IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 5357 of 2015

Present:

Mr. Justice K.M. Hafizul Alam

And

Mr. Justice Abdur Rahman

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. Md. Rezaul Karim Bazlu

.... Petitioner

-versus-

The Court of the General Certificate Officer, Dhaka, and another

.... Respondents

Mr. M. Atikur Rahman and Mr. Sujan Miah, Advocates

... for the petitioner

Mr. Azimuddin Patwary, Advocate

...for the respondent No.2

Date of hearing: 21.01.2026 and 03.02.2026

Date of Judgment: 15.2.2026 A.D. Sunday 02 Falgun 1432 B.S.

Abdur Rahman, J:

This *Rule Nisi,* at the instance of the petitioner, was issued on an application under Article 102 of the Constitution in the following terms:

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned proceedings of the Certificate Case No. 78 (Fine) of 2008 under the Public Demands Recovery Act, 1913 arising out of the judgment and order of the Metropolitan Assistant Sessions Judge, 5th Court, Dhaka passed in Metropolitan Sessions Case No. 517 of 2006 corresponding to C. R. Case No. 602 of 2006 under Section 138 of the Negotiable Instruments Act, 1881 for realization of the fine of Tk. 1,10,40,000/- from the petitioner, now pending before the General Certificate Officer, Dhaka, should not be declared to be without lawful authority and of no legal effect and/or such other or further order or orders as to this Court may seem fit and proper."

The crux of facts leading to the issuance of this Rule Nisi in brief are that: the respondent No.2, as a complainant through her constituted attorney, filed a petition of complaint under Section 138 of the Negotiable Instruments Act, 1881, alleging that the instant Writ Petitioner bought huge cloth on credit, which was valued at Total Tk. 80,20,000/= (Eighty Lac Twenty Thousand) from the Respondent No.2, and to clear part of the debt, the petitioner had given cheque of Tk.55,20,000/= (Fifty-Five Lac Twenty Thousand). However, the said cheque was returned from the Bank due to insufficient funds, and then the complainant served a legal notice to the petitioner for payment of money. The accused person did not care to pay, and hence the case.

Thereafter, the learned Cognizance Magistrate, completing all lawful formalities, issued a summons against the accused person. Hereinafter, case was transferred to the Court of the learned Metropolitan Sessions Judge, Dhaka. Then the case was thereafter transferred to the Court of Assistant Metropolitan Sessions Judge, 5th Court, Dhaka. The trial was held on contest. By a judgment and order dated 19 July 2007, the learned Assistant Metropolitan Session Judge, 5th Court, Dhaka, was pleased to convict the accused petitioner under section 138 of the Negotiable Instruments

Act, 1881, and sentenced him to suffer rigorous imprisonment for 1(one) year and to pay a fine of Tk. 1,10,40,000/- (Taka One Crore Ten Lac Forty Thousand) only, and the complainant shall be entitled to get the cheque amount only, and the rest shall be deposited to the Government Exchequer.

Subsequently, for the realization of the fine amount, Respondent No. 1 initiated a Certificate Case against the petitioner under the Public Demand Recovery Act, 1913, in pursuance of the order passed by the learned Assistant Metropolitan Sessions Judge, 5th Court, Dhaka, in Metro Sessions Case No. 517/2006 (corresponding to CR Case No. 602 of 2006). The certificate case was registered as Certificate Case No. 78/ Fine/ 2008 and the Certificate Case No. 78/Fine/2008 is still pending before the Respondent No.1. Hence, the petitioner finding no other equal efficacious remedy invoked this jurisdiction.

Conversely, the Respondent No.2 made an appearance, filing Wokalatnama through the learned Counsel Mr. Azim

Uddin Patwary without any Affidavit-in-opposition to contest the Rule.

Mr. M Atikur Rahman along with Mr. Supan Miah, the learned Counsels, appearing for the petitioner submitted that Section 386 of the Code of Criminal Procedure, 1898 has laid down that whenever an offender is sentenced to pay a fine, the fine can be recovered either by issuing a warrant for the levy of the amount by the attachment and sale of any immovable property belonging to the offender, or by issuing a warrant to the Collector of the District authorizing him to realize fine according to civil process against the movable or immovable property of the defaulter, and in such cases such warrant shall be deemed to be a decree and should be recoverable in accordance with the process of execution of decree applicable to a civil court and hence the initiation of Certificate Case under the Public Demands Recovery Act, 1913 is without any lawful authority and is of no legal effect.

