8 SCOB [2016] HCD 100

HIGH COURT DIVISION

Criminal Misc. Case No. 2893 of 2016
With
Criminal Misc. Case No. 2895 of 2016
With
Criminal Misc. Case No. 2896 of 2016
With
Criminal Misc. Case No. 2897 of 2016
With
Criminal Misc. Case No. 2898 of 2016
With
Criminal Misc. Case No. 2899 of 2016

Md. Sirajuddwla
…Petitioner
(In all cases)

Versus

The State and another
…Opposite parties
(In all cases)

Mr. Sk. Abu Musa Muhammad Arif, Advocate
…for the petitioner
(In all cases)

Mr. Sabel Newaz, Advocate
…for the opposite party no. 2
(In all cases)

Heard on: 16.11.2016
Judgment on: 20.11.2016

Present:
Mr. Justice A.K.M. Asaduzzaman
And
Mr. Justice Zafar Ahmed

Article 35 (2) of the Constitution of Bangladesh
and
Section 403 of Code of Criminal Procedure, 1898
The principle of double jeopardy:

The principle of double jeopardy, as argued before us, has been incorporated in Article 35(2) of the Constitution and the concept is firmly established in section 403 of the Cr.P.C. The principle protects a person from trial for the same offence for which he has already been convicted or acquitted (*autrefois convict* or *autrefois acquit*). The protection is available only when both the proceedings are for criminal proceedings and both the prosecutions are for the same offence. Here, we are dealing with two proceedings– one is criminal and the other is civil. Therefore, the principle of double jeopardy has no manner of application to the issue in hand.

... (Para 17)

The proposition of law, which is no longer a *res integra*, is that a criminal case and civil suit, though arising out of the same transaction, can proceed simultaneously.

... (Para 18)

Code of Criminal Procedure, 1898
Section 344:
It is not an invariable rule that there cannot be any parallel proceedings on the same facts in Criminal and Civil courts. At the same time, section 344 of the Cr.P.C. vests power upon the Court to postpone or adjourn criminal proceedings 'for any other reasonable cause'. Thus, proceedings in Criminal Court should be stayed or adjourned where identical issues based on same facts as in criminal cases are involved in suits pending in Civil Court.

... (Para 38)

Negotiable Instruments Act, 1881
Section 138:
and
Artha Rin Adalat Ain, 2003
Section 41:
and
Code of Criminal Procedure, 1898
Section 344, 561A:
In the case in hand, a sentence of fine under section 138 of the Act, 1881 may result in a proceeding of execution of decree (section 386(3) of the Cr.P.C.). Again, the same person may face an execution of decree proceeding under the Artha Rin Adalat Ain, 2003 for the same loan transactions which may together exceed the actual claimed amount. If the accused decides to file appeal against the sentence of fine as well as the decree passed in Artha Rin Suit, he has to deposit 50% of the amount of the dishonoured cheque and 50% of the decretal amount which in aggregate would almost cover the claimed amount. This may lead to unjust enrichment and thus, the inconvenience through legal process may lead to absurdity. The ends of justice and fairness demand that the process of law must not be allowed to cause or result in 'absurd inconvenience'. ... For the reasons discussed above, the case in hand, in our view, falls within the category of rarest of rare cases where an order of stay of the criminal proceedings under the Act, 1881 during pendency of the Artha Rin Suit which are between the same parties and over the same loan transactions, should be passed to give effect to section 344 of the Cr.P.C. in order to prevent abuse of the process of the Court and to secure the ends of justice.

...(Para 41 & 43)

Judgment

Zafar Ahmed, J:

1. Separate Rules were issued in the instant applications filed under section 561A of the Code of Criminal Procedure in which the accused-petitioner has prayed for quashing the respective proceedings under section 138 of the Negotiable Instruments Act, 1881. In all the cases the parties are same, they arise out of similar facts and the issue involved for adjudication is identical. Hence, they are heard together and disposed of by this single judgment.

