

6 SCOB [2016] HCD 1**High Court Division**

CRIMINAL MISCELLANEOUS CASE
NO.27080 OF 2010.

Mr. Tabarak Hossain with
Mr. Md. Akhter Hossain Majumder
.....For petitioners.

Anowar Ahmed and another
.....Petitioners

Ms. Sakila Rawshan, D.A.G. with
Ms. Sharmina Haque, A,A,G, and
Mr. Md. Sarwardhi,A.A.G
.....For opposite party.

Versus

The State

.....Opposite party

Heard and Judgment on 17th September,
2015.

PRESENT:

MS. JUSTICE SALMA MASUD CHOWDHURY

AND

MR. JUSTICE F.R.M. NAZMUL AHASAN

Code of Criminal Procedure, 1898**Section 561A:**

The customs authority being satisfied about the import documents, released the imported cloths from customs station and the petitioners handed over the imported cloths to the importer as C and F Agent from the Custom Area and place of business of the petitioners is the Customs House or Custom Area as per section 2(i) and 207 of the Customs Act, 1969 and Rule 2(b) of the Rules 1986 and consequently petitioners are in no way responsible for the alleged offence. The petitioners as agent cannot be held liable for the work of the Principal and thus the petitioners committed no offence within the meaning of sections 420/468/469/471/34 of the Penal Code. ... (Para 14)

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 taken against the accused petitioners in Metro. Special Tribunal Case No.132 of 2008 arising out of G.R. No.3416 of 1994 corresponding to Mirpur Police Station Case No.93 dated 28.11.1994 under sections 25(1) 25(B) and 25(Kha) of the Special Powers Act, 1974, so far it relates to the petitioners concerned, now pending in the Court of Metropolitan Special Tribunal No.2, Dhaka 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 Keramot Ali Fakir, Detective Officer, Customs Detective and investigation Paridaptor being the informant lodged a first information report with the Mirpur Police Station alleging that S.M. Azizur Rahman, Proprietor of M/S Fahad Garments on 23.11.1994 vide Bill of Entry No.6889 Rotation No.9/3/94, License No.119 imported 1,49,000/- yards of cloth which was released by a

Clearing and Forwarding agent namely Chistia Over Seas from Chittagong Port and the informant as per the direction of his higher authority, he along with other officers of the inquiry found out that one S.M. Azizur Rahman is the owner of said Garments factory but no cloth was found there and as such it was suspected that said cloth has been sold out in the black market and after interrogation said Azizur Rahman informed that he has sold out the cloths and machineries of the Garments factory to one Colonel (Ret.) M.A. Khalek, Proprietor of Gausia New Wears, Mirpur before 3 months and hence it was suspected that said Azizur Rahman and Khalek in collaboration with each other imported the said cloths and sold out those in the black market and hence the present case.

3. The police investigated the case and submitted charge sheet against the accused persons under section 25(1)/ 25(B)/25(Kha) of the Special Powers Act, 1974.

4. The case record was transmitted to the Court of the Metropolitan Special Tribunal No.2, Dhaka for trial who took cognizance against the accused persons and thereafter the accused persons filed an application before the Tribunal under section 265C of the Code of Criminal Procedure for discharging them from the charge and after hearing, the Tribunal rejected the application filed by the accused petitioners and accordingly charge was framed against all the accused persons under section 25(1), 25(B) and 25(Kha) of the Special Powers Act, 1974.

5. The petitioner obtained bail from the Court below.

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

7. Mr. Tobarak Hossain, the learned Advocate appearing on behalf of the petitioners submits that the petitioners are innocent and they have been falsely implicated in the present case. He also brings into the notice of this Court that no offence is disclosed against the petitioners in the first information report and the charge sheet was submitted after 14 years of lodging of the first information report and the petitioners are the Clearing and Forwarding agent and their function is to submit the papers and documents given by the importers and those were not created by the Clearing and Forwarding agent and the concerned authority held the report to get the goods released. He next submits that the ingredients of section 420/468/469/471/34 of the Penal Code are totally absent against the petitioners. The learned Advocate refers section 222 and 224 of the Contract Act of 1872 and submits that the employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him and an agent is indemnified against consequences of acts done in good faith. Lastly the learned Advocate submits that till today not a single witness has been examined by the prosecution.

8. Ms. Sakila Rawshan, the learned Deputy Attorney General appearing on behalf of the State opposes the Rule and submits that the quashment of the proceedings at the stage when trial has already begun and prosecution witnesses are examined is not permissible. In support to her contention the learned Deputy Attorney General refers a decision as reported in 13 M.L.R.(AD) page 103.

9. 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.

10. It appears that the present two petitioners were not named in the first information report which was lodged on 23.11.1994 against one accused person under section 20/468/469/471/34 of the Penal Code alleging that cloths were imported through Letter of Credit under bond but those were sold out in black market. After 14 years of the lodging of the first information report, the charge sheet was submitted, wherein 6 persons were included including the petitioners and the allegations against the petitioners was that they in collusion with the first information report named accused persons released the goods from Chittagong port. Admittedly the goods were not contraband items and through letter of credit the owner of the alleged garments industry brought the goods and released the goods through clearing and forwarding agent. It is the subsequent allegation that the cloths were sold in the black market.

11. Section 222 of the Contract Act runs as follows:- Agent to be indemnified against consequences of lawful acts- The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

12. Section 224 of the Contract Act runs as follows:- Non-liability of employer of agent to do criminal act- Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

13. Section 223 of the Contract Act says that where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it causes an injury to the rights of third persons.

14. The customs authority being satisfied about the import documents, released the imported cloths from customs station and the petitioners handed over the imported cloths to the importer as C and F Agent from the Custom Area and place of business of the petitioners is the Customs House or Custom Area as per section 2(i) and 207 of the Customs Act, 1969 and Rule 2(b) of the Rules 1986 and consequently petitioners are in no way responsible for the alleged offence. The petitioners as agent cannot be held liable for the work of the Principal and thus the petitioners committed no offence within the meaning of sections 20/468/469/471/34 of the Penal Code. The petitioners as Clearing and Forwarding Agent are responsible only in releasing the imported cloths from the customs station as per documents submitted by the importer to the customs and the Bank. The petitioners not being the first information report named accused persons and being Clearing and Forwarding Agent under the provisions of 207 of the Customs Act, 1969 and Customs Agents Rules 1986 there being no allegations of violation of any provisions of Customs Act, 1969 and the Rules, 1986, and they acted within the authority provided to them under Rule 2(b) of the Rules, 1986. Sections 207/208 and 209 of the Customs Act, 1969 prescribes the liability of the importer as Principal and not the agent.

15. The exercise of jurisdiction under section 561A of the Code of Criminal Procedure will depend upon the facts and circumstances of each case. This Court can interfere at any stage of the proceedings where the facts are so preposterous that no case can stand against the

accused and the further continuation of the proceedings would only cause harassment to the accused being an abuse of the process of the Court.

16. Considering the facts and circumstances of the case, we are of the view that the further proceedings of the present proceedings against the petitioner would be nothing but sheer abuse of the process of the Court, which needs to be quashed for ends of justice as there is nothing on record to connect the present petitioners with the alleged offence.

17. In the result, the Rule is made absolute. The proceedings of Metro. Special Tribunal Case No.132 of 2008 arising out of G.R. No.3416 of 1994 corresponding to Mirpur Police Station Case No.93 dated 28.11.1994 under sections 25(1) 25(B) and 25(Kha) of the Special Powers Ac, 1974, so far it relates to the petitioners are concerned, now pending in the Court of Metropolitan Special Tribunal No.2, Dhaka are hereby quashed.

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

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