

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. 13683 OF 2018

Tarekuzzaman and others.....Accused-petitioners

-Versus-

Md. Rabiul Islam and another.....Opposite parties

Mr. Md. Tahshin Ahmed, Advocate

... ..For the accused petitioners

None appears.....For the opposite parties

Mr. K.M. Masud Romy, DAG with

Mr. Mehadi Hasan (Milon), AAG and

Ms. Aleya Khandker, AAG

.....For the state

Heard on: 03.06.2024, 09.06.2024 and 30.06.2024

Judgment on: The 28th 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 parties to show cause as to why the proceedings of C.R. Case No. 829 of 2016 under sections 420/467/471 of the Penal Code now pending in the Court of learned Judicial Magistrate and Cognizance Court No. 1, Panchagarh 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 C.R. Case No. 829 of 2016 for **6 (six)** months from the date which was time to time extended by the Court.

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

That the opposite party No. 1 Md. Rabiul Islam as complainant filed a C.R. Case No. 829 of 2016 against the accused petitioners under sections 420/467/471 of the Penal Code, alleging inter alia that the scheduled land was originally belonged to one Gomaddi Mohammad, the great-grandfather of the complainant. The complainant acquired the case land by way of inheritance. At the time of the local survey, the accused petitioners claimed the case land on the basis of the registered purchased deed No. 960 dated 31.05.1956 executed by Samijuddin and handed over the photocopy of the said registered deed to the complainant. The complainant alleged that in order to grave the case land the accused petitioners in collusion with each other created the aforesaid forged deed executed by Samijuddin, the grandfather of the complainant. Hence the aforesaid case was filed against the accused

petitioners under section 420/467/471 of the Penal Code. Thereafter, accused petitioners appeared before the Court below and obtained bail. Thereafter, the accused petitioners have preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing the proceeding of the aforesaid case and obtained the instant Rule and stay.

Mr. Md. Tahsin Ahmed, the learned Advocate for the accused petitioners mainly submits that a case covering the offence under sections 467/468/471 of the Penal Code only be instituted by the concerned Court or by its formal direction, who finds the document as forged one and until and unless a document is proved to be forged by a competent Court the initiation of a case by an individual private person questioning the genuineness of the said document by passing the provision of sections 195(1)(C) of the CrPc is nothing but an abuse of the process of the Court. In support of his contention he pointed out that in the instant case, there is a clear allegation against the accused petitioners for creating a forged document. The alleged document is not produced by the accused petitioners in any judicial proceeding and

the complainant is a private person and as such the impugned proceeding is liable to be quashed.

None appears for the opposite parties to oppose the Rule.

Heard the submissions of the learned Advocate for the accused petitioners and perused the materials on record thoroughly.

On perusal of the petition of complaint, it transpires that the complainant claimed the case land on the basis of the inheritance. On the other hand, the accused petitioners claimed the said land on the basis of the registered purchase deed No. 960 dated 31.05.1956 which is alleged to be a forged document. So there is a clear allegation against the accused petitioners for committing the offence of a forged document. Mere allegation of a forged document is not enough unless it has been used in a judicial proceeding. Any allegation of such offence alleged to have been committed in or in relation to any proceeding in any Court should not be taken lightly. Rather it is imperative on the part of the concerned Court to deal promptly with such allegation and strictly in accordance with the law as it concerns the administration of public justice. If a forged document is produced in a proceeding by a party, the Court will acquire the sole jurisdiction to make a complainant under section

195(1)(C) of the Code of Criminal Procedure. The legislative intent in imposing prohibition against a private complaint is to save a party from vexatious prosecution. When the document has been used by a party to the proceeding the offenses fall very much within the ambit of section 195(1)(C) of the CrPc. No cognizance thereof can be taken except on a complaint by the Court. In the instant case, the alleged deed is not produced by the accused petitioners in any judicial proceeding as yet and as such the impugned proceeding in respect of the accused petitioners is liable to be quashed.

In such view of the aforesaid legal position, we find substances in the contention of the learned Advocate for the accused petitioners.

As a result, the Rule is made absolute.

The proceedings of C.R. Case No. 829 of 2016 under sections 420/467/471 of the Penal Code now pending in the Court of Learned Judicial Magistrate and Cognizance Court No. 1, Panchagarh is hereby quashed.

Communicate this judgment and order at once.

Md. Atabullah, J:

I agree

