

Present:

Mr. Justice M. Enayetur Rahim

And

Mr. Justice Ashish Ranjan Das

Suo-moto Rule No.09 of 2016

The State

----- Petitioner

-Vs-

Executive Magistrate Mohammad
Rafiqul Islam also the Upazilla
Nirbahi Officer of Sakhipur,
Tangail and another

---- Respondents

Mr. Md. Khurshid Alam Khan, Advocate

---For the Petitioner

Mr. S.M. Rezaul Karim, Advocate

---- For the Respondent No.1

Mr. Nurul Islam, Advocate

----For the Respondent No.2

Mr. Tanjibul Alam, Advocate with

Mr. Kazi Ershadul Alam, Advocate

----For the local correspondent of
the Daily Star, Tangail

Heard & Judgment on 18.10.2016

M. Enayetur Rahim, J:

This Suo-moto Rule was issued calling upon
1) Executive Magistrate Mohammad Rafiqul Islam,
also the Upazila Nirbahi Officer of Sakhipur,
Tangail and 2) Mohammad Maksudul Alam, Officer-
in-Charge of Sakhipur Police Station, Tangail

to show cause as to why the conviction and sentence passed by the Executive Magistrate and Upazila Nirbahi Officer, Sakhipur, Tangail on Saturday (17.09.2016) against Sabbir Shikder a student of Protima Bonki Public High School, Tangail should not be declared to have been passed without lawful authority and is of no legal effect and/ or pass such other or further order or orders as to this may seem fit and proper.

Background for issuing the Suo-moto Rule was that on 20.09.2016 Mr. Md. Khurshid Alam Khan, an Advocate of the Supreme Court having placed a copy of a news paper, namely, the 'Daily Star' published on 20.09.2016 have drawn our attention to a news item under the caption '**Boy jailed for FB comment about MP**'. .

In the said news item it was narrated as follows;

"A mobile court in Tangail has sentenced a schoolboy to two years imprisonment under the ICT Act on the charge of "threatening" a ruling Awami League lawmaker via Facebook messenger.

Executive Magistrate Mohammad Rafiqul Islam, also the Upazila Nirbahi Officer of

Sakhipur, passed the order on Saturday, a day after police detained the boy following the filing of a general diary by Anupam Shajahan Joy, lawmaker of Tangail-8 (Basail-Sakhipur) constituency.

Sabbir Shikder, a student of Protima Bonki Public High School in the Upazila, was sent to Tangail district jail yesterday.

Magistrate Rafiqul claimed the boy was 19 years old.

He also claimed that ninth-grader Shabbir wrote "Abusive and humiliating words" in his message to the law maker's personal Facebook ID on Friday.

Prof Mizanur Rahman, former National Human Rights Commission Chairman, said law enforcers could have followed proper procedure and investigated further instead of producing Sabbir before a mobile Court.

"Executive power has been misused here" he told the Daily Star over the phone.

Mohammad Maksudul Alam, Officer-in-Charge of Sakhipur Police Station, said the lawmaker filed a GD with the police station in this regard on Friday.

A line of the post reads: "Your time is going to end", the OC said, referring to the G.D.

Police picked up Sabbir and quizzed him. As he admitted sending the text, police produced him before the mobile court of Rafiqul Islam Saturday night, claimed the OC.

Rafiqul passed the order on the same night against Sabbir, son of Shahinoor Alam of Protima Bonki village.

The executive magistrate said the schoolboy was sentenced under the Information and Communication Technology (ICT) Act, He, however, could not mention the section of the act."

Having perused the said news item, we were constrained to issue a Suo-moto Rule.

At the time of the issuance of the Rule the Respondents were directed to appear before this Court on 27.09.2016 at 11.00 A.M with the relevant records in connection with the arrest of Sabbir Shikder and conviction passed against him. Sabbir Shikder also directed to appear before this Court on the same day and time with the relevant documents regarding his age and education. In compliance of the court order the Respondents have appeared before this Court and filed affidavit of

compliance. Victim Sabbir Sikder also appeared before this Court.

The Respondent No.1 in his affidavit of compliance stated that on 01.09.2016 a decision was conveyed to the officer-in-charge, Shakhipur Police Station, Tangail and all other concern mentioning the probable date of holding mobile court by him.

On 18.09.2016 at 5.00 p.m. the he along with the members of law enforcing agency hold the Mobile Court at Protimabonki area of Shakhipur Upazilla, Tangail, which is situated at the end of Poura area. The above place was selected on the basis of confidential information about the movement and activities of Narcotics article sellers, where the sellers and purchasers of Narcotics articles used to assemble. Being satisfied about the confidential information, the Mobile Court team headed by him rushed there and on suspecting movement of a young man, he was surrounded by the members of law enforcing agency. He was interrogated in presence of 04(four) witnesses. He was asked about his suspecting movement and as to whether he was possessing any illegal goods or not. The apprehended person disclosed his name as Sabbir Hossain and 100 grams hemp (gaza) was recovered from his possession and he pleaded guilty in presence of the witnesses. He also disclosed his identity and told that he was 19 years old. From his physical appearance he was found adult.

