

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

Criminal Miscellaneous Case No. 1917 of 2002

Hilal Fayejee @ Hilaluddin

....Accused-Petitioner

Versus

The State and another

....Opposite parties

Mr. Md. Zahedul Bari, Senior Advocate with

Mst. Nazmun Nahar, Advocate

....For the Accused-Petitioner

Mr. Rasel Ahmmad, D.A.G. with

Mr. Md. Shahadat Hossain Adil, A.A.G,

Mr. Md. Shamsil Arefin, A.A.G. and

Ms. Zohura Khatoon (Jui), A.A.G.

....For the Opposite Party No. 1

Heard and Judgment on 20.02.2025.

Md. Iqbal Kabir, J:

This Rule was issued calling upon the opposite parties to show cause as to why the proceeding of Complaint Case No. 120(1)2000 now pending before the Court of Magistrate, Second Class, Mymensingh should not be quashed and/or such other or further order or orders passed as to this Court may seem fit and proper.

The prosecution's story, in short, is that on 12.04.2000, the opposite party No. 2 filed a petition of complaint before the learned Magistrate, First Class, Mymensingh, stating inter alia that he is a political and social personality in his locality. He claims opposite party No. 2 is an educated, elected Member of Parliament, a freedom fighter, and proprietor of different business firms. However,

the present petitioner published a report in the Daily Newspaper under the Caption “সরেজমিন : সমুদ্রগঞ্জ ঘাট-আওয়ামী পরিবেশ রক্ষা আন্দোলন”; some portion of the said report was defamatory. The opposite party No. 2 has been mentally upset due to the publication of such a news article, and the same has lowered his prestige in public. After that, he tried to contact the petitioner to ascertain the truth of the aforesaid news, but the petitioner did not give any satisfactory explanation. Thereafter, filed a petition of complaint.

However, on receipt of the petition of complaint, the learned Magistrate, First Class, Mymensingh, examined the opposite party No. 2 under section 200 of the Code of Criminal Procedure. Thereafter, by the order dated 12-04-2000, a summons was issued against the petitioner, who voluntarily surrendered before the Court and obtained bail.

The case being ready has been transferred to the court of Magistrate, Second Class, Mymnsingh for disposal, and a date was fixed for framing of charge.

Being aggrieved by and dissatisfied with the proeeeding of the complaint case of the Court of the learned Magistrate, the petitioner begs to preferred this application under Section 561A of the Code of Criminal Procedure.

Mr. Md. Zahedul Bari, learned Advocate for the petitioner submits that the petition of complaint was examined and the statement of the opposite party No. 2 recorded under section 200 of the Code of Criminal Procedure, which does not disclose an offence under section 500 of the Penal Code. Moreover, the opposite party did not claim that the report published by the petitioner is entirely baseless, and thus challenged the proceedings. The materials

published in the news article are true, and it was published for the public's benefit. According to him editor and the publisher have published a rejoinder related to the alleged defamatory statements. He claims the allegation brought against the petitioner does not fall under section 500 of the Penal Code; as such, the proceeding against him is an abuse of the process of the court, and to secure the ends of justice, the same is liable to be quashed. In support of his submission, he cited two decisions, one of Shahadat Chowdhury vs Md. Ataur Rahman, reported in 48 DLR 176, and the other one is AKM Enamul Haque vs Md. Mizanur Rahman and others reported in 14 BLD 201.

However, suffice it to say that section 561A empowers this court to intervene on three counts i.e. (a) to give effect to any order under this code, (b) to prevent abuse of the process of any Court, (c) otherwise to secure the ends of justice, and this court can invoke any category of these there independently, separately and of jointly.

In this present case, the question, therefore, arises for consideration whether the material on record prima facie constitutes any offence against the accused petitioner.

In the present case, a defamatory allegation was brought and published in a news article against the opposite party. The opposite party was examined, and the statement of the complainant was recorded under section 200 Code of Criminal Procedure, and thereafter it was fixed for framing of charge. So, from the above facts, it cannot be said that the allegation does not fall under the above-mentioned sections. The factual aspect of the case will be decided by the trial Court on taking evidence. The onus or burden of proof of the said prima facie allegations against the accused

petitioner is heavily on the complainant, and the accused petitioner is at liberty to controvert all those allegations during a trial by cross-examining witnesses and also by adducing and producing witnesses and documents before the trial court.

In this context, the submissions and the decisions reported in 48 DLR 176, and 14 BLD 201 appear to us that the present case is different from those in the reported case, and we are unable to accept any of the contentions as raised by the advocate for the petitioner.

Given the above, the Rule has no legs to stand on, being devoid of substance, and is destined to fail.

Accordingly, the Rule is discharged.

The trial Court is directed to conclude the case within 6(six) months from receipt of the judgment and order without fail and not to allow any adjournment by any parties except in a very exceptional circumstance, keeping in mind that this is a very old case and has to be concluded within six months.

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

There will be no order as to cost.

Communicate the judgment and order at once.

Md. Riaz Uddin Khan, J:

I agree.