

Present :

Mr. Justice A.K.M. Asaduzzaman

And

Mr. Justice Md. Ashraful Kamal

Criminal Misc. Case No.11484 of 2007

Md. Akram Ali, Professor,

.....Petitioner.

-Versus-

The State

.....Opposite party.

Mr. Md. Osman Ghani, Advocate

.....For the petitioner

Mr. Bashir Ahmed, A.A.G.

..For the opposite party.

Heard and Judgment on 4th.May,2011.

A.K.M.Asaduzzaman,J.

On an application under section 561A of the Code of Criminal Procedure this rule was issued calling upon the opposite party to show cause as to why the judgment and order dated 14.05.2007 passed by the learned Additional Sessions Judge and Anti-Smuggling Tribunal, Sylhet in Criminal Revision No.191 of 2005 affirming the order of framing charge dated 9.7.05 passed by the Additional District Magistrate, Sylhet in Kotwali P.S. Case No.13 dated 8.5.2001 corresponding to G.R. Case No. 290 of 2001 under sections 420/467/468/471/34 of the Penal Code, now

pending in the Court of Additional District Magistrate, Sylhet should not be quashed.

Facts necessary for disposal of the rule are that one Manik Miah lodged an FIR against the petitioner and others before the Kotwali Police Station, Sylhet alleging inter alia that he and his four brothers are the owners and possessors of the case land on the basis of gift made in their favour by their father Hazi Rowsan Ali, vide registered deed dated 5.11.1995 but subsequently the accused petitioner with the help of other accused persons created a false registered deed on 23.6.1998 showing transfer of the case land in his favour by Saidun Nessa & Rajia Begum and others. In fact Rajia Begum and Saidun Nessa did not execute the said deed although they have been shown as seller No.9 and 10 in the said deed and the accused petitioner made a prayer for mutation by showing that false deed but mutation case was rejected by the Assistant Commissioner(Land).

In view of the said FIR Kotwali P.S. Case No. 13 dated 8.5.2001 was started against the petitioner and others.

The case was duly been investigated by the police, who submitted charge sheet against the petitioner and 9 others on 9.9.2001 under section 420/467/468/476/34 of the Penal Code.

The petitioner voluntarily surrendered before the court and obtained bail there from.

Thereafter the petitioner filed an application before the learned Magistrate for discharging him from the criminal proceeding with the contention that the petitioner instituted Title Suit No.19 of 2000 for partition of the suit land implicating the informant of the case as opposite party No.1 and the said suit subsequently transferred to the court of Assistant Judge, Bishwanath, Sylhet and renumbered as Title Suit No.37 of 2002 and been dismissed by the trial court on the ground of maintainability therein. Thereafter against the said judgment the petitioner preferred Title Appeal No.84 of 2006 which is now pending for disposal before the 3rd Court of Additional District Judge, Sylhet and since the deed in question are placed before the Civil Court and the matter is sub-judiced in the Civil Court and the impugned criminal proceedings holding the said deed as forged filed by private individual is barred under section 195 of the Code of Criminal Procedure and the criminal proceeding

maybe stayed till disposal of the civil suit, the learned Magistrate by the order dated 9.7.2005 rejected the application and framed charge against the accused petitioner.

Being aggrieved there against the petitioner preferred Criminal Revisional application before the Court of Sessions Judge, Sylhet which was numbered finally as Criminal Revision Case No.191 of 2005, the said revision ultimately heard on transfer by the Court of Additional Sessions Judge, who by the impugned judgment and order dated 14.5.2007 dismissed the criminal revision.

Being aggrieved there against the petitioner obtained the instant rule on an application under section 561A of the Code of Criminal Procedure.

The learned advocate appearing for the petitioner submits that by using the deed in question being dated 23.6.1998 the petitioner has also filed a suit for partition before the civil court and the matter is still pending and the said deed in question is still in issue of the civil court and its identity yet not been decided by the civil court and the allegation of forgery can well be established there and as such the instant criminal proceeding during pendency of the civil suit is not maintainable and the

same is an abuse of the process of the court and the instant criminal proceeding is thus liable to be quashed. He further submits that since disputed deed in question is lying in the Civil Court the complainant being the party of that suit has no locus-standi to file the impugned criminal case as being barred under section 195(1)© of the Code of Criminal Procedure and the impugned charge framed against the petitioner is thus perse illegal and is without jurisdiction which is liable to be quashed.

Ms. Hamida Chowdhury, the learned advocate, although filed an application on behalf of the informant for allowing the informant to be added in the instant case and like to contest the case as opposite party but subsequently being present in court submits that she has got no instruction to proceed against the rule.

Heard the learned Advocates and perused the documents and the supplementary affidavits.

Perusing the annexures it appears that by using the deed in question dated 23.6.1998 the present petitioner has already filed a suit for partition against the informant of the case and the said suit is still pending before the Civil Court, which means the petitioner, has already used the deed in question in competent civil

court and the matter is pending before there. In the premises in view of section 195(1)© of the Code of Criminal Procedure, no court shall take cognizance of any offence relating to a document produce or given any evidence to any court to which it has been used otherwise a complaint in writing of such Court, or of some other Court to which such Court is subordinate. But the informant of the case although being the party in the said civil suit filed a case against the petitioner on the same document which is under domain of a civil court, in the premises no criminal case can be entertained other than a complaint in writing of such Court, or of some other Court to which such Court is subordinate is respectable and the proceeding can not thus be proceeded in view of section 195(1)© of the Code of Criminal Procedure. Thus since the case is barred under law, which is a clear abuse of the process of the court and is liable to be quashed. In the premises the impugned framing of charge against the petitioner is apparently illegal and without jurisdiction.

In all view of the matter, we do not find any reason to continue the criminal proceeding and the instant criminal proceeding since is clearly appears to be an abuse of process of

the court which is liable to be quashed. We thus find merits in this rule.

In the result the rule is made absolute and the judgment and order dated 14.05.2007 passed by the learned Additional Sessions Judge and Anti-Smuggling Tribunal, Sylhet in Criminal Revision No.191 of 2005 affirming the order of framing charge dated 9.7.05 passed by the Additional District Magistrate, Sylhet in Kotwali P.S. Case No.13 dated 8.5.2001 corresponding to G.R. Case No. 290 of 2001 is hereby set side and quashed.

The order of stay granted earlier is hereby vacated.

Send down the L.C. Records.

Communicate the order at once.

Md. Ashraful Kamal, J.

I agree.