The respondent No.1 initiated proceeding of Mobile Court against the arrested Sabbir and framed charge against him under section 9(1) of the Madok Drobbya Niyantran Ain, 1990 and in reply of the notice framing charge, he pleaded guilty in presence of witnesses Rony and Zamil. The respondent being satisfied about the guilty plead of the arrested accused Sabbir recorded the same on the prescribed form.

The respondent No.1 after examining the arrested Sabbir and being satisfied about his confession recovery of hemp (gaza) from his exclusive possession and control, found him guilty under section 9(1) of the Madok Drobbya Niyantran Ain, 1990 and accordingly convicted him under the aforesaid section and sentenced him to suffer simple imprisonment for 2(two) years. Thereafter, pursuant to the aforesaid judgment and order dated 18.09.2016 the convicted Sabbir was sent to the jail.

In the affidavit it is further contended that in the news published in the Daily Star on 20.09.2016 it was mentioned that "Boy Jailed for FB comment about MP"; such heading of the news and the contention of the news was not correct. Because it was mentioned in the said news that Sabbir was arrested at the instigation of the local Member of Parliament, who was aggrieved on the comments of Sabbir about him on Facebook. The contention of

news was absolutely wrong, because the arrested Sabbir was not convicted under ICT Act, rather he was convicted under Madok Drobbya Niyantran Ain, 1990. A portion of the news item was referred to the interview of the respondent no.1, but the same was not correct, because the respondent no.1 was not interviewed by the correspondent of Daily Star. The deponent had given rejoinder to the Editor of the Daily Star about the false news. The alleged comments of convict Sabbir about the Hon'ble Member of Parliament in Facebook has no nexus with the Mobile Court proceeding in question conducted by the respondent no.1 on 18.09.2016. In the news item it was mentioned that the respondent had passed the order of conviction on Saturday, a day after of the police detained the boy following the filing a General Diary by the local Member of Parliament. The above contention is not correct. Convict Sabbir was caught redhanded with Narcotics article i.e. Ganja at the place of Protimabonki in presence of 04(four) witnesses on 18.09.2016 at 5.00 p.m. and he was convicted on spot, while narcotics article, i.e. Ganja was recovered from him physical possession and he was pleaded guilty. So, the above contention of news of arresting Sabbir before one day of passing judgment is not correct.

Convict Sabbir is not a minor. From the record of his passport No.BH0375578, it is evident that his date of birth is 10.05.1995 and the same date

of birth i.e. 10.05.1995 is also evident from the certificate issued by the Headmaster of concern school, where it has mentioned that the convict Md. Sabbir Hossain appeared in the final examination of Class-VIII in 2008. So, it is evident that in the year of 2008, who was student of Class-VIII, in the year of 2016 he cannot be a minor.

The respondent has not violated any law and rules in holding the trial in question under Mobile Court Ain, 2009. The correspondent of Daily Star in making report in question did not try to find out the truth about the facts. On the basis of presumption and wrong information he sent the news and the Daily Star without further scrutiny had published the news in question. The contention of news in question was based on totally wrong information.

Respondent No.2 in his affidavit of compliance stated that one Md. Shibly Sadik made a G.D vide entry No.554 dated 16.09.2016 alleging, inter alia, that one Sabbir Ahmed threatened the Hon'ble Member of Parliament (M.P) Mr. Anupum Shjahan Joy, constituency No.137 Tangail-8 (Bashail-Shafipur) to face dire consequences through his facebook messenger. After receiving the aforesaid allegation he asked one Sub-Inspector Anisur Rahman to take urgent action in the matter. On 18.09.2016 upon demand of the Executive Magistrate and Upazilla Nirbahi Officer, Shafipur, Tangail vide G.D No.604,

one S.I. Md. Delwar Hossain with one constable assisted the Magistrate for conducting the Mobile Court where Sabbir Hossain was convicted under section 9(1) of the Narcotics Control Act-1990 and sentenced him to suffer simple imprisonment for 2(two) years by the Executive Magistrate conducting Mobile Court.

On receiving the order of Suo-Moto Rule, the respondent collected the photostatcopy of certificate issued by Headmaster of Public High School, Bonki to ascertain the age of Sabbir Ahmed and according to the school certificate the date of birth is on 10.05.1995.

Both the respondents submitted supplementary affidavits annexing various documents.

This Court also directed the local correspondent of the 'Daily Star', Tangail to file an affidavit as to the genuineness of his report and accordingly an affidavit of compliance has been filed by him.

