

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

Present

Mr. Justice Md. Akram Hossain Chowdhury
And
Mr. Justice A.K.M. Rabiul Hassan

Criminal Revision No. 966 of 2023

Ala Uddin and others
.....Accused-Petitioners
Vs.

The State and another
..... Opposite parties

Mr. Salim Ahammad, Advocate
.....For the accused-Petitioners

Ms. Fatema Begum, Advocate
..... For the Added Informant-Opposite Party No.2

Mr. Prokash Ranjan Biswas, D.A.G. with
Mr. Md. Siddik Ali, AAG and
Mr. Md. Omar Faaruk, AAG and
Ms. Tahera Khatun, AAG
.... For the State, Opposite Party No. 1

Heard on 18.01.2026, 25.01.2026, 08.02.2026 & 22.03.2026

And

Judgment on: 05th March, 2026

Md. Akram Hossain Chowdhury, J.

The accused petitioners, 6 (six) in number, upon an application under section 439 read with section 435 of the Code of Criminal Procedure (Shortly Cr.P.C.) obtained the present rule calling upon the opposite parties to show cause as to why the order of framing charge dated 25.07.2022 passed by the learned Sessions Judge, Narayanganj in Sessions Case No. 1059 of 2022 arising out of Araihaajar P.S. Case No. 14 dated 30.05.2021

corresponding to G.R. No. 78 of 2021 under sections 302/34 of the Penal Code, 1860 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Pending hearing of the rule, by the ad-interim order dated 28.02.2023, the impugned order of framing charge dated 25.07.2022 passed by the learned Sessions Judge, Narayanganj was stayed till disposal of the rule.

The facts relevant for disposal of the rule, in brief, are that the added opposite party No. 2 named-Md. Billal Hossain being informant lodged an FIR with Arai-hajar Police Station impleading the present petitioners as accused therein alleging for committing offence under sections 143/447/323/307/302/506 /34 of the Penal Code, 1860 alleging *inter-alias* that due to long standing land dispute with the accused who always intended to cause damage of the informant party and upon such enmity at about 8:00 a.m. on 30.05.2021 while the informant and his father was working in front of their house by placing sands to high rise their “viti” land and at while the accused persons carrying with local deadly weapons like Dao, Steel Rod and Bamboo sticks with their hands used slang language to the father of the informant who even tried to restrain them from the quarrel. At while the father of the informant asked them why the accused restrain them, at the

moment, the accused persons indiscriminately dealt kick and blow upon the father of the informant. The informant even tried to escape his father but at while the accused persons had beaten him, as well. At one stage, the accused No. 5 dealt a blow on the secret place of the informant's father by which he fell on the ground and at while the accused Nos. 1, 4 & 6 by pressing the informant's father on the sands caused his death. Upon hearing their hue and cry while the surrounding people came-up into the spot, the accused persons then fled away by threatening the informant saying that if they file any case in the police station or any Court, they will kill them. On the said allegation the Arihajar Police Station Case No. 14 dated 30.05.2021 was started.

After holding investigation into the said FIR, the police ultimately submitted a Charge sheet in the case on 14.11.2021 under sections 143/447/323/304/506/ 34 of the Penal Code, 1860 but lefting section 302 even the same was in the FIR.

The informant thus challenging the said charge sheet filed a naraji before the learned Magistrate concerned on 03.03.2022. Learned Judicial Magistrate, Cognizance Court, "Ga" Anchal, Narayangonj upon hearing on the said Naraji vide order dated 22.05.2022 took cognizance in the case against the accused petitioners under section 302 by replacing 304 along with other penal sections and then transmitted the case record to the Court

of learned Sessions Judge, Narayangonj for its trial and disposal. The learned Sessions Judge, Narayangonj then upon registering the said case as Sessions Case No. 1059 of 2022 framed charge in the case against the petitioners under section 302 and other sections of the Penal Code by rejecting their application as filed under Section 265C of the Cr.P.C. Hence, the accused petitioners became aggrieved and moved this Court by taking legal recourse under section 439 read with section 435 of the Cr.P.C. and obtained the present rule along with the order of stay, as aforesaid.

Mr. Salim Ahmed, learned Advocate appearing for the accused-petitioners and supporting the rule submits that the cognizance as has been taken in the case was not properly held. The learned Magistrate since has no empowerment to try to the case of murder and as such, he has no jurisdiction to take cognizance of a case under section 302 of the Penal Code. However, he even then disregarding the said legal provision took cognizance in the case and then charge has been framed thereto even though without having any material evidence thereto and as such, the charge framing order dated 25.07.2022 is liable to be set aside. Learned Advocate then submits that if so as per naraji there has been an allegation for committing offence under section 302 of the Penal Code but the investigating officer do not have to collect

any of such evidence in the case; since the inquest and post mortem report do not reflect the specific cause of death of the victim and as such, the charge sheet submitted in the case under section 304 instead of 302 of the Penal Code. The learned Magistrate concerned even has no jurisdiction to try the case under the said section of 302 who however without holding further inquiry on the naraji filed, since the naraji is a fresh complainant, cannot take cognizance under section 302 and as such, he by taking cognizance has committed an error; and then upon relying which charge framed in the case even without having any legal basis thereto and thus he urges that the impugned order of charge is liable to be set aside. Learned Advocate therefore prays for making the rule absolute.

