

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

**Present**  
**Mr. Justice Md. Salim**  
**And**  
**Mr. Justice Shahed Nuruddin**

**CRIMINAL MISCELLANEOUS CASE NO.18398 OF 2014**

Md. Moinuddin  
.....Accused-Petitioner.

-VERSUS-

The State and another.  
...Opposite Parties.

No one appears ..... For both the parties.

Mr. Yesmin Begum Bithi, DAG with  
Mr. Binoy Kumar Ghosh  
Mr. A.T.M Aminur Rahman, A.A.Gs.  
.....For the State.

**Heard on: 01.11.2023 and**  
**Judgment on: 02.11.2023.**

**SHAHED NURUDDIN,J:**

By this Rule, the accused-petitioner by filing an application under Section 561A of the Code of Criminal Procedure sought for quashing the proceedings of C.R. Case No.63 of 2014 under Section 138 of the Negotiable Instrument Act,1881, now pending before the learned Senior Judicial Magistrate, Court No.2, Chittagong.

Material facts leading to this Rule are that, in order to discharge the loan liability the accused petitioner gave the cheque to the complainant which on presentation to the bank for encashment was dishonored on the ground of insufficiency of funds. Following the procedure and in compliance with statutory provisions laid down in section 138 of the Negotiable Instruments Act, 1881 the complainant filed the instant case.

The learned Magistrate took cognizance of the offence.

Being aggrieved and dissatisfied with the impugned proceedings the accused petitioner preferred the instant application and obtained the present Rule on 17.04.2014.

Heard the learned Deputy Attorney General and perused the record.

The accused petitioner submits in the petition that no valid notice was served upon the petitioner as required under section 138(1)(b) of the Negotiable Instruments Act, 1881 in view of the fact that admittedly the opposite party No.2 published a legal notice on 03.02.2014 in the “ Daily Khabar Patra” which is not a daily bangla national newspaper having wide circulation as required by section 138(1A)(c) of the

Negotiable Instruments Act, 1881 and as such in absence of sufficient service of notice, there cannot be any offence under section 138 of the Negotiable Instruments Act, 1881 and taking cognizance into the offence and continuation of the proceeding against the petitioner is an abuse of process of the Court and as such for ends of justice the proceeding against the petitioner is liable to be quashed.

The accused petitioner further submits in the petition that the cheque in question obtained by the opposite party No.2 by practicing fraud upon the petitioner and as such considering this aspect along with other grounds the proceeding is liable to be quashed.

Now, the case is pending for passing necessary order, the Court has lack of scope and jurisdiction to weigh the facts and evidence in this application, hence the Rule is liable to be discharged. The decision reported in 13 MLR (AD) 184 and 62 DLR (AD) 233.

We have meticulously examined the allegations made by the complainant and we find that the offence punishable under section 138 of the Negotiable Instrument Act, 1881 has been

clearly disclosed in the instant case against the accused. We have gone through the grounds taken in the application under section 561A of the Code of Criminal Procedure and we find that such grounds are absolutely the disputed question of facts and the same should be decided at the trial.

Since the ground taken by the accused petitioner is disputed question of fact and all the submissions are settled principle by the Hon'ble Appellate Division.

In the light of the discussions made above and the preponderant judicial views emerging out of the authorities referred to above, we are of the view that the impugned proceedings suffer from no legal infirmities which calls for no interference by this Court.

In view of the foregoing narrative, the Rule is discharged. The order of stay granted earlier stands vacated.

The office is directed to communicate the judgment at once.

**MD. SALIM, J:**

I agree

HANIF/BO