In the said affidavit of compliance it is contended that the contents of the report in question published on 20.09.2016 are true and genuine to the knowledge of the local correspondent of the "Daily Star" of Tangail District. From several local newspapers of Tangail, the local correspondent, on 19.09.2016, took notice of a news that a local boy was sentenced to suffer two years imprisonment by a mobile Court in Tangail under the

Information and Communication Technology Act, 2006 (ICT Act, 2006) on the charge of threatening a ruling Awami League lawmaker Anupam Shajahan Joy via Facebook messenger. Having come across the said news, the local correspondent, using his mobile number 01715815441 contacted the Executive Magistrate, respondent No.1, in the morning of 19.09.2016 on his mobile phone being number 01712361686 in order to gather further information on this. The said Executive Magistrate said that the schoolboy was sentenced under the ICT Act, 2006 but failed to specify under which section of the ICT Act, 2006 the said schoolboy was sentenced since he could not remember the specific section as he was outside. Further, upon being questioned by the local correspondent on the age of the said schoolboy, the Executive Magistrate said that the information as to the said schoolboy being underage was not correct since he has had break of study and he was actually 19 (nineteen)years old. Then immediately after, the local correspondent called the Officer-in-Charge of Sakhipur police station, respondent No.2 on his mobile phone being number 01713373457 in order to further verify the news and get more information on this. The said Officer-in-Charge narrated the incident of the schoolboy namely Sabbir Shikder sending allegedly threatening message to the local lawmaker and also said that the said schoolboy admitted to have sent the

threatening message to the said lawmaker when he was questioned following the detention of Sabbir by the police and afterwards he was sentenced under the ICT Act, 2006 by the Executive Magistrate.

On the basis of the information received from the respondents through mobile phone conversations, the local Correspondent prepared a report on the incident and sent the same to the head office of the 'Daily Star' in Dhaka on 19.09.2016 for publication on the Daily Star. In the afternoon, the head office of the Daily Star notified the local correspondent that there appeared to be a violation of law since a mobile court is not empowered to impose penalty on a person under the ICT Act, 2006 and further there was already a general diary, there ought to have been an investigation before producing the said schoolboy before a mobile court. The said head office, upon notifying the local correspondent as such; instructed him to verify further the information contained in the earlier draft report prepared by him. On the basis of such instruction, the Local Correspondent contacted the Executive Magistrate on his mobile number at around 03.50 PM and inquired further. The said Executive Magistrate said that the schoolboy admitted sending threatening and improper messages to the said lawmaker on the basis of which the Executive Magistrate sentenced him to suffer two years imprisonment under the ICT Act,

2006. The local correspondent further queried whether the imprisonment for two years was harsh since the imprisoned schoolboy appeared to be minor. The said Executive Magistrate said that he was not an underaged person or child as he had break of study and actually he was nineteen years old. The local correspondent asked again under what section of the ICT Act, 2006 the schoolboy was sentenced; to which the Executive Magistrate again said that he could not remember the exact section of the ICT Act, 2006 at that moment and he could not check the exact section then as he was in a meeting. Immediately after, the local correspondent contacted the said Officer-in-Charge of Sakhipur police station again informing him of the apparent breach of law and also asked him why the said schoolboy was produced before the mobile court prior to completion of the investigation on the basis of the general diary to which the said Officer-in-Charge replied that the Executive Magistrate asked him to produce the boy before the mobile court which he duly did. The local correspondent contacted both the Executive Magistrate and the Officer-in-Charge involved as can be seen from the 'Prepaid Usage Report for 1715815441' (Annexure-1) and made inquiries while preparing the report. However, the local correspondent could not contact the schoolboy in question as he was already put in prison.

On the basis of the information obtained from both the Executive Magistrate and the Officer-in-Charge involved, the report was finally prepared which was published at the back page of the Daily Star on 20.09.2016 with the heading "Boy jailed for FB comment about MP". A plain reading of the said report will reveal that the local correspondent cited remarks of both the said Officer-in-Charge and the Executive Magistrate for the information contained therein and did not include anything which was not sourced. Further, since the Executive Magistrate or the Officer-in-Charge failed to mention the specific section of the ICT Act, 2006, the local correspondent avoided making up the section on his own. These show the high journalistic etiquette maintained by the 'Daily Star' as well as the local correspondent in preparing and publishing the report. Further, considering the facts that the local correspondent made contacts on several occasions to ensure that he obtained the correct information and also took great care and showed commendable caution in reporting the news. The local correspondent is an award winning journalist having received "Unicef Award" in 2012 and "Best Correspondent of the Year" award in 2014 from the Daily Star. The local correspondent always endeavors to maintain the high standard of the journalistic practice for his report and in reporting the news of the schoolboy

