

Criminal-Question No-03 (Criminal Part):

Safdar issued a cheque dated 01.01.2008/01.01.2020 for the amount of Tk. 5 lacs in business transaction in favour of Shahnawaz. In the meantime dispute arose in between Safdar and Shahnawaz and Safdar informed his bank not to honour the aforesaid cheque. Shahnawaz on 05.01.2008/05.01.2020 presented the same for encashment. But the cheque was returned on the next day with an endorsement "payment stopped by the drawer". Shahnawaz issued a legal notice to Safdar on 10.01.2008/20.02.2020 and Safdar received the same on 14.01.2008/25.02.2020 Shahnawaz filed a case against Safdar on 16.02.2008/22.03.2020 in the Court of Chief Metropolitan Magistrate, Dhaka who took cognizance against Safdar and also framed charged under section 138 of Negotiable Instruments Act.

Prepare an application for quashing the proceedings under section 561A of the Code of Criminal Procedure on behalf of Safdar. (8th July 2006, 30th November 2007, 24th July 2009).

প্রশ্নটি বাংলায় (ফৌজদারী) ঃ সফদার তাহার ব্যবসায়িক লেনদেন এর ব্যাপারে ০১.০১.২০২০ ইং তারিখে ড্র করা ৫ লক্ষ টাকার একটি চেক জনাব শাহনাজের অনুকূলে ইস্যু করেন। ইতোমধ্যে জনাব সফদার এবং জনাব শাহনাজের মধ্যে বিবাদের সৃষ্টি হয় এবং জনাব সফদার তাহার ব্যাংকে উপরোক্ত চেকটি পরিশোধ না করার জন্য জানাইয়া দেন। শাহনাজ ০৫.০৫.২০০৮/০৫.০১.২০২০ ইং তারিখে উক্ত চেকটি নগদায়নের জন্য ব্যাংকে উপস্থাপন করেন। কিন্তু চেকটি পরের দিন এই মন্তব্য সহ ফেরৎ পাঠানো হয় যে "ড্রয়ার কর্তৃক চেক পরিশোধ করা বন্ধ করিয়া দেওয়া হইয়াছে। শাহনাজ ১০.০১.২০০৮/২০.০২.২০২০ ইং তারিখে সফদারকে লিগ্যাল নোটিশ দেয় এবং সফদার উহা ১৪/০১/২০০৮/২৫/০২/২০২০ ইং তারিখে উহা গ্রহণ করে। শাহনাজ ১৬.০২.২০০৮/২২:০৩.২০২০ ইং তারিখে সফদারের বিরুদ্ধে ঢাকার মহানগর হাকিমের আদালতে একটি মামলা দায়ের করে যিনি সফদারের বিরুদ্ধে অপরাধ আমলে নেন এবং নেগোশিয়েবল ইন্সট্রুমেন্ট এ্যাই এয় ১৩৮নং ধারায় একটি অভিযোগ গঠন করেন।

মামলার কার্যক্রমের ইতি ঘটানোর কোয়াশ করার জন্য ফৌজদারী কার্যবিধি আইনের ৫৬১-ক ধারায় সফদারের পক্ষে মামলার কার্যক্রম কোয়াশ করার জন একটি দরখাস্তের খসড়া তৈরী করুন।

(৮ই জুলাই ২০০৬, ৩০শে নভেম্বর ২০০৭ ২৪শে জুলাই, ২০০৯)

Answer to the question No. 03 (Criminal)

DISTRICT: DHAKA.

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CRIMINAL MISCELLANEOUS JURISDICTION)

CRIMINAL MISCELLANEOUS CASE NO. OF 2022

IN THE MATTER OF

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

AND

IN THE MATTER OF:

Safdar

Son of Jamal Uddin: of 107/A
Green Road; Police Station:
Dhanmondi;

District- Dhaka.

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

-VERSUS-

1. Shahnawaz, Son of Kamal
Hossain, of IS Free School Road,
Police Station- Dhanmondi,
District- Dhaka.

Complainant-Opposite party.

2. The State

Opposite party.

AND

IN THE MATTER OF:

Quashing the proceeding of Metro./
Metropolitan Sessions Case No.
2345 of 2020 arising out of C.R.
Case No 789 of 2020 under section
138 of the Negotiable Instruments
Act, 1881, now pending in the
Court of Chief Metropolitan
Magistrate, Dhaka.

To

Mr. Justice Hasan Foez Siddique, the Hon'ble Chief Justice of Bangladesh
and his Companion Justices of the said Hon'ble Court.

The humble petition of the petitioner above named
most respectfully-

SHEWETH:

1. That this application under section 561A of the Code of Criminal Procedure, 1898 has been filed challenging and Quashing the proceeding of Metro: Sessions Case No. 2345 of 2020 arising out of C.R. Case No. 789 of 2020 under section 138 of the Negotiable Instruments Act, 1881, now pending in the Court of Chief Metropolitan Magistrate, Dhaka.

2. That the opposite party No.1 (Shahnawaz) as complainant filed a complaint petition in the Court of Chief Metropolitan Magistrate, Dhaka on 22.03.2020 under section 138 of the Negotiable Instruments Act, 1881 against the accused-petitioner stating inter alia that there are business transactions between Safdar and Shahnawaz and it was stipulated that the Shahnawaz will give some goods to Safdar in exchange of which Satdar issued a cheque dated 01.01.2020 for an amount of Taka 5,00,000.00 (five lacs) only. But Shalinawaz failed to transmit goods to Safdar in due time for which Sardar stopped payment against the said cheque by requesting the concerned Bank. Shahnawaz presented the cheque in the Bank on 05.01.2020 For encashment but the cheque was returned on the next day with an endorsement "payment stopped by the drawer". There after Shahnawa issued a legal notice to Safdar on 20.20.2020 and Safdar received the same time on 25.02.2020 and even after receipt the said legal notice Safdar did not give Tk. 5,00,000 (five lacs) to Shahnawaz and then the opposite party being complainant filed the instant case.

