

9 SCOB [2017] HCD 119**High Court Division
(Special Original Jurisdiction)**

Writ Petition No. 970 of 2010

**Mahmudur Rahman
Vs.
Bangladesh and others**Mr. A.J. Mohammad Ali with
Mr. Ehsan A. Siddiq with
Mr. Imran Siddiq, Advocates
..... For the petitionerMr. Mahbubey Alam, Attorney General
with
Mr. Pratikar Chakma, A.A.G with
Mr. Shuchira Hossain, A.A.G withMr. Mizanur Rahman Khan Shaheen,
A.A.G with
Mr. Mohammad Shaiful Alam, A.A.G
...For the respondent No.1
Mr. Md. Billal Hossain, Advocate
...For respondent No.25

Heard on 01.08.2017 and 22.10.2017

Judgment on: 05.11.2017

Present:**Mr. Justice Sheikh Hassan Arif
And
Mr. Justice Md. Badruzzaman****Constitution of Bangladesh****Article 35:**

It appears from the above quoted provision of the Constitution that, a guarantee has been provided in favour of any person not to be prosecuted and punished for the same offence more than once. Therefore, the very condition to attract this provision is that, a person has to be first prosecuted and punished. The admitted position in this case is that, the petitioner was yet to be prosecuted and/or punished in any of the impugned criminal cases when he moved this writ petition. Thus, the very words of the Constitution under Article 35(2) make it clear that the said provisions was or is not attracted in so far as those criminal cases are concerned. ...**(Para 9)**

Code of Criminal Procedure, 1898**Section 403:**

The provisions under the Code of Criminal Procedure under Section 403 have given protection to a person in respect of previous acquittal as well. According to sub-section (1) of Section 403 of the Code Criminal Procedure, when a person has already been tried by a Court of competent jurisdiction for an offence and the said person has been convicted or acquitted of such offence, till such conviction or acquittal remains operative, he cannot be tried again for the same offence. Therefore, it appears that, the statutory provisions under the Code of Criminal Procedure has given wider protection to a person than the Constitutional provision in so far as the issue of double jeopardy is concerned. ...**(Para 10)**

Constitution of Bangladesh**Article 35:****And****Code of Criminal Procedure, 1898****Section 198:**

It is true that, by filing various cases against an individual in different districts, the personal liberty of that individual is somehow jeopardized and, on that point, learned advocate for the petitioner has raised the issue of another fundamental right of the petitioner as guaranteed by the Constitution under Article 32. However, it appears from the said very provision of Article 32 that, the said right of liberty in favour of a person is granted subject to the provisions of law. Therefore, when we are examining the fundamental rights of the petitioner guaranteed under the Constitutions, we cannot ignore the fundamental rights of the people of this country or the individuals who have filed those criminal cases feeling aggrieved by the said reports, in particular when every complainant has stated in their respective petition of complaint as to how they became aggrieved by such publication of reports in the said news paper. Therefore, under writ jurisdiction, we cannot assume that the said complainants were in fact not aggrieved personally. If we hold the view that they were not aggrieved personally, we would be preventing them from proving their cases before the Trial Court by adducing evidences. Therefore, this Court is of the view that, the issue whether the said complainants were in fact personally aggrieved or not, can only be decided in the trial by the Courts before which the impugned proceedings are pending. In that view of the matter, we do not find any substance in the submissions of the learned advocate for the petitioner in so far as the provisions under Section 198 of the Code of Criminal Procedure is concerned.

...(Para 11)

Code of Criminal Procedure, 1898**Section 526:**

It further appears from materials on record that, because of various criminal cases, the petitioner is required to move from one district to another district to defend those cases. The Code of Criminal Procedure, under Section 526, has given a solution to such inconvenience. This provision has conferred wide power on the High Court Division to transfer any criminal case from one district to another or even to transfer the same to itself for hearing. Therefore, it is always open to the petitioner to approach the High Court Division under the said provision seeking a transfer order of those cases to one particular district to avoid his potential inconveniences.

...(Para 12)

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

If the petitioner feels that the impugned criminal cases have been filed to victimize him for political reason or that the statements in those complaint cases do not disclose any offence, the petitioner also has an option to approach the High Court Division for quashing the same under section 561A of the Code of Criminal Procedure. This provision under Section 561A of the Code of Criminal Procedure has also given wide power on the High Court Division to pass any order for preventing abuse of the process of criminal Courts.