Learned Counsel has further submitted that the trial under the Negotiable Instrument Act 1881, being held under the Code of Criminal Procedure, 1898, the order for realization of fine shall be treated as an order of the Criminal Court, and hence Section 386 of the Code of Criminal Procedure, 1898 shall have to be followed.

Learned Counsel has earnestly submitted that the Rule 201(4) of the Criminal Rules and Orders-2009 has specifically laid down if the Collector is authorized to realize the amount imposed as a fine by a Criminal Court, that shall be realized in accordance with the provisions of Code of Civil Procedure, 1908, and hence the initiation and continuation of the impugned proceedings under the Public Demand Recovery Act, 1913 is without any lawful authority and is of no legal effect.

Mr. Azimuddin Patwary, learned Counsel appearing for the respondent No. 2 in Writ Petition, failed to controvert the submissions made by the learned Counsel for the petitioner on the law point, thus opposed the Rule stating that the Government has the option to realize the fine in favor of the Public Treasury under the periphery of the Public Demand Recovery Act, 1913, and the fine of private individual imposed in the criminal case, however, by filing the execution case to the concerned Civil Court.

On sifting the petition, documents annexed thereto, the admitted position is that the petitioner was convicted and sentenced under Section 138 of the Negotiable Instruments Act, 1881, in the respective session case mentioned above, to suffer the imposed periods of imprisonment and to pay the respective amounts of fines. It is also undisputed that the respective complainant filed the certificate case before the Certificate Officer, Dhaka under the Public Demand Recovery Act, 1913.

It appears that after the initiation of the certificate case, the concerned certificate officer issued a warrant of arrest against the respective petitioner, which was subsequently recalled by the Certificate Officer. The petitioner had served out the sentence of imprisonment. Thus, Section 386(1) and (3) provide for the realization of said fine. The provisions of section 386(1) and 386(3) are to be looked into for disposal of the Rule, which are quoted below-

> "386(1) Whenever an offender has been previously sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may-
>
> (a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender,
>
> (b) issue a warrant to the Collector of the District authorizing him to realize the asset by execution according to civil process against the movable or immovable property or both, of the defaulter:
>
> Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if the offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing is considered necessary to do so.

(2) ---

(3) Where the Courts issue a warrant to the Collector under sub-section (1), Clause (2), such warrant shall be deemed to be a device, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the said Code, be deemed to be the Court which passed the Decree, and all the process of that Code as to the execution of decrees shall apply accordingly:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender."

Moreover, similar provisions have also been taken under Rule 201(4) of the Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), 2009. For a better understanding of the provisions of Rule 201(4), which is relevant for beneficial purposes and quoted below:

(1) ...

(2)...

(3) ---

(4) A warrant issued under clause (b) subsection (1) of section 386 of the Code for the levy of a fine shall be directed to the Collector of the concerned district, authorizing him to realize the amount by execution according to the civil process as provided by the Code of Civil Procedure, 1908.

Under the provisions of section 386(1)(b) of the Code of Criminal Procedure, 1898, if the Court passing the sentence issues a warrant to the Collector of the district authorizing him to realize the fine by execution according to Civil process against the movable and immovable property or both properties of the defaulters, the collector would be treated as the decree holder.

From a plain reading of the provisions of Section 386(3) it is observable that if such warrant is issued to the Collector under Clause (b) of sub-section (1) such warrant shall be deemed to be a decree, and the collector would be the decree-holder, within the meaning of the Code of Civil Procedure, 1908 and he may file an execution case before the concerned and proper Civil Court for the realization of the fine. The proviso to sub-section (3) of section 386 of the Code of Criminal Procedure, 1898 prohibits from issuing a warrant of arrest or detaining in prison to the offender, but in the instant case the collector has yet taken any steps as per section 386(1) and (3) before the concern Civil Court for the realization of fine by filing any execution case, rather the Certificate Officer initiated the certificate case and issued the process against the petitioner by violating of the provisions of section 386 of the Code of Criminal Procedure, 1898.

