

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)

Criminal Miscellaneous No. 37799 of 2017.

IN THE MATTER OF:

Rokib @ Rakibur Rahman

.....Accused-petitioner

-V E R S U S-

The StateOpposite party.

Mr. M Mahbub Uddin, Advocate with

Mrs. Shahanara Parvin, Advocate

.....for the petitioner.

Mr. S.M. Munir, Additional Attorney General

Mr. Kazi Mynul Hassan, D.A.G and

Mr. Md. Mizanur Rahman, A.A.G

.....For the state-opposite party.

Heard on 24.09.2020, 05-06.10.2020

and Judgment on: 08.10. 2020

Present:

Mr. Justice Mustafa Zaman Islam.

And

Mr. Justice Md. Kamrul Hossain Mollah

Mustafa Zaman Islam, J:

Hearing conducted through video conferencing.

By this Rule, the accused petitioner by filing an application under section 561A of the Code of Criminal Procedure (briefly as the Code) sought for quashing of T.R. case no. 151 of 2015 arising out of G.R Case no. 259 of 2014 (Kala) corresponding to Kalaroa Police Station case no. 14 dated 15.10.2014 under sections 147/148/323/307/354/379/427/440/500/506(2)/149 of the Penal Code (briefly as

the Code) now pending in the court of learned Chief Judicial Magistrate, Satkhira should not be quashed and/or such other or further order or orders passed as to this Court may seem fit and proper.

The facts relevant for disposal of the Rule, in short are that on 02.09.2002, one Md. Muslem Uddin as complainant filed a petition of complaint being no. CRP-1171 of 2002 in the Court of Magistrate, 1st class, Cognizance Court, 'K' Anchal, Satkhira alleging inter alia, that on 30.08.2002 the Hon'ble leader of the opposition and former Prime Minister Sheikh Hasina went to see one raped victim Mahfuza Khatun who is the wife of a freedom fighter at Sadar Hospital, Satkhira. After visiting the said Mahfuza the Hon'ble leader of the opposition started from Satkhira to Jashore. On the way at the front part of the BNP office, at Kalaroa Thana the accused persons named in the petition of complaint and others 70-75 unknown people being armed with fire and lethal arms and hand bombs made a barricade on the road by a empty bus bearing no. Satkhira Ja-04-0029 and made an attacked upon the motorcade of the Leader of the Opposition with intent to kill her at the instance of Mr. Habibul Islam Habib, MP accused no.3 hauled down the acting convener of District Awami League Muzibur Rahman

Muzib from the car and accused nos. 7 and 8 injured the said convener by lathi blows. Accused no.6 snatched away tk.12,700/- and accused no.9 tore Panjabi of the victim Muzibur Rahman Muzib worth tk.500/-. At the moment accused nos. 10-40 assaulted the leaders and worker of Awami League causing swell injuries. At that time the opposition Leader Sheikh Hasina came out from her car and then and there accused nos.2 and 3 fired 2(two) shots with intent to murder her, but luckily she was saved, since the bullets went aimless. Then with the efforts of the security force and party workers, while the vehicle of the opposition leader was passing through the place of occurrence, accused nos.3 and 4 threw bombs towards the leader Sheikh Hasina and as a result Jobaidul Huq Russel a companion of her received injuries and glass of a vehicle (No. Dhaka Metro-Ga-125342) was damaged simultaneously accused nos.12-35 and others threw stones causing damage of the vehicles including that of the leader Sheikh Hasina worth tk.1(one) lac. Accused no.6 humiliated and outraged the modesty of Fatema Zaman Sathi, convener of Jubo Mohila Leage, Ramna Thana Unit and companion of the leader Sheikh Hasina. Then, the victim Motin tried to save Fatema Zaman Sathi but accused nos.9, 10 and 11 injured him by lathi blow in right arm and back. Accused no.11

snatched away a wrist watch of Motin worth tk.2200/-. At the same time some of the accused persons fired blank shots and created a reign of terror, used slang language towards the leader of the opposition and threw sandals. The photographers took snaps of the incident and widely published the news in different news papers. The accused persons also assaulted and humiliated the journalist. Subsequently, the leader of the opposition, her companions and motorcade managed to leave the place of occurrence with the help of local leaders and workers of Awami league, Security force and witnesses. After the safe arrival of the leader of the opposition at Dhaka and after medical treatment of the injured persons the complainant went to lodge an FIR with the local Police Station, but since the police declined to register the case wherein the incident took place, therefore, he made the petition of complaint before the Court of Magistrate 1st class, Satkhira.

