

In the Supreme Court of Bangladesh  
High Court Division  
(Criminal Miscellaneous Jurisdiction)

**Criminal Miscellaneous Case No. 23744 of 2017**

In the matter of:

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

-with-

In the matter of:

Zahanara Begum

**..... Accused-petitioner**

**-VERSUS-**

The State and other

**.....Opposite Parties**

Mr. Subrata Chowdhury, Advocate

**.....For the Petitioner**

Ms. Sufia Ahmed, Advocate

**....For the opposite party No.02-06**

Mr. Harunur Rashid, D.A.G with

Mr. Mohammad Shaheen Mirdha, A.A.G

Mr. Md. Bahar Uddin Al-Razi, A.A.G

Mr. Pijush Kumar Roy, A.A.G

**.....For the State**

Present:

Mr. Justice Jahangir Hossain

And

Mr. Justice Md. Riaz Uddin Khan

**Judgment on 12<sup>th</sup> November, 2019**

**Jahangir Hossain, J:**

This Rule was issued by an order dated 28.05.2019 on an application filed under section 561A of the Code of Criminal Procedure, 1898 calling upon the opposite parties to show cause as to why the impugned judgment and order dated 11.07.2016 passed by the learned Additional Metropolitan Sessions

Judge, 3<sup>rd</sup> Court, Dhaka in Metro. Revision Case No. 120 of 2015 rejecting the application filed under section 439A of the Code of Criminal Procedure and thereby affirming an order dated 31.12.2014 passed in C.R Case No. 417 of 2014 dismissing the case, should not be quashed and/or such other or further order or orders as to this Court may seem fit and proper.

The prosecution's case in brief is that the petitioner being the complainant, filed a petition of complaint before the Chief Metropolitan Magistrate, Dhaka on 22.4.2014 alleging inter alia that her son Mahbub Hossain @ Dodul was killed in a pre-planned manner by opposite party Nos. 02 to 06 from 28.01.2014 at 07:00 pm to 29.01.2014 at 02:00 pm. It has been further alleged in the petition of complaint that the aforesaid opposite parties did not inform her about her son's illness and they intentionally delayed taking her son to the hospital in time. The learned Metropolitan Magistrate after

examining the complainant under section 200 of the Code of Criminal Procedure [shortly Cr.P.C] sent the petition of complaint to the criminal investigation department for inquiry. Thereafter, the inquiry officer submitted report stating that there was no prima facie case against the opposite party Nos. 02 to 06. Against which the complainant filed a narazi petition before the court below but the same was rejected by order dated 21.12.2014.

Being aggrieved by and dissatisfied with the said order, the complainant-petitioner preferred a revision application under section 439A of the Cr.P.C in the Court of Metropolitan Sessions Judge, Dhaka. Ultimately the same was heard by learned Additional Metropolitan Sessions Judge, 3<sup>rd</sup> Court, Dhaka. The revision application was also rejected. Having no other alternative forum for getting remedy except invoking the inherent jurisdiction of the criminal court the petitioner moved the application filed under

section 561A of the Cr.P.C and obtained the present Rule.

Mr. Subrata Chowdhury, learned Senior Counsel appearing on behalf of the petitioner contends that the inquiry officer being biased placed the false report before the cognizance court and both the courts' below did not notice the contentions made in Narazi Petition with judicial mind and the judgment and orders of the courts' below are sheer abuse of the process of the court that only can be prevented by this Court under jurisdiction of section 561A of the Cr.P.C. It is further contended that once a narazi petition is filed, there is no option to reject the same rather it will proceed with the evidence of the occurrence as a fresh complaint.

In support of those contentions he has referred to the decisions namely 51 DLR-408, 61 DLR-393 and 8 BLC (AD)166 and in the case of Nurul Haque vs. Bazal Ahmed and others, reported in 48 DLR (1996) 327.

On the contrary, Ms. Sufia Ahmed, learned Advocate appearing on behalf of the opposite party Nos. 02 to 06, by filing a counter-affidavit submits that the complainant-petitioner brought the allegation on the basis of imaginary view. After filing the complaint, the Metropolitan Magistrate sent the petition of complaint to the person, who was the inspector of criminal investigation department, for inquiry. The inquiry officer thoroughly enquired the allegation and found no prima facie case against the opposite party Nos. 02 to 06.

