

Present:

Mr. Justice A.K.M. Asaduzzaman

And

Mr. Justice Syed Enayet Hossain

Criminal Misc. Case No. 13536 of 2020

Md. Rasel Ahmed

.....Petitioner.

-Versus-

A.H.M. Sohail @ Hasim and others

.....Opposite parties.

Mr. Sheikh Habib-ul-Alam, Advocate

.....For the petitioner.

Mr. Md. Mustaque Ahmed, Advocate

..... For the opposite party No.1

Mr. Md. Jasim Sarker, D.A.G.

.... For the state.

Heard and judgment on 6<sup>th</sup> November, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 06.11.2019 passed in Criminal Revision No. 112 of 2019 by

the Mohanagar Sessions Judge, Sylhet allowing the said Criminal Revision thereby discharging the accused persons from charge after setting aside the order No.11 dated 10.04.2019 passed by the Chief Metropolitan Magistrate Court, Sylhet, rejecting the application filed under section 241A of the Code of Criminal Procedure and framed charge against the accused under section 420/419/467/468/471 of the Penal Code corresponding to G.R. Case No. 115 of 2018 arising out of Sylhet Kotwali Model P.S. Case No. 42 dated 21.03.2018 under section 420/419/467/468/471 of the Penal Code should not be quashed.

Petitioner as informant filed Kotwali G.R. Case No. 115 of 2018 before the Court of Chief Metropolitan Magistrate, Sylhet under section 420/419/467/468/471 of the Penal Code against the accused persons, who are the opposite party in the instant rule.

An application under section 241A of the Code of Criminal Procedure filed by the accused opposite party No.1

and 2 was rejected by the learned Magistrate and a charge 10.04.2019 has been framed against the accused under section 420/419/467/468/471 of the Penal Code.

Challenging the said order accused persons moved before the Sessions Judge in revision and by the order dated 06.11.2019, the Mohanagar Sessions Judge, Sylhet allowed the said revision in Criminal Revision No. 112 of 2019 and set aside the order of the trial court and discharged the accused from the impugned criminal proceedings.

Challenging the said order petitioner then moved before this court and filed application under section 561A of the Code of Criminal Procedure and obtained the instant Rule.

Mr. Sheikh Habib-ul Alam, the learned advocate appearing for the petitioner drawing our attention to the application under section 241A of the Code of Criminal Procedure submits that regarding the document produced in court being No.7548 dated 30.11.1943, which is the subject matter of the case, there are two confusing statement in paragraph No.5, 7 and 9 of the discharged application and as such the trial court while framing charge

rejected the application for discharge holding that the matter is to be decided on evidence during trial. The learned Sessions Judge arbitrarily held that the deed itself was modified by way of an application for correction and as such the proceedings appears to be barred under law and accordingly discharged the accused after setting aside the order of trial court. The impugned judgment is not sustainable in law, which is liable to be to be quashed.

Mr. Md. Mustaque Ahmed, the learned advocate appearing for the informant opposite party frankly conceded the submission of the petitioner and admits that the order complaint contains having not proper appreciation of legal aspect of the case and thus prays that a direction may be given to the trial court to consider the grievances as been raised by the accused in the case afresh and to proceed with the case in accordance with law.

Heard the learned advocate and perused the documents annexed to the application.

In this matter FIR was lodged on holding that the accused petitioner created forged document and accordingly a proceeding has been initiated against the accused persons and the charge has

been framed upon rejecting the application under section 241A of the Code of Criminal Procedure by the Magistrate, which has been set aside by the Sessions Judge. In the application it has been contented that the number of the deed, which has been shown in the FIR there is a clerical mistake and practically the accused did not use the document, which has been asked to be created on forgery and as such the impugned criminal Proceedings is barred under law since not been initiated or cognizance has been taken without having a proper course of law.

On perusal of the application under section 241A of the Code of Criminal Procedure it appears that there are two types of story has been contended in the said application. One is the number of the deed and another is about its user in court. Unless and until it has properly been examined that the deed was at all been used in court or has been declared thereon to be forged one, all been a matter to be decided on evidence during trial, if it is found that a forged document has been used earlier in a civil or criminal court and no case was initiated from or on behalf of the said court, the initiation as well as taking cognizance of the case is

definitely is barred under section 195 (1)(C) of the Code of Criminal Procedure.

However unless and until it has been determined that the document forged was at all been used in court, the initiation of criminal proceedings or taking cognizance of the case filed by any individuals not by the court is not bar under law.

In any view of the matter unless and until it has been determined by way of evidence that the forged document was produced in court, the order of discharge as has been passed by the Sessions Judge on allowing the application under section 241A of the Code of Criminal Procedure appears to be illegal and was passed not in accordance with law, which is liable to be set aside.

In that view of the matter, we find merits in the rule.

In the result, the Rule is made absolute. The impugned judgment and order dated 06.11.2019 passed by the Mohanagar Sessions Judge, Sylhet is hereby set aside and quashed.

The Trial Court is hereby directed to proceed with the case and disposed of the matter in the light of the above observation

expeditiously as early as possible preferably within a period of 6(six) months after receiving of the order.

Communicate the judgment at once.

Syed Enayet Hossain, J:

I agree.