

Present:

Mr. Justice A.K.M. Asaduzzaman

And

Mr. Justice Syed Enayet Hossain

Criminal Misc. Case No. 11403 of 2017

Begum Khaleda Zia

.....Petitioner.

-Versus-

The State and another

.....Opposite party.

Mr. Jamir Uddin Sircar, Senior Advocate with

Mr. Zainul Abedin, Senior Advocate with

Mr. A.M. Mahbub Uddin, Senior Advocate with

Mr. Md. Ruhul Quddus, Senior Advocate with

Mr. Kayser Kamal, Advocate with

Mr. Gazi Kamrul Islam, Advocate with

Mr. S.K. Mohammad Ali, Advocate with

Mr. Md. Zakir Hossain Bhuiyan, Advocate with

Mr. Kazi Akhtar Hossain, Advocate with

Mr. Ragib Rouf Chowdhury, Advocate with

Mr. A.R. Raihan, Advocate, with

Mr. Gazi Towhidul Islam, Advocate with

Mr. Md. Moniruzzaman Asad, Advocate with

Mr. Md. Farhad Hossain, Advocate with

Mr. Sabbir Hamza Chowdhury, Advocate with

Mr. Ariful Alam, Advocate with

Mr. Syful Aziz, Advocate with
Mr. Khandaker Maruf Hossain, Advocate with
Mr. Md. Aktar Rasul, Advocate with
Mr. Md. Masum Billah, Advocate with
Mr. Md. Roqonuzzaman, Advocate with
Mr. Md. Jashim Uddin, Advocate with
Mr. Md. Mosaddek Billah, Advocate with
Mr. Shahriar Mahamud, Advocate with
Mr. G.M. Nazrul Islam, Advocate with
Mr. Rezaul Karim, Advocate, with
Mr. Mustafizur Rahman, Advocate with
Mr. Muhammad Nazmul Hassan, Advocate with
Mr. Mahamudullah, Advocate with
Mr. Mir Abdul Halim, Advocate with
Mr. Md. Javed Hossain, Advocate with
Mr. Md. Shahiduzzaman, Advocate with
Mr. Md. Mahmudul Arefin, Advocate with
Mr. Maksud Ullah, Advocate with
Mr. K.R. Khan Pathan, Advocate with
Mr. H.M. Shanjid Siddique, Advocate with
Mr. Khan Md. Moinul Hasan, Advocate with
Ms. Tamanna Khanam Irin, Advocate and
Mr. M. Sabbir Ahmed, Advocate and
Mr. Manabendrey Roy Madol, Advocate and
Mr. Tariqul Islam, Advocate and
Mr. M. Mahbubur Rahman Khan, Advocate and

Mr. Md. Ajmol Hossain, Advocate and
 Mrs. Shahjadi Kohinur, Advocate and
 Mrs. Minara Khatun, Advocate and
 Mrs. Jakia Anar Koli, Advocate and
 Mrs. Anjumananara Munni, Advocate

.....For the petitioner.

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 30th October, 2024.

A.K.M. Asaduzzaman,J.

Challenging the order No.4 dated 10.08.2016 of the Metropolitan Sessions Judge, Dhaka of taking cognizance under section 123A/124A/505 of the Penal Code against the petitioner in Metropolitan Sessions Case No. 4200 of 2016 arising out of the C.R. Case No. 23 of 2016, petitioner obtained the instant rule under section 561A of the Code of Criminal Proceeding for quashing the proceeding.

One Dr. Momtaj Uddin Ahmad Mehedi on 25.01.2016 filed a petition of complaint being C.R. Case No. 23 of 2016 under section 123(Ka)/124(Kha)/505 of the Penal Code implicating the accused petitioner stating, inter alia, that on 21.12.2015 Begum Khaleda Zia while making speech in a seminar organized by the Jatiyotabadi Muktijoddha Dal made certain remarks, which were inconsistent with the original proclamation of the independence of 1971, derogatory and insulting for the freedom fighters. By making such remarks, the petitioner sought to create hatred against the Government, which is also detrimental to the interest of the citizens at large.

