

**In the Supreme Court of Bangladesh  
High Court Division  
(Criminal Miscellaneous Jurisdiction)**

**Present:**

**Mr. Justice Md. Jahangir Hossain**

**And**

**Mr. Justice Ashish Ranjan Das**

**Criminal Miscellaneous Case No. 2739 of 2001.**

Noor Ahmed

.....Accused -Petitioner.

-Versus-

The State.

... Opposite-party.

None appears for the petitioner.

Mr. Golam Mostofa Tara, D.A.G.

Mr. Md. Anichur Rahman, A.A.G.

.....For the State.

**Heard on 03.12.2020, 06.12.2020 and  
Judgment on 13.12.2020.**

**Ashish Ranjan Das, J:**

Rule for quashment under Section 561A of the Code of Criminal Procedure was issued on 29.04.2001 at the instance of the accused Noor Ahmed in the following terms:

*“Let a Rule issue calling upon the opposite party to show cause as to why the order dated 28.03.2001 passed by the Sessions Judge, Cox’sbazar in Sessions Trial Case No. 50 of 2000 should not be quashed and/or such other or further order*

*or orders passed as to this court may seem fit and proper.”*

None appears to press the rule.

Although the matter is too old and occurring in the daily cause list with the name of the Advocate over the period.

We have perused the materials, annexed to the file and heard the objections raised by the learned Deputy Attorney General.

Short facts relevant for the purpose that could be gathered from the file are that the informant Atikul Islam purchased a piece of land from accused No.5 and another on 18.10.1998 and since purchase he has been in possession. However, the accused party including this petitioner Noor Ahmed of on 28.08.1999 deep at night fell upon the disputed land, assaulted the informants people and looted valuable articles. The informant was not there. He tried to reach the place of occurrence but he could not do so on the face attack of the accused party. He saw a jip waiting there. By this time the patrol police hearing hue and cry appeared there. The police got the jip seized and arrested its driver Dill Mohammad. The police recovered a lot of looted articles worth Tk. 1,50,000/- .

Stating above the informant lodged an ejahar with the local Cox'sbazer, Police Station on 30.08.1999 attracting Sections 143,448, 323,380,364, 364A, 441 and 34 of the Penal Code. Accordingly a police case being No.38 of 1999 on 30.08.1999 was set on motion. The police after investigation submitted charge sheet. This petitioner accused surrendered and obtained bail from the court. The case record was transmitted to the court of Sessions and the learned Sessions Judge, Cox'sbazer by his Order dated 30.08.1999 framed charge against the petitioner accused attracting Section 364, 364A and 34 of the Penal Code that has been the subject matter of this application for quashment.

The accused petitioner took a ground that if the allegation is accepted to be true on its face value in that case also it would be seen that the name of this petitioner Noor Ahmed was not mentioned in the ejahar or in the statement of the witnesses. No looted article was recovered from him. It happened deep at night and admittedly the informant was not there. We have seen the ejahar annexure-A and found that the name of this petitioner Noor Ahmed did not find place there. He can be not presumed

that the matter arose between the parties involving a land dispute. There was no clue in the file, whether the parties have by this time amicably resolved it or whether after so many years all of them are alive or not. This being the situation we find that there is no prospect of prosecution so far as this petitioner is concerned and to proceed with the charge will be an abuse of the process of the court.

Therefore, we are of the view that the rule is not bereft of merit.

Therefore, the Rule is made absolute.

The impugned order of the learned Sessions Judge, Cox'sbazer dated 28.03.2001 is set aside so far as the petitioner is concerned.

The ad-interim order passed earlier be recalled and vacated.

Communicate the judgment to the concern Court at once.

Md. Jahangir Hossain,J

I agree.