

6 SCOB [2016] HCD 108**HIGH COURT DIVISION****(Criminal Miscellaneous Jurisdiction)**

Mr. Pankaj Kumar Kundu, Advocate

Criminal Miscellaneous Case No. 40890
of 2012

... For the petitioners.

Mr. Sk. Md. Morshed, Advocate

Rashid and others

... Accused-Petitioners

For opposite party no. 2.

Versus

**The State, represented by the Deputy
Commissioner, Sunamganj and others.**

...Opposite-parties.

Heard on 03.11.15, 09.11.15 and

10.11.2015

Judgment on 17.11.2015

Present:**Mr. Justice Md. Emdadul Huq****And****Mr. Justice Muhammad Khurshid Alam Sarkar****Code of Criminal Procedure, 1898****Section 436:****The learned Sessions Judge, Sunamganj appears to have fallen in error in law in directing the learned Judicial Magistrate to take cognizance directly inasmuch as from a mere reading of Section 436 of the CrPC, it appears that the learned Sessions Judge is not empowered to directly ask any Judicial Magistrate to take cognizance. ...(Para 9)****Judgment****Muhammad Khurshid Alam Sarkar, J.**

1. By invoking the extraordinary jurisdiction of this Court under Section 561A of the Code of Criminal Procedure, 1898 (CrPC), the accused-petitioners sought to quash the judgment and order dated 06.08.2012 passed by the learned Sessions Judge, Sunamganj in Criminal Revision No. 56 of 2012 allowing the revision of the judgment and order dated 14.06.2012 passed by the Judicial Magistrate, Jagannathpur Zone, Sunamganj in GR Case no. 286 of 2011 (Jagannathpur) and thereby directing the latter to take cognizance against the accused-petitioners, who were not sent-up in the charge sheet.

2. The relevant facts necessary for disposal of this Rule are that the petitioners have been named as the accused in the First Information Report (FIR) filed with the Jagannathpur Police Station under the Sunamganj District. The FIR goes on to state that there was a gun-fight between two rival groups of village Sonatanpur under Jagannathpur Upazilla, District-Sunamganj. The group consisting of the people namely, Lutfur Rahman, Rumien, Sumen, Anis Mia, Ashique Mia, Golabur Rahman, Mehbub Rahman, Azizur Rahman, Khalikur Rahman and Khalilur Rahman fought against the other group of the people namely, Haji Asab Mia, Swapan Mia, Ripon, Shahin, Asadur, Badrul Islam alias A. Rouf, Mohibur Rahman and A. Rashid. The victim is the informant's brother, who was a student of the Sonatanpur Islamia Hafizia Madrasha of Jagannathpur and, at that relevant point in time, the

victim was standing on the first floor of the Madrasha and incidentally his left eye was hit by a bullet. Also a teacher of the said Madrasha namely Hafij Badrul Alam, and another student namely, Salman Siddik received bullet injury in their heads. When the clash was over, the teachers and students of the Madrasha took the injured persons to the Sylhet Osmani Medical College Hospital, but the informant's brother died on the way to Hospital. The informant received the information about the alleged occurrence at the midnight of 23.11.2011 over mobile from a student of the said Madrasha and he rushed to the Hospital on the following morning, when he found the dead body of his brother. Thereafter, he lodged the FIR with the Jagannathpur Police Station against 18 people, including the accused-petitioners, under Sections 143/144/149/326/307/302 of the Penal Code.

3. The said FIR having been registered as Jagannathpur Police Station Case No. 19 dated 24.11.2011 under Sections 143/144/149/326/307/302 of the Penal Code turned into the G.R. Case No. 286 of 2011 in the Court of Judicial Magistrate Jagannathpur under the District of Sunamganj. Based on the allegations made in the FIR the police investigated into the incident and submitted police report being charge sheet no. 20 dated 10.02.2012 wherein the accused-petitioners' names were dropped from the list of the accused-persons. It prompted the informant to file an application on 04.03.2012 before the concerned Court for inclusion of the names of these petitioners in the charge-sheet, which in common parlance is known as 'Naraji Petition'. The learned Judicial Magistrate after hearing both the sides, perusing the papers and considering the materials on record rejected the said Naraji Petition and accepted the charge sheet by discharging these accused-petitioners by his order dated 14.06.2012. Against the said order the informant filed a revisional application before the learned Sessions Judge, Sunamganj on 11.07.2012 which, having been registered as Criminal Revision No. 56 of 2012 and being heard by the learned Sessions Judge, Sunamganj in presence of both the sides, was allowed upon setting aside the above order dated 14.06.2012 passed by the learned Judicial Magistrate and directing the learned Judicial Magistrate to take cognizance of the offence against the not-sent up accused-persons. The accused-petitioners being aggrieved by the said order passed by the learned Sessions Judge, Sunamganj approached this Court and hence this Rule.

