

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

Present:

Mr. Justice Md. Khairul Alam
and
Mr. Justice Md. Rafizul Islam

Criminal Miscellaneous Case No. 33272 of 2010

Ismail Hossain

.....Accused-petitioner

-Versus-

The State and another.

..... Opposite parties

No one appears

..... For the petitioner

Md. Masudul Alam Doha, DAG

..... For the opposite parties.

Heard & Judgment on: 13.08.2026.

Md. Khairul Alam, J:

By filing an application under section 561A of the Code of Criminal Procedure, 1898 (hereinafter referred to as “the Code”), the accused-petitioner obtained the instant Rule, calling upon the opposite parties to show cause as to why the proceedings in Complaint Case No. 04 of 2008, under sections 406/420 of the Penal Code, now pending before the Court of Chief Judicial Magistrate, Narayanganj, should not be quashed.

The relevant facts for disposal of the Rule, as disclosed from the record, are that opposite party No. 2, as complainant, filed a petition of complaint before the learned Chief Judicial Magistrate, Narayanganj, implicating the present petitioner as an accused, alleging, inter alia, that on 20.07.2006, the complainant and the accused entered into an agreement. Pursuant to the said agreement, between 20.07.2006 and 04.09.2007, the accused, through 162 challans of different dates, received a total quantity of 124,426 kg of polyester fabrics and 130,113 kg of cotton fabrics. Against the said fabrics, the accused supplied finished goods weighing 122,630.86 kg of polyester fabrics and 126,715.13 kg of cotton fabrics, thereby retaining in his possession the remaining 1,795.14 kg of polyester fabrics and 3,397.87 kg of cotton fabrics. Hence, the petition of complaint, which was registered as Complaint Case No. 04 of 2008.

Upon receipt of the petition of complaint, the learned Magistrate examined the complainant under section 200 of the Code, took cognizance of the alleged offences and issued process against the accused. The accused

thereafter obtained bail. On 26.09.2010, the learned Magistrate rejected the application filed by the accused under section 241A of the Code of Criminal Procedure for his discharge and framed charge against the accused-petitioner under sections 406 and 420 of the Penal Code.

At this stage, challenging the initiation and continuation of the criminal proceedings, the petitioner moved this Court and obtained the Rule, along with an order staying further proceedings.

No one appeared on behalf of the petitioner to press the Rule.

The contention of the petitioner, as reflected in the petition, is that even if the allegations made in the petition of complaint are accepted in their entirety and at their face value, the essential ingredients of the offences under sections 406 and 420 of the Penal Code are not disclosed.

Mr. Md. Masudul Alam Doha, 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 relating to

dishonest inducement and breach of trust are matters to be determined upon evidence at the trial.

We have considered the submissions of the learned Deputy Attorney-General, examined the petition of complaint and other materials on record.

It is well settled that the inherent power of this Court under section 561A of the Code is an extraordinary power, which is to be exercised sparingly and with circumspection, principally to secure the ends of justice or to prevent abuse of the process of the Court. Such power may, however, be exercised where, even accepting the allegations made in the complaint in their entirety, no offence is disclosed against the accused.

For an offence under section 420 of the Penal Code, there must be deception and dishonest or fraudulent inducement at the inception of the transaction. A mere breach of contractual obligation, in the absence of dishonest or fraudulent intention at the inception of the transaction, does not ordinarily give rise to criminal liability. Where a substantial part of the contractual obligation has been performed, the subsequent failure or refusal to

perform the remaining part of the obligation, by itself, ordinarily constitutes a breach of contract giving rise to a civil liability and does not constitute the offence of cheating under sections 415/420 of the Penal Code.

In the case of Sayed Ali Mir and another vs. Syed Omar Ali and another, reported in 10 BLD (AD) 168, the Appellate Division held that a dispute arising out of a business transaction, in the absence of the necessary ingredients of a criminal offence, constitutes a civil liability and cannot be converted into a criminal proceeding.

In the case of Mahfez Mondal vs. Harunar Rasid, reported in 32 DLR (HD) 247, this Division held that mere failure to fulfil a contractual obligation does not, by itself, constitute a criminal offence.

For an offence under section 406 of the Penal Code, the foundational ingredients of entrustment and dishonest misappropriation or conversion thereof must be disclosed. The mere fact that, after entering into a commercial transaction, one party fails to perform a part of the obligation does not, without the requisite criminal intent

and other essential ingredients, transform the dispute into a criminal offence.

In the case at hand, it appears that the accused had received substantial quantities of fabrics over a considerable period pursuant to the agreement and had supplied finished goods against the major portion thereof. After performing the substantial part of the contractual obligation, the accused failed to supply the finished goods of the remaining quantities of fabrics. Thus, the allegation relates to incomplete performance of a contract.

Having regard to the facts and circumstances of the case and the principles of law discussed above, we are of the view that, even if the allegations made in the petition of complaint are accepted in their entirety, the essential ingredients of the offences under sections 406 and 420 of the Penal Code are not disclosed. Therefore, continuation of the criminal proceedings against the accused-petitioner would amount to an abuse of the process of the Court.

Accordingly, the Rule is made absolute.

The proceedings in Complaint Case No. 04 of 2008, under sections 406/420 of the Penal Code, now pending

before the Court of the learned Chief Judicial Magistrate, Narayanganj, are hereby quashed.

Let a copy of this judgment be sent to the learned Court concerned forthwith.

Md. Rafizul Islam, J.

I agree.

Kashem, B.O