

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. 4659 OF 2000

Md. Abdul Wahid.....Accused petitioner

-Versus-

The State.....Opposite party

None appears.....For the accused petitioner

Mr. Imran Ahmed Bhuiyan, DAG with

Mr. Mehadi Hasan (Milon), AAG and

Ms. Aleya Khandker, AAG

.....For the state

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 party to show cause as to why the proceedings of special Case No. 07 of 1999, arising out of Chittagong Bander P.S. Case No. 32 dated 31.05.1989 under sections 419 /420 /406 /467/ 468/ 471/ 109 of the Penal Code read with section 23 of the Foreign Exchange Regulation Act, 1947 now pending in the Court of learned Additional Mohanagar Sessions Judge, Chittagong 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 all further proceedings of the aforesaid Special Case No. 07 of 1999.

For disposal of the Rule, the relevant facts may briefly be stated as follows:

That one Md. Tofazzal Hossain, Inspector, District Anti-Corruption Officer as an informant lodged an FIR with the local police station alleging inter alia that the accused petitioner was a owner of M/S. Surma Enterprise, who opened an LC with a false intend in the IFIC bank, Moulvibazar for import of some smoke requisite. Subsequently, it was discovered that the petitioner imported cement instead of smoke requisite and thereby misappropriated the foreign exchange worth of **Tk. 5,77,500/-** (Taka Five lac, Seventy-seven thousand and Five hundred) and thereby committed an offence under sections 419/420/406/467/468/471/109 of the Penal Code read with section 23 of the Foreign Exchange Regulation Act, 1947. Hence, the aforesaid case was filed against the accused petitioner. Thereafter, the accused petitioner duly appeared before the Court below and obtained bail. Later on at the time of the framing charge, the accused petitioner filed an application under section 241A of the Code of Criminal Procedure for discharging the accused petitioner from the aforesaid case which was rejected and thereby framing a

charge against the accused petitioner vide its order dated 02.07.2000. Being aggrieved, the accused petitioner preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing the impugned proceeding 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 in the instant case, no prima facie case has been disclosed in the FIR against the accused petitioner, and as such the impugned proceeding is liable to be quashed.

Mr. Imran Ahmed Bhuiyan, the learned Deputy Attorney General for the opposite party submits that the contention as raised by the accused petitioner in his application is absolutely a matter of fact which needs to be decided at the time of trial and as such the instant Rule is liable to be discharged.

Heard the submissions of the learned Advocate for the opposite party and perused the materials on record thoroughly.

In the instant case, the accused petitioner has challenged the impugned proceeding on the ground that no criminal offence has been disclosed in the FIR of the instant case. On perusal of the FIR, it transpires that there is a prima facie case against the accused petitioner. Moreover, the

contention as raised by the accused petitioner in his application is a matter of fact which cannot be decided at this stage under the jurisdiction of section 561A of the Code of Criminal Procedure.

Having regard to the facts and circumstances of the case and the reasons as stated above, we do not find any substances of the Rule.

As a result, the Rule is discharged.

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

The trial Court is hereby directed to proceed with the case expeditiously in accordance with law.

Communicate this judgment and order at once.

Khandaker Diliruzzaman, J:

I agree