

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

Criminal Revision No. 1242 of 2024.

Md. Jane Alam.

... Petitioner.

-Versus-

The State and others.

...Opposite parties.

Mr. S.M. Sanour Hossain, Advocate

..... For the petitioner.

Mrs. Shiuli Khanom, D.A.G. with

Mr. Mohammad Osman Chowdhury, DAG and

Md. Humayun Karim Siddique A.A.G

..... For the State.

Hearing and Judgment on 20.02.2025.

Present

Mr. Justice Md. Khairul Alam

and

Mr. Justice K.M. Emrul Kayesh

Md. Khairul Alam , J

By filing this criminal revision, the accused petitioner has challenged the legality and propriety of the order dated 27.09.2023 passed by the learned Metropolitan Sessions Judge, Chattogram in Criminal Motion Case No. 142 of 2023 rejecting the criminal motion summarily and thereby refusing the prayer for simultaneous trial of C.R. Case No. 183 of 2022, now pending before the Court of Metropolitan Magistrate, 5th Court, Chattagram with Sessions

Case No, 525 of 2023 which is pending before the Court of Metropolitan Joint Sessions Judge, 7th Court, Chattagram.

The case of the petitioner, in short, is that one Haji Md. Alamgir as the complainant filed two petitions of complaint before the Court of Chief Metropolitan Magistrate, Chattagram, implicating the petitioner. The first case being C.R. Case No. 183 of 2022 is under sections 406/420 of the Penal Code which was filed on 17.05.2022 and the second case being C.R. Case No. 848 of 2022 is under section 138 of the Negotiable Instruments Act, 1881 was filed on 19.05.2022. The crux of both cases is the transaction regarding a mortgaged property. The first case is now pending before the court of Metropolitan Magistrate, 5th Court, Chattagram for trial. After being renumbered as Sessions Case No. 525 of 2023 the second case is now pending before the Court of Metropolitan Joint Sessions Judge, 7th Court, Chattagram. By filing an application before the Court of Metropolitan Sessions Judge, Chattagram under section 526 (B) of the Code of Criminal Procedure, the petitioner prays for a simultaneous trial of both cases. The learned Metropolitan Sessions Judge, Chattagram by the order dated 27.09.2023 rejected the application.

Being aggrieved thereby the accused petitioner filed this revision application and obtained the Rule.

Mr. S.M. Sanour Hossain, the learned Advocate appearing for the petitioner, submits that the impugned order is beyond the

law as well as beyond the facts. He further submits that since both cases have arisen out of the same transaction, simultaneous trial will be expedient for the ends of justice and to avoid conflicting decisions. He lastly submits that as both cases are between the same parties it would be advantageous to all the parties to have both cases before the same Court.

Mrs. Shiuli Khanom, the learned Deputy Attorney General opposes the Rule.

Heard the learned Advocate of the contending parties and perused the application.

It appears that two criminal cases filed by the same complainant, one under sections 406 and 420 of the Penal Code is now pending before the court of Metropolitan Magistrate, 5th Court, Chattagram and another case under section 138 of the Negotiable Instruments Act, 1881 is now pending before the Court of Metropolitan Joint Sessions Judge, 7th Court, Chattagram. Admittedly, both cases have arisen out of the same transaction i.e. regarding a mortgaged property. It also appears that the learned Metropolitan Joint Sessions Judge, 7th Court, Chattagram is competent to try both cases. The prayer of the petitioner under section 526 (B) of the Code of Criminal Procedure for simultaneous hearing of the said cases was rejected. The petitioner mainly contended that a simultaneous trial of the cases would be general convenience of the parties.

Under the provision of section 526B of the Code, if it appears to a Sessions Judge that it will be expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.

In the case of M.M Nurul Haque Mollah Vs. Sree Radheshyam Saha and another reported in 15 BLD (AD) (1995)33 our apex court held that cases arising out of the same transaction should ideally be disposed of simultaneously by the same judge and therefore, the venue of trial could be transferred for the general convenience of the parties. This approach may be aimed at avoiding conflicting judgments and ensuring a fair trial.

In the above facts and circumstances, we are of the view that the transfer as prayed for would be expedient for the ends of justice and also for the convenience of conducting the trial and for ensuring a fair trial. The learned Metropolitan Sessions Judge below without considering the same passed the impugned order.

Hence, the impugned order required to be interfered with.

Accordingly, the Rule is made absolute.

The impugned order dated 27.09.2023 passed by the learned Metropolitan Sessions Judge, Chattogram in Criminal Motion Case No. 142 of 2023 rejecting the prayer for simultaneous trial of C.R. Case No. 183 of 2022 now pending before the Court of Metropolitan Magistrate, 5th Court, Chattagram with Sessions Case

No, 525 of 2023 which is now pending before the Court of Metropolitan Joint Sessions Judge, 7th Court, Chattagram is hereby set-aside.

The learned Metropolitan Sessions Judge, Chattagram is hereby directed to transfer the record of C.R. Case No. 183 of 2022 from the Court of Metropolitan Magistrate, 5th Court, Chattagram to the Court of Metropolitan Joint Sessions Judge, 7th Court, Chattagram immediately and the learned Metropolitan Joint Sessions Judge, 7th Court, Chattagram is directed to try the aforesaid case with Sessions Case No, 525 of 2023 keeping side by side.

The office is directed to communicate a copy of the order to the learned Metropolitan Sessions Judge, Chattagram to take immediate steps to transmit the case record of C.R. Case No. 183 of 2022 to the Court of Metropolitan Joint Sessions Judge, 7th. Court, Chattagram. The office is also directed to communicate a copy of the order to the learned Metropolitan Joint Sessions Judge, 7th Court, Chattagram to take necessary steps as per the direction herein above.

K.M. Emrul Kayesh, J

I agree

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