

Present:  
Mr. Justice Mohammad Marzi-ul-Huq  
and  
Mr. Justice Md. Ruhul Quddus

Criminal Revision No.1340 of 1992

Taju Mia and others  
... Petitioners  
-Versus-  
The State and another  
...Opposite parties

No one appears for the petitioners

Mrs. Syeda Rabia Begum, A.A.G.  
... for the opposite party

Judgment on 3.6.2012

*Md. Ruhul Quddus, J:*

This Rule at the instance of the accused-petitioners was issued on an application under section 439 of the Code of Criminal Procedure calling in question the legality of order dated 20.9.1992 passed by the Additional Sessions Judge, First Court, Comilla rejecting an application filed by the petitioners for stopping the proceedings in Session Case No.28 of 1989 and releasing them under section 339C (4) of the Code.

Opposite Party No.2 Md. Shahidul Islam with dead body of a child approached Daudkandi Police Station, Comilla on 15.4.1986 and lodged an *ejahar* against the petitioners and thirty others alleging, *inter alia*, that earlier they were inhabitants of village Satani, wherefrom they settled in the village of Balurchar situated to the west of river Kathalia under *mouja* Brahman Char. They were having previous enmity and engaged in litigations with another

group of settlers hailing from village Nandirchar. In this inimical background, the petitioners and their accomplices being equipped with different lethal weapons, attacked them on 15.4.1986 at about 9 a.m and killed a child of five years named Malek, severely injured many of the villagers including women and children, ransacked their houses and looted ornaments, household goods, pet animals and other valuables worth Taka seven lac.

The *ejahar* gave rise to Daudkandi Police Station Case No.8 dated 15.4.1986. Police, after investigation, submitted charge sheet on 30.6.1986 under sections 147, 148, 302, 364, 342, 326, 325, 379, 380 and 323 of the Penal Code against the petitioners and others.

The case having been ready for trial was sent to the Sessions Judge, Comilla on 9.4.1989 and was registered as Session Case No.28 of 1989. Thereafter, it was sent to the Second Court of Additional Sessions Judge, Comilla for hearing and disposal. The Additional Sessions Judge received the case record on 5.7.1989 and subsequently framed charge against the accused including the petitioners under sections 148, 380, 302 and 34 of the Penal Code by order dated 26.5.1990, to which they pleaded not guilty and claimed to be tried.

In course of trial, prosecution examined eight witnesses and the case was fixed for further evidence. Meanwhile the petitioners filed an application for stopping further proceedings in the case and releasing them under section 339C (4) of the Code on the ground that the time-limit of total 270 days for conclusion of trial of the case had already expired. The Additional Sessions Judge heard the application and rejected the same by order dated 20.9.1992

on the ground that only 143 working days excluding the days when he was in charge, had expired. Against the said order of rejection, the accused-petitioners moved in this Court with the present criminal revision and obtained the Rule with an order of stay.

This criminal revision has been appearing in the cause list for several days with name of the Advocate for petitioners. We take it up for hearing, but no one appears to press the Rule. In view of its long pendency for nearly twenty years, we take it up for disposal and allow the Assistant Attorney General to make her submissions.

Mrs. Syeda Rabia Begum, learned Assistant Attorney General appearing for the State-opposite party, submits that the *ejahar* clearly discloses offence of murder, inflicting grievous injuries upon the villagers, ransacking their houses and looting ornaments, pet animals, household goods etc. Police, after investigation, submitted charge sheet against them. The trial Court had framed charge and the prosecution already examined eight witnesses. There is no illegality in the proceedings.

Mrs. Rabia further submits that the accused-petitioners themselves dragged the case by managing the Public Prosecutor to file a false application about the death of co-accused Garib Hossain, who was actually alive. Lastly she submits that during pendency of the Rule, the scope of stopping any criminal proceedings for non-conclusion of trial within the time-limit under section 339C (4) has been repealed. Now any criminal proceedings though initiated earlier, will be governed by the amended procedural law.

