

**13 SCOB [2020] HCD**

**HIGH COURT DIVISION**

**(CRIMINAL REVISIONAL JURISDICTION)**

Criminal Revision No. 1050 Of 2016

**Major Md. Nazmul Haque and others**  
- Accused-Petitioners.

-Versus-

**The State and another**  
- Opposite Parties.

Mr. Rokanuddin Mahmud, Senior  
Advocate with  
Mr. Muhammad Shafiqur Rahman with  
Mr. Mohiuddin Shamim with Ms. Fowjia  
Akhter and Ms. Ajmeri Chowdhury,  
Advocates  
- for the Accused-Petitioners.

Mr. Khondaker Mahbub Hossain, Senior  
Advocate, with

**Present:**  
**Mrs. Justice Farah Mahbub.**  
**And**  
**Mr. Justice Mahmudul Hoque**

**CrPC Section 265D:**

**Where the case is at a stage of framing charges and the prosecution evidence is yet to commence, the trial court has to consider the question of sufficiency of the ground for proceeding against the accused on a general consideration of materials placed before him by the investigating agency. The truth, veracity and effect of the evidence are not to be meticulously judged. The standard of the test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at this stage. ... (Para-35)**

**JUDGMENT**

**Farah Mahbub, J:**

1. This Rule at the instance of the accused-petitioners was issued under section 439 read with section 435 of the Code of Criminal Procedure directing the opposite parties to show cause as to why the impugned order dated 03.03.2016 passed by the learned Sessions Judge, Mymensingh in Sessions Case No.725 of 2015 rejecting the application filed by them under section 265C of the Code of Criminal Procedure and framing charge against them should not be set aside.

Ms. Fouzia Karim Firoze,  
Mr. M. Masud Rana,  
Ms. Feroza Pervin,  
Ms. Sathia Sahajahan and  
Mr. Md. Shariful Haque, Advocates  
- for the Opposite Party No.2.

Mr. Biswojit Roy, D.A.G. with  
Mr. M. Masud Alam Chowdhury, A.A.G  
with  
Mr. Mamunor Rashid, A.A.G  
..... For the opposite party No. 1.

Heard on 16.02.2017, 28.02.2017,  
01.03.2017, 07.03.2017, 08.03.2017,  
15.03.2017 and 21.03.2017

Judgment on 06.04.2017.

2. At the time of issuance of the Rule, all further proceedings of Sessions Case No.725 of 2015 arising out of C.R. Case No.220 of 2013 in the connection with Kotwali Police Station Case No.10(3)2005 corresponding to G.R. No.176 of 2005 under sections 302/34/201/202/203 of the Penal Code, had been stayed by this court for a prescribed period.

3. Facts, relevant for disposal of the present Rule, are that on 11.02.2005 a cadet namely Sharmila Shahreen Polin was found hanging in the bathroom of Mymensingh Girl's Cadet College (in short, the Collage). The Principal of the said college accordingly lodged UD Case No.4 of 2005 on 11.02.2005 with Kotowali Police Station, Mymensingh stating, *inter alia*, that the victim had committed suicide. Pursuant thereto Kotowali Police Station General Diary No.539 dated 11.02.2005 was recorded. Accordingly, the Sub-Inspector of Kotowali Police Station came at the place of occurrence and prepared seizure list in the presence of the seizure list witnesses(Annexure-B) as well as *surat-e-hal* report on 11.02.2005 at 2.00 p.m. (Annexure-C). On completion of the said process he sent the body of the victim to the Forensic Department, Mymensingh Medical College for post mortem report in order to find out the cause of death. Later, on 12.02.2005 the said Sub-Inspector further seized some articles(Annexure-D-1) from the place of occurrence. However, in the post mortem report dated 14.02.2005 the opinion as to the cause of death of the victim was as follows:

*“Considering the Autopsy findings & primary investigation report submitted by the police authority in inquest & challan, I am with the opinion that death of Sharmila Shahreen Polin was due to Asphyxia resulting from Hanging which was antemortem. Opinion regarding the nature of death to be given after the chemical analysis report of the preserved viscerae is available.”*

4. On 01.03.2005, chemical analysis report was given by the authority concern opining, *inter alia*,-

*“ Considering the Autopsy findings & primary investigation report submitted by the police authority in inquest & challan & Chemical anlysis report No.609, dated 24.02.2005(copy enclosed), I am with the opinion that death of Sharmila Shahreen Polin was due to Asphyxia resulting from Hanging which was antemortem and suicidal in nature.”* (Annexure-C-2).

