

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

PRESENT:

**MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN
AND
MR. JUSTICE KHANDAKER DILIRUZZAMAN**

CRIMINAL MISCELLANEOUS CASE NO. 1291 OF 2000

Abdul Gani Contractor.....Accused petitioner
-Versus-

The State.....Opposite party

None appears.....For the accused petitioner

Mr. Imran Ahmed Bhuiyan, DAG with

Mr. Mehadi Hasan (Milon), AAG and

Ms. Aleya Khandker, AAG

.....For the state

Judgment on: The 10th of August, 2023

ABU TAHER MD. SAIFUR RAHMAN, J.

This Rule was issued on an application filed by the accused petitioner under section 561A of the Code of Criminal Procedure, 1898 calling upon the opposite parties to show cause as to why the proceedings of G.R. Case No. 719 of 1998, arising out of Panchlaish Police station Case No. 26 dated 16.03.1998 under sections 147/148/448/435/307 of the Penal Code now pending in the Court of learned Chief Metropolitan Magistrate, Chittagong so far as it relates to the accused-petitioner should not be quashed and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court was pleased to stay all further proceedings of the aforesaid G.R. Case No. 719 of 1998 for **3 (three)** months from the date which was subsequently extended till to disposal of the Rule.

For disposal of the Rule, the relevant facts may briefly be stated as follows:

That one Liakot Ali as an informant lodged an FIR with the local police station alleging inter alia that the accused petitioner along with other FIR-named accused persons were very dangerous in nature and always created a anarchy in their locality. The informant as a word Commissioner raised his voice against their illegal activities. On the date of occurrence dated 16.03.1998 at around 2.35 p.m. the accused petitioner along with others with the intention to kill the informant exploded a bomb in his residence and set fire to his car and thereby caused a financial damage amounting to **Tk. 3,40,000/-** (Taka Three lac and Forty thousand). Hence, the aforesaid case was filed against the accused petitioner and others under sections 147/148/448/435/307 of the Penal Code. Thereafter, the accused petitioner duly appeared before the Court below and obtained bail. After investigation, police submitted a charge sheet against the several accused persons and not sent up the name of the accused petitioner in the said charge sheet. As against the aforesaid charge sheet, the informant filed a

naraji petition before the Court which was allowed vide its order dated 25.08.1999. Subsequently police submitted a supplementary charge sheet against the accused petitioner under sections 147/148/149/447/435/448//307/427 of the Penal Code which was accepted by the Court vide its order dated 01.12.1999. Being aggrieved, the accused petitioner preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing the impugned proceeding so far as it relates to the accused petitioner and obtained the instant Rule and stay.

No one appears for the accused petitioner to support the Rule.

However, the accused petitioner has stated in his application that the impugned proceeding as against the accused petitioner is nothing but an abuse of the process of the Court and the same is liable to be quashed for the ends of justice. It is further stated that once a Magistrate has taken a cognizance on a police report, the Magistrate is not entitled to send the same to the police for further investigation, and as such the impugned proceeding is liable to be quashed so far as it relates to the accused petitioner.

Mr. Imran Ahmed Bhuiyan, the learned Deputy Attorney General for the opposite party submits that since there is a specific allegation against the accused petitioner, the instant Rule is liable to be discharged.

Heard the submissions of the learned Advocate for the opposite party and perused the relevant FIR along with other materials on record thoroughly.

On perusal of the FIR, charge sheet and other materials on record it transpires that there is prima facie case against the accused petitioner. The accused petitioner stated in his application that after submitting the charge sheet, the Court has no jurisdiction to send the matter for further investigation. So far this issue is concerned it is necessary to examine the relevant provision of section 173(3B) which reads as follows:

“Nothing to this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (1) has been forwarded to the Magistrate and whereupon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-section (1) to 3(A) shall as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (1)”.

On perusal of the aforesaid provision, it is clear that it authorizes the police officer to carry a further investigation

into a case even after submission of a charge sheet under section 173(1) of the Code of Criminal Procedure if further evidence is available.

So the contention as raised by the accused petitioner in his application is not acceptable.

Under the given facts and circumstances of the case and the reasons as stated above, we do not find any substance of this Rule.

As a result, the Rule is discharged.

The order of stay granted earlier by this Court is hereby stand vacated.

The trial Court is hereby directed to proceed with the case expeditiously in accordance with the law.

Communicate this judgment and order at once.

Khandaker Diliruzzaman, J:

I agree