...(Para 12)

Constitution of Bangladesh**Article 35 and 102:****And****Penal Code, 1860****Section 500 and 501:**

In view of above facts and circumstances of the case, since, apparently and admittedly, no prosecution has been concluded against the petitioner and that the petitioner has neither been convicted or acquitted in any criminal case for the offence in question, namely, the offences punishable under Sections 500 and 501 of the Penal Code, we are of the view that, the petitioner does not have any case before this Court under writ jurisdiction to invoke Article 35(2) of the Constitution or other provisions of the Constitution or Code of Criminal Procedure. Besides, since the petitioner does not have any particular case of enforcement of fundamental rights under any of the above mentioned Articles, the writ petition is not maintainable. ... (Para 13)

Judgment**SHEIKH HASSAN ARIF, J:**

1. Rule Nisi was issued calling upon the respondents to show cause as to why further proceedings of the cases filed against the petitioner in the Courts of different districts on the selfsame allegation of publication of a defamatory news in daily “Amar Desh” on 17.12.2009, being Complaint Registrar Case No. 400C of 2009 pending before the Chief Judicial Magistrate, Natore; Complaint Registrar Case No.1693C of 2009 pending before the Chief Judicial Magistrate, Chittagong; Complaint Register Case No.309C of 2009 pending before the Chief Judicial Magistrate, Joypurhat; Complaint Register Case No.580 of 2009 pending before the Chief Judicial Magistrate, Comilla; Complaint Register Case No.933 of 2009 pending before the Chief Judicial Magistrate, Comilla; Complaint Register Case No.622 of 2009 pending before the Chief Judicial Magistrate, Comilla; Complaint Register Case No.1375 of 2009 pending before the Chief Judicial Magistrate, Bogra; Complaint Register Case No.600C of 2009 pending before the Chief Judicial Magistrate, Naogaon; Complaint Register Case No.470C of 2009 pending before the Chief Judicial Magistrate, Narail; Complaint Register Case No.812C of 2009 pending before the Chief Judicial Magistrate, Khulna; Complaint Register Case No.411 of 2009 pending before the Chief Judicial Magistrate, Khagracharia; Complaint Register Case No.485C of 2009 pending before the Chief Judicial Magistrate, Jamalpur; Complaint Register Case No.517 of 2009 pending before the Chief Judicial Magistrate, Pabna; Complaint Register Case No.728 of 2009 pending before the Chief Judicial Magistrate, Magura; Complaint Register Case No.503C of 2009 pending before the Chief Judicial Magistrate, Sirajgonj; Complaint Register Case No.1459C of 2009 pending before the Chief Judicial Magistrate, Jessore; Complaint Register Case No.514 of 2009 pending before the Chief Judicial Magistrate, Rangpur; Complaint Register Case No.917C of 2009 pending before the Chief Judicial Magistrate, Jhenaidah; Complaint Register Case No.810C of 2009 pending before the Chief Judicial Magistrate, Lakshmipur; Complaint Register Case No.768C of 2009 pending before the Chief Judicial Magistrate, Brahmanbaria; Complaint Register Case No.805C of 2009 pending before the Chief Judicial Magistrate, Gaibandha; Complaint Register Case No.6687 of 2009 pending before the Chief Metropolitan Magistrate, Dhaka; and Complaint Register Case No.706 of 2009 pending before the Chief Judicial Magistrate, Tangail, should not be declared to have been commenced and continued without lawful authority and are of no legal effect.

