

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. 15390 of 2019

In the matter of:

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

In the matter of:

Shikha Begum

...Convict- Petitioner

Versus

The State

...Opposite Party

Mr. Md. Earul Islam, Advocate

...For the Petitioner

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

...For the State

Heard on: 05.12.2023

Judgment on:11.12.2023

Ashish Ranjan Das, J:

Upon an application under section 561-A of the Code
of Criminal Procedure (for short the Code) rule was issued in
the following terms:

*“Let a Rule be issued calling upon the opposite
party to show cause as to why the judgment and order
of conviction dated 26.09.2018 passed by the 5th*

Special Tribunal, Narayanganj in Special Tribunal Case No.470 of 2006 arising out of Siddhirganj Police Station Case No.30 dated 09.06.2006 corresponding to G.R. No.272 of 2006 under section 25-B of the Special Powers Act,1974 and convicting the convict-petitioner under section 25-B(2) of the Special Powers Act,1974 and sentencing him to suffer rigorous imprisonment for 03(three) years and a fine of Tk.10,000/-(ten thousand), in default to rigorous imprisonment for a period of 02(two) months more should not be quashed and/ or pass such other or further order or orders as to this court may seem fit and proper.”

We have heard the learned Advocate for the petitioner and the learned Deputy Attorney General, who opposed in the Rule.

Short facts relevant for the purpose that could be gathered from the file are that Sub- Inspector Md. Nazrul Islam attached to Siddhirganj police station, Narayanganj accompanied by forces on 09.06.2006 at about 17.45 P.M while on Simrail Truck Stand he saw this petitioner woman

getting down from a bus and upon search 10 bottles of Indian smuggled Phensidile could be recovered from her possession in presence of the witnesses present there. The alamat was seized under a list and accordingly Siddhirgonj Police Station Case No.30 dated 09.06.2006 attracting section 25B of the Special Powers Act,1974 was recorded.

After investigation charge sheet was accordingly filed. In order to bring the charge home the prosecution produced as many as 5 witnesses. Though they were not cross-examined as the sole accused was absconding. But at end of trial before delivery of judgment having been enlarged on bail the sole accused remained fugitive and the judgment was pronounced in absentia. The learned trial court, 5th Special Tribunal, Narayanganj found the petitioner guilty of the charge and sentenced her to suffer 3(three) years rigorous imprisonment coupled with a fine of Tk. 10,000/-.

As the petitioner was absent and could not prefer an appeal within the prescribed time she brought this application under section 561-A of the Code. The informant along with his recovery forces pressed the charge of recovery of the alamat from the petitioner.

Now the learned advocate for the petitioner vigorously argued that it was admitted by the investigation officer that no sample of alamats was produced before the tribunal, nor it was chemically examined to mean that those 10 bottles were contained contraband drug. On this issue, however the learned Deputy Attorney General had nothing to say.

The allegation is that 10 bottles of Indian smuggled drug phensedyl were recovered from the petitioner but the investigation officer frankly admitted that the alamats was not produced before the court and particularly it was not chemically examined in order to conclude that the bottles contained contraband drug and those were of Indian origin.

Thus, for the purpose we are of the view that the above omission failed to prove the prosecution case, there was no evidence in trial to conclude that the alamats was of Indian origin containing contraband drug, phensedyl.

Thus, we find merit in the submission in the rule and the same is therefore made absolute.

In the result, the Rule is made absolute.

The judgment and order of conviction and sentence dated 26.09.2018 passed by the 5th Special Tribunal,

Narayanganj in Special Tribunal Case No.470 of 2006 arising out of Siddhirganj Police Station Case No. 30 dated 09.06.2006 under section 25-B of the Special Powers Act, 1974 corresponding to G.R. No.272 of 2006 convicting the petitioner under section 25-B(2) of the Special Powers Act,1974 and sentencing her to suffer rigorous imprisonment for 3(three) years coupled with a fine of Tk. 10,000/-, in default to suffer 2(two) months more is hereby set aside and quashed.

The petitioner Shikha Begum stands acquitted and of course discharged of her bail bond.

Send down the lower court's record along with a copy of this judgment at once.

Md. Riaz Uddin Khan, J:

I agree.

Bashar,B.O.