5. However, the father of the victim filed a petition of complaint on 19.02.2005 being C.R. Case No.154 of 2005 in the 1<sup>st</sup> Court of Cognizance, Mymensingh under sections 302/34/202/203/201 of the Penal Code alleging, *inter alia*,-

*“ .....অত্র বাদীর মেয়ে পলিনকে তার ঘাড়ের বাম পার্শ্বে ময়মনসিংহ গার্লস ক্যাডেট কলেজের দায়িত্বপ্রাপ্ত ও দায়িত্বে নিয়োজিত কর্মকর্তা,ব্যক্তি ও তৎসহযোগী ব্যক্তি আসামী ভারী বস্তু দ্বারা স্বজুড়ে আঘাত করিয়া পলিনকে খুন করিয়া অতঃপর উক্ত খুনকে আত্মহত্যা বলিয়া ধামাচাপা দেওয়ার কু-উদ্দেশ্যে মিথ্যা তথ্য প্রদান করী ব্যক্তিগনকে আসামী করিয়া দৃষ্টান্তমূলক বিচারের দাবীতে বাদী অত্র মোকদ্দমা দায়ের করিলেন। ....”*

6. Instead of taking cognizance the learned Magistrate concern sent the said complaint petition to the Officer-in-charge Kotowali Police Station, Mymensingh under section 156(3) of the Code of Criminal Procedure(in short, the Code) for investigation. However, despite direction of the learned Magistrate the said complaint petition had not been registered as FIR by the Officer-in-charge of the respective police station. As such, the father of the victim, the complainant, by making an application dated 03.03.2005(Annexure-B) sought for a direction from the learned Magistrate concern to register the case as FIR and for re-examination of the body of the victim. However, in this application the complainant for the 1<sup>st</sup> time brought the allegation of murder against the accused petitioners. The said prayer was allowed by the learned Magistrate concern vide order dated 12.03.2005. Accordingly, on 14.03.2005 upon

examination of the body of the victim a further *surat-e-hal* report was prepared by the officers concern belonging to the law enforcing agency and the body of the victim was duly sent to the Forensic Department of the Dhaka Medical College Hospital for post-mortem report(Annexure-C-3).

7. In the 2<sup>nd</sup> post-mortem report dated 07.05.2005(Annexure-C-4) it has been opined, *inter alia*,-

“.....শবব্যবচ্ছেদে দেহের প্রায় সমস্ত আবরণী কলা পচিত এবং আংশিক গলিত অবস্থায় প্রাপ্ত, গলার কোষকলা এতই পচিত যে উহাতে কোন যখম বা আঘাতের চিহ্ন নির্ণয় করা সম্ভব হইল না। রাসায়নিক পরীক্ষার রিপোর্ট ১২০৮ বি, তাং ৩১/৩/০৫ যাহাতে কোন বিষের আন্ড্র পাওয়া যায় নাই। মৃত্যুর কারণ সম্পর্কে মেডিকেল অফিসারের মতামত।  
বিঃ দ্রঃ যখমের ক্ষেত্রে, যখমে হত্যার আত্মহত্যার বা অন্য কিছুই আলামত আছে কিনা তাহা লিখুন মৃত্যুর কারণ এবং ধরণ সম্পর্কে বলা যায় যে, সমগ্র দেহের কোষগুলি কলা পচিত ও আংশিক গলিত অবস্থায় কারণে এবং কোন অস্থিতে আঘাতের চিহ্ন না পাওয়ায় রাসায়নিক পরীক্ষার কোন বিষের কোন অস্তিত্ব না থাকায় আমাদের পক্ষে কোন প্রকার মতামত দেয়া সম্ভব হইল না।.....”

8. Meanwhile, pursuant to the order of the learned Magistrate concern the petition of complaint, filed earlier by the father of the victim, had been registered as Kotowali Police Station Case No.10 dated 06.03.2003(Annexure-A). However, during the course of investigation on 22.03.2005 the officer concern further seized certain articles from “ ঘটনাস্থল ময়মনসিংহ গার্লস ক্যাডেট কলেজের ১০৫ নং শান্তি হাউজের বাথরুমের পার্শ্বে ডর্ম হইতে স্বাক্ষী হোসনে আরার দেখানো মতে। ” (Annexure-D-2).

9. In the meanwhile, the Investigation Officer after conclusion of investigating submitted final report tender (FRT) on 29.09.2005(Annexure-F) opining as under-

“ ..... অত্র মামলার সার্বিক তদন্তকালে ময়না তদন্ত প্রতিবেদন পর্যালোচনা ভিসেরা রিপোর্ট পর্যালোচনা এবং উপস্থিত সাক্ষ্য প্রমানাদি পর্যালোচনা পূর্বক অত্র মামলা গোপন ও প্রকাশ্য তদন্ত কালে সাক্ষ্য প্রমানে এজাহারে উল্লেখিত ময়মনসিংহ গার্লস ক্যাডেট কলেজের দায়িত্বপ্রাপ্ত ও দায়িত্বে নিয়োজিত কর্মকর্তা ও তৎসহযোগী ব্যক্তির বিরুদ্ধে কোন অভিযোগ প্রমানিত হয় নাই। বাদীর মেয়ে স্বেচ্ছায় গলায় ওড়না পেচাইয়া আত্মহত্যা করিয়াছে বলিয়া প্রতীয়মান হওয়ায় মামলাটি তথ্যগত ভুল বলিয়া প্রতীয়মান হয়।.....” and had recommended to release the name of the accused persons as mentioned in column 4 of the said police report.

