

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

Present:

Mr. Justice K.M. Hafizul Alam
And
Mr. Justice Abdur Rahman

Criminal Miscellaneous Case No. 54742 of 2022

In the matter of:

Most. Akhi Begum

.....Informant-petitioner

-Versus-

The State & another

.....Opposite parties

Mr. Anisur Rahman (Raihan), Advocate

.....For the Accused-petitioner

None appeared.

.....For the opposite party No. 01

Ms. Shiuli Khanam, DAG, with

Mr. Md. Nazrul Islam (Choton), DAG,

Mr. Md. Humayun Karim Siddique, AAG and

Ms. Aklima Parven, AAG

.....For the State

Heard on 19.11.2025 and 23.11.2025.

Judgment on 11.01.2026 A.D., Sunday, 27 Poush,
1432 B.S.

Abdur Rahman, J.

This Rule was issued at the instance of the informant petitioner, calling upon the opposite parties in the following terms:

“এই মর্মে রাষ্ট্র-অপরপক্ষদের প্রতি কারণ দর্শানোপূর্বক রুল জারী করা হইল,

কেন পটুয়াখালীর দায়রা জজ আদালতের ফৌজদারী ৮৩/২০২১ নং রিভিশনে প্রচারিত ০৯/০২/২০২২ তারিখের তর্কীয় রায় ও আদেশ রদ ও রহিত (set aside) করা হইবে না? যে রায় ও আদেশমূলে পটুয়াখালীর চীফ জুডিশিয়াল ম্যাজিস্ট্রেট আদালতে দণ্ডবিধির ১৪৩/৩৪১/৩২৩/৩২৫/৩২৬/ ৩০২/৩০৭/৩৪ ধারার অভিযোগে বিচারধীন জি.আর. ০৫/২০১৭ নং মামলায় প্রচারিত ০২/০৩/২০২১ তারিখের রায় ও আদেশ বহালপূর্বক ফৌজদারী রিভিশনটি না-মঞ্জুর করা হইয়াছে ; যেখানে আসামী-অপরপক্ষকে অত্র মামলা হইতে অব্যাহতি দেওয়া হইয়াছে এবং অত্র আদালতের বিবেচনায় আসামী-দরখাস্তকারী ন্যায়বিচারের স্বার্থে আর যে সকল প্রতিকার পাইতে পারেন তাহারও কেন আদেশ দেওয়া হইবে না?”

The prosecution case, in short, is that on 22.01.2017 at about 20.35 hours the informant-petitioner as an informant lodged First Information (FI) with Dumki Police Station, Patuakhali against 9 accused persons along with 2/3 unknown accused persons which has been recorded as Dumki Police Station case No. 05 dated 22.01.2017, under Sections 143, 341, 323, 325, 326, 307 and 506 of the Penal Code, 1860 stating the facts, *inter-alia* that both the parties are the inhabitants of the same village, and there election dispute was occurred between both the parties regarding UP election and the father of the informant namely Mojibur Bhuiyan (Victim) earlier lodged 3 cases against the accused persons which are pending before the learned Court concerned. Due to the previous enmity and grudge, the accused persons threatened the informant party to kill them. At one stage, on 20.01.2017 at about 05.00 hours, the accused persons made an unlawful assembly armed with country-made deadly

weapons and attacked the informant party and injured them grievously. Upon hearing hue and cry, the neighbors came forward to the place of occurrence, and the accused persons left the place of occurrence by threatening the informant party. Thereafter, the injured victims were taken to General Hospital, Patuakhali, for treatment. Upon considering the critical condition of the father of the informant, including her cousin, they were referred to Sheer-E-Bangla Medical College Hospital, Barishal, for better treatment. On 23.1.2017 at about 04.00 hours, the father of the informant, namely Mojibur Bhuiyan, succumbed to death under treatment. Being informed, the police made an inquest report regarding the dead body of the deceased and sent the dead body to the Morgue of Sher-E-Bangla Medical College Hospital, Barishal, for a postmortem report on 23.1.2017, and the investigating officer added section 304 of the Penal Code, 1860 with the FIR, hence the case.

