

Present:

Mr. Justice A.K.M. Asaduzzaman

And

Mr. Justice Syed Enayet Hossain

Criminal Misc. Case No. 14514 of 2017

Begum Khaleda Zia

.....Petitioner.

-Versus-

The State

.....Opposite party.

Mr. Jamir Uddin Sircar, Senior Advocate with

Mr. Zainul Abedin, Senior Advocate with

Mr. A.M. Mahbub Uddin, Senior Advocate with

Mr. Md. Ruhul Quddus, Senior Advocate with

Mr. Kayser Kamal, Advocate with

Mr. Gazi Kamrul Islam, Advocate with

Mr. S.K. Mohammad Ali, Advocate with

Mr. Md. Zakir Hossain Bhuiyan, Advocate with

Mr. Kazi Akhtar Hossain, Advocate with

Mr. Ragib Rouf Chowdhury, Advocate with

Mr. A.R. Raihan, Advocate, with

Mr. Gazi Towhidul Islam, Advocate with

Mr. Md. Moniruzzaman Asad, Advocate with

Mr. Md. Farhad Hossain, Advocate with

Mr. Sabbir Hamza Chowdhury, Advocate with

Mr. Ariful Alam, Advocate with

Mr. Syful Aziz, Advocate with
Mr. Khandaker Maruf Hossain, Advocate with
Mr. Md. Aktar Rasul, Advocate with
Mr. Md. Masum Billah, Advocate with
Mr. Md. Roqonuzzaman, Advocate with
Mr. Md. Jashim Uddin, Advocate with
Mr. Md. Mosaddek Billah, Advocate with
Mr. Shahriar Mahamud, Advocate with
Mr. G.M. Nazrul Islam, Advocate with
Mr. Rezaul Karim, Advocate, with
Mr. Mustafizur Rahman, Advocate with
Mr. Muhammad Nazmul Hassan, Advocate with
Mr. Mahamudullah, Advocate with
Mr. Mir Abdul Halim, Advocate with
Mr. Md. Javed Hossain, Advocate with
Mr. Md. Shahiduzzaman, Advocate with
Mr. Md. Mahmudul Arefin, Advocate with
Mr. Maksud Ullah, Advocate with
Mr. K.R. Khan Pathan, Advocate with
Mr. H.M. Shanjid Siddique, Advocate with
Mr. Khan Md. Moinul Hasan, Advocate with
Ms. Tamanna Khanam Irin, Advocate and
Mr. M. Sabbir Ahmed, Advocate and
Mr. Manabendrey Roy Madol, Advocate and
Mr. Tariqul Islam, Advocate and
Mr. M. Mahbubur Rahman Khan, Advocate and

Mr. Md. Ajmol Hossain, Advocate and
 Mrs. Shahjadi Kohinur, Advocate and
 Mrs. Minara Khatun, Advocate and
 Mrs. Jakia Anar Koli, Advocate and
 Mrs. Anjumananara Munni, Advocate

.....For the petitioner.

Mr. Md. Jasim Sarker, D.A.G. with
 Mr. Rasel Ahmmad, D.A.G. with
 Mr. Md. Geas Uddin Gazi, A.A.G. with
 Mrs. Shamima Akhter Banu, A.A.G. and
 Mrs. Laboni Akter, A.A.G. and
 Mr. Kazi Mohammad Moniruzzaman, A.A.G.

.. ... For the state.

Heard and judgment on 30th October, 2024.

A.K.M. Asaduzzaman,J.

By the order No.3 dated 10.08.2016 the Metro Special Tribunal No.1, Dhaka in Metro Special Tribunal Case No. 386 of 2016 corresponding to G.R. Case No. 93 of 2015 arising out of Darus Salam P.S. Case No. 29 dated 20.02.2015, took cognizance upon accepting the FIR filed under section 15(3)/25D of the Special Powers Act, 1974 on rejecting the application under section 265(C) of the Code of

Criminal Procedure, filed by the petitioner, which is challenged in the rule.

Fact relevant for disposal of this rule are that one Md. Kamrul Hasan, Sub-inspector of the Darus Salam Police Station, Dhaka lodged an FIR on 20.02.2015 under section 15(3) of the Special Powers Act, 1974 alleging, inter alia, that on 19.02.2015 at about 00.20 A.M. while the informant was in his duty, came to know that a bus of New Dhaka Link had been torched with fire in front of Diabari New Road by the 20 party alliance. As the informant along with other police personnel namely informant went to the place of occurrence and found the said bus to be burning in fire. Subsequently with the aid of the local inhabitants, he was able to extinguish the fire. Having inquired the people present in the place of occurrence, he came to know about the involvement of the accuseds with the torching of the bus.