10. Being aggrieved the complainant filed *naraji* on 16.10.2005(Annexure-G) contending, *inter alia*,-

“ .....ঘটনার দিন অর্থাৎ ১১/০২/০৫ ইং তারিখ সকাল ৯.৪৫ ঘটিকায় পলিন তার কমনরুম হইতে অধ্যায়ন শেষে কিছু বই হাতে তার নিজের রুমে ফিরিয়া আসে এবং তারি নিজের চেয়ারটি অন্য বান্ধবী ব্যবহারে থাকায় বান্ধবীর অনুরোধে আরেকটি চেয়ার আনার জন্য রুম থেকে বেসরয়ে যায়। তখন মেজর নাজমুল ও সার্জেন্ট নওশের পলিনকে সিকিউরিটি গার্ড হেনাকে দিয়া ডাকিয়া তাহার রুমে নিয়া যায় এবং পরিকল্পিত ভাবে ঠান্ডা মাথায় হত্যা করে।...” and prayed for further investigation by any high ranking officer of CID. The prayer was allowed by the learned Magistrate concern. Ultimately, after conducting further investigation another FRT dated 04.09.2009 was submitted by one Assistant Superintendent of Police, CID, Mymensingh opining, *inter alia*,-

“.....পূর্ববর্তী তদন্তকারী অফিসারদের তদন্তে প্রাপ্ত সাক্ষ্য প্রমানাদি বিশ্লেষণে মৃত পলিনের বান্ধবী সহকাপঠি ক্যাডেটদের জবানবন্দিতে শান্তি হাউজে তৎসময় কর্তব্যে নিয়োজিত ক্যাডেট কলেজের কর্মকর্তা ও কর্মচারীদের জবানবন্দিতে মৃত পলিন এর সুরতহাল প্রতিবেদন ও ময়না তদন্ত প্রতিবেদন পর্যালোচনায় এবং ঘটনার পারিপাশি।বকতায় প্রমানিত হইয়াছে। বাদীর কন্যা ক্যাডেট নং ১১৪৫, শর্মিলা শাহরিন পলিন ঘটনার তারিখে সে নিজেই গলায় ফাঁস দিয়া আত্মহত্যা করিয়াছে। বাদী

আবেগপ্রবন হইয়া এই ঘটনাকে অতিরঞ্জিত করিয়া অত্র মামলার অভিযোগ দায়ের করিয়াছেন।বাদীর মানিত সাক্ষী সহ নিরপেক্ষ সাক্ষীদের জিজ্ঞাসাবাদে এবং প্রকাশ্য ও গোপনে তদন্তে বাদীর দায়েরকৃত অভিযোগ ও নারাজীর আবেদন বর্ণিত ঘটনাবলী প্রমান করার মত কোন সাক্ষ্য প্রমান পাওয়া যায় নাই।  
.....”

11. The officer concern also recommended to release the name of the accused petitioners from being proceeded. Being aggrieved the complainant filed 2<sup>nd</sup> *naraji* on 04.11.2009 before the learned Magistrate concern (Annexure-L) and prayed for judicial inquiry under section 202(2A) of the Code. Upon hearing both the contending parties the learned Senior Judicial Magistrate, Mymensingh had examined the complainant under section 200 of the Code and allowing the prayer had directed the learned Judicial Magistrate, Mymensingh for judicial inquiry vide order dated 15.12.2009(Annexure-M).

12. During the course of judicial inquiry 10(ten) judicial witnesses were examined and ultimately, after about 4(four) years the judicial inquiry report was finally submitted on 22.05.2013 by the learned Magistrate, concern opining, *inter alia*,-

“.....উপরিউক্ত আলোচনার ভিত্তিতে ভিকটিম পলিনের মৃত্যুর ঘটনার আগের ও পরের পারিপার্শ্বিক অবস্থা বিবেচনা করে এই বিচার বিভাগীয় তদন্তে নিম্নরূপ বিষয়সমূহ উদঘাটিত হয়েছে:-

ক্যাডেট নং-১১৪৫ ভিকটিম শার্মিলা শাহরিন পলিন আত্মহত্যা করেনি। বরং তাকে বিগত ১১/০২/২০০৫ ইং তারিখ শুক্রবার বেলা ১০.৩০ ঘটিকার পর কলেজের মিল্ক ব্রেকের সময় ময়মনসিংহ গার্লস ক্যাডেট কলেজের অভ্যন্তরে শারীরিক নির্যাতন করার পর লাঠি জাতীয় ভেঁতা বস্তু দ্বারা আঘাত পূর্বক নিঃশ্বাস করে পরবর্তীতে শ্বাসরোধ করে হত্যা করা হয়েছে এবং উক্ত হত্যাকাণ্ডটিকে ধামাচাপা দিয়ে আত্মহত্যা হিসেবে প্রচারের উদ্দেশ্যে তার মৃতদেহ শান্তি হাউজের বাথরুমে বরনার শাওয়ারের পাইপের সাথে ওড়না দ্বারা বুলিয়ে রাখা হয়েছে।

