

Present

**Mr. Justice Md. Jahangir Hossain**

**And**

**Mr. Justice Md. Bazlur Rahman**

**Criminal Revision No.2600 of 2021**

Eskander Mollah and others

----- Petitioner

Versus

The state

----- Opposite party.

Mr. S.M. Shahjahan, Advocate

----- For the petitioner

Mr.Mohammad Imdadul Hoque, Advocate

----- For the opposite party

Mrs. Yesmin Begum Bithi, D.A. G with

Mst. Asma Khatun, A.A.G with

Mr. A.T.M. Aminur Rahman, A.A.G

-----For the opposite-party-State

**Heard and Judgment on: 24<sup>th</sup> November, 2022**

**MD. JAHANGIR HOSSAIN;J**

This Criminal Revision No. 2600 of 2021 has been filed under section 439 read with section 435 of the Code of Criminal Procedure. This Rule was issued calling upon the opposite party to show cause as to why the order dated 08.09.2021 passed by the learned Additional Sessions Judge,

Shariatpur in Sessions Case No. 92 of 2010 arising out of Zanjira P.S Case No. 07 dated 10.03.2010 corresponding to G.R. No. 32 of 2010 under section 323/ 324/ 325/ 326/ 307/ 302/ 114/34 of the Penal Code for sending back the said case to the Sessions Judge, Shariatpur for trial and disposal as per order of learned Sessions Judge, Shariatpur vide memo No. 1759 dated 08.09.2021, now pending before the court of Sessions Judge, Shariatpur should not be set aside and/or pass such other order or orders as to this Court may seem fit and proper.

It appears from the record that at the time of issuance of the Rule all further proceedings of the said Sessions Case No. 92 of 2010 was stayed for a period of 06 (six) months from date.

Learned Advocate, Mr. Mohammad Imdadul Hoque, appeared on behalf of the opposite party and submits that at the time of trial before the Additional Sessions Judge, Shariatpur 11(eleven) witnesses wer examined. At that stage the informant party filed an application before the District and Sessions Judge for transfer of the case and to withdraw the part heard Sessions case from the file of the said Additional Sessions Judge Court. Upon such application the learned Sessions Judge passed an

order of withdrawal of the case from the Court of Additional Sessions Judge. Thereafter learned Additional Sessions Judge by an order dated 08.09.2021 sent the record for trial before the District and Sessions Judge, Shariatpur.

Lastly he submits that long period has already been elapsed and they do not have any objection if this revision is allowed and the said Sessions Case is sent to any competent Court of the Shariatpur District court.

On the other hand, learned Advocate Mr.S.M.Shajahan, appeared on behalf of the accused-petitioner and submits that as per Section 528(1A) of the Code of Criminal Procedure the learned Sessions Judge cannot recall any case or appeal which he has made over to any Additional Sessions Judge for trial and disposal if the trial has already commenced before the learned Additional Sessions Judge. The learned Sessions Judge committed a gross illegality in recalling the case as per section 528(1A) of the Code of Criminal Procedure.

We have perused the record, the impugned order and other materials on record. It transpires that it is a case of 2010

and by this time 12 years have been elapsed. The case is stacked up on trial.

Considering the submissions of the learned Advocate and other materials on the record and perusing the section 528(1A) of the Code of Criminal Procedure we are of the view that the justice will be met if the revisional application is allowed and the said case is transferred to the said Trial Court within 30 days for disposal.

On the above observation the Rule is disposed of.

The order of stay granted at the time of issuance of the Rule is hereby vacated.

Learned District and Sessions Judge is directed to do needful for sending the record to the Trial Court.

Let a copy of this judgment be transmitted to the concerned Court below at once.

**Md. Bazlur Rahman, J:**

I agree

Md.Majibur Rahman

Bench Officer