

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

**PRESENT:**

**MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN  
AND  
MR. JUSTICE MD. BASHIR ULLAH**

**CRIMINAL MISCELLANEOUS CASE NO. 6097 OF 2012**

Md. Shamsuddin Khan Nasim and others  
.....Accused-petitioners  
-Versus-

The State and others.....Opposite parties  
Mr. Mansurul Haque Shafi, Advocate  
.....For the accused-petitioners  
Ms. Ishrat Fatema, Advocate  
...For the opposite party No. 2

**Heard on: 08.11.2023 and 23.11.2023**

**Judgment on: The 28<sup>th</sup> of January, 2024**

**ABU TAHER MD. SAIFUR RAHMAN, J.**

This Rule was issued on an application filed by the accused petitioners under section 561A of the Code of Criminal Procedure, 1898 calling upon the opposite parties to show cause as to why the proceedings of G.R. Case No. 769 of 2008, arising out of Sudharam Police Station Case No. 31 dated 25.06.2008 under sections 467/468/471/109 of the Penal Code now pending in the Court of Judicial Magistrate, Cognizance Court No. 1, Sadar, Noakhali should not be quashed and/or such other

or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court was pleased to stay all further proceedings of the aforesaid G.R. Case No. 769 of 2008 for **3 (three)** months from date which was time to time extended by the Court.

For disposal of this Rule, the relevant facts may briefly be stated as follows:

That the opposite party No. 2 one A.K.M. Saleh Uddin as an informant filed a G.R. Case No. 769 of 2008 under sections 467/468/471/109 against the accused-petitioners and others alleging inter alia that he has purchased the land in question measuring .78 acres of land vide 3 (three) registered purchase deeds and out of said land he subsequently sold out .19 acres of land to a third party and enjoying the rest of .63 acres of land till today. Subsequently, he mutated the said land vide Mutation Case No. 184/74-75 and opened a separate jama khatian No. 62 in his own name only. After a long time, while the accused petitioner and others tried to build a house in his said then he made an application dated 22.02.2005 to the office of the local pourashava against the accused petitioners. Thereafter, the accused

petitioners appeared in the office of the said pourashava and claimed the land in question by way of producing a forged mutation khatian wherein the name of one A.B.M. Sultan Uddin (the father of accused-petitioner Nos. 1 to 3 and husband of the accused-petitioner No. 4) has been inserted beside the name of the informant as serial No. 2. Hence, the aforesaid case was initiated against the accused-petitioners under sections 467/468/471/109 of the Penal Code. Accordingly, the charge was framed against the accused petitioners. Being aggrieved, the accused-petitioners have preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing the aforesaid proceeding and obtained the Rule and stay.

Mr. Mansurul Haque Shafi, the learned Advocate for the accused petitioners mainly submits that regarding the case land, Miscellaneous Appeal No. 39 of 2020 filed by the accused petitioner is pending between the parties, and the genuineness of the document in question is not decided by the Court as yet and as such the continuation of the instant criminal case would constitute an abuse of the process of the Court and as such the impugned proceeding is liable to be quashed.

As against this, Mrs. Ishrat Fatema, the learned Advocate for the opposite party No. 2 mainly submits that whether the document in question is forged or not is a question of fact which cannot be decided at this stage under section 561A of the Code of Criminal Procedure.

She further contended that the right, title, and possession of the land in question has already been settled in Title Suit No. 35 of 1995 filed by the opposite party No. 2, and as such the instant Rule is liable to be discharged.

Heard the submissions of the learned Advocates of both sides and perused the petitioner's application along with other materials on record thoroughly.

In the instant case, the accused petitioners mainly contended that regarding the case land a civil suit is pending between the parties, and as such the instant criminal proceeding is not sustainable in law.

On perusal of the FIR (**Annexure-'A'**) it transpires that the informant opposite party No. 2 claimed the case can on the basis of 3 (three) registered purchase deeds and thereafter mutated the said land in his own name only vide Mutation Case No. 184 of 1974-1975 as evident from the Mutation Khatian No. 62.

We have further noticed that regarding the case land, the informant opposite party No. 2 earlier filed a Title Suit No. 35 of 1995 against the predecessor of the accused-petitioner which was subsequently decreed on contest vide its judgment and order dated 16.08.1995 (decree signed on 26.08.1995). As against the aforesaid judgment and decree no appeal has been filed by the accused petitioner as yet.

We have also seen that subsequently the accused petitioner filed a Title Suit No. 95 of 2002 for cancellation of the judgment and decree passed in Title Suit No. 35 of 1995 which was dismissed in the absence of the accused petitioner vide order dated 24.01.2007 and subsequently again it was dismissed on 31.08.2008 as against the said order, the accused-petitioner filed a Miscellaneous Case No. 02 of 2009 which was also dismissed on 17.02.2013. As against the said order, the accused petitioner filed a Miscellaneous Appeal No. 39 of 2020 which is still pending before the Sessions Judge, Noakhali.

In the case of Amir Ali Mostofa Vs. Shah Md. Nurul Alam as reported in 74 DLR (AD) (2022) page-79 wherein the Hon'ble Appellate Division was held that-

“Only because of the subject matter of the criminal case and civil litigation being the same, it will not be a bar for continuation of the criminal proceedings, rather the criminal case will run in its own way.”

So the contention as raised by the accused petitioner is not acceptable.

In such view of the aforesaid legal position, we do not find any substances of this Rule.

As a result, the Rule is discharged.

The order of stay granted earlier by this Court is hereby stand vacated.

Since it is a very old case, the concerned trial Court below is hereby directed to dispose of the aforesaid case expeditiously preferably in accordance with the law.

Communicate this judgment and order at once.

**Md. Bashir Ullah, J:**

I agree

