

**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. 14889 of 2014.**

Md. Abdul Quddus Makhan

.....Accused-petitioner.

-Versus-

The State and another.

..... Opposite parties.

None appears.

..... For the petitioner.

Mr. Najmul Karim, Advocate

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

**Heard on: 30.01.2025 &**

**Judgment on: 06.02.2025.**

**Md. Khairul Alam, J:**

This Rule was issued calling upon the opposite parties to show cause as to why the proceeding of C.R. Case No. 460 of 2011 (Dhanmondi) under section 138 of the Negotiable Instruments Act, 1881 (shortly, the NI Act) now pending in the Court of Chief Metropolitan Magistrate, Dhaka 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 the accused petitioner obtained credit facilities from the complainant bank. To

adjust the liability the accused issued a cheque bearing No.549270 dated 12.12.2010 amounting to Taka 9,70,220/-. On presentation, the cheque was dishonoured on 12.12.2010 for insufficiency of funds. Notice calling upon the drawer to pay the amount covered by the cheque was issued on 14.12.2010. But, there was no positive response from the side of the drawer. Hence, the complainant filed C. R. No. 460 of 2011 (Dhanmondi) under section 138 of the NI Act before the Court of Chief Metropolitan Magistrate, Dhaka. Accordingly, the process was issued and the petitioner obtained bail.

Being aggrieved by and dissatisfied with the aforesaid proceeding the petitioner moved before this Hon'ble Court and obtained the Rule and an order of stay of the impugned proceeding.

No one appears to support the Rule.

On perusal of the petition, it appears that the petitioner mainly relied upon two separate grounds, firstly, 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 blank post-dated cheque, according to the petitioner is illegal, secondly, the bank has already filed an Artha Rin Suit against the

accused claiming the amount covers the amount of the cheque, therefore the impugned proceedings is double jeopardy.

Mr. Najmul Karim, the learned Advocate appearing for the opposite party No. 2-bank 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 proceedings. In support of the submissions, he refers to several decisions of this Court.

We have gone through the criminal miscellaneous case and perused the materials on record as well as the cited cases as referred to by the learned Advocate for the opposite party No.2.

At first, we have to adjudicate whether a 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 whether the pendency of Artha Rin Suit against the accused on the self-same issue is double jeopardy 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 the bank 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 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.

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**

