

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION

Present
Mr. Justice Md. Salim
And
Mr. Justice Shahed Nuruddin

CRIMINAL MISCELLANEOUS CASE NO.52256 OF 2018

Sultan Khan
.....Accused-Petitioner.

-VERSUS-

The State and another
. ...Opposite Parties.

Mr. Mirza Salah Uddin Ahmed, Advocate
..... For the accused petitioner.

Mr. Mohammad Shafiq Ullah, Advocate
----- For the opposite party No.2.

Mr. B.M. Abdur Rafell, DAG with
Mr. Binoy Kumar Ghosh, A.A.G.
Mr. A.T.M. Aminur Rahman (Milon), A.A.G.
Ms. Lily Rani Saha, A.A.G.
.....For the State.

Heard on 23.11.2023, 29.11.2023, 11.01.2024
and 28.02.2024.

Judgment on 25.04.2024.

MD. SALIM, J:

By this Rule the opposite parties were asked to show cause as to why the proceeding of C.R. Case No.607 of 2018 (Kotwali) under Section 467 / 468 / 420 of the

Penal Code, now pending before the Chief Metropolitan Magistrate, Barishal should not be quashed.

The facts, in a nutshell, for the disposal of the Rule are that the opposite party No.2 as a complainant filed a petition of complaint on 04.01.2018 before the Metropolitan Magistrate, Cognizance Court, Barishal against the accused petitioners alleging inter-alia, that, his father was the owner of the scheduled land by way of auction purchase and inheritance and also possessing the said land for a long time. The father of the accused persons filed Title Suit No.114 of 2003 before the Civil Court with a prayer for declaration of title wherein Ras Mohan, Satta Narayan, and Beni Madhab were made parties as dependent Nos.8, 9, and 10 using their fake addresses because defendants are not existence in the country. So it is presumed that the accused persons created forged documents and a Solenama with the intent to grab the scheduled property. Thereafter, the accused persons showed off false persons as defendants

and filed a forged Solenama as evidence before the civil court and obtained a decree.

The Magistrate after receiving the complaint petition directed the Police Bureau of Investigation (PBI), Barishal for inquiry. After the inquiry, PBI found a prima facia case against the accused persons and submitted an inquiry report against the accused petitioners on 08.08.2018.

The learned Metropolitan Magistrate, Barishal took cognizance of the case on 05.09.2018 against the accused petitioners under Sections 467 / 468 / 420 of the Code of Criminal Procedure and issued warrent of arrest against the accused persons.

Thereafter, the accused petitioner surrendered before the Magistrate, and after obtaining bail filed this application under section 561A of the Code of Criminal Procedure before this court and obtained the instant Rule and order of stay of the proceedings of the instant case.

Mr. Mirza Salah Uddin Ahmed, the learned Counsel appearing for the petitioners submits that the alleged offenses were committed in relation to Title Suit No.114 of 2003 but no complaint was filed by the concerned Court as per provision so enumerated in Section 195 of the Code of Criminal Procedure and as such the proceeding is liable to be quashed.

On the contrary, Mr. Mohammad Shafiq Ullah, the learned Counsel appearing on behalf of the opposite party No.2 submitted that the accused persons intentionally used the forged Solenama as evidence and produced false persons as dependents obtained the decree from a civil court so guilty intention as an ingredient of an offense is required to be proved by evidence and circumstances at the trial and therefore this case cannot be considered for quashing the proceeding under section 561A of the Code of Criminal Procedure.

We have considered the submissions of the learned Counsels for both parties and perused the petition of

complaint, annexure, and other materials on record. To substantiate the argument advanced by the Bar relevant law we may be quoted the law as under:-

“195(1)c No court shall take cognizance of any offence described in section 463 or punishable under section 471, section 475, or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.”

It manifests that Clause c of Section 195(1) of the Code of Criminal Procedure, 1898 provides that no court shall take cognizance of the offence described in section 463 of the Penal Code alleged to have been committed by a party to any proceedings in any Court in respect of any document produced or given in evidence in such proceeding except on the complaint in writing of such

court, or some other court to which such court is subordinate.

Section 463 of the Penal Code defines forgery including forgery of a document that purports to give authority to any person to receive or deliver any money or purports to be a receipt acknowledging payment of money.

This view gets support from the case of Mir Mahiruddin Mia and others Vs Rokeya Hossain reported in 7 BCR (AD) 94 = 5 B L D (AD) 73 our Appellate Division held that—

“The alleged offences have been committed in relation to a proceeding in the Civil Court and no Court is competent to take cognizance of an offence mentioned in clause (b) except on a written complaint by the Court concerned. The present complaint is not by any such Court and in view of provision of section 476 read with section 195 of the Code of Criminal Procedure, the learned Magistrate was not competent to take cognizance

of the alleged offences under sections 193 and 199 of the Penal Code against the appellants”.

In the instant case, it is presumed by the complainant that the accused persons created false documents and showed off false persons as defendants submitted the forged Solenama before the Civil Court and used the same as evidence and fraudulently obtained a decree in Title Suit No. 114 of 2003. So it is revealed that the alleged offenses have been committed concerning a proceeding in a Civil Court but the petition of complaint was not filed by the Court concerned. Therefore, the proceeding of the instant case is barred by the provision so enumerated in section 195 (1) c of the Code of Criminal Procedure.

Notably, it also manifests from the record that Title Suit No. 05 of 2010 was filed by the complainant before the Joint District Judge, Barishal for setting aside the aforesaid Judgment and decree passed in Title Suit No. 114 of 2003 which is now pending for hearing.

Nevertheless, Section 463 of the penal code defines forgery including forgery of documents that purport to give authority to any person to receive or deliver any payment of money or purports to be a receipt acknowledging payment of money. Therefore, the alleged forged 'Solenama' comes within the ambit of section 463 of the Code of Criminal Procedure.

In the light of the above-settled provision of law, in the given facts and circumstances of the case, since no complaint in writing has been made by a competent Court as per the provision so enumerated in Clause c of Section 195(1) of Code of Criminal Procedure, 1898 we have no option but to interfere with the instant proceedings invoking our inherent jurisdiction under section 561A of the Code of Criminal Procedure at an initial stage as a rarest of the rare case. Because of the above, the irresistible conclusion is that the proceeding of the instant case must be quashed.

Resultantly, the Rule is made absolute.

Let the impugned proceedings of C.R. Case No.607 of 2018 (Kotwali) arising out of M.P. Case No.05 of 2018 under Section 467 / 468 / 420 of the Penal Code, now pending before the learned Chief Metropolitan Magistrate, Barishal is hereby quashed.

The order of stay passed earlier in connection with the Rule stands vacated.

Send a copy of the judgment and order to the concerned Court below at once.

SHAHED NURUDDIN, J

I agree