being sentenced under the ICT Act, 2006, he showed the same by contacting the said Executive Magistrate and the Officer-in-Charge repeatedly in order to verify the authenticity of the news. The local correspondent went great length and quoted the sources of the said report published on 20.09.2016, hence, questioning the authenticity of the said news is unfortunate. There was no ulterior motive nor was there any intention to vilify or disparage any lawmaker or anyone else by publishing the said report. The local correspondent duly reported what he had found out from the very primary sources. Moreover, on 18.09.2016 the daily 'Prothom Alo' published a report of two students being detained by the police for threatening the local MP on page 12. The daily Jugantor also published a similar report on page 16 of its issue dated 18.09.2016. Further, on 19.09.2016, the daily Amader Shomoy reported that the said schoolboy namely Sabbir Shikder was sentenced to suffer two years imprisonment by the Executive Magistrate Rafiqul Islam under the ICT Act. Then on 20.09.2016, the Daily Ittefak also published a report on page 13 about the imprisonment of the schoolboy for two years under the ICT Act, 2006 by the Executive Magistrate Rafiqul Islam for threatening the local lawmaker of Sakhipur. Moreover, the daily Manabjamin on page 11 of its issue dated 20.09.2016 covered the same news of

imprisonment of the said schoolboy for two years by the Executive Magistrate Rafiqul Islam under the ICT Act for threatening the local lawmaker. All the news reports quoted above published in different newspapers appear to have been written by their very local respective Sakhipur correspondents where the alleged detention by the police and sentencing of the said schoolboy took place and almost all the above reports cited that the schoolboy was sentenced under the ICT Act, 2006 for threatening the local lawmaker and none of these report mentioned the specific section of the said Act and none of the above quoted news reports mentioned that the said schoolboy was sentenced for carrying hemp. Therefore, the authenticity of the news report published by the Daily Star on 20.09.2016 with the title "Boy jailed for FB comment about MP" is further vindicated by the contents contained in the above quoted news reports published in different national newspapers.

Heard Mr. Md. Khurshid Alam Khan, the learned Advocate appearing to support the Suo-moto Rule, Mr. Nurul Islam, the learned Advocate, appearing for Respondent No.2, Mr. S.M. Rezaul Karim, the learned Advocate appearing for Respondent No.1 and Mr. Tanjibul Alam, the learned Advocate appearing for the local correspondent of 'Daily Star' of Tangail.

Mr. S.M. Rezaul Karim submits that in conducting the Mobile Court the Respondent No.1 did not violate any law or Rules and he rightly convicted Sabbir Shikder in accordance with law. The Mobile Court did not convict Sabbir Shikder under ICT Act rather he was convicted under Madok Drobbay Niontron Ain,1990.

Mr. Nurul Islam appearing for respondent No.2 submits that as per requisition of the Executive Magistrate this respondent assigned SI Md. Delwar Hossain and one constable to assist the Executive Magistrate for conducting the Mobile Court and other than that this respondent had no role in conducting the mobile court in question. He did not arrest convict Sabbir Pursuant to the G.D lodged regarding giving threat to local Member of Parliament. The news published in the 'Daily Star' was misleading and that was made and published with an ulterior motive in order to defame the image of the local Member of Parliament as well as the local Administration. He further submits that the role of the Daily Star is always suspicious and against the present democratic Government.

Mr. Tanjibul Alam, the learned Advocate however, in his submission reiterates the statements made in the affidavit-in-compliance filed by the local correspondent of the Daily State of Tangail.

We have also heard victim Sabbir Shikder and before the court he made the following statement;

“শুক্রবার ১৬/৯/২০১৬ ইং রাত ৯ টায় আমার বাড়ি থেকে আমাকে গ্রেফতার ও মোবাইল জব্দ করে। আমি রাতে ঘরে শুইয়া ছিলাম, একজন সিভিল লোক ও আরেক জন পুলিশের ড্রেস পড়া লোক আমাকে ধরে নিয়ে যায় থানায়। তারপর ওসির রুমে আমাকে নিয়ে যায়, তখন ওসি জিজ্ঞাসা করে এগুলো কি লিখছস। একই কথা আমাকে ২ বার জিজ্ঞাসা করা হয়। আমি বলি আমি কিছুই লিখি নাই। তখন আমাকে ওসি অনেক মারপিট করে। তারপর আমাকে এম,পি সাহেবের বাসায় নিয়া যায় ওসি। তারপর এম,পি সাহেব জিজ্ঞাসা করল এগুলো किसের জন্য লিখছস, তখন আমি বলি এগুলো আমি লিখি নাই। তারপর এম,পি, সাহেব রাগান্বিত হইয়া আমাকে দুইটা বারি দিয়েছে। এম,পি সাহেবের প্রতি আমার কোন রাগ নেই। তিনি রাগের মাথায় আমাকে মারছে। আমি কোন কিছু মনে করি নাই। তখন এম,পি সাহেব বলল ওকে থানায় নিয়ে যাও। থানায় ২ দিন রাখার পর আমাকে চোখ বেধে হেডকাপ পরিয়ে ওসির রুমে নিয়ে যায়। তারপর ওসির রুমে আমাকে শোয়াইয়া মুখে লাঠি ধরে, তারপর ওসি বলে তোকে ক্রসফায়ারে দিব। তারপর মাইর এর চোটে আমি স্বীকারোক্তি করি। তারপর ৩ দিন পরে ইউ, এন, ও এর রুমে নিয়ে যায়। ইউ,এন,ও বলে এগুলো কি লিখছস। পরে আমাকে বুকের মধ্যে লাগি মেরে ফেলে দেয়। তারপর কে যেন আমাকে ধরে দাঁড়া করায়। ইউ,এন,ও আমাকে ২ বছরের সাজা দেয়।

