

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

**WRIT PETITION NO.10454 OF 2007.**

**IN THE MATTER OF:**

An application under Article 102(2) (a) (ii) of the  
Constitution of the People's Republic of  
Bangladesh.

**AND**

**IN THE MATTER OF:**

Upendra Mohan Bosak

*.....Petitioner.*

*-Versus-*

Bangladesh and others.

*...Respondents.*

Mr. Md. Haroon Ar Rashid, Advocate

*..... For the Petitioner.*

Mr. A.K.M. Amin Uddin, D.A.G with

Ms. Anna Khanom Koli, A.A.G and

Mr. Md. Shaifour Rahman Siddique, A.A.G

*.....For the Respondents.*

Mr. S.M. Abdur Rouf, Advocate,

*..... For the Anti-Corruption Commission.*

**Present:**

**Mr. Justice Md. Nazrul Islam Talukder**

**And**

**Mr. Justice Kazi Md. Ejarul Haque Akondo**

**Heard & judgment on:18.05.2022.**

**Md. Nazrul Islam Talukder, J:**

On an Application under Article 102 of the  
Constitution of the Peoples Re-public of Bangladesh,  
this Rule, at the instance of the petitioner, was issued  
calling upon the respondents to show cause as to why  
the approval of the application of the provisions of the

Emergency Power Rules, 2007 by Respondent No. 02 vide Memo No. Sha:ma(Ain-1)/Jo.Kha Bi-1/2007/216 dated 16.04.2007 (**Annexure-A**) in Special Case No. 15 of 2007 corresponding to Metropolitan Special Case No.134 of 2007 arising out of Hajaribag Police Station Case No.19 dated 26.03.2007 under Sections 420/409 of the Penal Code, 1860, read with Section 5(2) of the Prevention of Corruption Act, 1947 and Rules 19Uma(1) and (5) of the Emergency Powers Rules, 2007, now pending before the learned Special Judge, Special Court No.1, Dhaka, should not be declared to have been made without lawful authority and is of no legal effect and/or pass such other or further order of orders as to this Court may seem fit and proper.

The facts leading to issuance of the Rule run as follows:-

On 26.03.2007, one Md. Shahjahan, Sub-Inspector of Police, Hajaribag Police Station, Dhaka Metropolitan Police, Dhaka being informant lodged an

F.I.R with Hajaribag Police Station against one Mr. Nasiruddin Ahmed Pintu contending, inter alia, that upon receiving information relating to relief corrugated iron sheets, the informant together with his colleagues reached at Bhagolpur Lane area at about 2.15 p.m. and seized 91 pieces of corrugated iron sheets marked as 'relief tins, not for sale' from the top of the first floor of Baitun Mamur Jame Mosque, 108/1, Bhagalpur Lane, Hajaribag, Dhaka. Upon query from the local people, it was known that ex-Member of Parliament Mr. Nasiruddin Ahmed Pintu gave those relief sheets to the Mosque. The President of the Mosque and the local Commissioner Mojibur Rahman Monju informed that the ex-Member of Parliament Mr. Nasiruddin Ahmed Pintu gave those iron sheets for the Mosque at about one year ago without any allotment. The ex-Member of Parliament Mr. Nasiruddin Ahmed Pintu as a public representative has committed the offence of criminal breach of trust by

arbitrary distribution of government relief corrugated iron sheets. Hence the F.I.R.

The Anti-Corruption Commission after holding investigation submitted charge-sheet being charge sheet No. 116 dated 08.10.2007 under Sections 409/406/420/109 of the penal Code together with Section 5(2) of the Prevention of Corruption Act, 1947, and the Rules 19Uma(1) and (5) of the Emergency Powers Rules, 2007, against three accused persons including the present petitioner.

Following the investigation report, the learned Metropolitan Senior Special Judge, Dhaka, by an order dated 22.10.2007, took cognizance of the offences against the petitioner and others under the aforesaid sections.

Being aggrieved by the impugned criminal proceeding, the petitioner approached this court under Article 102 of the Constitution of the People's Republic of Bangladesh challenging the same and

obtained this Rule along with an order of stay of the proceeding and an order of bail.

When the matter is taken up for hearing, none appears for the petitioner before this court to participate in hearing of Rule.

