

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. 8427 OF 2004

Hashibul Hassan alias Lavloo.....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 parties to show cause as to why the proceedings of Special Case No. 68 of 2004, arising out of Kotwali Police Station Case No. 37 dated 25.07.2003, corresponding to G.R. Case No. 272 of 2003 under sections 409/420 of the Penal Code read with section 5(2) of the Anti Corruption Act, 1947 now pending in the Court of learned Special Judge, Faridpur 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 Special case for 3 (three) months from date which was subsequently extended till to disposal of the Rule.

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

That one Sheikh Md. Fauabilla, District Anti Corruption Officer, Faridpur lodged an FIR with the local police stations alleging inter alia that the accused petitioner as a Chairman of Faridpur Pourashava received total amount of **Tk. 1,00,84,431/-** through several cheques from the T & T Board as compensation for cutting roads at Faridpur District for laying the underground cables to set up the digital exchange project of T & T Board. Regarding the aforesaid money, the accounts are to be dealt with jointly, by the Chairman of Faridpur Pourashava and the Nirabahi Officer of Faridpur Upazilla. However, the accused petitioner as Chairman of Faridpur Pourashava, opened an account No. S.T.D-70 dated 22.01.2001 under his own signature alone in Rupali Bank, Faridur Branch and deposited all the cheques amounting to **Tk. 1,00,84,431/-** and subsequently the said account was closed on 28.01.2003 by withdrawing the entire amount along with interest amounting to **Tk. 1,17,007/-** without having any entry into the cash book of the Pourashava. Subsequently, the accused

petitioner opened another S.T.D Account No. 75 dated 14.09.2002 with joint signature and deposited the amount of Tk. 40,00,000/- and misappropriated the amount of Tk. 61,94,737/- from the aforesaid fund, as provided by the T & T board. Hence, the aforesaid case was filed against the accused petitioner. Thereafter, the accused petitioner duly appeared before the Court below and obtained bail. After investigation, the Anti-Corruption Commission submitted charge sheet No. 39 dated 15.02.2004 against the accused petitioner under sections 409/420 read with section 5(2) of the Anti-Corruption Act. Thereafter, the aforesaid case was transferred to the Senior Special Judge, Faridpur for trial which was registered as Special Case No. 68 of 2004. Being aggrieved, the accused petitioner preferred this application before this Court under section 561A of the Code of Criminal Procedure for quashing the aforesaid impugned proceeding and obtained the instant Rule and stay.

None appears for the accused petitioner to support the Rule. However, the accused petitioner has stated in his application that as per resolution dated 03.04.2001 adopted by the Faridpur Pourashava, the accused petitioner as a Chairman of the said Pourashava is empowered to open an account himself alone regarding the money as provided by T & T Board. Accordingly, the accused petitioner opened STD Account No. 57 in the Janata Bank, Faridpur Branch, and

deposited the alleged amount of **Tk. 60,84,508/-** and till today the said money is available in the aforesaid account as evident from **Annexure-‘C’** series to the instant application and as such the instant proceeding is liable to be quashed.

As against this, Mr. Imran Ahmed Bhuiyan, the learned Deputy Attorney General for the state submits that as per FIR and charge sheet there is a specific allegation against the accused petitioner and hence the accused petitioner has no ground to invoke the provision 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 Advocate for the state and perused the materials on record thoroughly.

On perusal of the petitioner’s application, it transpires that the contention as raised by the accused petitioner in his application as ground Nos. 1 to V are absolutely a matter of fact which cannot be decided at this stage under the jurisdiction of section 561A of the Code of Criminal Procedure.

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.

The trial Court below 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