

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CRIMINAL MISCELLANEOUS JURISDICTION)

**Present:**

**Mr. Justice Md. Nazrul Islam Talukder**

**And**

**Mr. Justice K.M. Hafizul Alam**

**Criminal Miscellaneous Case No.16259 of 2017**

Md. Nobi Hossain and another

**..... Accused-petitioners.**

**-Versus-**

The State and another

**..... Opposite-parties.**

Mr. Afzal H. Khan, Advocate with

Mr. Chandan Chandra Sarker, Advocate,

**..... For the Accused-petitioners.**

Mr. A.K.M. Amin Uddin, D.A.G with

Mrs. Helena Begum (China), A.A.G.

**.... For the State-opposite-party.**

Mrs. Fowjia Akther (Popy), Advocate,

**.....For the Anti-Corruption Commission.**

**Heard on 11.12.2018 , 31.01.2019 and 27.02.2019**

**Judgment on: 27.02.2019.**

**Md. Nazrul Islam Talukder, J:**

On an application under Section 561A of the Code of Criminal Procedure, this Rule, at the instance of the accused-petitioners, was issued calling upon the opposite-parties to show cause as to

why the impugned proceeding of Special Case No.13 of 2015 arising out of Haluaghat Police Station Case No.18 dated 30.11.2000 corresponding to G.R. Case No.562 of 2000 under Sections 420/109 of the Penal Code, now pending in the Court of learned Special Judge, Mymensingh, should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

The facts leading up to issuance of the Rule, in brief, are that on 30.11.2000, one Md. Mossahrof Hossain Mridha, Inspector, District Anti-Corruption Bureau, Mymensingh being Informant lodged a First Informant Report with the Officer-in-Charge of the Haluaghat Police Station being P.S. Case No.18 dated 30.11.2000 under Sections

409/420/201/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 against 5(five) accused-persons alleging, inter-alia, that the accused-petitioners in collusion and connivance with some other accused fraudulently got the land of plot No.1405 measuring of an area of 0.15 acres of land, under khatian No.248, Mouza: Joinati, Police Station: Haluaghat, in the name of F.I.R named accused Nos.3 and 4 i.e the present accused-petitioners, which was allegedly listed in vested property from the office of the local Assistant Commissioner of Land vide Mutation Case No.716(9-1)90-91. Hence the F.I.R.

On the basis of the above F.I.R, the Investigating Officer of Durnity Daman Commission Combined District Office, Mymensingh after investigation submitted charge-

sheet being No.13 dated 24.01.2012 against 6(six) accused persons including the accused-petitioners under Sections 409/420/ 201/109/418/477 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

Nevertheless, the Investigating Officer submitted final report against the accused Md. Ali Akbar and Md. Abdul Khalek with a recommendation to discharge them from the case.

After submission of the charge-sheet, the learned Senior Special Judge, Mymensingh by his order dated 06.06.2012 was pleased to take cognizance of the offence against the accused-petitioners under Sections 420/201/109/477/418 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 and the same was renumbered as Special Case No.04 of 2012.

Thereafter the case record was transmitted to the Court of learned Special Judge, Mymensingh for trial and disposal and the same was renumbered as Special Case No.13 of 2015 and the date was fixed on 04.09.2016 for framing of charge.

During pendency of the case, the accused-petitioners filed an application under Section 265C of the Code of Criminal Procedure before the Court of learned Special Judge, Mymensingh for discharging them from the case.

On 04.09.2016, the case was fixed for hearing the application for discharge and also for framing of charge and on the fixed date, the learned Special Judge after hearing the application for discharge was pleased to reject the application and framed charge against the accused-petitioners under Sections 420/109 of the Penal Code.

Being dissatisfied with impugned proceeding, the accused-petitioners approached this Court with an application under Section 561A of the Code of Criminal Procedure and obtained this Rule and stay of the impugned proceeding.