আমি এর সঠিক বিচার প্রার্থনা করছি।

আদালতের প্রশ্নঃ ‘তুমি কি মাদক খাও’?

উত্তরঃ আমি খাইনা।

আদালতের প্রশ্নঃ ‘তোমাকে এই কথাগুলো কেউ শিখিয়ে দিয়েছে কি না’?

উত্তরঃ ‘কেউ শিখিয়ে দেয় নাই’। ”

We asked Mr. Md. Khurshid Alam Khan, to file an affidavit regarding the above the statements made by Sabbir Shikder before the court and in compliance of this order father of Sabbir Shikder filed an affidavit-of-compliance. In the said affidavit-of-compliance it is also contended that

according to academic transcript of the victim Md. Sabbir Shikder alias Md. Sabbir Hossen the date of birth is 11.07.2002 which also is evident from his birth certificate issued 20.04.2011 and the certificate of P.S.C and as such the victim Sabbir Shikder is aged about 15 years and being a minor.

We have also perused the record of Mobile Court Case No.245 of 2016. On perusal of the said record we have found a written computer typed complaint made by SI Delower Hossain before the Executive Magistrate and also a computer typed seizure list. These computer typed complaint and seizure list create valid and reasonable doubt about the veracity of the Mobile Court proceeding. It surprised us how SI Md. Delower Hossain made a computer typed complaint before the respondent no.1 on the spot while Mobile Court proceeding was going on. It could not be possible to carry a computer in course of Mobile Court proceeding, and in the seizure list the name of the seized item was also typed by computer, and in the charge form two names were mentioned as witnesses who were from village-Nolua, not from the alleged place of occurrence that is the area, Protima Bankin. Having perused the records, it prima-facie creates doubt in our mind that the record of the Mobile Court Case No.245 of 2016 was after thought and created one. Moreover, from the order sheet it also transpires that after passing the order of

conviction the Executive Magistrate directed to send Sabbir Shikder to the Tangail jail with conviction warrant. This fact also asserted by the respondent no.1 his affidavit in compliance. But from Annexure-B series to the affidavit-of-compliance filed by the respondent no.2 it is evident that Sabbir was brought to the police station on 18.09.2016 at about 17.50 and on the following day i.e. on 19.09.2016 he was taken to Tangail Court. This document also raised question whether after passing the order of conviction by the Executive Magistrate allegedly in the evening of 18.09.2016 was there any scope to send victim Sabbir to the Police Station on 18.09.2016 by night, if he was at all convicted by the Mobile Court. Respondent No.1 in his affidavit clearly asserted that after convicting Sabbir he sent the boy to jail with conviction warrant. From annexure 2 series, that is from the news published in various national daily newspapers and the affidavit of compliance filed the local correspondent of the 'Daily Star', Tangail it is evident that victim Sabbir Shikder was picked up and arrested by the police on 17.09.2016 that is prior to one day of the order of conviction by the Mobile Court and on 18.09.2016 the said news was published in the 'Daily Prothom Alo', annexure-2 and the 'Daily Jugantor', annexure-2(a). This two news prove that victim Sabbir was apprehended by the police before

18.09.2016. The respondents did not make any rejoinder or protest about the said news.

As per the statement of victim Sabbir he was picked up by police on 16.09.2016 at night and from annexure-2 serious it is evident that the local correspondents of various newspapers mentioned that Sabbir was arrested on 17.09.2016. Further, it also appears from annexure-1, prepaid usage report for 171585441, to the affidavit of compliance filed by the District Correspondent of the 'Daily Star' of Tangail that before making the alleged report he on several occasions had talked with the respondents through his mobile. The mobile numbers of respondent No.1 and 2 are 01712361686 and 01713373457 respectively.

It would be pertinent to note that neither respondent No.1, nor respondent No.2 denied the news reports published in a number of national dailies those categorically mentioned that Sabbir Sikder was a minor boy, he was arrested and punished by a Mobile Court long after he was taken into police custody. If it is presumed that the boy suffer had been in police custody, then finding him guilty on the charge of illegally carrying hemp sounds improbable and not tenable.

In view of the above, we are convinced that victim Sabbir Shikder was picked up by the police from his house before 18.09.2016 and the victim Sabbir Shikder was confined in the Police Station

for two days illegally and alleged conviction was passed when he was under the police custody and no Mobile Court proceedings was conducted by the respondent No.1 as claimed by him.

