

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. 32249 OF 2018

Emdadul Huq Akan and anotherAccused petitioners

-Versus-

The State and another.....Opposite parties

Mr. Tapan Kumar Bepary, Advocate

.....For the accused petitioners

Mr. Md. Mostafa Kamal, Advocate

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

Mr. Imran Ahmed Bhuiyan, DAG with

Mr. Mehadi Hasan (Milon), AAG and

Ms. Aleya Khandker, AAG

.....For the state

Heard and Judgment on: The 9th of August, 2023

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, 1898 calling upon the opposite parties to show cause as to why the impugned judgment and order dated 10.09.2017 passed by the learned Additional Sessions Judge, Pirojpur in Criminal Revision No. 59 of 2015 dismissing the revision and thereby affirming the order No. 15 dated 03.03.2015 passed by the learned Chief Judicial Magistrate, Pirojpur framing the charge against the accused-

petitioners under sections 465/468 of the Penal Code in G.R. Case No. 113 of 2013 (Moth), arising out of Mothbaria Police Station Case No. 04 dated 02.03.2013 now pending in the Court of Chief Judicial Magistrate, Pirojpur 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, this Court was pleased to stay the aforesaid proceedings of G.R. Case No. 113 of 2013 for 6 (six) months from 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 informant lodged an FIR with the local police station alleging inter alia that the informant along with others have purchased the case land vide several registered deeds on several dates and accordingly their names have been recorded in the S.A. record. In order to grave the case land, the accused petitioners in collusion with each other created a forged deed dated 15.02.2012. Hence, the aforesaid case was filed against the accused petitioners under sections 465/468/471/420/114 of the Penal Code. Thereafter, the accused petitioners appeared before the Court below and obtained bail. Later on, the charge was framed against the accused petitioners under sections 465/468 of the Penal

Code. As against the said order, the accused petitioners preferred a Criminal Revision No. 59 of 2015 before the Court of Learned Sessions Judge, Pirojpur which was discharged vide its order dated 10.09.2019. Being aggrieved, the accused petitioners have preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing the impugned judgment and order dated 10.09.2017 and obtained the instant Rule and stay.

Mr. Tapan Kumar Bepary, the learned Advocate for the accused petitioners submits that regarding the case land, a Title Suit No. 291 of 2012 filed by the accused petitioners is pending before the Court of Assistant Judge, Mothbaria, Pirojpur and as such the impugned proceeding is not maintainable.

He further contended that the nature of allegation as stated in the FIR does not constitute any criminal offence under sections 465/468/471/420/114 of the Penal Code and as such the impugned proceeding is liable to be quashed.

Mr. Md. Mostafa Kamal, the learned Advocate for the opposite party No. 2 submits that in the instance case, 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 and therefore the instant Rule is liable to be discharged.

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

On perusal of the petitioners' applications, it transpires that regarding the case land, a Title Suit No. 291 of 2012 is pending between the parties. It is well settled principal of law is that a pending of a civil suit cannot bar the proceeding of a criminal case for a criminal offence. Moreover, the contention as raised by the accused petitioners is absolutely a matter of fact which cannot be decided at this stage under section 561A of the Code of Criminal Procedure.

In such view of the aforesaid legal position, we do not find any substances of this Rule.

As a result, the Rule is discharged.

The order of stay granted earlier by this Court is hereby stand vacated.

Communicate the judgment and order at once.

Khandaker Diliruzzaman, J:

I agree