

Present:
Mr. Justice Md. Nazrul Islam Talukder
And
Mr. Justice Khizir Hayat

Criminal Revision No.150 of 2020

Durnity Daman Commission

..... **Petitioner.**

-Versus-

Md. Sayruddin Ahammad @ Shoiruddin Ahmed and another

..... **Opposite-parties.**

Mr. A.K.M. Farhan, Advocate

..... **For the Petitioner.**

Mr. A.K.M. Amin Uddin, D.A.G with

Ms. Anna Khanom Koli, A.A.G and

Mr. Md. Shaifour Rahman Siddique, A.A.G

..... **For the State-opposite party.**

Mr. Mohammad Hossain, Advocate with

Mr. Mohammad Saifuddin Khokon, Advocate

.....**For the Accused-opposite-party No. 1.**

Heard on : 03.08.2022 11.08.2022 and 14.08.2022

Judgment on: 14.08.2022

Md. Nazrul Islam Talukder, J:

On an application under Section 10(1A) of the Criminal Law Amendment Act, 1958, this Rule, at the instance of the petitioner, was issued calling upon the accused-opposite-party No.1 and another to show cause as to why order No. 09 dated 03.07.2019 passed by the learned Special Judge (District and

Sessions Judge), Jessore passed in Special Case No. 05 of 2019 arising out of Criminal Miscellaneous Case No. 1527 of 2011 under Sections 323/ 342/ 161/162/ 163/427/ 500/ 501/ 502/506(2) of the penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947 discharging the accused-opposite party No. 1 from the case, should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution case, in brief, is that on 15.11.2011, the complainant Provash Chondro Gosh son of late Ajit Gosh filed a petition of complaint being Criminal Miscellaneous Case No. 1527 of 2011 before learned Special Judge as well as District and Sessions Judge, Jossore under Sections 323 / 342 / 161 / 162 / 163 / 427 / 500 / 501 / 502 / 506(2) of the penal Code read with Section 5(2) of the Prevention

of Corruption Act, 1947 against the accused-opposite party No. 1, the then Officer-in-Charge (OC) of Monirampur Thana alleging, *inter alia*, that the complainant was the owner of the land measuring 5.15 (five point one five) acre by way of inheritance situated at Nehalpur Mouza No. 241, S.A. Khatian No. 1871/1, Dag Nos. 168, 175 and 200. The complainant had land dispute with one Abul Hossain and seven others. It is alleged in the petition of complaint that the complainant cultivated IRRI paddy in the land in question but on 04.05.2011 at 10.00 a.m the aforesaid Abul Hossain and others with the help of local hooligans taking 400 people entered into the disputed land at the instance of accused-opposite party No. 1, cut off the paddy, took away 150 maund paddy through the truck, sold out the same for Tk. 1,20,000/- and kept the same at the custody of

accused-opposite party No.1. The complainant went to make complaint to the accused-opposite party No. 1, Officer-in-Charge (OC) of Monirampur Thana against Abul Hossain and others who took away 150 (one hundred fifty) maund IRRI paddy from the land of the complainant and sold out the same for Tk. 1,20,000.00 (one lac twenty thousand) and kept the money with the accused-opposite party No. 1. When the complainant requested the accused-opposite party No. 1, the then Officer-in-Charge (OC) to return his Paddy, the accused opposite-party asked him to pay Tk. 50,000.00 (fifty thousand) as bribe or else the accused-opposite-party threatened the complainant to implicate him in a false case if the complainant comes to the police station again. Being afraid of the accused opposite party No. 1, the then Officer-in-Charge (OC), the complainant in presence of the eight

witnesses paid Tk. 20,000.00 (Twenty thousand only) to the accused-opposite party No. 1 and requested the accused-opposite party No. 01 to return his paddy. The accused-opposite party No. 01 told the complainant to come on 29.09.2011 with the remaining amount of Tk. 30,000.00 (thirty thousand only). The complainant declined to pay and asked the accused-opposite party No.1 to return Tk. 20,000.00 (Taka twenty thousand only). The accused-opposite party No.1 refused to pay the money and also threatened to kill him in cross fire. He also abused him, beat him and forced him out of the Thana. By this way, the complainant was denied to lodge an F.I.R against one Abul Hossain and others at Monirampur Police Station. Hence the petition of complaint being Criminal Miscellaneous Case No. 1527 of 2011 against the accused-opposite party No.1.

