

**1 SCOB [2015] HCD 1****HIGH COURT DIVISION**

(Criminal Miscellaneous Jurisdiction)

Criminal Miscellaneous Case No. 33311 OF 2011

Mr. Prabir Halder

..... For petitioner.

**Sheikh Ferozur Rahman** .....Petitioner

Ms. Sakila Rawshan, D.A.G. with

Ms. Sharmina Haque, A.A.G, and

Mr. Md. Sarwardhi, A.A.G

-Versus-

.....For opposite party.

**The State and another**.....Opposite partiesHeard and judgment on 4<sup>th</sup> August, 2015.

**It is the unanimous view of our Court that when a forged document is brought into a Court, private complaints subsequent to this are not maintainable. The documents in serial No.30 and 31 (Annexure-I to this petition) were not found to be forged by the Court where it was produced. In a proceeding where a forged document has been used, the Court concerned should make the complaint. Since the alleged forged document has been filed in a Civil Court, it is for the concerned Civil Court to lodge any complaint before the Criminal Court if it finds any forgery relating to the said document. ... (Para 6)**

**Judgment****SALMA MASUD CHOWDHURY, J.**

1. This Rule arising out of an application under section 561A of the Code of Criminal Procedure at the instance of the accused petitioner was issued calling upon the opposite party to show cause as to why the proceedings of G.R. Case No.3 of 2000 (D.G.R. No.1 of 2000) arising out of Khulna Police Station Case No.3 dated 4.1.2000 under section 406/409/420/467/468/471/109 of the Penal Code read with section 5(2) of the Act II of 1947, now pending in the Court of Chief Metropolitan Magistrate, Khulna should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. The prosecution case in short is that one Senior Manager of Agrani Bank, Rupsha Strand Road Branch, Khulna lodged a complaint petition on 25.6.1996 against the Petitioner along with 8 others under section 420/409 of the Penal Code read with section 5(2) of Act II of 1947 alleging that the accused petitioner was the Managing Director of Bagerhat Sea Food Industries Ltd. which is registered under Companies Act, and accused Nos.2-8 were the Directors of the Company and the Complainant on 16.11.1995 on inspection of the godown of the said Company found that the Shrimps were kept in heaps instead of packing those in cartoons and the complainant on 21.11.95 requested the petitioner for repairing godown No.3 and to keep the shrimps in an orderly manner but he refused to do and before filing Money Suit, the complainant scrutinised the relevant papers and detected that the accused in connivance with accused No.9 took loan from the Bank and the accused had no right and title for the land kept under mortgage and the said land was a vested property and the project was established over the vested property and knowing it fully well, he took huge amount of loan and misappropriated it and in the name of exporting 3200 master cartoons of shrimps, they took it out of the godown and sold it in the local market and misappropriated the sale proceeds and thereby committed offence and a complaint petition was filed and the Chief Metropolitan Magistrate, Khulna on receipt of the same passed orders directing the District Anti-Corruption Authority, Khulna for treating the said application as a first information report and to start a regular case under proper section of law and on receipt of the said complaint petition, the District Anti-Corruption Office, Khulna started DAB Khulna E. R. No.43 of 1996 but without treating the said Complaint Petition as a first information report, Mr. S.M. Shamia Iqbal, an Inspector of D.A.B. Khulna as Informant lodged a case being Khulna Police Station Case No.3 dated 4.1.2000 against as many as 10 (ten) accused persons including the petitioner, alleging, that the accused in collusion with each other for having illegal benefit on misuse of power and on committing criminal breach of trust by way of forgery created loan sanction letter against Bagerhat Sea Food Industries and took out shrimps kept under pledge in the godown of Agrani bank for export and without doing as such, by creating false export documents, misappropriated a sum of Tk.4,12,42,460.00 and thereby committed offence under section 406/409/420/467/468/471/109 of the Penal Code and in course of investigation in D. A. B., E. R. No. 43/96 it was found that

