

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

Present

Mr. Justice Ashish Ranjan Das

And

Mr. Justice Md. Riaz Uddin Khan

Criminal Miscellaneous Case No. 46614 of 2022

IN THE MATTER OF :

An Application under Section 561A of the Code of
Criminal Procedure

-And-

IN THE MATTER OF :

Farid Khan

...Complainant-Petitioner

Versus

The State and others

...Opposite Parties

Mr. Taposh Kumar Dutta, Advocate

...For the Petitioner

Mr. S.M. Asraful Hoque, D.A.G with

Ms. Fatema Rashid, A.A.G

Mr. Md. Shafiquzzaman, A.A.G. and

Mr. Md. Akber Hossain, A.A.G

...For the State

Heard on 05.02.2024 and Judgment on 13.02.2024

Md. Riaz Uddin Khan, J:

Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 16.03.2022 passed by the Sessions Judge, Narayanganj in Criminal Revision No. 136 of 2021 allowing the Revision and thereby discharging the accused-opposite party No.02 by setting aside the order dated 15.03.2021 passed by the Chief

Judicial Magistrate, Narayanganj in C.R. Case No. 1063 of 2018 (T.R. No. 46 of 2019) under sections 406/467/468 of the Penal Code, 1860 framing charge against the accused-opposite party No.02 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and appropriate.

Succinct facts for disposal of this Rule are that the present petitioner as the complainant filed C.R. Case No. 1063 of 2018 before the Court of Chief Judicial Magistrate, Narayanganj, under sections 406/467/468 of the Penal Code against the accused-opposite party No. 2 contending inter alia that the complainant and the witness No. 2 Mizanur Rahman are siblings and members of a joint family. The accused-opposite party No. 2 became owner and possessor of a quantum of the land measuring $09\frac{1}{6}$ decimals by way of purchase and mutated the same in his name. Then on 24.08.1993 the accused took loan from Uttara Bank Limited, Nitaiganj Branch, by mortgaging the said land. As the accused failed to repay the loan amount, the bank filed Artha Rin Suit No. 06 of 2001 and obtained decree on 23.03.2003. Thereafter the bank filed Artha Jari Case No. 48 of 2002 wherein the Artha Rin Adalat issued title certificate of the said land in favour of the bank and subsequently on 23.07.2007 the registration thereof was completed.

Suppressing the said facts, the accused in a fraudulent manner proposed to the complainant and his brother Mizanur Rahman to sell a quantum of land measuring 0470 ajutangsha along with 5 semi-pucca rooms against the consideration money amounting Tk. 30 lac and on 07.01.2009 the accused received Tk. 30 lac from the complainant and his brother namely Mizanur Rahman and thereby executed and registered saf-kabla deed No. 213/09 dated 07.01.2009 in favour of said Mizanur Rahman and handed over the possession thereof. Thereafter Mizanur Rahman got mutation of the said land vide mutation case No. 8429/2008-2009 dated 01.11.2009 and has been paying the rents thereof regularly. At one stage Uttara Bank Limited filed an application before the Assistant Commissioner (Land), Fatullah to cancel the said mutation and in this regard Mizanur Rahman, the sibling of the complainant, received a notice. Then the complainant on 18.09.2018 collected a copy of the said application for cancellation of the mutation and could learn about the details of the fraud, forgery and criminal breach of trust committed by the accused and hence the case.

The cognizance Court on 19.11.2018 on receiving the complaint examined the complainant-petitioner under section 200 of the Code of Criminal Procedure and took cognizance of the offence under sections 406/467/468 of the Penal Code. Subsequently the case was transferred to the

Chief Judicial Magistrate, Narayanganj and was also registered as T.R. No. 46 of 2019.

On 28.11.2019 the accused-opposite party No. 2 filed a discharge application under section 241A of the Code of Criminal Procedure and upon hearing both the parties the Chief Judicial Magistrate, Narayanganj vide order dated 28.11.2019 discharged the accused-opposite party No. 2. Challenging the said order of discharge the complainant filed criminal revision being No. 17 of 2020 before the Sessions Judge, Narayanganj who upon hearing both the parties vide his judgment and order dated 01.11.2020 set aside the order of discharge passed by the Chief Judicial Magistrate, Narayanganj and allowed the revision on the finding that the complainant had prima facie case against the accused as was transpired from the complaint petition and directed the Chief Judicial Magistrate, Narayanganj to rehear the parties on the point of framing charge and application for discharge.