To add the facts, on 1.2.2017, one injured victim, Md. Rubel Bhuiyan, being the complainant, filed a C.R. Case No. 102 of 2017 before the learned Senior Judicial Magistrate, Cognizance Court No.1, Patuakhali against 3 accused persons along with some other unknown persons alleging offence punishable under Sections 143, 341, 302, 325, 326, 307, 323, 506, 114 and 149 of the Penal Code, 1860.

Thereafter, the case was investigated by the police and found prima-face case, and during the investigation, one accused made a confessional statement under Section 164 of the Code of Criminal Procedure, 1898 (later on be termed as Cr.P.C), and he disclosed the name of one Md. Jashim Fakir, who was not an FIR-named accused. After completing the investigation, the investigating officer submitted a charge sheet, bearing No. 67 dated 24.12.2017, against 9 accused persons along with a prayer for discharging the accused opposite party No.2, against which

the informant petitioner filed a Naraji Petition and the learned Court below directed the DB (District Detective Branch), Patuakhali, to hold further investigation. After completing necessary further investigation, the DB, Patuakhali, submitted a supplementary charge sheet being No. 32 dated 17.7.2019 against 9 accused, along with a prayer for discharging the accused opposite party No.2.

Thereafter, on 14.11.2019, the informant filed a Naraji Petition against the said police report, and after hearing, the learned Magistrate was pleased to reject the said Naraji Petition on 02.03.2021. Thereafter, the informant petitioner filed a fresh Criminal Revision being No. 83 of 2021, against the order of learned Magistrate before the learned Sessions Judge, Patuakhali and after hearing the learned Sessions Judge was pleased to reject the said Criminal Revision and thereby upheld the order dated 02.03.2021 passed by the learned Senior Judicial Magistrate, vide impugned judgment and order dated

09.02.2022, and subsequently, the informant petitioner filed this Criminal Miscellaneous Case under section 561A of the CPC challenging the impugned judgment and order of the learned Sessions Judge, Patuakhali.

Mr. Abid Hossain, the learned Advocate appearing on behalf of the informant petitioner, has submitted that though the opposite party No.2, Md. Jashim Fakir, who was not an FIR-named accused, but the principal accused, Md. Ruhul Amin Shikder made a confessional statement under section 164 of the CPC who disclosed the name of the accused opposite party No.2 including other accused in commissioning the alleged offence of the case.

Learned Advocate further submitted that the learned Sessions Judge also failed to consider the facts and circumstances of the case, thereafter the impugned order is not sustainable or tenable in the eye of law, hence, the same is liable to be quashed.

On the other hand, none appeared for the opposite party No.2, thus the learned Deputy Attorney General, Md. J.R. Khan Robin, appearing on behalf of the State opposite party, opposed the Rule.

We have perused the application along with the prosecution materials annexed thereto. We have also considered the submissions made by the learned Deputy Attorney General.

The prosecution's material exposes that one co-accused Ruhul Amin made a confessional statement who disclosed the name specifically stated that, “তখন বারেক বলে আমি জসিমকে দিলাম, জসিম নাক মুখ বেধে কলবাড়ির বাজারে ছিল। আমি কলবাড়ি বাজার থেকে বাড়ি গিয়ে আমি রুহুল আমিন, সহিদুল, লাবু, কালু, সোহেল একত্রে মটর সাইকেলে রওনা হই পথে জসিমকে নিয়ে বাজারের দিকে যাই। আমাদের দেখে মজিবুর ভূইয়া ও রুবেল দৌড় দেয়। মজিবুর ভূইয়া আমাদের দেখে একটি বাশ হাতে নেয় মারার জন্য। মজিবুর ভূইয়া ঐ বাশ দ্বারা আমাকে বারি দিতে গেরে মজিবুর নিজেই কাত হয়ে পাকা রাস্তার উপর পড়ে যায়। তারপর আমি জসিম, বাচ্চু মিলে লাঠি