2. Short facts, relevant for the disposal of the Rule, are that, the petitioner, at the relevant time, was the Chairman of Amar Desh Publications Ltd., the Publisher of Daily Amar Desh. He was also the acting editor of the said daily which, according to him, was one of the fastest growing news papers in the country. That he was the Chairman of the Board of Investment, Bangladesh during a period from December, 2001 to October 2006 and he performed his duties as the Chairman the said Board very successfully. That he was also the Energy Advisor to the Government of Bangladesh during a period from June, 2005 to October, 2006. It is stated that, on 17.12.2009, Mr. M. Abdullah, Special Correspondent of the said newspaper, Daily Amar Desh, investigated, researched, prepared and published a report in the said daily in relation to the allegations of corruption committed by Dr. Tawfique-e-Elahi Chowdhury, an Advisor to the Prime Minister and Sajib Wajed Joy, son of the Prime Minister. In the said report, it was published that the Ministry of Power and Energy was investigating allegations of corruption of Dr. Chowdhury and Mr. Joy in relation to accepting bribes of USD five million for awarding a contract to Chevron, a United States based oil company. It is further stated that, the said report was based on the correspondence between the Ministry of Power and Energy and Petrobangla. After publication of the said report on 17.12.2009, the daily received a rejoinder from the Ministry of Power and Energy and the said rejoinder was accordingly published verbatim in the said daily. However, it is stated, being furious by such report in the said daily, 23 individuals, as complainants in 21 districts, filed 23 complaint registrar cases against the petitioner and two others alleging defamation punishable under Sections 500 and 501 of the Penal Code. Accordingly, the said cases were registered as Complaint Registrar Case No. 400C of 2009 pending before the Chief Judicial Magistrate, Natore; Complaint Registrar Case No.1693C of 2009 pending before the Chief Judicial Magistrate, Chittagong; Complaint Register Case No.309C of 2009 pending before the Chief Judicial Magistrate, Joypurhat; Complaint Register Case No.580 of 2009 pending before the Chief Judicial Magistrate, Comilla; Complaint Register Case No.933 of 2009 pending before the Chief Judicial Magistrate, Comilla; Complaint Register Case No.622 of 2009 pending before the Chief Judicial Magistrate, Comilla; Complaint Register Case No.1375 of 2009 pending before the Chief Judicial Magistrate, Bogra; Complaint Register Case No.600C of 2009 pending before the Chief Judicial Magistrate, Naogaon; Complaint Register Case No.470C of 2009 pending before the Chief Judicial Magistrate, Narail; Complaint Register Case No.812C of 2009 pending before the Chief Judicial Magistrate, Khulna; Complaint Register Case No.411 of 2009 pending before the Chief Judicial Magistrate, Khagracharia; Complaint Register Case No.485C of 2009 pending before the Chief Judicial Magistrate, Jamalpur; Complaint Register Case No.517 of 2009 pending before the Chief Judicial Magistrate, Pabna; Complaint Register Case No.728 of 2009 pending before the Chief Judicial Magistrate, Magura; Complaint Register Case No.503C of 2009 pending before the Chief Judicial Magistrate, Sirajgonj; Complaint Register Case No.1459C of 2009 pending before the Chief Judicial Magistrate, Jessore; Complaint Register Case No.514 of 2009 pending before the Chief Judicial Magistrate, Rangpur; Complaint Register Case No.917C of 2009 pending before the Chief Judicial Magistrate, Jhenaidah; Complaint Register Case No.810C of 2009 pending before the Chief Judicial Magistrate, Lakshmipur ; Complaint Register Case No.768C of 2009 pending before the Chief Judicial Magistrate, Brahmanbaria; Complaint Register Case No.805C of 2009 pending before the Chief Judicial Magistrate, Gaibandha; Complaint Register Case No.6687 of 2009 pending before the Chief Metropolitan Magistrate, Dhaka; and Complaint Register Case No.706 of 2009 pending before the Chief Judicial Magistrate, Tangail.

3. It is further stated that, the said Dr. Tawfique-e-Elahi Chowdhury himself filed a complaint register case on 19.01.2010 against the petitioner, being Complaint Register Case

95 of 2010 before the Chief Metropolitan Magistrate, Dhaka and cognizance was taken therein. Therefore, according to the petitioner, in total 24 criminal cases are now pending against him in 21 Districts in relation to the same allegation and same offence. After cognizance was taken in the said cases, the petitioner obtained ad-interim anticipatory bail from the High Court Division in all the 24 criminal cases including the impugned 23 complaint registered cases. Thereafter, the petitioner has moved this Court with this writ petition challenging the proceedings of the impugned 23 complaint register cases and obtained the aforesaid Rule. At the time of issuance of the Rule, this Court, vide ad-interim order dated 02.02.2010, stayed further proceedings of the said cases for a period of 03 (three) months, which was extended time to time.

4. The Rule is opposed by the Government (respondent No. 1) by filing affidavit-in-opposition, mainly contending that, the petitioner has no case before this Court under writ jurisdiction and that the case of the petitioner does not attract the provisions under Article 35(2) of the Constitution. It is further stated by the respondent that, since the petitioner, through its news paper, published defamatory news against the leader of Bangladesh Awami League and the son of the said leader, the followers and leaders of the party have been defamed and as such some of them, being personally aggrieved, filed the impugned cases in their respective districts.