In opposing the rule, Ms. Fatema Begum, learned Advocate appearing for the added-opposite party No.2 submits that since there has been a clear allegation in the FIR in committing murder the victim by the accused-petitioners and the witnesses by their statement as made under section 161 of the Cr.P.C. have supported the said allegation and then the cognizance taken thereto and the charge framed as well in the case under sections 302/34 of the Penal Code which requires no interference of this Court and since the charge has already been framed, the accused-petitioners have to agitate their grievances at the trial. Learned

Advocate also submits that the inquest report as well as the postmortem report since reflects some injury over the dead body which therefore cannot be ignored by the accused-petitioner and as such, the cognizance taken and the charge framed thereto were legally held which deserves no interference. Learned Advocate to that extent referred before the Court, the judgment passed by this Court in the case of Abu Bakar and others Vs. The State, reported in 47 DLR (1995)-57 and also the case of Bilkish Miah Vs. The State, reported in 17 BLD (AD)(1997)-297. By referring those decisions the learned Advocate for the informant opposite party urges to discharge the rule, since the charge has already been framed, the accused-petitioners, if so, has/had any grievances they have to agitate the same before the trial Court by placing their legal evidence.

We have heard the learned Advocate for the respective parties elaborately and gone through the materials on record and to appreciate their submissions as above placed, we have perused material as available with the record. It is admitted that an FIR was lodged against the petitioners under the various sections along with section 302 of the Penal Code and after holding investigation into the case, the Investigating Officer submitted a charge sheet thereto under Section 304 in place of 302 of the Penal Code. The informant thus feeling aggrieved filed a naraji

application and upon which the learned Judicial Magistrate, Cognizance Court, Narayangonj straightway took cognizance in the case against the accused petitioners under section 302 along with other penal sections instead of 304 and then send the record to the Court of learned Sessions Judge, Narayangonj for its trial and disposal. The learned trial judge i.e. the learned Sessions Judge, Narayangonj upon relying which framed charge against the petitioners under section 302/34 of the Penal Code by rejecting the application as they filed under section 265C of the Cr.P.C. This rule was thus issued to examine the same.

The moot question herein is whether the learned Judicial Magistrate concerned has took cognizance in the case in accordance with law and then relying which the charge framed thereto by the learned Sessions Judge, Narayangonj. To make proper decision thereto, we have to reproduce here the section 202 of Cr.P.C which provides:-

202. Postponement for issue of process- (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any such other person as he thinks fit, for the purpose of

ascertaining the truth or falsehood of the complaint: Provided that, save and except where the complaint has been made by a Court, no such direction shall be made unless the provisions of the section 200 have been complied with:

Provided further that where it appears to the Magistrate that the offence complained of is triable exclusively by a Court of session, the Magistrate may postpone the issue of process for compelling the attendance of the person complained against and may make or cause to be made an inquiry or investigation as mentioned in this sub-section for the purpose of ascertaining the truth or falsehood of the complaint. (Under lined to emphasis)

(2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police-officer, such person shall exercise all the powers conferred by this Code on an officer-in-charge of a police-station, except that he shall not have power to arrest without warrant.

(2A) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath; Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(2B) Where the police submits the final report, the Magistrate shall be competent to accept such report and discharge the accused.

In the present case, since a naraji application has been filed against the charge sheet, the learned Magistrate since finds that an allegation brought therein under section 302 of the Penal Code which is triable by the Court of Sessions but not by any

Magistrate of the cognizance Magistrate concerned; in that case, under the above noted provision the Magistrate ought to have send the case to hold a further inquiry, since in the charge sheet the investigating officer found no material evidence under section 302 of the Penal Code and further that since the Magistrate has no power to try the case under section 302 other than the Court of Sessions, he has no jurisdiction to take cognizance thereto. Even then, the learned Magistrate concerned without holding a further inquiry over the allegation in order to ascertain the falsehood and truthness of the said allegation who however straightway took cognizance in the case under section 302 of the Penal Code which thus requires our interference for the sake of securing the ends of justice.

The submissions even placed by the learned Advocate for the opposite party by referring two decisions which are even not disputed herein, because the naraji being a fresh complaint, the applicant should have to be examined under section 200 of the Cr.P.C. and that process since has been properly taken in the case but the learned cognizance Magistrate was failed to hold a further inquiry over the allegation made as per section 202 of the Cr.P.C. Since in the charge sheet the investigation officer earlier find no *prima-facie* materials under section 302 of the Penal Code. Thus, we are in a considered view to set aside the said cognizance taken order of the learned Magistrate and then the charge being framed

thereto which also to be set aside for the sake of proper adjudication of the case.

Resultantly, the order of taking cognizance dated 22.05.2022 and then following which the charge framed in Sessions Case No. 1059 of 2023 on 25.07.2022 are hereby set aside.

The learned cognizance Magistrate concerned is however directed to hear on the naraji application, afresh and then hold a further inquiry in the case under section 202 of the Cr.P.C. on the allegation made in the naraji about to discover the truthness and falsehood of the allegation as made and then if so the case stand under section 302 of the Penal Code, shall send the record towards the Court of Sessions for taking cognizance and also for holding trial thereto.

With the above observation and direction the rule is disposed of.

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

A.K.M. Rabiul Hassan, J.

I agree.