বিচার বিভাগীয় তদন্তকালে ভিকটিম ক্যাডেট নং-১১৪৫ শার্মিলা শাহরিন পলিনের মূল হত্যাকারী হিসাবে ময়মনসিংহ গার্লস ক্যাডেট কলেজের এ্যাডজুটেন্ট মেজর নাজমুল হক এবং উক্ত হত্যাকাণ্ডের প্রত্যেক সহযোগী হিসাবে সার্জেন্ট নওশেরউজ্জামান ও সিকিউরিটি গার্ড হেনা বেগম এর সরাসরি সম্পৃক্ততার বিষয়ে আপাতভাবে প্রাথমিক সত্যতা (*Prima Facie*) পাওয়া গিয়াছে।

বিচার বিভাগীয় তদন্তকালে ভিকটিম ক্যাডেট নং- ১১৪৫ শার্মিলা শাহরিন পলিনের হত্যাকাণ্ডের সাথে জড়িত অপরাধীদের রক্ষার একই উদ্দেশ্য জ্ঞাতসারে সাক্ষ্য গায়েবসহ ভুল তথ্য প্রদান, ইচ্ছাকৃতভাবে হত্যা সংক্রান্ত তথ্য প্রদানের বিরত থাকা এবং হত্যাকাণ্ড সম্পর্কে ভুল তথ্য প্রদানের মাধ্যমে এই হত্যাকাণ্ডকে আত্মহত্যা হিসাবে প্রমানের চেষ্টার সাথে ময়মনসিংহ গার্লস ক্যাডেট কলেজের এ্যাডজুটেন্ট মেজর নাজমুল হক, এনসিও সার্জেন্ট নওশেরউজ্জামান, সিকিউরিটি গার্ড হেনা বেগম, ক্যাডেট কলেজ সমূহের ডিএএজি মেজর মুনির আহাম্মদ চৌধুরী এবং ময়মনসিংহ গার্লস ক্যাডেট কলেজের সহযোগী অধ্যাপক আবুল হোসেন এর সরাসরি সম্পৃক্ততার বিষয়ে আপাতভাবে সত্যতা (*Prima Facie*) পাওয়া গিয়াছে। তবে মেস ম্যানেজার শাহজাহান আলীর এই হত্যাকাণ্ড বা হত্যাকাণ্ডের ঘটনা ধামাচাপা দেওয়ার জন্য তা আত্মহত্যা হিসাবে প্রচারে সম্পৃক্ততার বিষয়ে আপাতভাবে প্রাথমিক সম্পৃক্ততা (*Prima Facie*)পাওয়া যায়নি।

বিচার বিভাগীয় তদন্তকালে বিগত ১১/০২/২০০৫ তারিখ শুক্রবার বেলা ১০.৩০ ঘটিকার পর ময়মনসিংহ গার্লস ক্যাডেট কলেজের মিল্ক ব্রেকের সময় ভিকটিম ক্যাডেট নং ১১৪৫ শার্মিলা শাহরিন পলিনের হত্যাকাণ্ড ও হত্যাকাণ্ডের ঘটনা ধামাচাপা দিয়ে উক্ত ঘটনা আত্মহত্যা হিসাবে প্রচারের সাথে জড়িত ময়মনসিংহ গার্লস ক্যাডেট কলেজের এ্যাডজুটেন্ট মেজর নাজমুল হক, এনসিও সার্জেন্ট নওশেরউজ্জামান, সিকিউরিটি গার্ড হেনা বেগম, ক্যাডেট কলেজ সমূহের অধ্যাপক ডি এ এজি মুনির আহাম্মদ চৌধুরী এবং ময়মনসিংহ গার্লস ক্যাডেট কলেজের সহযোগী অধ্যাপক আবুল হোসেন এর বিরুদ্ধে ১৮৬০ সনের দণ্ড বধির ৩০২/২০১/২০২/২০৩/৩৪ ধারার অধীনে অপরাধের সংশ্লিষ্টতার অভিযোগের আপাতভাবে প্রাথমিক সত্যতা (*Prima Facie*) পাওয়া গিয়াছে।

পরিশেষে বলা যায় যে, এই বিচার বিভাগীয় তদন্তকালে সাক্ষ্য আইনের অন্যতম প্রনিধান যোগ্য মতবাদ A man can tell a lie, but circumstances of evidence can not (Illegible) a lie এর কার্যকারিতা আরও একবার প্রমানিত হল। .....

13. The learned Senior Judicial Magistrate, Mymensingh having found *prima facie* substance thereto took cognizance of the offence against the accused petitioners under sections 302/201/202/203/34 of the Penal Code and issued warrant of arrest against them vide

order dated 27.05.2013. However, since cognizance was taken pursuant to judicial inquiry report the learned Magistrate vide the same order had treated the matter as C.R. case instead of G.R. case. Accordingly, the case was registered as C.R. Case No.220 of 2013 and the record was duly transferred to the learned Sessions Judge, Mymensingh for trial and disposal. On receipt thereof the case had been registered as Sessions Case No.725 of 2015.