The complainant was examined under section 200 of the Code of Criminal Procedure. Thereafter the Metropolitan Magistrate, Dhaka took cognizance of an offence against the petitioner under section 123(Ka)/124(Ka)/505 of the Penal Code and issued summons upon her for appearance on 03.03.2016 vide order dated 25.01.2016.

The petitioner voluntarily surrendered before the court and obtained bail.

The case thereafter transmitted to the Court of Metropolitan Sessions Judge, Dhaka for trial and renumbered as Metropolitan Sessions Case No. 4200 of 2016.

On 10.08.2016 the petitioner filed an application under section 265(C) of the Code of Criminal Procedure for discharging her from the impugned criminal proceedings, the Sessions Judge rejected the said application and fixed on 10.10.2016 for framing charge.

Thereafter the petitioner moved before this court and obtained the instant Rule.

Mr. A.M. Mahbub Uddin, the learned Advocate appearing for the petitioner drawing our attention to the provision as laid down under section 196 of the Code of Criminal Procedure together with the petition of complaint as been lodged by a private individual submits that the petition of complaint does not constitute any authority to initiate a criminal proceedings under

the offence as disclosed therein accordingly the initiation of the instant criminal case is clearly bar as well as taking cognizance thereafter upon obtaining sanction later on is not in accordance with law. Accordingly the impugned criminal proceedings is nothing but an abuse of the process of court, which is liable to be set aside. The learned advocate further submits that when the case was admittedly initiated by a private individual and the government vide earlier order dated 21.09.2010 clearly declared that there is no scope to grant sanction under section 196 of the Code of Criminal Procedure to initiate a criminal proceedings through any petition of complaint lodged by a private individual and as such subsequent sanction as been accorded in the instant case on a petition of complaint lodged by private individual is a clear violation with ulterior motive of the order of Government as been forwarded vide Memo No. স্বঃসঃ (আইন-১)/বিবিধ-০৫/২০০৯/৫৪৪৮ dated 21.09.2010.

In all view of the matter, the learned advocate for the petitioner submits that the impugned criminal proceedings is a colourful exercise of power as well as abuse of the process of the court, which is liable to be quashed.

Mr. Md. Jasim Sarker, the learned Deputy Attorney General on the other hand although opposes the rule but considering the legal aspect of the case find it difficult to oppose the submission as been made by the learned advocate appearing for the petitioner.

Heard the learned Advocate and perused the documents annexed to the application and the relevant provision of law.

The case in hand was initiated admittedly by a private individual. Upon going through the petition of complaint it appears that nowhere in the 4th corner thereon, the complainant has disclosed that he obtained any authority from government to initiate the impugned criminal proceeding for an offence punishable under Chapter VI or IXA of the Penal Code, or section 505 of the same Code,

Section 196 of the Code of Criminal procedure provides that:

"196. No Court shall take cognizance of any offence punishable under Chapter VI or IXA of the Penal Code (except section 127), or punishable under section 108A, or section 153A, or section 294A, or

section 295A or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the (Government, or some officer empowered in this behalf by the Government)."

Although subsequently while taking cognizance of this case on 25.01.2016 the Metropolitan Magistrate disclosed in his order that:

"আসামীর বিরুদ্ধে রাষ্ট্রদ্রোহীতার মামলা করার জন্য স্বরাষ্ট্র মন্ত্রণালয় অভিযোগকারীকে অনুমতি (Sanction) দিয়েছে।"

Upon going through the provision as laid down under section 196 of the Code of Criminal Procedure as stated above we find that the sanction, which has been given subsequently after initiation of this case is not sufficient to comply the provision as laid down under section 196 of the Code of Criminal Procedure.

