

Present:

Mr. Justice A.K.M. Asaduzzaman

And

Mr. Justice Syed Enayet Hossain

Criminal Misc. Case No. 55833 of 2017

Abdus Salam

.....Petitioner.

-Versus-

The State

.....Opposite party.

Mr. A.M. Mahbub Uddin, Senior Advocate with

Mr. Shadeen Malik, Senior Advocate with

Mr. Kayser Kamal, Advocate with

Mr. S.M. Shahjahan, Advocate and

Mr. Md. Tayeb-Ul-Islam Showrov, 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 31<sup>st</sup> October, 2024.

A.K.M. Asaduzzaman,J.

Challenging the proceeding of Metropolitan Sessions Case No. 15582 of 2017 arising out of G.R. No. 13 of 2015 corresponding to Tejgaon P.S. Case No. 13 dated 08.01.2015 under section 124A of the Penal Code read with section 3 of the Police (Incitement of Disaffection) Act 1922, pending in the Court of Metropolitan Sessions Judge, Dhaka the rule was obtained by filing an application under section 561A of the Code of Criminal Procedure to quash the proceeding on the ground that the case was not been initiated complying the legal procedure as well as violating the legal provision as laid down under section 196 of the Code of Criminal Procedure.

Fact relevant for disposal of this rule are that on 08.01.2015 one Borhan Uddin, sub-inspector of Police, Tejgaon Police Station, D.M.P., Dhaka lodged an FIR with the Tejgaon Police Station against the petitioner and other accused persons alleging, inter alia, that on 05.01.2015 Bangladesh time corresponding to United Kingdom time on

04.01.2015 at 19.28 o'clock, Bangladesh Nationalist Party (BNP), United Kingdom Branch organised a protest meeting with a caption “৫ই জানুয়ারী গনতন্ত্র হত্যা দিবস” Senior Vice-Chairman of BNP, Tareq Rahman, who is a fugitive accused of several criminal cases, delivered a long speech for a period of 50 minutes on that programme. A private television channel of Bangladesh, namely Ekusey Television telecasted the said speech. On analysis of the said speech, it has been revealed that he being a fugitive from law and at that time he was living in United Kingdom, by false and provocative speech in connivance with Abdus Salam, Chairman of Ekusey Television and other conspirators, tried to create an anarchic situation which inspired the BNP-Jamat led 20 parties alliance to commit unlawful activities. He delivered contemptuous statements against judiciary and his statements regarding the Army, Boarder Guard of Bangladesh and Police were provocative and inciting. The Senior Vice-Chairman of BNP, Tarek Rahman in connivance with the Chairman of Ekusey Television, Abdus Salam and other persons in a pre-planned

manner telecasted the alleged false, fabricated, baseless and provocative speech. Hence they have committed the offence under section 124A of the Penal Code read with section 3 of the Police (Incitement of Disaffection) Act, 1922. Approval of the Ministry of Home had been duly obtained by the prosecution.

Pursuing the said FIR Tejgaon P.S. Case No. 13 dated 08.01.2015 corresponding to G.R. No. 13 under section 124A of the Penal Code read with Section 3 of the Police (Incitement of Disaffection) Act, 1922 was started.

On 08.01.2015 the Investigating Officer filed an application for showing the accused petitioner as an accused in the instant case and prayed for 7 days remand, which was allowed.

During investigation the statement under section 164 of the Code of Criminal Procedure was taken from the petitioner. After investigation police submitted charge sheet being No. 508 dated 31.08.2016 under section 124A of the

Penal Code read with section 3 of the Police (Incitement of Disaffection) Act, 1922 against 4 accused persons including the petitioner.

By the order No.79 dated 29.09.2016 the Magistrate accepted the charge sheet and took cognizance of offence under section 124A of the Penal Code read with section 3 of the Police (Incitement of Disaffection) Act, 1922 against 4 accused persons including the petitioner and the case was transferred to the Court of Metropolitan Sessions Judge, Dhaka for trial and registered as Metropolitan Sessions Case No. 15582 of 2017.

The accused petitioner was shown arrest in the instant case on 08.01.2015 and thereafter he obtained bail on 11.04.2017 from the High Court Division in Criminal Miscellaneous Case No. 15263 of 2017.