On receipt of the said petition of complaint the learned magistrate took deposition of the complainant as per provision of section 200 of the Code and directed the officer-in-charge, Kolaroa Police Station to submit a report after investigation. After investigation who submitted a final report on 25.12.2003 and the Superintendent of Police, Satkhira submitted another

report on 30.12.2003. Against the said perfunctory investigation report of the Officer-in-Charge, Kalaroa, the complainant filed a Naraji Petition before the Court of Magistrate 1st Class, Satkhira.

On 22.01.2004, the learned Magistrate rejected the Naraji Petition of the complainant and accepted the final report and thereby disposed of the complainant case. As against the aforesaid order dated 22.01.2004, the complainant preferred a Revision application being Criminal Revision no. 17 of 2004 before the learned Sessions Judge who after hearing the respective parties rejected the Revision application by his judgment and order dated 11.04.2004.

Being aggrieved by the aforesaid judgment and order dated 11.04.2004, the informant preferred an application under section 561A of the Code of Criminal Procedure by invoking extra-ordinary jurisdiction before the court and obtained the Rule. Thereafter, by a Division bench of this court heard this matter and setting aside the order dated 11.04.2004 passed by the Sessions Judge, Satkhira affirming the order dated 22.01.2004 passed by the Magistrate, 1st class 'Ka' Anchal, Satkhira who rejecting the naraji petition and the Chief Judicial Magistrate, Satkhira is directed to dispose of the Naraji petition

filed by the complainant petitioner and proceed with the case in accordance with law by its order dated 18.07.2013 in Criminal Miscellaneous case no. 5893 of 2009.

On receipt of the judgment and order of this court the learned Chief Judicial Magistrate re-registered the case being CRP No. 223 of 2004 (Kala) and sent the case record to the officer-in-charge, Kalaroa police station for investigation. On receipt of the same the case was treated as Kalaroa Police Station case no. 14 dated 15.10.2014 corresponding to G.R. 259 of 2014 under sections 147/148/323/226/307/354/379/427/440/500/ 506(2)/149 of the Penal Code read with section 19A and (f) of the Arms Act and sections 3 and 4 of the Explosive Substances Act, 1908.

After investigation, the police submitted charge sheet against the accused petitioner including accused persons. Noted that the name of the accused petitioner is appeared in the charge-sheet as serial no. 38. The investigating officer of this case filed separate charge sheets under the relevant sections of the Penal Code along with the Arms Act, and the Explosive Substances Act. Pertinent to note that the case is splited, where the case is prepared and ready for trial under the Penal Code and the same was transferred to Chief Judicial Magistrate,

Satkhira. During trial the charge was framed on 10.07.2017 and the prosecution examined as many as 9 witnesses to prove its case before issuing Rule on 23.08.2017.

At this juncture, on 30.04.2017 the accused petitioner Rakib @ Rakibur Rahman filed an application before the Chief Judicial Magistrate for Separate his case as per the prevailing Juvenile law of the country as the accused petitioner was a minor on the date and time of the occurrence, which was rejected by the order dated 11.06.2017. Against the said order, the accused petitioner filed a Criminal Revision being no. 103 of 2017 before the learned Sessions Judge, Satkhira but it was rejected by the order dated 03.07.2017.

The accused petitioner, being aggrieved, against that order filed a Criminal Miscellaneous case under section 561A of the Code by invoking the extra ordinary jurisdiction of this court and obtained the present Rule and the proceeding was stayed by the order dated 23.08.2017.

