

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. 39036 OF 2018

Md. Amjad Ali.....Accused petitioner

-Versus-

The State.....Opposite party

None appears.....For the accused petitioner

Ms. Salina Akter Chowdhury, 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 10th of August, 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, 1898 calling upon the opposite parties to show cause as to why the judgment and order dated 29.11.2017 passed by the learned Metropolitan Sessions Judge, Chattogram in Criminal Revision No. 294 of 2017 rejecting the same and thereby affirming the order dated 21.03.2017 passed by the learned Chief Metropolitan Magistrate, Chattogram in C.R. Case No. 1808 of 2012 framing of charge against the accused petitioner under

sections 420 /467 /468/ 469/ 471/ 109 of the Penal Code now pending in the Court of learned Chief Metropolitan Magistrate, Chattogram 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, the Court was pleased to stay all further proceedings of the aforesaid C.R. Case No. 1808 of 2012 for 6 (six) 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 opposite party No. 2 as complainant filed a C.R. Case No. 1808 of 2012 against the accused petitioner and others under sections 420 /467 /468 /469 /471 /109 of the Penal Code alleging inter alia that the scheduled property is a waqf estate created by his grandfather late Kudrat Ali vide a registered deed No. 3028 dated 26.11.1942. The accused petitioners were also heirs of said Kudrat Ali. The accused petitioner claimed that he has been appointed as Motuwalli by the waqf administrator. After that, the complainant's opposite party filed an application before the waqf administrator for cancellation of the appointment of said Motuwalli under section 32 of the Waqf Act. During the hearing of the said application, the accused petitioner submitted a waqf deed which is claimed to be as forged

deed. Hence, the aforesaid case was filed against the accused petitioner under sections 420 /467 /468 /469/ 471/ 109 of the Penal Code. Thereafter, the accused petitioner duly appeared before the Court below and obtained bail. Subsequently, the charge was framed against the accused petitioner vide its order dated 21.03.2017. As against the said order, the accused petitioner preferred a Criminal Revision No. 294 of 2017 which was rejected vide its judgment and order dated 29.11.2017 and thereby affirming the order of framing charge passed by the trial Court. Being aggrieved, the accused petitioner has preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing the impugned judgment and order dated 29.11.2017 passed in Criminal Revision No. 294 of 2017 and obtained the instant Rule and stay.

No one appears for the accused petitioner to support the Rule. However, the accused petitioner has stated in his application that earlier the complainant opposite party No. 2 as plaintiff filed a suit for declaration of title being Title Suit No. 132 of 2012 regarding the waqf estate in question which is still pending in the Court of Joint District Judge, 2nd Court, Chattogram and as such the instant proceeding is barred by law under section 195(1)(C) of the Code of Criminal Procedure.

Ms. Salina Akter Chowdhury, the learned Advocate for the opposite party No. 2 submits that in the petition of complaint, there is a specific allegation against the accused petitioner, and as such the petitioner has no ground to invoke the provision of section 561A of the Code of Criminal Procedure for quashing the impugned proceeding and as such the instant Rule is liable to be discharged.

Heard the submissions of the learned Advocate for the opposite party No. 2 and perused the materials on record thoroughly.

The only issue for determination of this Rule is to see whether the impugned proceeding of C.R. Case No. 1808 of 2012 under sections 420/467/468/469/471/109 against the accused petitioner is liable to be quashed.

On perusal of the petition of complaint, it transpires that admittedly the scheduled property is the waqf estate created by his grandfather, late Kudrat Ali vide registered deed No. 3028 dated 26.11.1942. The accused petitioner claimed that he has been appointed as Motuwalli of said waqf estate by the waqf administrator which has been challenged by the complainant's opposite party before the waqf administrator. At the time of the hearing, the accused petitioner filed a certified copy of the waqf deed No. 3028 dated 26.11.1942 which is claimed to be as forged deed, and hence the aforesaid C.R. case was filed against the accused

petitioner under sections 420 /467 /468/ 469/ 471/ 109 of the Penal Code.

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.

In the instant case, we have noticed that the alleged forgery document (the certified copy of the waqf deed No. 3028 dated 26.11.1942) was produced before the Waqf Administrator. We have to keep in mind that the administrator of waqf acts as a civil Court regarding the removal of motuwalli.

Our this view gets support from the decision in the case of Showkat Ali Vs. Administrator of Waqf as reported in 29 DLR (SC), 276.

In view of the above provision of law and the decision of the apex Court, we are of the view that since the alleged forged document has been filed before the Waqf Administrator which is deemed to be a civil Court, it is for the concerned Waqf Administrator to lodge any complaint before the criminal Court if it finds the forgery relating to the said document. Since the impugned proceeding of C.R. Case No. 1808 of 2012 under sections 420/467/468/469/471/109 has been initiated on the 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 impugned proceeding now pending in the Court of Chief Metropolitan Magistrate, Chattogram as C.R. Case

No. 1808 of 2012 under sections 420/467/468/469/471/109 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.

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

As a result, the Rule is made absolute.

The proceeding of C.R. Case No. 1808 of 2012 under sections 420/467/468/469/471/109 of the Penal Code now pending in the Court of Chief Metropolitan Magistrate, Chattogram is hereby quashed.

Let a copy of this judgment to send down to the concerned Court below at once.

Khandaker Diliruzzaman, J:

I agree