Certified copy of the said petition of
complaint is annexed hereto and marked
as ANNEXURE-'A'.

3. That the complainant (Shahnawaz/Mr.A) was examined dated 22.03.2020 under section 200 of the Code of Criminal Procedure and upon taking cognizance under section 138 of the Negotiable Instrument Act by the Chief Metroplitan Magistrate, Dhaka and warrant of arrest was issued against the accused- petitioner.

4. That on 04.04.2020 the accused-petitioner had surrendered before the chief Metropolitan Magistrate, Dhaka and obtained bail.

Certified copy of the said order sheet is
annexed hereto and marked
ANNEXURE- 'B'. 85

5. That it is stated that the case was fixed on 05.05.2020 for charge Luring and the accused petitioner filed an application for time for the same; but the learned Court rejected the said time petition arbitrarily without any cogent reason and illegally jamed charge against the accused petitioner on that date which is an abuse of the process of the court and as such the proceedings of the instant case should be quashed

Certified copy of the said order of framing charge is annexed herewith and marked as ANNEXURE- 'C'.

6. That on the petitioner submitted a petition under Section 241(A) of the Code of Criminal Procedure to discharge from the case but no order to this effect was passed as the order sheet is silent on this point and the charge against the accused-petitioner was framed under section 138 of the Negotiable Instrument Act. Certified copy of the said petition under section 241(A) and order sheet of the CMM are annexed herewith and marked as ANNEXURE 'D' & 'D-1' respectively.

7. That it is submitted that the learned Court has taken cognizance of the offence without taking oath from the complainant opposite party No. 1 which is the violation of the mandatory provision of law and as such the proceedings is an abuse of the process of the Court and is liable to be quashed.

8. That it is respectfully submitted that the offence under Section 138 of N. I. Act, 1881 (amended as 2006) shall triable by the Court of Session, the Chief Metropolitan Magistrate has no jurisdiction to frame charge against the petitioner under above mentioned section and thus the continuation of the impugned proceeding is absolutely abuse of the process of the law and therefore the same is liable to be quashed to secure the ends of Justice.

9. That it is submitted that the petition of complaint is not amenable to the mandatory provisions of law and as such being abuse of the process of the Court is liable to be quashed.

10. That being aggrieved by and dissatisfied with the instant proceeding having been proceeded with quite illegally the accused petitioner begs to move this application before your Lordships on the following amongst other-

GROUND

I. For that the proceeding of this case is bad in law as well as in facts and circumstances, and as such the same is liable to be quashed.

II. For that the offence under Section 138 of N. I. Act, 1881 (amended as 2006) shall triable by the Court of Session, the Chief Metropolitan Magistrate has no Jurisdiction to frame charge against the petitioner under above mentioned section and thus the continuation of the impugned

proceeding is absolutely abuse of the process of the law and therefore the same is liable to be quashed to secure the ends of Justice.

III. For that the learned Court has taken cognizance of the offence without taking oath from the complainant opposite party No. 1 which is the violation of the mandatory provision of law and as such the proceedings is an abuse of the process of the Court and is liable to be quashed.

IV. For that the case has been filed out of malafide intention and only to harass and humiliate the accused-petitioner by abusing process of the court. Hence, proceeding of the impugned case is liable to be quashed.

V. For that the instant proceeding is not maintainable being abuse of the process of the Court since the accused-petitioner was not examined under the mandatory provision of section 242 without considering his application under section 241A of the Code of Criminal Procedure.

VI. For that the proceeding of the impugned case is illegal, Improper, unreasonable and unjust. Hence, the proceeding is liable to be quashed for ends of justice.

WHEREFORE it is most humbly prayed that your Lordships would graciously be pleased to issue Rule calling upon the opposite parties to show cause as to why the proceeding of Metro/ Metropolitan Sessions Case No. 2345 of 2020 arising out of C.R. Case No 892000 under section 138 of the Negotiable Instruments Act, 1881, now pending in the Court of Chief Metropolitan Magistrate, Dhaka was quashed, call for the record and hearing the parties, perusing the record and the cause shown, if any, be pleased to make the Rule absolute and/or pass such other or further order or orders as to your lordships may deem fit and proper.

AND

Pending hearing of the rule your Lordships may kindly be pleased to stay the operation of the proceedings of the instant case.

And for this act of kindness the petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Shahnawaz, son of Kamal Hossain and Most Hasna Begum, of 15 Free School Road, Police Station-Dhanmondi, District- Dhaka, aged about 35 years, by Faith-Muslim, by Profession Business, by Nationality- Bangladeshi by birth, ID No. 111222333444 do hereby solemnly affirm and say as follows :-

1. That I am the cousin/brother of the accused petitioner and Tadbirkar of this case and am fully acquainted /conversant with the facts and circumstances of the case and am competent to swear this affidavit.
2. That the statements of facts made in this petition are true to my knowledge and matters of records which I verily believe to be true and the resents are submissions before this hon'ble court.

(Md. WXYWXYXYXY)

Advocate

EPONENT

The deponent is known to me and
identified by me.

Md. XYXYXYXY

Solemnly affirmed before me by the
said deponent on this the 07th day
of July, 2022 at 11 AM.

Advocate

Membership No.

Room No

COMMISSIONER OF AFFIDAVIT
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.