14. On 04.10.2015 the accused petitioners filed an application before the trial court under section 265C of the Code of Criminal Procedure (in short, the Code) (Annexure-Q) stating, *inter alia*, that the complainant's story of murder was apparently fictitious, for, the allegation was vague and constantly varying throughout the course of investigation; that the complainant's source of knowledge of the alleged murder, a letter and a photograph were not authentic; that no allegation of murder was found amongst the statements of the witnesses; that the post-mortem report described the incident as suicide; that the judicial inquiry report was flawed because it only took into account the statements of witnesses preferred by the complainant but did not take into consideration the statements of the impartial witnesses recorded during the course of investigation as well as further investigation.

15. The complainant submitted counter application to oppose the prayer of discharge of the accused petitioners (Annexure-R). Upon hearing the respective contending parties the learned Sessions Judge, Mymensingh rejected the application filed under section 265C of the Code and vide order dated 03.03.2016 had framed charge against the accused petitioners under sections 302/201/34 of the Penal Code. The said court accordingly transferred the case record to the learned Additional Sessions Judge, 1<sup>st</sup> Court, Mymensingh for trial.

16. Earlier, however, the accused petitioner Nos.1 and 2 obtained anticipatory bail from the High Court Division of the Supreme Court of Bangladesh. Subsequently, all the accused petitioners obtained bail from the 1<sup>st</sup> Court of Cognizance, Mymensingh as well as from the 1<sup>st</sup> Court of learned Additional Sessions Judge, Mymensingh on 24.03.2016. However, till date they are enjoying the privilege of bail.

17. Being aggrieved by and dissatisfied with the order of framing of charge upon rejecting the prayer so made under section 265C of the Code the accused petitioners filed the instant application under section 439 read with section 435 of the Code and obtained the present Rule and stay.

18. Mr. Rokanuddin Mahmud, the learned Senior Advocate appearing with Mr. Muhammad Shafiqur Rahman, the learned Advocate on behalf of accused-petitioners submits that section 265C has been incorporated in the Code of Criminal Procedure (in short, the Code) after deleting Chapter XVIII of the Code by the Law Reforms Ordinance, 1978 with a view to protecting innocent persons from being harassed and also to make sure that the case of no evidence does not occupy the valuable time of the Sessions Court. In the instant case, he goes to argue, whether the evidence and materials collected during investigation as well as during judicial inquiry were sufficient to frame charge against the petitioners, is the only consideration for disposal of the instant revisional application.

19. Accordingly, he goes to argue that basing on the complaint petition if the Magistrate takes cognizance of the offence as alleged and examine the complainant on oath during the course of judicial inquiry, the only material he will have for consideration is the judicial inquiry report and the complaint petition along with the complainant's statements on oath. But in the present case, order for holding judicial inquiry was passed by the learned

Magistrate concern after the matter was investigated in not once but twice, one by the respective Investigating Officer and the other by the CID. During the course of investigation, the Investigating officer collected evidence, prepared seizure list and recorded statements of as many as 33 (thirty-three) witnesses under section 161 of the Code. All these documents must be considered by the charge hearing court. In this connection he submits that amongst those witnesses who were residing inside the Cadet College at the relevant time(as many as 25 (twenty five)witnesses, 10 (ten) of whom were young girl who were the classmates of the victim), in their statements have categorically stated that the deceased committed suicide. On the other hand, the witnesses who were residing in Dhaka, far away from the place of occurrence(all neighbours, relatives of the informant), and who came to see the dead body of the victim when it arrived in Dhaka, in their statements recorded under section 161 of the Code only stated that they saw 3(three) injury marks on the dead body but none of them alleged murder. Moreover, he submits that neither the complaint petition nor the statements of 10(ten) judicial witnesses, who were examined on oath during the course of judicial inquiry, reveal anything which indicate that there was homicide or that the petitioners were connected with the death of the victim in any way whatsoever. Accordingly, he submits that since none of the witnesses, so have been examined during the course of investigation or judicial inquiry alleged any specific act against any of the accused as such, they cannot be prosecuted for causing death of the victim.

20. Mr. Mahmud further goes to argue that the judicial inquiry report is the only material which the prosecution has relied on. The said report itself is a questionable one, for, it is not a report as contemplated under section 202(2A) of the Code, it is rather in the form of judgment giving decision thereon with reason of his own, not upon the evidence and materials collected in the case. Moreso, he submits that the court is not bound to follow the judicial inquiry report at the time of framing of charge; whatever may be the report of the Judicial Magistrate holding inquiry, the trial court is required to exercise his own independent judgment. In the instant case, the learned Sessions Judge, Mymensingh solely relied upon the conclusion of the learned Judicial Magistrate concern and thus, fell into error. In support he has relied upon the decisions of the cases of *Ruhul Alim Kha Vs. State: reported in 56 DLR 632* and *Abul Ahsan Joardar Vs. Kazi Misbahul Alam: reported in 45 DLR 606*.

