

LEX/BDHC/0026/2016

Equivalent Citation: 21BLC(2016)388

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION)

Criminal Miscellaneous Case No. 32945 of 2014

Decided On: 17.01.2016

Appellants: **Abu Sayeed Chowdhury**
Vs.

Respondent: **State and Ors.**

Hon'ble Judges:

A.K.M. Asaduzzaman and Md. Ashraful Kamal, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Shah Monjurul Hoque, Advocate

For Respondents/Defendant: Forhad Ahmed, D.A.G.

JUDGMENT

A.K.M. Asaduzzaman, J.

1. This Rule was issued calling upon the opposite parties to show cause as to why the proceeding of Sessions Case No. 1346 of 2014 arising out of CR Case No. 709 of 2013 (Kotwali Zone) under section 138 of the Negotiable Instruments Act, (NI Act) 1881, now pending in the court of Metropolitan Sessions Judge, Chittagong should not be quashed. Fact relevant for disposal of the rule are that the opposite party No. 2 as complainant filed CR Case No. 709 of 2013 before the Court of Metropolitan Magistrate (Kotwali Zone), Chittagong against the accused petitioner alleging inter-alia that the accused petitioner took loan from the complainant opposite party Bank for the purpose of business and subsequently, for repayment of the outstanding loan amount, the accused petitioner issued cheque No. 3819814 dated 17-9-2012 in favour of the complainant opposite party No. 2 bank for amount of Taka 1,20,00,000. Thereafter the opposite party No. 2 presented the cheque for encashment but the same was dishonoured for insufficient fund on 31-1-2013. Subsequently on 11-2-2013 the opposite party bank sent a legal notice to the accused petitioner requesting him to pay the cheque amount, but the accused petitioner was unable to repay the same and make reply of the legal notice due to unreachability of the said notice, hence the case.

2. In view of the said petition of complaint after taking cognizance against the accused petitioner under section 138 of the Negotiable Instruments Act, 1881, the case was transmitted to the Court of Metropolitan Sessions Judge, Chittagong for hearing and registered as Sessions Case No. 1346 of 2014.

3. The petitioner appeared before the court and obtained bail and thereafter the petitioner filed an application under section 561-A of the Code of Criminal Procedure and obtained the instant Rule along with order of stay.

4. The learned advocate appearing for the petitioner submits that the opposite party No. 2 complainant filed Artha Rin Suit No. 1 of 2013 on 1-1-2013 for recovery of loan amount of the instant case and subsequently filed instant case being CR No. 709 of 2013 on 24-3-2013 malafide and continuation of 2 cases for realization of same

money can not be tenable in law. He further submits that the cheque was issued for repayment of outstanding loan amount is contrary to the provisions laid down in section 138 of the NI Act, so the proceedings initiated under sections 138 and 140 of the NI Act, is redundant and not supported by law and is liable to be quashed. He further submits that the continuation of the instant section 138 of the NI Act and the Artha Rin Suit for recovery of outstanding amount in connection with the same loan transaction are double jeopardy against the accused petitioner, hence the impugned proceeding is liable to be quashed.

5. Mr. Omar Sadat, the learned advocate appearing for the Bank-opposite party No. 2 drawing our attention to a number of cases namely in the case of SAB Solaiman Ali vs. Rangs Industries Ltd. reported in 1 LG (AD) 20, in the case of Majed Hossain vs. State reported in 17 BLC (AD) 177, the case of Khondaker Mahtabuddin Ahmed vs. State reported in 49 DLR (AD) 132 and in the case of Monzur Alam (Md) vs. State reported in 55 DLR (AD) 62 submits that the matter in issue in this rule has already been settled by our Appellate Division and at present there is nothing in law precluding a criminal case on account of civil suit pending against the petitioner on the same facts. The criminal case stands for the offence, while the civil suit is for realization of money. Both can stand together. In the premises since there is nothing to interfere in this rule, he thus prays for discharging the rule.

6. Heard the learned advocate of both the sides and perused the record.

7. In this rule, the main contention is that the complainant-opposite party No. 2 since has already initiated a case for realization of money under Artha Rin Adalat Ain, whether out of the same transaction and on the same matter a criminal proceeding under section 138 of the NI Act can proceed or not.

8. By now our apex Court has already taken a view on the point.

9. In the case of Khondaker Mahtabuddin Ahmed vs. State reported in 49 DLR (AD) 132 their Lordships has already held that:--

"The charge-sheet and other materials indicate that there is a prima facie case of criminal offence against the petitioners and others. Again there is nothing in law precluding a criminal case on account of a civil suit pending against the petitioners on the same facts. The criminal case stands for the offence, while the suit is for realization of money. Both can stand together".

10. Relying upon the said decision our Apex Court further confirmed the finding of the High Court Division in the case of SAB Solaiman Ali vs. Rangs Industries Limited reported in 1 LG (AD) 20 and observed that:

"The High Court Division however, agreed with the submission made on behalf of the respondent company that civil liability and criminal liability were quite different and both civil and criminal case can continue simultaneously as the money suit was for realization of money and the criminal case was for the criminal offence and there was no legal bar to continue both civil and criminal cases simultaneously and for this reason the rule was liable to be discharged."

11. In the case of Monzur Alam (Md) vs. State reported in 55 DLR (AD) 62, their lordships held that:--

"Under section 138 of the Negotiable Instruments Act an offence is committed if a cheque is dishonoured and if payment is not made within 15

days after receipt of a legal notice. It is a settled law that criminal proceeding can be proceeded independently of the civil suit."

12. Thus in the instant Rule, we find the opposite party-Bank has instituted a suit for realization of money, which is a civil suit but the instant criminal proceedings under section 138 of the Negotiable Instruments Act has filed as on and when the cheque was presented to the bank and was ultimately returned as dishonoured due to insufficiency of fund and subsequently on the demand of the petitioner, the opposite party failed to re-pay the out standing loan within stipulated time, the criminal offence has thereby deemed to have constituted under section 138 of the Negotiable Instruments Act. In view of the above law and circumstances, we find that the Artha Rin Suit is for realization of money and the instant criminal case under section 138 of the Negotiable Instruments Act is for the offence committed by the petitioner on dishonoured the cheque. In view of the above settled law of our Appellate Division, since the criminal proceeding can be proceeded independently of the civil suit, there is no bar to proceed with the instant criminal proceedings.

13. Regard being had to the above law, fact and circumstances we find no merit in this rule to quash the proceeding. In the result, the Rule is discharged and the order of stay granted earlier is hereby vacated and recalled.

Communicate the judgment at once.

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