

Present:

Mr. Justice Borhanuddin

and

Mr. Justice Md. Ruhul Quddus

Criminal Appeal No. 3247 of 2008

Mohiuddin Ahmmed and others

... Appellants

-Versus-

The State

...Respondent

Mr. Pronay Kanti Roy, Advocate

...for the appellants

Mr. Md. Monwar Hossain, A.A.G.

...for the respondent

Judgment on 15.5.2011

*Md. Ruhul Quddus, J:*

This appeal under section 30 of the Special Powers Act, 1974 is directed against order dated 15.4.2008 passed by the Judge, Special Tribunal No.1, Noakhali in Special Tribunal Case No.14 of 2008 arising out of Hatia Police Station Case No.8 dated 14.11.2007 corresponding to G.R. No.66 of 2007, so far it relates to rejection of the appellants' application for discharge filed under section 265C of the Code of Criminal Procedure and framing charge against them under section 25C of the Special Powers Act.

Facts leading to this appeal, in brief, are that the informant Shiekh Md. Mafizur Rahman, a Sub-Inspector of police lodged an *ejaher* with Hatia police station against the appellants on 14.11.2007 bringing allegations of keeping expired medicines of different brand and items in their respective pharmacies for the purpose of sale. The police recorded the case and after investigation submitted charge sheet on 15.2.2008 against the appellants under section 25C of the Special Powers Act.

The case after being ready for trial, was sent to the Special Tribunal No.1, Noakhali, wherein it was numbered as Special Tribunal Case No.14 of 2008. The appellants filed an application under section 265C of the Code of Criminal Procedure for their discharge from the case. The learned Judge of the Tribunal heard the application, rejected the same and framed charge against them under section 25C of the Special Powers Act by his order dated 15.4.2008. The appellants filed the present criminal appeal against the said order of framing charge, and subsequently obtained an order staying all further proceedings of the case.

Mr. Pronay Kanti Roy, learned Advocate appearing for the appellants, submits that the appellants are bonafide businessmen at Hatia Bazar. They had kept the out dated medicines in separate cartons not to sell, but to return to the respective manufacturing companies. The joint forces whimsically seized those medicines and lodged the *ejahar* against them causing endless harassment and humiliations. In support of his contention, Mr. Roy referred to some defense materials including a circular dated 13.7.2006 issued by Bangladesh Chemist and Druggists Association. As a second line of his argument, he submits that the offence as alleged in the *ejahar* is exclusively triable under the Drug Act, 1940 and the Special Tribunal constituted under the Special Powers Act has got no jurisdiction to try the case.

On the other hand, Mr. Md. Monwar Hossain, learned Assistant Attorney General appearing for the State referred to the impugned order and submits that the learned Judge of the Tribunal gave elaborate reasoning in rejecting the appellants' application for discharge. Whether the expired medicines were kept in the pharmacies to return to the manufacturers, are questions of facts to be determined in trial. At this stage the appellant cannot be discharged on such a defense plea, when a charge sheet has been filed after proper investigation and the Tribunal took cognizance of the offence.

We have examined the documents referred by the learned Advocate for the appellants and also examined the provisions of law. The Drug Act, 1940 does not oust the jurisdiction of any other Court to try an offence relating to drug under

any other law. For better appreciation, the relevant section 32 (3) of the Drug Act is quoted below :

“32 (3) Nothing contained in this chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this chapter”

The circular of Bangladesh Chemist and Druggists Association and other defense materials as referred by the learned Advocate for the appellants can not be considered at the time of framing of charge. The Court in framing charge will consider the *ejahar* and the materials on record, which are gathered by the police in course of investigation. [reliance placed on 40 DLR 310, 47 DLR 404, 60 DLR 677, 16 BLT 474, 15 BLD 339, and 16 BLD (AD) 264].

For all the reasons stated above, we do not find any illegality in the impugned order. The appellants will get ample opportunity to adduce evidence, if any and to prove their respective defense cases in due course of trial.

In the result, the appeal is dismissed. The stay granted at the time of admission of the appeal is vacated. The Tribunal is directed to dispose of the case as early as possible.

Communicate a copy of the judgment.

Borhanuddin, J.

I agree.