

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

Criminal Misc. Case No.2254 of 2005

Md. Alamgir Bhuiyan
... Petitioner
-Versus-
The State
... Opposite Party

No one appears for the petitioner

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

Judgment on 18.3.2012

Md. Ruhul Quddus, J:

This Rule at the instance of a sole accused in a criminal case was issued on an application under section 561 A of the Code of Criminal Procedure for quashment of the proceedings in C. R. Case No.555 of 1997 under section 406 of the Penal Code that was pending before the Magistrate of second class, Comilla.

Complainant Md. Abdul Malek, Secretary of Nabiabad Islamia Dakhil Madrash, Devidwar, Comilla filed a petition of complaint before the cognizance Court No.2, Comilla on 10.8.1997 against the petitioner alleging, *inter alia*, that the petitioner is his predecessor-in-office. He had illegally

confined and misappropriated some documents of the Madrash namely, registration cards, mark sheets, original certificates, check book and pass book against the bank account maintained by the Madrash etc.

On receipt of the complaint, the Magistrate sent it for judicial inquiry to be conducted by the Assistant Commissioner (land) Devidwer, Comilla by his order dated 10.8.1997. The Assistant Commissioner after holding judicial inquiry submitted a report on 7.9.1997 with a finding of prima facie truth in the allegation. On receiving the inquiry report the Magistrate took cognizance of offence against the petitioner by his order dated 21.10.1997 and issued summon against him. The petitioner voluntarily appeared before the Court and obtained bail on 1.1.1998. Subsequently the Magistrate by his order dated 9.2.1999 framed charge against him under section 406 of the Penal Code to which he pleaded not guilty and claimed to be tried.

In course of trial the prosecution examined the witnesses and after closing the prosecution the case was fixed for argument. At that stage the petitioner filed an application under section 540 of the Code of Criminal Procedure for recalling two witnesses, which the trial Magistrate rejected by his order dated 23.8.2004 on the ground that the case was fixed for argument. In that event the petitioner moved in this Court challenging the entire proceedings in the case and obtained the Rule with an order of stay.

This criminal miscellaneous has been appearing in the cause list for several days with name of the Advocate for petitioner. It was called for hearing on 15.3.2012, but no one for the petitioner appeared. In view of its long pendency we took it up for disposal and allowed the Assistant Attorney General to make her submission.

Mrs. Syeda Rabia Begum, learned Assistant Attorney General took us through the entire order sheets and submitted that the case was fixed for argument after closing the prosecution witnesses, at this stage there is no legal scope for quashment for the proceedings.

We have gone through the record and considered the submission of the Assistant Attorney General. It appears from the petition that the petitioner has raised a question whether the allegations made in the complaint constitute any offence under section 420 or any other section of the Penal Code.

No certified copy of the evidence of witnesses has been annexed to appreciate to facts. Definitely the trial Court is competent enough to see whether the facts revealed in course of trial constitute any criminal offence or the charge is required to be altered.

It further appears from order dated 23.8.2004 that after closing the prosecution, the case was fixed for argument before

the trial Magistrate. At this stage quashment of the proceedings is not legally permissible. This view lends support from Golam Sarwar Hiru Vs. the State and another, 13 MLR (AD) 103.

Under the facts and circumstances of the present case, and in view of the case cited above, we are not inclined to interfere with impugned proceedings at this stage.

Accordingly the Rule is discharged. The order of stay granted at the time of issuance of the Rule is vacated.

Communicate a copy of the judgment immediately.

Mohammad Marzi-ul-Huq, J:

I agree.