

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. 1840 OF 2000

Bibhuti Halder.....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 judgment and order dated 05.07.1999 so far it relates to appointment of receiver passed by the Additional Sessions Judge, 1st Court, Khulna in Criminal Revision No. 41 of 1999 allowing the criminal revision and thereby reversing the order dated 22.03.1999 passed by the Magistrate, 1st Class, Khulna in Non FIR Case No. 36 of 1994 drop the proceeding of section 145 of the Code of Criminal Procedure should not be quashed and/or such other or

further order or orders passed as to this Court may seem fit and proper.

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

That one A.B.M. Fazlul Karim, Inspector of police as complainant filed a Non FIR Case No. 36 of 1994, corresponding to Non G.R. No. 75 of 1994 before the Magistrate, 1st Class, Khulna treating the petitioner as first party and the opposite party No. 1 as second party alleging inter alia that on the basis of the information he came to know that on 21.12.1994 the second party Dr. Giasuddin forcibly harvesting the paddy from the schedule land which was also claimed by the 1st party. Accordingly, the notice was served upon the both parties. Papers of both parties were consulted but it was difficult to come to a conclusion, since the land in question was claimed by both parties. It is further stated that regarding the land in question several civil suit are pending before the Courts. Since, there is an apprehension of breach of peace in connection with the loan in question, a proceeding under section 145 of the Code of Criminal Procedure is required to be started. On the basis of the said petition, the learned Magistrate,

initiated the proceeding under section 145 of the Code of Criminal Procedure and thereby attached the land in question and appointed a receiver over the said land. Thereafter, both parties appeared before the Court below and submitted a written statement and also adduced their evidence. After conclusion of evidence, the learned Court below drop the said proceeding along with a direction to hand over the sale proceeds of the output of the land in question to the second party as he was in possession of the said land vide its order dated 22.03.1999. As against the said order, the petitioner 1st party preferred a Criminal Revision No. 41 of 1999 before the Court of Sessions Judge, Khulna which was heard by the Additional Sessions Judge, 1st Court, Khulna. After haring of both parties, the learned Additional Judge, Khulna allowing the said Criminal Revision vide its order dated 05.07.1999 and thereby set aside the order dated 22.03.1999 passed by the Magistrate, 1st Class, Khulna in Non FIR Case No. 36 of 1994 along with direction to keep continue the order of appointment of receiver passed by the Magistrate, 1st Class, Khulna till to appointment of receiver or to settle the right of title or possession of the land in question by

the civil Court. Being aggrieved, the petitioner 1st party preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing the impugned order dated 05.07.1999 passed in Criminal Revision No. 41 of 1999 so far as it relates to appointment of receiver and obtained the instant Rule and stay.

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

However, the petitioner has stated in his application that since the Revisional Court allowed the Revision case on a finding that first party-petitioner has been in possession of the case land in view of which the appointment of receiver with regard to the case land is unwarranted and abuse of the process of Court and thus this portion of the operative part of the order is liable to be quashed.

It is further stated that since the order of the Magistrate Court has been set aside in revision, hence the order of appointment of receiver is against the norms of judicial proceeding and as such it is liable to be deleted from the operative portion of the impugned order

passed by the of the learned Additional Sessions Judge, Khulna.

None appears for the opposite party No. 1 to oppose the Rule.

The only issue for determination of this Rule, is to see whether the impugned order dated 05.07.1999 passed in Criminal Revision No. 41 of 1999 so far as it relates to appointment of receiver is liable to be quashed.

On perusal of the petitioner's application along with the impugned judgment and order it transpires that regarding the schedule land the opposite party No.1 (2nd party) earlier filed a Title Suit No. 96 of 1991 against the petitioner 1st party and obtained a temporary injunction. As against the said order, the father of the petitioner 1st party preferred an Appeal No. 747 of 1991 before the Hon'ble High Court and obtained the order of status quo over the land in question. We have further noticed that regarding the land in question, the petitioner 1st party also filed another Title Suit No. 46 of 1990 and obtained the order of temporary injunction which is still pending. We have to keep in mind that the civil Court is the only competent authority to decide the right title and possession of the case land in question.

In such view of the aforesaid legal position, the learned Additional Sessions Judge, 1st Court rightly set aside the order dated 22.03.1999 passed by the Magistrate, 1st Class, Khulna in Non FIR Case No. 36 of 1994, corresponding to Non G.R. No. 75 of 1994 along with direction to keep continue the order of appointment of receiver passed by the Magistrate, till to appointment of receiver or to settle the right of title or possession of the case land by the civil Court, which does not call for any interference by this Court under the jurisdiction of section 561A of the Code of Criminal Procedure.

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.

Communicate the judgment and order at once.

Khandaker Diliruzzaman, J:

I agree