

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

Present

**Mr. Justice Ashish Ranjan Das**

**And**

**Mr. Justice Md. Riaz Uddin Khan**

**Criminal Miscellaneous Case No. 39021 of 2017**

**IN THE MATTER OF :**

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

-And-

**IN THE MATTER OF :**

Md. Muslim and another

... Accused-Petitioners

Versus

Md. Moazzem Hossain and another

...Complainant-Opposite Parties

Mr. Md. Mamun Kabir

...For the Accused-Petitioners

Mr. Suman Chandra Banik

...For the Opposite parties

Mr. S.M. Asraful Hoque, D.A.G with

Ms. Fatema Rashid, A.A.G

Mr. Md. Shafiquzzaman, A.A.G. and

Mr. Md. Akber Hossain, A.A.G

...For the State

**Judgment on: 19.05.2024**

**Md. Riaz Uddin Khan, J:**

Rule was issued upon an application filed under section 561A of Code of Criminal Procedure asking the opposite parties to show cause as to why the judgment and order dated 15.06.2017 passed by the Metropolitan Sessions Judge, Dhaka in Criminal Revision No. 532 of 2017 rejecting the Revision and affirming the order dated 10.04.2017 passed

by the Metropolitan Magistrate, Dhaka in C.R. Case No. 934 of 2014 rejecting an application under section 344 of the Cod of Criminal Procedure praying for staying the further proceeding till disposal of Title Suit No. 238 of 2014 and Title Suit No. 347 of 2016 filed by the accused-petitioner No. 1 should not be set aside and/or such other or further order or orders passed as to this Court may deem fit and appropriate.

At the time of issuance of Rule all further proceeding of C.R. Case No. 934 of 2014 was stayed.

Facts for disposal of this Rule is that one Md. Moazzem Hossain Firoz Meah represented by S.M. Asaduzzaman filed a complaint petition against the accused-petitioners alleging *inter alia* that a partnership deed was executed on 08.05.1993 between the complainant and Ms. Afsara Begum, the wife of the accused No. 1. On 20.07.2014 accused No. 1 informed the complainant that he is not willing to continue the partnership business with him. The complainant came to know that his partner Afsara Begum died on 09.05.2008 but accused No.2 concealing the death of Afsara Begum renewed the trading license in her name by false personation and

accused No. 1 abated accused No. 2 in doing so. The complainant suspects that by doing so the accused may deceive the complainant.

On receiving such complaint the learned Magistrate examining the attorney of the complainant send the matter for inquiry and after receiving the inquiry report took cognizance of the case on 04.05.2016 under section 417/418/419/465/34 of the Penal Code. On exhausting formalities the case was transferred for trial and the matter was fixed for framing charge and charge was framed under section 418/419/465 of the Penal Code. At this stage the petitioners filed an application under section 344 of the Code of Criminal Procedure before the trial court for stay of the criminal proceedings till pending of two civil suits bearing Title Suit No. 238 of 2014 and Title Suit No. 347 of 2016. The trial court rejected the application against which the petitioners filed criminal revision before the Court of Sessions which was also rejected by the learned Metropolitan Sessions Judge, Dhaka.

Being aggrieved by and dissatisfied with the judgment and order passed by the learned Sessions Judge as well as the court of Magistrate the petitioners filed the instant

application under section 561A of the Code of Criminal Procedure and obtained the Rule and order of stay as stated at the very outset.

Mr. Md. Mamun Kabir, the learned advocate appearing for the accused-petitioners submits that the petitioner No. 2 died on 02.07.2021 and he filed an application before this Court for striking out her name which was allowed earlier by this Court. The learned advocate then submits that since there are civil suits pending between the parties regarding the same subject matter the criminal proceeding should be stayed otherwise the petitioner No. 1 will be prejudiced.

On the other hand Mr. Suman Chandra Banik, the learned advocate appearing for the opposite party-complainant submits that the plaint of the suit filed by the petitioner was rejected by the trial court and though the petitioner filed appeal before this Court against the said order of rejection of plaint. He submits that indefinite postponement of a criminal case is against the policy of law and there is no hard and fast rule that a criminal case should be kept stayed pending disposal of civil suit.

We have heard the learned advocates for both the parties, perused the application

along with the annexures. We have also gone through the order passed by the learned Magistrate and the impugned judgment and order passed by the learned Sessions Judge.

It appears from record that the Suit being Title Suit No. 238 of 2014 is filed by the petitioner Md. Muslim against the complainant opposite party praying for permanent injunction not to disturb the plaintiff in his peaceful possession of the schedule shop while Title Suit No. 347 of 2016 is also filed by the petitioner Md. Muslim against the complainant opposite party for declaration that the partnership between the parties is still subsistence as per the terms of the partnership deed being no.4358 dated 14.10.1993 and also the plaintiff is entitle to do business on the schedule property.

On the other hand the present criminal case being CR Case No.934 of 2014 is filed on the allegation that the complainant came to know that his partner Afsara Begum died on 09.05.2008 but accused No.2 concealing the death of Afsara Begum renewed the trading license in her name by false personation of executing and signing documents and accused No. 1 abated accused No. 2 in doing so. The

complainant suspected that by doing so the accused may deceive the complainant.

From plain reading of the two complaints of the suits and the petition of complaint we find no nexus between the subject matter of the suits and the present complaint petition. According to section 344 of the Code of Criminal Procedure the court may, if it thinks fit, for the absence of witness or any other reasonable cause, postpone the case from time to time. In the present case the accused-petitioner failed to show any reasonable cause for postponement of the criminal case and failed to show that the fate of the instant criminal proceeding depended upon the fate of civil suits. Since we do not find any nexus between the subject matter of the civil suits and the instant criminal proceeding, we are not inclined to interfere with the impugned judgment and order by staying the instant proceeding till disposal of the civil suits in question.

However, from the contents of the petition of complaint and inquiry report a question may be raised whether there is no ingredients of cheating as defined in section 415 of the Penal Code punishable under section 417, 418, 419 or forgery as defined

under section 463 of the Penal Code punishable under section 468 of the Penal Code. Unfortunately, the petitioner is agitating his grievance in wrong forum by filing application under section 344 of the Code of Criminal Procedure and obtained this rule which is not sustainable. Be that as it may, the petitioner may agitate his grievance by taking appropriate recourse of law, if so advised.

We have already observed that there is no merit in the instant rule which is destined to fail having no legs to stand in the given facts and circumstances of the case and the position of law as discussed above.

In the result, the Rule is **discharged**.

The order of stay passed earlier by this Court stands vacated.

Communicate the judgment and order at once.

**Ashish Ranjan Das, J:**

I agree.