Mr. M. Mahabub Uddin Khokon, the learned Advocate with Mrs. Shahana Parveen, the learned Advocate for the accused petitioner in support the rule at the very outset submits that the accused petitioner was a minor at the time of the alleged occurrence on 30.08.2002 and in support of being his

minor he produced National ID card, Public Examination certificate and Birth Certificate before the trial court. So, the same should be ascertained before framing charge. But the learned trial court failed to do the needful causing miscarriage of justice. He drew our attention and tried to impress us that sections 20, 21 and 15 of the Children Act, 2013 (in short Act, 2013). The provision of section 20 of the Act, 2013 is obligatory in nature, therefore non-complying of the said provisions manifestly affect the whole proceeding and thereby, the proceedings is liable to be quashed. He submits that when age of the accused petitioner is claimed to be minor, duty cast upon the court to ascertain the age of the petitioner, but without complying the section 21 of the Act, 2013 the trial court framed charge against the petitioner which is clear abuse of the process of the court and, therefore, the whole proceedings is liable to be quashed. He further submits that whereas the petitioner's age at the time of alleged occurrence was 10 years 10 months more which is supported by his National ID card, Certificate of Public Examination and Birth Certificate and Voter number. The investigating officer has to follow the mandatory provisions of sections 15 and 20 of the Act, 2013 as such, framing of charge on that basis is inherent defect which has

vitiating the whole proceedings. He next submits that the instant Criminal Proceeding manifestly suffers from malafide and the same is manifestly accompanied with malafides and the same is initiated with an ulterior motive of wreaking political revenge against the accused petitioner but the trial court ought to have discharged him for interest of justice, therefore, the proceedings is apparently an abuse of the process of the court and is liable to be quashed for securing the ends of justice. He referred the decisions and relied upon in the case of Sher Ali vs. The State reported in 46 DLR (AD) 67 and in the case of Abdul Kader chowdhury and others vs. State reported in 28 DLR (AD) 38.

Conversely, Mr. S.M. Munir, the learned Additional Attorney General with Mr. Kazi Mynul Hassan, the learned Deputy Attorney General and Mr. Mizanur Rahman, the learned Assistant Attorney General appearing on behalf of the state opposes the Rule and submits that occurrence took place on 30.08.2002. Charge sheet and supplementary charge-sheet were submitted on 26.04.2015 and 17.05.2015 respectively and charge was framed on 10.07.2017. On the other hand, the petitioner filed an application on 30.04.2017 in the court of Chief Judicial Magistrate, Satkhira for splitting his case and to send it to the Juvenile court of the concerned jurisdiction as he

was minor at the time when the alleged offence was committed by him. Pursuant to the above date and events the petitioner the aforesaid that application with malafide intention to drag the matter and to make the proceedings frustrated. Besides, the accused petitioner for the first time raised objection before the trial court regarding the question of the accused being a minor, but the accused is not a minor as per Children Act, 1974 (in short Act, 1974) at the relevant time of framing charge of the case as such, the Rule is liable to be discharged. He submits that once a child offender crosses the age of 16 years and then charged with an offence or tried for the same the statutory requirement of the child being tried by a juvenile court comes to an end. He further submits that the claim of the accused petitioner is that he was minor at the time of occurrence but as per the averments made in the charge sheet shown that the accused was 32 years and at the time of occurrence he was 19 years. In that view, the petitioner prayed for quashing of the whole proceeding which is malafide and intentional as such, the instant Rule shall be discharged with cost. He referred to the decisions in the case of Abdul Mannan Chowdhury @ Momen vs. State reported in 47 DLR (AD) 96, in the case of Golam Sarwar Hiru vs the State and another reported in 13 MLR (AD)

103 and in the case of Habibur Rahman Mollah vs. State and another reported in 62 DLR (AD) 223.

In order to appreciate their submissions we have gone through the record and given our anxious consideration to their submissions.

The moot question before us is whether the Act, 2013 will be applicable in the case, a proceeding is initiated when the Act, 1974 was existed and how does the age of the accused petitioner affect the trial for the offence he has committed.