The Rule is contested by the Opposite-party No.02 (Anti-Corruption Commission) by filing counter-affidavit where it has been alleged that the accused-petitioners in connivance with other accused most illegally mutated the vested property in the name of accused-petitioners and others and created a wrong record. It has further been alleged that the FIR and charge-sheet clearly made out a prima facie case against the accused-petitioner including other accused under Sections 409/420/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 and as such

there is no scope to quash the proceeding in question by exercising power under Section 561A of the Code of Criminal Procedure. Furthermore, the statements as revealed from the application under Section 561A of the Code are out and out defence materials which cannot be taken into consideration while exercising inherent jurisdiction and therefore, the instant Rule is liable to be discharged being bereft of any substance.

At the very outset, Mr. Afzal H. Khan, the learned Advocate with Mr. Chandan Chandra Sarker, the learned Advocate appearing on behalf of the accused-petitioners, submits that the accused-petitioners purchased some portion of land in question by vide registered sale deed being No.623 dated 13.07.1979 from its original owner and thereafter, they mutated the said land in their name and have been

possessing the same by paying land development tax to the government regularly and as such, framing of charge and continuation of the instant proceeding against the accused-petitioners is the abuse of the process of the court and the same is liable to be quashed.

He further submits that there is no material to prove that the land in question is or has ever been a vested property since the inception of the record; in fact, the land was recorded in the name of the predecessor-in-interest of the accused-petitioners in the S.A. and R.S. Khatian in accordance with law and the accused-petitioners became the owner of the said land by way of purchase, but the learned judge of the Court below most erroneously framed charge against the accused-petitioners and others without applying judicial mind and as such, the continuation of the instant



proceeding is abuse of the process of the Court and the same is liable to be quashed.

He then submits that though the land in question was enlisted as vested property under 'Kha' list, yet by subsequent enactment of “অর্পিত সম্পত্তি প্রত্যর্পণ (দ্বিতীয় সংশোধন) আইন, ২০১৩” the government has rescinded the 'Kha' list of the vested property with retrospective effect meaning thereby that the properties enlisted therein were never been a vested property and therefore, the allegation of mutating vested property in the name of the petitioners by means of corrupt practice cannot be sustained inasmuch as by operation of law, such allegation becomes a nullity.

He lastly submits that on similar facts and circumstances, the proceeding of Special Case No.05 of 2012, arising out of Dhobaura Police Station Case No.4 dated 07.12.2000, corresponding to G.R No. 591 of 2000 under Sections 409/420/109 of the Penal Code

and section 5(2) of the Prevention of Corruption Act, 1947, pending in the court of Special Judge, Mymensingh, was quashed by the High Court Division in Criminal Miscellaneous Case No.37476 of 2014 and that the proceeding of Dhobaura Police Station Case No.10 dated 28.02.2001 was started but eventually that case was ended up in submitting final report on the ground that the land in question is not a vested property, whereas the instant case has not been treated alike manner as charge-sheet has already been filed in the court and for this reason, the continuation of the instant case is, therefore, nothing but an abuse of the process of the court which is liable to be quashed to secure the ends of justice.

On the other hand, Mrs. Fowjia Akter Popy, the learned Advocate for the Anti-Corruption Commission, submits that since the FIR and the charge-sheet do disclose prima-facie case of commission of offence

against the accused-petitioners and other accused under Sections 409/420/109 of the Penal Code read with Section 5(2) of the Act of 1947, there is hardly any scope to quash the impugned proceedings under Section 561A of the Code banking on some disputed question of facts.

She candidly submits that since prima-facie case has been made out against the accused-petitioners including other accused and charge has been framed as well, the impugned proceeding should not be stifled at this stage but it should be allowed to go on and the prosecution should be given a chance to prove its case by adducing evidence and that being the reason, the Rule is liable to be discharged.

She lastly submits that the land in question was declared vested property on 31.01.1968 as is evident from the charge-sheet and as such, the impugned proceeding should not be quashed.