[গাবের লাঠি দ্বারা মজিবুর ভুইয়াকে পিতাই। লাবলু শহিদুল ও সোহেল ঐ রুবলকে মারে। আমরা খুনের উদ্দেশ্যে বারি দেইনি। কেবল আজিজুর ভুইয়ার পায়ের হাঁটুর নিচে কয়েকটি বারি দিয়ে বাড়ি চলে আসি। এলাকার লোকজন আসলে আমরা দ্রুত এই স্থান ত্যাগ করি।”, which consummately divulged that the confession made by Md. Ruhul Amin was inculpatory in nature who entwined the name of Jasim Fakir prima facie bears the truth with the act of committing a crime (i.e., *in flagrante delicto*), unless dismantled by other legal evidence. But both the Subordinate Courts blink off to the legal effect *if so facto*.

However, it is evident from the Naraji Petition (i.e., petition of protest) that the informant specifically mention that, “তাহাড়াও প্রাপ্ত মোকদ্দমার তদন্তকারী কর্মকর্তা হুমায়ূন কবির কর্তৃক সন্দিগ্ধ আসামি জসিম ফকিরের প্রেরিত ফরোয়াডিংয়ে উল্লেখ করেন যে, ধৃত ১নং আসামি রুহুল আমিনের ফৌজদারি কার্যবিধি ১৬৪ ধারার জবানবন্দি মতে জসিমের নাম প্রকাশ করিয়াছে উল্লেখ করে। অথচ ফৌজদারি কার্যবিধি ১৬৪ ধারার জবানবন্দি মতে প্রাপ্ত একজন আসামিকেও তদন্তকারী অন্যায়ভাবে অব্যাহতির প্রার্থনা করিয়াছে। যাহাতে বাদীপক্ষের গুরুতর ক্ষতির কারণ হইয়াছে।”, but the learned Magistrate at the time of passing

impugned order mention that, “বাদীর প্রধান আপত্তি হলো সন্ধিক্ষ আসামী মোঃ জসিম ফকির কেন C/S এ Not sent up করা হলো। কিন্তু তিনি নিজেই ঘটনার ০২, (দুই) দিন পরে এজাহার দায়ের করলেও মোঃ জসিম ফকিরকে আসামী করেন নাই। উল্লেখ যে এজাহার দায়েরের দিন ডিসিষ্ট মোঃ মজিবর ভুইয়া ও জিবিত ছিল। এজাহারকারী স্বভাবতই ডিসিষ্ট মজিবর ভুইয়া ও ২নং সাক্ষী মোঃ রুবেল ভুইয়াদের কাছে শুনে এজাহার দায়ের করেছেন। আসামী মোঃ রুহুল আমিন সিকদার তার ফৌঃ কাঃ বিঃ ১৬৪ ধারার জবানবন্দিতে আসামী হিসেবে জসিম ফকিরের নাম উল্লেখ করলেও সাক্ষীদের জবানবন্দিতে জসিম ফকিরের জড়িত থাকার বিষয়টি উল্লেখ নাই এবং ঘটনাস্থলে জসিম ফকিরের ব্যবহৃত কোন বস্তু সাক্ষ্যও পাওয়া যায় নাই। --- কেউ কাউকে জড়িত করে জবান বন্দি দিলেই সে আসামী হয়ে যায় না যতক্ষণ না তার বিরুদ্ধে সাক্ষ্য প্রমাণ পাওয়া যায় আদালত এমনটাই মনে করে। এমতাবস্থায় বাদীর আনিত না-রাজী দরখাস্ত মঞ্জুর করার মত যুক্তি সংগত কোন কারন না থাকায় না-রাজী দরখাস্ত নামঞ্জুর করা হলো।” From this type of order it is presumed that the learned Magistrate has assumed the power of Sessions Judge to analyze the evidences like a murder case, rather to find out the prima facie of offence or to arrange investigation to have prima facie for taking cognizance of the offence alleged. It is the established principle of law as per Section 193 of the Cr.P.C that no Sessions Judge shall

take cognizance of any offence as a Court of original jurisdiction unless the accused has been sent to it by a Magistrate duly empowered in that behalf.