Before going to materials on record it is noted that the leader of opposition and the President, Bangladesh Awami league Sheikh Hasina and her party were attacked in pre planned manner in different parts of the country including Satkhira in her programs or in her motorcade or in public meetings as part of the end or destruction of her life by the perpetrators at the relevant time. At this juncture, Kalaroa police refused to accept the case when the complainant went to lodge the case of the offence committed at Kalaroa, Satkhira. The police remained very silent about the offence. At different times the police forced were used as political tools of the then ruling party. Usually the police declined to register the case. The police are regulated by the Police Act, 1861. It is a colonial

law by which it is not possible to reflect the aspirations of the People of independent Bangladesh. The police are reliable resort and shelter of the people. We hope the police would work in the interest of the country as well the nation beyond their personal interests. Police must work on building a nation free from political pressure and they will not act as a political narrator. It appears from the record that the attack made on the leader of the opposition's motorcade at Kalaroa under District Satkhira is a attempt or process of killing the leader of the opposition Sheikh Hasina. The role of the Kalaroa police was questionable about the regarding the incident, even though the police did not take cognizance of this incident as an offence for personal gain of the respective police station which does not place any responsibility on the shoulder of the entire police force. Overall, the role of the police force are showing immense skill in maintaining law and order, particularly in the fight against terrorism, drugs and heinous crime.

It is pertinent to note that the legal provisions for quashing of proceeding of criminal cases under section 561A of the Code. The several decisions of our Apex Court in this regard ought to be guided by following twin objectives, as laid down-

- i) To Prevent abuse of the process of the court.
- ii) To secure ends of justice.

The power under section 561A of the Code must be exercised very sparingly with circumspection and in rarest of the rare cases. Exercise of inherent power under section 561A is not the Rule but it is an exception. The exception is applied only when it is brought to the notice of the court that grave miscarriage of justice could be committed if the trial is allowed to proceed when the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to court that the trial would likely to be ended in acquittal.

As could be seen that the conflicting views expressed and submitted before us by the learned Advocates both parties. The learned Additional Attorney General tried to impress pointing at some issues that the Juvenile means under the Act, 1974 which was below sixteen years, on the date when he is charged with or tried for an offence whereas the learned Advocate for the accused petitioner contends that the Juvenile under the Act, 2013, a person under the age of eighteen years is a Juvenile on the date of commission of the offence.

Suffice it to note that one of the basic distinctions between the Act, 1974 and the Act, 2013 relates to the age of

the person. Under the Act, 1974, a juvenile means who has not attained in the age of 16 years. In Act, 2013 the age limit is 18 years. A person above 16 years in terms of Act, 1974, on the date of framing charge, was not a Juvenile. In the instant case, it appears from the record that the petitioner was minor at the time of offence was committed as per his admit card of Dhakhil examination, Birth Certificate, and National ID card which has been produced by the accused petitioner before the trial court. It is seen that the accused petitioner was born on 11.10.1991 and offence was committed on 30.08.2002. In fact, he was 10 years 10 month more at the relevant time.

For proper disposal of the Rule, there are very significant to produce the relevant laws. First, we begin by referring to section 2(f), and 6 of the Act, 1974 which runs thus:-

“Child means a person under the age of sixteen years and when used with reference to a Child sent to certified institute or approved home or committed by a court to custody of a relative or other fit person means that Child during the whole period of his detention notwithstanding that he may have attained the age of sixteen years during that period.”

And-

6(1) Notwithstanding anything contained in section 239 of the Code or any other law for the time being in force, no child shall be charged with or tried for offence together with an adult.

6(2).....”

Combined reading of the above sections it appears that section 6 of the Act, 1974 provide that the accused should be less than 16 years, when he is charged with or tried for an offence to come with the ambit of Act, 1974.

By referring to sections 4, 20 and 100 of the Act, 2013, which runs thus:-

“৪। বিদ্যমান অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, এই আইনের উদ্দেশ্য পূরনকল্পে, অনুর্ধ্ব ১৮ বৎসর পর্যন্ত সকল ব্যক্তি শিশু হিসাবে গণ্য হইবে।”

২০। আপাততঃ বলবৎ অন্য কোন আইন, আদালতের রায় বা আদেশ ভিন্নতর যাহা কিছুই থাকুক না কেন, এই আইনের উদ্দেশ্য পূরনকল্পে, অপরাধ সংঘটনের তারিখই হইবে শিশুর বয়স নির্ধারণের জন্য প্রাসংগিক তারিখ।”

এবং

ধারা ১০০(১)। এই আইন কার্যকর হইবার সংগে সংগে Children Act, 1974 (Act no. XXXIX of 1974) অতঃপর উক্ত Act বলিয়া উল্লিখিত, রহিত হইবে।

২(ক).....