It is further submitted that it is well settled principle of law that a party being unsuccessful in revision under section 439A of the Cr.P.C, cannot invoke the inherent power of the High Court Division. A second revision under section 561A of the Cr.P.C is not maintainable. It is further submitted that the extra-ordinary power of the High Court Division under section 561A of the Cr.P.C, cannot be invoked to examine the correctness

or propriety of any finding sentence or order recorded or passed by a revision court in exercise of power under sections 435/439/439A of the Cr.P.C.

In order to consider the submissions she has referred to the decisions namely 24 BLD(AD)233, 45 DLR(AD)9 and 70 DLR (HC)744.

We have heard the contentions of learned Advocates for both the parties, perused the judgment and orders of courts' below, counter-affidavit and its reply and other connected papers on record, wherefrom we find that the petitioner, mother of the deceased, as complainant filed a petition of complaint before the Chief Metropolitan Magistrate, Dhaka on 22.04.2014 alleging that her son did not die of heart attack rather he was killed between 28.01.2014 at 07:00 pm and 29.04.2014 at 02:00 pm by opposite party Nos. 02-06 in a pre-planned manner. It is further alleged by the complainant-petitioner that the deceased could have survived if the accused-opposite-parties took the victim to the hospital on

time for proper treatment. However, this petition of complaint was sent to the criminal investigation department for enquiry. Enquiry Officer, an Inspector of CID submitted enquiry report deficting that the opposite-party Nos. 02-06 did not kill the deceased rather some of them vehemently tried to save his life taking him to more than one hospitals including United Hospital, Dhaka after the deceased felt sick in the house where he was living for a long time with his wife, opposite party No.02.

It has been revealed from record that this complaint case was lodged after around three months of the alleged occurrence and the said complaint was enquired by an Inspector of Criminal Investigating Department.

According to the enquiry report, the victim along with his wife, opposite party No.02 was living in Gazipur District where opposite party No. 03 was also there at the time of alleged occurrence. The complainant-petitioner and her daughter, Shahanz Pervin along with her son- in-law were living in

Dhaka. The complainant has been suffering from heart disease for a long time and she lives on pacemaker. The victim, son of the complainant, joined National University as Assistant Director on 07.09.1998, subsequently National University issued show cause notices upon him as his Educational certificates were found forged. A three members' committee formed by the authority of National University upon enquiry found the allegation true and he was eventually terminated from his job with effect from 19.02.2013 but it was subsequently stayed for three months in a Writ Petition filed by the victim. It also appears from enquiry report that the victim was a patient of heart disease.

Complainant claimed in her petition of complaint that servant Ayesha of opposite party No. 02 as well as victim informed her that the victim had a glass of suspected juice at the instance of opposite party Nos. 2 and 3 when he felt sick with chest pain having not taken him to hospital. But Ayesha narrated in

her statement recorded by enquiry officer that when the victim was about to go to Dhaka at 01:00/01:15 pm felt chest pain and having asked his mother-in-law took paracetamol tablet and a medicine from his own bag after having a glass of water, fetched by Ayesha. A pharmacy doctor of the locality had seen him. At the relevant time opposite party No. 02 was in her work place and she suggested over telephone to take the victim to the hospital. Accordingly, he was taken to 'Medipath Hospital' at Chandra intersection with the help of Daroan Gias Uddin. Shahanaz Pervin, daughter of the complainant, got news of illness of the victim from her servant Khokon who was informed through telephone. But the mother of the victim was not informed by Shahanaz or her husband Awlad Hossain as she runs with pace-maker due to her heart decease. Another witness Awlad Hossain, son-in-law of the complainant went to the United Hospital where he had seen the opposite party No. 02. Victim was in the operation theater at that

time. Sometime later, Doctor said three rings were set up with the body of the victim. He did not inform his mother-in-law as she is a heart-patient. Consequently they came to know that the victim lost his last breath at the hospital.

