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IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CRIMINAL MISCELLANEOUS JURISDICTION)

Dated: The 19th day of October, 2022

Present:

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice Md. Bazlur Rahman

CRIMINAL MISCELLANEOUS CASE NO. 34783 OF 2014 (Arising out of Metro Sessions Case No. 6880 of 2013 arising out of C.R. Case No. 1864 of 2011, now pending before the Joint Metropolitan Sessions Judge, 6th Court, Dhaka.)

And

In the matter of:

Gopal Chandra Borman, Son of- Ridoy Kumar Borman, Managing Director, M/S Winter Collection Limited, Of village- House No- 14 (3rd floor), Road No- 30, Sector-7, Police Station- Uttora, District- Dhaka. Permanent Address- Of village- Bhelakopa, Post- Talukjomira, Police Station- Polashbari, District- Gaibandha.

..... Accused-Petitioner
(On Bail)

-Versus-

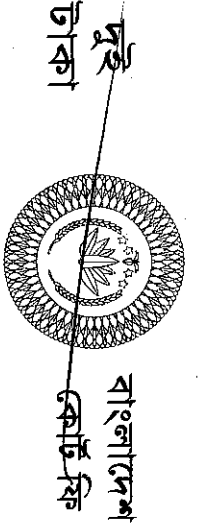
1. The State.

.....Opposite Party

2. Sonali Bank Limited, 35-44, Motijheel C/A, Dhaka. Represented by it's Officer, Md. Alamgir Kabir Bhuiah, Executive Officer, Sonali Bank Limited, Dilkusha Corporate Branch, Dhaka.

.....Complainant-
Opposite Party

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- 2 -

Present

Mr. Justice Md. Jahangir Hossain
And
Mr. Justice Md. Bazlur Rahman

Criminal Miscellaneous Case No. 34783 of 2014

In the matter of:

Gopal Chandra Borman
-----Accused-Petitioner.
-Versus-
The State and another
-----Opposite-parties.

No one appears
----- For the Petitioner.
Mr. Faysal Mustafa, Advocate

--- For the Opposite Party No.02.

Mrs. Yesmin Begum Bithi, D.A.G with
Mrs. Mst. AsmaKhatun, A.A.G with
Mr. ATM AminurRahman, A.A.G
-----For the State.

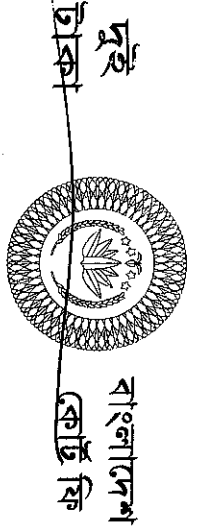
Heard on 31.08.2022.

Judgment on 19.10.2022.

Md. Jahangir Hossain, J:

This Criminal Miscellaneous Case No. 34783 of 2014 has been filed under section 561A of the Code of Criminal Procedure 1898. The Rule was issued on 02.09.2014 as " let a Rule be issued calling upon the

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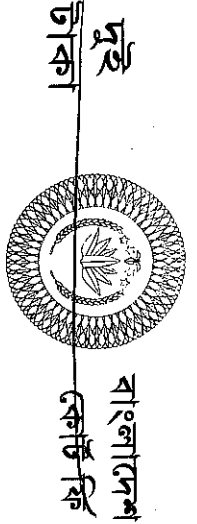


- 3 -

Opposite parties to show cause as to why the Metro Session Case No. 6880 of 2013 arising out of C.R Case No. 1864 of 2011, under sections 138 of the Negotiable Instrument Act, 1881, now pending in the Court of Learned Joint Metropolitan Sessions Judge, 6th Court, Dhaka should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

The relevant facts of the case is a complaint filed by the opposite party No.2, Sonali Bank Limited being Metro Session Case No. 6880 of 2013 arising out of C.R Case No. 1864 of 2011 before the learned Chief Metropolitan Magistrate Court, Dhaka against the accused petitioner under section 138 of Negotiable Instruments Act, 1881. The complainant carrying on banking business and the accused is the Managing Director of the Company named M/S. Winter Collection Limited. Accused petitioner No.2 took loan from the complainant bank and the accused petitioner did not paid the said loan amount according to the condition of the loan sanction. There was a shortage of goods in the factory for why the petitioner issued a security

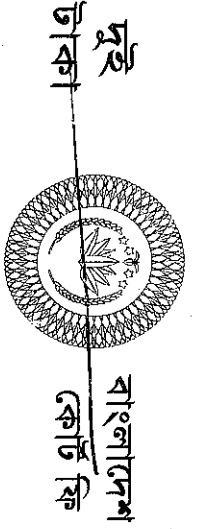
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— 4 —

post dated cheques as security on 23.03.2011 after discussion with the bank. The complainant sent a legal notice through his lawyer for payment of the said cheque amount but the petitioner did not paid the aforesaid cheque amount. Lastly, the complainant opposite party filed the instant petition of complaint before the learned Chief Metropolitan Magistrate Court, Dhaka against the present accused petitioner under section 138 of Negotiable Instruments Act, 1881. The accused petitioner lastly filed this application under section 561A of the Code of Criminal Procedure challenging the proceedings of Metro Session Case No. 6880 of 2013 arising out of C.R Case No. 1864 of 2011 under section 138 of Negotiable Instruments Act. The main ground taken by the accused petitioner in this petition that the complainant filed suit against the accused petitioner under section 4 of the Artha Rin Adalat Ain, 2003 for recovery of the loan of the financial institution. In the instant case, the opposite party No.2 preferred the case under section 138 of Negotiable Instrument Act for recovery of loan which is barred under

