

zo Present:

Mr. Justice A.K.M. Asaduzzaman

And

Mr. Justice Syed Enayet Hossain

Criminal Misc. Case No. 20335 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. Anjumanara 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 31st October, 2024.

A.K.M. Asaduzzaman,J.

Challenging the proceeding in G.R. Case No. 104 of 2015 arising out of Darus Salam P.S. Case No. 04 dated 03.03.2015 under section 435/307/109/34 of the Penal Code, pending before the Court of Chief Metropolitan Magistrate, Dhaka, this rule was obtained to quash the proceeding.

Fact relevant for disposal of this rule are that on 03.03.2015 one Md. Shah Alam, sub-inspector, Darus Salam Police Station, D.M.P., Dhaka lodged an FIR, which gave rise

to Darus Salam P.S. Case No. 04 dated 03.03.2015 under section 435/307/109/34 of the Penal Code with the contention that on 03.03.2015 at about 03.20 a.m. while the informant was in his duty came to know that a minibus had been torched with fire, which was parked inside the Great Wall field on the east-southern side of the Gabtoli bus terminal. He then rush to the spot and found the said bus burned on fire. From the local peoples he came to know that the accused persons mentioned in the FIR are involved in the said incidence.

The case was sent for investigation, police after investigation submitted charge sheet being No. 210 dated 30.04.2016 under section 435/307/109/34 of the Penal Code implicating 27 accused persons including the petitioner, although who was not been forwarded through the FIR earlier.

The petitioner voluntarily surrendered before the Court on 10.08.2016 and got bail.

On 05.09.2016 the petitioner filed an application for discharging her from the impugned criminal proceedings but the learned Magistrate rejected the said application and took cognizance against the petitioner under section 435/307/109/34 of the Penal Code and fixed up the next date on 09.05.2017 for service of W/P &A.

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 decision in the case of Abdul Quader Chowdhury and others Vs. The State reported in 28 DLR (AD) 38 submits that the ratio as has been forwarded therein has got reliance in the instant case and proceeding, which is initiated against the petitioner by putting her into the charge sheet, which is made mechanically having no specific allegation against her, is an abuse of the process of the court and it can 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 judgment cited by the learned advocate.

It appears from the FIR that petitioner was neither been named in the column of the FIR nor any allegation has been attributed in the body of the FIR subsequently although police submitted charge sheet mentioning 27 accused persons including the petitioner but on perusal of the charge sheet it will also appear that there is no legal evidence against the petitioner as been mentioned in the body of the charge sheet, which insist the Investigating Officer to make the petitioner as an accused in the case. In fact a mini bus was torched and getting the news, informant rushed to the spot and found bus has burned away and been dumped in a place. Which has been torched by an unknown person even then the informant mentioned some of the accused persons in the FIR having no specific allegation either about their

presence or participation of the said occurrence. Moreover in the charge sheet, the investigating officer did not mention therein that he got any information about the presence and participation of the present petitioner from any witness in the so-called incidence. In that view of the matter the charge sheet appears to be made mechanically just to harass and humiliate the petitioner with an ulterior motive as well as the colourful exercise of power. There are number of decision of our Apex court that in the same scenario the charge sheet as well as the proceeding are initiated against any accused person on colourful exercise of power having ulterior motive cannot proceed and is liable to be quashed. In the decision referred to here by the learned Advocate also get reliance on this point.

Regard being had to the above law, fact and circumstances of this case, we are of the opinion that the impugned criminal proceedings as has been initiated and continuing against the petitioner is nothing but an 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 G.R. Case No. 104 of 2015 arising out of Darus Salam P.S. Case No. 04 dated 03.03.2015 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.