

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. 2420 of 1999.

Md. Anowar Hossain.
.....Petitioners.

-Versus-

The State and another.
..... Opposite parties.

No one appears
..... For the petitioners.

Ms. Nahid Hossain (Liza), DAG
..... For the opposite parties.

Heard & Judgment on: 15.01.2026.

Md. Khairul Alam, J:

On an application under section 561A of the Code of Criminal Procedure, this Rule has been issued at the instance of the accused-petitioner, calling upon the opposite parties to show cause as to why the proceedings in Complaint Case No. 150 of 1998, pending in the Court of Magistrate, 1st Class, Cha Anchal, Bogura, under Sections 406/420 of the Penal Code, 1860, should not be quashed.

The relevant facts, as disclosed from the record, are that the present opposite party No. 2, as an employee of a

microfinance organization, namely, Proshika Manobik Unnayan Center (hereinafter referred to as the Samity), filed a petition of complaint implicating the present petitioner as the accused, alleging, inter alia, that on 15.10.1996 the accused obtained a loan of Taka 88,000/- from the Samity but failed to repay the same duly. Therefore, as of 15.01.1998, there remained an unpaid balance of Taka 81,662/-, which led to the filing of the complaint. Upon receipt of the complaint, the learned Magistrate examined the complainant under Section 200 of the Code of Criminal Procedure, took cognizance under sections 406 and 420 of the Penal Code, and issued process against the accused, who subsequently obtained bail, and the petition of complaint was registered as Complaint Case No. 150 of 1998.

Being aggrieved by the initiation of the criminal proceedings, the petitioner filed the instant application for quashment and obtained this Rule along with an order staying the proceedings.

No one appeared for the petitioner to support the Rule.

The contention of the petitioner, as reflected in the petition, is that even if the allegations are accepted at their face value, they do not disclose the essential ingredients of offences under sections 406 or 420 of the Penal Code. The alleged facts at best constitute a civil liability.

Ms. Nahid Hossain (Liza), learned Deputy Attorney-General, appearing for the State, opposed the Rule and submitted that the petition of complaint discloses a prima facie case, and that the allegations of dishonest inducement and breach of trust as set out in the complaint are matters for trial.

The inherent power of this Court under section 561A of the Code of Criminal Procedure is to be exercised sparingly, to secure the ends of justice or to prevent abuse of the process of the Court where, inter alia, the allegations, even if accepted in their entirety, do not constitute any offence.

The offence of cheating under sections 415/420 of the Penal Code involves deception and dishonest intention at the very time of inducement. The petition of complaint must demonstrate that the accused had a fraudulent or dishonest intent from the outset and never intended to repay the loan.

In the case of Abdul Rouf (Md) alias Nayan v. State, reported in 53 DLR (HCD) 283, it was held that mere failure to repay a loan, without proof of initial fraudulent intent, does not amount to cheating.

In the present case, the fact of partial repayments, on the face of record, by the petitioner strongly negates any allegation of initial dishonest intent. The Samity has alleged no fact indicating that the petitioner deceitfully took the loan with a premeditated plan to default.

Similarly, the offence of criminal breach of trust requires “entrustment” of property and its subsequent dishonest misappropriation. A borrower is not a trustee of the borrowed money but the owner of the same with an obligation to return the amount.

In the present case, the allegation that the petitioner returned the loan amount partially, but failed to return it entirely, does not constitute criminal breach of trust. It is purely a civil liability. The complainant, being a microfinance organization, without filing a civil suit, filed this criminal case, which is a clear example of a mala fide attempt to use criminal law as a mechanism for debt recovery.

For the reasons stated above, it is evident that the allegations in the complaint, even if taken as true, do not make out a case for offences under sections 406 or 420 of the Penal Code or otherwise. The alleged facts are purely a civil liability. Therefore, the continuation of the impugned proceeding for default in repayment of a loan, where partial payments have been made, is nothing but an abuse of the process of the Court.

Accordingly, the Rule is made absolute.

The proceedings in Complaint Case No. 150 of 1998, under Sections 406/420 of the Penal Code, 1860, pending in the Court of Magistrate, 1st Class, Cha Anchal, Bogura, are hereby quashed.

Let a copy of this judgment be sent down to the concerned Court at once.

Md. Sagir Hossain, J.

I agree.

Kashem, B.O