

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. 36084 OF 2023**

Md. Abul Khayer Sarder.....Accused Petitioner  
-Versus-

The State and another.....Opposite parties

Mr. Md. Zobaidur Rahman, Advocate

.....For the accused petitioner

Mr. Md. Humayun Kabir Manju, Advocate

....For the opposite party No. 2

Mr. Md. Ahsan Ullah, AAG with

Mr. Mehadi Hasan (Milon), AAG and

Ms. Aleya Khandker, AAG

.....For the state

**Heard on: 10.08.2023 and 13.08.2023**

**Judgment on: The 15<sup>h</sup> of October, 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 calling upon the opposite parties to show cause as to why the judgment and order dated 08.02.2023 passed by the learned Sessions Judge, Joypurhat in Criminal Revision No. 163 of 2022 rejecting the revisional application and thereby affirming the order dated 06.09.2022 and 02.11.2022 passed by the learned Additional Chief Judicial Magistrate, Joypurhat in C.R. Case No. 160 of

2022 under sections 420/467/468/465/109 of the Penal Code rejecting the application filed by the petitioner for staying the proceedings of the said case now pending in the Court of learned Additional Chief Judicial Magistrate, Joypurhat 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 opposite party No. 2 as complainant filed a C.R. Case No. 160 of 2022 against the accused petitioner and others under sections 420 /467 /468 /465/ 109 of the Penal Code alleging inter alia that the complainant is the owner of the deep tube well which is situated on the scheduled land. The complainant set up the aforesaid deep tube well for the purpose of irrigation in 1991. Subsequently, the accused petitioner claimed ownership of the said deep tube well on the basis of an affidavit of sale which is claimed to be a forged document. Hence, the aforesaid case was filed against the accused petitioner. Thereafter, the accused petitioner duly appeared before this Court below and obtained bail. At the time of the framing charge, the accused petitioner filed an application for discharge under section 241A of the Code of Criminal Procedure which was rejected vide its order dated 06.09.2022 and thereby framed a charge against the accused petitioner under sections

420/467/468/465/109 of the Penal Code. Subsequently, the accused petitioner filed an application for stay the aforesaid proceeding which was also rejected vide its order dated 02.11.2022. Being aggrieved, the accused petitioner preferred a criminal revision against the aforesaid impugned order dated 06.09.2022 along with the order dated 02.11.2022 which was also rejected vide its order dated 08.02.2023 and thereby affirming the order of the trial Court below. Being aggrieved, the accused petitioner preferred this application before this Court under section 561A for quashing the impugned order passed in Criminal Revision No. 163 of 2022 and obtained the instant Rule and stay.

Mr. Md. Zobaidur Rahman, the learned Advocate for the accused petitioner mainly submits that regarding the ownership of the deep tube well in question, the complainant earlier filed an Other Class Suit No. 126 of 2020 before the Court of Assistant Judge, Kalai, Joypurhat against the accused petitioner for declaration of title which is still pending. Due to the pendency of the aforesaid civil suit, the instant proceeding is barred by law under section 195(1)(C) of the Code of Criminal Procedure, and as such the instant proceeding is liable to be quashed.

As against this, Mr. Md. Humayun Kabir Manju, the learned Advocate for the opposite party No. 2 submits that as per materials on record, both the Court below rightly

passed the impugned orders which does not call for any interference by this Court under the jurisdiction of section 561A of the Code of Criminal Procedure and as such the instant Rule is liable to be discharged.

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

On perusal of the petition of complaint, it transpires that regarding the same matter (deep tube well in question) the complainant earlier filed an Other Class Suit No. 126 of 2020 for declaration of title against the accused petitioner as evident from **Annexure-‘D’** to the application. We have noticed that the complainant did not mention anything about the aforesaid civil suit in his petition of complaint which is amounts to suppression of facts.

The accused petitioner contended that the impugned proceeding is barred by law under section 195(1)(C) of the Code of Criminal Procedure. In order to appreciate the contention of the learned Advocate for the accused petitioner it is necessary to examine the relevant provision of section 195(1)(C) of the Code of Criminal Procedure which reads as follows:

“195(1) No Court shall take cognizance

(a).....

(b).....

(c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same

Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate”.

On perusal of the aforesaid provision of law, it transpires that section 195(1)(C) of the Code of Criminal Procedure provides a bar against initiation of private complaint on the allegation of forgery of a document which is the subject matter of a suit or case in any civil, criminal or revision Court.

In the case of Md. Takumuddin Par Vs. State as reported in 4 BLT (AD) 84, wherein their Lordship in the Hon’ble Appellate Division held that-

“Section 195(1)(C) of the Code of Criminal Procedure provides that in case where the alleged forged deeds have been produced or given in evidence in any Court, the initiation of the criminal case is barred on the basis of a private complaint.”

Now the question arises whether the offence under sections 467 and 468 of the Penal Code is covered by the provision of section 195(1)(C) of the Code of Criminal Procedure to attract the restriction as provided by the said section.

In the case of Nur Ahmed Vs. Kalimuddin as reported in 1987 BCR (AD), 152 their Lordship in the Appellate Division while deciding this question held as under:

“Clause (C) of section 195(1)(C) of the Code of Criminal Procedure will apply to offence under sections 467 and 468 of the Penal Code as there are both offences described in section 463 of the said Code.”

In view of the aforesaid provisions of law, now let us examine to see whether the impugned proceeding is liable to be quashed.

As per provision of section 195(1)(C) of the Code of Criminal Procedure, a case covering the offences under sections 467/468/471 of the Penal Code can only be initiated by the concerned Court or by its formal direction who finds the document as forged and until and unless a document is proved to be forged by a competent Court, the initiation of a case by an individual private person questioning the genuinity of the said document bypassing the mandatory provision of section 195(1)(C) of the Code is nothing but an abuse of the process of Court. We have noticed that regarding the same matter, the complainant earlier filed an Other Class Suit No. 126 of 2020 for declaration of title against the accused petitioner which is still pending before the Court of Assistant Judge, Kalai, District-Joypurhat. Since the aforesaid civil suit is pending, it is for the concerned Court to lodge any complainant before the criminal Court if it finds the forgery relating to the alleged

document. Since the proceeding of C.R. Case No. 160 of 2022 has been initiated on private complaint, the same cannot continue in view of the provision of section 195(1)(C) of the Code of Criminal Procedure, and as such the proceeding of C.R. Case No. 160 of 2022 under sections 420/467/468/465/109 of the Penal Code is found to be an abuse of the process of the Court and is liable to be interfered with by this Court in its inherent jurisdiction. However, both the Courts below failed to appreciate the aforesaid legal aspects as involved in the instant case and thereby committed an error of law which is liable to be quashed.

Under the given facts and circumstances of the case and the reasons as stated above, we find the substance of this Rule.

As a result, the Rule is made absolute.

The proceedings of C.R. Case No. 160 of 2022 under sections 420/467/468/465/109 of the Penal Code now pending in the Court of learned Additional Chief Judicial Magistrate, Joypurhat is hereby quashed.

Communicate this judgment to the concerned Court below at once.

**Khandaker Diliruzzaman, J:**

I agree

