

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL REVISIONAL JURISDICTON)

Criminal Revision No. 2748 of 2016

IN THE MATTER OF:

An application under Section 439 read with
Section 435 of the Code of Criminal Procedure.

AND

IN THE MATTER OF:

Doctor Md. Abul Kalam Azad

.....Accused-Petitioner

Versus

The State, represented by the Deputy
Commissioner, Jessore

.....Opposite Party

Mr. Golam Rabbani with

Mr. Khan Md. Ruhul Bari Sharif, Advocates

.....For the Accused-Petitioner

Mr. Farid Uddin Khan, D.A.G. with

Mr. Rasel Ahmmad, D.A.G.,

Mr. Md. Shahadat Hossain Adil, A.A.G.,

Mr. Md. Shamsil Arefin, A.A.G. and

Ms. Zohura Khatoon (Jui), A.A.G.

.....For the Opposite Party

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

Judgment on 20.02.2025.

Md. Iqbal Kabir, J:

On an application under section 439 read with section 435 of the Cr.PC, this Court issued a Rule calling upon the opposite party to show cause as to why the impugned order dated 10.11.2016 passed by the learned Sessions Judge, Jessore in Sessions Case No. 895

of 2016 arising out of Chowgacha P.S Case No. 05 dated 05.09.2013 of corresponding to G.R No. 113 of 2013 (Chowgacha) under sections 302/34 of the Penal Code rejecting an application for discharge and framed charge against the petitioner should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

The fact stated in this revisional application, in short, is that the informant lodged an FIR on 05.09.2013 with Chowgacha Police Station thereby alleging *inter alia* that on 04.09.2013 her son Amirul Islam was waiting in front of Katgola in Bundolitola Bazar wherein eight FIR named accused along with some unknown persons attacked her son with various country-made arms on the alleged date at about 5.15 PM. According to her, there was previous enmity amongst them. In her description, she claims that accused No. 1 gave a hammer blow on the head, accused No. 2 was hit by an iron rod on the body of the victim, and accused No. 3 also gave a blow by a Chinese axe. Thereafter, the victim was admitted to the Upazila Health Complex, but the doctors referred the victim to the Jessore Medical College Hospital for better treatment. However, on 05.09.2013 all procedure was completed to shift him to Dhaka Medical College Hospital (DMCH). But at about 7.15 A.M, he died. Hence informant lodged the FIR with Chowgacha Police Station under sections 302/34 of the Penal Code.

In this case, the police submitted charge sheet No. 301 dated 18.11.2013. By the charge sheet, 4 accused including the petitioner were implicated and 6 accused were not sent up in the charge sheet.

Based on a Naraji petition dated 04.05.2014 filed by the informant, the matter was sent to the police for further investigation. However, the police submitted a supplementary charge sheet No. 180 dated 22.11.2014 implicating 4 accused including this petitioner.

On 31.05.2016, the petitioner surrendered to the Court of the learned Senior Judicial Magistrate, Amali Adalat, Chowgacha, Jessore. However, on 30.06.2016 accused petitioner was granted ad-interim bail by the learned Senior Sessions Judge, Jessore.

In due course, the accused was put on trial in the aforesaid case in the Court of Additional Sessions Judge, 2nd Court, Jessore. The trial Court after hearing the parties framed charges against the accused under section 302/34 of the Penal Code, though submission was made in respect of release from the charge.

Against the charge farming order dated 10-11-2016, the accused petitioner filed an application under section 439 read with section 435 of the Cr.P.C.

It has claimed that the Additional Session Judge upon considering the statements of the witnesses recorded under section 161 of the Cr.P.C framed charges against the petitioner. It is at this juncture, the accused petitioner moved this Court and obtained the instant Rule.

It has been claimed in this case, that sixteen witnesses made statements under section 161 of the Cr.P.C, out of those only three witnesses in their statement stated accused made a plan for the occurrence and relying upon such statements charged was framed against the petitioner under section 302/34 of the Penal Code.

Mr. Golam Rabbani, learned Advocate appearing for the petitioner submits that the petitioner is not FIR named accused, nobody made the confessional statement and no one implicated the accused petitioner. The police included the petitioner's name in the police report only to harass him.

