

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. 23133 OF 2019

Shamsur Rahman.....Accused petitioner

-Versus-

The State and another.....Opposite parties

Mr. Nur Muhammad Azami, Advocate

... ..For the accused petitioner

Mr. Rezaul Karim, Advocate

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

Mr. K.M. Masud Romy, DAG with

Mr. Mehadi Hasan (Milon), AAG and

Ms. Aleya Khandker, AAG

.....For the state

Heard on: 12.05.2024

Judgment on: The 20th of May, 2024

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, calling upon the opposite parties to show cause as to why the judgment and order dated 15.11.2018 passed by the learned Metropolitan Sessions Judge, Chattogram in Criminal Revision No. 950 of 2018 summarily rejecting the revision and thereby affirming the order dated 31.07.2018 passed by the learned Additional Chief Metropolitan Magistrate, Chattogram in C.R. Case No.

193 of 2017 (Khulshi) under sections 467/468/471/420/109 of the Penal Code, 1860, send back the case to the cognizance Court along with direction to hold a further inquiry regarding the involvement of the accused petitioner in the alleged offence should not be set aside/quashed so far as relates to the accused petitioner 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 operation of the aforesaid judgment and order dated 15.11.2018 passed in Criminal Revision No. 950 of 2018 as well as the order dated 31.07.2018 passed in C.R. Case No. 193 of 2017 (Khulshi) for 6 (six) months from the date so far as it relates to the accused-petitioner 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, Md. S.M.A. Hakim as a complainant filed a C.R. Case No. 193 of 2017 against the accused petitioner and others alleging inter alia that regarding the waqf estate in question, the accused No. 1 claiming himself as motuwalli and filed an application to the Waqf Administrator for enrolment the waqf property along with some forged documents. In pursuance of the said

application, the Waqf Administrator enrolled the property as waqf estate (wherein a Masjid has been established) and also appointed the accused No. 1 as motuwalli. Thereafter, on behalf of the Masjid committee, the opposite party No. 2 as complainant filed a petition of complaint against the accused petitioner and others under sections 467/468/471/420/109 of the Penal Code. After examination of the complainant, the learned Magistrate sent the matter to the PBI for inquiry. After having an inquiry, the PBI submitted an inquiry report before the learned Court below. After receiving the inquiry report, the learned Magistrate transferred the case to the Additional Chief Metropolitan Magistrate for trial. Thereafter, the trial Court took cognizance of the case against the 6 (six) accused persons apart from the accused petitioner. Since there is a specific allegation against the accused petitioner in the petition of complaint, the learned Magistrate sent back the case to the cognizance Court for further inquiry so far as relates to the accused petitioner vide its order dated 31.07.2018. Being aggrieved, the accused petitioner preferred a Criminal Revision No. 950 of 2018 before the Metropolitan Sessions Judge which was summarily rejected vide its order dated 15.11.2018. Being aggrieved, the petitioner preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing the impugned order dated

15.11.2018 passed in Criminal Revision No. 950 of 2018 and obtained the instant Rule and stay.

Mr. Nur Muhammad Azami, the learned Advocate for the accused petitioner submits that the alleged forgery in connection with the waqf deed is not determined by any competent Court and there is also no expert opinion as to whether the waqf deed is forged or not, and as such the impugned judgment and order dated 15.11.2018 passed in Criminal Revision No. 950 of 2018 and the order dated 31.07.2018 passed in C.R. Case No. 193 of 2017 are liable to be quashed.

As against this, Mr. Rezaul Karim, the learned Advocate for opposite party No. 2 submits that since there is a specific allegation against the accused petitioner, both the Court below rightly passed the order which does not call for any interference by this Court under the jurisdiction of section 561A of the Code of Criminal Procedure.

Heard the submissions of the learned Advocates of both sides and perused the materials on record thoroughly.

The only issue for determination of this Rule is to see whether the trial Court has any jurisdiction to hold a further inquiry regarding the allegation against the accused petitioner is concerned. It is well well-settled principle of law that the Court is not bound to accept the inquiry report. At the time of taking cognizance or framing of charge, the

Court has to consider all the materials on record very carefully. Nothing shall be deemed to preclude to holding a further investigation if the Court is not satisfied with the inquiry report. In the instant case, the name of the accused petitioner was not sent up in the PBI report as he was out of the country during the commission of the alleged offence. Not being satisfied with the aforesaid inquiry report, the trial Court rightly sent back the case to the cognizance Court along with a direction to hold a further inquiry so far as relates to the accused petitioner is concerned which does not call for any interference by this Court under the jurisdiction of section 561A of the Code of Criminal Procedure. Moreover, the accused petitioner has nothing to be aggrieved with the impugned order, since no cognizance has been taken against the accused petitioner as yet.

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.

Communicate this judgment and order at once.

Md. Atabullah, J:

I agree

