

**Present:**

*Mr. Justice Md. Nazrul Islam Talukder*

*And*

*Mr. Justice Kazi Md. Ejarul Haque Akondo*

**Criminal Miscellaneous Case No. 15445 of 2010**

Saleh Ahmed

***..... Accused-Petitioner.***

***-Versus-***

The State and another

***.....Opposite-Parties.***

Mr. Sheikh Md. Zakir Hossain, Advocate

***.....For the Accused-petitioner.***

Mr. A.K.M. Amin Uddin, D.A.G with

Ms. Anna Khanom Koli, A.A.G and

Mr. Md. Shaifour Rahman Siddique, A.A.G

***.....For the State-opposite party.***

Ms. Quamrun Nessa, Advocate

***.....For the Anti-Corruption Commission.***

**Heard and Judgment on: 07.06.2022**

***Md. Nazrul Islam Talukder, J.***

On an application under section 561A of the Code of Criminal Procedure, 1898 (in short the Code), this Rule, at the instance of the accused-petitioner, was issued calling upon the opposite-parties to show cause as to why the impugned proceeding of Shahbag

P.S. Case No. 19 dated 08.08.2007 corresponding to ACC G.R. No. 79 of 2007 and Metropolitan Special Case No. 73 of 2008 under Sections 409 and 109 of the penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947, now pending in the Court of Metropolitan Senior Special Judge Court, Dhaka should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

At the time of issuance of the Rule, there was an order to the effect that this Rule will be heard and disposed of with Criminal Miscellaneous Case No.31 of 2008 arising out of the self-same case. It may be noted that the aforesaid Criminal Miscellaneous Case No.31 of 2008 was heard and disposed of by

this court on 11.02.2019 and after hearing the said Rule was discharged and the order of stay was also vacated by judgment and order dated 11.02.2019.

The prosecution case leading to issuance of the Rule, in short, is that one Mr. Mohammad Mahbubul Alam, Assistant Director, Anti-Corruption Commission (in short the ACC) as informant lodged a First Information Report (in brief the FIR) with Shahbag Police Station against the petitioner and others. The allegation was that during inquiry it was found that a decision was taken in an inter-ministerial meeting held on 31.08.2005 to the effect of off-loading 25% shares (31,77,985) of the paid up capital of Dhaka Electric Supply Company Ltd.

(DESCO) in the capital market through direct listing process and out of that 10% (3,17,798) shares would be kept preserved for the officers and employees of DESCO on its face value. Subsequently when the matter was placed before the Ministry of Power and Energy for necessary approval, the accused-petitioner being the Secretary of the Power Division and other officials delayed the matter internationally for their illegal gain and with ill motive made a recommendation for transferring the proportionate final share to the officers and employees of the said ministry out of the said 10% shares without complying with legal process. The Managing Director of DESCO without taking approval from the Board gave his consent to transfer

shares in favour of the officers and employees of the Ministry concerned. Thereafter a list of officers and employees of DESCO was prepared in order to sell 10% shares at face value and although the accused-petitioner and others are not the officers of DESCO, their names were included in the list without mentioning their designation and accordingly shares were distributed among them and the accused- petitioner obtained 3000 shares at the face value of the share. With the above allegation Shahbag Police Station started Shahbag Police Station Case No. 19 dated 08.08.2007 under section 5(2) of the Prevention of Corruption Act, 1947 read with sections 409/109 of the Penal Code, 1860 against the petitioner and others.

The Anti-Corruption Commission after holding investigation submitted charge-sheet against the accused-petitioner and others under the aforesaid sections. Being aggrieved by and dissatisfied with the impugned proceeding, the accused-petitioner approached this court with an application under section 561A of the Code and obtained this Rule along with an order of stay on 09.06.2010.

From the charge-sheet, it appears that the investigating officer after investigation submitted a charge-sheet being no. 204 dated 27.05.2008 under sections 420/409/109 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 against the petitioner and others.

It may be mentioned that when the matter is taken up for hearing, no one appears to press the Rule for hearing on behalf of the accused-petitioner.

At the very outset, Ms. Quamrun Nessa, learned advocate, appearing on behalf of the ACC, submits that the allegations made in the FIR clearly disclosed prima-facie case against the accused-petitioner and the same are disputed and complicated questions of facts as such the application under section 561A of the Code is not sustainable in law.

She next submits that the instant miscellaneous case under section 561A of the Code is premature before taking cognizance of the case by the competent court and a proceeding cannot be said to be pending and

accordingly the proceeding cannot be quashed.

She further submits that it is the settled principle of law that a criminal proceeding cannot be quashed before framing of charge and as such the Rule is liable to be discharged.

She lastly submits that it has been decided in the case of **Latifa Akter Vs State reported in 51 DLR (AD) 159** that an accused can only prefer an application under section 561A for quashing the proceeding if he becomes previously unsuccessful in his application either under section 265C or 241A otherwise, his application for quashing shall be premature, the ratio decidendi of the



case is fully applicable in the present case as such the Rule is liable to be discharged.

