

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION**

**Present
Mr. Justice Md. Salim
And
Mr. Justice Shahed Nuruddin**

CRIMINAL REVISION CASE NO.1339 OF 2010

Momtaj Ala Zakir Ahmed
.....Accused-Petitioner.
-VERSUS-
The State and A.C.C.
.....Opposite Parties.

Mr. Md. Aminul Islam, Advocates
..... For the accused petitioner.
Mr. Shaheen Ahmed, Advocate
..... For the opposite party No.1.

Mr. B.M. Abdur Rafell, DAG with
Mr. Binoy Kumar Ghosh, A.A.G.
Mr. A.T.M. Aminur Rahman (Milon), A.A.G.
Ms. Lily Rani Saha, A.A.G.
.....For the State.

**Heard on 08.01.2024, 10.01.2024 and 17.01.2024
Judgment on 25.01.2024.**

MD. SALIM, J:

By this Rule, the opposite parties were asked to show cause as to why the order dated 24.05.2010 passed by the learned Special Judge, Special Judge Court No.5, Dhaka in Special Case No.08 of 2010 rejecting an application filed by the accused petitioner under Section 241A of the Code of Criminal Procedure and thereby framing charge against the accused petitioner under

Section 409 / 477A and 201 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act-1947, now pending before the Special Judge, 5th Court, Dhaka should not be quashed.

Facts, in a nutshell, for disposal of the Rule, are that the accused petitioner was in charge of both the divisional accountant and cashier during the period from 1998 to July 1999, and in the said period several tender schedules of the Civil Department of Roads and Highways were sold. The accused petitioner being a cashier misappropriated the sale proceeds of Tk.15,31,345/- including TK. 145,550/- by not depositing the money to the government treasury and also by causing the disappearance of the money receipt book nos. 20165, 19818, 320176, 20186, and 20188 in relation to misappropriation of TK. 13,82,955/.

The case was investigated by the Anti-Corruption Commission. After investigation submitted the charge sheet on 26.10.2009 against the petitioner under Section 409 / 477A and 201 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act-1947.

Subsequently, on 28.05.2010 the charge was framed by the learned Special Judge, Court No.5, Dhaka while rejecting the application under Section 241A of the Code of Criminal Procedure.

The petitioner after obtaining bail filed this instant Miscellaneous Case under Section 561A of the Code of Criminal Procedure and obtained the present Rule and order of stay.

Mr. Md. Aminul Islam the learned counsel appearing on behalf of the accused petitioner submits that the allegation brought against the accused petitioner is unspecified, vague, and inferential which does not warrant to framing charge is unlawful. He then submits that section 21 of the penal code is not a scheduled offense but the charge has been framed under scheduled and non-scheduled offenses together which is not at all permitted by the law and as such the impugned order of framing of charge is liable to be quashed.

Mr. Shaheen Ahmed, the learned advocate appearing on behalf of the ACC opposes the contention so made by the learned counsel for the petitioner and submits that it

is stated in section 5(7) of the Criminal Law Amendment Act, 1958 that when trying an offense under this Act, a Special Judge may also charge with the offense under this act, a Special Judge may also charge with and try other offenses not so triable of the code of Criminal Procedure, 1898 relating to the joinder of charges, be charge at the same time.

Mr. B.M. Abdur Rafell learned Deputy Attorney General appearing for the State opposes the contention so made by the counsel for the petitioner and adopts the submission of Mr. Ahmed.

We have heard the learned Counsel appearing for the petitioner, the learned Deputy Attorney General for the State as well as the learned Counsel for the Anti-Corruption Commission. We have also perused and carefully considered the Miscellaneous application filed by the petitioner and other connected materials available on record.

From the plain reading of the First Information Report as well as the charge sheet, it appears to us that the First Information Report and the charge sheet clearly

disclose the initial intention of the accused petitioner to deceive the money of the government fund as the Informant categorically narrated the manner of crime committed by the accused petitioner. In that way, the accused petitioner dishonestly misappropriated the whole amount of Tk. 13,82,955/- from the government fund. So the subsequent conduct of the accused petitioner also disclosed that for personal gain, he had the intention to criminal breach of trust, defraud, and misappropriate the government fund.

Now in order to appreciate the submission advanced at the bar let us examine the relevant law in the context of the facts of the present case.

Sub-section 7 of Section 5 of the Criminal Law Amendment Act, 1957 provides that-

“When trying an offense under this act a Special Judge may also charge with and try other offenses not so triable with which the accused may, under the provisions of the Code of Criminal Procedure, 1898, relating to the joinder of charges, be charged at the same trial”.

It manifests that when distinct offences were committed in the course of one and same transaction with the same aim the Special Judge when trying an offence may also try other offences not so triable jointly at one trial. This view gets support from the case of Kazi Mozaharul Huq and others Vs state reported in 33 DLR (HCD) 262 held that --

An offense punishable under section 5(2) of the Prevention of Corruption Act and under section 420 of the penal code no doubt are distinct but as the distinct offenses were committed in the course of one and the same transaction with the same aim in view by the accused-appellants they have rightly charged with and tried together by the learned Special Judge.

Further, Section 6(1B) of the Criminal Law Amendment Act, 1958 provides that-

“A person accused of more offenses than one punishable under this Act may be tried in one trial for all such offenses”.

It manifests that Section 6(1B) of the Criminal Law Amendment Act, 1958 excluded the application of Section

234 of the Code of Criminal Procedure. Therefore, as per the provision so enumerated in section 235 of the Criminal Procedure Code, a joint trial can be held for a series of acts forming the same transaction.

Considering the above facts and circumstances we are of the view that the offenses punishable under Section 5(2) of the Prevention of Corruption Act and Section 201 of the penal code no doubt are distinct but as the distinct offenses were committed in the course of the same transaction with the same aim in view by the accused petitioner the charge has rightly been framed by the learned Special Judge.

In view of the above, facts and circumstances, we do not find any substances in the Rule.

Resultantly, the Rule is discharged.

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

Send down the lower court record and communicate the judgment at once.

SHAHED NURUDDIN,J

I agree