The power, jurisdiction and procedure of the Mobile Court have been laid down in sections 5, 6 and 7 of the Mobile Court Ain, 2009, which are quoted below:

- ৫। মোবাইল কোর্ট পরিচালনার ক্ষমতা অর্পণ---সরকার সমগ্র দেশে কিংবা যে কোন জেলা বা মেট্রোপলিটন এলাকায় যে কোন এক্সিকিউটিভ ম্যাজিস্ট্রেটকে, এবং ডিস্ট্রিক্ট ম্যাজিস্ট্রেট তাহার আঞ্চলিক অধিক্ষেত্রে যে কোন এক্সিকিউটিভ ম্যাজিস্ট্রেটকে, আইন শৃঙ্খলা রক্ষা এবং অপরাধ প্রতিরোধ কার্যক্রম সম্পাদনের উদ্দেশ্যে লিখিত আদেশ দ্বারা মোবাইল কোর্ট পরিচালনা করিবার ক্ষমতা অর্পণ করিতে পারিবে।
- ৬। মোবাইল কোর্টের ক্ষমতা---(১) ধারা ৫ এর অধীন ক্ষমতাপ্রাপ্ত এক্সিকিউটিভ ম্যাজিস্ট্রেট বা ধারা ১১ এর অধীন ক্ষমতাপ্রাপ্ত ডিস্ট্রিক্ট ম্যাজিস্ট্রেট আইন শৃঙ্খলা রক্ষা ও অপরাধ প্রতিরোধ কার্যক্রম পরিচালনা করিবার সময় তফসিল বর্ণিত আইনের অধীন কোন অপরাধ, যাহা কেবল জুডিসিয়াল ম্যাজিস্ট্রেট বা মেট্রোপলিটন ম্যাজিস্ট্রেট কর্তৃক বিচার্য, তাহার সম্মুখে সংঘটিত বা উদঘাটিত হইয়া থাকিলে তিনি উক্ত অপরাধ তাৎক্ষণিকভাবে ঘটনাস্থলেই আমলে গ্রহণ করিয়া অভিযুক্ত ব্যক্তিকে, স্বীকারোক্তির ভিত্তিতে, দোষী সাব্যস্ত করিয়া, এই আইনের নির্ধারিত দন্ড আরোপ করিতে পারিবেন।
- (২) তফসিলে বর্ণিত কোন আইনের অধীনে প্রণীত বিধি, প্রবিধি বা আদেশের অধীন কোন অপরাধ উক্ত আইনের অধীন অপরাধ বলিয়া গণ্য হইবে।
- (৩) তফসিলে বর্ণিত কোন আইনের অধীন কোন অপরাধ কোন আদালত বা ট্রাইব্যুনাল কর্তৃক বিচার্য হইবে তাহা উক্ত আইনে নির্ধারণ করা না থাকিলে, ফৌজদারী কার্যবিধির ধারা ২৯ এর সংশ্লিষ্ট দ্বিতীয় তফসিলের অষ্টম কলাম অনুযায়ী নির্ধারিত আদালত কর্তৃক উক্ত অপরাধ বিচার্য বলিয়া গণ্য হইবে এবং যদি অনুরূপ কোন অপরাধ বিচার করিবার এখতিয়ার মেট্রোপলিটন ম্যাজিস্ট্রেট এবং প্রথম, দ্বিতীয় বা তৃতীয় শ্রেণীর জুডিসিয়াল ম্যাজিস্ট্রেটের না থাকে, তাহা হইলে উক্ত অপরাধ, তফসিলে বর্ণিত আইনের অধীন অপরাধ হওয়া সত্ত্বেও, এই আইনের অধীন আমলে গ্রহণ করিয়া দন্ড আরোপ করিবার

এখতিয়ার এই আইনের অধীন মোবাইল কোর্ট পরিচালনাকারী এক্সিকিউটিভ ম্যাজিস্ট্রেট বা ডিস্ট্রিক্ট ম্যাজিস্ট্রেটের থাকিবে না।

(৪) মোবাইল কোর্ট পরিচালনা করিবার সময় যদি অনুরূপ কোর্ট পরিচালনাকারী এক্সিকিউটিভ ম্যাজিস্ট্রেট বা ডিস্ট্রিক্ট ম্যাজিস্ট্রেটের নিকট এইরূপ মনে হয় যে, অপরাধ স্বীকারকারী ব্যক্তির সংশ্লিষ্ট অপরাধ এমন গুরুতর যে, এই অধ্যাদেশের অধীন নির্ধারিত দণ্ড আরোপ করা হইলে উহা যথোপযুক্ত দণ্ডারোপ হইবে না, তাহা হইলে তিনি উক্ত ব্যক্তিকে দণ্ড আরোপ না করিয়া তাহার বিরুদ্ধে নিয়মিত মামলা দায়েরের ব্যবস্থা করিবেন।

