

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

PRESENT:

MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN
AND
MR. JUSTICE MD. ATABULLAH

CRIMINAL MISCELLANEOUS CASE NO. 13424 OF 2017

A.K.M. Hasan and othersAccused-petitioners

-Versus-

The State.....Opposite party

Mr. Sherder Abul Hossain with

Mr. Zaidy Hasan Khan, Advocates

...For the accused petitioners

Mr. Md. Abdur Razzak with

Mrs. Kalpana Akter Banu, Advocates

.....For the opposite party No. 2

Mr. K.M. Masud Rummy, DAG with

Mr. Mehadi Hasan (Milon), AAG and

Ms. Aleya Khandker, AAG

.....For the state

Heard on: 12.05.2024 and 02.06.2024

Judgment on: The 15th of July, 2024

ABU TAHER MD. SAIFUR RAHMAN, J.

This Rule was issued on an application filed by the accused petitioners under section 561-A of the Code of Criminal Procedure calling upon the opposite party to show cause as to why the proceedings of G.R. Case No. 852 of 2011, arising out of Gulshan Police Station Case No. 60 dated 26.09.2011 under sections 420/467/468/471 of the Penal Code now pending before of Court of learned Additional Chief Judicial Magistrate-4, Court No. 05, Dhaka 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, the Court was pleased to stay all further proceedings of the aforesaid G.R. case for **6 (six)** months from the date which was time to time extended by this Court.

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

That the opposite party No. 2 as complainant filed a petition of complaint before the Chief Metropolitan Magistrate, Dhaka which was registered as Gulshan Police Station Case No. 60 dated 26.09.2011 under sections 420/467/468/471 of the Penal Code alleging inter alia that the informant has purchased the case land measuring .2525 ajuutangsha vide registered deed No. 7231 dated 03.09.2008 and thereafter mutated the said land in his own name and since then he is in possession of the said land. It is further stated that regarding the case land, the accused petitioners filed a Title Suit No.78 of 2009 for declaration of title before the Court of 1st Joint District Judge, Dhaka which is still pending. During the pending of the aforesaid case, the accused petitioners by way of suppressing the facts, created a forged mutation document in their name vide Mutation Case No. 20688/2009-2010 dated 05.07.2010. Hence, the aforesaid case was filed against the accused petitioners under sections 420/467/468/471 of the Penal Code. Thereafter, the accused petitioners duly appeared before the

Court below and obtained bail. Later on, the charge was framed against the accused petitioners vide its order dated 11.01.2016. Being aggrieved, the accused petitioners filed an application before this Court under section 561A of the Code of Criminal Procedure for quashing the aforesaid proceeding and obtained the instant Rule and stay.

Mr. Sherder Abul Hossain, the learned Advocate for the accused petitioner submits that regarding the case land, the accused petitioners earlier filed a Title Suit No. 78 of 2009 before the 1st Joint District Judge, Dhaka which is still pending. Due to the pendency of the aforesaid civil suit, the instant proceeding is barred by law under section 195(1)(C) of the Code of Criminal Procedure.

Mr. Md. Abdur Razzak, the learned Advocate for the opposite party No. 2 submits that as per FIR and charge sheet there is a specific allegation against the accused petitioners, and as such the accused petitioners have no ground to invoke the provision of section 561A of the Code of Criminal Procedure. Hence, the instant Rule is liable to be discharged.

The only issue for determination of this Rule is to see whether the impugned proceeding of G.R. Case No. 852 of 2011 under sections 420/467/468/471 of the Penal Code against the accused petitioners is liable to be quashed.

On perusal of the FIR dated 26.09.2011, it transpires that the informant opposite party No. 2 claimed the case land on the basis of the purchased deed No. 7231 dated 03.09.2008. It is also observed that regarding the case land, the accused petitioners earlier filed a Title Suit No. 78 of 2009 before the 1st Joint District Judge, Dhaka for declaration of title along with correction of R.S. record which is still pending.

The informant contended that during pending of the aforesaid title suit, the accused petitioner created the mutation document in their names which is forged one and hence the instant case was filed against the accused petitioners under sections 420/467/468/471 of the Penal Code.

The accused petitioner contended that the impugned proceeding is barred by law under section 195(1)(C) of the Code of Criminal Procedure. In order to appreciate the contention of the learned Advocate for the accused petitioner it is necessary to examine the relevant provision of section 195(1)(C) of the Code of Criminal Procedure which reads as follows:

“195(1) No Court shall take cognizance

(a).....

(b).....

(c) of any offence described in section 463 or punishable under section 471, section 475 or section

476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate”.

On perusal of the aforesaid provision of law, it transpires that section 195(1)(C) of the Code of Criminal Procedure provides a bar against initiation of private complaint on the allegation of forgery of a document which is the subject matter of a suit or case in any civil, criminal or revenue Court.

In the case of Md. Takumuddin Par Vs. State as reported in 4 BLT (AD) 84, wherein their Lordship in the Hon’ble Appellate Division held that-

“Section 195(1)(C) of the Code of Criminal Procedure provides that in case where the alleged forged deeds have been produced or given in evidence in any Court, the initiation of the criminal case is barred on the basis of a private complaint.”

Now the question arises whether the offence under sections 467 and 468 of the Penal Code is covered by the provision of section 195(1)(C) of the Code of Criminal

Procedure to attract the restriction as provided by the said section.

In the case of Nur Ahmed Vs. Kalimuddin as reported in 1987 BCR (AD), 152 their Lordship in the Appellate Division while deciding this question held as under:

“Clause (C) of section 195(1)(C) of the Code of Criminal Procedure will apply to offence under sections 467 and 468 of the Penal Code as there are both offences described in section 463 of the said Code.”

In view of the aforesaid provisions of law, now let us examine to see whether the impugned proceeding is liable to be quashed.

In the instant case, we have noticed that regarding the case land, the accused petitioner earlier filed a Title Suit No. 78 of 2009 before the 1st Joint District Judge, Dhaka for declaration of title which is still pending for hearing.

The informant opposite party No. 2 did not disclose in the FIR whether the accused petitioners have produced the alleged document in the aforesaid title suit or not. In view of the provision of section 195(1)(C) of the Code of Criminal Procedure, we are of the opinion that a case covering the offences under sections 467/468/471 of the Penal Code can only be instituted by the concerned Court or by its formal direction who finds the document as forged and until and

unless a document is proved to be forged by competent Court, the initiation of a case by an individual private person is not maintainable. Regarding the case land since a Title Suit No. 78 of 2012 is pending before the 1st Joint District Judge, Dhaka, it is for the concerned Court to lodge any complaint before the criminal Court if it finds the forgery relating to the alleged document. Since, the impugned proceeding of G.R. Case No. 852 of 2011 has been initiated on private complaint, the same cannot continue in view of the provision of section 195(1)(C) of the Code of Criminal Procedure and as such the proceeding of G.R. Case No. 852 of 2011 under sections 420/467/468/471 of the Penal Code is found to be an abuse of the process of the Court and is liable to be interfered by this Court in its inherent jurisdiction. However, both the Courts below failed to appreciate the aforesaid legal aspects as involved in the instant case and thereby committed an error of law which is liable to be quashed.

Under the given facts and circumstances of the case and the reasons as stated above, we find substance of this Rule.

As a result, the Rule is made absolute.

The proceeding of G.R. Case No. 852 of 2011 under sections 420/467/468/471 of the Penal Code, now pending in

the Court of learned Additional Chief Judicial Magistrate-4, Court No. 5 Dhaka is hereby quashed.

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

Md. Atabullah, J:

I agree