5. Mr. A.J. Mohammad Ali, leaned senior counsel appearing for the petitioner, submits that, initiation of more than one criminal case in respect of same offence, punishable under Sections 500 and 501 of the Penal Code, is not permitted by law and the Constitution. According to him, by filing these criminal cases, fundamental rights of the petitioner to be treated in accordance with law and his personal liberty, as guaranteed under Articles 31 and 32 of the Constitution, have been grossly violated. He submits that, if the impugned proceedings are not quashed by this Court, the petitioner will be victim of double jeopardy which is prohibited by Article 35(2) of the Constitution, which is also an important fundamental rights of the petitioner guaranteed by the Constitution. Further referring to the provisions under Sections 179 and 198 of the Code of Criminal Procedure, learned advocate submits that, since the act of publication of the said report in the said news paper was done from Dhaka, only case that could be proceeded against the petitioner was the case which was filed before the Chief Metropolitan Magistrate, Dhaka. Therefore, according to him, other cases on the self same allegations, which have been filed in 21 other districts, cannot proceed against the petitioner. Learned advocate further submits that, the report in question, even if treated as defamatory report, the alleged defamation is caused not to the complainants of those criminal cases but to the Prime Minister and her son. Therefore, according to him, the complainants in those impugned criminal cases, under no circumstances, may be treated as aggrieved persons as provided by Section 198 of the Code of Criminal Procedure. Learned advocate further submits that, even if no conviction and punishment have yet been imposed in the impugned cases against the petitioner, this Court should interfere into those criminal cases when it is clear before this Court that there is every possibility in those criminal cases that they will jeopardize the fundamental rights of the petitioner as guaranteed under Article 35(2) of the Constitution.

6. As against above submissions, Mr. Mahbubey Alam, learned Attorney General appearing for respondent no.1, has placed the news items in question, which are annexed to the writ petition as Annexures-A and B. Mr. Alam then submits that, by these reports, not only the Prime Minister or her son was defamed, rather, according to him, the entire political party led by Sheikh Hasina has been defamed. Therefore, according to him, when the leader

of the said political party, Bangladesh Awami League, and her son have been defamed in such malicious way, all the followers of the said political party and their leaders have become personally aggrieved. Therefore, since the reputation of the very political party have been undermined or the leaders of the said political party have been defamed, it cannot be said that the followers of the said political party are not personally aggrieved. Further referring to the relevant Articles in the Constitution as well as the provisions under Sections 526 and 561A of the Code of Criminal Procedure, learned Attorney General submits that, the very writ petition challenging the impugned proceedings is not maintainable inasmuch as that the petitioner has equally efficacious alternative remedy under the said provisions before the Criminal Benches of this Court.

7. It appears from the materials on record that, admittedly, 24 criminal cases have been filed against the petitioner in 21 different districts in respect of the same reports published in the Daily Amar Desh on 17.12.2009 and 19.12.2009 (Annexures A and B). It is apparent from the very reading of the said reports that, the Prime Minister at the relevant time (who was also the President of Bangladesh Awami League), her son and one Advisor to the Prime Minister were the subject matter of the said reports by which the news paper wanted to project that they were directly or indirectly involved in corruption. The further admitted position is that, these reports prompted some supporters of Bangladesh Awami League in different districts to file the impugned criminal cases against the petitioner and some other individuals who were involved in publishing the said reports. When the petitioner moved this writ petition, the said criminal cases were pending before the said Courts and, these, he obtained ad-interim anticipatory bail from the High Court Division in connection with those cases. Therefore, at the time of issuance of the Rule, no prosecution could proceed against the petitioner in those criminal cases and that the said criminal cases could not reach their ends to have a result of conviction or acquittal against him because of the ad-interim order passed in the instant writ petition.

8. Against above factual backdrop, since the petitioner has mainly tried to invoke Article 35(2) of the Constitution, which is one of the most important fundamental rights guaranteed by the Constitution in favour of a person, let us quote the same for ready reference:

“35. (1).....
 (2) *No person shall be prosecuted and punished for the same offence more than once.*
 (3).....
 (4).....
 (5).....
 (6).....”

(Underlines supplied)

9. It appears from the above quoted provision of the Constitution that, a guarantee has been provided in favour of any person not to be prosecuted and punished for the same offence more than once. Therefore, the very condition to attract this provision is that, a person has to be first prosecuted and punished. The admitted position in this case is that, the petitioner was yet to be prosecuted and/or punished in any of the impugned criminal cases when he moved this writ petition. Thus, the very words of the Constitution under Article 35(2) make it clear that the said provisions was or is not attracted in so far as those criminal cases are concerned.