Mr. A.K.M. Amin Uddin, the learned Deputy Attorney-General appearing for the State opposite-party, has adopted the submissions advanced by the learned Advocate for the Anti-Corruption Commission.

We have perused the application under Section 561A of the Code of Criminal Procedure and heard the learned Advocates for the respective parties and considered facts and circumstances of the case including the law bearing on the subject.

As per averments made in the FIR (**Annexure-A**) as well as in the investigation report (**Annexure-B**), the prosecution case is that the disputed land is a vested property and the accused-petitioners in furtive league with other FIR named accused fraudulently got the vested property in their name mutated and thereby committed offence punishable under Sections

402/420/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

It appears from the submissions advanced by the learned Advocates for the accused-petitioners that the accused-petitioner No.1 Nobi Hossain and accused-petitioner No.2 Sofina Begum purchased the case land vide a registered Saaf-kabala deed being No.623 dated 13.01.1979 from one Md. Samir Uddin, who had bought the said land measuring 15 decimals vide registered Saaf-kabala deed No.855 dated 20.10.1971 from the S.A. record tenants, i.e. Umesh Chandra Bhattacharya, Nirod Chandra Bhattacharya, Sudhir Chandra Bhattacharya and Adhir Chandra

Bhattacharya and that the vendors in the said two deeds swore affidavits before the Sub-Registrar, clearly affirming that the case land has never been vested as an enemy or vested property and that since the said deeds have not been challenged in any competent court, there cannot be any questions regarding their authority; that the property in question was never ever listed as an enemy/vested property by due process of law. However, the said property, surprisingly, somehow was included in the so-called “kha list” which, by operation of law following the enactment of the “অর্পিত সম্পত্তি প্রত্যর্পন আইন, ২০০১” (Act XIV of 2001) on 10.10.2013, has been

abolished (বাতিল) in such manner as if the property listed in the said “kha list” were never enemy/vested property. Besides, there is no materials to prove that the land has been a vested property since the inception of the record; in fact, the land was recorded in the S.A khatian in accordance with law and the land has been sold out through registered sale deeds. Moreover, according to the Ain (Act XIV of 2001), the land listed in the said “kha list” is absolutely private property and only an interested person of the related property may lodge a case; the informant has no interest in the land and as such is not entitled to lodge the instant case; according to

Section 28 (ka) of the “অর্পিত সম্পত্তি প্রত্যর্পণ (দ্বিতীয় সংশোধন) আইন, ২০১৩” (Act XIV of 2001), which has been given retrospective effect, the case land was never a vested property and the petitioners, who have been owning and possessing the land and paying due rent since purchase in 1979, have not committed any offence under the ambit of Sections 420/109 of the Penal Code; after repeal of the Vested and Non-resident property Ordinance vide Ordinance No.92 of 1996, there is no scope of starting any new V.P. case under the provisions of the aforesaid law and if any such proceeding is started, it will be absolutely without jurisdiction; the law of enemy property



itself died with repeal of the Ordinance No.1 of 1969 on 23.03.1974 and no further vested property case can be started thereafter on the basis of the law which is already dead. Accordingly, there is no basis at all to treat the case land as vested property by stating the instant case. The petitioners have not committed any criminal offence and the charge framed against them is illegal and deserves to be quashed by this court for the ends of justice.

It is evident from Paragraph No.13 of the Memo. No.55(17)-IX-22/65-E.P, dated 14.03.66 issued under the signature of the then Deputy Custodian, Enemy Property (Land and Buildings)

and Director of Land Records and Surveys, E.P., Tejgaon, Dacca that “All land which vest in the Deputy Custodian should be shown in red ink in the remarks column of the R.O.R. to avoid certificate being filed for arrear of rent in respect of them” and that Paragraph No.7 of the same Memo states that for each case of land designated as enemy property, a separate case number will have to be given and separate records maintained. This was not done in the instant case.

