

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

Present

Mr. Justice K.M. Hafizul Alam

And

Mr. Justice Abdur Rahman

CRIMINAL MISCELLANEOUS CASE NO. 32601 of 2025

IN THE MATTER OF:

Mohammad Salauddin Khan

...Accused-Petitioner.

(On bail)

-VERSUS-

The State

..the state and another.

Mr. Shahida Arobi

...for the petitioner.

Mr. Md. Asadur Rahman

....for the opposite party.

Heard on 19.11.2025 and 07.01.2026

&

Judgment on 12.01.2026, Monday

28, Poush 1432 B.S.

Abdur Rahman, J.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 21.1.2025 passed by the learned Additional Sessions Judge, Bankruptcy Court, Chattogram in Criminal Revision No. 602 of 2024 affirming the order dated 15.7.2024 passed by the learned Joint Sessions Judge 1st Court, Chattogram in Sessions Case No. 1493 of 2022, arising out of C.R. Case No. 106 of 2022 (Potiya)

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under section 138 of the Negotiable Instruments Act, 1881, now pending in the Court of learned Joint Sessions Judge, 1st 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 relevant, in short, are that on 02.03.2022, the complainant, Md. Jasim Uddin Talukder filed a complaint petition in the Court of the learned Senior Judicial Magistrate, Potiya Cognizance Court, Chattogram, alleging *inter alia* that the complainant and the accused had a business relation and hence in course of transaction a due of 14,00,000/- was pending, and the complainant demanded the same from the accused and the accused issued a cheque to the complainant being Cheque No. SB/A 9751641 dated 13.12.2021 of AC No. 155.151.25453 of Dutch Bangla Bank Limited, Payable at any branch and the complainant presented the said cheque for encashment on 14.12.2021 to Union Bank Limited, Shantirhat Branch, Chattogram and the cheque was dishonored on the ground of 'Insufficient Fund' on 14.12.2021, and thereafter on 02.01.2022 the complainant, through learned Advocate served legal notice upon the accused petitioner demanding payment of cheque amount of Tk.14,00,000/- and the same was received by the accused, and did not take step to pay the cheque amount. Then the complainant filed the petition of complaint in the learned Senior Judicial Magistrate, Potiya, Cognizance Court, Chattogram against the accused petitioner under section 138 of the Negotiable Instrument Act, 1881, hence the case.

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After following all procedures, the case record was communicated to the learned Sessions Court, Chattogram, and the case was re-numbered as Sessions Case No. 2493 of 2022, and the learned Sessions Judge transferred the said case to the learned Joint Sessions Judge, 1st Court, Chattogram, for holding trial.

Thereafter, the learned trial Court framed an alleged charge under Section 138 of the Negotiable Instruments Act, 1881, against the accused petitioner in his absence and fixed the next date on 19.10.2022, for witnesses, and the accused person again surrendered before the learned trial Court and was enlarged on bail. Thereafter, the complainant was examined as P.W.1 on 08.01.2023 and duly cross-examined by the accused petitioner on 19.6.2023, and then the accused petitioner filed two petitions, one for re-calling the P.W.1 and the other for production of Account Book from the custody of the complainant and after hearing the learned trial Court was pleased to reject both the petitions and then the accused petitioner preferred a Criminal Revision being No. 29 of 2024 before the learned Sessions Judge, Chattogram, and after hearing the learned Sessions Judge was pleased to allow the Revision and sent back the record giving specific directions for production of the account book from the custody of the complainant and also allowed the re-calling P.W.1. Thereafter, the learned trial Court having the said order from the learned Sessions Judge fixed a date for defence witness and most erroneously bounced the directions regarding re-call of PW1

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and production of the account book from the custody of the complainant vide Order dated 12.03.2024.

Hereinafter, the learned trial Court passed several dates for defence witnesses, without assigning any date for the production of the Account Book from the custody of the complainant, and for re-calling the PW1. Subsequently, the complainant made appearance and produced the Account Book on 15.07.2024, though there was no such order on the face of the record, and then the accused person prayed time for crossing the PW1 on re-call, and the learned Court was pleased to reject the prayer for time, and heard the argument of learned Assistant Public Prosecutor, and fixed the next date on 08.08.2024 for judgment, and thereby the accused petitioner being aggrieved by and dissatisfied with the said order dated 15.7.2024, preferred another Criminal Revision being No. 602 of 2024, before the learned Sessions Judge, and after hearing the learned Additional Sessions Judge was pleased to reject the same on 20.01.2025.

