

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Mahmud Hossain,
Chief Justice
Mr. Justice Muhammad Imman Ali
Mr. Justice Hasan Foez Siddique
Mr. Justice Abu Bakar Siddiquee
Mr. Justice Obaidul Hassan

CRIMINAL PETITION FOR LEAVE TO APPEAL NO.1308 OF 2019.

(From the judgment and order dated 15.01.2019 passed by the High Court Division in Criminal Miscellaneous Case No.52894 of 2017.)

Southern University Bangladesh : Petitioner.

=Versus=

Md. Osman and others : Respondents.

For the Petitioner : Mr. Motahar Hossain, Advocate instructed by Mr. Mohammad Ali Azam, Advocate-on-Record.
For Respondent Nos.1-5 : Mr. Shah Munzurul Haque, Advocate instructed by Mr. M. Ashraf-uz-Zaman Khan, Advocate-on-Record.
Respondent No.6 : Not represented.

Date of hearing and judgment : 14.06.2021.

J U D G M E N T

Hasan Foez Siddique, J: This Criminal Petition for leave to appeal is directed against the judgment and order dated 15.01.2019 passed by the High Court Division in Criminal Miscellaneous Case No.52894 of 2017 disposing of the same and directing the Chairman of University Grants Commission for holding an inquiry upon setting aside the cognizance taking order dated 05.01.2017 passed by the Metropolitan Magistrate, Cognizance Court No.2, Chittagong in C.R. Case No.09 of 2017.

The relevant facts, for the disposal of this petition, are that one Kabir Mohammad Ashraf Ullah, Administrative Officer of Southern University of Bangladesh filed C.R. Case No.09 of 2017(Chalkbazar) against Md.

Osman, Mohammad Salim Uddin, Md. Taslim Uddin, Md. Minhazur Rahman, Rejaul Alam and Ahmed Golam Sarwar under Sections 467/468/469/471/472/420/34 of the Penal Code alleging, inter alia, that the Southern University, getting approval from the University Grant Commission (shortly, the U.G.C.) and the Ministry of Education has been running its academic functions. It is alleged that the accused persons illegally created a Trust in the name Southern University Trust (shortly, the Trust) and, without obtaining approval of the relevant authorities, opened campuses in 12 different places of the country and started running academic activities and issued academic certificates to different persons. In such circumstances, the Southern University authorities filed Writ Petition No.10549 of 2014 challenging the activities of the accused persons. Accordingly, a Rule Nisi was issued in that writ petition and after contested hearing the High Court Division, by a judgment and order dated 29.04.2015, made the Rule Nisi absolute with a direction to the Education Ministry and U.G.C. to take necessary steps for closure of all the campuses established by the accused persons. But they continued their illegal activities. In November and December of 2016, the Southern University received three different letters from the Education Ministry, Chittagong Bar Association and the British High Commission in Dhaka. In those three letters, the Southern University was requested to verify the genuineness of three academic certificates issued in the name of the Southern University in favour of three different persons under the signature of accused No.4 as the purported Controller of the University. Upon receipt of Education Ministry's letter of dated 13.11.2016, the Southern University, on its own initiative, caused an inquiry and found that the accused persons have

illegally issued at least 25 false academic certificates to 25 persons during the years from 2007 to 2016, as mentioned in the complaint petition. The complainant alleges that, in the above noted manner, the accused persons have committed the offences under Sections 467/468/469/471/472/420 and 34 of the Penal Code.

The learned Metropolitan Magistrate, Cognizance Court No.2, Chattagram examined the complainant Kabir Mohammad Ashraf Ullah under Section 200 of the Code of Criminal Procedure and took cognizance of the offence against the accused persons under Sections 467/468/469/471/472/420 and 34 of the Penal Code and issued warrant of arrest. The accused persons appeared in the Court and obtained bail. Thereafter, they filed an application under Section 561A of the Code of Criminal Procedure in the High Court Division and obtained Rule.

The High Court Division by the impugned judgment and order disposed of the Rule upon setting aside the cognizance taking order dated 05.01.2017 passed by the learned Metropolitan Magistrate, Cognizance Court No.2 and directed the U.G.C. for holding inquiry over the matter with the some observations. Against the said judgment and order of the High Court Division, the complainant has filed this Criminal Petition for Leave to Appeal.

Mr. Motahar Hossain, learned Advocate appearing for the petitioners, submits that though the petition of complaint disclosed a strong prima facie case against the accused respondents under Sections 467/468/469/471/472/420 and 34 of the Penal Code, the High Court Division erred in law in setting aside the cognizance taking order and directing the U.G.C. for holding an inquiry.

