

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Mahmud Hossain,

Chief Justice

Mr. Justice Muhammad Imman Ali

Mr. Justice Hasan Foez Siddique

Mr. Justice Abu Bakar Siddiquee

Mr. Justice Md. Nuruzzaman

Mr. Justice Obaidul Hassan

CRIMINAL PETITION FOR LEAVE TO APPEAL NO.562 OF 2020.

(From the judgment and order dated 05.02.2020 passed by the High Court Division in Criminal Miscellaneous Case No.58852 of 2019.)

Shafiqul Azam and others : Petitioners.

=Versus=

The State, represented by the Deputy Commissioner, Kushtia : Respondents.

For the Petitioner : Mr. Momtazuddin Fakir, Senior Advocate instructed by Mrs. Madhumalati Chowdhury Barua, Advocate-on-Record.

For Respondent No.1 : Mr. Biswajit Debnath, Deputy Attorney General(with leave of the Court).

For Respondent No.2 : Mr. Ruhul Quddus, Advocate instructed by Mr. Md. Momin Uddin, Advocate-on-Record.

Date of hearing and judgment : **21.06.2021.**

J U D G M E N T

Hasan Foez Siddique, J: This Criminal Petition for leave to appeal is directed against the judgment and order dated 05.02.2020 passed by the High Court Division in Criminal Miscellaneous Case No.58852 of 2019 discharging the Rule.

The relevant facts, for the disposal of this petition, are that the respondent No.2 as complainant filed a petition of complaint against the present petitioners and another under sections 120(Kha), 143, 447, 448, 379, 403 and 427 of the Penal Code alleging, inter alia, that at about 4 p.m.

on 10.06.2019 the accused persons, in connivance with each other, demolished the structures situated at the disputed place by the excavators and bulldozer without serving any notice upon the complainant, thereby, they had committed offences punishable under the aforesaid provisions of law. They looted the goods worth of tk.20,00,000/- of the complainant. The total the price of the damaged and looted property was of tk.2,50,00,000/-. The said case was registered as C.R. Case No.597 of 2019.

The Additional Chief Judicial Magistrate, Kushtia, upon examining the complainant, directed the Additional Superintendent of Police (Administration and Offence), Kushtia for holding an inquiry over the matter, who holding inquiry, submitted his report stating that he did not find any evidence of demolishing Pramanik Super Market as claimed by the complainant. The complainant filed a naraji petition against that report. The Additional Chief Judicial Magistrate, accepting the naraji petition, took cognizance of the offence punishable under Sections 120(Kha), 143, 447, 448, 379, 403 and 427 of the Penal Code against the petitioners upon rejecting the report submitted by the Additional Superintendent of Police. The petitioners surrendered in the Court and obtained bail. Thereafter, they filed an application under Section 561A of the Code of Criminal Procedure in the High Court Division and obtained Rule and order of stay. The High Court Division, after hearing the parties, discharged the Rule. Thus, the petitioners have filed this Criminal Petition for Leave to Appeal.

Mr. Momtazuddin Fakir, learned Senior Advocate appearing for the petitioners, submits that the Additional Chief Judicial Magistrate

committed error of law in taking cognizance of the offences before according sanction from the Government as per provision of section 197 of the Code of Criminal Procedure though the petitioners are the public servants and they allegedly committed the aforesaid offences at the time of discharging their official duties, so the judgment and order of the High Court Division should be set aside and the instant proceeding should be quashed.

Mr. Biswajeet Debnath, learned Deputy Attorney General appearing for the State, submits that the sanction as provided under section 197 of the Code of Criminal Procedure can be accorded at any time before completion of the trial and trial of the case has not yet been held, so there was no illegality in the judgment and order of the High Court Division.

Mr. Ruhul Quddus, learned Advocate informed the Court that the complainant respondent No.2 Md. Raqibul Islam had died. Since State has appeared and sought for dismissal of the petition, we have decided dispose of the matter finally.

In this case, it appears from the petition of complaint that except accused petitioner No.3 Qumruzamman, rest of the petitioners are public servants. Petition of complaint discloses that the accused persons went to the property under dispute and allegedly demolished the structures situated therein, thereby, committed the offences punishable under the aforesaid provisions of law. Mr. Fakir submits that since the petitioners are public servants and they allegedly committed offences while performing their official duties to evict the unauthorized occupants of the property, in question, without according sanction from the Government, the instant

order of cognizance was bad in law. It is relevant here to reproduce the provisions of section 197 of the Code of Criminal Procedure:

“197.(1) When any person who is a Judge within the meaning of section 19 of the Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the ¹[previous sanction of the Government]-
 (2) ¹[The Government] may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

The legislative mandate engrafted in Section 197 of the Code of Criminal Procedure debarring a Court from taking cognizance of an offence except with a previous sanction of the Government. Criminal prosecution against public servant can not be allowed to proceed without sanction under section 197 when the offence is allegedly committed while discharging his official duty. Section 197 provides that if a public servant committed any offence or alleged to have been committed by him while acting or purporting to act, in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Government. Sanction of the Government as contemplated in Section 197 Cr.P.C. is intended to protect public servant from needless harassment. Such protection by way of sanction renders assurance and protection to the honest public servant to perform public duties and to the

best of his abilities because the threat of prosecution demoralises the honest officials. This provision should not be interpreted in a restricted manner. Section 197 has been designed to facilitate effective and unhampered performance of public servants' official duty. The prior sanction for their prosecution is a condition precedent to the taking of cognizance of the case against them by the Courts. Object of this provision is to enable the Government to scrutinize the allegations made against a public servant to shield him against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, in order to apply the bar of section 197 Cr.P.C. each case has to be considered in its own fact situation in order to arrive at a finding as to whether the protection could be given to the public servant.

Considering the contents of the petition of complaint and other prevailing situation of this case, before taking cognizance of the offence against the public servants, the Magistrate ought to have accorded sanction from the Government as per provision of section 197 of the Code of Criminal Procedure. However, no such sanction is necessary for protection of accused petitioner No.3 Kumruzzaman, Managing Director, K.N.B. Agro Industries Ltd. Bottail, BSIC, Kushtia.

Accordingly, the cognizance taking the order of the Additional Chief Judicial Magistrate dated 06.08.2019 in C.R. Case No.597 of 2019 against Shafiqul Azam, who is the Assistant Engineer, Zilla Parishad Kushtia, Md. Moniruzzaman, Surveyor of the Zilla Parishad, Kushtia and Md. Shanuzzaman Shahin, Administrative Officer of the Zilla Parishad Kushtia is set aside. The learned Additional Chief Judicial Magistrate is directed to take step to accord sanction for prosecuting them as per provision under

section 197 of the Code of Criminal Procedure from the Government and, thereafter, to take necessary step in accordance with law.

With the observation made above, the petition is disposed of.

C.J.

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The 21st June, 2021.
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