We have considered the submissions of learned Assistant Attorney General, perused the record including the revisional application and consulted the relevant provisions of law. It appears that there are specific allegations of murder of an innocent child of five years, injuring the villagers and looting their ornaments, pet animals, household goods etc. against the petitioners and their accomplices. After framing of charge, eight prosecution witnesses were already examined.

It further appears from order dated 28.11.1989 that the Public Prosecutor reported to the trial Court that co-accused Garib Hussain had died, whereas order dated 4.2.1990 shows that according to a police report, the said Garib Hussain was still alive. This inquiry took only 67 days (including the holidays) to be dissolved. Moreover, without any support from the record, or any explanation or reply whatsoever from the concerned Public Prosecutor, it cannot be readily said that the petitioners had managed him to do it and were responsible for dragging the case. So, we do not find any substance in the submission of the learned Assistant Attorney General on this point.

A few months after issuance of the present Rule, section 339C of the Code was amended by The Code of Criminal Procedure (Second Amendment) Act, 1992 (Act No.XLII of 1992) on 1.11.1992 and thereby the provision of stopping the proceedings in respect of trial and releasing the accused for non-conclusion of trial within the time-limit under section 339C (4) and that of revival of the case under section 339D were repealed. After such amendment, section 339C of the Code stands as follows:

õ339C. Time for disposal of the cases- (1) A Magistrate shall conclude the trial of a case within one hundred and eighty days from the date on which the case is received by him for trial.

(2) A Sessions Judge, an Additional Sessions Judge or an Assistant Sessions Judge shall conclude the trial of a case within three hundred and sixty days from the date on which the case is received by him for trial.

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2) where a person is accused in several cases and such cases are brought for trial before a Magistrate or a Court of Session, the time limit specified in sub-section (1) or sub-section (2) for the trial of such cases shall run consecutively.

(2B) Notwithstanding the transfer of a case from one Court to another Court, the time specified in sub-section (1) or sub-section (2) shall be the time for concluding the trial of a case.

(3) Omitted

(4) If a trial cannot be concluded within the specified time, the accused in the case, if he is accused of a non-bailable offence, may be released on bail to the satisfaction of the Court, unless for reasons to be recorded in writing, the Court otherwise directs.

(5) Nothing in this section shall apply to a trial of a case under section 400 or 401 of the Penal Code, 1860 (Act XLV of 1860), or to the trial of a case to which provisions of chapter XXXIV apply.

(6) In this section, in determining the time for the purpose of a trial-

(a) Omitted

(b) the days spent on account of the absconion of an accused after his release on bail, if any, shall not be counted.ö

For a clear understanding of the previous legal position, the old sections 339C and 339D of the Code are also quoted below:

339C.-(1) A Magistrate shall conclude the trial of a case within one hundred and twenty days from the date on which the case is received by him for trial.

(2) A sessions Judge an Additional Sessions Judge or an Assistant Sessions Judge shall conclude the trial of a case within two hundred and forty days from the date on which the case is received by him for trial.

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), where a person is accused in several cases and such cases are brought for trial before a Magistrate or a Court of Session, the time-limit specified in sub-section (1) or sub-section (2) for the trial of such cases shall run consecutively.

(3) If for any reason to be recorded in writing, a Magistrate or a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge is unable to conclude the trial of a case within the specified time, he shall conclude such trial within thirty days after the expiry of the specified time:

Provided that nothing in this sub-section shall apply to the summary trial of a case.

(4) If a trial cannot be concluded within the specified time or the extended time as mentioned in sub-section (3) further proceedings in respect of the trial shall stand stopped and the accused person released.

(5) Nothing in this section shall apply to a trial of a case under section 400 or 401 of the Penal Code, 1860 (Act XLV or 1860) or to the trial of a case to which provisions of chapter XXXIV apply.

(6) In this section, in determining the time only the working days shall be counted.

339D.-(1) Notwithstanding anything contained in section 339C, any proceedings in respect of the trial of a case stopped under sub-section (4) of that section shall be revived, if an application for such revival is made by the Government to the Court, where such proceedings were pending on the date they were stopped, within ninety days from that date; and the proceedings thus revived shall continue from the stage at which they were stopped:

Provided that where such Court is not in existence or has no jurisdiction to try the case for any reason, the application for such revival shall be made to the Court which has jurisdiction to try such case.