In the course of investigation, the Assistant Director Durnity Daman Commission, District Office, Mymensingh sent a letter to the Assistant Commissioner (Land) and Upazilla Nirbahi

Officer, Haluaghat, Mymensingh vide “স্মারক নং-  
 দুদক/সজেশ/ময়মনসিংহ/ ৮৯৩ তারিখ ০৯.০৮.২০১০, under  
 the title: বিষয়ঃ মামলা তদন্তের বিষয়ে সংশ্লিষ্ট রেকর্ডপত্র  
 সরববরাহ প্রসঙ্গে” In reply to that letter Manjrul  
 Mannan, the Upazilla Nirbahi Officer, Haluaghat,  
 Mymensingh stated that there was no proof of the  
 said property being included in the V.P. list, nor  
 is there any record of it in the office of the  
 Assistant Commissioner, Land, Haluaghat,  
 Moreover, there is no signature of anyone in the  
 record book. He wrote “অত্রাফিসের রেজিষ্ট্রার দৃষ্টে বর্ণিত  
 ভূমির ভি,পি, নথি সৃজনের কোন প্রমাণাদি নেই”।

It is apparent from paragraph 2 of the পরিপত্র  
 issued under the signature of kazi Md. Abu Bakar

Siddiquae , Joint Secretary, Ministry of Land,  
 Section 5, Vide Memo নং ভূঃ ম /শা-৫/১৯৩-৮৫/১৮-  
 (২০০) তারিখ ১৪.০১.১৯৯২ ইং it has been stated that --  
 জেলা প্রশাসকগণকে উক্ত স্মারকে নির্দেশ দেওয়া হইয়াছিল যে  
 তাহারা অর্পিত সম্পত্তি শাখা নিজেরা পরিদর্শন করিয়া অর্পিত  
 সেন্সাস তালিকাগুলি সরকারী সিদ্ধান্তের আলোকে নিবিড়ভাবে  
 পরীক্ষা করিবেন এবং পরীক্ষিত শুমারী তালিকার/ Census List  
 প্রতিটি পাতায় অতিরিক্ত জেলা প্রশাসক (রাজস্ব) স্বাক্ষর করিবেন।

With a view to arriving at a correct decision  
 in the case, we feel it necessary to refer to section  
 ২৪ of “অর্পিত সম্পত্তি প্রত্যর্পণ (দ্বিতীয় সংশোধন) আইন, ২০১৩”  
 by which a new section namely, section ২৮ক was  
 incorporated after section ২৮ of the relevant Act  
 which reads as under:

অর্পিত সম্পত্তি প্রত্যর্পণ (দ্বিতীয় সংশোধন) আইন, ২০১৩ এর ২৪ ধারার মাধ্যমে ধারা ২৮ক নতুনভাবে সংশ্লিষ্ট আইনে সন্নিবেশিত করা হয়েছে যা নিম্নরূপঃ-

২৮ক। “খ” তফসিল বিলুপ্তি, ইত্যাদি সম্পর্কিত বিশেষ বিধান।- (১) অর্পিত সম্পত্তি প্রত্যর্পণ (দ্বিতীয় সংশোধন) আইন, ২০১৩ কার্যকর হইবার সংঙ্গে অর্পিত সম্পত্তি সম্পর্কিত “খ” তফসিল বাতিল হইবে এবং উহা এমনভাবে বাতিল হইবে যে, উক্ত তফসিলভুক্ত সম্পত্তি কখনোই অর্পিত সম্পত্তির তালিকাভুক্ত হয় নাই।

(২) এই আইনের অধীন স্থাপিত ট্রাইবুনাল, আপীল ট্রাইবুনাল বা বিশেষ আপীল ট্রাইবুনাল কর্তৃক উপ-ধারা (১) এর অধীন বিলুপ্তকৃত “খ” তফসিলভুক্ত সম্পত্তির বিষয়ে ইতোমধ্যে নিষ্পত্তিকৃত যে কোন মামলার রায় বা ডিক্রী বাতিল ও অকার্যকর বলিয়া গণ্য হইবে এবং উক্ত ট্রাইবুনাল, আপীল ট্রাইবুনাল বা বিশেষ আপীল

