

1 SCOB [2015] HCD 127**HIGH COURT DIVISION**

(Criminal Miscellaneous Jurisdiction)

Criminal Miscellaneous Case No.49814 OF 2014

None appears

..... For the petitioner

Md. Sajedul Hoque Manik @ Majedul Haque Manik

Mr. Bibhuti Bhuson Biswas, A.A.G.

..... For the opposite party.

... Petitioner

-Versus-

Heard on 28.07.2015, 29.07.2015

and Judgment on 02.08.2015.

The State

... Opposite party

Bench:**Mr. Justice Md. Ruhul Quddus****And****Mr. Justice Bishmadev Chakrabortty****Druto Bichar Tribunal, Ain 2002****Sub-section 4 of section 10:**

It appears that the case record was sent to the Druto Bichar Tribunal No.4, Dhaka on 24.12.2012 and the petitioner filed the application for return of the case record to the concerned Court on 07.07.2014, wherefrom the said case was sent to it, which is clearly after the expiry of 135 working days as evident from the order sheet. Sub-section 4 of section 10 of the Druto Bichar Tribunal, Ain 2002 clearly provides that if the trial of a Druto Bichar Tribunal case is not concluded within the time stipulated in sub-section (1), (2) and (3) of section 10, it shall be sent back to the Court wherefrom the case was transferred. ...The Druto Bichar Tribunal No.4, Dhaka has lost its jurisdiction to continue or proceed with the trial of the case after expiry of the statutory period. ... (Para 8&9)

Judgment**Bishmadev Chakrabortty, J.**

1. By this Rule the opposite party State was called upon to show cause as to why the order dated 07.07.2014 passed by the learned Judge, Druto Bichar Tribunal No.4, Dhaka in Druto Bichar Tribunal Case No.23 of 2012 arising out of Darus Salam Police Station Case No.44 dated 24.01.2011 corresponding to G.R. No.44 of 2011 under sections 302/201 and 34 of the Penal Code now pending before the Druto Bichar Tribunal No.4, Dhaka should not be set aside.

2. At the time of issuance of the Rule, all further proceedings of the aforesaid case, so far as it relates to the petitioner, was stayed for a period of 3(three). The order of stay still subsists after its extension for a further period of 1(one) year.

3. The petitioner along with others were charge sheeted and made accused in a criminal case under sections 302/201 and 34 of the Penal Code on the allegation of committing murder of one Kamrul Hasan of Chandpur. The record of the said case was transmitted to the Court of Sessions, Dhaka for trial. At one stage the government vide notification dated 21.04.2012 sent the case to the Druto Bichar Tribunal No.4, Dhaka for trial under the provisions of Druto Bichar Tribunal Ain, 2002 (briefly the Ain, 2002) and the same was renumbered as Druto Bichar Tribunal Case No.23 of 2012. During the continuation of trial the petitioner on 07.07.2014 filed an application before it under section 10(4) of the Ain, 2002 for sending back the case to the Court, wherefrom it was transferred on the ground that under the provisions of section 10(1), (2) and (3) of the Ain, 2002, the Tribunal had no authority to hold trial of the case after expiry of the statutory period of (90+30+15=135) 135 days, which is a special limitation provided in the Ain, 2002. The Druto Bichar Tribunal No. 4, Dhaka after hearing by the impugned order dated 07.07.2014 rejected the said application and proceeded with the case.

4. Being aggrieved by the aforesaid order passed by the Druto Bichar Tribunal No.4, Dhaka the petitioner moved this revisional application before this Court under section 439 of the Code of Criminal Procedure (briefly the code) and obtained the present Rule and interim order of stay.

5. At the time of delivery of judgment it come to our knowledge that though the petitioner invoked revisional jurisdiction under section 439 of the Code, but after issuance of the Rule firstly the case was registered as Criminal Revision No. 49814 of 2014 and, thereafter, in each and every order it has been designated as Criminal Miscellaneous Case No. 49814 of 2014. For our anxiety we took information from concerned section and they ascertained that it has been registered as a Miscellaneous Case instead of a Criminal Revision. Since Rule has been issued challenging the legality and propriety of certain order and the matter is fixed today for delivery of judgment, we are disposing the Rule in the designated manner without making unnecessary delay and further complicity.

6. None appears on behalf of the petitioner to press the Rule, although the matter has been appearing in the list for several days with the name of the learned Advocate for the petitioners.

7. On the other hand, Mr. Bibhuti Bhuson Biswas, the learned Assistant Attorney General, appearing on behalf of the opposite party State has submitted that 12 prosecution witnesses of the case has already been examined and the accused persons have taken adjournments in the case for delaying in disposal of the matter. The adjournments taken by the accused persons should not be treated as working days of the Court, and as the statutory period of limitation as provided under section 10 of the Ain, 2002 has not yet expired and as such the Rule is liable to be discharged.

8. We have heard the learned Assistant Attorney General for the opposite party State and perused the revisional application, annexures and entire order sheet of the Tribunal. It appears that the case record was sent to the Druto Bichar Tribunal No.4, Dhaka on 24.12.2012 and the petitioner filed the application for return of the case record to the concerned Court on 07.07.2014, wherefrom the said case was sent to it, which is clearly after the expiry of 135 working days as evident from the order sheet. Sub-section 4 of section 10 of the Druto Bichar Tribunal, Ain 2002 clearly provides that if the trial of a Druto Bichar Tribunal case is not concluded within the time stipulated in sub-section (1), (2) and (3) of section 10, it shall be sent back to the Court wherefrom the case was transferred.

9. It appears from the order sheet that the prosecution failed to produce any witness since long and for that they took adjournment consecutively, and it is for the prosecution for which the matter has been delayed and hence the submission made by the learned Assistant Attorney General has no leg to stand. The impugned order, therefore, does not appear to have been passed legally. The Druto Bichar Tribunal No.4, Dhaka has lost its jurisdiction to continue or proceed with the trial of the case after expiry of the statutory period.

10. In view of the discussion made above, we find substance in the Rule. The application dated 07.07.14 filed by the accused petitioner for return of the case be allowed.

11. Accordingly, the Rule is made absolute. The order dated 07.07.2014 passed by the Druto Bichar Tribunal No.4, Dhaka in Druto Bichar Tribunal Case No.23 of 2012 arising out of Darus Salam Police Station Case No.44 dated 24.01.2011 corresponding to G.R. No.44 of 2011 rejecting the application for return of the case record is hereby set aside.

12. The learned Judge of the Druto Bichar Tribunal No.4, Dhaka is hereby directed to send the case record of Druto Bichar Tribunal Case No.23 of 2012 to the Court wherefrom it was transferred and after receiving of the said case record the concerned Court shall proceed with the case in accordance with law.

13. Communicate copy of the judgment to the concerned Court at once.