On the other hand, Mr. A.K.M Amin Uddin, the learned Deputy-Attorney General, appearing on behalf of the opposite-party No.1, submits that *prima-facie* case has been disclosed against the petitioner in the FIR and the petitioner has come before this court at the very early stage as such there is no scope to quash the whole proceedings of the case without taking evidence and accordingly the Rule should be discharged.

We have gone through the application under section 561A of the Code of Criminal Procedure and perused the prosecution materials annexed thereto. We have also perused the counter-affidavit filed by the

opposite-party No.2. We have heard Ms. Quamrun Nessa, learned Advocate for the opposite-party No. 2 and Mr. A.K.M. Amin Uddin, the learned Deputy-Attorney General for the State at length and considered their the submissions and the relevant laws and decisions referred by them.

On perusal of the FIR, it appears that there is specific allegation against the petitioner which reads as follows: এমতাবস্তায় অনুসন্ধানকালে প্রমানিত হয় যে, ডেসকো এর কর্মকর্তা/কর্মচারীদের জন্য আইন দ্বারা ৩,১৭,৭৯৮টি শেয়ার সংরক্ষিত থাকা সত্ত্বেও আসামীগন সরকারী কর্মচারী হিসেবে শেয়ার বন্টনের জিষ্মাদার থাকা অবস্থায় মিথ্যা ও প্রতারণার আশ্রয়ে পরস্পর যোগসাজশে অপরাধমূলক কর্মকাণ্ডের মাধ্যমে নিজেরা অবৈধভাবে লাভবান হওয়া এবং অন্যদেরকে অবৈধভাবে লাভবান করার জন্য অসৎ উদ্দেশ্যে বলবৎকৃত আইনের নির্দেশাবলী ক্ষমতার অপব্যবহারের মাধ্যমে ভংগ করে ৬১,০০০টি শেয়ার (প্রতিটি শেয়ারের Face Value ১০০/-টাকা) বিধি বহির্ভূত ভাবে গ্রহন সহ মন্ত্রণালয়ের কর্মকর্তা/কর্মচারীদের

मध्ये बन्तन करतः दः विः ४०९/१०९ धारासह १९४९ इंग सनेर दुर्नीति प्रतिरोध २नंग आइनेर ५(२) धाराय अपराध करेछेन।

There is further allegation in the FIR which reads as follows- डेसकोर व्यवस्थापना परिचालक आसामी सालेह आहमेद विषयति डेसकोर बोर्ड सभाय उपस्थापन ना करे २१/०१/२००६ इंग तारिखे सचिव, विद्युत् मन्त्रणालयके देया एक पत्रे विद्युत् मन्त्रणालये कर्मरत सकल कर्मकर्ता/कर्मचारीदेर संरक्षित शेयार देयार विषये डेसको कर्तृपक्षेर सम्मतिर कथा जानान एवं परवर्ती डेसकोर बोर्ड सभाय उपस्थापन पूर्वक post-Facto अनुमोदन ग्रहन करे सभार कार्यविवरनी यथारीति मन्त्रणालये प्रेरन करा हवे मर्मे पत्र देन एवं एकई पत्रे मन्त्रणालय कर्मकर्ता/कर्मचारीदेर नामेर तालिका प्रेरन करते अनुरोध करेन। विद्युत् मन्त्रणालयेर बे-आइनी आदेश डेसको कर्तृक डेसकोर बोर्ड अनुमोदन ना करा सत्वेओ आसामी मोः आबुल्लाह मासुद मन्त्रणालयेर अनुमोदन व्यतिरेके उल्लिखित आसामीदेर योगसाजशे ०१/१०/२००६ इंग तारिखेर ५६८ नंग पत्रे मन्त्रणालयेर कर्मकर्ता/कर्मचारीदेर जन्य २% शेयार हिसेबे ६१,०००/ टि शेयार संरक्षनेर सरकारेर अनुमोदन प्रदान करा हलो मर्मे व्यवस्थापना परिचालक डेसकोके जानिये देयार पर पुनराय तिनि एकई तारिखे ५८३ नंग सारक मूले डेसकोर प्रस्तावित १०% शेयार

সংরক্ষনের বিদ্যুৎ মন্ত্রণালয়ের নীতিগত সিদ্ধান্ত জ্ঞাপন করা হলো মর্মে ডেসকোকে জানায়।