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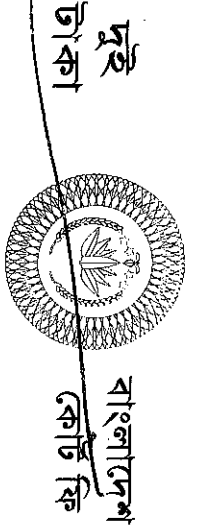


section 5(1) of the Ain,2003. But the trial court illegally framed charged against the petitioner which is abuse of the process of court and the impugned proceedings is liable to be quashed.

At the time of hearing no one appeared on behalf of the petitioner to press the Rule.

Mr. Faysal Mustafa, learned Advocate appeared on behalf of the Opposite-Party No. 02 Sonali Bank limited submits that the complainant filed the complaint against the accused petitioner as per statute i.e., under section 138 of Negotiable Instruments Act, 1881 which was properly accepted by the court and the charge has been framed against the accused petitioner as per law. The grounds taken by the accused petitioner in this application or the miscellaneous case all are disputed question of facts which cannot be decided at this stage under section 561A of the Code of Criminal Procedure. Further he submits that the matters and the grounds taken in this case all are already settle by our Apex Court as such, he prayed for discharging

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the Rule. In support of his submission he referred 25 *BLC(HCD) p-568* where it is held-

“ It is now as well settled law that criminal proceedings can be proceeded independently of the civil suit and 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 civil suit is for the offence, while the civil suit is for realization of money. Both can stand together.”

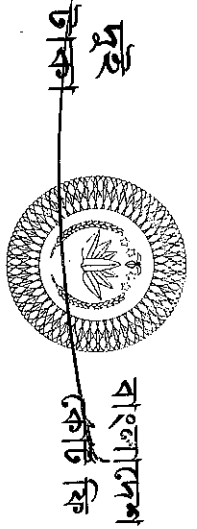
Further, he referred 25 *BLC(HCD) p-568*, where it is held-

“ Institution of the artha rin suit is not valid a ground for quashment of or interference with the proceeding in the Sessions Case under section 138 of the Act. The issues raised in an Artha Rin Suit are confined to the realization of money along with the interest thereon. The suit does not involve any criminal liability. On the other hand, a case under section 138 of the Act involves a strict criminal liability which means that, the offence thereunder, may not involve a means rea and institution of an artha rin suit does not exempt of the offender from the criminal of liability being the penalty of a maximum imprisonment of 1(one) year or specified quantum of fine or both. ”

Lastly, he referred 16 *ADC p-239* where it is held-

“ Whether a commercial bank can filed a case under section 138 of the Negotiable Instruments Act(in short, the Act) in respect of dishonour of a post dated cheque taken from a borrower despite taking collateral security from the borrower. ”

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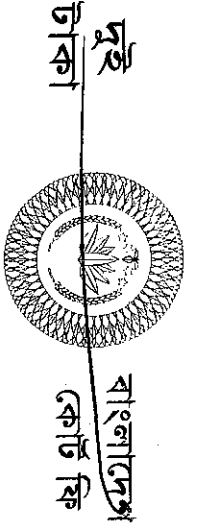
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We have carefully scrutinized the application filed by the accused petitioner under section 561A and other relevant annexures with the record. It transpires to us the ground taken by the accused petitioner are all settle by this time by our apex court and this all matters also refers by filing the decisions of our apex court by the opposite party. On the other hand it is now are settle law that criminal proceedings can be proceeded independently of the civil suit and there is nothing in law precluding a criminal case on account of a civil suit pending against the petitioner on the same fact. Furthermore, the statement made in the application and the grounds taken by the petitioner this all are disputed question of fact which may examine by the trial court. There is no other statement and materials in the application for considering the matter in this case. As such, we do not find any merit in the Rule.

Accordingly, the Rule is discharged.

The order of stay granted earlier by this Court is hereby vacated.

N/A



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Office is directed to communicate this judgment and order to the court concerned at once.

Md. Jahangir Hossain

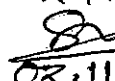
Md. Bazlur Rahman, J.

I agree.

B. Rahman

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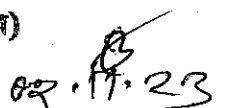
সহকারী রেজিস্ট্রার

বাংলাদেশ সুপ্রীম কোর্ট হাইকোর্ট বিভাগ

(১৮৭২ ইং সনের ১ম আইনের)

৭৬ ধারামতে ক্রমতা প্রাপ্ত


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