accused-petitioner on 4.10.1994 in favour of Bagerhat Sea Food Industries Bagerhat, applied to Agrani Bank for a loan of Tk.16,00,00,000.00 whereupon on the said date accused Firozur Rahman recommended for a loan of Tk.15,00,00,000.00 and the D. G. M. of Zonal Office of the Bank on 13.10.1994 recommended for sanctioning a loan of Tk.10,00,00,000.00 and the said recommendation, the concerned file on process was placed before accused Abdur Rahman on 22.10.94 and though the said loan was not sanctioned till then, the accused Bank Officials since 6.10.1994 had been making payment against the said proposal for loan and by that time, already Tk.4,00,19,420/- was paid and from 6.10.1994 to 22.10.1994, during process of the loan proposal, none of the concerned accused Bank Officials made any remark thereupon with regard to the payment of the loan money before sanctioning loan and thereby the said accused Bank Officials on misuse of their power gave an illegal favour to the accused-petitioner in withdrawing Tk.4,00,19,420/- and the accused-petitioner pursuant to a letter of credit from Osaka, Japan applied on 25.10.1994 for delivery of 1,650 cartoons of shrimps valued at Tk.91,37,400/- for the purpose of export to Japan to accused Sheikh Firozur Rahman being the Manager of Agrani Bank and the accused petitioner took delivery of the same vide stock Memo No.89514 dated 29.10.1994 by putting his signature but without exporting the same created false export bill and submitted it with the Foreign Exchange Branch of the Bank at Khulna and on getting negotiated the said Bill was sent to the Strand Road Branch of the Bank for depositing the same against Cash Credit Place Account and the accused withdrew the said money and when the fact of the said false export was revealed, the accused-petitioner was asked to deposit and/or pay back Tk.85,32,318/70 including interest and again as per the demand of the accused-petitioner, the accused Sheikh Firozur Rahman and accused R. M. Zahidul Islam vide D.O. No.11381 dated 14.11.1994 allowed the accused-petitioner to take delivery of 3200 master cartoons of shrimps vide stock Memo No.66358 dated 23.11.1994 but the accused without exporting the same again submitted false export bill and on negotiating the same withdrew Tk.1,87,45,118/20 and thereafter the officers of the Bank Clay Road Branch came to learn about the said export bill and vide letter dated 23.11.94 the accused-petitioner was asked to refund the said money but he did not, and by the aid of active co-operation of accused Sheikh Firozur Rahman and accused R.M. Zahidul Islam on creating false pledge stock documents showed pledge of 9449 master cartoons of shrimps out of which 3200 was of Bagda and at that time there was no mention for collecting so much shrimps and more over the machineries of the petitioner had no capacity of processing so much shrimps at a time and the accused in aforesaid manner in connivance with each other misappropriated a total sum of Tk.4,12,42,460.00 and committed the offence and in pursuance of the said case being Khulna Police Station Case No.3 dated 4.1.2000, G.R. Case No. 3 of 2000 (D.G.R. No.1 of 2000) has been started in the Court of Chief Metropolitan Magistrate, Khulna and the Metropolitan Magistrate vide his Process No.271/96 dated 25.6.1996 forwarded the complaint petition to the DACO, Khulna pursuant to which D.A.B. E.R. No.43/96 dated 26.6.1996, started and pursuant to the said memo of the Court, the DACO, Khulna vide memo No.2130/D.A.B. (Noo: ) dated 30.11.1997 submitted a report to the Court informing vide paragraph 3(ka)(1) that no sanction was obtained from the Office of the Hon'ble Prime Minister for lodging any case against the accuseds and pursuant to an application dated 18.1.2000 the Metropolitan Magistrate vide order dated 19.1.2000 asked for an opinion of the Investigating Officer who vide Memo No.10S/D.A.B./Jukta dated 27.1.2000 submitted a report and the Magistrate vide order dated 6.2.2000 granted bail to the said accused Md. Firozur Rahman and thereafter the accused-petitioner surrendered before the Court on 9.2.2000 and the Magistrate by an order of the said date granted bail to the accused-petitioner. A suit being Money Suit No.4 of 1996 was also filed by the Manager Agrani Bank as plaintiff before Artho Rin Adalat, Khulna praying for a decree for realisation of money to the tune of Tk.21,15,88,728.69 stating the facts and allegation as has been stated and alleged in the first information report of Khulna Police Station Case No.3 dated 4.1.2000 and hence the present case.

3. Being aggrieved by the proceedings of the case, the petitioner filed an application under section 561-A of the Code of Criminal Procedure before this Court and obtained the present Rule.

