

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Miscellaneous Jurisdiction)**

Present:

Mr. Justice Md. Khairul Alam
and
Mr. Justice K.M. Emrul Kayesh

Criminal Miscellaneous Case No. 32433 of 2019.

Md. Nurul Huda

.....Accused-petitioner.

-Versus-

The State and another.

..... Opposite parties.

Md. Kaiser Zahid Bhuiyan, Advocate.

..... For the petitioner.

Mr. Ziaul Haque Sarker, Advocate

..... For the opposite party No.02.

**Heard on: 30.01.2025 &
Judgment on: 13.02.2025.**

Md. Khairul Alam, J:

This Rule was issued calling upon the opposite parties to show cause as to why the proceeding of Sessions Case No. 8869 of 2018 arising out of C.R. Case No. 260 of 2017 (Doublemooring Thana) under section 138/140 of the Negotiable Instruments Act, 1881 (shortly, the NI Act) now pending in the Court of Joint Metropolitan Sessions Judge, 3rd Court, Chattogram should not be quashed and or pass such other or further order or orders as to this Court seem fit and proper.

Relevant facts for disposal of the Rule are that IFCO Garments and Textiles Ltd. is a limited company engaged in the garments business. In the course of business, the company took loan from Al-Arafa Islami Bank Limited. To adjust the liability the company issued a cheque bearing No.1092242 dated 05.09.2016 amounting to Taka 1,98,08,000/- in favour of the bank. On presentation, the cheque was dishonoured on 03.01.2017 for insufficiency of funds. Notice calling upon the drawer to pay the amount covered by the cheque was issued on 01.02.2017. But, there was no positive response from the side of the drawer. Hence, Al-Arafa Islami Bank Limited as complainant filed C. R. No. 260 of 2017 (Double Mooring) under sections 138/140 of the NI Act before the Court of Joint Metropolitan Sessions Judge, 3rd Court, Chattogram implicating six persons as accused including the petitioner, showing the petitioner as the director of the company. Accordingly, the process was issued and the petitioner obtained bail. Subsequently, on 28.03.2019 charge was framed and the next date of the case was fixed on 03.06.2019 for the witness. In the meantime, the bank as the plaintiff filed Artha Rin Suit No. 04 of 2017 impleading the petitioner and others for the realization of the loan.

Against this backdrop, the petitioner moved before this Hon'ble Court and obtained the Rule and an order of stay of the proceeding.

Mr. Md. Kaiser Zahid Bhuiyan the learned Advocate appearing for the petitioner has submitted that the cheque is a post-dated blank cheque that was given to the bank as security against the credit facilities, the impugned proceeding using the said post-dated blank cheque, according to the petitioner is illegal. He has next submitted that the bank, being a financial institute, is barred under the provision of the Artha Rin Adalat Ain, 2003 to file any case/suit except an Artha Rin Suit. He has next submitted that since the bank has already filed an Artha Rin Suit against the petitioner claiming the amount, covering the amount of the cheque, the impugned proceeding is double jeopardy.

Mr. Ziaul Haque Sarker, the learned Advocate appearing for the opposite party No. 2 has submitted that all the issues raised by the petitioner in this case have already been settled by this court, despite the said fact the petitioner filed this case only to delay the proceeding.

We have carefully considered the submissions of the learned Advocates for the contending parties and perused the other materials on record.

At first, we have to adjudicate whether proceeding using a post-dated cheque given as security against credit facilities is maintainable or not.

Section 21C of the NI Act is regarding anti-dating and post-dating cheques. Therefore it would be necessary to peruse the provision of section 21C of the NI Act. The said section 21C runs as follows:

“ **21C. Anti-dating and post-dating-** A promissory note, bill of exchange or cheque is not invalid by reason only that it is ante-dated or post-dated:

Provided that anti-dating and post-dating does not involve any illegal or fraudulent purpose or transaction.”

