

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

PRESENT:

**MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN
AND
MR. JUSTICE MD. BASHIR ULLAH**

CRIMINAL MISCELLANEOUS CASE NO. 21150 OF 2021

Most. Moslema alias Most. Moslema Khatun and another
.....Accused petitioners

-Versus-

The State.....Opposite party

Ms. Salina Akter, Advocate

.....For the accused petitioners

None appears.....For the opposite party

Heard on: 13.11.2023 and 22.11.2023

Judgment on: The 21st of January, 2024

ABU TAHER MD. SAIFUR RAHMAN, J.

This Rule was issued on an application filed by the accused petitioners under section 561A of the Code of Criminal Procedure calling upon the opposite parties to show cause as to why the proceedings of C.R. Case No. 129(C) of 2017 (Tanore) filed by the complainant- opposite party No. 2 under sections 406/420/109 of the Penal Code now pending in the Court of Senior Judicial Magistrate, Rajshahi 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 case 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. 2 as complainant filed a C.R. Case No. 129 (C) of 2017 (Tanore) against the accused petitioner under sections 406/420/109 of the Penal Code alleging inter alia that the scheduled land is belongs to the accused petitioners and to purchase the said land, the complainant executed an unregistered bainapatra (বায়নাপত্র) with the accused petitioner at the consideration of **Tk. 35,00,000/-** (Taka Thirty-five lac) and out of said amount, the accused petitioners received the money amounting to **Tk. 6,00,000/-** (Taka Six lac) from the complainant. After receiving the said money, the accused petitioners gave an undertaking to the effect that they will execute the registration of the said land within 15.04.2017. However, subsequently, they refused to make the registration of said land and also refused to pay back the money to the complainant. Hence, the aforesaid case was filed against the accused petitioners under sections 420/406 of the Penal Code. Thereafter, the accused petitioners appeared before this Court below and obtained the bail. Later on, at the time

of the framing charge, the accused petitioners filed an application before the trial Court under section 241A of the Code of Criminal Procedure for discharging them from the aforesaid case which was allowed vide its order dated 17.07.2018. As against the said order, the complainant filed a Criminal Revision No. 137 of 2018 before the Divisional Special Bench, Rajshahi which was allowed and thereby set aside the order dated 17.07.2018 passed by the trial Court. Being aggrieved, the accused petitioners 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.

Ms. Salina Akter, the learned Advocate for the accused petitioners submits that the nature of the allegation as mentioned in the petition of the complaint is civil in nature which does not constitute any criminal offence, and as such the instant Rule is liable to be quashed.

None appears for the opposite part 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 admittedly the scheduled land was belongs to the accused petitioners. We have further noticed that to purchase the said land, the complainant executed an unregistered

bainapatra with the accused petitioners under certain terms and conditions, and subsequently, the accused petitioners refused to make the registration of the said land. The nature of the allegation as mentioned in the petition of complaint arose from the contractual agreement which is civil in nature and does not constitute any criminal offence.

Under the given facts and circumstances of the case and the reasons as stated above, we find substance 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. 129(C) of 2017 (Tanore) under sections 406/420/109 of the Penal Code now pending in the Court of Senior Judicial Magistrate, Rajshahi is hereby quashed.

Communicate this judgment and order at once.

Md. Bashir Ullah, J:

I agree