

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISIDICICTION)

Present:

Mr. Justice S M Kuddus Zaman

And

Mr. Justice A.K.M. Rabiul Hassan

Criminal Miscellaneous Case No. 24546 of 2022

Md. Mahbubul Islam and others

.... Accused-Petitioners

-Versus-

The State and another

.... Opposite Parties

Mr. Md. Qumrul Islam, Senior Advocate with

Md. Syed Mohamad Javed Parvez, Advocate

.... For the petitioners.

Mr. Sujit Chatterjee, D.A.G. with

Mr. Moududa Begum, A.A.G.

Mr. Mirza Md. Soyeb Muhit, A.A.G.

Mr. Mohammad Selim, A.A.G.

Mr. Zahid Ahmed (Hero), A.A.G.

.... For the State.

Mr. Md. Munsurul Hoque Chowdhury, Senior
Advocate with

Mr. Motaher Hossain Sazu, Advocate

.... For the opposite party No.2.

Heard on 23.05.2024.

Judgment on 05.06.2024.

S M Kuddus Zaman, J:

On an application under section 561A of the Code of
Criminal Procedure this Rule was issued calling upon the

opposite parties to show cause as to why the proceedings of C.R. Case No.691/2021 (Motijheel) under Sections 4-06/420/109 of the Penal Code, now pending in the Court of learned Chief Metropolitan Magistrate, Dhaka should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that opposite party No.2 as complainant lodged a complaint alleging that the impugned property belonged to her maternal grandfather which subsequently devolved upon her mother and six maternal uncle including the petitioners. In her share her mother Mahfuza Khatun acquired two flats being No.13-C and 9-B exclusively and jointly with the accused persons acquired another six flats which were rented out. The accused persons on behalf of the mother of the complainant used to collect rental of above six flats since 2013 and used to pay $\frac{1}{7}$ share of the above rental to the mother of the complainant. But in November 2018 accused persons stopped paying above rental share of above joint flats and finally denied the ownership of the

mother of the complainant. The accused persons jointly owed Taka 7,51,285/- complainant for above unpaid rent.

The learned Metropolitan Magistrate examined the complainant under Section 200 of the Code of Criminal Procedure and sent the complaint for inquiry by PBI who on conclusion of inquiry submitted a report finding truth in the above allegation.

On the basis of above report the learned Metropolitan Magistrate took cognizance and issued warrant of arrest against them. The petitioners entered appearance before the learned Metropolitan Magistrate, obtained bail and then moved to this Court with this petition under Section 561A of the Code of Criminal Procedure for quashment of above proceedings.

Mr. Md. Qamrul Islam, learned Advocate for the petitioners submits that the complainant opposite party No.2 is the daughter of the petitioner and the disputed six flats are joint property of the petitioners and the complainant. It has been stated in the complaint that since 2013 the petitioners were collecting the rent of above joint flats and paying $\frac{1}{7}$ portion of above rental to the mother of the complainant. There is a Civil Suit being No.335 of

2021 pending in the Court of 5th Court of Joint District Judge, Dhaka in respect of above joint property. The dispute between the parties are purely civil in nature and there was no element of deception on the part of the accused petitioners but the learned Metropolitan Magistrate failed to appreciate above materials on record properly and most illegally took cognizance against the petitioners and initiated this proceedings under Sections 420/406 of the Penal Code which is abuse of the process of the Court and liable to be quashed.

Mr. Md. Munsurul Hoque Chowdhury, learned Advocate for the complainant opposite party No.2 submits that the petitioners who are the co-owners of above joint flats were entrusted by the mother of the complainant to collect rentals of above six joint flats and pay $\frac{1}{7}$ part of above rental to the mother of the petitioners. But they have denied the ownership of the mother of the petitioners in 2018, stopped payment of the rent and misappropriated above rents amounting to Taka 7,51,285/-. The petitioners did not deny that they stopped payment of the share of rental of above joint flats to the complainant. As such

there are initial elements of deception as well as criminal breach of trust against all the petitioners.

