

**4 SCOB [2015] HCD 86****High Court Division  
(Special Original Jurisdiction)**

Ms. Rana Kawser, Advocate

Writ Petition No. 5546 of 2008

... for the Petitioner

**Md. Selim Mollah**

... Petitioner

Mr. Biswojit Roy, Deputy Attorney  
General with Mr. Bibhuti Bhuson Biswas,  
Assistant Attorney General

Vs.

... for the Respondents

**Bangladesh and others**

... Respondents

Judgment on 04.08.2015

**Present:****Mr. Justice Md. Ruhul Quddus****And****Mr. Justice Bhishmadev Chakraborty****Druto Bichar Ain, 2002****Section 6:****Alongside the five categories of cases, the Government in the public interest can transfer any pending case at any stage of trial to Druto Bichar Tribunal.****A question may still arise as to when this particular provision of law gives authority on the Government to transfer any pending criminal case at any stage of trial to any Druto Bichar Tribunal, why five categories of cases relating to the offence of murder, rape, firearms, explosive substances and drug are required to be specifically mentioned. Here the necessity of objective satisfaction on the part of the Government arises as to which cases other than the cases of those five categories are to be transferred in what public interest, and without any objective satisfaction recorded to that effect transfer of any other case to the Tribunal constituted under the Ain is not permissible. The concerned officials of the Ministry of Home Affairs must be careful and expressive in sending any case other than the cases of five categories specifically mentioned in section 6 of the Ain.****...(Para 9 and 10)****Judgment****Md. Ruhul Quddus, J:**

1. This Rule at the instance of an accused in a criminal case was issued challenging the legality of transfer of Druto Bichar Tribunal Case No. 3 of 2008 (previously Metropolitan Special Tribunal Case No. 316 of 2005) arising out of Motijheel Police Station Case No.3 dated 02.10.2004 corresponding to G. R. No. 915 of 2004 under section 25A of the Special Powers Act, 1974 from the Metropolitan Special Tribunal No.12, Dhaka to Druto Bichar Tribunal No.2, Dhaka by a notification being SRO No. 23-Ain/2008 dated 31.01.2008 [annexure-D to the writ petition] so far it relates to the said case.

2. The informant Md. Anwar Hossain, a Sub-Inspector of Police posted to the Detective Branch of Dhaka Metropolitan Police lodged the case long back on 02.10.2004 against the petitioner and three others bringing allegation of possessing counterfeit currency-notes of Taka 1,22,000/- (one lac twenty thousand) in total. Another Police Officer investigated the case and submitted a charge sheet on 31.12.2004 against the same set of accused including the petitioner under the said penal law.

3. Eventually the case being registered as Metropolitan Special Tribunal Case No. 316 of 2005 was pending in trial before the Metropolitan Special Tribunal No.12, Dhaka. At one stage, it was transferred to the Druto Bichar Tribunal No.2, Dhaka under the provision of Druto Bichar Ain, 2002 (hereinafter referred to as "the Ain"). In that event the petitioner moved in this Court and obtained the Rule with an interim order of stay, which was extended from time to time.

4. Ms. Rana Kawser, learned Advocate for the petitioner submits that the Government has no scope to transfer a case for illegal possession of counterfeit currency-note within the scope of section 6 of the Ain. The law gives authority on the Government only to transfer the cases relating to the offence of murder, rape, fire arms, explosive substances and drug. The impugned notification was, therefore, issued without jurisdiction.

5. On the other hand, Mr. Biswojit Roy, learned Deputy Attorney General submits that alongside the five categories of cases, the Government can also transfer any criminal case to Druto Bichar Tribunal in public interest. It is very much permissible under section 6 of the Ain. The Rule is therefore liable to be discharged, learned Deputy Attorney General thus concludes.

6. In turn of reply Ms. Rana Kawsar opposes the contention of the leaned Deputy Attorney General submitting that all criminal cases somehow involve public interest, and it cannot be the scheme of law to transfer all the criminal cases to Druto Bichar Tribunal, where the cases of five categories are specifically mentioned.

