

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. 16298 of 2017

In the matter of:

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

In the matter of:

Md. Kamrul Hossain and others

...Accused - Petitioner

Versus

The State

...Opposite Party

Mr. Md. Nurul Islam Sujon, Senior Advocate,
with

Ms. Elida Yeasmin, Advocate

...For the Petitioner

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

...For the State

Heard on: 03.03.2024

Judgment on: 12.04.2024

Ashish Ranjan Das, J:

This Rule for quashment under Section 561-A of the
Code of Criminal Procedure (for short the Code) rule was
issued on 11.04.2017 at the instance of the accused petitioner
Md. Kamrul Hossain and others in the following terms:

“Let a Rule be issued calling upon the opposite party to show cause as to why the proceeding of Special Tribunal Case No. 128 of 2016 arising out of G.R. Case No. 363 of 2014 corresponding to Sitakunda Police Station Case No. 1(11)2014 under Section 25B(2) of the Special Power Act, 1974 now pending in the court of 7th Additional Sessions Judge and Special Tribunal No.15, Chittagong should not be quashed and/ or pass such other or further order or orders as to this court may seem fit and proper.”

We have heard the learned Advocate for the petitioners and the objection raised by the learned Deputy Attorney General and perused the records.

Short fact relevant for the purpose that could be gathered from the file is that the informant J.C.O. of BGB attached to temporary BGB Camp Chittagong received a secret source information that a Truck loading smuggling articles Fani to Chittagong . The informant with his forces rushed to took possession on the Dhaka to Chittagong Highway at water Development Board, Sitakundo when at

about 5.00 A.M. 31.10.2014 he found a truck mobile towards

Sub- Inspector Md. Nazrul Islam attached to Siddhirganj police station, Narayanganj accompanied by forces on 09.06.2006 at about 17.45 P.M while on Simrail Truck Stand leaving this petitioner woman got down from the bus and upon searched from her 10 bottles of Indian smuggle Phensidile would be recovered in presence of the witnesses though there seized under alleged and accordingly Siddhirgonj Police Station Case No.30 dated 09.06.2006 attracting section 25B of the Special Powers Act,1974 was recorded.

After investigation charge sheet was accordingly filed, in order to bring the charge whom and the prosecution produced as many as 5 witnesses. Though they were cross-examined but end of trial before delivery of judgment having been enlarged on bail sole accused when remain absent and the judgment was pronounced in absentia. The learned trial court fixed Special Tribunal, Narayanganj

found the petitioner guilty of the charge and sentence her to suffer 3(three) years rigorous imprisonment coupled with a fine of Tk. 10,000/-.

As the petitioner was absent and could not preference appeal within the prescribed time and brought this application under section 561-A of the Code. The informant along with his recovery forces pressed the charge upon recovery of the alamat from the petitioner.

Now the learned advocate for the petitioner vigorously argued that it was admitted by the investigation officer but no sample of alamat was produced before the tribunal, nor it was chemically examine to mean that there was sustained bottles and contained contraband drag. On this issue, however the learned Deputy Attorney General had nothing to say that.

The allegation is that 10 bottles of Indian smuggle drug heroine were recovered from the petitioner but the investigation officer frankly admitted that the alamat was not produced before the court and particularly it was not chemically examine and control that the bottles contained contraband drug and though the Indian origin, that using

the days we cannot help controlling that real incriminating article or could not to the evidence to have been Indian smuggle contraband.

Thus, for the purpose we are of the view that above omission cut the proved of the prosecution case, there was no evidence in trial to conclude that the alamat was of Indian origin contained contraband drug.

Thus, we find merit in the submission in the rule and the same is therefore made absolute.

In the result, the Rule is made absolute.

The judgment and order of conviction and sentence dated 26.09.2018 passed by the 5th Special Tribunal, Narayanganj in Special Tribunal Case No.470 of 2006 arising out of Siddhirganj Police Station Case No. 30 dated 09.06.2006 under section 25-B of the Special Powers Act, 1974 corresponding to G.R. No.272 of 2006 convicting the petitioner under section 25-B(2) of the Special Powers Act, 1974 and sentencing him to suffer rigorous imprisonment for 3(three) years couple with a fine of Tk. 10,000/-, in default to suffer 2(two) months more is hereby set aside and quashed.

The petitioner Shikha Begum stands acquitted and of course discharged her bail bond.

Send down the lower court's record along with a copy of this judgment at once.

Md. Riaz Uddin Khan, J:

I agree.

Bashar, B.O.