10. While examining the similar provisions of the Indian Constitution under Article 20(2), the Supreme Court of India has repeatedly declared this position in respect of the principle of double jeopardy. It is held by the Indian Supreme Court in **O.P. Dahiya Vs. Union of India (2003), 1SCC-122** that, when a person is neither convicted nor acquitted on the charges against him in the first trial, a trial in such a case would not be amount to double jeopardy. Though the protection in respect of double jeopardy in USA and UK are wider than the constitutional protection in our Subcontinent, namely in India, Bangladesh and Pakistan, and in those countries the protection is given even in respect of acquittal (see the 5th amendment to the US Constitution), the protection as provided by the Constitutions of this subcontinent (India, Pakistan and Bangladesh) is narrower than those countries in that the protection is given only in respect of previous prosecution and conviction and not for previous acquittal for the same offence. However, the provisions under the Code of Criminal Procedure under Section 403 have given protection to a person in respect of previous acquittal as well. According to sub-section (1) of Section 403 of the Code Criminal Procedure, when a person has already been tried by a Court of competent jurisdiction for an offence and the said person has been convicted or acquitted of such offence, till such conviction or acquittal remains operative, he cannot be tried again for the same offence. Therefore, it appears that, the statutory provisions under the Code of Criminal Procedure has given wider protection to a person than the Constitutional provision in so far as the issue of double jeopardy is concerned.

11. It is true that, by filing various cases against an individual in different districts, the personal liberty of that individual is somehow jeopardized and, on that point, learned advocate for the petitioner has raised the issue of another fundamental right of the petitioner as guaranteed by the Constitution under Article 32. However, it appears from the said very provision of Article 32 that, the said right of liberty in favour of a person is granted subject to the provisions of law. Therefore, when we are examining the fundamental rights of the petitioner guaranteed under the Constitutions, we cannot ignore the fundamental rights of the people of this country or the individuals who have filed those criminal cases feeling aggrieved by the said reports, in particular when every complainant has stated in their respective petition of complaint as to how they became aggrieved by such publication of reports in the said news paper. Therefore, under writ jurisdiction, we cannot assume that the said complainants were in fact not aggrieved personally. If we hold the view that they were not aggrieved personally, we would be preventing them from proving their cases before the Tribal Court by adducing evidences. Therefore, this Court is of the view that, the issue whether the said complainants were in fact personally aggrieved or not, can only be decided in the trial by the Courts before which the impugned proceedings are pending. In that view of the matter, we do not find any substance in the submissions of the learned advocate for the petitioner in so far as the provisions under Section 198 of the Code of Criminal Procedure is concerned. In this regard, we have also examined the provisions under Section 179 of the Code of Criminal Procedure as raised by the learned advocate for the petitioner. Upon examining that provision, it appears that, the same does not have any application in respect of the impugned proceedings.

12. It further appears from materials on record that, because of various criminal cases, the petitioner is required to move from one district to another district to defend those cases. The Code of Criminal Procedure, under Section 526, has given a solution to such inconvenience. This provision has conferred wide power on the High Court Division to transfer any criminal case from one district to another or even to transfer the same to itself for hearing. Therefore, it is always open to the petitioner to approach the High Court Division under the said

provision seeking a transfer order of those cases to one particular district to avoid his potential inconveniences. Thus, on that point as well, we are of the view that, the petitioner has no case before this Court. On the other hand, if the petitioner feels that the impugned criminal cases have been filed to victimize him for political reason or that the statements in those complaint cases do not disclose any offence, the petitioner also has an option to approach the High Court Division for quashing the same under section 561A of the Code of Criminal Procedure. This provision under Section 561A of the Code of Criminal Procedure has also given wide power on the High Court Division to pass any order for preventing abuse of the process of criminal Courts.

13. In view of above facts and circumstances of the case, since, apparently and admittedly, no prosecution has been concluded against the petitioner and that the petitioner has neither been convicted or acquitted in any criminal case for the offence in question, namely, the offences punishable under Sections 500 and 501 of the Penal Code, we are of the view that, the petitioner does not have any case before this Court under writ jurisdiction to invoke Article 35(2) of the Constitution or other provisions of the Constitution or Code of Criminal Procedure. Besides, since the petitioner does not have any particular case of enforcement of fundamental rights under any of the above mentioned Articles, the writ petition is not maintainable.

14. Regard being had to the above facts and circumstances of the case, we do not find any merit in the Rule and as such the same should be discharged.

15. In the result, the Rule is discharged. The ad-interim order, if any, thus stands recalled and vacated.

16. Send down the L.C.R.

17. Communicate this.

Md. Badruzzaman, J:

18. I agree.