আপীল ট্রাইব্যুনালে বিচারাধীন উক্ত “খ” তফসিলভুক্ত সম্পত্তি সম্পর্কিত সকল মামলা abate হইয়া যাইবে এবং এইরূপ abatement এর জন্য সংশ্লিষ্ট আদালত কর্তৃক আনুষ্ঠানিক আদেশ প্রদানের প্রয়োজন হইবে না।

(৩) উপ-ধারা (১) এর অধীন বাতিলকৃত “খ” তফসিল সম্পর্কিত কোন আবেদন বা নালিশ জেলা কমিটি, বিভাগীয় কমিটি বা কেন্দ্রীয় কমিটিতে যে কোন পর্যায়েই থাকুক না কেন উহা স্বয়ংক্রিয়ভাবে বাতিল হইয়া যাইবে।

(৪) উপ-ধারা (১) এর অধীন “খ” তফসিল বাতিল হওয়া সত্ত্বেও উক্ত তফসিলভুক্ত সম্পত্তিতে সরকার বা কোন ব্যক্তির কোন স্বত্ব বা স্বার্থ সম্পর্কে প্রচলিত আইনের অধীন প্রতিকার লাভে কোন আইনগত বাধা থাকিবে না।

(৫) ধারা ২০ক বিলিষ্ট হওয়া সত্ত্বেও উক্ত ধারার অধীন গঠিত কোন বিশেষ আপীল ট্রাইব্যুনালে “ক” তফসিলভুক্ত সম্পত্তি

সম্পর্কিত কোন মামলা বিচারাধীন থাকিলে উহা এমনভাবে চলমান থাকিবে যেন, উক্ত ট্রাইব্যুনাল বিলুপ্ত হয় নাই এবং উক্ত মামলায় প্রদত্ত ডিক্রী ধারা ২(ছ)) এর উদ্দেশ্যে পুরণকল্পে প্রদত্ত ডিক্রী হিসাবে গণ্য হইবে।

From a close reading of the aforesaid provisions of law, it is apparent that the alleged 'kha' schedule of the vested property has been rescinded in such a manner that the properties included in the said list were never been enlisted as vested property. It is the definite contention of the accused-petitioners that the disputed property had never been vested in the government; rather they purchased the same from its original owners by registered sale deed and have been possessing

the same upon mutating their name thereof. Since the 'kha' list of the vested property has been cancelled by the government with retrospective effect as if the properties enlisted therein were never vested in the government, the allegation of mutating vested property in the name of the petitioners by taking recourse to corrupt practice does not hold water in the changed scenario.

With regard to the offence of mutating the said plot of land in the joint names of petitioner No.1 Nobi Hossain and his wife petitioner No.2 Sofina Khatun, it is humbly submitted that there has been no criminal misconduct in so far as the matter is out and out a question of civil law and



the ACC can have no business to poke its nose in the matter because only a party aggrieved due to such mutation can have recourse to the competent civil court for remedies whatsoever. The disputed questions of fact with regard to title and possession of the land in question cannot be resolved by this court invoking its jurisdiction under section 561A of the Code of Criminal Procedure.

Furthermore, materials on record emphatically reveal that on similar facts and circumstances Dhobaura Police Station Case No.10 dated 28.02.2001 was started but ultimately it was ended up in submitting final

report on this ground that the land in question was not a vested property. Similarly, the proceeding of Special Case No.05 of 2012, arising out of Dhobaura Police Station Case No.4 dated 07.12.2000, corresponding to G.R No. 591 of 2000 under Sections 409/420/109 of the Penal Code and section 5(2) of the Prevention of Corruption Act, 1947, pending in the court of Special Judge, Mymensingh, was quashed by the High Court Division in Criminal Miscellaneous Case No.37476 of 2014

