

In the Supreme Court of Bangladesh  
High Court Division  
(Criminal Revisional Jurisdiction)

Bench:

Mr. Justice Muhammad Abdul Hafiz  
and  
Mr. Justice Md. Ruhul Quddus

Criminal Revision No.2030 of 1991

In the matter of:

An application under section 439 (1) of the Code of  
Criminal Procedure;

And

In the matter of:

State

... Petitioner

-Versus-

Syeduddin Ahmed, Head Assistant-cum-Accountant of  
Stamp Section, Patuakhali Treasury Branch, Patuakhali.

... Opposite Party

Mr. Md. Masud Hasan Chowdhury, Deputy Attorney  
General

...for the petitioner

No one appears for the opposite party

Judgment on 08.10.2013

*Md. Ruhul Quddus, J:*

This Rule was issued challenging the legality of order dated 05.07.1989 passed by the Special Judge, Patuakhali in Special Case No. 1 of 1989 arising out of Patuakhali Police Station Case No.11 dated 30.10.1987 corresponding to G. R. No.109 of 1987 under section 409 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947 discharging the accused-opposite party under section 265C of the Code of Criminal Procedure.

Facts necessary for disposal of the Rule, in brief, are that the accused-opposite party while serving in the Treasury branch of Patuakhali misappropriated non-judicial stamp worth Taka 9,500/- within 07.07.1983 to 30.05.1985. The matter was reported to the District Anti Corruption Bureau on 22.01.1986. The Anti Corruption Bureau after inquiry lodged a first information report with Patuakhali Police Station on 30.10.1987. After investigation, an Assistant Inspector of the Bureau submitted charge sheet on 27.11.1988 against the accused-opposite party, on which Special Case No.1 of 1989 was started in the Court of the Senior Special Judge, Patuakhali.

The special case was fixed for framing charge on 05.07.1989, when the learned Special Judge discharged the accused-opposite party under section 265C by order dated 05.07.1989, being aggrieved by which the State moved in this Court and obtained the instant Rule.

Mr. Md. Masud Hasan Chowdhury, learned Deputy Attorney General appearing for the State submits that the learned Special Judge discharged the opposite party on the ground of absence of the public prosecutor, which is not reasonable. He further submits that when there is specific allegation of misappropriation of public money and the accused-opposite party impliedly confessed his guilt by depositing the money, the order of discharging him from a criminal liability is illegal.

We have considered the submissions of the learned Deputy Attorney General and gone through the record. It appears that the accused-opposite party already deposited the money, which he allegedly misappropriated. The accused-opposite party took the plea that the money was misplaced because of carelessness and negligence in duty, for which he was already dismissed from service in a departmental proceeding. The public prosecutor was also consecutively absent which indicated the prosecution's unwillingness to prosecute him. In such a position the learned Special Judge took a practical view and discharged the accused.

Under the facts and circumstances, we are of the view that the impugned order does not suffer from any gross illegality or miscarriage of justice, which can be interfered with by this Court.

Accordingly, the Rule is discharged. However, by virtue of this judgment the accused-opposite party Syeduddin Ahmed will not be reinstated in service.

Send down the lower Court's record.

Muhammad Abdul Hafiz, J:

I agree.