It may be noted that one Md. Wazed Ali Gazi, the Assistant Director, Anti-Corruption Commission, Sajeka, Jossore investigated into the allegations and on 30.08.2016 submitted charge-sheet against the accused-opposite party No. 1 under Sections 323/342/161/ 162/163/ 427/500/ 501/ 502/506(2) of the penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

After submission of the charge-sheet, the case was transferred to the court of learned Special Judge (District and Sessions Judge), Jossore for trial and was renumbered as Special Case No. 05 of 2019.

During pendency of the case, the accused opposite-party No. 1 filed an application under Section 265(C) of Code of Criminal Procedure for discharging him from the case, which was opposed by

the learned Public Prosecutor of the Anti-Corruption Commission.

The learned Special Judge, Jossore, by order No. 09 dated 03.07.2019 passed in Special Case No. 05 of 2019 discharged the accused-opposite party No.1 from the case.

Being aggrieved by the impugned order discharging the accused-opposite party No. 1 from the case, the Anti-Corruption Commission filed this criminal revision before this court under Section 10(1A) of the Criminal Law Amendment Act, 1958 and obtained this Rule.

At the very outset, Mr. Mohammad Hossain, the learned Advocate along with Mr. Mohammad Saifuddin Khokon, the learned Advocate appearing for accused-opposite party No.1, submits that the complainant submitted an application for receiving

Tk. 17,500/- out of Tk.41,500/- and the same was given to him; so there is no allegation of misappropriation of money against the accused and in that view of the matter, the learned Special Judge rightly discharged the accused-opposite party No. 1 from the case.

He next submits that the paddy in question was sold at a price of Tk. 41,500/- (forty one thousand and five hundred) and out of them Tk. 24,000/- was given to Md. Habibur Rahman @ Habib following an application dated 10.05.2011 filed by him and Tk. 17,500/- was given to the complainant on the basis of an application filed by him and the aforesaid facts have been reflected in the investigation report, wherein the Investigating Officer has stated that there is no prima facie allegation of misappropriation of money against the accused-opposite party No. 1

save and except violation of some official rules and regulations and for this reason, the learned Special Judge rightly discharged the accused from the case.

He lastly submits that the paddy in question was cut off and sold out on the basis of unanimous compromise between the parties made at the instance of local M.P, local Chairman and local elites with a view to maintaining peace and tranquility in the locality and as such, following the investigation report, the learned Special Judge rightly discharged the accused-opposite party No.1 from the case.

On the other hand, Mr. A.K.M. Farhan, the learned Advocate appearing for the Anti-Corruption Commission, submits that the investigation report is not based on proper facts since 8 (eight) witnesses deposed before the investigating officer that the complainant gave bribe of Tk. 20,000/- to the

accused-opposite party No. 1, but the same fact has not taken into consideration by the investigating officer and submitted charge-sheet against the accused stating that there is no allegation of misappropriation of money against the accused save and except violation of some official rules and regulations taking mala fide intention.

He next submits that following the investigation report, the learned Special Judge discharged the accused without considering the facts and circumstances of the case in proper perspective, so the order of discharge may be set aside for ends of justice.

He lastly submits that the allegation of criminal misconduct and criminal breach of trust is there in the prosecution materials to connect the accused with the alleged offences and as such, the impugned order of discharge is liable to be set aside.

Mr. A.K.M Amin Uddin, the learned Deputy Attorney-General appearing on behalf of the State, has adopted the submissions of the learned Advocate for the Anti-Corruption Commission.

We have gone through the revisional application along with the prosecution materials annexed therewith and heard the learned Advocates for the respective parties at length.

