurisdiction. The High Court Division's writ jurisdiction is not meant to

interfere in pending criminal trials except in very exceptional situations, for example, if the constitutionality of the law itself is challenged. The Hon'ble Appellate Division has cautioned that there is no scope for quashing a criminal proceeding under the writ jurisdiction unless the *vires* (validity) of the law is challenged. Therefore, if proceeding under section 138 of the Negotiable Instruments Act, 1881 has been validly initiated, the accused cannot bypass the normal criminal process by filing a writ petition. In particular, when a cheque dishonour case is at an advanced trial stage, the accused must raise any defenses in the trial court itself.

In the above facts and circumstances, we find no merit in the instant Rule. Accordingly, the instant Rule is discharged. There shall be no order as to costs.

Communicate the Judgment and order at once.

(Sikder Mahmudur Razi, J:)

I agree.

(Raziuddin Ahmed, J:)