

Present
Mr. Justice Sheikh Abdul Awal
Criminal Revision No. 1213 of 2006

Kabir Ahammad Humayun
.....Informant-Petitioner.

-Versus-

Mirza Golam Kibria Kabir and others.
.....Opposite parties.

None appears, Advocate
.....For the Informant Petitioner.

Mr. Khaled Ahmed, Advocate
.. For the opposite party Nos. 1-26

Ms. Shahida Khatoon, D.A.G with
Ms. Sabina Perven, A.A.G with
Ms. Kohenoor Akter, A.A.G.
... For the State Opposite party No. 27

Heard on 23.04.2024, 24.04.2024 and
Judgment on 24.04.2024

Sheikh Abdul Awal, J:

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order of acquittal dated 24.04.2006 passed by the learned Additional Sessions Judge, Jamalpur in Criminal Appeal No. 9 of 2005 allowing the appeal and setting-aside the judgment and order of conviction and sentence

dated 06.02.2005 passed by the learned Magistrate, 1st Class, Speedy Trial Court, Jamalpur in Speedy Trial Case No. 32/04 arising out of Madargonj Police Station Case No. 06 dated 16.02.2004 corresponding to G.R. No. 217(2)/04 convicting the accused-opposite party Nos. 1-26 under section 4(1) of the Arin Sringkhola Bighnakari Aparadh (Druta Bichar) Ain, 2002 and sentencing them thereunder to suffer simple imprisonment for a period of 2(two) years and to pay a fine of Taka 5000/- in default to suffer simple imprisonment for a period of 1 (one) month more each should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The relevant facts briefly are that one, Kabir Ahmed as informant on 16.02.2004 at 21.35 hours lodged an Ejahar with Madargonj Police Station, Jamalpur against 25 accused persons and unknown 25/30 terrors under sections 4/5 of the Ain Sringkhola Bighnakari Aparadh (Druta Bichar) Ain, 2002 stating, inter-alia, that the accused persons after being armed with chinese axe, pistol, lathi etc. entered into the office of the Al-Akaba Bohumukhi Somobay Samity Limited and thereafter, accused No. 4 Ayna demanded Taka 1,00,000/- as ransom to the accountant of that samity and accused Nos. 2 & 6 by pointing pistol detained the

informant in a room and at that time witness, Jahangir refused to pay ransom and then accused No.20, Iqbal set-fire on TVs, motorcycle and accused No.9, Rimon destroyed a Yamaha motorcycle and accused No.10, Dudu took Taka 25,000/- from drawer of the office and accused Nos. 13, 21,22 also destroyed 4 fans by lathi blows and accused No. 8, Rimu destroyed Almirah of the office by Chinese axe and accused No.3 Vitu dealt so many ram-dao blows on file cabinet and accused persons also destroyed 10/12 bicycles of the office and also took away 3 bicycles, accused Nos. 5,7,8,11,12,15,16,17,23,24 also destroyed the office furnitures and also set-fire thereon. In this way accused persons damaged properties of the office which valued at Taka 2,43,400/- , so many witnesses saw the occurrence but they could not resist the same out of wariness.

Upon the aforesaid First Information Report, Madargonj Police Station Case No. 6 dated 16.02.2004 under sections 4/5 of the Ain Sringkhola Bighnakari Aparadh (Druta Bichar) Ain, 2002 was started.

Police after completion of investigation submitted charge sheet against 26 accused persons including 25 F.I.R. named accused being charge sheet No. 22 dated 21.02.2004 under sections 4/5 of the Ain Sringkhola Bighnakari Aparadh (Druta Bichar) Ain, 2002.

Ultimately, the accused-opposite parties were put on trial before the Druta Bichar Adalat, the learned Magistrate, 1st Class, Speedy Trial Court, Jamalpur to answer a charge under sections 4/5 of the Ain Sringkhola Bighnakari Aparadh (Druta Bichar) Ain, 2002 to which they pleaded not guilty and prayed to be tried stating that they have been falsely implicated in this case out of political enmity.

At the trial, the prosecution side examined in all 09 (nine) witnesses to prove its case, while the defence examined none. The defence case as it appears from the trend of cross-examination of the prosecution witnesses and examination of the accused-person under section 342 of the Code of Criminal Procedure appeared to be that the accused-opposite parties were innocent and they have been falsely implicated in the case out of political enmities.

On conclusion of trial, the learned Magistrate, 1st Class, Jamalpur by his judgment and order dated 06.02.2005 found the accused-opposite parties guilty under sections 4(1) of the Ain Sringkhola Bighnakari Aparadh (Druta Bichar) Ain, 2002 and sentenced them thereunder to suffer simple imprisonment for a period of 2(two) years and to pay a fine of Taka 5000/- in default

to suffer simple imprisonment for a period of 1 (one) month more each.

Aggrieved accused persons then preferred Criminal Appeal No. 09 of 2005 before the learned Sessions Judge, Jamalpur, which was subsequently transmitted to the Court of the learned Additional Sessions Judge, Jamalpur, who by the impugned judgment and order dated 26.04.2006 allowed the appeal and set-aside the judgment and order of conviction and sentence dated 06.02.2005 passed by the learned Magistrate, 1st Class, (Druta Bichar Adalat), Jamalpur.

Being aggrieved by the aforesaid impugned judgment and order of acquittal dated 26.04.2006 passed by the learned Additional Sessions Judge, Jamalpur, the informant-petitioner moved before this Court and obtained the present Rule.

No one found present to press the Rule on repeated calls despite of fact that this criminal revision appeared in the list for hearing with the name of the learned Advocate for informant-petitioner.

Since the matter is an old one of 2006 arising out of the order of acquittal, I am inclined to dispose of it on merit on the basis of the evidence and materials on record.

