

In the Supreme Court of Bangladesh
High Court Division
(Criminal Miscellaneous Jurisdiction)

Criminal Miscellaneous Case No. 23990 of 2014

In the matter of:

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

-And-

In the matter of:

Md. Habibur Rahman and others

..... Accused-Petitioners

-Versus-

The State

.....Opposite Party

No one appears

.....for the petitioners

Mrs. Mahbuba Sultana with

Mr. Belal Hossain, Advocates

.....for the opposite party

Mr. Dr. Md. Bashir Ullah, D.A.G with

Mr. B.M Abdur Rafel, D.A.G

Mr. Mizanur Rahman Shaheen, A.A.G

Mr. Md. Shafayet Zamil, A.A.G

Ms. Syeda Jahida Sultana (Ratna), A.A.G and

Mr. Md. Ashikuzzaman Bablu, A.A.G

.....for the State

Present:

Mr. Justice Jahangir Hossain

And

Mr. Justice Mohi Uddin Shamim

Judgment delivered on 16.06.2021

Jahangir Hossain, J:

By order dated 18.05.2014 this Court issued a Rule calling upon the opposite party to show cause as to why the order dated 25.09.2013 passed by the learned Sessions Judge, Bogra rejecting the Criminal Revision No. 398 of 2013 and thereby affirming the order dated 27.08.2013 passed by the learned Additional Chief Judicial Magistrate, Bogra framing the charge against the accused-

petitioners under sections 466/468/471/109 of the Penal Code in Kahalu Police Station Case No. 11 dated 10.10.2007 corresponding to G.R. No. 138 of 2007 [Kahalu], now pending in the Court of Additional Chief Judicial Magistrate, Bogra should not be quashed.

The prosecution case is briefly described as under:

One S.M Yeatimul Hoque as complainant filed a petition of complaint with the 1st Class Magistrate, Kahalu, Bogra against the accused-petitioners alleging, inter alia that on 10.11.2013 the complainant got married to accused No. 02 by a registered Nikah Nama. After marriage the complainant took the accused No. 02 to his domain and both of them had started passing their conjugal life peacefully as husband and wife. At one point of time, during their conjugal life, the accused No. 02 being misunderstood, filed a Nari-O-Shishu Case being No. 254 of 2007 before the Nari-O-Shishu Nirjatan Daman Tribunal against the complainant. In that case she was not favoured the verdict from the said Nari-O-Shishu Nirjatan Daman Trinubal. Subsequently, on the advice of the other accused including Nikah Registrar in collusion with each other torn some of pages of the registered Nikah Nama of their marriage in the register Book and they forged the signature of witnesses as well and also created a forged Nikah Nama on which dower money was shown as Tk. 10,00,001/-[Tk. ten lakh one]. Soon after knowing the said facts of the incident, the complainant went to the place of occurrence and had seen the forged Nikah Nama in the register Book. Hence, the case was initiated. Upon getting the complainant the learned magistrate sent it to the concerned police station to be treated as FIR.

Police, after conclusion of investigation, submitted a police report vide Charge Sheet No. 66 dated 05.07.2008 under the aforesaid sections. Accordingly, on perusal of the FIR, charge sheet and other related documents, the Judge of the trial court framed charge against the accused-petitioners. The accused-petitioners being aggrieved, filed a revision vide No. 398 of 2013 before the learned Sessions Judge challenging the order of framing charge made against them. The learned Sessions Judge having perused the application and other materials on record, rejected the revision application filed by the accused-petitioners under sections 435/439A of the Code of Criminal Procedure.

Being aggrieved by and dissatisfied with the judgment and order of the learned Sessions Judge, the accused-petitioners moved this Court with an application under section 561A of the Code of Criminal Procedure and obtained the instant Rule with an order of stay by order dated 18.05.2014. The interim order of stay was extended from time to time by this Court at the instance of the accused-petitioners.

Although this matter has been appeared in the daily cause list on so many occasions but no one stands in support of the Rule when it is taken up for hearing.

On the other hand, Mr. Dr. Bashir Ullah, learned D.A.G. along with Mr. Md. Billal Hossain, learned Advocate appearing on behalf of the State, submits that the prima face case is clearly seen in the FIR against the accused-petitioners and there has been no illegality in

passing the order of framing charge by the trial court. He further submits that the rule has no merit, which needs to be discharged.

Heard the submissions of the learned Advocates for the opposite party, perused the FIR, charge sheet, judgment and order of the Courts below and connected documents on record, wherefrom it transpires that the alleged occurrence took place between 10.11.2004 and 04.10.2007. On perusal of the FIR it is found that the accused-petitioners in collusion with each other, forged the signature of the witnesses and replaced the dower money as 10,00,001/-[Tk. ten lakh one] instead of Tk.1,00,001/-[Tk. one lakh one]. Since, the prima face case is found on a plain reading of the FIR, it cannot be set aside at the stage of framing of the charge. It may be discarded by producing evidence at the trial. The trial court at the time of framing charge can only see whether there prima face case is present or not, or whether there is preposterous allegation, or whether there is any legal bar to initiate the proceeding against the accused, or the allegation of the FIR/petition of complaint does not constitute, any offence or either no legal evidence, adduced in support of the case, or the evidence adduced clearly or manifestly fails to prove the charge.

Having considered the settled principles made in the case of Ali Akkas-versus-Enayet Hossain and others, reported in 17 BLD(AD)44, we find no substance in the Rule to be made absolute.

Therefore, the Rule, issued by this Court, is discharged without any order as to costs. The order of stay granted earlier by this Court stands vacated.

Communicate the Judgment and order at once.

Mohi Uddin Shamim,J

I agree