

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. 53491 of 2018

IN THE MATTER OF :

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

-And-

IN THE MATTER OF:

Md. Hasan Gazi and others

...Accused- Petitioners

Versus

The State

...Opposite Party

Mr. Salah Uddin, Advocate

...For the Petitioners

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: 12.12.2023

Md. Riaz Uddin Khan, J:

By this Rule the opposite party State was asked to show cause as to why the impugned judgment and order dated 30.05.2018 passed by the Sessions Judge, Chandpur in Criminal Revision No. 15 of 2016 affirming the order dated 18.10.2015 passed by the Additional Chief Judicial Magistrate, Chandpur, in Faridgonj Police Station Case No. 17 dated 20.07.2014 corresponding to G.R. No. 167 of 2014 under sections 323/324/307/427/506 of the Penal Code, pending in

the Court of Additional Chief Judicial Magistrate, Chandpur should not be quashed and/or such other or further order or orders should not be passed as to this Court may seem fit and proper.

At the time of issuance of Rule all further proceedings of Faridgonj Police Station Case No. 17 dated 20.07.2014 corresponding to G.R. No. 167 of 2014 was stayed which is still in force.

The brief facts are that one Abul Hossain Gazi lodged an ejahar against 8 (eight) accused persons on the allegation that the property of dag No. 931 of R.S. Khatian No. 196 under Faridgonj Mouja No. 291, is the ancestral property of the informant party and had been in possession for many years and recently started construction work on the said land but the accused persons planned to dispossess them forcibly from the said land. On 19.07.2014 at about 5.30 p.m. all the accused person forming an unlawful assembly being armed with axe, hammer, iron rod, kirich etc. trespassed into the said suit property and broke 4 pucca pillar of the said under construction building causing a damage of Tk. 2,50,000/- and when the brother of the informant Elias Gazi raised objection, the accused No. 1 with intent to kill Elias gave a kirich blow causing cut injury on the forehead, accused no.2 hit him with iron rod at the knee, accused no.4 tried to kill him by strangulation

and the other accused persons took away 2 tons of iron rod valued at Tk. 1,00,000/- and hearing the scream the neighbours around came to the place of occurrence and saved him and Elias was admitted to Faridgonj Hospital for treatment and hence the prosecution case.

Police took up the matter for investigation and submitted charge sheet against all FIR named accused under sections 143 /447/ 323/ 324/ 307/ 427/ 379 and 506 of the Penal Code on the finding that the occurrence took place at 2.30 pm when accused no.1 Hasan Gazi inflicted knife blow causing injury on hand and head of Elias Gazi and the other accused persons caused damage to the under construction building and took away iron rod valued at Taka 10/15 thousand.

At the time of framing charge the learned Magistrate discharged 04(four) of the accused on the finding that the allegation brought against them are baseless and there is no ingredient of any offence against them while framed charge against the present petitioner Nos.1 and 4 under sections 307/324/427 and petitioner Nos.2 and 3 under sections 323/427/506 of the Penal Code on the finding that the points raised in the application under section 241A of the Code of Criminal Procedure can only be determined at the time of trial after taking evidence.

Against the order of framing charge the accused petitioners preferred criminal revision

before the learned Sessions Judge who was pleased to reject the revision by his judgment and order dated 30.05.2018.

Being aggrieved by and dissatisfied with the said judgment and order passed by the learned Sessions Judge, the accused-petitioners moved this Court and obtained the Rule and order of stay as stated at the very outset.

Mr. Salah Uddin, the learned Advocate appearing on behalf of the petitioners submits that admittedly there are civil disputes between the parties who are the adjacent neighbours and close relations to each others. The mother of the petitioner nos.1 & 2 being plaintiff filed civil (title) suit no.46 of 2013 against the informant and others for declaration of title and got order of status-quo in relation to the possession of the suit land and to frustrate the outcome of the civil suit this criminal case has been filed. The petitioners only asked the informant party not to violate the order of status-quo passed by the civil court and no occurrence took place as alleged by the informant.

He then submits that the injury certificate of Elias Gazi shows that all the 4 injuries are simple in nature which was caused at 2.30 pm and the time of examination was 3.30 pm while the informant alleged that the occurrence took place at 5.30 pm which *ipso facto* suggest that the injury certificate is concocted and made up only

to harass the petitioners and to frustrate the outcome of the civil suit.

The learned advocate further submits that there is no ingredient of either section 307 or 506 of the Penal Code against any of the accused petitioners; moreover the investigating officer did not find any specific allegation against the accused-petitioner Nos.2 and 3 who stand same footing with the accused persons who have been discharged by the trial court.

On the other hand Mr. S.M. Asraful Hoque, learned Deputy Attorney General appearing for the State-opposite party opposes the Rule.

We have heard the submissions of both the parties, perused the application, supplementary affidavit along with the annexures including the FIR, police report, injury certificate and the other materials on record.

