

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

Suo Moto Rule No.06 of 2024

IN THE MATTER OF:

The State

..... Petitioner

-Vs-

***Mr. Abu Zayed Md. Rafiqul Alam, learned Public
Prosecutor, Naogaon.***

..... Respondents

And

Mr. Anik R. Hoque, Additional Attorney General with
Mr. Tanim Khan, D.A.G. with
Ms. Syeda Shajia Sharmin, D.A.G with
Mr. Md. Muzahedul Islam (Shahin), A.A.G with
Ms. Shadia Afrin, A.A.G and
Mr. Siddiqur Rahman, A.A.G

.....For the petitioner-government

Mr. Md. Mainul Islam, Advocate

..... For the respondent.

Heard and judgment on:19.03.2025

Present:

Mrs. Justice Farah Mahbub.

And

Mr. Justice Debasish Roy Chowdhury

Farah Mahbub, J:

Pursuant to the representation dated 02.12.2024 so made by the Naogaon Magistracy along with a video clip an attention was drawn to the office of the Registrar General, Bangladesh Supreme Court with regard to the slanderous statements made by the learned Public Prosecutor, Naogaon Mr. Abu Zayed Md. Rafiqul Alam in a public gathering against the learned Magistrates concerned including the learned Chief Judicial Magistrate, Naogaon.

Those statements not only tantamount to demeaning the dignity and sanctity of the concerned magistracy but, also, a naked intervention in the independence of judiciary, with a view to undermining the authority of the courts in the estimation of the public at large. Said questionable conduct of the public prosecutor concerned also goes to violate the canons of Profession of Conduct and Etiquette, framed under Bangladesh Legal Practitioners and Bar Council Order, 1972.

The High Court Division having the power of superintendence and control over all courts and tribunals subordinate to it vide Article 109 of the Constitution of the People's Republic of Bangladesh directed Mr. Abu Zayed Md. Rafiqul Alam, the Public Prosecutor, Naogaon vide order dated 18.12.2024 to appear before this Court on 06.01.2025 and to give reply with affidavit as to why a contempt proceeding should not be drawn against him for lowering down the dignity and sanctity of Naogaon Magistracy by making slanderous and malicious statements in public gathering against the learned Magistrates concerned including the learned Chief Judicial Magistrate, Naogaon, who are discharging their duties and responsibilities at Naogaon Magistracy as the respective judges in accordance with law.

The learned Attorney General of Bangladesh, as being the ex-officio Chairman of Bangladesh Bar Council, was also directed to take necessary steps in the matter in question in accordance with law.

In compliance thereof, Mr. Abu Zayed Md. Rafiqul Alam duly appeared in person on 06.01.2025 and by filing affidavit sought unconditional apology before this Court with commitment not to repeat

the same in future. Subsequently, by filing a supplementary affidavit stated, *inter alia*, that said respondent personally met the learned Magistrate concerned to express his remorse over the issue in question and, ultimately, mitigated the said issue amicably.

On the other hand, in compliance of the order dated 18.12.2024 a report has been filed before this Court on behalf of the learned Attorney General of Bangladesh, as being the *ex-officio* Chairman of Bangladesh Bar Council, stating, *inter alia*, that the learned Magistrates of the Naogaon Magistracy were posted there during the period of the erstwhile fascist Government. After the fall of the said regime on 05.08.2024 several cases were lodged against the political leaders and supporters of the concerned political party across the country as they brutally attacked the students and the general public supporting the anti-discrimination students movement against the said regime. However, upon due inquiry, it is found that many learned Magistrates of Naogaon Magistracy granted bail to the leaders and supporters of a particular political party despite having specific allegations against them and, were also, grave in nature. These questionable orders created a negative impact in the administration of justice and, also, went against the sentiment of the general public at large.

It is fundamental that if the rule of law is to have any meaning or content, the authority of the courts and judges and the confidence of the public in these should not be allowed to be shaken: *R vs. Almon: 97 ER 94*.

In *Brahma Prakash Sharma vs. State of UP*, AIR 1954 SC 10 the Supreme Court of India has observed, *inter alia*, that scandalising in substance is an attack on individual judges or the court as a whole with or without referring to particular cases, casting unwarranted and defamatory aspersions upon the character or ability of the judges. Such conduct is punishable as contempt for the reason that it tends to create distrust in the popular mind and impairs confidence of the people in courts which are of prime importance to the litigants in the protection of their rights and liberties.

In *Delhi Judicial Service Association, Tis Hazari Court vs. State of Gujarat*, (1991) 4 SCC 406 at pp 456, 457, the Supreme Court held as follows:

“.... The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of court. The public have a vital stake in effective and orderly administration of justice. The court has the duty of protecting the interest of the community in the due administration of justice and, so, it is entrusted with the power to comment for contempt of court, not to protect the dignity of the court against insult or injury, but, to vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with.....”

In an unequivocal voice it is observed that courts of justice in a country from the highest to the lowest are by their constitution entrusted with the functions of administration of justice which entails the confidence of the public in them. It is, however, the expectation and

confidence of those public that courts of justice perform their functions and discharge their duties with moral excellence without fear or favour, or being biased.

In this regard it is pertinent to mention that the Canons of Professional Conduct and Etiquette for Advocates, framed under the Legal Practitioners & Bar Council Act, 1965, particularly Chapter III, cast a solemn obligation to maintain dignity, restraint, fairness and respect towards the Court, to assist the Court with candour and clarity and to refrain from any conduct, language or gesture which may tend to scandalise the Court or obstruct the due course of justice. In tandem, the judges of the subordinate courts are not beyond ethical discipline; rather, may appropriately be guided by the Code of Conduct prescribed for the Judges of the Supreme Court of Bangladesh, reformulated under Article 96 of the Constitution, in *Government of Bangladesh and others vs. Advocate Asaduzzaman Siddiqui and others*, 71 DLR (AD) 2019 52 (para 391). The said Code underscores that a judge must remain impartial, patient, courteous and firm, must uphold the majesty of the law, and must conduct proceedings in a manner that inspires public confidence in the administration of justice. In the courtroom, therefore, the reciprocal duties of the Bar and the Bench demand disciplined communication, mutual respect and adherence to ethical restraint, for any departure therefrom strikes at the very foundation of the rule of law and may legitimately attract the jurisdiction of the Court in contempt.

The conduct of Mr. Abu Zayed Md. Rafiqul Alam, the learned Public Prosecutor, Naogaon, no doubt, is a scurrilous attack on the

judiciary as a whole, to undermine the authority of the courts and public confidence in the administration of justice and, is, thus, contemptuous.

However, taking into consideration of the facts that he sought unconditional apology to this Court as well as to the learned Magistrates concerned with commitment not to repeat the same in future this Court refrains from proceeding with the process of contempt.

Accordingly, this *suo moto* Rule is disposed of without any order as to costs.

Communicate the judgment and order to the respondents concerned at once.

Debasish Roy Chowdhury, J:

I agree.