Mr. Shah Munjurul Haque, learned Advocate appearing for the respondents, submits that the High Court Division upon proper appreciation of the materials on record held that the prima-facie allegation under Section 3(2) of the বেসরকারী বিশ্ববিদ্যালয় আইন, ২০১০ (the Ain) may be made out from the petition of complaint and, thus, rightly directed the University Grant Commission to hold an inquiry upon setting aside the cognizance taking order of the Magistrate. There is no error in the order of the High Court Division.

On perusal of the petition of complaint, it appears that the complainant brought specific allegation against the accused respondents that they, in collusion with each other, fabricated certificates using the name of Southern University, Bangladesh which were used for illegal benefit. In the petition of complaint, it was inter alia, stated,

“জয়নাল আবেদীন সিদ্দিকী কর্তৃক চুটগ্রাম জেলা আইনজীবী সমিতির নিকট প্রদত্ত সাউদার্ন ইউনিভার্সিটি বাংলাদেশ অর্থাৎ বাদীর প্রতিষ্ঠানের নাম ও লোগো ব্যবহারপূর্বক জয়নাল আবেদীন সিদ্দিকীর বরাবরে ইস্যুকৃত প্রবেশনাল সার্টিফিকেট, একাডেমিক ট্রান্সক্রিপ্ট এবং প্রত্যয়ন পত্রের কোন ধরনের বাস্তব অস্তিত্ব নাই। অর্থাৎ উক্ত কাগজপত্র সমূহ সম্পূর্ণ ভূয়া এবং জাল জালিয়াতির মাধ্যমে সৃষ্ট এবং তাহা বাদীর প্রতিষ্ঠান কর্তৃক ইস্যুকৃত নহে। উক্ত কাগজপত্রে পরীক্ষা নিয়ন্ত্রক এবং রেজিস্ট্রার হিসাবে যাহাদেরকে দেখানো হইয়াছে তাহারা কখনও বাদীর প্রতিষ্ঠানে কর্মরত ছিলেন না এবং বর্তমানেও নাই। তাহাদের সহিত বাদীর প্রতিষ্ঠানের কোন সম্পর্ক নাই। আসামীগণ পরস্পর যোগসাজশে উক্ত জাল সনদ পত্র, একাডেমিক ট্রান্সক্রিপ্ট ও প্রত্যয়নপত্রে পরীক্ষা নিয়ন্ত্রক ও রেজিস্ট্রারের কলামে ভূয়া ব্যক্তির নাম বসাইয়া জাল স্বাক্ষর প্রদান করিয়া উক্ত কাগজপত্রাদি সৃজন করতঃ জাল সনদের অবৈধ ব্যবসার মাধ্যমে লাভবান হইয়াছেন।”

The Cognizance Magistrate, upon perusal of the contents of petition of complaint and examining the complainant under Section 200 of the Code of Criminal Procedure, found prima facie case against the accused respondents punishable under Sections 467/468/469/471/472/420/34 of the Penal Code and, accordingly, issued warrant of arrest against them.

The plenitude of power under section 561A of the Code of Criminal Procedure by itself, makes it obligatory for the High Court Division to exercise the same with outmost care and caution. Such inherent jurisdiction may be exercised, namely, to give effect to an order under Cr.P.C.; to prevent abuse of the process of the court, and to secure the ends of justice. The width and the nature of the power itself demands that such inherent powers are to be exercised sparingly and with caution and only in cases where the High Court Division is, for reasons recorded, of the clear view that continuance of the prosecution would be nothing but abuse of the process of the Court or proceeding is merely attended with malafide on the face of the record. The High Court Division will not quash the proceeding if it is required to call upon appreciation of evidence. It cannot assume role of appellate Court while dealing with an application under section 561A of the Code of Criminal Procedure. In the instant case, since the petition of complaint discloses prima facie case against the accused respondents punishable under the aforesaid provisions of law, we are of the view that the High Court Division has committed an error of law in setting aside the cognizance taking order of the Magistrate. It failed to exercise its power under section 561A of the Code of Criminal Procedure having regard to the facts and circumstances of the case.

Considering the contents of the petition of complaint, cognizance taking order of the Magistrate and other materials on record, we find substance in this petition.

Thus, the petition is disposed of. The impugned judgment and order of the High Court Division dated 15.01.2019 passed in Criminal Miscellaneous Case No.52894 of 2017 is hereby set aside. The trial Court is directed to proceed with the case in accordance with law.

C.J.

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The 14th June, 2021.
M.N.S./words-1388/