2. Md. Sirajuddula, who is the accused in all the cases, has filed the instant applications. The proceedings in question are now pending in the Court of Additional Metropolitan Sessions Judge, Court No.3, Chittagong.

3. In **Criminal Miscellaneous Case No. 2893 of 2016**, the proceedings of Sessions Case No. 593 of 2013 arising out of C.R. Case No. 1540 of 2012 have been challenged.

4. In **Criminal Miscellaneous Case No. 2895 of 2016**, the proceedings of Sessions Case No. 253 of 2013 arising out of C.R. Case No. 1498 of 2012 have been challenged.

5. In **Criminal Miscellaneous Case No. 2896 of 2016**, the proceedings of Sessions Case No. 592 of 2013 arising out of C.R. Case No. 1521 of 2012 have been challenged.

6. In **Criminal Miscellaneous Case No. 2897 of 2016**, the proceedings of Sessions Case No. 354 of 2013 arising out of C.R. Case No. 1005 of 2012 have been challenged.

7. In **Criminal Miscellaneous Case No. 2898 of 2016**, the proceedings of Sessions Case No. 674 of 2013 arising out of C.R. Case No. 1480 of 2012 have been challenged.

8. In **Criminal Miscellaneous Case No. 2899 of 2016**, the proceedings of Sessions Case No. 586 of 2013 arising out of C.R. Case No. 1550 of 2012 have been challenged.

9. The opposite party no.2 Eastern Bank is the complainant of all the C.R. cases. Facts of the cases are almost similar. The accused-petitioner obtained credit facility from the complainant bank. In order to discharge the loan liability, he gave separate cheques to the bank which, on presentation to the bank for encashment, were dishonoured on ground of insufficiency of fund. Following compliance of the statutory procedure laid down in section 138 of the Negotiable Instruments Act, 1881 (in short, 'the Act, 1881') the bank filed the respective C.R. cases against the accused. The cases were ultimately transferred to the Court of Additional Metropolitan Sessions Judge, Court No.3, Chittagong for disposal.

10. The proceedings have been challenged and sought to be quashed not on the ground of any violation of the provisions of section 138 of the Act, 1881 rather, mainly on two separate grounds, firstly, the cheques are post dated blank cheques which were given to the bank as security against the loan, and the bank subsequently filled in the cheques and used them at its own sweet will which, according to the petitioner, is illegal and secondly, the bank has already filed Artha Rin Suit against the accused claiming the amount which also covers the value of the cheques in question. It has been argued that the bank is not allowed to pursue two separate proceedings for the same cause of action and for the same purpose *i.e.* recovery of loan which amounts to double jeopardy and unjust enrichment.

11. The learned Advocate for the petitioner made submissions in support of the Rules. On the other hand, the learned Advocate for the opposite party bank opposed the Rules. We have heard the learned Advocates of both sides and perused the materials on record.

12. Section 6 of the Act, 1881 defines a cheque as a "bill of exchange drawn on a specified banker and not expressed to be payable otherwise on demand". A cheque is a negotiable instrument. There are some presumptions regarding a cheque under the Act, 1881. As to date, the presumption of law is that every cheque bearing a date was made or drawn on such date (section 118(b)). This presumption has to be read in conjunction with section 20 under which presumption is made in favour of the holder of a cheque which was delivered to him blank or incomplete that the drawer has given *prima facie* authority to him to make or complete it, as the case may be, into a negotiable instrument for the amount, if any specified therein, or where no amount is specified, for the amount, not exceeding, in either case, the amount covered by the stamp. Again, every negotiable instrument is presumed to be made or

drawn for consideration and it so accepted, indorsed, negotiated or transferred for consideration (section 118(a)). When a negotiable instrument is made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction (section 43).

