

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. 38846 OF 2022

Most. Minara Khatun.....Informant petitioner
-Versus-

The StateOpposite party

Mr. Rafiqul Islam Sohel, Advocate

.....For the informant petitioner

Mr. K.M. Masud Romy, DAG with

Mr. Mehadi Hasan (Milon), AAG and

Ms. Aleya Khandker, AAG

.....For the state

Heard on: 29.10.2023

Judgment on: The 9th of Novemver, 2023

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 calling upon the opposite party to show cause as to why the impugned order dated 25.1.2021 passed by the learned Sessions Judge, Mymensingh in Sessions Case No. 240 of 2020, arising out of Fulbaria Police Station Case No. 08 dated 12.03.2018, corresponding to G.R. No. 39 of 2018 under section 302/201/34 of the Penal Code and thereby discharging the accused opposite party No. 1 Md. Abdullah Hannan Uzzal should not be quashed and/or such other or further orders 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 proceeding of the aforesaid Sessions case for 3 (three) 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 petitioner as informant lodged an FIR with the local police station dated 12.03.2018 alleging inter alia that on 06.03.2018 at around 10.00 a.m. her son Md. Mehedi Hasan Babu left the home talking about Kishoreganj Bazar and did not come back home. She searched all possible places but failed. In this regard, a G.D. was made with the local police station (G.D. No. 267 dated 07.03.2018). Later on, a message came from the mobile phone used by her son to her mobile phone number demanding money for the release of her son. On the basis of the said G.D. police started investigation and arrested one accused Md. Tushar. On being asked, he admitted that he brought her son to Dhaka. Thereafter, the case was transferred to the District Intelligence Branch, Mymensingh for investigation. Subsequently, the investigating officer arrested accuseds Md. Al Amin and Ujjal and recovered the half-melted dead body of her son from a hole in the floor of the warehouse of accused Ujjal. Subsequently, she filed a supplementary FIR wherein she mentioned the name of the 7 (seven) co-accused

as suspected. Hence, the aforesaid case was filed against the accused petitioner and others under section 8/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003). After investigation, police submitted charge sheet No. 228 dated 31.12.2018 under sections 302/201/34 of the Penal Code against the accused opposite party No. 1 and others. At the time of the framing charge, the accused opposite party No. 1 Md. Abdullah Hannan Ujjal filed an application under section 265(C) of the Code of Criminal Procedure for discharging him from the aforesaid case which was allowed vide its order dated 25.01.2021. 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 and obtained the instant Rule and stay.

Mr. Rafiqul Islam Sohel, the learned Advocate for the informant petitioner submits that as per the charge sheet, there is a specific allegation against the accused petitioner but the trial Court below without considering the materials on record discharged the accused petitioner from the instant case which is illegal and not sustainable in law.

Mr. K.M. Masud Rummy, the learned Deputy Attorney General appearing on behalf of the state-opposite party No. 2 concedes with the submissions of the learned Advocate for the informant petitioner.

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

On perusal of the FIR, charge sheet along with other materials on record it transpires that the accused opposite party No. 1 is not an FIR named accused. However, his name has been mentioned in the supplementary FIR wherein it has been observed that “আসামী আল আমিন ও উজ্জলদের স্বীকারোক্তি এবং দেখানো মতে কেশরগঞ্জ বাজারে আসামী উজ্জলদের গুদাম ঘরের মেঝের গর্ত হইতে আমার ছেলের অর্ধ গলিত মৃত লাশ জেলা গোয়েন্দা পুলিশ, ময়মনসিংহ উদ্ধার করে।”

We have further noticed that in the instant case, the accused opposite party No. 1 Ujjal did not make any confessional statement under section 164 of the Code of Criminal Procedure. We have also observed that in the instant case, two co-accused namely Md. Tushar and Al-Amin made a confessional statement under section 164 of the Code of Criminal Procedure wherein they implicated themselves for committing the offence and elaborately discussed how the deceased victim died and by whom but did not disclose the name of the accused opposite party No. 1 Ujjal.

After investigation, police submitted the charge sheet as against the accused Raihan Tushar and Md. Al-Amin alias Shawon under sections 302/201/34 of the Penal Code and against the accused opposite party No. 1 Md. Abdullah

Hannan Ujjal under section 201 of the Penal Code. We have examined all 15 (fifteen) witnesses' statements as recorded under section 161 of the Code of Criminal Procedure wherein none of the witnesses mentioned the name of the accused opposite party No. 1. On perusal of all materials on record, the learned Sessions Judge rightly passed the impugned order dated 25.01.2021 and thereby discharged the accused opposite party No. 1 from the instant case which does not call for any interference by this Court.

Under the given facts and circumstances of the case and the reasons as stated above, 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 this judgment and order at once.

Md. Bashir Ullah, J:

I agree