From the facts and circumstances of the case and the submissions of the respective parties, it is patent that the accused-petitioner No.1 Nobi Hossain and accused-petitioner No.2 Sofina Begum purchased the case land vide a registered

Saaf-kabala deed being No.623 dated 13.01.1979 from one Md. Samir Uddin, who had bought the said land measuring 15 decimals vide registered Saaf-kabala deed No.855 dated 20.10.1971 from the S.A. record tenants, i.e. Umesh Chandra Bhattacharya, Nirod Chandra Bhattacharya, Sudhir Chandra Bhattacharya and Adhir Chandra Bhattacharya and that the vendors in the said two deeds swore affidavits before the Sub-Registrar, clearly affirming that the case land has never been vested as an enemy or vested property and that since the said deeds have not been challenged in any competent court, there cannot be any questions regarding their authority; that

the property in question was never, ever listed as an enemy/vested property by due process of law. However, the said property, surprisingly, somehow was included “kha list” which, by operation of law following the enactment of the অর্পিত সম্পত্তি প্রত্যর্পণ (দ্বিতীয় সংশোধন) আইন, ২০১৩ on 10.10.2013, has been abolished (বাতিল) in such manner as if the property listed in the said “kha list” were never enemy/vested property. Besides, there is no materials to prove that the land has been a vested property since the inception of the record; in fact, the land was recorded in the S.A khatian in accordance with law and the land has been sold out through registered sale deeds.

Moreover, according to the Ain (Act XIV of 2001), the land listed in the said “kha list” is absolutely private property and only an interested person of the related property may lodge a case; the informant has no interest in the land and as such is not entitled to lodge the instant case; subsection (4) of section 28ka of অর্পিত সম্পত্তি প্রত্যর্পণ (দ্বিতীয় সংশোধন) আইন, ২০১৩ contemplates as follows:

(৪) উপ-ধারা (১) এর অধীন “খ” তফসিল বাতিল হওয়া সত্ত্বেও উক্ত তফসিলভুক্ত সম্পত্তিতে সরকার বা কোন ব্যক্তির কোন স্বত্ব বা স্বার্থ সম্পর্কে প্রচলিত আইনের অধীন প্রতিকার লাভে কোন আইনগত বাধা থাকিবে না।

In view of the above, if the government represented by the Deputy Commissioner,

Mymensingh, is aggrieved by the title and possession of the accused-petitioners in the land in question, the Deputy Commissioner may take appropriate legal steps under the appropriate law against the grievances if any of the government.

We have no hesitation to hold the view that the allegations which have been brought against the accused-petitioners and others are of civil nature.

Under the aforesaid circumstance, the learned trial judge most illegally and erroneously framed charge against the petitioners although no offence has been committed by them and the continuation of the instant proceedings is an

abuse of the process of the court and the same is liable to be quashed.

In such a scenario, no fruitful purpose will be served if the instant criminal case is allowed to continue; rather it would be a futile exercise both on the part of the court as well as on the prosecution at the expense of time and money. In such a backdrop, we are of the considered view that to secure ends of justice as well as to prevent abuse of the process of the court, the Special Case Nos.13 of 2013 should not be allowed to continue rather it is liable to be quashed.

In the aforesaid premises, we find merit in the Rule which must succeed.

**Accordingly, the Rule is made absolute.**

In consequence thereof, the impugned proceeding of Special Case No.13 of 2015 arising out of Haluaghat Police Station Case No.18 dated 30.11.2000 corresponding to G.R. Case No.562 of 2000 under Sections 420/109 of the Penal Code, now pending in the Court of learned Special Judge, Mymensingh, so far as it relates to the accused-petitioners, is quashed.

Anyway, the government represented by the Deputy Commissioner, Mymensingh, shall be at liberty to take recourse to the competent civil court under the appropriate law if the government is aggrieved by the title and possession of the accused-petitioners in the land in question.



Communicate this judgment and order to the learned judge of the concerned court below and the Deputy Commissioner, Mymensingh, at once.

**K.M. Hafizul Alam, J:**

I agree.