

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

Present

Mr. Justice Ashish Ranjan Das

And

Mr. Justice Md. Riaz Uddin Khan

Criminal Miscellaneous Case No. 54435 of 2017

IN THE MATTER OF :

An Application under Section 561A of the Code of
Criminal Procedure

-And-

IN THE MATTER OF :

Abdul Wodud

...Informant- Petitioner

Versus

The State and others

...Opposite Parties

Mr. Md. Shafe Ullah, with

Mst. Moslema Banu, Advocates

...For the Petitioner

Mr. S.M. Asraful Hoque, D.A.G with

Mr. Sheikh Serajul Islam Seraj, D.A.G

Ms. Fatema Rashid, A.A.G

Mr. Md. Shafiquzzaman, A.A.G. and

Mr. Md. Akber Hossain, A.A.G

...For the State

Judgment on: 05.12.2023.

Md. Riaz Uddin Khan, J:

Rule was issued calling upon the opposite parties to show cause as to why the impugned order dated 05.10.2017 passed by the Sessions Judge, Sunamgonj in Criminal Revision No. 35 of 2017 rejecting the Revisional application and thereby affirming the order dated 16.02.2017 passed by the Senior Judicial Magistrate, Sadar, Sunamgonj in G.R. Case No. 255 of 2013 arising out of Sunamgonj

Sadar Police Station Case No. 05 dated 06.10.2013 under sections 302/316/202/419/201 of the Penal Code rejecting the time petition for filing Naraji petition against police report dated 28.12.2016, pending in the Court of Senior Judicial Magistrate, Cognizance Court, Sadar, Sunamgonj should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The brief facts are that one Abdul Wadud lodged an FIR dated 06.10.2013 in the Sunamgonj Sadar Police Station alleging *inter alia* that Emdadul Hoq witness No. 1 of the instant case is his full brother, witness No. 2 Dolly Begum is his brother's wife who was pregnant for about 8 months; that his brother had previous enmity with accused Abdus Salam, Rejaul and Shunu Mia in relation to property and also had enmity with accused Rasel regarding Municipality Election dispute; that on 06.10.2013 at about 4.00 hours in the early morning the accused party along with 4/5 unknown persons being armed with Dao, Iron rods and other country made weapons entered into the house of Emdadul Hoque; that informant's brother Abdul Latif and his wife Dolly Begum woke up hearing the sound of breaking door and saw the accused in the room and raised hue and cry and at that time on the order of accused Rasel to kill Abdul Latif, accused Abdus Salam gave a Dao blow on the forehead of Abdul Latif, accused Reajul

gave a Dao blow on the head of Dolly Begum and all other accused assaulted them mercilessly; that on hearing hue and cry informant along with other neighbouring people came forward and took the injured person to the Hospital and lodged the instant case under section 143/ 447/ 448/ 323/ 324/ 326/ 307/ 114/ 34 of the Penal Code.

Police took up the case for investigation and during investigation victim Dolly Begum succumbed to her injuries on 17.10.2013 at Osmani Medical College Hospital, Sylhet and after investigation CID police submitted charge sheet against three accused namely Emdadul Haque, Amir Hussain and Jahangir Alam Roni under section 302/419/201/202 of the Penal Code along with a prayer for discharge of the FIR named accused namely Abdus Salam, Rezaul, Hussain Ahmed Rasel and Shunu Miah against which the informant filed a naraji petition. The case was sent to the CID for further investigation and the CID submitted supplementary Charge Sheet on the same finding against which the informant filed a naraji petition again. This time the learned Magistrate again sent the case for further investigation to the CID and on the same finding supplementary charge sheet was submitted against the same 3(three) accused excluding FIR named accused which was accepted by the learned Magistrate rejecting an application for adjournment to file a naraji petition.

Against the said order the informant filed Criminal Revision No. 35 of 2017 before the Sessions Judge, Sunamgonj who after hearing was pleased to reject the same against which the informant preferred this application under section 561A of the Code of Criminal Procedure before this Court.

Mr. Md. Shafe Ullah, the learned Advocate appearing on behalf of the petitioner submits that during investigation victim Emdadul Haque and his daughter Habiba Haque Suva made statement under section 164 of the Code of Criminal Procedure while accused Jahangir Alam Roni also made 164 statement before the Magistrate.

He then submits that the victim Emdadul Haque was seriously injured upon his forehead at the time of occurrence and the doctor opined that such an injury upon the forehead cannot be self inflicted. The Courts below ought to have considered that the informant praying for the investigation to be conducted by any other department of the police other than CID and if the matter is investigated properly the truth would be revealed and as such the impugned orders passed by the courts below should be set aside for ends of justice.

We have heard the submissions of the learned advocate, perused the application, supplementary affidavit along with the annexures including the

FIR, 3(three) police reports, and the other materials on record.

It appears that the case was investigated by the police of Criminal Investigation Department (CID) for three times by order of the learned Magistrate. All the times the findings and result are same. The accused named in the FIR are not found involved in the occurrence by the CID while the CID submitted charge sheet against the witnesses and victim on the finding that they are involved in the occurrence. This is a serious matter and the learned Magistrate should have sent the case for investigation by the investigating agency other than CID at the 2nd and 3rd time. The informant sought time so that he can file naraji application but the learned Magistrate without considering the gravity of the case rejected the same and the revisional Court also rejected the same without applying their judicial mind. Considering the peculiar facts and gravity of the case we are of the opinion that ends of justice would be best served if the case is investigated by the Police Bureau of Investigation (PBI). In such view of the matter, we are inclined to interfere with the orders passed by the courts below.

Resultantly the rule is made **absolute** with direction that the case be investigated by the Police Bureau of Investigation (PBI).

The impugned order dated 05.10.2017 passed by the Sessions Judge, Sunamgonj in Criminal Revision No. 35 of 2017 rejecting the revisional application and thereby affirming the order dated 16.02.2017 passed by the Senior Judicial Magistrate, Sadar, Sunamgonj in G.R. Case No. 255 of 2013 arising out of Sunamgonj Sadar Police Station Case No. 05 dated 06.10.2013 under sections 302/316/202/419/201 of the Penal Code, now pending in the Court of Senior Judicial Magistrate, Cognizance Court, Sadar, Sunamgonj is hereby set aside.

Communicate the judgment and order to the court concerned at once.

Ashish Ranjan Das, J:

I agree.