

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. 33135 OF 2023

Main Uddin.....Informant petitioner

-Versus-

The State and others.....Opposite parties

Mr. M. Mainul Islam, Advocate

.....For the informant petitioner

Mr. Muhammad Shajadul Islam Bhuiyan, Advocate

...For the opposite party Nos. 3 to 6

Heard on: 03.12.2023 and 04.12.2023

Judgment on: The 28th of January, 2024

ABU TAHER MD. SAIFUR RAHMAN, J.

This Rule was issued on an application filed by the informant 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 30.06.2022 passed by the learned Additional Sessions Judge, Feni in Criminal Revision No. 117 of 2021 disallowing the revision and thereby affirming the order dated 13.09.2021 passed by the learned Judicial Magistrate, 4th Court, Feni in G.R. Case No. 94 of 2017 rejecting the application filed by the petitioner for addition of charge under section 379 of the Penal Code, 1860 now pending in the Court of Judicial

Magistrate, 4th Court, Feni 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 the petitioner as an informant lodged an FIR with the local police station against the accused opposite party Nos. 2 to 6 under sections 143 /447 /448 /323 /307 /379/ 380/ 427 /354 /506(2) of the Penal Code which was registered as a Dagonbhuiyan Police Station Case No. 02 dated 01.05.2017 alleging inter alia that on the date of occurrence dated 27.04.2017, the accused opposite party Nos. 2 to along with other unknown persons in a group entered the informant's place and cut down 3 (three) mango trees, 4 (four) kathal trees, 2 (two) gob trees, 4 (four) mehagani trees and stole the trees worth of **Tk. 1,20,000/-**. The 90 (ninety) feet long boundary wall next to the informant's house was broken by the accused Nos. 1 and 2 and caused damage amounting to **Tk. 2,00,000/-**. Hence, the aforesaid case was filed. Thereafter, the accused opposite parties appeared before the Court below and obtained bail. After investigation, police submitted a charge sheet against the accused opposite parties under sections 143 /447 /448/ 323 /307 /379 /380/ 427/ 354 /506(2) of the Penal Code. Later on, the charge was framed against the accused

opposite parties under sections 143 /447 /448/ 323/ 307/ 379/ 380/ 427 /354 /506(2) of the Penal Code. During the trial, the prosecution examined as many as 10 (ten) witnesses. After the conclusion of evidence, the next date was fixed on 13.09.2021 for examination of the accused's under section 342 of the Code of Criminal Procedure as well as for argument. At this stage, the informant petitioner filed an application for addition of charge under section 379 of the Penal Code which was rejected by the trial Court vide its order dated 13.09.2021. As against the said order, the informant petitioner preferred a Criminal Revision No. 117 of 2021 before the learned Sessions Judge, Feni which was rejected vide its order dated 30.06.2022. Being aggrieved, the informant petitioner preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing the impugned order dated 30.06.2022 passed by the revisional Court and obtained the instant Rule and stay.

Mr. M. Mainul Islam, the learned Advocate for the informant petitioner submits that as per provision of section 227 of the Code of Criminal Procedure, the Court may alter or add to any charge at any stage before the judgment is pronounced but both the Court below failed to appreciate the aforesaid legal aspects and thereby committed an error of law by passing the impugned order which is liable to be quashed.

Mr. Muhammad Shajadul Islam Bhuiyan, the learned Advocate for the opposite party Nos. 3 to 6 submits that at the stage of argument, the petitioner filed this application under section 561A of the Code of Criminal Procedure for quashing the impugned order which is not maintainable and as such the instant Rule is liable to be discharged.

Heard the submissions of the learned Advocates of both sides and perused the instant application along with the materials on record thoroughly.

On perusal of the petitioner's application along with the impugned order, it transpires that the trial has already been concluded and the case is now pending for argument as evident from order No. 48 dated 13.09.2021 passed by the Trial Court. At the stage of argument, the informant petitioner filed this application under section 561A of the Code of Criminal Procedure for quashing the impugned order dated 30.06.2022 passed in Criminal Revision No. 117 of 2021, arising out of G.R. Case No. 94 of 2017 under sections 143 /447 /448 /323 /307 /379/ 380/ 427/ 354/506(2) of the Penal Code. When the trial has been concluded and the case is pending for argument at this stage, the application for quashing the proceeding or any order is not entertainable.

Our this view gets support from the decision in the case of Golam Mohammad and another as reported in 19 BLT (AD), page 239.

In such view of the aforesaid legal position, we are in view that the learned Additional Sessions Judge rightly passed the impugned order dated 30.06.2022 in Criminal Revision No. 117 of 2021, arising out of G.R. Case No. 94 of 2018 which does not call for any interference by this Court under the jurisdiction of section 561A of the Code of Criminal Procedure.

As a result, the Rule is discharged.

The Trial Court below is hereby directed to proceed with the case expeditiously preferably within the period of **6 (six)** months from the date of receipt of a copy of this judgment and order in accordance with law.

Communicate this judgment and order at once.

Md. Bashir Ullah, J:

I agree