13. It is a common scenario that the bank/financial institution files a case under section 138 of the Act, 1881 against the borrower stating that the cheque in question was given to it to repay the instalment(s) towards adjustment of the loan liability. The accused, who is also the borrower, moves this Division invoking its inherent power to quash the proceedings on the grounds that the cheque in question is a post-dated security cheque; that it was a blank cheque; that it was an undated cheque; that it was obtained by the bank prior to issuance of the loan sanction advice and disbursement of the loan instalment(s) and hence, no consideration passed when the borrower was compelled to sign the blank undated cheque; that it was obtained through undue influence, coercion or that the borrower was under duress and had no option but to sign the blank cheque albeit sufficient property was mortgaged as security against the loan; that the cheque was signed for purposes other than as a method of realisation of loan etc. By raising these points the accused attempts to argue that the cheque in question cannot be treated as a cheque within the meaning and ambit of the Act, 1881. Some of these points are simply irrelevant. Some other points involve resolution of disputed question of facts which cannot be determined without taking evidences. Inevitably, this Division refuses to exercise its inherent power to quash the proceeding.

14. Suffice it to say that once it is proved that the complainant has filed the case after compliance of the provisions of the section 138 of the Act, 1881 and that the cheque has been executed by the accused, the presumptions laid down in section 118 of the Act, 1881 and other presumptions discussed hereinbefore come into operation in favour of the complainant. It is then for the accused to establish his defence by adducing evidences to rebut the presumptions to be absolved of the criminal liability.

15. It is a common practice that the bank/financial institution takes recourse to section 138 of the Act, 1881 and simultaneously files a suit against the borrower under the Artha Rin Adalat Ain, 2003 (in short, 'the Ain, 2003') for recovery of loan. Invariably, the accused in the criminal proceeding is also a defendant in the civil suit. The accused in the criminal proceedings, while invoking the inherent power of this Division under section 561A of the Code of Criminal Procedure, raises the above mentioned points and in addition takes a plea that the criminal proceedings under the Act, 1881 is barred by the *non-obstante* clause contained in section 5 of the Ain, 2003 and that to allow the criminal proceedings to continue along with the civil suit would amount to double jeopardy. The case in hand falls within this scenario.

16. It has been stated in the instant applications that on 31.07.2012, the complainant bank as plaintiff filed Artha Rin Suit No. 90 of 2012 before the Court of the Artha Rin Adalat No. 1, Chittagong against the petitioner and another for recovery of Tk. 39,12,98,043.39. The said suit is still pending. The amount claimed in the suit covers the value of the cheques and that both the Artha Rin Suit and the instant criminal cases arise out of the same loan transaction. The learned Advocate for the complainant bank does not dispute this factual matrix.

17. The principle of double jeopardy, as argued before us, has been incorporated in Article 35(2) of the Constitution and the concept is firmly established in section 403 of the Cr.P.C. The principle protects a person from trial for the same offence for which he has already been convicted or acquitted (*autrefois convict* or *autrefois acquit*). The protection is

available only when both the proceedings are for criminal proceedings and both the prosecutions are for the same offence. Here, we are dealing with two proceedings– one is criminal and the other is civil. Therefore, the principle of double jeopardy has no manner of application to the issue in hand.

18. The proposition of law, which is no longer a *res integra*, is that a criminal case and civil suit, though arising out of the same transaction, can proceed simultaneously. ***Monzur Alam (Md) vs. State and another*** 55 DLR (AD) 62 and ***Shamsul Islam Chowdhury vs. Uttara Bank*** 11 BLC 116 are authorities on the point.

19. Parliament enacted the Artha Rin Adalat Ain, 2003 (in short, 'the Ain, 2003') for recovery of loans given by the financial institution. 'Financial Institution' includes banks and financial institution established under the Financial Institutions Act, 1993. Section 5(1) of the Ain, 2003 states that notwithstanding anything contained in any other law, all suits relating to recovery of loan of a financial institution shall be filed and disposed of in Artha Rin Adalat. Referring to section 5 of the Ain, 2003, it has been argued, which we have already noted, that because of the *non obstante* clause contained in the section, the financial institution is barred from filing a criminal case under the Act, 1881 for dishonour of cheque which is essentially also a mode for recovery of loan.