On the other hand, Mr. S.M. Abdur Rouf, the learned Advocate appearing on behalf of the Anti-Corruption Commission, submits that Special Case No.15 of 2007 corresponding to Metropolitan Special Case No.134 of 2007 arising out of Hajaribag Police Station Case No.19 dated 26.03.2007 under Sections 420/409 of the Penal Code, 1860, now pending before the learned Judge of the Special Court No.1, Dhaka is pending against the petitioner and others and after initiation of the case, charge-sheet has been submitted against the petitioner and others by the Anti-Corruption Commission.

He next submits that it is now well settled principle of law that a criminal proceeding can't be challenged under the writ jurisdiction.

He then submits that the allegations brought against the petitioner and others are all disputed and complicated questions of fact which cannot be inquired into by this Court under writ jurisdiction.

He lastly submits that the allegations that have been brought against the petitioner and others can be decided on taking evidence from the witnesses of the respective parties and under the aforesaid circumstances, there is no scope to challenge the impugned proceeding under the writ jurisdiction.

We have gone through the writ petition and perused the materials annexed therewith. We have also heard the submissions made by the learned Advocate for the Anti-Corruption Commission and the learned Deputy Attorney-General for the respondents. We have also considered their submissions to the best of our wit and wisdom. On going through the record of the writ petition, it appears that Special Case No.15 of 2007 corresponding to Metropolitan Special Case No.134 of 2007 arising out of Hajaribag Police Station

Case No.19 dated 26.03.2007 under Sections 420/409 of the Penal Code, 1860, read with Section 5(2) of the Prevention of Corruption Act, 1947 and Rules 19Uma(1) and (5) of the Emergency Powers Rules, 2007, now pending before the learned Judge of the Special Court No.1, Dhaka is pending against the petitioner and others and after initiation of the case, charge-sheet has been submitted against the petitioner and others by the Anti-Corruption Commission. It is now well settled that a criminal proceeding cannot be challenged under the writ jurisdiction. Furthermore, the vires of the law involved in this case has not been challenged in this writ petition. In the decision taken in the case of **ACC vs. Mehedi Hasan, reported in 67 DLR(AD)137**, it was held that: “There is no scope for quashing a criminal proceeding under the writ-jurisdiction unless the vires of the law involved is challenged. The vires of the law involved in the case has not been challenged. Therefore, there is no scope for aggrandizement of jurisdiction of the High Court

Division in quashing a criminal proceeding”. Similar view has been expressed in the decision taken in the case of **Begum Khaleda Zia vs Anti-Corruption Commission, reported in 69 DLR (AD)181**. Apart from the above, this Court cannot look into the disputed and complicated questions of facts under writ jurisdiction. In the decision taken in the case of **Begum Khaleda Zia vs Anti-Corruption Commission, reported in 70 DLR (AD)50**, it has been decided that: “In proceedings under Article 102 of the Constitution it is not open to the High Court Division to hold an elaborate enquiry into disputed and complicated questions of fact. The High Court Division would only interfere with the proceeding of a criminal court if it is found that such proceeding is without jurisdiction and if there is no other efficacious relief provided in laws against such proceeding or the vires of the law basing on which the proceeding initiated is challenged.” Furthermore, the approval of filing of the case under the provisions of Emergency



Powers Rules, 2007 by Respondent No.3 vide Memo No. sha:ma (Ain-1)/Jo.kha Bi-1/2007/2016 dated 16/04/2007 (**Annexure-A to the writ petition**) is an administrative act and the illegality and impropriety of the same if any may be looked into by the learned trial judge during trial of the case.

Having considered all the facts and circumstances of the case, the submissions advanced by the learned Advocates for the respective parties and the propositions of law, we do not find any merit in this Rule.

**Consequently, the Rule is discharged.**

Resultantly, the order of stay along with the order of bail granted at the time of issuance of the Rule stands vacated.

The petitioner is directed to surrender before the court of learned Special Judge, Special Court No.1, Dhaka within 7(seven) days from the date of receipt of this judgment and order by the learned Special Judge, Special Court No. 01, Dhaka positively and without

fail, failing which the learned Special Judge, Special Court No.1, Dhaka shall take steps to secure arrest of the petitioner in accordance with law.

The learned Special Judge, Special Court No.1, Dhaka is directed to conclude the trial of the case preferably within 1 (one) year from the date of receipt of this judgment and order.

Let a copy of this judgment and order be communicated to the learned Special Judge, Special Court No.1, Dhaka and other respondents at once.

**Kazi Md. Ejarul Haque Akondo, J**

I agree.