However, the other essence of the facts of the case is that the investigating officer, after due verification of the statement of the accused person(s), the investigating officer produced the accused person before the Magistrate for recording the confession judicially. For better understanding, we can examine the relevant provisions of Regulation No. 283 of the Police Regulation, 1943, which are as follows:

“283. (a) (i) When an accused or suspected person volunteers a confession, it should be recorded in detail by a police officer who, if it appears to be true, shall take immediate steps for its verification. Such verification should include the tracing and examination of witnesses named or indicated in the confession and the search for, or

the recovery of, stolen property or other exhibits material to the investigation.

The officer recording the confession shall further arrange for the confessing person to be sent to a Magistrate in order that the confession may be judicially recorded.”

From the plain appraisal of the above provisions of law, it is clear that the investigating officer definitely arranged the measurement of verification and thus produced the accused person before the learned Magistrate, who also endorsed a memorandum that the confession was voluntarily made, admitted to be correct and it contains a full and true account of statement made by him, which cannot be rebutted without any sanguine evidence that contradicts it in a trial by a proper Court. In the instant case, the investigating officer who arranged the stage of recording confession judicially cannot stand against his own footing of verification of the said

confession; and if so, be that, both investigating officers might come under the compulsions of offences under Sections 217 and 218 of the Penal Code, 1860.

From the very facts of the instant case, it is found that the informant initially mentioned some persons specifically and 2/3 unknown persons as accused in the First Information, including 8 witnesses, and subsequently revealed the name of the opposite party No. 2 Jashim Fakir, through a confessional statement, who has not been sent up in the police report. But when the Naraji petition, having the status of a fresh complaint including Section 302 of the Penal Code, 1860, came before the learned Magistrate, who deliberately failed to examine the complainant of Naraji petition under Section 200 of the Cr.P.C and mentioned that, “ধার্য তারিখ নথি পেশ করা হইল। --- দেখিলাম, মামলার নথি, এজাহার, C/S, নারাজী দরখাস্ত ও CD পর্যালোচনা করিলাম। ---Not sent up আসামী মোঃ জসিম ফকিরকে মামলার দায় হইতে অব্যাহতি দেওয়া হইল।” which manifestly

indicates that the learned Magistrate assumed power under Section 202(1) of the Cr.P.C as he inquired into the case himself, but overlooked the provisions of Section 202(2A) of the said Code where it is denoted as, 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 examined them on oath. Surprisingly, the learned Sessions Judge also failed to address these mandatory provisions of law, which was shocking to go through the smooth way of the rule of justice.

Upon perusal of the materials on record, considering the facts and circumstances as well of the prepositions of law, we are of the view that the Naraji Petition submitted by the informant petitioner which was earlier rejected should be heard again by a Senior Magistrate then the earlier Senior Judicial Magistrate as per law and the learned Chief Judicial Magistrate, Patuakhali is hereby directed to

hear the Naraji Petition by himself or to make arrangement to hear the same any Additional Chief Judicial Magistrate giving proper notice /summons for appearance of the opposite party No.2 Md. Jashim Fakir for allowing being heard with the due process of law.

Having considered the submissions, legal propositions, facts and circumstances, we are of the view that the Rule has merit. Accordingly, the impugned judgment and order dated 09.02.2022 are set aside.

In the Result, the Rule is made absolute with the above observations and directions.

The office is directed to communicate this judgment and order forthwith.

(Abdur Rahman, J)

K. M. Hafizul Alam, J:

I agree,

(K.M. Hafizul Alam, J)