

Present

Mr. Justice A.S.M. Abdul Mobin

&

Mr. Justice Md. Mahmud Hassan Talukder

Criminal Miscellaneous Case No. 5540 of 2020.

Riad Ahmed Chowdhury

..... Complaint Petitioner.

Vs.

The state and othersOpposite Parties.

Mr. Golam Rabbani, Advocate

for the petitioner.

Ms. Samira Tarannum Rabya (Miti),D.A.G) with

Mr. M.A. Karim, Advocate

for the opposite party No.2.

Heard on: 22.02.2024.

Judgment on: 27.02.2024.

A.S.M.ABDUL MOBIN,J.

In this Rule the complainant petitioner has challenged the Judgment and order dated 09.07.2019 passed by the learned Additional Metropolitan Sessions Judge, 3rd Court, Dhaka in Criminal Revision No. 451 of 2016 rejecting the revision and affirming the order dated 20.03.2016 passed by the learned Additional Chief Metropolitan Magistrate, Court No.05, Dhaka in G.R. Case No. 338 of 2013 arising out of Tejgaon Industrial P.S. Case

No. 25 dated 28.10.2013 under sections 420/ 406/ 467/ 468/ 471/ 506/109 of the Penal Code.

The complainant petitioner initiated the case by filing a complaint petition in the Court of Chief Metropolitan Magistrate, Dhaka stating *inter alia* his father late Dewan Abul Fazal Chowdhury had a house situated at Uttara Sector-6, and built a multistoried building thereon. He died leaving behind the complainant and his brother Niaz Ahmed Chowdhury, sister Rumana Chowdhury and mother Nurunnahar Chwodhury as his legal heirs. The complainant went to United States of America. Since then he has been living there. He came back to Bangladesh on 25.01.2010. After coming he saw a sign board of Architect and Design Engineers Ltd hung over on their plot. The complainant issued a legal notice upon the company. In reply to his legal notice, the company stated that the complainant petitioner executed a power of attorney dated 03.01.2010. Thereafter the complainant searched at the Uttara

Sub-registry Office and obtained the certified copy of the forged power of attorney. When his brother was asked about the forged power of attorney he threaten him with dire consequence. The complainant alleged that the said power of attorney was false and created for the purpose of grabbing in his property.

The learned Magistrate on receipt of the complaint petition, sent it to the police station for treating it as an FIR and for investigation. Tejgaon Police recorded the FIR and held investigation. After investigation submitted charge sheet against the accused under sections 420/ 406/ 467/ 468/ 471/ 506/109 of the penal Code. But the accused opposite party No.2 was not sent up in the charge sheet. The learned Magistrate received the charge sheet on 06.07.2015. The complainant did not file any Naraji Petition. The learned Magistrate accepted the charge sheet on 08.10.2015 and discharged the accused opposite party No.2. The case was sent for trial to the Court of learned Additional Chief Metropolitan

Magistrate, 5th Court, Dhaka and the learned Magistrate fixed 20.03.2016 for framing charge. On 20.03.2016 the complainant petitioner filed an application for a direction to hold further investigation in the case. The learned Magistrate heard the parties and by his order on 20.03.2016 rejected the prayer for holding further investigation. Against that order the complainant petitioner filed Criminal Revision No. 454 of 2016 in the Court of Metropolitan Sessions Judge, Dhaka and the revision was heard in the Court of Additional Metropolitan Sessions Judge, 3rd Court, Dhaka. The learned Additional Metropolitan Sessions Judge by his judgment and order dated 09.07.2019 rejected the revision and upheld the order dated 20.03.2016 passed by the learned Additional Chief Metropolitan Magistrate, Dhaka.

The complaint being aggrieved by said judgment and order passed by the learned Additional Metropolitan Sessions judge, filed this application

under section 561A of the Code of Criminal Procedure and obtained the present rule.

Mr. Golam Rabbani, the learned advocate appearing for the complaint petitioner submits that admittedly the accused opposite party No.2 was the Managing Director of the Architect & Design Engineers Ltd and the forged power of attorney was given in favour of the said company. He was a beneficiary of the said power of attorney. But he was not sent up in the charge sheet even though a prima facie case was made out against him. He submits that in the facts and circumstances, a direction should be given for holding further investigation. The learned Judge of the Revisional Court has failed to appreciate the matter and as such the impugned judgment and order passed by the Additional Metropolitan Sessions Judge is liable to be quashed.

On the other hand, the learned Deputy Attorney General opposes the rule.

We have considered the submissions of the learned advocate, perused the application and all other relevant papers annexed thereto. On perusal of the record it appears that the complainant in his petition of complaint which was subsequently recorded as an FIR stated that a power of attorney was created in his name on 03.01.2010. During investigation, the said power of attorney was found forged and created for the purpose of allowing the company of the accused opposite party No.2 to take development project on the property of the complaint petitioner. The investigating officer recommended for discharge of the accused opposite party No.2 on the ground that he was not informed about creation of the forged power of attorney and he was not involvement in the process of making the power of attorney.

In the Police report it is also stated that the complaint petitioner entered into an agreement with his others co sharer and also executed an agreement

with accused opposite party No.2 for sale of his share under construction building. After execution of the said agreement he filed the instant complaint.

The case was filed on 28.10.2013 and charge sheet was submitted on 06.07.2015. Meanwhile, almost nine years have been elapsed. After such a long period it is not at all desirable to send back the case for holding further investigation. In view of the facts and circumstances of the case, it appears that the learned Magistrate rightly rejected the prayer for holding further investigation.

Apart from this, after introduction of sub section 2(B) of section 202 of the Code of Criminal Procedure. the order of discharge or order of acceptance of final report is now a Judicial order. If any one feels aggrieved by the order of discharge he can move before the sessions Judge under section 436 and 439 of the Code of Criminal Procedure for setting aside the order of discharge and for a direction to hold further inquiry into the case. But so

long the order of discharge remains in force and is not set aside by the superior Court, there is no scope for a direction to hold further investigation. This view has been expressed in the case of *Rasharaj Sarker Vs. State* 52 DLR (2000)- 598 and *Sate Vs. Ershad Ali Sikder* 9BLC (2004)- 294. In the case of Ershad Ali Sikder, It was held:

“When an accused person has been discharged of an offence, the superior Court has power to set aside the order of discharge and to direct further inquiry into the matter. Section 436 of the Code of Criminal Procedure empowers the Sessions Judge or the High Court Division, on examining the record of a case, to direct the Magistrate to make further inquiry into the matter but no such direction may be made, into the case of any person who has been discharged unless such person has given an opportunity of being heard. Sections 202(2B) and Section 436 of the Code debar the

prosecution of a person who has been discharged in a case. In the alternative, it may be said that there is finality of the order in respect of the said person, and the case cannot be re-opened by the Magistrate unless the Superior Courts direct for further inquiry into the matter. The Magistrate becomes *functus officio* after making an order of discharge in respect of the said person and the said matter cannot be reopened by the Magistrate except on certain conditions. ”

In view of the above discussion, we do not find merit in this Rule.

Accordingly, the Rule is discharged.

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

Since the case is a very old, we direct the learned Chief Metropolitan Magistrate, 4th Court, Dhaka to conclude the trial of the case expeditiously

without given any adjournment to either party on flimsy ground.

Communicate this order to the concerned court at once.

MD. MAHMUD HASSAN TALUKDER, J.

I agree.