4. Mr. Prabir Halder, the learned Advocate appearing on behalf of the petitioner submits that the documents of alleged false and forged export bill in connection with the alleged export of 1650 and 3200 master cartoons of shrimps having been produced in Court along with the plaint of Money Suit No.4 of 1996 filed by the Manager of the Branch as Plaintiff as per requirement of the provisions under Rule 14 of Order 7 of the Code of Civil Procedure, the impugned proceeding under section 467/468/471 of the Penal Code is barred under section 195(C) of the Code of Criminal Procedure. He next submits that since the Money Suit No.4 of 1996 has been decreed on compromise and the alleged forged documents i.e. the alleged forged export bill, having been produced therein, no Court can take cognizance of an offence of forgery defined in section 463 and punishable under section 468 or 471 of the Penal Code unless there is a complaint by the said Court is made in which documents were produced and there having been no such complaint by the Artho Rin Adalat till today, the present proceedings cannot continue. He also submits that since accused No.1 S.M. Amjad Hossain entered

into a contract with Agrani Bank, Strand Road Branch, Khulna, for establishing a Shrimps Processing and Exporting Industry in the year 1992 and since then he had been doing business with the Bank by taking loan and making payment there as per the terms and conditions of the contract, any breach of any term does not constitute any criminal offence either of criminal breach of trust or of cheating rather the dispute being a civil dispute in nature, the impugned proceedings is an abuse of the process of law. The learned Advocate then submits that since the Chief Metropolitan Magistrate directed the DACO, Khulna for treating the Complaint Petition filed by the then Manager of the Bank on 25.6.1996 (Annexure- A) as the First Information Report vide Annexure-B hereto having been made without any lawful authority, the same cannot be treated to be a First Information Report rather can be treated to be a statement under section 161 of the Code of Criminal Procedure and as such the impugned proceeding on the basis of second F.I.R. having been frivolous, vexatious and abuse of process of Court is liable to be quashed. Lastly the learned Advocate submits that accused No.1 S.M. Amjad Hossain filed Criminal Miscellaneous Case No.5251 of 2000 arising out of the same first information report under section 561-A of the Code of Criminal Procedure in which Rule was issued and on hearing, the said Rule was made absolute.

5. Ms. Sakila Rawshan, the learned Deputy Attorney General appearing on behalf of the State opposes the Rule but submits that Rule issued in Criminal Miscellaneous Case No.5251 of 2000 was made absolute on hearing by this Court.

6. We have heard the learned Advocate appearing on behalf of the petitioner and the learned Deputy Attorney General representing the State opposite party and perused the application under section 561A of the Code of Criminal Procedure along with other materials on record. It appears that the date of occurrence was from 4.10.1994 to 31.12.1994 and the judgment was delivered on 8.3.1997 and the decree was signed on 15.3.1997 in Money Suit No.4 of 1996 and by way of a solenama decree the Bank received the money on obtaining the judgment and decree and the present first information report was lodged on 4.1.2000, after a long time. It also appears that in the first information report allegation has been made that some bills were forged by M.O.C.A. No.810944 dated 27.10.1994 and M.O.D.A. No.891939 dated 2.11.1994 but these documents were produced before the Court below in Money Suit No.4 of 1996 by way of list of documents filed by the plaintiff Bank and came to our notice by Annexure-I that those documents were produced before the Court concerned in serial No.30 and 31. It is the unanimous view of our Court that when a forged document is brought into a Court, private complaints subsequent to this are not maintainable. The documents in serial No.30 and 31 (Annexure-I to this petition) were not found to be forged by the Court where it was produced. In a proceeding where a forged document has been used, the Court concerned should make the complaint. Since the alleged forged document has been filed in a Civil Court, it is for the concerned Civil Court to lodge any complaint before the Criminal Court if it finds any forgery relating to the said document.

7. The learned Advocate has referred Annexure-H, Criminal Petition for Leave to Appeal No.388 of 2006 wherein their Lordships of the Appellate Division found in a similar case that since the entire amount has been paid by the accused person in terms of the solenama arising from a Money Suit filed by the Bank, which ended in compromise and the money was adjusted in full, the further proceeding would be an abuse of the process of the Court and their Lordships affirmed the judgment passed by the High Court Division quashing the proceedings.

8. Considering the facts and circumstances of the case, we are of the view that the further proceedings of the present criminal case would be nothing but sheer abuse of the process of the Court and are liable to be quashed for ends of justice.

9. In the result, the Rule is made absolute. The proceedings of G.R. Case No.3 of 2000 (D.G.R. No.1 of 2000) arising out of Khulna Police Station Case No.3 dated 4.1.2000, now pending in the Court of Chief Metropolitan Magistrate, Khulna relating to the petitioner is hereby quashed.

10. The order of stay granted earlier by this Court stands vacated.

11. Communicate a copy of the judgment and order to the Court concerned.