

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

Present

Mr. Justice Ashish Ranjan Das

And

Mr. Justice Md. Riaz Uddin Khan

Criminal Miscellaneous Case No.16122 of 2018

In the matter of:

An application under Section 561A of the Code
of Criminal Procedure.

In the matter of:

Md. Abdul Hannan

...Accused Petitioner

Versus

S.M. Nazmul Huq and another

...Opposite Parties

Mr. Md. Asad Ullah, Advocate

...For the Petitioner

None appears

..... For the opposite party No.1.

Mr. S.M. Asraful Hoque, D.A.G

...For the State

Heard on:21.04.2024 and 28.04.2024

Judgment on:30.04.2024.

Ashish Ranjan Das, J:

Rule under section 561-A of the Code of Criminal
Procedure (for short the Code) was issued in the following
terms:

*“Let a Rule be issued calling upon the opposite
parties to show cause as to why the proceedings in
Special Sessions Case No.83 of 2017 arising out of*

Complaint Register Case No. 1910 of 2014, now pending in the Court of learned Special Judge, Court No.03, Dhaka should not be quashed and/ or pass such other or further order or orders as to this court may seem fit and proper.”

Short fact relevant for the purpose that could be gathered from the file is that the complainant opposite party Mr. S. M. Najmul Huq brought this case under sections 138/140 of the Negotiable Instruments Act, 1881 through his authorized person Mr. Md. Al-Amin.

The case is that this petitioner as accused is claimed to have received a loan of Tk.1,50,00,000/-(One crore fifty lakhs) from the complainant Mr.S.M. Najmul Huq for his business purpose and on the pretext of repayment he issued 3 cheques of 50(fifty) lacs taka each on 07.01.2014, 08.01.2014, 09.01.2014 cheque Nos.CA-50 5241545, CA-50 5241546, CA-50 5241547 and the cheques were placed for encashment on 08.07.2014 and were dis-honoured for inadequacy of fund the sent legal notice but in vain and hence is this case.

Now the case of this accused petitioner is that actually there was no such transaction nor the complainant could actually lend such a huge amount as a public servant.

Secondly, out of the 3 cheques, cheque Nos.CA-50 5241545 dated 07.01.2014 is barred by limitation.

The learned Advocate submitted that this has been brought mixing valid and in valid cheques. As the learned advocate for the petitioner submitted that in the case one Mr. Al-Amin was examined under section 200 of the Code of Criminal Procedure, while Mr. Al-Amin was not the complainant nor the holder of the cheque in due course. Finally Mr. Al-Amin, proceeding the case was not a legal personality since he was not a the power of Attorney holder, while it appears that the complainant Mr. S. M. Najmul Huq himself signed the petition of complaint but he was not examined under section 200 of the Code nor he was conducting the case.

So, the learned lawyer for the petitioner Mr. Md. Ashad Ullah vehemently submitted that all those legal infirmities, the case has become non maintainable and hence the proceeding should be quashed.

The other side seems to have never appeared, although this is a long pending matter and has been occurring in the daily cause list over the period.

Heard the learned advocate for the accused petitioner and perused the entire record.

It appears that the petition of complaint was presented by one Mr. Al-Amin as the authorized agent of the complainant Mr. S.M. Najmul Huq. But he has been presented as the complainant on the strength of a letter of authority written in plain paper. But it has been observed in the case of *Md. Nur Hussain -Vs- Md. Alamgir Alam reported in 37 BLD(AD)2017, page-202* that the agent must be a power of Attorney holder and it did not happen in the case. While he was not examined under section 200 of the Code while presenting the complaint. Therefore, we find convincing substance in in the submission of the learned advocate for the petitioner.

The issue that the original complainant is a public servant and he could not and had no ability to lend 1,50,00,000/- taka. However, the complainant did not disclose that he was a public servant and since this has been a question of fact not to be looked in to in this forum.

Since the person Mr. Al-Amin is not the authorized person under law and since the original complainant

Mr.S.M. Najmul Huq seems to have signed the petition of complaint but not examined under section 200 of the Code of Criminal Procedure, we find the ground quite cogent in law, thus, the petition case appears non maintainable.

As a result, the rule is made absolute. The proceedings in Special Sessions Case No.83 of 2017 arising out of Complaint Register Case No. 1910 of 2014 under sections 138/140 of the Negotiable Instruments Act,1881, now pending in the Court of learned Special Judge, Court No.03, Dhaka is hereby quashed.

The ad-interim order if any is recalled and vacated.

However, the complainant is not prevented from bringing a legal action many other forums provided that he proved the fact of lending such huge amount of money.

Communicate the judgment at once.

Md. Riaz Uddin Khan, J:

I agree.

Bashar,B.O.