On a plain reading of the said provision, it appears that a cheque will not be invalid because of that it is ante-dated or post-dated. When dealing with the issue our Apex Court in 17 BLC (AD) 177 decided the issue in the following manner:

“Sub-section (1) of section 138 has not made any qualification of the cheque so returned unpaid either post-dated given as a security for repayment of the loan availed by a loanee as alleged by the drawer for encashment currently. When the legislature has not made any difference between a post-dated cheque issued as security for the repayment of the loan availed by the loanee, here the petitioners, as argued by Mr. Chowdhury and a cheque issued for encashment currently, we do not see any scope of making any such difference.”

Therefore, we do not find any merit in the first contention of the petitioner that the impugned proceeding using the blank post-dated security cheque is illegal.

The next point to be decided is despite filing an Artha Rin Suit by a financial institution against the petitioner on the same issue whether this criminal case is maintainable or not.

In the case of Eastern Bank Limited vs. Md. Shirajuddula, reported in 72 DLR (AD) 79 the Apex Court deals with the issue. In the said case, Eastern Bank Limited, being a financial institution filed an Artha Rin Suit as well as a criminal case under

section 138 of the NI Act for the same purpose and the same cause of action i.e. recovery of loan. The accused of that case prayed for quashing the proceeding contending the same as not maintainable and double jeopardy. The Apex Court settled the issue holding that the pendency of a civil suit will not hinder the proceedings of a criminal case and vice versa.

By placing a supplementary affidavit the learned Advocate for the petitioner informed this court that during the pendency of this Rule, on 16.02.2020, by filing an application under section 43 of the Companies Act, 1994 the petitioner prayed for rectification of the share register by excluding his name. In the said application the petitioner alleged that the Managing Director of the Company forging the signature of the petitioner included his name as the director of the company. Accordingly, Company Matter No. 34 of 2020 was initiated and the same is still pending for disposal. The learned Advocate then submitted that the petitioner was implicated in the case as a director of the company, but the directorship of the petitioner is under challenge in a competent court, therefore, to avoid multifarious complicity the impugned proceeding is liable to be quashed.

Therefore, the last issue that we have to adjudicate is whether the pendency of a company matter can be considered as a basis for quashing a criminal proceeding.

Admittedly, there is no clear guideline as to which criminal proceedings should be quashed in the exercise of the inherent power of section 561A of the Code because the limit of this power is constantly changing through various judicial pronouncements. Considering the existing judicial pronouncements, the following conditions can be considered for quashing of any proceedings:

1. If after accepting the allegation made in the complaint or the F.I.R. entirely do not, prima faice, disclose any offence.
2. The allegations made in the complaint or the F.I.R., though disclose the offence, but the proceeding is barred under the law.
3. Where there is no specific provision in the law for redress of the grievance for the aggrieved party.
4. To prevent abuse of the process of the court or otherwise to secure the ends of justice.

In the present case the company took a loan and to adjust the liability the company issued a cheque. On presentation, the cheque was dishonoured, and the statutory notice was served without any positive response. As per the petition of complaint, at that relevant time, the petitioner was the director of the company. Therefore, the petition of the complaint disclosed the offence against the petitioner clearly. It is not the case of the petitioner that this case is barred under any law or that the trial court has no jurisdiction to try the case. Therefore, the impugned proceeding does not satisfy any of the above conditions of quashing the proceedings. The issue of the directorship of the petitioner in the company is a disputed question of fact to be ascertained at the time of trial by taking evidence and therefore, such a question cannot be decided in a proceeding under section 561A of the Code in view of the decision of this court in the case of Abdul Quader Chowdhury vs State reported in 28DLR(AD)38 wherein it was held that where an assessment of evidence is involved the case cannot be quashed. In the case of Eastern Bank Limited vs. Md. Shirajuddula, we have already observed that our apex court is still of the view that the pendency of a suit of a civil nature will not hinder the proceedings of a criminal case and vice versa.

It may be put on record that whatever observations we have made, have been made for the disposal of this Rule only, and will have no bearing on the decision of the trial court in disposing the case in accordance with the law.

In view of the above discussions, we do not find any merit in the Rule.

Accordingly, the Rule is discharged without any order as to costs.

The order of stay passed at the time of issuance of the Rule is hereby recalled and vacated.

Communicate a copy of the judgment and order to the concerned Court at once.

K.M. Emrul Kayesh, J

I agree