(৫) মোবাইল কোর্ট পরিচালনা করিবার সময় যদি এইরূপ কোন অপরাধ এক্সিকিউটিভ ম্যাজিস্ট্রেট বা ডিস্ট্রিক্ট ম্যাজিস্ট্রেট এর সম্মুখে সংঘটিত বা উদঘাটিত হয়, যাহা সেশন আদালত কিংবা অন্য কোন উচ্চতর বা বিশেষ আদালত বা ট্রাইব্যুনাল কর্তৃক বিচার্য, তাহা হইলে মোবাইল কোর্ট পরিচালনাকারী এক্সিকিউটিভ ম্যাজিস্ট্রেট বা ডিস্ট্রিক্ট ম্যাজিস্ট্রেট উক্ত অপরাধের সহিত সংশ্লিষ্ট ব্যক্তির বিরুদ্ধে অভিযোগ এজাহার হিসাবে গণ্য করিবার জন্য সংশ্লিষ্ট থানার ভারপ্রাপ্ত কর্মকর্তাকে নির্দেশ প্রদান করিবেন।

৭। **মোবাইল কোর্টের পরিচালনা পদ্ধতি**---(১) এই আইনের অধীন মোবাইল কোর্ট পরিচালনা করিবার সময় কোন ব্যক্তির বিরুদ্ধে অপরাধ আমলে গৃহীত হইবার পরপরই মোবাইল কোর্ট পরিচালনাকারী এক্সিকিউটিভ ম্যাজিস্ট্রেট বা ডিস্ট্রিক্ট ম্যাজিস্ট্রেট সংক্ষিপ্ত অভিযোগ লিখিতভাবে গঠন করিয়া উহা অভিযুক্ত ব্যক্তিকে পাঠ ও ব্যাখ্যা করিয়া শুনাইবেন এবং অভিযুক্ত ব্যক্তি গঠিত অভিযোগ স্বীকার করেন কি না তাহা জানিতে চাহিবেন এবং স্বীকার না করিলে তিনি কেন স্বীকার করেন না উহার বিস্তারিত ব্যাখ্যা জানিতে চাহিবেন।

(২) অভিযুক্ত ব্যক্তি অভিযোগ স্বীকার করিলে তাহার স্বীকারোক্তি লিপিবদ্ধ করিয়া উহাতে অভিযুক্তের স্বাক্ষর বা ক্ষেত্রমত, টিপসই এবং দুইজন উপস্থিত স্বাক্ষর বা স্বাক্ষর বা, ক্ষেত্রমত, টিপসই গ্রহণ করিতে হইবে; এবং অতঃপর মোবাইল কোর্ট পরিচালনাকারী এক্সিকিউটিভ ম্যাজিস্ট্রেট বা ডিস্ট্রিক্ট ম্যাজিস্ট্রেট তাহার বিবেচনায় যথোপযুক্ত দণ্ড আরোপ করিয়া লিখিত আদেশ প্রদান করিবেন এবং উক্ত আদেশে স্বাক্ষর করিবেন।

- (৩) অভিযোগ অস্বীকার করিয়া আত্মপক্ষ সমর্থনে অভিযুক্ত ব্যক্তি কর্তৃক প্রদত্ত ব্যাখ্যা সন্তোষজনক হইলে, মোবাইল কোর্ট পরিচালনাকারী এক্সিকিউটিভ ম্যাজিস্ট্রেট বা ডিস্ট্রিক্ট ম্যাজিস্ট্রেট তাহাকে অভিযোগ হইতে অব্যাহতি প্রদান করিবেন।
- (৪) অভিযুক্ত ব্যক্তি কর্তৃক উপ-ধারা (৩) এর অধীন প্রদত্ত ব্যাখ্যা সন্তোষজনক না হইলে মোবাইল কোর্ট পরিচালনাকারী এক্সিকিউটিভ ম্যাজিস্ট্রেট বা ডিস্ট্রিক্ট ম্যাজিস্ট্রেট অভিযোগটি বিচারার্থে উপযুক্ত এখতিয়ার সম্পন্ন আদালতে প্রেরণ করিবেন।

On careful examination of the above provisions of the Mobile Court Ain, 2009 it is crystal clear that the Magistrate who is empowered for holding a Mobile Court under the Mobile Court Ain, 2009 must take cognizance of the alleged offence instantly at the spot provided the same has been committed or unfolded in his presence and the said Magistrate is also empowered to convict the accused and award the prescribed sentence to him if he pleads guilty. Cognizance of the offence has to be taken by the concerned Magistrate instantly on the spot and lodgment of written complainant with the Magistrate is not at all required. There is no scope to convict a person under the Ain, 2009 who was apprehended or arrested or detained by the police prior to his trial that is before commencement of Mobile Court proceeding. And if anyone is convicted in the aforesaid manner, the whole proceeding of the Mobile Court will be vitiated and the order of conviction is illegal and without jurisdiction.

