

Present:
Mr. Justice Soumendra Sarker
and
Mr. Justice Md. Ruhul Quddus

Criminal Misc. Case No.4156 of 1997

Jahangir
... Petitioner

-Versus-

Md. Kafiluddin Choudhury and another
... Opposite Parties

No one appears for the petitioner

Mr. Gazi Md. Mamunur Rashid, A.A.G.
õ for the State-opposite party

Judgment on 29.3.2012

Md. Ruhul Quddus, J:

This Rule at the instance of the sole accused 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.124 of 1995 under section 406 of the Penal Code that was pending before the Magistrate of first class, Nilphamari Sadar.

Opposite Party No.1 Md. Kafiluddin Choudhury, a businessman engaged in contract and supply filed a petition of complaint on 10.6.1995 in Court No.2 of Magistrate, first class, Nilphamari alleging *inter alia*, that the accused-petitioner Jahangir took loan of Taka 85,000/- (eighty-five thousand) only from him on execution of a bond on 21.4.1995. It was stipulated that the petitioner would pay him profit of Taka 1000/- and pay him back the principal amount within 15.6.1995. After expiry of the stipulated time, he did not pay him the money even

the profit. Under the circumstance, a *shalish* was held at his house on 18.6.1995, where the petitioner flatly denied the fact of taking loan in presence of the local elites. In this way he dishonestly misappropriated the entire money.

The Magistrate examined the complainant, took cognizance of offence under sections 420 and 406 of the Code and issued process against the petitioner. He surrendered before the Magistrate, obtained bail and subsequently filed an application for his discharge from the case, which was rejected and charge under section 406 of the Code was framed against him. In that event, he moved in this Court with the present miscellaneous case under section 561A of the Code of Criminal Procedure and obtained the Rule with an order of stay.

The case has been appearing in the cause list since 23.3.2012 with name of the Advocates for petitioner. Today it is taken up for hearing, but no one for the petitioner appears. In view of its long pendency for nearly fifteen years, we take it up for disposal and allow the Assistant Attorney General to make his submissions.

Mr. Gazi Md. Mamunur Rashid, learned Assistant Attorney General appearing for the State-opposite party submits that the petition of complaint clearly discloses the offence under sections 406 and 420 of the Penal Code. The Court in due course took cognizance of offence against the petitioner and subsequently framed charge against him. Whether the allegations made in the petition of complaint are true, it can only be decided in due course of trial. At this stage there is no scope for quashment of the proceedings.

We have considered the submissions advanced by learned Assistant Attorney General and gone through the miscellaneous application with the documents annexed. In view of clear allegations of taking loan on execution of a bond and subsequent denial of taking loan as made against the petitioner in the petition of complaint, it cannot be said that the complaint does not disclose any offence under section 406 of the Code against the accused. The Magistrate examined the complainant, took cognizance of offence against the accused, issued process against him and subsequently proceeded with trial on framing charge under section 406 of the Code. The application for discharge (annex-C) shows that the petitioner denied his signature allegedly put on the bond, which can be determined only in due course of trial. The proceedings, therefore, do not suffer from any illegality or any abuse of the process of Court and as such we do not find any substance in the Rule.

The Rule is, therefore, discharged. The stay granted at the time of issuance of Rule is vacated.

Communicate a copy of the judgment.

Soumendra Sarder, J:

I agree.