

Present :
Mr. Justice Md. Jahangir Hossain
And
Mr. Justice Ashish Ranjan Das.

Criminal Misc.No.6108 of 1998

In the matter of:

Abduz Zaher Commander
..... Petitioner
-Versus-
The State
..... Opposite party.
No one appears
.....For the petitioner.
Mr. Md. Anichur Rahman, A.A.G.
... For the State

Heard on: 31.02.2021

Judgment on: 18.02.2021

Ashish Ranjan Das, J:

Rule for quashment under section 561-A Code of Criminal Procedure (for short the Code) was issued on 02.11.1998 at the instance of the accused petitioner Abduz Zaher Commander in the following terms:

“Let a Rule issue calling upon the Deputy Commissioner, Noakhali to show cause as to why the proceedings of the Sessions Case No.21 of 1998, now pending in the Court of Additional Sessions Judge, 2nd Court, Noakhali should not

be quashed or such other order or further order or orders passed as to this court may seem fit and proper.

None appeared to press the rule, although the long pending matter has been occurring in the daily cause list with the names of the advocates. However, we have heard the objection raised by the learned Assistant Attorney General and perused the materials annexed to the record.

Short facts relevant for the purpose of disposal of the rule that could be gathered from the file may be summarized as under:-

That the petitioner Abduz Zaher Commander used to be a freedom fighter. He in a procession with number of freedom fighters from the cooperative society for short, the society or samity of Ramgati Thana Muktijodda Bahumuki Samabaya Samity Limited and himself became its secretary. There were 300 members in the society and in course of time the society was allotted 600 acres of agricultural land by the government located under police station Sudharam district Noakhali. But involving a portion of land so settled, there has been a long pending enmity between the society

and one Mahfuzul Huq Sher Ali, a rich man living under police station Ramgati district Noakhali. On 07.12.1994 when on behalf of the Samity the petitioner accompanied by other members of the association and hired labourers at about 1.30 P.M were harvesting paddy from the disputed land hired mercenaries of Mahfuzul Huq Sher Ali (for short Sher Ali) armed with various indigenous weapons fell upon the petitioner party. Good number of people belonging to the party sustained injuries amongst those one hired labour Sheikh Alauddin alias Milon sustained a grievous hurt at the hands of the culprit Sher Ali and his man. He was immediately shifted to nearby Char Jabbar Hospital where he succumbed to the injuries at about 3 P.M on 07.12.1994. Describing these happenings this petitioner on that very day on 07.12.1994 lodged an FIR in the Char Jabbar Police Camp that was received and was numbered as Sudharam P. S. Case No.14 dated 08.12.1994 attracting sections 147/148/447 /114/ 302/34 of the Penal Code.

While at the instance of rival of Sher Ali a bleated case was registered with neighboring Ramgati Police Station where in this petitioner was portrayed as an accused at the

plan of Sher Ali in the counter case. The investigation was perfunctory and the petitioner was nominated as an accused.

Now the case of the petitioner is that in the said bleated case of Ramgati Police Station investigation was not at all proper under influence of Sher Ali. Statements of witnesses were not properly recorded.

Obviously this ground should not be accepted as ground for quashment. The matter is old enough and we have no idea whether all the parties are still alive or not.

Be that as it may with the lapse of time it will be almost impossible for the investigators to collect proper evidence if they are directed to investigate further. In the situation we are of the view that the petitioner should face trial and in the proceeding obviously parties will get chance of adduce evidences. In the situation it will be upon trial judge to assess evidences and come to a conclusion in respect of the charge.

With the findings and observation the instant Rule is disposed of.

However, there is no order as to costs.

The order of stay granted earlier is hereby recalled and

vacated.

Communicate the judgment and order to the court
below at once.

Md. Jahangir Hossain, J:

I agree.

Bashar. B.O.