Thereafter the Chief Judicial Magistrate, Narayanganj again took up the case for hearing on framing of charge and on hearing vide his order dated 15.03.2021 rejected the discharge application and thereby framed charge against the accused-opposite party No. 2 under sections 406/467/468 of the Penal Code.

Challenging the said order dated 15.03.2021 the accused-opposite party No. 2 filed Criminal

Revision No. 136 of 2021 which was admitted by the Sessions Judge, Narayanganj. Subsequently upon hearing, the Sessions Judge, Narayanganj allowed the revision and thereby discharged the accused-opposite party No. 2 vide his judgment and order dated 16.03.2022 on the finding that as no transaction was held between the complainant and the accused so the complainant has no right to file the instant case having no ingredients of section 406/467/468 of the Penal Code.

Being aggrieved by and dissatisfied with the said judgment and order dated 16.03.2022 the complainant moved this Court and obtained Rule in the instant application under section 561A of the Code of Criminal Procedure.

Mr. Taposh Kumar Dutta, the learned Advocate appearing for the complainant-petitioner submits that the learned Sessions Judge earlier in Criminal Revision No. 17 of 2020 opined that “এমতাবস্থায় রিভিশনকারী-বাদীর নালিশী দরখাস্ত মোতাবেক প্রতিপক্ষ আসামীর বিরুদ্ধে প্রাইমাফেসি কেইস বিদ্যমান রয়েছে মর্মে প্রতীয়মান হয়। ফলে বিজ্ঞ নিম্ন আদালতের তর্কিত আদেশ আইন সঙ্গত নয় এবং উক্ত আদেশে হস্তক্ষেপ করার যথেষ্ট যৌক্তিক কারণ বিদ্যমান রয়েছে মর্মে সিদ্ধান্ত গৃহীত হয়।” while by his impugned judgment and order holding a complete opposite view of the finding that “বিজ্ঞ নিম্ন আদালত রিভিশনকারী-আসামীর বিরুদ্ধে দভবিধির ৪০৬/৪৬৭/৪৬৮ ধারায় অভিযোগ গঠন করার মতো পর্যাপ্ত উপাদান না থাকা সত্ত্বেও অভিযোগ গঠন করেন যাহা আইনতঃ ও ন্যায়তঃ গ্রহণযোগ্য নয় বিধায় বিজ্ঞ নিম্ন আদালতের তর্কিত আদেশে হস্তক্ষেপ করার যথেষ্ট যুক্তিযুক্ত কারণ রয়েছে মর্মে প্রতীয়মান হয়।” which is self-contradictory creating a great anomaly in the administration of justice. He then submits that

the learned Sessions Judge, failed to appreciate the contention agitated by the accused opposite party No.2 in his discharged application are defence plea which can only be settled by the trial court after taking evidence. He next submits that the learned Sessions Judge failed to appreciate that the brother of the complainant in whose name the accused opposite party No. 2 fraudulently executed and registered the deed in question is included as the prosecution witness No. 2 in the complaint petition hence the impugned judgment and order is liable to be set-aside.

Mr. Dutta finally submits that the learned Sessions Judge failed to appreciate that in the petition of complain paragraph No. 6 the petitioner alleged that the opposite party No. 2 misappropriated the money of both the complainant and his brother Mizanur Rahman, witness No. 2 and as such the petitioner being affected/aggrieved has every right to file the complaint petition.

No one appears for the accused-opposite party No.2. However, the learned Deputy Attorney General appearing for the state supported the contention of the learned Advocate for the complainant-petitioner.

We have heard the learned Advocate for the parties, perused the application along with the annexures and the other materials on record available before us.