The enquiry officer also visited all the hospitals where the victim was taken after having being sick and he examined the medical documents preserved in the hospitals. He had also talks with the respective authorities of the concerned hospitals and he found nothing wrong with the treatment of the victim by the doctors at the hospitals. From the medical documents at the United Hospital he ascertained that the victim died of massive heart attack at 09:22pm on 28.01.2014. This incident i.e victim's death of massive heart attack was not in any way challenged by the complainant, soon after it had occurred and the dead body of the victim was not also exhumed from the earth on the prayer of the complainant party at the relevant time if

there were any suspect on the performance of the opposite party Nos. 02-06 during treatment of the victim. It also appears from enquiry report that the victim was taken to the hospitals on time. The Opposite Party No. 02, wife of the victim, tried her best to provide proper treatment to the victim through doctors of the hospitals going to one after another hospital.

In order to grab money amounting to Tk. 50 lakh of the victim from National University, as alleged by the complainant, is absurd because the victim joined the National University as Section Officer [Assistant Director] on 07.09.1998 and terminated from job finally on 19.02.2013. So, within the said years of service there has been no scope to get Tk. 50 lakh from the authority of the National University by the victim. Therefore, such allegation indicates that the opposite party Nos. 02-06 had no connection and intention to kill the victim for grabbing his money.

A naraji petition may be a fresh complaint and there is no bar to take cognizance by the Magistrate on the basis of naraji petition after submitting police report but if there is no prima face case against the accused-persons, the magistrate can reject the naraji petition and discharge the accused persons from the charge brought against them. In the instant case, the magistrate having scrutinized the inquiry report, naraji petition and relevant papers on record, denied taking cognizance against the accused [Opposite Party Nos. 02-06] and the learned Sessions Judge also rejected the criminal revision relying upon merit and facts and circumstances of the case. It is quite natural to bring an allegation of negligence by the complainant against the accused-persons as she is the mother of the victim. Because she lost her son without having knowledge of her son's sudden illness. But due to her own illness of heart disease she was not informed even by her daughter and son-in-law.

The contention of the learned Advocate for the petitioner is that there is no bar to hold further investigation as claimed by the complainant. Having referred to the cases of 38 BLD(AD) 2018, 144 and 12 MLR(AD)30, we do agree with the views of aforementioned decisions of the Appex Court that there is no legal bar for further investigation and submission of supplementary charge sheet upon collection of additional evidence even after submission of charge sheet or police report under section 173(1) of the Cr.P.C. The court can trigger further investigation even after a final report is submitted under section 173(3B) of the Cr.P.C. But in the instant case, there is no more additional evidence to be found on the face and circumstances of the case. Further inquiry or investigation is not required to be held for consuming time and money of the authority concerned in the case.

Another point is whether 2<sup>nd</sup> revision or application under section 561A of the Cr.P.C after exhausting section 439A of the Cr.P.C by

the court of sessions, can be invoked by either party with the High Court Division. Answer will be in both affirmative and negative. Hard and fast rule should not be applied in the dispensation of justice. After invoking sections 435/439/439A of the Cr.P.C by the Sessions Judge, a litigant can move the High Court Division by filing an application under section 561A of the Cr.P.C if there is a cogent ground to prevent abuse of the process of the court or the High Court Division in exercise of its inherent jurisdiction can interfere with under section 561A of the Cr.P.C only to secure the ends of justice but it depends upon the significant materials available on record in the case. We do not find such materials available in the present case.

The opposite party Nos.02-06 have been facing long agony due to this criminal proceeding of murder charge without having sufficient materials of allegation brought by the prosecution against them.

Both the judges of courts' below have upon scrutiny of the petition of complaint and inquiry report elaborately discussed and assigned reasons at what consideration they have rejected the naraji petition and the revision application finding no incriminating materials against opposite party Nos. 02-06.

So, our considered view is that there is no sufficient material from the side of the prosecution to interfere with the reasons of the lower courts.

Having regard to the facts, circumstances and the contentions of both parties and discussions referred to above, we are constraint to hold that there is no merit in the instant rule.

In the result, the rule, issued by this Court, is hereby discharged. The order of stay, granted earlier stands vacated and there will be no order as to costs.

Communicate the Judgment and order at once.

**Md. Riaz Uddin Khan,J**

I agree