

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION**

**Present
Mr. Justice Md. Salim
And
Mr. Justice Md. Riaz Uddin Khan**

CRIMINAL MISCELLANEOUS CASE NO.13238 OF 2017

Md. Mahmudur Rahman Mahmud
.....Accused-Petitioner.
-VERSUS-
The State
.....Opposite Parties.

Mr. Syed Quamrul Hossain, Advocate
----- For the petitioner.
Mr. Tushar Kanti Roy, DAG
Mr. Md. Azizul Hoque, A.A.G
Mr. A.T.M. Aminur Rahman (Milon), AAG.
Ms. Lily Rani Saha, A.A.G.
.....For the State.

Heard on 03.08.2023 and 10.08.2023
Judgment on 10.08.2023.

MD. SALIM, J:

By this Rule, the accused-petitioner by filling an application under Section 561A of the Code of Criminal Procedure sought to quash the proceedings of Laxmipur Police Station Case No.03 dated 01.10.2014 corresponding to G.R. No.904 of 2014 under Article 74 of the Representation of the People Order,1972, now

pending before the Additional Chief Judicial Magistrate, Laxmipur.

Material facts leading to this Rule are that one A.K.M. Tipu Sultan, Deputy Commissioner, and Returning Officer, 10th Parliamentary Election-2014, Laxmipur as informant lodged an FIR with the Laxmipur Police Station stating, inter alia, that according to Article 44C, Clause-(1) of the Representation of People Order-1972, every election agent of a contesting candidate shall within thirty days, after the publication of the name of the returned candidate has to submit a return of election expenses in the Form-22 along with an affidavit to the Returning Officer. The 10th National Parliamentary Election 2014 was held on 5th January 2014 and the name of the elected candidates was published in the Bangladesh Gazette on 08.01.2014 rather the accused petitioner did not submit the return of election expenses within thirty days; the accused petitioner was sent a letter for submitting the return but he did not submit the same thus the accused petitioner committed offence under Article 74 of the Representation of People Order 1972.

The case was investigated by the police. After a perfunctory investigation, the charge sheet was submitted by the police. Subsequently, the charge was framed against the accused petitioner under Article 74 of the Representation of People Order, 1972.

The accused petitioner voluntarily surrendered before the Additional Chief Judicial Magistrate, Laxmipur, and obtained bail on 13.01.2017.

Feeling aggrieved with the above charge farming order the accused petitioner filed an application under section 561A of the Code of Criminal Procedure and obtained the present Rule on 29.03.2017 and order of stay of the proceeding.

Mr. Syed Quamrul Hossain, the learned counsel appearing on behalf of the accused petitioner submits that the instant case was lodged violating the provision of Article 90 of the Representation of People Order 1972 and as such the impugned proceedings against the accused petitioner is an abuse of the process of court and the same is liable to be quashed.

Mr. Tushar Kanti Roy, learned Deputy Attorney General appearing on behalf of the State opposes the contention made by the learned counsel for the accused petitioner and submitted that since a prima facie case is made out in the F I R and Charge Sheet, the proceedings of the instant case cannot be quashed.

We have given our anxious consideration to the submissions of the counsel for both parties and carefully examined the record.

In order to appreciate the points raised by the learned counsel for the petitioner let us examine the relevant law. Article 90 of the Representation of People Order, 1972 provided that “ No prosecution for an offence under Article 73 or Article 74 shall be commenced except-

- (a) within six months of the commission of the offence; or
- (b) if the election at which the offence was committed is subject to an election petition and the High Court Division has made an order in

respect of such offence, within three months of the date of such order.”

It manifests that for committing an offence punishable under Article 73 or 74 of the Representation of People Order 1972 a criminal case/proceeding shall be lodged against the offender within six months of the date of the commission of the offence or three months of the order, passed by the High Court Division in respect of election petition of such offence as per provision so enumerated in Article 90 of the Representation of People Order, 1972.

It is revealed from the record that the accused petitioner participated in the 10th National Parliamentary Election. The election was held on 5th January 2014 and the name of the candidates was published in the Bangladesh Gazette on 8th January 2014.

Notably, Article 44C, Clause-(1) of the Representation of People Order 1972 provides that every election agent of a contesting candidate shall within thirty days after the publication of the name of the returned candidate, has to submit a return of election

expenses in the Form-22 along with an affidavit to the Returning Officer.

In the instant case, it appears that though the accused petitioner was sent a notice for submitting his return rather the accused petitioner failed to submit his return of election expenses within thirty days.

It is also revealed from the plain reading of the First Information Report and charge sheet that the instant case was lodged on 01.10.2014 though the 10th National Parliamentary Election was held on 5th January 2014 and the name of the elected candidates was published in the Bangladesh Gazette on 08.01.2014. Therefore it is crystal clear that the instant case was lodged violating the provision so enumerated in Article 90 of the Representation of Peoples Order, 1972.

In the light of the discussions made above and considering the submission of the learned counsel for the petitioner, we hold that there are sufficient grounds for quashing the proceeding against the accused person thus we are inclined to hold that the Rule has merit to succeed.

Resultantly, the Rule is made absolute.

Let the proceedings of Laxmipur Police Station Case No.03 dated 01.10.2014 corresponding to G.R. No.904 of 2014 under Article 74 of the Representation of the People Order,1972, now pending before the Additional Chief Judicial Magistrate, Laxmipur be hereby quashed.

Send a copy of the judgment and order to the concerned Court below at once.

MD. RIAZ UDDIN KHAN,J

I agree