Thereafter, the petitioner filed this miscellaneous case under Section 561A of the Code of Criminal Procedure, 1898, challenging the order dated 20.01.2025 of the learned Additional Sessions Court, Chattogram.

Ms. Shahida Arobi, the learned Advocate appearing on behalf of the accused-petitioner has submitted that learned Revisional Court rejected Criminal Revision No. 602 of 2024 based on wrong observation and wrong findings by overlooking the mistakes to the learned trial Court and most erroneously

observed the fact skipping the materials allegations and as such the impugned judgment and order is liable to be quashed for the ends of Justice. She further submits that the learned trial Court vehemently overlooked the decision of the learned Sessions Judge provided in Criminal Revision No. 29 of 2024 relating to the inspection of the account book and for further cross-examination of P.W.1, and as such the impugned judgment and order are liable to be quashed.

On the other hand, the learned Advocate Mr. Md. Asadur Rahman, appearing on behalf of the opposite party No.2, opposed the Rule, but he candidly submitted that he has no objection, if the application is allowed, by giving the accused petitioner a limited time for availing the opportunity he claimed.

Having heard the learned Counsels and upon consideration of the record it is found that P.W.1 in his cross examination admitted that “আসামীর সাথে লেনদেনের প্রমানস্বরূপ বালাম বহি আছে। বালাম বহি আদালতে দিইনি। ... সত্য নয়, আসামীর কাছ থেকে সব পাওনা বুঝে পেয়েছি কিংবা তা হিসাব বহিতে লেখা আছে”, from the above discloser on the part of the complainant, the accused petitioner filed an application calling for the account book from the custody of the complainant and in this regard he also preferred another application for re-calling the P.W1 to that effect, but at the time of hearing of those petitions the learned trial Court vide order being No. 13 dated 16.10.2023 stated that “বাদীর নিকট হইতে সংরক্ষিত হিসাব বহি ও P/W-1 কে পুনরায় জেরা করার অবকাশ না থাকায় দরখাস্তদ্বয় নামঞ্জুর করা হইল।”, and such kind of nonspeaking order barren the provisions of

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Section 265I(3) of the Code of Criminal Procedure, 1898, where the accused person(s) have ample opportunity to apply for the issue of any process for compelling the attendance the any witness or the production of any document or thing, the Court shall issue such process unless he considers for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Thus, we do not find such kind of reasons have given by the learned trial Court at the time of rejecting the applications, however, the learned Sessions Judge being pleased in Criminal Revision No. 29 of 2024 allowed that applications for the ends of justice. Conversely, the learned trial Court having the said order of the upper Court try to defeat the due process of law vide order dated 15.7.2024. Certainly, from that order it is also evident that the learned trial Court also fail to provide separate date for examination accused person under section 342 of the Code of Criminal Procedure, 1898, and for giving an opportunity to accused person(s) entering upon defence under section 265I, and also for giving an opportunity under section 265J of the Code of Criminal Procedure, 1898, for taking arguments from the accused person(s), rather skipping all those fundamental requirements for criminal trial, deliberately referred the case for judgment *per se*.

Upon shifting the judgment and order of the learned Additional Sessions Judge in Criminal Revision No. 602 of 2024, it is revealed that he strenuously lost sight of the

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considerations of the learned Sessions Judge held in Criminal Revision No. 29 of 2024, which was also left out in the reflections of the orders of the learned trial Court, consequently the grievances of the accused person have fallen into an act de hors the law.

In view of the above facts and circumstances, we are inclined to redress the remonstrations of the petitioner, providing all the opportunities as given by the learned Sessions Judge in Criminal Revision No. 29 of 2024, and to maintain the aforementioned propositions of law in favor of the accused petitioner; consequently, justice would be met if the learned trial Court to conclude the trial within 3 (Three) months, from the date of receipt of this judgment and order.

Accordingly, the impugned judgment and orders of the Subordinate Courts are hereby set aside, and the Rule is disposed of with the above observations and directions without any order as to cost.

The order of stay granted pursuant to this Rule is recalled and vacated.

The office is directed to communicate this judgment and order to the learned Trial Court within a reasonable period.

(Abdur Rahman, J)

K.M. Hafizul Alam, J

I agree.

(K.M. Hafizul Alam, J)