On correct appreciation of the materials on record the learned Metropolitan Magistrate has rightly initiated above proceedings which calls for no interference.

The learned Advocate further submits that the learned Metropolitan Magistrate sent the complaint for inquiry by the Police Bureau of Investigation (PBI) who on conclusion of inquiry found truth in above allegations. As far as the pendency of civil suit is concerned that is a tool used by the petitioners to deprive the complainant from her legitimate share in the rental of the joint flats and above suit was filed after lodging of this complaint.

We have considered the submission of the learned Advocates for the respective parties and carefully examined all materials on record.

In the complaint the complainant opposite party has admitted that six disputed flats was a joint property of the predecessor and mother of the complainant namely Mahfuza Khatun and her six brothers the five petitioners and accused Amirul Islam. Above Mahfuza Khatun has transferred her share

in above joint flats in favour of the complainant and her sister by a registered deed of gift dated 26.12.2018.

It has been stated at Paragraph Nos.7 and 8 of the complaint that the petitioner and accused Aminul used to receive the rental of above joint six flats since 2013 and used to pay $\frac{1}{7}$ share of above rental to the mother of the complainant. There is no claim that the mother of the complainant entrusted her brothers accused petitioner for collection of above rent on her behalf. During the period from 2013 to October 2018 the accused petitioners regularly paid the share of above joint rental to the mother of the complainant. Since admittedly the accused petitioners continuously paid the share of rental of above joint flats to the complainant's mother for long five years we are unable to find any element of initial deception on the part of the petitioners.

Undisputedly above six flats are joint properties of the complainant and the accused petitioners which mean that they all are equal owners and lawful possessors of above flats. Any dispute between the co-owners or co-sharers with regard to possession, ownership or rental of undivided or joint property is

civil in nature which can be lawfully settled by presenting an appropriate plaint in a competent civil court.

In above view of the materials on record we are unable to find any element of deception or misappropriation punishable under Sections 420 and 406 of the Penal Code, 1860. As such the instant proceedings appears to be a still born and preposterous one.

But it turns out from the record that the petitioners namely Md. Saiful Islam, Md. Khairul Islam and the remaining Md. Nazrul Islam voluntary surrendered on 27.12.2021 and the remaining petitioners namely Md. Mahbubul Islam, Md. Khademul Islam and Md. Karimul Islam voluntary surrendered 28.12.2021 in the Court of the Metropolitan Magistrate and submitted two separate petition for bail. In support of above petitions for bail the petitioners executed two separate Angikarnamas before the learned Metropolitan Magistrate stating that the complainant owes the rental money she has claimed in the complaint and the petitioners would make payment of the same after getting bail. The learned Metropolitan Magistrate granted bail to the petitioners solely on consideration of above

two Angikarnamas holding that the petitioners have agreed to make payment of the outstanding rental of the disputed property after getting bail. But no visible endeavor was made by the petitioners to pay above outstanding rents to the complaint pursuant to the above written assurance made to a Court of law. Instead after getting bail the petitioners have moved to this Court with this application under Section 561A of the Code of Criminal Procedure for quashment of above proceedings. Above proceeding would have surely come to an end had the petitioners honored their written promise made to the Court below. The petitioners have shown deliberate disregard to a Court of law and they did not come before us in clean hand.

In above view of the materials on record we hold that the quashment of above proceedings shall establish an unethical precedent and inspire others to disregard the assurances made in writing a Court of voluntarily and after getting a remedy on the basis of above assurance move to the higher Court for another relief disowning above assurance.

In above view of the facts and circumstances of the case and materials on record we are of the view that ends of justice will be

better ensured if we discharge this Rule due to above unfair conduct of the petitioners.

In the result, the Rule is hereby discharged.

Let the order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

Communicate this judgment and order to the Court concerned at once.

A.K.M. Rabiul Hassan, J:

I agree.

*MD. MASUDUR RAHMAN
BENCH OFFICER*

