

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CRIMINAL MISCELLANEOUS JURISDICTION)

Present

**Mr. Justice Ashish Ranjan Das**

**And**

**Mr. Justice Md. Riaz Uddin Khan**

**Criminal Miscellaneous Case No. 11929 of 2017**

**IN THE MATTER OF :**

An application under Section 561A of the Code of  
Criminal Procedure

-And-

**IN THE MATTER OF :**

**Zuel Sheikh alias Sheikh Ziaur Rahman**

...Accused- Petitioner

Versus

The State

...Opposite Party

Mr. Zahirul Alam Babar, Advocate

..... For Accused-Petitioner

Mr. S.M. Asraful Hoque, D.A.G with

Mr. Sheikh Serajul Islam Seraj, D.A.G

Ms. Fatema Rashid, A.A.G

Mr. Md. Shafiquzzaman, A.A.G. and

Mr. Md. Akber Hossain, A.A.G

..... For the State

**Judgment on: 10.12.2023**

**Md. Riaz Uddin Khan, J:**

Rule was issued calling upon the opposite party to show cause as to why the proceedings of Manab Pachar Case No. 04 of 2016 arising out of Gopalganj Sadar Police Station Case No. 36 dated 23.01.2016 under sections 11 and 12 of the Manab Pachar Protirodh-O-Daman Ain, 2012, pending in the Court of Manab Pachar Aporadh Daman Tribunal, Gopalganj should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

At the time of issuance of Rule all further proceedings of Manab Pachar Case No. 04 of 2016 was stayed which is still subsisting.

Succinct facts are that one Md. Saiful Islam, Sub-Inspector of Gopalganj Sadar Thana as informant lodged the instant FIR alleging inter-alia that on a secret information the informant and his companions raided Hotel F.S. of Kaparpotti, Gopalganj Sadar Bazar at about 14.30 hours on 23.01.2016 and after searching the room No. 205 of 1<sup>st</sup> Floor of F.S. Hotel wherefrom they arrested one Tinmoy Mondal and another named Sonali and after interrogation the arrested persons said that the Hotel Manager Syed Ali called them to the Hotel for prostitution and the owner of the Hotel Zuel Sheikh gave permission to use his Hotel for the same; thus accused Syed Ali and Zuel Sheikh committed offence under sections 11 and 12 of the Manab Pachar Protirod-O-Damon Ain, 2012 and accused Tinmoy Mondal and Sonali committed offence under section 290 of the Penal Code and accused Tinmoy Mondal and Sonali were forwarded to the court for trial in non FIR Prosecution No. 13, dated 23.01.2016 under section 290 of the Penal Code for committing public nuisance and hence the case.

In the aforesaid non F.I.R. prosecution Case No. 13 dated 23.01.2016 corresponding to Non-GR case no.15 of 2016 under section 290 of the Penal Code, after trial, both the accused were convicted

as they pleaded guilty and accused Tinmoy Mondol was asked to pay a fine of Tk-200/- while accused Sonali was sentenced for 2 (two) days simple imprisonment by order dated 25.01.2016 and 27.01.2016 respectively by the Additional Chief Judicial Magistrate, Gopalganj.

The police after investigation of the instant case submitted charge sheet on 12.04.2016 against both the accused Zuel Sheikh and Syed Ali under sections 11 and 12 of the Manab Pachar Protirod-O-Damon Ain, 2012.

In course of time the accused petitioner filed an application under section 265C of the Code of Criminal Procedure for discharge before the Manab Pachar Aporadh Daman Tribunal, Gopalganj and the learned judge of the Tribunal after hearing rejected the application and framed charge under the aforesaid sections of the Ain by his order dated 31.08.2016.

The case was fixed for examination of witnesses and at this stage the accused petitioner moved this Court and obtained the rule and order of stay.

Mr. Zahirul Alam Babar, the learned Advocate appearing for the accused petitioner submits that the petitioner is not the owner/tenant of the 1<sup>st</sup> floor of F.S. Hotel where the alleged occurrence took place rather he is the owner/tenant of 2<sup>nd</sup> and 3<sup>rd</sup> floor of F.S. Hotel and in this regard the present petitioner filed Title Suit No.26 of 2015

against the owner of the hotel building Shekh Kamrul Hossain and Title Suit No.160 of 2015 has been filed by said Shekh Kamrul Hossain against the present petitioner which shows that the schedule of the property in both civil suits are the 2<sup>nd</sup> and 3<sup>rd</sup> floor of F.H. Hotel. The police on the influence of Shekh Kamrul Hossain filed the instant case on false allegation where Kamrul's employees Md. Nazrul Islam and Ashraf Ali are shown the witnesses.

