

**11 SCOB [2019] HCD 113**

**High Court Division  
(Criminal Revisional Jurisdiction)**

Criminal Revision No.1184 OF 2008

**M.N. Kamal Hossain and another**  
..... Petitioners

**Vs.**

**The State**

..... Opposite party

Mr. Aminur Rahman, Advocate  
..... for the petitioners

Mr. Biswojit Roy, Deputy Attorney  
General.

..... for the opposite party.

Heard on 26.08.2015, 01.09.2015

And

Judgment on 03.09.2015.

**Bench:**

**Mr. Justice Md. Ruhul Quddus**

**And**

**Mr. Justice Bhishmadev Chakrabortty**

**It also appears from the record that at the time of framing charge petitioner No.1 M.N. Kamal Hossain remained absent but charge was framed accordingly and warrant of arrest was issued. By suppressing the said fact of issuance of warrant of arrest, he moved before this Court in Criminal Miscellaneous Case No.8151 of 2008 and on 08.06.2008 obtained Rule and interim order of anticipatory bail for a limited period. The said interim order was not extended. Ultimately the Rule was discharged on 21.12.2011 and the concerned Court was directed to take necessary steps to secure his arrest.**

**In view of the above petitioner No.1 M.N. Kamal Hossain is a fugitive from justice. He is not entitled to file this application before this Court and to get any order on it.**

**... (Para 12 & 13)**

**JUDGMENT**

**Bhishmadev Chakrabortty, J.**

1. This Rule at the instance of two accused in a criminal case on an application under section 439 of the Code of Criminal Procedure was issued calling upon the opposite party State to show cause as to why the order dated 29.05.2008 passed by the Divisional Special Judge, Chittagong in Special Case No.224 of 1999 framing charge against the petitioners under sections 409/467/471 and 109 of the Penal Code read with Section 5(2) of Act II of 1947 should not be set aside.

2. At the time of issuance of the Rule all further proceedings of the said Case, so far it was related to the petitioners, was stayed for a period of 6(six) months. Eventually the said order of stay was extended till disposal of the Rule.

3. On the basis of a First Information Report (briefly the FIR) lodged by an Inspector of DAB, Cox's Bazar, Chakoria Police Station Case No.11 dated 28.09.1985 was stated against accused-no.2 Md. Idris Ali and others under the aforesaid sections.

4. The allegation as disclosed in the FIR, in short, is that in the year 1984 while loan/Credit Program was under operation through Sonali Bank, Badarkhali Branch, accused Md. Idris in collusion with the manager and other staffs of the bank submitted an application for loan against a fake and false shrimp culture project. The manager of the bank forwarded the application to the Deputy General Manager with recommendation furnishing a false report of the field assistant. Accordingly Taka 75,000/- was sanctioned for the project in the name of petitioner No. 2 Md. Idris Ali. On receipt of the said sanction order account No.224 was opened in his name. He withdrew the amount but neither repay the same nor there was any existence of the said project and thus accused-petitioner No. 2 and four others in connivance with the each other committed the offence of sections 420/406/409/465/1467/471 and 109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947 (briefly Act II of 1947).

5. The then Bureau of Anti Corruption after investigation submitted charge sheet against all the FIR named accused persons further adding petitioner No.1 M.N. Kamal Hossain as accused. In the charge sheet allegation made against petitioner no. 1 M.N. Kamal Hossain was that he being elected Chairman of an Union Parishad issued false certificate in favour of accused Md. Idris Ali showing a fake project as genuine one and thus committed the offence under the aforesaid sections.

6. Initially the accused petitioners voluntarily surrendered before the concerned Court and obtained bail and, thereafter, they moved before this Division in Criminal Revision No.967 of 1992 and 1129 of 1992 respectively challenging the proceeding of the said case. A Division Bench of this Court issued Rules in both the cases. But after hearing by the judgment and order dated 26.01.2006 was pleased to dispose of both the Rules on the finding and observation that petitioner No.2 herein who took the loan from the bank has stated in the petition that he had paid-up the entire outstanding amount and the bank issued clearance certificate to that effect, the trial Court at the time of framing charge may consider the certificate as claimed by the petitioner.