It is a general rule of criminal law that anybody having knowledge of any criminal offence can file or lodge criminal case before the Court or the Police Station, as the case may be, even though (s)he is not personally injured or affected by the offence unless there is any bar specifically mentioned in any law. Such as, only payee or holder in due course of a cheque can file case under section 138 of the Negotiable Instruments Act, 1881. Under section 190 of the Code of Criminal Procedure a competent Magistrate may take cognizance of any offence, among other, upon receiving a complaint of facts which constitute such offence. The section does not provide for any qualification or limitation of a person making the complaint of facts but in the subsequent sections, namely, sections 195 to 199B limitation has been prescribed for the complainant in respect of certain kinds of offences mentioned therein. In those sections there is bar on taking cognizance of some offences. The complaint in the present case not being restrained by any of the aforesaid sections could be filed by anybody—either by Farid Khan, the complainant or his brother Mizanur Rahman. Our this view got support from the decision of Tamizul Haque Vs. Anisul Haque reported in 1996 BLD (AD) 206 wherein their lordships observed:

It is an elementary principle of criminal law that any person having

knowledge of any criminal offence may set the law in motion by making a complaint even though he is not personally injured or affected by the offence. This is, however, subject to certain limitation that is or may be provided by or under any law. Under section 190 Cr.P.C. a competent Magistrate may take cognizance of any offence, among other, upon receiving a complaint of facts which constitute such offence. The section does not provide for any qualification or limitation of a person making the complaint of facts but in the subsequent sections, namely, sections 195, 196, 196A, 198 and 199 limitation has been prescribed for the complainant in respect of certain kinds of offences mentioned therein.

In the present case, it appears from the petition of complaint that the complainant-petitioner alleged that the accused-opposite party No. 2 misappropriated money by practicing fraud upon both of the complainant and his brother though a registered deed has been executed and registered in the name of the brother of the complainant-petitioner. So, as per petition of complaint the complainant himself is directly aggrieved by the conduct of the accused. We have carefully examined sections 195 to 199B of the

Code of Criminal Procedure and the restriction/bar imposed in those sections are not applicable in the present case. Even if the complainant is not directly affected by the conduct of the accused but his brother is, then also there is no bar to file the complaint petition by the complainant.

It appears from record that earlier the same Sessions Judge by his judgment and order dated 01.11.2020 in Criminal Revision No. 17 of 2020 arising out of the present complaint case opined that “এমতাবস্থায় রিভিশনকারী-বাদীর নালিশী দরখাস্ত মোতাবেক প্রতিপক্ষ আসামীর বিরুদ্ধে প্রাইমাফেসি কেইস বিদ্যমান রয়েছে মর্মে প্রতীয়মান হয়। ফলে বিজ্ঞ নিম্ন আদালতের তর্কিত আদেশ আইন সঙ্গত নয় এবং উক্ত আদেশে হস্তক্ষেপ করার যথেষ্ট যৌক্তিক কারণ বিদ্যমান রয়েছে মর্মে সিদ্ধান্ত গৃহীত হয়।” but by his impugned judgment and order holding a complete opposite view on the finding that “বিজ্ঞ নিম্ন আদালত রিভিশনকারী-আসামীর বিরুদ্ধে দণ্ডবিধির ৪০৬/৪৬৭/৪৬৮ ধারায় অভিযোগ গঠন করার মতো পর্যাপ্ত উপাদান না থাকা সত্ত্বেও অভিযোগ গঠন করেন যাহা আইনতঃ ও ন্যায়তঃ গ্রহণযোগ্য নয় বিধায় বিজ্ঞ নিম্ন আদালতের তর্কিত আদেশে হস্তক্ষেপ করার যথেষ্ট যুক্তিযুক্ত কারণ রয়েছে মর্মে প্রতীয়মান হয়।” which is not only self-contradictory but also creates confusion in the mind of the trial court. The learned Sessions Judge did not even give any reason why there is no ingredients of offence under sections 406/467/468 of the Penal Code. He only opined that since the transaction was not held between the complainant and the accused there is no ingredients of the offence, which we have already held wrong proposition of law. There is prima facie case against the accused opposite party to be tried.

In such view of the matter, we find substance in this Rule.

Resultantly the Rule is made **absolute**.

The judgment and order dated 16.03.2022 passed by the Sessions Judge, Narayanganj in Criminal Revision No. 136 of 2021 allowing the Revision and thereby discharging the accused-opposite party No.02 is set aside and the order dated 15.03.2021 passed by the Chief Judicial Magistrate, Narayanganj in C.R. Case No. 1063 of 2018 (T.R. No. 46 of 2019) under sections 406/467/468 of the Penal Code, 1860 framing charge against the accused-opposite party No.02 is hereby affirmed.

The learned magistrate is directed to proceed with the case in accordance with law.

Communicate the judgment and order at once.

Ashish Ranjan Das, J:

I agree.