He then submits that admittedly the place of occurrence is room No. 205, 1<sup>st</sup> floor of the Hotel F.S. which is not the rental floor of the petitioner and the Police initiated the case on the ill motive and for serving the purpose of the owner Sheikh Kamrul Hossain who is the party to both Title Suit Nos.26 of 2015 and 160 of 2015 and admittedly the present petitioner is the owner/tenant of 2<sup>nd</sup> and 3<sup>rd</sup> floor of the F.S. Hotel and not 1<sup>st</sup> floor.

He next submits that the FIR of the instant case has been initiated on the basis of non FIR case 13 dated 23.01.2016 and according to the statements of pleading guilty by the accused Tinmoy Mondal and Sonali of that non FIR case the learned Magistrate passed judgment and order of conviction and sentence dated 25.01.2016 and 27.01.2016 but those convicted persons stated nothing against the present petitioner but the Police with ill motive and personal interest of

the owner of the building of F.S. Hotel Sheikh Kamrul Hossain filed the instant case.

He also submits that the Non-F.I.R. Case No. 13 dated 23.01.2016 corresponding to Non G.R. Case No. 15 of 2016 as well as related orders and applications of the accused Tinmoy and Sonali does not constitute any offence under section 11 or 12 of Manab Pachar Protirodh-0-Daman Ain, 2012 as the informant of the instant case claimed that the said accused Tinmoy Mondal and Sonali mentioned the name of the present petitioner Zuel Sheikh and his Manager Syed Ali but the depositions of said accused Tinmoy Mondal and Sonali recorded by the learned Magistrate reveal that they did not disclose the name of the present petitioner in any manner.

He lastly submits that close reading of the FIR, Charge Sheet and other relevant materials available on records does not disclose any offence under section 11 or 12 of the Manab Pachar Protiradh-0-Daman Ain, 2012 or any other law of the land for the time being in force and as such the impugned proceeding is liable to be quashed to secure the ends of justice.

On the other hand Mr. S.M. Asraful Hoque, learned Deputy Attorney General appearing on behalf of the State-opposite party opposes the Rule submitting that whether the accused petitioner is the owner/tenant of the 2<sup>nd</sup> and 3<sup>rd</sup> floor or room no.205 of 1<sup>st</sup> floor of the Hotel

where the alleged occurrence took place is a defence material and disputed question of fact which cannot be decided in the instant rule issued under section 561A of the Code of Criminal Procedure.

We have heard the submissions of both the parties, perused the application, supplementary affidavit along with the annexures including the FIR, police report, orders of the earlier filed non FIR Prosecution case and the other materials on record.

It appears that the instant case has been filed against the present petitioner on the basis of alleged statements of Tinmoy Mondol and Sonali, accused of Non-FIR prosecution No.13 dated 23.01.2016 corresponding to Non-GR Case no.15 of 2016. It further appears from the order of the Additional Chief Judicial Magistrate, Gopalganj dated 25.01.2016 and 27.01.2016 along with the guilty pleaded statements of said Tinmoy Mondol and Sonali (Annexure-I to I-3) in Non-GR Case no.15 of 2016 that though they have pleaded guilty but nowhere claimed that they have done so on the invitation of accused Syed Ali or on permission of the accused petitioner, the alleged owner of place of occurrence. Police submitted charge sheet in the present case admittedly after going through the guilty pleaded statements of Tinmoy Mondol and Sonali and only on the basis of their statements that the present petitioner has given them

permission to prostitution and if that is so, then there is no prima facie evidence of section 11 or 12 of the Manab Pachar Protiradh-O-Daman Ain, 2012. In other words in the present case there is no ingredient of section 11 or 12 of the Manab Pachar Protiradh-O-Daman Ain, 2012. Since there is no ingredient of either section 11 or 12 of the Manab Pachar Protiradh-O-Daman Ain, 2012, the learned judge of the Tribunal should have discharged the accused petitioner from the case. This is a trivial matter having no serious or believable or trustworthy allegation and there is no prima facie evidence that the present petitioner in any way given permission to prostitution. Moreover, who were involved in committing public nuisance have been punished in accordance with law. In that view of the matter we are inclined to interfere with the instant proceedings initiated under sections 11 and 12 of the Manab Pachar Protiradh-O-Daman Ain, 2012 against the petitioner.

In the result, the rule is made **absolute**.

The proceedings of Manab Pachar Case No. 04 of 2016 arising out of Gopalganj Sadar Police Station Case No. 36 dated 23.01.2016 under sections 11 and 12 of the Manab Pachar Protirod-O-Daman Ain, 2012, pending in the Court of Manab Pachar Aparadh Daman Tribunal, Gopalganj is hereby quashed.

Communicate the judgment and order to the Court of Manab Pachar Protirod-O-Daman Tribunal, Gopalganj at once.

**Ashish Ranjan Das, J:**

I agree.