20. The argument is misconceived. Proceeding under section 138 of the Act, 1881 is for trial of the offence although it is *quasi* civil and criminal in nature. It would be seen at later part of the judgment that the proceeding serves two fold purposes– trial of the offence and recovery of the value of the dishonoured cheque. But payment of the amount of dishonoured cheque by the accused to the complainant or recovery of the same during the pendency of the criminal case does not absolve the accused of the criminal liability nor the proceeding is dropped automatically for this reason unless the complainant opts for non-prosecution of the case. If the offence is proved, and the accused is found guilty, the payment of money can be considered as a mitigating factor and the Court shall certainly take into account of the same so far as sentencing is concerned.

21. It follows from the above discussions that the criminal proceeding under the Act, 1881 cannot be throttled on the ground of pendency of Artha Rin Suit or even after ending the suit in decree in favour of the bank/ financial institution.

22. So far as permissibility as to simultaneous civil and criminal proceedings is concerned, the position in India is no different. The Indian position on the issue is succinctly stated in S. Krishnamurthi Aiyar's *'Law Relating to The Negotiable Instruments Act'* (10th Ed.) where at pp. 760-761 the author observed by referring to Indian case laws that,

> "The filing of civil suit and criminal proceedings are the alternate remedies available to the complainant and they create different types of rights in the complainant which he can legally proceed in the Court. The civil and criminal proceedings are not only different but also they are independent from each other. Simply because a suit has been decreed in a case of dishonoured cheque, that *ipso facto* does not decide criminal proceedings and *vice-versa*. It is so for the reason that in such matter in criminal proceedings, relief would be for punishing a person for the offence committed whereas, in civil proceedings, the relief would be for the amount of the bounced cheque and thus, for the same matter the remedies/ reliefs under Civil Law and Criminal Law are different and independent. Section 138 of N.I. Act being a quasi civil

> and criminal nature, it would be wrong to say that under section 138 proceedings could not have been launched at all by the complainant because of the pendency of the civil suit. Ultimately at the most if the complainant is successful in getting the fruits of the decree in the civil suit, it would be helpful only as a mitigating circumstance while imposing sentence under section 138 of Negotiable Instruments Act." *(underlining is ours)*

23. Be it noted that in India there is no analogous law to that of Artha Rin Adalat Ain.

24. In ***Majed Hossain and others vs. State*** 17 BLC (AD) 177 an issue was raised as to whether a proceeding under section 138 of the Act, 1881 would lie against the drawer of the unpaid/dishonoured cheque(s) when the accused obtained the loan by creating equitable mortgage and the complainant had the option to recover the loan money by selling the mortgaged property. The apex Court observed,

> "A close reading of sub-section (1) of section 138 of the Act, 1881 shows that it has nothing to do with the recovery of loan amount. The whole scheme of the law as discussed hereinbefore, is to haul up the drawer of the unpaid/ dishonoured cheque(s) for not arranging the funds against the issuance of such cheques(s) and then its/ his failure to make the payment of the amount of the money of the unpaid/ dishonoured cheque(s) on demand by the payee or, as the case be, by the holder in due course of the cheque(s) in writing within thirty days of the receipt of such notice as provided in clauses (b) and (c) respectively of sub-section (1) of section 138 of the Act, 1881."
>
> *(emphasis supplied)*

25. The decided cases in our jurisdiction have echoed the Indian view that section 138(1) has nothing to do with the recovery of loan amount and the proceeding is for trial of the offence for dishonour of the cheque. The inevitable conclusion that follows from the decided cases is that there is no bar upon the bank/financial institution to file criminal case under section 138 of the Act, 1881 and at the same time civil suit under the Artha Rin Adalat Ain, 2003 for recovery of the loan amount.

26. Be that as it may, the settled proposition of law does not answer the issue in hand which is whether the bank can simultaneously proceed with the criminal proceedings under the Act, 1881 and the civil suit filed under the Ain, 2003. The answer to the issue requires a comparative study of the relevant laws of both India and Bangladesh.

