

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

**Criminal Misc. Case No. 45010 of 2018**

**In the matter of:**

An application under section 561A of the Code of Criminal Procedure, 1898

-And-

**In the matter of:**

Sumaiya Tanvir @ Ayesha Panni and others  
 ..... Accused-Petitioners

-Versus-

The State and another

.....Opposite Parties

Mr. A. Baset Majumder, Senior Advocate with  
 Mr. M. Sayed Ahmed and  
 Mr. Md. Mijanur Rahman, Advocates

.....for the Accused-Petitioners

Mr. Rehan Husain with

Mrs. Ms. Asma Akter, Advocates

.....for the opposite party

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

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

Mr. Mohammad Shaheen Mirdha, A.A.G

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

Mr. Mizanur Rahman Shaheen, A.A.G

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

.....for the State

**Present:**

**Mr. Justice Jahangir Hossain**

**And**

**Mr. Justice Md. Badruzzaman**

**Judgment delivered on 17.12.2020**

**Jahangir Hossain, J:**

By this Rule the opposite parties were asked to show cause as to why the proceedings of C. R. Case No. 132 of 2017 [Sadar]

under sections 420/467/468/471/109 of the Penal Code, 1860 now pending in the Court of Chief Judicial Magistrate, Tangail should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution case is briefly described as under:

The opposite party No. 02 as complainant filed a petition of complaint before the Judicial Magistrate, Tangail on 20.02.2017 alleging, inter alia that the accused-petitioner No. 01 having shown herself as the owner of the land in question in collusion with other accused-petitioners made a transfer of 15 decimals of land by a registered deed being No. 3959 dated 28.04.2016 from the "Haider Ali Khan Panni waqf Alal Awlad Estate", represented by its Mutwalli namely, Captain [Retd.] Daud Khan Panni. The S.A record of this land was prepared in the name of Haider Ali Khan Panni and was possessed and managed as the waqf property and also the said property was mutated and the latest record is in favour of the waqf, noted above. The aforesaid deed was made basing on false, fabricated and forged documents.

Having received the complaint-petition, the learned Judicial Magistrate, Tangail examined the complainant and recorded the substance under section 200 of the Code of Criminal Procedure, 1898 and also directed Police Bureau of Investigation [PBI] to inquire

the allegation. Upon getting enquiry report dated 27.11.2017, the learned magistrate took the cognizance of offence against the accused-petitioners by issuing summons upon them.

The accused-petitioners appeared in the case after knowing about its initiation made by the complainant. Subsequently, the accused-petitioners filed an application before this Court under section 561A of the Code of Criminal Procedure and obtained the present Rule with an order of stay of all further proceedings of the case, mentioned earlier.

In support of the Rule, Mr. M. Sayed Ahmed, learned Advocate contends that there is no specific allegation regarding forgery or cheating in the petition of complaint. Question of title itself does not prompt the complainant to initiate a criminal proceeding against the accused-petitioners. The inquiry officer of PBI did not seize any article or documents from the land records' office as to how the accused-petitioners made false registered deed of agreement in collusion with each other.

It is further submitted that since the question of title is involved in the transfer of the land in question it cannot be resolved by way of criminal proceeding rather it should be decided first by a competent court of civil jurisdiction. So the initiation of impugned criminal proceeding is illegal and also an abuse of process of the court and

the same is liable to be quashed for the ends of justice. In support of his arguments Mr. Sayed has cited some decisions namely, 13 DLR 215, 43 DLR (AD) 102, 5 BLD (AD)80, 7 BLD (AD) 32, 17BLD(AD) 44 and 2 MLR(1997)(AD).

On the contrary, Mr. Rehan Husain, learned Advocate by filing counter-affidavit on behalf of the complainant-opposite party submits that the deed is a fraudulent one. The civil suit for cancellation of the deed does not mean that there is confusion regarding title to the land, if there was confusion the complainant would have also prayed for title which he did not. The police found prima facie case against the accused-petitioners upon inquiry of the allegation. It is a clear case of fraud and forgery committed by the accused-petitioners that needs to be legally tried. It is further urged that if the case is quashed, it will encourage others to sell waqf property with impunity and will destroy the aged old waqf and will lead to multiplicity of proceedings and it may lead to violence and breach of peace in the area.