In the case of Foyez Ahmed Vs. State, reported in 64 DLR, page-257 a Division Bench of the High Court Division has observed that; , the

procedural due process was not complied with by the Executive Magistrate causing grave prejudice to the petitioner and rendering his conviction 'non-est' in the eye of the law."

Both Mr. Nurul Islam and Mr. S.M. Rezaul Karim have tried to convince us that the instant Rule is not maintainable as the victim has the forum of appeal to ventilate his grievances, if any. It is now well settled that High Court Division has got the jurisdiction to issue Suo-moto Rule in exercising the power under Article 102 of the constitution in appropriate case.

Moreover, rule 10 under Chapter XIA of Supreme Court of Bangladesh (High Court Division) Rules, 1973 (as amended upto 2013) has empowered the High Court Division to issue Rule Nisi treating any report published in a newspaper or other media or a letter signed by any person with his address and sent to the Hon'ble Chief Justice or any other Judge or the Court or Registrar as an application within the meaning of article 102 of the constitution, if it is satisfied that a public wrong of grave nature has occurred or is occurring or is going to occur.

Rule 10 under Chapter XIA of Supreme Court of Bangladesh (High Court Division) Rules, 1973 (as amended upto 2013) runs as follows:

"Notice and Rule Nisi on letter, news report etc.-(1) If a motion bench dealing with writ matters, on going through a letter, which is signed by any person with this address and sent to the Chief Justice or any other Judge or the Court or Registrar or, any report published in a newspaper or other media, is satisfied that a public wrong of grave nature has occurred or is occurring or is going to occur, the Bench may treat such letter or report as an application within the meaning of article 102 of the Constitution and may issue Rule Nisi upon such persons(s) and/or public authority and in such terms as the Bench considers appropriate.

It is true that Mobile Court Ain, 2009 provides for appeal against the judgment and order of conviction before the District Magistrate. But if malafide is found on the face of the record in a Mobile Court proceeding and the conviction is 'no-est' in the eye of law, then this Court has every jurisdiction to interfere with the matter exercising power under Article 102 of the constitution. It is by now well settled that malafide vitiates everything. Thus, the submission advanced by the learned Advocates for the respondent no.1 and 2 as

to the maintainability of the rule has no legs to stand.

Having discussed and considered as above, we are of the opinion that the respondent no.1 convicted Sabbir Shikder in not complying the mandatory provision of Mobile Court Act, 2009 and as such same is illegal and without jurisdiction and liable to declared to have been passed without lawful authority and is of no legal effect. Respondent no.2 also illegally confined victim Sabbir in Police Station after his apprehension, prior to 18.09.2016.

Accordingly, the Suo-moto Rule is made absolute.

The conviction and sentence dated 18.09.2016 passed against Sabbir Shikder by the respondent no.1 in Mobile Court Case No.245 of 2016 is declared to have been passed without lawful authority and is of no legal effect. Sabbir Shikder is discharged from the charge brought against him and he be released from his bail bond.

We have already noticed that the documents relating to the Mobile Court Case No.245 of 2016 prima facie appeared to be created one and after thought. For taking further action on the matter it will be fair and just to make an inquiry in a proper and legal way and it is also necessary to

make inquiry in respect of allegations made by victim Sabbir in his statement before this court.

In view of the above, we direct the Chief Judicial Magistrate, Tangail to make an inquiry with regard to the judicial record of Mobile Court Case No.245 of 2016 and the allegations made by the Sabbir Shikder before this Court.

Accordingly, the Chief Judicial Magistrate, Tangail is directed to hold an inquiry in the light of the above observations and if, in the process of inquiry any criminal offence is disclosed against any person/persons, he is also directed to proceed further in accordance with law.

For fair and impartial inquiry it is necessary to withdraw respondent nos.1 and 2 from Tangail District and as such the 1. Secretary, Ministry of Public Administration, Government of Bangladesh and 2. Inspector General of Police, Bangladesh, are directed to withdraw 1) Executive Magistrate Mohammad Rafiqul Islam, Upazila Nirbahi Officer of Shakhipur, Tangail and 2) Mohammad Maksudul Alam, Officer-in-Charge of Sakhipur Police Station, Tangail from Sakhipur Police Station and they may be posted in any other suitable place outside Dhaka Division.

Office is directed to send the judicial record of Mobile Court Case No.245 of 2016, attested copies of the affidavit-of-compliances with the

annexures of the respective parties to the Chief Judicial Magistrate, Tangail.

Office is also directed to communicate a copy of this judgment and order to the 1. Secretary, Ministry of Public Administration, Government of Bangladesh and 2. Inspector General of Police, Bangladesh for necessary compliance.

Ashish Ranjan Das, J:

I agree.