27. In India, section 138 is not divided into any sub-sections. It contains a proviso and an 'explanation'. Originally, in Bangladesh the provisions of section 138 were identical to those of Indian section 138. However, by Act No. XVII of 2000 dated 6th July, the words "for discharge in whole or in part, of any debt or other liability" contained in main body of section 138 in Bangladesh were repealed. The 'explanation' to the section was also omitted. The omitted 'explanation' stated that, *"For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability"*. By the amending Act, sub-sections (2) and (3) were also added to section 138 in Bangladesh. Thus, section 138, as it now stands in Bangladesh, is divided into three sub-sections. In India, the words *"for discharge in whole or in part, of any debt or other liability*" are still contained in the section and 'explanation' has not been amended. Both in India and in Bangladesh the Act, 1881 has been subjected to various amendments. However, those amendments have no bearing upon the adjudication of

the issue in hand. In spite of the amendments to section 138 in Bangladesh, the elements or conditions precedent to the commission of the offence of dishonour of cheque have remained similar to those of Indian law except some minor differences which have no impact upon the main ingredients of the offence.

28. Sub-sections (2) and (3) of section 138 of our law, which are absent in Indian law, run thus:

> (2) Where any fine is realised under sub-section (1), any amount up to the face value of the cheque as far as is covered by the fine realised shall be paid to the holder. *(emphasis supplied)*
>
> (3) Notwithstanding anything contained in sub-sections (1) and (2), the holder of the cheque shall retain his right to establish his claim through civil Court if whole or any part of the value of the cheque remains unrealized.

29. Fine referred to in sub-section (2) may extend to thrice the amount of the cheque, or both. In India the fine may extend to twice the amount of the cheque.

30. Fine or part of fine received or recovered from the convict is deposited with the Treasury (rule 602 of the Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), 2009). Whenever a Criminal Court imposes a fine, or a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order that the whole or any part of the fine recovered to be applied in the payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court (section 545(1)(b) of the Cr.P.C.). Section 117 of the Act, 1881 provides rules for determination of compensation payable in case of dishonour of a cheque etc.

31. Generally, fine imposed by a Criminal Court cannot be equated with or treated as compensation. Section 545 of the Cr.P.C. deals with circumstances in which fine can be converted into compensation and paid to the person who sustained loss or injury caused by the offence. Special penal law may contain provisions regarding distribution of fine. For example, section 15 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 provides that,

> 15z **ভবিষ্যৎ সম্পত্তি হইতে অর্থদন্ড আদায়।-** এই আইনের ধারা ৪ হইতে ১৪ পর্যন্ত ধারাসমূহে উল্লিখিত অপরাধের জন্য ট্রাইব্যুনাল কর্তৃক আরোপিত অর্থদন্ডকে, প্রয়োজনবোধে, ট্রাইব্যুনাল অপরাধের কারণে ক্ষতিগ্রস্ত ব্যক্তির জন্য ক্ষতিপূরণ হিসাবে গণ্য করিতে পারিবে এবং অর্থদন্ড বা ক্ষতিপুরনেণর অর্থ দন্ডিত ব্যক্তির নিকট হইতে বা তাহার বিদ্যমান সম্পদ হইতে আদায় করা সম্ভব না হইলে, ভবিষ্যতে তিনি যে সম্পদের মালিক বা অধিকারী হইবেন সেই সম্পদ হইতে আদায়যোগ্য হইবে এবং এইরূপ ক্ষেত্রে উক্ত সম্পদের উপর অন্যান্য দাবী অপেক্ষা উক্ত অর্থদন্ড বা ক্ষতিপূরণের দাবী প্রাধ্যন্য পাইবে।

32. Another example is section 35 of the রিয়েল এস্টেট উন্নয়ন ও ব্যবস্থাপনা আইন, ২০১০ which runs as under:

> 35z **BcjuLa Ab h¡Vez-** (১) এই অধ্যায়ের অধীন দোষী সাব্যস্ত ও দন্ডিত ডেভেলপারের নিকট হইতে অর্থ দন্ড বাবদ কোন অর্থ আদায় হইলে আদালত আদায়কৃত অর্থর অনূর্ধ্ব ৫০% ক্ষতিগ্রস্ত ভূমি মালিক বা ক্ষেত্রমত, ক্রেতার অনুকূলে এবং অবশিষ্ট অংশ রাষ্ট্রের অনুকূলে প্রদান করার আদেশ দিতে পারিবে।