Mr. Khaled Ahmed, the learned Advocate appearing for the accused-opposite party Nos. 1-26 supports the impugned judgment and order of acquittal, which was according to him just, correct and proper. The learned Advocate submits that from a combined reading of the first information report, deposition of witnesses and other materials on record would prove that the informant lodged this false case in order to victimise the accused persons out of political enmity. Finally, the learned Advocate submits that from the judgment of the trial court it is found that the Magistrate has not properly assessed the evidence of the case and failed to consider the gross contradictions/discrepancies and omissions as well as admission of PWs on vital points and as such, the Court of appeal below rightly set-aside the order of conviction and sentence.

Ms. Kohenoor Akter, the learned Assistant Attorney-General submits that in this case without any prior permission from the solicitor office, the informant-petitioner filed this case against the impugned judgment and order of acquittal which is misconceived, incompetent and not tenable in the eye of law.

Having heard the learned Advocate for the accused-opposite parties and the learned Assistant Attorney General, perused the criminal revisional

application under section 439 read with section 435 of the Code of Criminal Procedure, the F.I.R, charge sheet, deposition of witnesses and other materials on record including the judgments of 2 Courts below, now the only question that calls for my consideration in this Revision is whether the Court of appeal below committed any error in acquitting the accused-opposite parties after setting-aside the judgment and order conviction and sentence passed by the learned Magistrate, 1st class, Jamalpur.

On scrutiny of the record, it appears that in this case prosecution side examined 9 witnesses out of 19 charge sheeted witnesses to prove its case.

Now, let me advert to the evidence of prosecution witnesses. PW-1, informant of the case stated in his deposition that occurrence took place on 16.02.2004 at 11:00 a.m. This witness also stated in his deposition that accused persons after being armed with Chinese Kural, pistol, lathi etc. entered into the office of the Al-Akaba Bohumukhi Somobay Samity Ltd. while accused No. 4 Ayna demanded Taka 1,00,000/- as ransom from accountant of that samity and accused Nos. 2 and 6 by pointing pistol detained the informant in a room and at that time witness Jahangir refused to pay ransom while accused persons attacked them and then accused No.20,

Iqbal set-fire on TVs, motorcycle and accused No.9, Rimon destroyed a Yamaha motorcycle and accused No.10, Dudu took Taka 25,000/- from drawer of the office and accused Nos. 13,21,22 also destroyed 4 fans by their lathi blows and accused No. 8, Rimu destroyed Almirah of the office by Chinese axe and accused No.3 Vitu dealt so many blows on file cabinet by ram-daw and accused persons also destroyed 10/12 bicycles of the office and also taken away 3 bicycles, accused Nos. 5,7,8,11,12,15,16,17,23,24 also destroyed office furnitures and also set-fire thereon. In this way accused persons damaged properties of the office valued at Taka 2,43,400/-. This witness in his cross-examination stated that- “কথিত ঘটনার দিন সারাদেশে হরতাল ছিল।” PW-2, PW-3, PW-4, PW-5 and PW-6 corroborated the evidence of PW-1 in respect of all material particulars. PW-7 and PW-8 are seizure list witnesses. PW-9, S.I. Kazi Sanwar Hossain investigated the case. This witness stated in his deposition that during investigation he visited the place of occurrence, prepared sketch-map of the place of occurrence, examined the witnesses under section 161 of the Code of Criminal Procedure and after completion of investigation having found prima-facie case against the accused-persons and thus, he submitted charge sheet against the accused persons under sections 4/5 of the Ain

Sringkhola Bighnakari Aparadh (Druta Bichar) Ain, 2002.

On an analysis of the evidence of PWs together with F.I.R and charge sheet, it appears that occurrence took place during the hortal day and there are lump allegations against the accused-opposite parties as to attack, demanding ransom and taken away money from the office etc. which is not safe to maintain the order of conviction and sentence in fact and circumstances of the case and the evidence of record. The Court of appeal below as last court of fact on due consideration of the entire evidence and materials on record arrived at a finding that- “বিজ্ঞ নিম্ন আদালত কর্তৃক প্রদত্ত রায় ও দণ্ডদেশ নিরীক্ষান্তে দেখা যায়, বিজ্ঞ নিম্ন আদালত আসামীদের কৃতকর্ম ও তার সম্পৃক্ততায় উদ্ধৃত উপাদান উপজীব্য প্রমানহীন থাকায় মামলাটির প্রতি ধাপে ধাপে সন্দেহ প্রকাশ করিয়া অভিমত ব্যক্ত করিয়াছেন এবং এই সন্দেহের আসামী বা আসামীগন পাইতে হকদার উল্লেখ করিয়াছেন।”

The reasonings given by the learned Additional Sessions Judge, , Jamalpur appear to me to be proper and sound and I do not find any reason to differ from it. There are contradictions/discrepancies and omissions as well as admission of PWs on vital points and as such it is not safe to maintain the order of conviction and sentence.

On going through the material on records it is found that the informant-petitioner did not obtain any prior permission to file the case against judgment and order of acquittal from the Office of Solicitor. Therefore, I find substance and force in the submission of the learned Assistant Attorney General that this criminal revision is misconceived, incompetent.

Considering all these aspects of the case as revealed from the materials on record, it appears to me that the prosecution could not prove its case beyond all reasonable doubts and thus, the learned Additional Sessions Judge, Jamalpur committed no illegality in acquitting the accused-opposite parties from the charges levelled against them.

In view of my discussions made in the foregoing paragraphs it is by now clear that the instant Rule must fail.

In the result, the Rule is discharged. The order of acquittal is hereby maintained.

Send down the lower Court's records at once.