7. We have gone through the record, considered the submissions of the learned Advocates and consulted the relevant provisions of law. Section 6 of the Ain confers authority on the Government to transfer actually six categories of cases. Those are (1) any criminal case in public interest, and the cases relating to the offence of (2) murder, (3) rape, (4) firearms, (5) explosive substances and (6) drug. For better appreciation of the meaning, spirit and essence of the said provision of law, section 6 of the Ain is quoted below:

*Ðaviv 6/ gvgj v ~vbršġ -  
mi Kvi mi Kviix tMtRtU cĀvcb Ðviv, Rb ~ġ\_ nZ'v, al ħ, AvtMqv ~i weġŪvi K `ĕ" Ges gv`K `ĕ" mspvšġ  
Acivġai wePvixab tKvb gvgj v Dnvi th tKvb chġq `vqiv Av'ij Z ev weġkġ Av'ij Z ev g'vRtŵ Av'ij Z  
ntZ wePvġii Rb `ġZ wePvi UvBejvġj ~vbršġ KiġZ cviġe/Ó (Bangladesh Code, Volume-35).*

8. Because of use of the coma before and after the word 'Rb ~ġ\_ it can easily be construed that "in public interest, any pending case" has been made a separate category for transfer to Druto Bichar Tribunal under the Ain. It will be more clear, if we read the said provision omitting the words "nZ'v, al ħ, AvtMqv ~i weġŪvi K `ĕ" Ges gv`K `ĕ" mspvšġ Aciva". After so omission the provision of law would stand as follows:

*Ômi Kvi mi Kvix tM̄R̄U cĀvcb Øviv, Rb̄ñ\_©... wePrivaxb tKvb gvgjv Drvi th tKvb chĀq `vqiv Av`vj Z ev wełkl Av`vj Z ev ḡmR̄tôU Av`vj Z ntZ wePr̄tii Rb̄`ñZ wePri UvBej̄btj `vbišfi KiłZ cvi te|0*

9. The above quoted part of section 6 makes a clear sense that alongside the five categories of cases, the Government in the public interest can transfer any pending case at any stage of trial to Druto Bichar Tribunal.

10. A question may still arise as to when this particular provision of law gives authority on the Government to transfer any pending criminal case at any stage of trial to any Druto Bichar Tribunal, why five categories of cases relating to the offence of murder, rape, firearms, explosive substances and drug are required to be specifically mentioned. Here the necessity of objective satisfaction on the part of the Government arises as to which cases other than the cases of those five categories are to be transferred in what public interest, and without any objective satisfaction recorded to that effect transfer of any other case to the Tribunal constituted under the Ain is not permissible. The concerned officials of the Ministry of Home Affairs must be careful and expressive in sending any case other than the cases of five categories specifically mentioned in section 6 of the Ain.

11. This is true that all criminal cases involve public interest as it relates to law and order situation of the Country as well as the safety and security of the people in general and also their peace and discipline. But the degree of public interest involved in each criminal case and its importance cannot be the same.

12. In the present case, allegation of recovery of huge counterfeit currency-notes has been brought against the accused including the present petitioner. The police submitted a charge sheet after completion of investigation into the allegation. The nature of offence apparently involves public interest as it affects the monetary system of the Country, and in course of transaction of the said counterfeit currency-notes any innocent citizen can be victimized. This is not an ordinary criminal case between two individuals affecting individual interest or injuring an individual that involves less public interest.

13. Under the facts and circumstances of this particular case, although no objective satisfaction on the part of the Government except simple mentioning of the word “Rb̄ñ\_©” (in public interest) at the top of the impugned gazette notification has been recorded, we are of the view that the present case involves public interest and therefore, the ultimate decision of the Government in transferring the case by issuing the impugned notification is approved with a note to be cautious in future.

14. In view of the above, we are not inclined to interfere with the impugned gazette notification transferring the present case.

15. Accordingly, the Rule is discharged with the above observations. The order of stay granted earlier stands vacated. The Druto Bichar Tribunal No.2, Dhaka is directed to proceed with the case in accordance with law.

16. Communicate the judgment to the Secretary, Ministry of Home Affairs as well.