

**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. 46126 OF 2015

Mohammad Mozahar Showdagor and another
.....Accused-Petitioners.

-VERSUS-

The State and another. ...Opposite Parties.

None appears

..... For the petitioner.

Mr. Syfuzzaman, Advocate

..... For the Opposite Party No.2.

Mr. B.M. Abdur Rafell, DAG with

Mr. Binoy Kumar Ghosh

Mr. A.T.M Aminur Rahman, A.A.Gs.

.....For the State.

Heard and Judgment on: 23.11.2023.

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 Sessions Case No.749 of 2015 arising out of C.R. Case No.453 of 2014 under Section 138/140(1)/140(2) of the Negotiable Instrument Act,1881, now pending before the learned Additional Metropolitan Sessions Judge, 4th Court, Chattogram.

Material facts leading to this Rule are that the allegation brought against the accused-petitioner is punishable under Section 138 of the Negotiable Instrument Act, 1881.

The learned Magistrate took cognizance of the offence. The case is now pending for charge hearing.

Being aggrieved and dissatisfied with the impugned proceedings the accused petitioner preferred the instant application and obtained the present Rule on 18.11.2015.

Despite the matter appears in the cause list for hearing, no one appears to press the rule. However, in presence of Mr. Syfuzzaman, the learned Counsel appearing for the opposite party No.2 and the learned Deputy Attorney General, we are inclined to dispose of the rule on merit.

Mr. Syfuzzaman, the learned Counsel appearing for the opposite party No.2 by filing a counter affidavit submits that the petitioner admitted that he issued the cheque in question voluntarily in favour of the opposite party No.2 in presence of local elite parsons. The petitioner shall get ample opportunity in the concern trial court to prove his case through a proper trial in which the concern trial Court weigh both parties evidence in

support of their cases. Now, the case is pending for charge hearing and at this stage prior framing charge, the Hon'ble Court has lack of scope and jurisdiction to weigh the facts and evidence in this application, hence the Rule is liable to be discharged. In support of his contention he referred the decision reported in 13 MLR (AD) 184 and 62 DLR (AD) 233.

Heard the learned Advocate for the opposite parties and perused the record.

On exploration of the materials on record it transpires that the complainant categorically narrated the manner of crime committed by the accused. Moreso, in defence the accused denied the entire allegations. So, when there is such denial, the question of innocence does not arise with this regard reliance has been placed in the case of Abdur Rahim alias A.N.M Abdur Rahman Vs. Enamul Haq and another reported in 43 DLR (AD) 173. Moreover, we can also rely upon the case reported in 68 DLR (AD) 298 and 72 DLR (AD) 79. All that is required at the stage of framing charge is to see whether the prima-facie case regarding commission of certain offence is made out. In the instant case the accused stand indicted for offence punishable under section 138 of the Negotiable Instrument Act,1881.

Cognizance has been taken under the said section. We have meticulously examined the allegations made by the complainant and we find that the offence punishable under the above offence 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. The pleas of the petitioner is nothing but the defence plea. Be that as it may the proposition of law is now well settled that on the basis of defence plea or materials the criminal proceedings should not be stifled before trial; when there is a prima-facie case for going for trial. In view of such facts, the grounds taken in the petition of Misc. case are not the correct exposition of law. Moreso interruption of the course of Justice will set up a wrong precedent by which the course of justice instead of being advanced readily been stifled inasmuch as the grounds advanced before us are not correct or legal exposition of law. Therefore we hold that there are sufficient grounds for proceeding against the accused for going for trial under the same section. To that end in view we are at one with learned Magistrate regarding taking cognizance against

the accused. In view of the above we failed to discover any merit in this Rule. Thus the Rule having no merit fails.

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

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

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

The office is directed to communicate the judgment at once.

MD. SALIM ,J:

I agree

Hanif/BO