

3 SCOB [2015] HCD 119**High Court Division
(Criminal Revisional Jurisdiction)**

Criminal Revision No.263 of 2012

Mr. Alal Uddin, Advocate

... For the petitioners

Md. Feroj Miah and another

...Accused-Petitioners

Mr. Delowar Hossain Somaddar, D.A.G

... For the State

-Versus-

Heard on: 29.07.2015

Judgmenton:30.07.2015

The State

...opposite party

Present:**Mr.Justice Bhabani Prasad Singha****And****Mr.Justice S.M. Mozibur Rahman****Druta Bichar Tribunal Act, 2002****Section 10:**

In this case remarkably the government does not deny the fact of failure of conclusion of trial of the Druta Bichar Tribunal Case No.07 of 2006 within the stipulated time. As per the provision of section 10 of the Druta Bichar Tribunal Act, 2002, the trial of a Druta Bichar Tribunal Case is to be concluded within 135 days from the date of receipt of the case for trial. No option for the court is left therein except sending the case back to the original court in the event of failure on the part of the tribunal to conclude trial of the case within the stipulated period. ... (Para 9)

Judgment**Bhabani Prasad Singha, J:**

1. This Rule was issued calling upon the opposite party to show cause as to why the impugned order no.182 dated 09.10.2011 passed by the Druto Bichar Tribunal No.2, Dhaka in Druta Bichar Tribunal Case No.07 of 2006 arising out of Uttara P.S. Case No.40 dated 29.01.2005 under sections 302/34/107/109/307/ 326/380/458/459/411 of the Penal Code should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. The facts leading to this Criminal Revision case under section 439 read with section 435 of the Code of Criminal Procedure, 1898 are that on 29.01.2005 at about 16.15 hours the informant Mrs. Sayda Hamid lodged an FIR in the local police station against the 5 FIR named accused-petitioners and 14/15 others under section 302 of the Penal Code stating, inter alia, that out of previous enmity over a road, on 29.01.2005, the FIR named 5 accused-persons and 14/15 others entered into the house of the informant cutting the grill and at one stage, attacked her husband and daughter Fashrana and took away various articles including gold ornaments worth Tk.2,60,000/- only. The victims were taken in to Dhanmondi Central Hospital for treatment and from there they were referred to Bangabandu Medical Collage

Hospital for better treatment and there her husband died and her daughter was ultimately cured, hence the case.

3. After investigation police submitted charge sheet against 10 accused-persons including the accused-petitioners under sections 449/452/458/459/380/427/326/302/302/109/34 of the Penal Code.

4. Thereafter, the case was transferred to the Court of Metropolitan Sessions Judge, Dhaka and subsequently, was transferred to the Court of Druta Bichar Adalat No.2, Dhaka for trial and disposal. On 05.09.2012 an application was filed on behalf of the accused-petitioners to send the case records from the Court of Druta Bichar Adalat No.2, Dhaka to the Court of Metropolitan Sessions Judge, Dhaka stating that more than 170 working days have already expired in the Court of Druta Bichar Adalat No.2, Dhaka. After hearing the petition vide the impugned order dated 09.10.2011 the learned Judge of the Druta Bichar Adalat No.2, Dhaka rejected the said application.

5. It is against the impugned order dated 09.10.2011 the petitioners preferred this Criminal Revision Case under section 439 read with section 435 of the Code of Criminal Procedure and obtained the Rule.

6. Mr. Alal Uddin, the learned Advocate representing the accused-petitioners submits that the impugned order being bad in law and in fact is liable to be set aside; that Druta Bichar Adalat No.2, Dhaka although did not deny expiry of 170 days in holding trial of the case illegally rejected the said application. The learned Advocate prays for making the Rule absolute on setting aside the impugned order.

7. On the other hand, Mr. Delowar Hossain Somadder, the learned Deputy Attorney General representing the State opposed the Rule.

8. Heard the submissions of the learned Advocates representing the parties and perused the materials on record including the Annexues attached to the revisional application.

9. The record shows that on 23.05.2006, the record of the Druta Bichar Tribunal Case No.07 of 2006 was received by the learned Judge of the Druta Bichar Tribunal No.2, Dhaka. Order No.47 dated 27.11.2006 shows that 120 working days for disposal of the case was expired and that the learned Judge of the Druta Bichar Tribunal No.2, Dhaka extended another 15 days in view of that for trial of the case. Subsequently, 29.11.2006, 30.11.2006 and 04.12.2006 were fixed for hearing of the case. On 28.10.2010, the learned public prosecutor filed a petition for withdrawal of the case in respect of the accused-persons Joynal Abedin Molla, Shahin Molla, Sharif Molla, Humayun Kabir and Iqbal Siddique which was allowed vide order no.136 dated 03.01.2011 and the order no.136 dated 28.12.2010 was vacated. Challenging the order No.136 dated 03.01.2011, the accused-persons Joynal Abedin Molla, Shahin Molla, Sharif Molla, Humayun Kabir and Iqbal Siddique preferred Criminal Miscellaneous Case No.14653 of 2011 in the High Court Division and the proceedings of Druta Bichar Tribunal Case in respect of the said 3 accused-persons was stayed for six months from 29.05.2011. It is stated in the said order that the proceedings of the case will go on in respect of the other accused-persons as usual (Ref: Order No.164 dated 19.06.2011). On 05.09.2012 an application on behalf of the accused-persons Firoz Miah and Ali Ashraf Sarker was filed under section 10 of the Druta Bichar Tribunal Ain, 2002 praying for sending the case back to the original court as per section 4 of the Act stating that the trial of the case

could not be concluded within the stipulated time. In this case remarkably the government does not deny the fact of failure of conclusion of trial of the Druta Bichar Tribunal Case No.07 of 2006 within the stipulated time. As per the provision of section 10 of the Druta Bichar Tribunal Act, 2002, the trial of a Druta Bichar Tribunal Case is to be concluded within 135 days from the date of receipt of the case for trial. No option for the court is left therein except sending the case back to the original court in the event of failure on the part of the tribunal to conclude trial of the case within the stipulated period. The learned Advocate for the petitioners further submits that in Criminal Miscellaneous Case No.14653 of 2011 vide judgment dated 30.01.2014 the proceedings of Druta Bichar Tribunal Case No.07 of 2006 arising out of Uttara P.S. Case No.40 dated 29.01.2005 corresponding to G.R. Case No.40 of 2005 under sections 302/307/326/380/458/859/411/34/109 of the Penal Code in respect of the accused-persons Joynal Abedin Molla, Iqbal Hossain, Sharif has been quashed and they have been discharged from the case.

10. We perused the judgment passed in Criminal Miscellaneous Case No.14653 of 2011 bringing the record of that case from the record room and found truth in the submission of the learned Advocate for the accused-persons.

11. In view of the discussion made here above, we find merit in the instant Criminal Revision Case and we hold that the learned Judge of the Druta Bichar Tribunal No.2, Dhaka wrongly passed the order under challenge.

12. In the light of discussion made here above, we find merit in the instant Criminal Revision Case and as such, we are inclined to make the Rule absolute.

13. In the result, the Rule is made absolute. The impugned Order no.182 dated 09.10.2011 passed by the Druta Bichar Tribunal No.2; Dhaka in Druta Bichar Tribunal Case No.07 of 2006 is hereby set aside.

14. The interim order passed at the time of issuance of the Rule stands vacated.