

Present:

Mr. Justice A.K.M. Asaduzzaman

And

Mr. Justice Syed Enayet Hossain

Criminal Misc. Case No. 48301 of 2024

Ahsanul Karim

.....Petitioner.

-Versus-

The State

.....Opposite party.

Mr. Md. Ruhul Quddus, Senior Advocate with

Mr. Kayser Kamal, Advocate with

Mr. Aminul Hoque, Advocate with

Mr. Mohammad Shishir Manir, Advocate with

Ms. Farzana Khan, Advocate with

Mr. Majibul Haque Bhuiyan, Advocate with

Mr. Anwar Hossen, Advocate with

Mr. Mustafizur Rahman, Advocate and

Mr. Md. Akter Rasel, Advocate

.....For the petitioner.

Mr. Ahsanul Karim, Senior Advocate

... In person.

Mr. Abdul Jabbar Bhuiya, Additional Attorney
General with

Mr. Md. Jasim Sarker, D.A.G. with

Mr. Rasel Ahmmad, D.A.G. with
Mr. Md. Geas Uddin Gazi, A.A.G. with
Mrs. Shamima Akhter Banu, A.A.G. and
Mrs. Laboni Akter, A.A.G. and
Mr. Kazi Mohammad Moniruzzaman, A.A.G.

.... For the state.

Heard and judgment on 7th November, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the proceedings of Shahbag P.S. Case No. 6(8)24 dated 23.08.2024 corresponding to G.R. Case No. 310 of 2024 under section 143/448/323/324/326/307/506 of the Penal Code, pending before the Court of Chief Metropolitan Magistrate, Dhaka so far it relates to the petitioner should not be quashed.

Fact relevant for disposal of the rule are that on 23.08.2024 one M Ashraful Islam, Advocate, Supreme Court of Bangladesh as informant lodged an ejahar against the 5 accused persons including the petitioner, who has shown therein as accused No.5 along with other unknown accused

persons alleging, inter alia, that one day during court hour while the informant was working at his room (Room No. 2005 (Annex)), accused No.1, namely Advocate Kaium with 2/3 unknown persons entered the informant's room and started threatening the informant. The accused No.1 threatened the informant that unless he promises that he would not contest in a Contempt Proceeding before the Hon'ble Appellate Division on 29.08.2024, he will be killed. The accused No.1 also said that the accused No.2, a leader of Supreme Court, is waiting outside to hear what the informant says to the accused No.1. The accused No.1 told the informant that the accused No.5-petitioner is also with them. At one point of altercation, the accused No.1 brought out a pocket knife and attacked the informant and the informant sustained cut injury and the accused No.4 attacked the informant and gave several punch. Thereafter, the other lawyers present in the said room detained the accused Nos.1 and 4 and then the accused No.2 who was waiting outside the room entered the room with 6/7 unknown persons and

snatched the accused Nos. 1 and 2 from the said room. The accused No.1 under the leadership of the accused No.2 tried to kill the informant in connection with a news report published in the Daily Inqilab on 22.08.2024.

On 24.08.2024 the Chief Metropolitan Magistrate after receiving the case sent for investigation and fixed up on 02.10.2024 for submission of police report.

Petitioner surrendered before the court and obtained bail in Criminal Miscellaneous Case No. 44371 of 2024 and thereafter filed this application under section 561A of the Code of Criminal Procedure and obtained the instant rule.

Mr. Ahsanul Karim, the learned advocate, shown as an accused No.5 in the FIR appeared before this court in person submits that the allegation, made in the FIR is not at all desirable and is a bad incidence but if the fact is accepted and taken to be true even then no offence has been attributed against the petitioner in any way. In that view of the matter, the petitioner was made as accused in the instant case just to harass and humiliate him. Since no offence could not made out against the petitioner and the story

appears to be contended therein against the petitioner is preposterous, the impugned criminal proceedings against him is liable to be quashed.

Mr. Abdul Jabbar Bhuiya, the learned Additional Attorney General on the other hand although opposes the rule but find it difficult to assail the submission made by the learned advocate for the petitioner.

Heard the learned advocate and perused the documents annexed to the application.

In the case we find some allegation is there against some lawyer of the Bar for assaulting the informant. Although in the FIR petitioner is shown as an accused No.5, but having no allegation is there against him. FIR disclosed in the following manner:

"আমি অন্যান্য দিনের মত পেশাগত দায়িত্ব পালন শেষে নিজ কক্ষে অবস্থান কালে (রুম নং-২০০৫ (এনেক্স) ভবন সুপ্রিমকোর্ট বার) দুপুর ১.১০ ঘটিকার সময় হঠাৎ ১নং আসামীসহ অজ্ঞাতনামা ২/৩ জন আমার কক্ষে প্রবেশ করে। ১নং আসামী এ্যাডভোকেট কাউন্সিল আমাকে বিভিন্ন হুমকি দামকি দিয়ে বলে যে-তুই বেশি বাড়াবাড়ি করতেছিস, তোকে যেন

কোন কোর্টে না দেখি আর তুই বিচারপতি নাইমা হায়দারের বিরুদ্ধে অবান্তর কথা বলবি না এবং আগামী বৃহস্পতিবার ২৯শে আগষ্ট তোর Comtempt Petition মোকাবেলা করবি না। সোজা কোর্টে গিয়ে দুই হাত জোর করে ক্ষমা চাইবি এ ব্যাপারে আমাদের কাছে এখনি ওয়াদা করবি অন্যথায় তোকে জানে মেরে ফেলবো। আমাদের চিনতে পারছিস" তো আমরা কার লোক। তোর বাবা গাজী কামরুল ইসলাম সজল এই সুপ্রিম কোর্টের নেতা, বাহিরে অপেক্ষা করতেছে তুই কি বলস জানার জন্য? এমনকি এস আলম গ্রুপের আইনজীবী এহসানুল করিমও আমাদের সাথে আছে।"

The statement as stated in the FIR against the petitioner that: "এমনকি এস আলম গ্রুপের আইনজীবী এহসানুল করিমও আমাদের সাথে আছে।" is itself a vague statement and could not show his involvement in the alleged occurrence in any way. Even if he was there with the main accused persons, that would not constitute an offence as alleged in the FIR of assaulting the informant in any way. Merely discloser of his name is not sufficient enough to say that he was involved in the case. The above narration is apparently is vague and is preposterous one. Accordingly initiation and continuation of the criminal proceeding at least against the petitioner is an abuse of the process of court, which is liable to be quashed.

We thus find merits in the rule.

In the result, the Rule is made absolute.

The impugned proceedings of Shahbag P.S. Case No. 6(8)24 dated 23.08.2024 corresponding to G.R. Case No. 310 of 2024 is hereby quashed as against the petitioner.

The order of stay granted earlier is hereby recalled and vacated.

Communicate the judgment at once.

Syed Enayet Hossain, J:

I agree.