(2) Where any proceedings are revived under sub-section (1), the accused in the case shall, if he is accused of a non bailable offence, be released on bail to the satisfaction of the Court unless for reasons to be recorded in writing the Court otherwise directs.

(3) Where any proceedings are revived under sub-section (1), the trial of the case after such revival shall be concluded within the time specified in sub-section (1) or sub-section (2) of section 339C, as the case may be.

(4) If the trial of a case after revival cannot be concluded within the specified time, further proceedings in respect of the trial of the revived case shall stand stopped and the accused person released.

(5) In this section, in determining the time for the purpose of trial:-

(a) the date of revival of a case shall be deemed to be the date on which the case is received for trial: and

(b) only the working days shall be counted.ö

Upon a comparative study of the old and amended sections, we find that the amended sub-section (4) of section 339C of the Code has taken away the scope of stopping the proceedings in respect of trial of a criminal case and that of releasing the accused for non-conclusion of trial within the specified time. Act No. XLII of 1992 has also repealed section 339D of the Code and thereby has taken away the scope of revival of the proceedings stopped under sub-section (4) of section 339C.

Now the question arises as to whether the present case will be governed under the amended law. In this regard we find the case of Abdul Wadud Vs. State, 48 DLR (AD) 6. In that case the High Court Division discharged the Rule in a criminal revision and thereby affirmed an order of Sessions Judge,



Munshigonj rejecting an application for stopping proceedings of the case and releasing the accused under section 339C of the Code.

Leave was granted, amongst other, to consider whether the amendment of section 339C by Act No. XLII of 1992, by which sub section (4) of section 339C was substituted during pendency of the criminal revision, would take away the right of release of the accused as it stood before amendment of the law. The Appellate Division dismissed the appeal by a unanimous decision. His lordship Mr. Justice Mustafa Kamal in paragraph 7 of the judgment observed as follows:

*“ It is therefore of no consequence if the learned Sessions Judge has made a mistake in holding that since he had taken charge of the Sessions Division on January 23, 1991, a fresh period of 270 days will start from that date. Section 339C referred to an offence, not to a person. The learned Sessions Judge was obviously wrong in his view. But the wrong will not bring any relief to the appellant. During the pendency of the criminal revision the new Act came into force on the 1<sup>st</sup> November, 1992 and his supposed right of stoppage of proceeding and release evaporated along with the amendment, because the prosecution too lost the right of revival”. (emphasis supplied)*

In paragraph 21 of the same judgment as referred to above, his lordship Mr. Justice Md. Ismailuddin Sarker observed:

*“In view of the repeal of sub-section (4) of section 339C Cr P C followed by reenactment of the said sub-section the new procedural law will be applicable in the pending cases although instituted when the old*



provision was in force and the pending cases are to be governed by the new procedure under the amended law.ö (emphasis supplied)

The ratio laid down in the case of Abdul Wadud that the amended procedural law will be applicable in the pending cases although instituted when the old provision of law was in force, is also applicable in the present case. We are, therefore, of the view that the instant case will be governed by the amended procedural law.

It is to be kept in mind that the purpose of old section 339C (4) was to expedite the trial and not to give a safe passage to the offenders to go unpunished. In the present case, the impugned order even if was passed on an untenable ground, it will not help the petitioners in any manner, as the procedural law has been amended by this time and settled otherwise by the apex Court.

In view of the above, we do not find any substance in the Rule. Accordingly the Rule is discharged. Stay granted at the time of issuance of the Rule is vacated. The trial Court is directed to proceed with the case in accordance with law and conclude the trial expeditiously. Before holding further trial, the Court will serve notices upon all the accused persons and give them reasonable opportunity to appear before the Court and shall consider their prayers for bail, if any.

Send down the lower Court's record.

Mohammad Marzi-ul-Huq, J:

I agree.