Thereafter the petitioner filed the application 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, on mentioning the provision as laid down under section 196 together with section 4 (1) clause VIII of the Code of Criminal Procedure submits that since the instant criminal case was not been initiated through a petition of complaint rather by way of FIR lodged by a Sub-inspector, the initiation and continuation of the instant criminal case is legally been barred under section 196 of the Code of Criminal Procedure. The impugned criminal proceedings thus need to be quashed. In support of this contention he referred to a decision in the case of the State Vs. Aynuzzaman reported in 1987 BLD(AD)100.

Mr. Md. Jasim Sarker, the learned Deputy Attorney General on the other while oppose the rule, considering the provision as laid down under section 196 of the Code of Criminal Procedure together with the decision cited in 1987 BLD(AD)100 find it difficult to oppose the rule.

Heard the learned Advocate and perused the documents annexed to the application and the judgment cited by the learned advocate.

For making a comment in a meeting held by BNP on 5<sup>th</sup> January, 2015 on quoting that: বাংলাদেশের প্রধান বিচারপতি একজন রাজনৈতিক নেতার কবর জিয়ারত করে এবং রাজনৈতিক বক্তব্য দিয়ে নিরপেক্ষ ও ন্যায় বিচার করতে পারবেন না। was made by Senior Vice Chairman of BNP Mr. Tareq Rahman, which was published in the Ekushey Television the Chairman of the said Television with the other accused persons including Mr. Tareq Rahman were shown as accused and FIR was lodged, which gave rise to the instant case. Question raised in the instant rule that pursuant to the decision cited in the rule, whether the FIR through which the case was initiated, has got the legal entity to proceed with the case or not.

Section 196 of the Code of Criminal Procedure contents a legal bar.

Now let us see what has said under section 196 of the Code of Criminal Procedure:

Section 196 of the Code of Criminal Procedure has said;

“196. No Court shall take cognizance of any offence punishable under Chapter VI or IXA of the Penal Code (except section 127), or

punishable under section 108A, or section 153A, or section 294A, or section 295A or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the [Government, or some officer empowered in this behalf by the Government].”

In view of the above provision it is the prime requirement of law that in order to initiate a criminal proceeding, for an offence punishable under Chapter VI or IXA of the Penal Code or punishable under section 108A, or section 153A, or section 294A, or section 295A or section 505 of the same Code, can only be initiated and cognizance can only be taken as and when a complaint is lodged having proper authority of the Government.

Section 4(1)(h) of the Code of Criminal procedure speaks that:

"4.(1)(h). "complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code,

that some person whether known or unknown, has committed an offence, but it does not include the report of a police-officer."

The definition as quoted above clarify what is called complaint. A complaint is an allegation regarding the commission of an offence by a known or unknown person, must be made either orally or in writing to a Magistrate. It does not say that such an allegation to a Magistrate would be channeled through a police office. On the contrary the definition expressly mentions that it does not include the report of a police-officer (this explanation has been quoted from 1987BLD (AD)100). As per the provision as laid down under section 196 of the Code of Criminal Procedure no court shall take cognizance of any offence as mentioned therein (the case in hand) of the Penal Code accept upon a complaint.

This shows that the bar against taking cognizance of such an offence otherwise then upon a complaint is total and complete and FIR cannot be held to be a complaint and thus the provision as well as the restriction has been put forwarded under section 196 of the Code of Criminal Procedure will definitely attract in the instant case, which was initiated by way of FIR not by way of

complaint as has been defined under section 4(1)(h) of the Code of Criminal Procedure. Accordingly it has rightly been said that the initiation and continuation of the instant criminal case since not been operated through following the proper procedure of law, is liable to be quashed. The decision cited here reported in the case of 1987 BLD(AD)100 got reliance on this point.

We thus find substances in the submission of the learned advocate for the petitioner, the impugned criminal proceedings since not been initiated on complying the legal provision as laid down under section 196 of the Code of Criminal Procedure is nothing but an abuse of the process of the court, which is liable to be quashed as a whole.

In the result, the Rule is made absolute. The impugned criminal proceedings of Metropolitan Sessions Case No. 15582 of 2017 arising out of G.R. No. 13 of 2015 corresponding to Tejgaon P.S. Case No. 13 dated 08.01.2015 is hereby quashed.

All other accused persons who are not here in the instant rule will also get the benefit of the judgment since the proceedings as a whole being quashed.

The order of stay granted earlier is hereby recalled and vacated.

Communicate the judgment at once.

Syed Enayet Hossain, J:

I agree.