In this context, we need to consider the objective test as to whether it is possible to inquire into the reasons why, due to any ignorance or mistake in the existing circumstances, the District Collector resorted to the provisions of the Public Demands Recovery Act, 1913, instead of filing an execution suit in the Civil Court. Positively, we find that the original Act of 1881 contained no criminal provision for the dishonor of cheques. Cheque dishonor created only civil liability, meaning the payee could file a money suit, but no criminal prosecution was possible. Later on, Section 138 was introduced by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988, effective from 1989, setting forth the purposes to increase the credibility of cheques, to prevent cheque fraud, and to create criminal liability for dishonor of cheques. These provisions also put the foot upon the shoes of the Code of Criminal Procedure, 1898, whereas the mindset of the authority concerned rested on the previous procedures of the Public Demand Recovery Act, 1913.

In a comparative study of the Indian jurisdiction, we find that they used the fine as compensation under the authority of the provisions of Section 357 of the Code of Criminal Procedure, 1973, which are as follows:

“Section 357(3) in the Code of Criminal Procedure, 1973 -

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced."

Be that as it may, one of the pioneering decisions held by the High Court Division of the Supreme Court of Bangladesh in Golam Morshed (Md) **Vs.** Court of Executive Magistrate and General Certificate Officer, Dhaka and another, (Ref: 20 BLC 120) that,

"Unquestionably, the sentence of fine passed by any criminal Court is not a 'public demand' within the meaning of the Act. As it is not a 'public demand' within the meaning of the Act, the question of realization of the fine amounts through initiation of the certificate case is out of the question. ---(14)"

The case in our hand reveals from the writ petition that the petitioner already served out the punishment for 1(one) year in compliance with the judgment and order of the learned trial Court, but there is no trace of filing an application under Section 386 of the Code of Criminal Procedure, 1898 from the part of the complainant-respondent. Whereas, the complainant–respondent, eschewing the ordinary course of civil adjudication, has directly set the machinery of the Public Demand Recovery Act, 1913 in motion by invoking the jurisdiction conferred hereunder, ostensibly for realization of the alleged claim as a public demand. Pertaining thereto, the paramount question is whether the 'Fine' imposed by the Criminal Court in the case of the Negotiable Instrument Act be deemed as 'Decree' without any exhaustive order passed under the provisions of Section 386(1) of the Code of Criminal Procedure, 1898 (later on be termed as Code); certainly not.

To make it assertive, we find that the trial Court has to exercise power firstly under Sub-section 1(a) of Section 386 of the Code by issuing a warrant for the levy of fine where "Fine" is not a Decree, but in case of failure, it has to exercise the forum of Sub-section 1(b) of Section 386 of the Code authorizing the Collector of the District to realize the fine amount by executing thorough civil process, considering the 'Fine' as a 'Decree', and then the Collector of the District shall exercise the jurisdiction as enshrined in Sub-section 3 of Section 386 of the Code, though the Criminal Court may take action for the recovery of the fine in either or both the way of Sub-section 1(a), and 1(b) of Section 386 of the Code; thus if the Court follows the provisions of Sub-section 1(b) of Section 386 of the Code, it has to be satisfied by following the 'Proviso' of Sub-section 1, clause (b) of Section 386 of the Code, and the Court shall have the obligation to pass a specific order to that effect by authorizing the Collector of the District to exercise the power as a decree-holder as per Sub-section 3 of Section 386 of the Code, otherwise, the fine shall not be considered as a decree and the collector of District will not be able to act as a decree holder.

On sifting the Annexure-B, the impugned judgment and order dated 19.07.2007, it is transpired that the Court directed as, “অত্র রায়ের অনুলিপি বিজ্ঞ সি এম এম, ঢাকা ও বিজ্ঞ জেলা ম্যাজিস্ট্রেট, ঢাকা বরাবরে সদয় অবগতি ও প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য প্রেরণ করা হউক।". So, it is manifested that the Court, without exercising the power vested in it, as preserved in the ‘Proviso’ of Sub-section 1, clause (b) of Section 386 of the Code, sent the judgment to the District Magistrate. More so, there is no contributing factor of the বিজ্ঞ জেলা ম্যাজিস্ট্রেট, ঢাকা, instead of Collector of the District-Dhaka in realization of fine, except in the case of in absentia trial.