The case was investigated by the police, who submitted charge sheet being Charge Sheet No. 240 dated 14.05.2016

under section 15(3)/25D of the Special Powers Act implicating 21 accuseds persons including the present petitioner.

The case thereafter transmitted to the Court of Special Tribunal, Dhaka for trial and renumbered as Special Tribunal Case No. 4200 of 2016 vide order dated 27.04.2016.

The petitioner thereafter voluntarily surrendered before the Court of Special Tribunal No.1, Dhaka and obtained bail.

On 10.08.2016 the petitioner filed an application under section 265(C) of the Code of Criminal Procedure for not taking cognizance against her as well as for discharging her from the impugned criminal proceedings. The Tribunal rejected the said application by the impugned order.

The petitioner then moved before this court under section 561A of the Code of Criminal Proceeding and obtained the instant rule.

Mr. A.M. Mahbub Uddin, the learned Advocate appearing for the petitioner drawing our attention to the provision as laid

down under section 15 of the Special Powers Act submits that since the instant criminal case was not been initiated for violating any provision on any clause as laid down under section 15(1) of the Special Powers Act there is no scope to award any conviction to any accused persons even to the petitioner under section 15(3)/25D of the Special Powers Act. Moreover upon going through the FIR it will appear that even on plain reading it is apparent on the story of torching a private bus did not disclose any offence as against the petitioner for which she can be punished by any of the law. In that view of the matter the impugned criminal proceedings is nothing but an abuse of the process of the court, which is liable to be quashed.

Mr. Md. Jasim Sarker, the learned Deputy Attorney General on the other hand although opposes the rule but considering the legal aspect of the case find it difficult to oppose the submission as been made by the learned advocate appearing for the petitioner.

Heard the learned Advocate and perused the documents annexed to the application and the relevant provision of law.

It appears from the FIR that for torching a private minibus as been shown to be torched on fire and the allegation was made showing a number of the accused persons having no specific allegation of their presence or participation in the alleged occurrence, the case was initiated by Sub-inspector under section 15(3) of the Special Powers Act.

Section 15 of the Special Powers Act provides that:

"15.Sabotage- (1) No person shall do any act with intent to impair the efficiency or impede the working of, or to cause damage to,-

a) Any building, vehicle, machinery, apparatus or other property used, or intended to be used, for the purpose of the Government or of any local authority or nationalised commercial or industrial undertaking;

b) any railway, aerial ropeway, road, canal, bridge, culvert, causeway, port, dockyard, light house, aerodrome, telegraph or telephone line or post, or television or wireless installation;

c) any rolling-stock of any railway or any vessel or aircraft;

d) any building or other property used in connection with the production, distribution or supply of any essential commodity, and sewage works, mine or factory;

e) any place or area prohibited or protected under this Act or any other law for the time being in force (or;)

[(f) any jute, jute product, jute godown, jute mill or jute bailing press.]

(2) The provisions of sub-section (1) shall apply in relation to any omission on the part of any person to do anything which he is under a duty, either to Government or to any public authority or to any person, to do, as they apply to the doing of any act by a person.

[(3) If any person contravenes any of the provisions of this section, he shall be punishable with

death, or with (imprisonment for life) or with rigorous imprisonment for a term which may extend or fourteen years, and shall also be liable to fine.]"

In order to constitute an offence under section 15 of the Special Powers Act it is very essential to show that damage has been done on intended to be done on any property either belonged to government or of any local authority or nationalised commercial or industrial undertaking. If any damage has been done or any of the above clause as been mentioned under section 15(1) (a-f) to any private property will not be an offence punishable under section 15 (3) of the Special Powers Act. When it is crystal clear from the FIR that no offence has been done in violation of any clause as mentioned above rather admittedly a private mini bus under New Dhaka Link is found to be torched on fire, no offence as been disclosed under section 15 of the Special Powers Act to have committed punishable under section 15(3) under the said Act.

Moreover upon going through the FIR we find if the allegation as has been made therein to have torched a minibus having no mentioning the presence and participation of any

accused made in the column of the FIR does not constitute any offence specifically as against any of the accused persons, even not under Penal Law.

Regard being had to the above law, fact and circumstances of this case, we are of the opinion that the impugned criminal proceedings as well as taking cognizance against the petitioner apparent is illegal as well as abuse of the process of the court, which is liable to be quashed.

In all view of the matter, we find substances in the submission of the learned advocate for the petitioner.

In the result, the Rule is made absolute. The impugned criminal proceedings of Metro Special Tribunal Case No. 386 of 2016 is hereby quashed.

The order of stay granted earlier is hereby recalled and vacated.

Communicate the judgment at once.

Syed Enayet Hossain, J:

I agree.