21. He also goes to submit that 3(three) injury mark on the basis of which the learned Magistrate concluded that it was a case of murder were not mentioned by the complainant, and the neighbours/relatives in their statements recorded under section 161 of the Code, but 5(five) years after the incident they had mentioned those marks during the course of judicial inquiry, which goes to show their falsity, these aspects were overlooked by the learned Magistrate. In addition, the prosecution has heavily relied on a photograph which claimed to have revealed injury marks on the face of the deceased. In this regard he submits that photograph cannot be a legal piece of evidence unless it is supported by medical evidence. In the inquest and the post-mortem report no such injury marks were found in the body of the deceased. Secondly, even if for argument's sake, the photograph is accepted the mere sign of an injury on the face, as shown in the photograph, is not at all sufficient to lay a charge of murder. As such, he submits that framing of charge on the basis of this photograph is not sustainable in the eye of law.

22. He further submits that the complainant filed as many as 4(four) petitions i.e., complaint petition, supplementary complaint petition, and 2(two) *naraji* petitions. None of those contain any specific allegation whatsoever which can be said to be legal evidence. The main thrust of his allegations is based on suspicion allegedly raised by a letter sent by a girl

named Shila who was neither examined during the investigation nor in the judicial inquiry. He also goes to submit that in the post-mortem report the doctor concern gave opinion that the death of the victim was suicidal in nature. Against the said post-mortem report there is no other material or any other findings of any expert in the record of the case before claiming that the death of the victim was homicidal.

23. In the 2<sup>nd</sup> *naraji* petition, he goes to argue, the complain claimed to have heard the incident from cadet Munmun Roada who according to him seems to be the only witness to the unfortunate incident. Munmun was examined during judicial inquiry and her statements were recorded on oath as J.W.10, but she did not utter a single word against any of the accused. As such, his claim does not stand in the eye of law, and the prosecution story of murder is effectively destroyed.

24. Lastly, he submits that the judicial inquiry report failed to provide any new plausible ground to the learned Sessions Judge to proceed against the accused petitioners. The police and the CID by filing final report tender categorically concluded that there was no sufficient ground to proceed. The learned Sessions Judge, Mymensingh did not find, apart from the photograph, what new ground had been unveiled by the judicial inquiry report, nor made any observation as to why the final report by the police and the CID should be overturned and why the 161 statements of the witnesses, the post-mortem report and the inquest report should be disregarded. Instead the said court has framed charge without proper consideration of the materials on record and application of judicial mind. In support he has referred the decision of the case of *The State Vs. Khondoker Md. Moniruzzaman* reported in **17 BLD(AD)54**.

25. Accordingly, he submits that upon striking down the impugned order dated 03.03.2016 passed by the learned Sessions Judge, Mymensingh this Rule is liable to be made absolute for the ends of justice.

26. *Per contra*, Mr. Khondaker Mahbub Hossain, the learned Senior Advocate appearing with Ms. Fouzia Karim Firoze, the learned Advocate on behalf of complainant opposite party No.2 submits that vide section 265D of the Code the learned Sessions Judge shall frame charge in writing after hearing the accused and the prosecution provided he found existence of *prima facie* case on the basis of the materials so placed before him by the prosecution. However, he goes to argue, while considering the judicial inquiry report or the police report, as the case may be, the court is not bound by the opinion of the Judicial Magistrate or the Investigating officer as to the nature of the offence. The court is to frame charge according to law as would emerge from the records of the case and the documents submitted therewith by the prosecution. At the same time, he submits that the obligation to discharge the accused under section 265C of the Code arises when the learned Sessions Judge after considering the records of the case, all documents furnished by the prosecution, hearing both the prosecution and the defence, considers that there is no sufficient ground for proceeding. However, in that case the court has to record the reasons for so doing. In the instant case, he goes to argue, the learned Sessions Judge, Mymensingh after considering the records of the case and after hearing both the contending parties opined, *inter alia*, that there is ground for presuming that the accused petitioners have committed the alleged offence. Accordingly, he framed charge vide the impugned order dated 03.03.2016 under sections 302/201/34 of the Penal Code. Now, the burden lies upon the prosecution to prove its case with the evidence, which cannot be denied at this stage by striking down the order of framing of charge.

27. He further submits that at the beginning of the unfortunate incident the accused petitioners have taken a positive defence that it is a case of suicide without their knowledge; hence, vide section 106 of the Evidence Act onus lies upon them to prove the said context with evidence in view of the fact that it is a custodial death, for, the victim, a cadet of Mymensingh Girl's Cadet College (in short, the College) died while she was in the custody of the college authority. In support of his contention the learned Advocate has relied upon the ratio as decided by the Appellate Division in the case of *Mahbur Sheikh alias Mahabur Vs. State*: reported in **67 DLR (AD)34**. Accordingly, he submits that since a prima facie case has been disclosed against the accused petitioners hence, they have no scope to have any shelter under section 265C of the Code. In that view of the matter the contention of the accused petitioners being not tenable in the eye of law this Rule is liable to be discharged.