On perusal of the F.I.R, it appears that the complainant was the owner of the land measuring 5.15 (five point one five) acre by way of inheritance situated at Nehalpur Mouza No. 241, S.A. Khatian No. 1871/1, Dag Nos. 168, 175 and 200. The complainant had land dispute with one Abul Hossain and seven others. It is alleged in the petition of complaint that the complainant cultivated IRRI paddy in the land in question but on 04.05.2011 at 10.00 a.m

the aforesaid Abul Hossain and others with the help of local hooligans taking 400 people entered into the disputed land at the instance of accused-opposite party No. 1, cut off the paddy, took away 150 maund paddy through the truck, sold out the same for Tk. 1,20,000/- and kept the same at the custody of accused-opposite party No.1. The complainant went to make complaint to the accused-opposite party No. 1, Officer-in-Charge (OC) of Monirampur Thana against Abul Hossain and others who took away 150 (one hundred fifty) maund IRRI paddy from the land of the complainant and sold out same for Tk. 1,20,000.00 (one lac twenty thousand) and kept the money with the accused-opposite party No. 1. When the complainant requested the accused-opposite party No. 1, the then Officer-in-Charge (OC) to return his Paddy, the accused opposite-party asked him to pay

Tk. 50,000.00 (fifty thousand) as bribe or else the accused-opposite-party threatened the complainant to implicate him in a false case if the complainant comes to the police station again. Being afraid of the accused opposite party No. 1, the then Officer-in-Charge (OC), the complainant in presence of the eight witnesses paid Tk. 20,000.00 (Twenty thousand only) to the accused-opposite party No. 1 and requested the accused-opposite party No. 01 to return his paddy. The accuse-opposite party No. 01 told the complainant to come on 29.09.2011 with the remaining amount of Tk. 30,000.00 (thirty thousand only). The complainant declined to pay and asked the accused-opposite party No.1 to return Tk. 20,000.00 (Taka twenty thousand only). The accused-opposite party No.1 refused to pay the money and also threatened to kill him in cross fire. He also abused

him, beat him and forced him out of the Thana as a result of which the complainant could not lodge an F.I.R against the aforesaid Abul Hossain and others at Monirampur Police Station. Being compelled, the complainant filed the petition of complainant before the court being Criminal Miscellaneous Case No. 1527 of 2011 against the accused-opposite party No.1.

From the supplementary-affidavit filed by the accused-opposite party No. 1, it is apparent that on 16.04.2011 one S.I. Gopal Chandra Roy submitted an application to the learned Executive Magistrate, Jossore for appointing a Receiver for maintaining the law and order in connection with the Miscellaneous Case No. 14 of 2003 and Memo No. 866 dated 29.03.2011 and Monirampur Police Station G.D. No. 664 dated 14.04.2011; that on 01.05.2011 S.I. Gazi Abdur Rahman, Nehalpur Police Camp under

Monirampur Police Station, Jossore after knowing the matter rushed to the land in question along with his accompanying forces for controlling the situation vide G.D. No. 7 and after return from the spot made an official note Vide G.D. No. 17; that the S.I. Gazi Abdur Rahman on 06.05.2011 vide G.D. No. 261 received an amount of Tk. 41,500/- of the sold out paddy with the consent of the Upazila Chairman and others; in view of the land dispute, the complainant filed 02 separate suits being Civil Suit No. 127 of 2006 and Civil Suit No. 7 of 2011, which are pending for disposal; that Mr. Showpon Kumar Battacharjee, Upazila Chairman, Monirampur Upazila compromised the matter among the parties and permitted to cut off the paddy for maintaining peace and tranquility in the locality and on the basis of unanimous decision one Md. Amzad Hossen Lavlu