He submits that the 2nd investigation officer stated in the supplementary charge sheet that “পূর্ববর্তী তদন্তকারী অফিসারের তদন্তে প্রাপ্ত ডাক্তার মোঃ আবুল কালাম আজাদের বিরুদ্ধে অত্র মামলার ঘটনার সাথে জড়িত থাকায় কোন সাক্ষ্য প্রমাণ পাওয়া যায়নি। তবে পূর্ববর্তী তদন্তকারী কর্মকর্তা তার তদন্তে প্রাপ্ত সাক্ষ্য প্রমাণে প্রকাশিত আসামী ডাঃ আবুল

কালাম আজাদ (৩৫), পিতা-মৃত এলাহী বকস, সাং বাটিকামারী, থানা চৌগাছা, জেলা-যশোর অত্র মামলার পরিকল্পনার সাথে জড়িত থাকার বিষয় উল্লেখ করেছেন” So, it is very much clear that the petitioner is not involved with the alleged occurrence and he is innocent and as such, the order of framing of charge against him is liable to be set aside.

He submits that the petitioner is a village doctor who practices in the said area and his medicine store is located near the place of occurrence. He did not know who came in his place before the occurrence. He is not connected or involved with the alleged occurrence and did not commit any offence, and as such, the charge farming order against the petitioner is liable to be set aside.

We have perused the application, considered the submissions made by the parties, and also considered the facts and circumstances of the case.

On perusal, it appears in this case, that 16 witnesses have made statements under section 161 of the Cr.P.C. Out of those material statements of witnesses, namely Saiful Islam Sumon claims one of the accused Habib after arrest states present petitioner was involved with the plan. Md. Abdul Mazid states after 1st part of the occurrence accused sat in a meeting with the accused petitioner. Md. A. Rahim states some of the accused entered into the medicine store of the petitioner. Md. Atiur Rahman states accused medicine store is situated in front of Rahim's shops. No one alleged accused is involved with the occurrence and took part in the commission of offence. Mr. Rabbani also brought notice that Habib did not make any statement under section 161 of the Cr.P.C.

It is pertinent to note that this Court examined the F.I.R., material statements of the witnesses recorded under section 161 of the Cr.P.C, Police Report, and charge farming order, and from those documents, it appears that the accused petitioner did not remain present at the place of occurrence.

It appears the accused is a local physician and his medicine store is situated near the place of occurrence. At one point in time accused was in his chamber as it was his regular routine work. From the above narration and material statements of all those 16 witnesses, this court did not find that the decision was made in a meeting in the presence of the petitioner for the alleged commission of offence; there is nothing to indicate by which the petitioner can be implicated with the alleged offence in any manner. The occurrence took place near the medicine store, there might be some people entering the medicine store, which does not mean that there was a meeting with the petitioner. The petitioner is not connected with the alleged commission of offence or occurrence. He did not commit or involve any positive or negative acts on it; therefore, the charge cannot be brought and or fall against him under the above-mentioned sections.

From the materials on record, it appears that the petitioner was not involved; there is no reason to proceed with the case against the petitioner on the charge of murder or for attempt to murder. The Court below without considering the materials on record and application of judicial mind wrongly opined that there is a ground to frame charge against the petitioner. Though, facts and the materials on record do not sufficiently provide that the accused is involved as an abettor or in any way involved with the offence as alleged.

The above narration and the materials on record do not prove or there is any ground that the accused petitioner is involved as an abettor in the offence as alleged. Though, the court below wrongly opined that there was ground for the presumption that the petitioner had committed the alleged offence of abatement and wrongly framed charges against him.

In the premises noted above, this Court finds merit/substance in the submissions made by the petitioner.

In the result, the Rule is made absolute.

The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

The order dated 10.11.2016 passed by the learned Sessions Judge, Jessore in Sessions Case No. 895 of 2016 arising out of Chowgacha P.S Case No. 05 dated 05.09.2013 corresponding to G.R No. 113 of 2013 (Chowgacha) under sections 302/34 of the Penal Code, now pending in the Court of learned Sessions Judge, Jessore is hereby set aside, so far relates to the petitioner.

There will be no order as to cost.

Communicate the order.

Md. Riaz Uddin Khan, J:

I agree.