২(খ).....

(গ).....

(ঘ) দায়েরকৃত অনিষ্পন্নাদীন মামলাসমূহ যে সকল কিশোর আদালতে বিচারাধীন রহিয়াছে উক্ত মামলাসমূহ উক্ত শিশু আদালত সমূহের মাধ্যমেই এমনভাবে নিষ্পন্ন করিতে হইবে যেন উক্ত Act রহিত ও বিলুপ্ত হয় নাই।

(ঙ).....

(চ).....

It is crystal clear from the above sections that the Juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of such offence. Section 100 of the Act, 2013 which provides a special provision as saving clause in respect of pending cases. It is noted that in the Act, 2013, legislative intent clearly states that all proceeding in respect of a Juvenile pending in any Shishu Adalat on the date on which the Act, 2013 came into force shall continue before that court, as if the Act, 2013 had not been passed. In the case in hand, it appears from the record that the Act, 2013 came into force on 20.06.2013 and occurrence took place on 30.08.2002. Needless to say that the accused petitioner had attained above 18 years on the date of the Act, 2013 came into force. The provisions of Act, 2013 are

not to apply who had ceased to be a Juvenile on or before the commencement of this Act, this act would apply to those under the age of 18 years until the Act, 2013 came in to operation. Thus, in respect of pending cases, section 100 of Act, 2013 is to be applied at any stage even the judgment pronounced by the trial court and when the matter is pending in Appeal, Revision or otherwise, shall consider and decide upon the question of juvenility. Juvenility is determined by the age on the date of commission of offence.

As could be seen that the present accused petitioner was found 22 years when the Act, 2013 came into force on 20.06.2013. The question is that the accused petitioner was an adult on the date of enforcement of the Act, 2013. Needless to mention here that if the petitioner was minor on the commencement of Act, 2013, then, Act, 2013 might be applied but in the given scenario the petitioner attained his majority i.e. 18 years when the Act, 2013 came into operation. Suffice it to say that if subsequently, he had attained adulthood would not matter. If the accused petitioner was juvenile, the court would act as per Act, 2013. Pertinent to note that the Act, 2013 would have prospective effect and not retrospective effect except in cases where the person had not completed the age of 18 years

on the date of commencement of Act, 2013. In the case in hand, it would not be governed by the Act, 2013.

It is, thus, manifest from a conjoint reading of those sections Act, 2013 that all persons who were below the age of 18 years on the date of commission of offence even prior to come in force of the Act, 2013 i.e. 20.06.2013 would be treated as juvenile, though the claim of juvenility is raised after he has attained the age of eighteen years on or before the commencement of Act, 2013. All the decision cited above by both the learned Advocates have no manner of application, so cited decisions does not help them in any way.

In the light of legal position as expounded above and in the aforementioned decisions, this court at this stage can decide and determine the question of juvenility of accused petitioner Rokib @ Rakibur Rahman, but in the mean time the petitioner had attained 18 years. Since, the age of the accused petitioner had more than 18 years from the date of commencement of the Act, 2013, the said Act would not apply to him rather he would not get any aid under this Act. Moreover, the Act, 1974 would not apply to him as he had attained above 16 years of the age at the time of framing of charge. In this case, the trial will proceed along with accused. There will be no deviation from law.

In view of above, the Rule is discharged without any order as to cost. The order of stay granted earlier by this court is hereby recalled and vacated. The trial court will proceed with T.R case no. 151 of 2015 arising out of G.R no. 259 of 2014 (Kala) corresponding to Kalaroa police station case no. 14 dated 15.10.2014 and dispose of it in accordance with law.

All the observations made above are tentative in nature and will not prejudice the case on merit.

In view of the facts, this is a case of 2002, we are inclined to direct the learned trial court below to dispose of the case as early as possible preferably within 03 (three) months from the date of receipt of this judgment and order.

The office is directed to communicate the order at once.

(Mustafa Zaman Islam)

Md. Kamrul Hossain Mollah, J:

I agree.

(Md. Kamrul Hossain Mollah)