was authorized to cut off the paddy and thereafter, the Md. Amzad Hossen Lavlu entrusted Md. Habibur Rahman for cutting the paddy; after selling the paddy for Tk. 41,500/-, he deposited the same to the Officer-in-Charge, Monirampur Police Station which was received by S.I Khandoker Shamim Ahmed and thereafter on 10.05.2011, following an application, Md. Habibur Rahman @ Habib received Tk. 24,000/- for paying the bills of labour, rent of godown, cost of bags etc and kept the remaining amount of Tk. 17,500/- to the Police Station; that Provash Kumar Ghosh also submitted an application to the Officer-in-Charge, Monirampur, Jossore for withdrawing Tk. 17,500/- and he also assured that he had succeeded in Miscellaneous Case No. 47 of 2001 and on the basis of application, the Officer-in-Charge paid Tk. 17,500/- on good faith vide G.D. No. 112; that Mr.

Md. Wazed Ali Gazi, Deputy Director, Dudok, Sojeka, Jessore investigated the matter without examining the labours who cut off the paddy at the decision of the elite persons of the locality who compromised the matter; that the accused-opposite party No. 1 neither cut off the paddy nor sold out the same; the accused-opposite party No. 1 did not pass any order to anybody to cut off the paddy and he did not appear in the spot at the relevant time of occurrence.

It may be mentioned that the accused-opposite party No. 1 has made the aforesaid statements on the basis of documentary evidence but the same have not been denied by the learned Advocate for the Anti-Corruption Commission by filing any affidavit-in-reply before this court.

It is worthwhile to mention that the investigating officer after holding investigation into the allegations submitted investigation report against the accused-opposite party No. 1 under Sections 323 / 342 / 161 / 162 / 163 / 427 / 500 / 501 / 502 / 506(2) of the penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 contending inter-alia that the allegation of misappropriation of money against the accused-opposite party No. 1 has not been found but he did not take any order from the court for appointing any receiver, cutting off paddy and selling of the same through auction, which amounts to violation of some official rules and regulations by the accused-opposite party No. 1 abusing his power and authority.

It has been mentioned earlier that with a view to maintaining peace and tranquility in the locality over

cutting off paddy from the disputed land, the local Upazila Chairman and other elite people of the locality compromised the matter among the parties and took unanimous decision to cut off the paddy, sell out the same and deposit the monies to the police station. Under the aforesaid circumstances, the police had to take quick decision to control the situation and maintain the peace and tranquility in the locality. Moreover, the monies after selling the paddy were taken by the complainant and other parties following their applications. It appears from the records that the paddy in question was sold at a price of Tk. 41,500/- (forty one thousand and five hundred) and out of them Tk. 24,000/- was given to Md. Habibur Rahman @ Habib following an application dated 10.05.2011 filed by him and Tk. 17,500/- was given to the complainant on the basis of an application filed by him. In the

above backdrop, the story of giving bribe to the accused-opposite party No. 1 by the complainant does not appear to be credible. Furthermore, if the accused-opposite party No.1 indulges in any kind of misconducts misusing official power and position violating official rules and regulations, that matter may be looked into by the higher officers of the concerned police department in order to discipline and control them but this sort of cases against the accused-opposite party No.1 without committing criminal breach of trust is not sustainable in the eye of law.

After the dispassionate consideration of the above facts and circumstances, we are of the view that there are no elements to frame charge against the accused-opposite party No. 1 under Sections 323 / 342 / 161 / 162 / 163 / 427 / 500 / 501 / 502 / 506(2) of the penal Code read with Section 5(2) of the

Prevention of Corruption Act, 1947 and the learned Special Judge, Jessore rightly discharged the accused-opposite party No. 1 from the case.

Having considered all the facts and circumstances of the case and the submissions advanced by the learned Advocates for the respective parties, our penultimate decision is that this Rule may be discharged since we do not find any merit in this Rule.

Accordingly, the Rule is discharged.

In consequence thereof, the order of discharge dated 03.07.2019 passed by the learned Special Judge, Jessore discharging the accused-opposite party No.1 from the above mentioned case is affirmed and maintained.

The accused-opposite party No.1 is discharged from the case if he is not wanted in connection with any other case.

Communicate this judgment and order to the learned judge of the concerned court below at once.

Khizir Hayat, J:

I agree.