Moreover, after due scrutiny we find that section 3(6) of the Public Demand Recovery Act, 1913 has defined 'Public Demand' as any arrear of money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon up to the date on which the certificate is signed under part II, and since the amount recoverable from the Writ Petitioner does not fall within the definition of

'Public Demand' as defined under the Public Demand Recovery Act, 1913.

In the above scenario, **if the Collector of the District is authorized by any competent Criminal Court, as Decree-holder as per Section 386(1)(b) of the Code, they shall have to file an execution suit in the proper Civil Court for execution of the decree. The Civil Court is at liberty to deal with the matter as per the provisions of Order 21 Rule 30 of the Code of Civil Procedure, 1908. The Execution Court has every right to deal with the properties of the judgment-debtor to attach or to make an order against him of committal to civil prison with the due process of law, or both.** In this context, it is congenial to cite a decision of the High Court Division of the Supreme Court of Bangladesh, their Lordships were pleased to hold in Pubali Bank **Vs.** Kolaroa Ice and Cold Storage Ltd., Kolaroa, Sathkhira, and others (54 DLR 216) that-

"After the Judgment debtors in their written objection admitted that they have no properties of their own to

satisfy the decrees, civil imprisonment was the only method for enforcing the decree of payment of money. --- (10)"

Coupled with the above, we find that **if any party relating to a Negotiable Instrument has the option to invoke summary procedure under the provisions of Order 37 of the Code of Civil Procedure, 1908, for the quick disposal of money disputes. Rule 3 of Order 37 of the said Code denotes that, *"A decree passed under this rule may be executed forthwith."* Accordingly, we believe that the decree arising out of Sub-sections 1(b) & 3 of Section 386 of the Code shall have to be executed expeditiously as possible. In that backdrop, the Execution Court need not have a hearing of maintainability and the Complainant-decree holder shall be eligible to appoint his personal lawyer to aid the Government Pleader.**

Considering the above facts and circumstances, we are of the view that the trial Court failed to exercise the obligatory powers vested in it as preserved in Sub-section 1, clause (b), it's 'Proviso' of Section 386 of the Code, and concomitantly, the initiation and continuation of the impugned proceedings taken by the respondents are without any lawful authority and are of no legal effect. Moreover, the impugned proceedings have been initiated in breach of the expressed provisions mentioned in the Code of Criminal Procedure, 1898, and the Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), 2009, which is violative of the petitioner's right to get protection of law as enshrined under Article 31 of the Constitution of the People's Republic of Bangladesh.

Forgoing discussions and observations mandated that all the proceedings of the Certificate Case No. 78/Fine/2008 are hereby declared to have been initiated and preceded without lawful authority and are of legal effect. The respondent No.1 is hereby directed to transmit the records of the said case by concluding its proceeding to the Collector, Dhaka, for the realization of the fine amounts through Execution Suit in the competent Civil Court as per law.

Thereby, all certificate proceedings founded on liabilities under the Negotiable Instruments Act, 1881, and now pending before the respective District Collectors, shall *ipso facto* stand abated by operation of law, with the parties being relegated to the appropriate statutory remedy, namely, execution of warrants under section 386(3) of the Code of Criminal Procedure, 1898; and this declaration shall operate as a judgment *in rem*, binding on all, whether parties to these proceedings or not.

In tandem, there are essences in the Rule Nisi, and the same is hereby made absolute without any order as costs.

Let a copy of this judgment be transmitted to the Collector of Dhaka, and General Certificate Officer, Dhaka (respondent No.1) for information and necessary action, immediately.

Let a copy of this judgment be forthwith transmitted to the Registrar General of the Supreme Court of Bangladesh, who is hereby directed to circulate the same among all learned Sessions Judges, Metropolitan Sessions Judges, and

District Collectors throughout the country for their information, necessary action, and strict compliance.

The Court doth duly acknowledge and appreciate the efforts of the learned Counsels representing both parties.

(Abdur Rahman, J)

K.M. Hafizul Alam, J:

I agree.

(K.M. Hafizul Alam, J)