(2) Bc¡ma Ef-ধারা (১) এর অধীন বন্টন সম্পর্কিত কোন আদেশ প্রদান না করিলে সমcu Ab রাষ্ট্রের অনুকূলে জমাকৃত হইবে।

33. Under sub-section (2) of section 138 of the Act, 1881 fine is paid to the holder for the amount up to the face value of the cheque so far as covered by the fine and thus, this provision is an exception to the general principle regarding fine that fine or part of fine, if paid or recovered, is deposited with the Treasury.

34. The sub-section (2) was added to section 138 in 2000, but the offence was triable by a Court of Metropolitan Magistrate or a Magistrate of the first class. It caused a practical problem. A Metropolitan Magistrate or first class Magistrate has the power to impose fine up to Tk. 10,000/-. Cases, in which, the value of the cheque exceeded Tk. 10,000/-, a Magistrate could not impose fine for the entire amount. To remove this anomaly, section 141 of the Act, 1881 was amended by the Act No. III of 2006 and now, the offence is tried by a Court not inferior to that of a Court of Sessions. By the said amending Act, section 138A was inserted by which it has been made a condition precedent to deposit 50% of the amount of the dishonoured cheque before filing an appeal against the order of sentence. No deposit is required under the Indian law to file an appeal against order of sentence.

35. We have already noted that the corresponding Indian Negotiable Instruments Act, 1881 does not contain any analogous provision contained in section 138(2) of our Act, 1881. The offence under section 138 in India is tried by a Metropolitan Magistrate or a Judicial Magistrate of the first class who cannot impose a sentence of fine exceeding Rs. 10,000/- (previously it was Rs. 5,000/-). In a deserving case where the Magistrate thinks that the complainant must be compensated with his loss, he can resort to the course indicated in section 357 of the Indian Cr.P.C. (similar provisions albeit not the same are contained in section 545 of our Cr.P.C.). The power of awarding compensation to the complainant has been dealt within two phases in section 357 of Indian Cr.P.C. When sentence of fine is imposed, the trial Court as well as the appellate Court can order the whole or any part of the fine recovered to be paid by way of compensation if any loss or injury is caused by the offence. Under section 357(3), compensation can be ordered only when a Court imposes a sentence, of which fine does not form a part. There is no limit for awarding compensation. Thus, in ***Pankajhai Nagjibhai Patel vs. State of Gujrat*** AIR 2001 SC 567 the Indian Supreme Court retained the sentence of imprisonment of six months, but deleted the fine portion from the sentence and directed the accused to pay compensation of Rs. 83,000 to the complainant.

36. Reverting back to the law of our land, we note that the legislature did not use the word 'compensation' in section 138(2) and hence, it intended the added sub-section (2) of section 138 as a mode for recovery of the amount of the dishonoured cheque although section 138(1) has nothing to do with the recovery of the same. Thus, the criminal proceeding under the Act, 1881 in our jurisdiction serves two purposes, firstly, to punish the offender, and secondly, to recover the value of the cheque as compensation in the name of fine, if the same is not yet paid to the holder. The absence of analogous provision in Indian law suggests that in India the purpose of the criminal proceeding under the Act, 1881 is to try and punish the offender only. In India fine is not equated with compensation.

37. There is another aspect of the scenario. To recapitulate, the adjudication involves a situation where the bank has filed criminal case under section 138 of the Act, 1881 as well as civil suit against the same accused under the Artha Rin Adalat Ain over the same loan transaction(s). If the accused is awarded a sentence, he has to deposit 50% of the amount of

the dishonoured cheque to file an appeal. Again, if the Artha Rin Suit is decreed in favour of the bank, the same accused being a defendant has to deposit 50% of the decretal amount to file the appeal.