28. Mr. Biswojit Roy, the learned Deputy Attorney General appearing with Mr. M. Masud Alam Chowdhury, the learned Assistant Attorney General with Mr. Mamunor Rashid, the learned Assistant Attorney General on behalf of the Opposite Party No.1 adopts the submissions so have been advanced by the learned Advocate appearing on behalf of the complainant Opposite Party No.2.

29. Pursuant to the unfortunate death of Cadet Sharmila Shahreen Polin at Mymensingh Girl's Cadet College UD Case No.4 of 2005 was registered with Kotowali Police Station, Mymensingh on 11.02.2005 at the instance of the Principal of the said college. Ultimately, the father of the victim filed C.R. Case No.154 of 2005 on 19.02.2005 before the learned 1<sup>st</sup> Class Magistrate, Cognizance Court No.1, Mymensingh under sections 302/201/202/203/34 of the Penal Code alleging murder of his daughter by the respective officers of the said college along with others. The learned Magistrate, however, instead of taking cognizance of the offence had directed the Officer-in-charge of Kotowali Police Station, Mymensingh under section 156(3) of the Code to investigate the allegation. Accordingly, the information was registered as Kotowali Police Station Case No.10 dated 06.03.2005. Meanwhile, upon conclusion of investigation final report tender was submitted by the Investigating Officer on 29.09.2005(Annexure-F). The complainant being aggrieved filed *naraji* on 16.10.2005(Annexure-G) and prayed for further investigation. Said prayer was allowed, and vide the respective order the learned Magistrate had directed the CID to conduct further investigation. Pursuant thereto the Assistant Superintendent of Police, CID, Mymensingh conducted further investigation and submitted supplementary FRT on 04.09.2009. Being aggrieved the complainant again filed *naraji* on 04.11.2009(Annexure-L) with a prayer for judicial inquiry under section 202(2A) of the Code. The learned Senior Judicial Magistrate, Mymensingh treating the said *naraji* as fresh complaint had examined the complainant under section 200 of the Code of Criminal Procedure and vide order dated 15.12.2009 sent the matter to the concerned Magistrate for judicial inquiry under section 202(2A) of the Code.

30. It is the established principle of law that when the complaint has been sent to the learned Magistrate concern for judicial inquiry he will examine the complainant and his witnesses on oath. He will, however, critically examine them to ascertain the truth of the alleged occurrence and the complicity of the accused person in the offence. He will also ask for the relevant documents, if any, in support of the allegations put forth by the complainant, verify them and try to ascertain the truth or falsehood. On completion of the said steps the learned Magistrate will submit a report with his findings as to the alleged offence and involvement of the individual accused. These findings will be in the form of "recommendation" mentioning specifically the penal section of the offence and the name of the accused, if the case is so made out through evidence.



31. In the instant case, the learned Magistrate concern upon examining the FIR, *surat-e-hal* report, post-mortem report, seizure list, map of the place of the occurrence, 161 statements of the witnesses recorded during the course of investigation, the case docket, final report tender, supplementary final report tender, the *naraji* petitions, the statements of witnesses so recorded during judicial inquiry including the complainant and the other documents as produced by the complainant, submitted report on 22.05.2013 recommending that there is *prima facie* case to proceed further under section 204 of the Code against the accused petitioners. The accused petitioners duly appeared/surrendered before the court concern and obtained bail therefrom. Since the offence is triable exclusively by the Court of Sessions the case record has been duly sent to the Court of learned Sessions Judge, Mymensingh for trial. On receipt thereof it has been registered as Sessions Case No.725 of 2015. The learned Sessions Judge, however, duly took cognizance of the offence against the accused petitioners.

32. Meanwhile, the accused petitioners upon obtaining bail from the Court of learned Sessions Judge, Mymensingh filed application under section 265C of the Code. Upon hearing the respective contending parties the learned Sessions Judge, Mymensingh rejected the same finding-*inter-alia*,

*“.....It appears from the record that the Learned Judicial Magistrate, after holding judicial enquiry, has submitted an elaborate Report depending on the deposition of the witnesses and also on the attending circumstance of the occurrence. The witnesses, including the informant, have claimed that the victim Sharmila Shahrin Polin was killed by the accused petitioners and thereafter a drama of committing suicide, by hanging her inside the bathroom from a shower, was staged by the accused-persons. It has been mentioned in the report of the learned Senior Judicial Magistrate that he has noticed the mark of injury caused by nail in the left cheek, a circular abrasion on the left side of neck, marks of fingers & nail on the both sides of trachea and marks of scratch on the chest of victim Sharmila Shahrin Polin in the photograph of dead body supplied by her father.*