However from the government order contained in Memo No. স্বঃমঃ (আইন-১)/বিবিধ-০৫/২০০৯/৫৪৪৮ dated 21.09.2010, it is apparent that government through Ministry of Home affairs has expressed:

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার

স্বরাষ্ট্র মন্ত্রণালয়

আইন শাখা-১

বাংলাদেশ সচিবালয়, ঢাকা-১০০০

স্মারক নম্বর-স্বঃমঃ (আইন-১)/বিবিধ-৫/২০০৯/৫৪৪৮ তারিখঃ ২১ সেপ্টেম্বর, ২০১০ খ্রিষ্টাব্দ।

বিষয়ঃ সচিবালয় পত্র গ্রহণ কেন্দ্রে প্রাপ্ত আবেদন/অভিযোগের উপর ব্যবস্থা গ্রহণ প্রসংগে।

সূত্রঃ মন্ত্রি পরিষদ বিভাগ এর স্মারক নং-সচিবালয় পত্র গ্রহণ অধিশাখা/৩৭৬, তারিখ-২২/০৬/২০১০

উপর্যুক্ত বিষয় ও সূত্রোক্ত স্মারকের পরিপ্রেক্ষিতে জানানো যাচ্ছে যে, ফৌজদারী কার্যবিধি ১৮৯৮ এর ১৯৬ ধারার বিধান মোতাবেক কারো বিরুদ্ধে রাষ্ট্রদ্রোহিতার অভিযোগে মামলা রুজু করা এখতিয়ার শুধুমাত্র সরকার বা সরকার কর্তৃক এ বিষয়ে বিশেষ ভাবে ক্ষমতাপ্রাপ্ত কোন কর্মকর্তার রয়েছে। সাধারণ ব্যক্তির আবেদনের প্রেক্ষিতে উক্ত ব্যক্তিকে ফৌজদারী কার্যবিধি, ১৮৯৮ এর ১৯৬ ধারার অধীন মামলা রুজু করার ক্ষেত্রে সরকারের মঞ্জুরী প্রদান করার কোন আইনগত সুযোগ নেই।

২। বিষয়টি নির্দেশক্রমে অবহিত করা হ'ল।

স্বা/অস্পষ্ট

(মোহাম্মদ আবুসাইদ মোল্লা)

সহকারী সচিব

ফোনঃ ৭১৬৮১৫৩

মন্ত্রিপরিষদ সচিব

মন্ত্রিপরিষদ বিভাগ

বাংলাদেশ সচিবালয়, ঢাকা।

(দৃঃআঃ উপ-সচিব, সচিবালয় পত্র গ্রহণ অধিশাখা)

স্মারক নম্বর-স্বঃমঃ(আইন-১)/বিবিধ-০৫/২০০৯/৫৪৪৮(১)তারিখঃ ২১ সেপ্টেম্বর, ২০১০ খ্রিষ্টাব্দে

অনুলিপি সদয় জ্ঞাতার্থে প্রেরণ করা হ'লঃ

১। জনাব মোঃ পিকে আব্দুর রব, এ্যাডভোকেট

৩নং কোর্ট হাউজ স্ট্রীট

২য় তলা, রুম নং-৪, ঢাকা।

স্বা/অস্পষ্ট

(মোহাম্মদ আবুসাইদ মোল্লা)

সহকারী সচিব

In view of the above direction of the government when there is no scope to accord any sanction on complaint lodged by

private individual, any sanction if is given subsequent to the initiation of the criminal case, is a clear violation of the government order itself.

Regard being had to the above law, fact and circumstance of this case, we are of the opinion that the initiation and continuation of the instant criminal proceeding against the petitioner is a colourfur exercise of power, malafide and is a clear abuse of the process of the court, which is liable to be quashed.

In all view of the matter, we find substances in the submission of the learned advocate for the petitioner.

In the result, the Rule is made absolute. The impugned criminal proceedings of Metropolitan Sessions Case No. 4200 of 2016 arising out of C.R. Case No. 23 of 2016 is hereby quashed.

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

Communicate the judgment at once.

Syed Enayet Hossain, J:

I agree.