7. Both the petitioners again appeared before the Court and obtained bail. On 29.05.2008 instant petitioner No.1 did not appear before the Court, but filed an application for adjournment which was rejected by the Court and ultimately charge was framed against him under the aforesaid sections and warrant of arrest was issued. The trial Court also ordered to proceed with the trial against him under section 339B (2) of the Code of Criminal Procedure (briefly the Code). Petitioner No.2 remained present and filed an application under section 265C of the Code for his discharge, which was rejected and ultimately charge was framed against both of them under sections 409/467/468/471 and 109 of the Penal Code read with section 5(2) of Act II of 1947 taking into consideration the observation made by this Division in the judgment of earlier two revision. Thereafter, petitioner No. 1 by suppressing the said fact of issuance warrant of arrest against him filed Criminal Miscellaneous Case No.8151 of 2008 before this Court praying for anticipatory bail and on 08.06.2008 obtained Rule and interim order of anticipatory bail for one year. After obtaining the order of bail petitioner No.1 again filed the instant criminal revision before this Court under section 439 of the Code challenging the order of framing charge and obtained the present Rule and order of stay.

8. Mr. Aminur Rahman, learned Advocate appearing for the petitioners submits that petitioner No.1 issued only a certificate in favour of petitioner No.2 describing the shrimp project as genuine one for taking loan from the bank. Mere issuance of a certificate do not constitute the offence as alleged. There is nothing in the record to implicate the petitioner with the offence. Moreover, petitioner No.2 Md. Idris has already paid the total outstanding

amount to the bank. In the attending facts and circumstances he prays for making the Rule absolute.

9. On the other hand Mr. Biswojit Roy, learned Deputy Attorney General for the State submits that there is sufficient material on record to frame charge against the petitioners. Taking into consideration the observation given by this Division in Criminal Revision No.967 of 1992 and 1129 of 1992, the Special Judge, Chittagong framed charge against them. The plea of payment of the outstanding amount to the bank, taken by petitioner No.2 Idris Ali in earlier criminal revision was not found to be true by the Special Judge on consideration of the evidence of the witnesses taken meanwhile. The Special Judge considering all those rightly framed charge against them and proceeded with the trial. There is no ground to interfere with the above order of framing charge and as such the Rule is liable to be discharged.

10. We have heard the learned Advocate for the petitioners and the learned Deputy Attorney General and perused the materials on record. We have also gone through the records of Criminal Revision Nos. 967 of 1992, 1129 of 1992 and Criminal Miscellaneous Case No. 8151 of 2008 brought before us.

11. It appears that it has been alleged that accused petitioner No. 2 Md. Idris Ali took loan from the bank for the alleged shrimp project. The project was certified by petitioner No.1 as genuine, but during investigation it has been found that all the accused in connivance with each other had misappropriated the money in the name of a fake project and accordingly charge has been submitted. It appears from the record that the facts raised by the petitioners in the earlier criminal revisions that petitioner No.2 has paid up the outstanding amount to the bank was not found to be true by the Special Judge at the time of framing charge on consideration of the evidence of the witnesses taken meanwhile. We also find sufficient materials on record to frame charge against them. The Special Judge, Chittagong committed no illegality in framing charge against them by the impugned order.

12. It also appears from the record that at the time of framing charge petitioner No.1 M.N. Kamal Hossain remained absent but charge was framed accordingly and warrant of arrest was issued. By suppressing the said fact of issuance of warrant of arrest, he moved before this Court in Criminal Miscellaneous Case No.8151 of 2008 and on 08.06.2008 obtained Rule and interim order of anticipatory bail for a limited period. The said interim order was not extended. Ultimately the Rule was discharged on 21.12.2011 and the concerned Court was directed to take necessary steps to secure his arrest.

13. In view of the above petitioner No.1 M.N. Kamal Hossain is a fugitive from justice. He is not entitled to file this application before this Court and to get any order on it. He is, therefore, directed to surrender before the concerned Court within 1(one) month from the date of receipt of this order failing which the Divisional Special Judge, Chittagong shall take necessary steps to secure his arrest.

14. Considering the above facts and circumstance of the case we find no substance in this Rule.

15. In the result, the Rule is discharged. The order of stay granted earlier by this Court stands vacated.

16. The Divisional Special Judge, Chittagong shall proceed with the case against the petitioners in accordance with law.

17. Communicate the judgment to the concerned Court at once.