*Although the said photograph was saying something about the alleged atrocity on the persons of the victim Shirmila Shahrin Polin, but that was not reflected in the inquest report prepared by the police and the post-mortem report prepared by the doctor concerned. The learned Magistrate has relied on the circumstantial evidence and came to the finding that there was no sign & symptom of commission of suicide by the victim as the story of suicide by hanging was not supported by the medical jurisprudence. In the absence of such signs and symptoms as to commission of suicide by hanging the occurrence of death of the victim Sharmila Shahrin Polin cannot be opined as an occurrence of suicide. Since there were some marks of injury on the person of the victim-deceased and since the story of commission of suicide by hanging could not be made believable, so the accused persons owe an explanation as to the cause & nature of death of the victim. In the absence of proof as to commission of suicide by the victim, there is reasonable ground to believe that the victim was killed and she did not commit suicide. The claim and counter claim of both sides can be decided only after examination of witnesses during trial. So, there is no cogent ground to discharge the accused persons from the charges brought against them. As such, I do not find any reason to allow the petition and accordingly, the same is rejected.*

*There having sufficient reasons to presume that the accused persons have committed offence punishable under sections 302/201/34 of the Penal Code, the charges under the said sections against the accused (1) Adjutant Major Najmul Haque, (2) N.C.O. Md. Nowsheruzzaman, (3) Hena Begum, (4) D.A.A.G. Major Munir Ahammed Chowdhury and (5) Md. Abul Hossain are framed. The framed charges are read over & explained to the present accused persons and they pleaded not guilty and claimed to be tried.*

*Issue summons upon the witnesses No.1-5 fixing 24-3-2014 for trial.....” and framed charge against them under sections 302/201/34 of the Penal Code in exercise of power as provided under section 265D of the Code.*

33. Sections 265C and 265D of the Code of Criminal Procedure provide as under-
- “265C. Discharge.- If upon consideration of the record of the case and the documents submitted therewith, and after hearing the submission of the accused and the prosecution in this behalf, the Court considers that there is no sufficient grounds for proceeding against the accused, it shall discharge the accused and record the reasons for so doing.*
- 265D. Framing charge.- (1) If, after such consideration and hearing as aforesaid, the Court is of opinion that there is ground for presuming that the accused has committed an offence, it shall frame in writing a charge against the accused.*
- (2) Where the Court frames a charge under sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”*

34. The obligation to discharge the accused under section 265C of the Code comes when the court considers that there is no sufficient ground for proceeding against the accused.

35. “*No sufficient ground*” in section 265C of the Code means that the materials placed before the court do not make out or are not sufficient to make out a *prima facie* case against the accused i.e., absence of any ground for presuming that the accused has committed an offence. Where the case is at a stage of framing charges and the prosecution evidence is yet to commence, the trial court has to consider the question of sufficiency of the ground for proceeding against the accused on a general consideration of materials placed before him by the investigating agency. The truth, veracity and effect of the evidence are not to be meticulously judged. The standard of the test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at this stage. At this stage, even a very strong suspicion found upon materials before the court, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of commission of the offence: as has been observed in the case of ***Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Amit Kumar Bhunja and others: (1979) 4 Supreme Court Cases 274.***

36. Similarly, in ***State of Himachal Pradesh Vs. Krisan Lal Pardhan and others: AIR 1987 (SC)773*** the court made it clear that all that is required at the stage of framing of charges is to see whether *prima facie* case regarding the commission of certain offence is made out. The question whether the charges will eventually stand proved or not can be determined only after the evidence is recorded in the case. At this stage, the court is not to weigh the evidence. The court is not to go into the details on the pros and cons of the matter or enter into meticulous consideration of the evidence and materials, as has been observed in

the case of *Md. Akbor Dar and others Vs. State of Jammu and Kashmir and others: AIR 1981(SC)1548*. If the court is of the opinion that there is ground for presuming that the accused has committed an offence, it shall frame charge in writing against the accused and that reasons are not required to be given.

37. In the instant case, the learned Sessions Judge, Mymensingh categorically opined that there is sufficient reason to presume that the accused petitioners have committed offence punishable under sections 302/201/34 of the Penal Code and has framed charge against them under the said sections vide the impugned order dated 03.03.2016.

38. However, the revisional jurisdiction of the High Court Division of the Supreme Court of Bangladesh vested in section 439 read with section 435 of the Code is exercised only in exceptional cases where the interest of public justice required interference for the correction of a manifest illegality or for prevention of gross miscarriage of justice.

39. The impugned order of framing of charge dated 03.03.2016 does not appear to have suffered from manifest illegality or has caused gross miscarriage of justice to the accused petitioners, for, the complainant is yet to prove his case with the evidence already on record; conversely, the accused petitioners will have the opportunity to controvert those with counter evidence. Last but not the least, vide section 227 of the Code the trial court has ample power to alter or add to any charge at any time whatsoever before the judgment is pronounced if the evidence, so recorded during the course of trial, disclosed an offence under another section of the Penal Code.

40. In view of the above, the decisions so have been referred by the accused petitioners cannot be made applicable in the facts and circumstances of the present case.

41. Be that as it may, we find no ground requiring interference in the order of framing of charge dated 03.03.2016 passed by the learned Sessions Judge, Mymensingh in Sessions Case No.725 of 2015.

42. In the result, the Rule is discharged.

43. The order of stay granted earlier by this Court is hereby vacated.

44. Communicate this judgment and order to the court concern.

45. Send down the Lower Court's record at once.