38. The above discussions and comparative study of the relevant laws of India and Bangladesh pose an important question– whether the criminal proceeding under section 138 of the Act, 1881 should be stayed pending the Artha Rin Suit which are between the same parties and over self same loan transactions or they can proceed simultaneously. It is not an invariable rule that there cannot be any parallel proceedings on the same facts in Criminal and Civil courts. At the same time, section 344 of the Cr.P.C. vests power upon the Court to postpone or adjourn criminal proceedings 'for any other reasonable cause'. Thus, proceedings in Criminal Court should be stayed or adjourned where identical issues based on same facts as in criminal cases are involved in suits pending in Civil Court (***Vasu Vydier vs. State of Kerala***, 1975 CrLJ 494, 497 (Ker)). If the object of the criminal proceedings, instituted while a civil suit in respect of the same matter is pending, is in reality to prejudice the trial of the civil suit by a preliminary enquiry into the subject matter of the suit or to coerce the accused to authorise a compromise, it will only be just and fair to stay the criminal proceedings (***Shaikh Davud vs. Yusuff,*** (1954) Travan 1326).

39. It is often found that laws enacted for the general advantage do result in individual hardship and inconvenience; for example laws of Limitation, Registration, Attestation although enacted for the public benefit, may work injustice in particular cases but that is hardly any reason to depart from the normal rule to relieve the supposed hardship or injustice in such cases.

40. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results. According to BRETT, M.R., the inconvenience necessitating a departure from the ordinary sense of the words should not only be great but should also be what he calls an "absurd inconvenience" (***R. vs. The Overseers of the Parish of Tonbridge*** (1884) 13 QBD 339).

41. In the case in hand, a sentence of fine under section 138 of the Act, 1881 may result in a proceeding of execution of decree (section 386(3) of the Cr.P.C.). Again, the same person may face an execution of decree proceeding under the Artha Rin Adalat Ain, 2003 for the same loan transactions which may together exceed the actual claimed amount. If the accused decides to file appeal against the sentence of fine as well as the decree passed in Artha Rin Suit, he has to deposit 50% of the amount of the dishonoured cheque and 50% of the decretal amount which in aggregate would almost cover the claimed amount. This may lead to unjust enrichment and thus, the inconvenience through legal process may lead to absurdity. The ends of justice and fairness demand that the process of law must not be allowed to cause or result in 'absurd inconvenience'.

42. The accused-petitioner did not make any application before the trial Court for adjournment of the criminal proceedings. In the instant applications, he has invoked the inherent power of the High Court Division under section 561A of the Cr.P.C. to quash the criminal proceedings. We have already held that the criminal proceedings under the Act, 1881 cannot be throttled on the ground of pendency of the Artha Rin Suit. In the instant applications, the petitioner has not made any prayer for adjournment of the criminal proceedings till disposal of the Artha Rin Suit.

43. The inherent power of the High Court Division can be exercised: (a) to make such orders as may be necessary to give effect to any order under the Code, or (b) to prevent abuse of the process of any Court, or (c) to otherwise to secure the ends of justice. It is now settled principle of law established through judicial pronouncements that the inherent power has to be exercised sparingly with circumspection and in the rarest of rare cases. For the reasons discussed above, the case in hand, in our view, falls within the category of rarest of rare cases where an order of stay of the criminal proceedings under the Act, 1881 during pendency of the Artha Rin Suit which are between the same parties and over the same loan transactions, should be passed to give effect to section 344 of the Cr.P.C. in order to prevent abuse of the process of the Court and to secure the ends of justice.

44. Hence, it is ordered that the proceedings of the respective C.R. cases shall remain stayed till disposal of the Artha Rin Suit No. 90 of 2012 now pending in the Court of Artha Rin Adalat, Chittagong. Adjournment *sine die* is not in accordance with law. Therefore, if the Artha Rin Suit is stayed or adjourned at the instance of the accused-petitioner, the order of stay shall stand vacated and the proceedings of the respective C.R. cases shall continue.

45. With the above observations and directions, the Rules are disposed of.

46. There is no order as to costs.

47. Communicate the judgment at once.