

Present

Mr. Justice A.S.M. Abdul Mobin

&

Mr. Justice Md. Mahmud Hassan Talukder

Criminal Miscellaneous Case No. 10666 of 2018.

Foeyzul Karim and othersPetitioners.

Vs.

The state and another.....Opposite Parties.

Mr. Mohammad Rzaul Kabir Khan, Advocate
for the petitioners.

Mr. Mohammad Rezaul Karim, advocate
for the opposite parties.

Heard on: 07.12.2023.

Judgment on: 12.12.2023.

A.S.M.ABDUL MOBIN,J.

This Rule was issued calling upon the opposite parties to show cause as to why the proceedings contained in C.R. Case No. 116 of 2016 under sections 420/467/468/465/466 and 471 of the Penal Code, now pending in the Court of Chief Judicial Magistrate, Bandarban Hill District should not be quashed.

The complainant opposite party No.2 initiated the case by filing a Complaint Petition in the Court of Senior Judicial Magistrate, Lama, Bandarban Hill District alleging *inter alia* that mother of the complainant, witnesses No.3 in the complaint purchased 10 (ten) decimals of land from the heirs of Apingshi Marma on 19.12.2005. Thereafter, the

complainant himself and jointly purchases some other land under the same Khatian and became owner of 1.64 acres of land. On the other hand accused petitioner Nos. 1-5 purchased 1.00 acre of land by a registered deed being dated 06.03.2003. Although they could purchase only 0.52 decimal from their seller. Afterwards, the accused petitioner Nos. 1-5 in collusion with accused No.6 and 7 who were then employed in the Revenue Department inserted Plot Nos. 1650, 1651 and 1658 in the Balam book and Register. The complainant came to know about the forgery after obtaining certified copy on 06.03.2016. It is alleged that the accused petitioner No.1 in collusion with accused Nos. 6 and 7 committed the forgery for wrongful gain. The complainant tried to settle the dispute amicably but failed. He, thereafter, filed the complaint petition.

The learned Magistrate on receipt of the complaint examined the complainant and sent it to Assistant Information Officer, lama for inquiry. The Assistant Information Officer, lama after holding inquiry submitted a report on 24.10.2016. In the inquiry report it was stated that prima facie case was found in support of the complaint.

The learned Magistrate having received the report, took cognizance against the accused petitioner and others under sections 420/467/468/465/466 and 471 of the Penal Code on 25.10.2016. The accused petitioners surrendered before the learned Magistrate and obtained bail. They also filed a revisional application before the learned Sessions Judge, Bandarban Hill District against the order of taking cognizance. The learned Sessions Judge by his judgment and order dated 01.06.2017 rejected the revision. The petitioners thereafter, filed this application under section 561A of the Code of Criminal Procedure obtained the rule.

Mr. Mohammad Rezaul Karim Khan, the learned Advocate appearing on behalf of the petitioners submits that in the complaint petition there is specific allegation against public servants. It is alleged that in collusion with the public servants the forgery was committed. He submits that if public servants are involved, then offences may come within in the schedule of the Anti Corruption Commission Act, 2004. Therefore, the very order of taking cognizance on complaint filed by a private person is not permissible in

law. As such the very order of taking cognizance is liable to be quashed.

The learned advocate further submits that in the complaint the complainant stated that he earlier went to a Revenue Court for cancelation of the mutation allegedly carried out by using forged documents. In that case, complaint ought to have been made by the said Revenue Court, and the instant proceeding is clearly barred by the provision of section 195 of the Code of Criminal Procedure. In that view of the matter, the proceedings shall not be allowed to be continued and liable to be quashed.

On the other hand, Mr. Mohammad Rezaul Karim, the learned advocate appearing for the complainant opposite party submits that the allegation made in the complaint petition clearly discloses offences against the accused petitioners and the learned Judicial Magistrate has got authority to take cognizance of offences against the accused petitioners and others. As such there is no illegality in the proceeding and the rule is liable to be discharged.

We have considered the submissions of the learned advocates, perused the application and all other relevant

papers annexed thereto. It is alleged that the accused petitioners in collusion with the employees of the revenue department (who are accused Nos. 6-7 in the complaint) committed the forgery. They altered the Balam book and Register by inserting Plot Nos. 1650, 1651 and 1658 therein. The allegations made in the complaint implicate public servants in the commission of forgery. If public servants are involved in the commission of forgery, then the offence comes in the schedule of the Anti Corruption Commission Act, 2004. In case of any offence under the schedule of Anti Corruption Act 2004, the Anti Corruption commission is entrusted with the task of investigation. Not only the task of investigation, sanction of the Commission is also necessary for taking cognizance of such offence.

In the instant case, cognizance of offence of forgery involving public servants was taken on a complaint. Which is not permissible in law. As such, the very order of taking cognizance is illegal and liable to be quashed. However, since there is an allegation of forgery committed in collusion with public servant and since the offence is within the schedule of the Anti Corruption Commission, it

is necessary that it should be investigated by the Anti Corruption Commission.

In view of the matter, we find substance in the submission of the learned advocate for the petitioner.

In the result, the Rule is made absolute. The order of taking cognizance dated 16.10.2016 is hereby quashed.

However, the learned Magistrate is directed to send the complaint petition to the Anti Corruption Commission for investigation under the provision of the Anti Corruption Commission, Act, 2004 and the Bidhimala framed thereunder.

Communicate this order to the concerned court at once.

MD. MAHMUD HASSAN TALUKDER,J.

I agree.