4. Mr. Pankaj Kumar Kundu, the learned Advocate appearing for the petitioners, takes us through the FIR, charge sheet, Naraji Petition and the orders passed by the Courts below and submits that the learned Sessions Judge, Sunamganj has committed serious illegality in directing the learned Magistrate to take cognizance of the offence against the not-sent up petitioners inasmuch as the law does not empower the learned Sessions Judge to make such direction upon the cognizing Magistrate. In continuation of the aforesaid submission, the learned Advocate for the petitioners argues that the learned Sessions Judge at best could have directed the concerned Magistrate to conduct further inquiry about the allegation of the informant. By placing the provision of Section 436 of the CrPC, the learned Advocate for the petitioners canvasses that the cognizance-taking Magistrate or any other Magistrate may carry out further inquiry upon affording an opportunity to the not-sent up accused-persons and, thereafter, the concerned Magistrate will be in a position to pass an appropriate order as to inclusion or exclusion of the names of the petitioners in the list of the accused. The learned Advocate for the petitioners next submits that if the charge sheet and the order of the learned Magistrate is minutely read side-by-side, it would appear that there was no illegality in rejecting the Naraji Petition by the learned Judicial Magistrate, Jagannathpur, Sunamganj and, thus, the same ought not to have been interfered with by the learned Sessions Judge in exercising his revisional power. By making the aforesaid submissions by the learned Advocate for the accused-petitioners, he prays for making the Rule absolute.

5. Per contra, Mr. Sk. Md. Morshed, the learned Advocate appearing for the informant places the provision of Sections 156(3), 173(1), 173(3), 173(3B), 190(1), 200, 202 and 203 of the CrPC and submits that the concerned Judicial Magistrate utterly failed to understand the true meaning of the said provision and, consequently, he failed to make the appropriate decision in dealing with the Naraji Petition. He refers to the statements made by the 3 (three) eye-witnesses in the form of affidavit which were produced before the concerned Magistrate and submits that the learned Magistrate ignored their categorical statements as to the involvement of these petitioners in the occurrence. He submits that out of 3 (three) victims while one has died within a few hours of the incident, the two victims of the said incident are still suffering from the injuries received in that incident and, particularly, the condition of the student, who was hit by a bullet at his head, is very vulnerable as the bullet damaged the neurological functions of the said student. He forcefully submits that the names of these petitioners ought to have been included in the charge sheet with an aim to place them before the trial Court by way of taking cognizance. However, the learned Advocate for the informant concedes that it would have been an appropriate order if the learned Sessions Judge, Sunamganj would have directed the concerned Judicial Magistrate to conduct further inquiry, instead of asking the learned Judicial Magistrate to take cognizance of the offence against these petitioners. By making the above submissions, the learned Advocate for the informant prays for discharging the Rule.

6. The first issue to be examined by this Court is whether there were sufficient prosecution materials before the learned Judicial Magistrate to take cognizance against these petitioners and, if it is answered in the affirmative, the second issue would come up for consideration is whether the learned Session Judge, Sunamganj was competent to direct the learned Judicial Magistrate to take cognizance directly.

7. We have perused the Lower Courts' Record (LCR) containing the FIR, statements recorded under Section 161 of the CrPC, Charge sheet, Naraji Application with its annexures, the impugned order dated 06.08.2012 passed by the learned Sessions Judge, Sunamganj in Criminal Revision No. 56 of 2012 in tandem with the order dated 14.06.2012 passed by the learned Judicial Magistrate, Sunamganj rejecting the Naraji application.

8. It appears that the learned Sessions Judge has rightly found out the error committed by the learned Judicial Magistrate who rejected the Naraji petition without taking into consideration the statements made by 3 (three) eye witnesses in the form of affidavit and without recording the statements of the wounded teacher and student who received their injuries in the said gun-fight. We have also noticed that the statement of Mrs Akli Bibi, the wife of a not-sent up accused Abdur Rashid, from whom the gun has been seized, has not been recorded by the investigating officer. Furthermore, in the order of the learned Judicial Magistrate there should have been comprehensive discussions on the ballistic report detailing the reason and basis of ignoring the contents of the said report.

9. However, the learned Sessions Judge, Sunamganj appears to have fallen in error in law in directing the learned Judicial Magistrate to take cognizance directly inasmuch as from a mere reading of Section 436 of the CrPC, it appears that the learned Sessions Judge is not empowered to directly ask any Judicial Magistrate to take cognizance.

10. In the light of the fact that the gun owned by Adbur Rashid has been seized, a further investigation as to use or non-use of the said gun in the clash between the groups may be carried out.

11. The above discussions lead us to hold that while the learned Judicial Magistrate failed to apply his judicial mind resulting in error of decision in rejecting the Naraji Petition, the learned Session Judge, Sunamganj appears to have misread and misconstrued the extent of his jurisdiction and power to revise an order on Naraji application by directing the concerned Judicial Magistrate to take cognizance against these petitioners.

12. Accordingly, this Rule is disposed of with a direction upon the learned Judicial Magistrate, Jagannathpur, Sunamganj to conduct further inquiry taking into consideration of the statements of 3 (three) eye-witnesses that have been made in 3 (three) separate affidavits. After accomplishing the above further inquiry, the concerned Judicial Magistrate shall be at liberty to pass necessary order with regard to taking cognizance and to proceed with their case.

13. In the result, the Rule is disposed of with the above observation and direction. The order dated 06.08.2012 passed by the learned Sessions Judge, Jagannathpur, Sunamganj in Criminal Revision No. 56 of 2012 is modified to the extent that the learned Judicial Magistrate, Jagannathpur, Sunamganj is directed to make further inquiry and to decide whether to take cognizance against these petitioners.

14. If the learned Judicial Magistrate, Jagannathpur Zone, Sunamganj is of the view that further investigation is to be conducted by the police, in that event, he may ask the police to file a supplementary police report. The learned Judicial Magistrate, Jagannathpur, Sunamganj is directed to complete the entire process within 3(three) months from the date of receipt of this order.

15. The order of stay granted at the time of issuance of the Rule is hereby vacated.

16. Send down the Lower Courts' Record at once.