Learned Advocate by citing famous case of American actor and sports legend O.J Simpson submits that this case is relevant in the present case because Mr. Simpson was acquitted of murdering his wife, Nicole Simpson but was found guilty in civil court for the same wrong. Apart from this, criminal judgment is not relevant in the

civil suit as it has been settled by a series of decisions, particularly 5 BLC 649, 6 BLC 82, 41 DLR (AD) 97 and 1956 PLD (Lah.) 490.

It is further submitted that the current B.S record of the land in question is in favour of the waqf and the accused-petitioner No. 01 forged the mutation papers that will be clear during the trial of the case and she had knowledge that it was waqf property and thereby committed cheating punishable under section 420 of the Penal Code. The document is not only false and fraudulent but it contains fictitious information that is the specific mutation case number cited to defraud others [42 DLR 191, 43 DLR (AD) 198 and 7 BCR (AD) 148]. So at this stage there is no scope to quash the proceedings of the case by making the Rule absolute.

Heard the contentions of the learned Advocates of both the parties, perused the application along with supplementary affidavit, petition of complaint, inquiry report, counter-affidavit and other connected documents on record wherefrom it transpires that the complainant opposite party brought the allegations by filing petition of complaint against the accused-petitioners that the accused-petitioner No. 01 transferred 15 decimals of land by a registered deed bearing No. 3959 dated 28.04.2016 to accused Nos.2-5 by creating false, fraudulent, fabricated and forged documents. The land in question as alleged in the petition of complaint was waqf property.

The complainant-opposite party claimed that the accused-petitioner No.01 was not at all owner of the land but she having made some false documents transferred the land to the accused-petitioner Nos. 2-5 in collusion with other accused persons who are the witnesses of the alleged deed in question.

On perusal of the petition of complaint it finds that the complainant-opposite party alleged in paragraph No. 05 that no current record is prepared in the name of the transferor and the transferor made the registered deed on the basis of false and fabricated documents. But it is not stated in the petition of complaint of what kind of documents she has made by forgery or fraudulently. There should be specific assertion by the complainant- opposite party in the petition of complaint. Although the inquiry officer found prima facie case against the accused-petitioners but he did not seize any documents from the respective office or elsewhere.

It appears from documents on record that on the question of transfer of the land the complainant opposite party filed separate Civil Suit vide Other Class Suit No. 32 of 2017 before the Joint District Judge, 1<sup>st</sup> Court, Tangail for cancellation of registered Kabala bearing No.3959 dated 28.04.2016 and the accused-petitioner No. 01 also filed Partition Suit No.25 of 2018 before the Joint District Judge, 1<sup>st</sup> Court, Tangail after filing of the present case. Both the civil

suits are now pending before the Joint District Judge, 1<sup>st</sup> Court, Tangail.

It also appears that the dispute has been started between the brother and sister. The accused-petitioner No. 01 claims that she had inherited the property of her predecessor. On the contrary, the complainant- opposite party claims that the transfer of the land in question actually belongs to waqf property and the accused-petitioner No.01 has already taken over her share from other property and she has no right to obtain any land from the waqf property. On the other hand, the accused-petitioner No.01 further demands that she having inherited the land got mutated in her name and subsequently sold out the land in question in her need. So, claim and counter-claim of both parties are yet to be finalized by the competent court of law.

In the facts of the case, advanced by both parties, as in point of time, the civil suits were instituted after filing of the present case. The question of forged or fraudulent deed in question is yet to be examined by the civil court. Therefore, it cannot be said at this stage that there is a prima facie case against the accused-petitioners to proceed with the criminal offence. Where there is a chance of prejudice to the accused-petitioners and adverse decision is likely to prejudice them in their defence in the civil suits as well, if the criminal

proceeding is allowed to continue during the pendency of the civil suit. The justice would be met, if the act of forgery or fraudulency is detected in the alleged conduct of the accused-petitioners by the civil court first.

Therefore, in the interest of justice, the criminal proceeding, where those very documents are claimed by the complainant as forged, be stayed till the disposal of the civil suits.

In the result, the Rule is disposed of. Let the criminal proceeding arising out of C.R. Case No. 132 of 2017 [Sadar], now pending in the Court of Chief Judicial Magistrate, Tangail be stayed till the disposal of the civil suits.

Both the parties are directed to take necessary steps for quick disposal of the civil suits.

Let a copy of this Judgment be communicated to the concerned court below at once.

**Md. Badruzzaman,J**

I agree