It appears that admittedly there is land dispute between the parties centering which the occurrence took place. It further appears from the police report that the investigating officer found- আমার অত্র মামলার প্রাথমিক তদন্তকালে মামলার বাদীসহ সাক্ষীদের জিজ্ঞাসাবাদ সহ স্থানীয় প্রকাশ্য ও গোপনে ব্যাপক তদন্তকালে জানা যায়, অত্র মামলার বাদী ও বিবাদী হাসান গাজীর বসত বাড়ী ও জায়গা পাশাপাশি। অপরাপর বিবাদীরা বিবাদী হাসান গাজীর বোন ও আত্মীয় স্বজন। পৌরসভার মধ্যে এবং মূল সড়কের পাশাপাশি হওয়ায় জায়গার বর্তমান মূল্য খুব বেশী। আমার তদন্তকালে দেখা যায়, ঘটনাস্থল জায়গায় মামলার বাদী ৪ তলা বিল্ডিং নির্মাণ করিয়া দীর্ঘদিন যাবত ভোগ দখলে আছেন। অন্যদিকে বিল্ডিংয়ের সামনে তিনি পুনরায় স্থাপনা নির্মাণ করিতেছেন। যাহাও বাদীর দখলভুক্ত নিজস্ব সম্পত্তি। কিন্তু মামলার বিবাদীপক্ষ বাদীর দখলভুক্ত জায়গা সম্পত্তির ৪ ফুট জায়গা পাইবে মর্মে দাবী করিয়া আসায় তাহাদের মধ্যে দীর্ঘদিন যাবত বিরোধ। তদন্তকালে জানা যায়, তাহাদের মধ্যকার

উভয় পক্ষের উক্ত বিরোধ নিরসনে স্থানীয় ভাবে গণ্যমান্য লোকজন সার্ভেয়ার দিয়া মাপিয়া কয়েকবার সমাধানের চেষ্টা করিলেও তাহাদের কোন পক্ষই না মানায় কেহই কোন সমাধান দিতে পারে নাই। ফলে মামলার বাদীপক্ষ তাহার দখলভুক্ত জায়গায় কাজ করাকালীন মামলার বিবাদীপক্ষ বাধা দিয়া আসছিল। তদন্তকালে আরো জানা যায়, উক্ত জায়গার বিরোধ নিয়া আদালতে মামলাও হইয়াছে। পরবর্তীতে অত্র মামলার ঘটনার দিন গত ১৯/০৭/১৪ ইং তারিখ দুপুর অনুমান ০২.৩০ ঘটিকার দিকে মামলার বাদীপক্ষ লোকজন নিয়া তাহার জায়গার কাজ করাকালীন অত্র মামলার বিবাদীরা ঘটনাস্থলে বসিয়া বাদীপক্ষের লোকজনদেরকে গালিমন্দ করিয়া কাজে বাধা দেয়। তখন সেখানে উপস্থিত বাদীর ভাই ইলিয়াছ গাজী তাহাদের নিষেধ করলে আসামীরা তাহাকে গালমন্দ করে ও মারধর করে। তখন উত্তেজিত হইয়া ১নং বিবাদী হাছান গাজী তাহার হাতে থাকা ধারালো ছোড়া দিয়া তাহাকে খুন করার উদ্দেশ্যে কোপ মারিলে তিনি বাম হাত দিয়া ফিরাইলে তিনি হাতে ও মাথায় মারাত্মক জখম প্রাপ্ত হন। আসামীরা বাদীর নির্মানাধীন ৪টি পিলার সহ নির্মানাধীন দেওয়াল ও বিভিন্ন জিনিষপত্র ভাংচুর করিয়া প্রায় লক্ষাধিক টাকার ক্ষয়-ক্ষতি করে। ইহা ছাড়াও আসামীরা বাদীর নির্মানাধীন ভবনের নীচে থাকা ১০/১৫ হাজার টাকার লোহার রড চুরি করিয়া নিয়া যায়। পরে লোকজন আসলে বিবাদীরা, বাদী ও তাহার লোকজনদেরকে ধমকায় পুনরায় কাজ করলে প্রানে মেরে ফেলার হুমকি ধমকি দিয়া চলিয়া যায়। which means the injury allegedly caused by the accused petitioner no.1. There is no specific allegation against the accused petitioner no.3 Monowar Hossain either in the ejahar or in the charge sheet. Though there is specific allegation in the ejahar against accused petitioner no.2 Aleya Begum @ Selina that she inflicted iron rod blow on the knee of Elias but investigating officer did not find proof any such allegation and the injury certificate also does not support the allegation.

On the other hand there is specific allegation against the accused petitioner nos.1, Hasan Gazi and 4, Md. Rony which are also supported by the injury certificate. The

inconsistency regarding the time of occurrence as alleged in the ejahar and the injury certificate is a matter of fact which is to be determined at the time of trial after taking evidence.

The learned Magistrate discharged 4 (four) co-accused from the case and the petitioner No.2, Aleya Begum @ Selina and petitioner no.3 Monowar Hossain stand on the same footing of those discharged co-accused. In that view of the matter, to bring the parity of the judicial order the petitioner Nos.2, and 3, who stand with the same footing of the discharged accused should have been discharged by the learned Magistrate.

In the facts and circumstances of the case we are inclined to interfere with the impugned judgment and order passed by the learned Sessions Judge as well as the order of framing charge passed by the learned Magistrate only with regard to accused petitioner Nos. 2 and 3. However, we are not inclined to interfere with the impugned judgment and order passed by the learned Sessions Judge as well as the order of framing charge passed by the learned Magistrate with regard to accused petitioner Nos. 1 and 4 Md. Hasan Gazi and Md. Rony respectively.

In the result the Rule is made **absolute-in-part**.

The order of framing charge against accused petitioner No. 2, Aleya Begum @ Selina and No.3,

Monowar Hossain is hereby set aside and quashed.
Both of them are discharged from the case.

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

Communicate the judgment and order at once.

Ashish Ranjan Das, J:

I agree.