আসামী আ ন হ আখতার হোসেন, সাবেক বিদ্যুৎ সচিব, এ, এস,এম, মেজবাউল ইসলাম, যুগ্ম সচিব, নাজমা বেগম, সাবেক উপ-সচিব আব্দুল্লাহ মাসুদ, সাবেক সিনিয়র সহকারী সচিব, কৃষ্ণচঞ্চল তালুকদার, প্রশাসনিক কর্মকর্তা নীতি নির্ধারনী জরুরী পত্র দুইটি ফেলে রেখে প্রায় দেড় মাস পর নিজেদের অবৈধ ভাবে লাভবান করার অসৎ উদ্দেশ্যে মন্ত্রণালয়ের কর্মকর্তা/কর্মচারীদেরকে ও অন্তর্ভুক্ত করার জন্য একই ভাবে শেয়ার প্রদানের এই প্রস্তাব বে-আইনী ভাবে নথিতে উল্লেখ পূর্বক ১০/০৭/০৬ ইং তারিখে নোটশিটে বিদ্যুৎ মন্ত্রণালয়ের কর্মকর্তা ও কর্মচারীদের ডেসকোর জন্য সংরক্ষিত ১০% শেয়ার হতে আনুপাতিক হারে শেয়ার প্রদানের বে-আইনী ভাবে সুপারিশ করেন। কিন্তু তৎকালীন মন্ত্রী মহোদয় সুপারিশটি অনুমোদন না করে বিষয়টির উপর আইন/বিধির আলোকে পরিক্ষান্তে সিদ্ধান্ত গ্রহনের আবশ্যিকতার উল্লেখ করলে তৎপ্রেক্ষিতে আসামী আ ন হ আখতার হোসেন (সচিব) এ, এস, এম, মেজবাউল ইসলাম (যুগ্মসচিব) ইসমত আরা জাহান (উপসচিব) লায়লা জেসমিন (সিনিয়র সহকারী সচিব) চঞ্চল তালুকদার কৃষ্ণ তালুকদার (প্রশাসনিক কর্মকর্তা) অসৎ উদ্দেশ্যে নিজেদের মধ্যে উক্ত শেয়ার অবৈধভাবে পাওয়ার লক্ষ্যে আইনের ও বিধি বিধানের তোয়াক্কা না করে

২২/০৮/২০০৬ ইং তারিখে মনগড়া মতামত দিয়ে ডেসকোর বোর্ড সভায় বিদ্যুৎ মন্ত্রণালয়ের কর্মকর্তা/কর্মচারীদের ডেসকোর কর্মকর্তা/কর্মচারীদের জন্য সংরক্ষিত ১০% শেয়ার অন্তর্ভুক্ত করার নীতিগত সিদ্ধান্তের জন্য নথি উপস্থাপন করে অনুমোদন করিয়ে নেন।

From the above allegations, it appears that the Managing Director of DESCO without taking approval from the Board gave his consent to transfer share in favour of officers and employees of the Ministry concerned.

On perusal of the charge-sheet, it appears that in the inter- ministerial meeting held on 31.08.2005, it was decided that 25 % shares ( 31,77,985) of the DESCO will be sold/ offloaded in capital market. Accordingly DESCO vide letter dated 17.11.2005 sent a detail proposal to the Secretary, Power Division with a recommendation to keep 10%

shares reserved for the staffs and officers of the DESCO. The Honorable Minister in a meeting held on 20.03.2006 without accepting the same approved to sell 25 % shares through Capital Market. But the Board of Directors in violation of previous decision of the Hon'ble Minister and the provision of Direct Listing Regulations, 2006 in its 100<sup>th</sup> meeting took decision to keep 10 % shares (3,17,798) at face value of Tk. 100 for its staffs/officers and members of the Board of Directors. Subsequently by giving false information in its 9<sup>th</sup> Annual General Meeting got the said decision approved. The DESCO on 3.05.2006 applied to the Securities & Exchange Commission for direct listing and the same was approved with some

conditions. 15 % shares (28,60,187) were offloaded in between 18.06.2006 to 17.07.2006 at the rate of Tk.257.11 each. Thereafter the Managing Director of the DESCO pursuant to the decision in a meeting claimed to have been presided over by the Hon'ble State Minister dated 09.05.2006 (non-existence meeting) on 29.05.2006 and 04.06.2006 requested for formal approval from the ministry as to 10% shares. Pursuant to those letters, the petitioner illegally prepared note sheet and placed the same before the Hon'ble State Minister with a proposal to include the Officers/Employees of the Ministry in 10% shares and the Hon'ble Minister without accepting the same directed to place the same after examination of

relevant laws. But the petitioner and others with ill motive and in violation of relevant provisions again placed the same before the Hon'ble Minister with recommendation that decision may be taken in the Board of Directors of DESCO. The Hon'ble Minister put his signature on it on 23.08.2006 under caption- "as per proposal". But the Managing Director of the DESCO without approval from the Board of Directors requested the petitioner for sending the list of names of the officers/staffs and members of Board of Directors as well as the names of the officers/staffs of the ministry with the approval of the government. Subsequently accused Abdullah Masud in connivance with others vide letter dated 01.10.2016 informed



the MD that approval is given for allotment of 2% shares (61000) though there was no approval of the Board of Directors of DESCO and higher authority. In the list the names of the officers and staffs of the Ministry were included but they hid their designation. Securities and Exchange Commission approved the letter of the DESCO dated 21.11.2006 to sell 3,17,798 shares on 12.12.2006 with condition that 10 % shares would only be distributed among the officers /staffs and the members of Board of Directors. In violation of the above condition 61000 shares were distributed among the officers/employees of the Ministry at the rate of Tk.100 as face value for each share and the petitioner got 3000 shares. At that time

the market value of the each share was at Tk. 423.25 thus all the accused caused loss of Tk. 10,20,00,891 [3,15,548 x (423.25-100)=10,20,00,891] to the Government.

From the discussion made above, it appears that in violation Direct Regulations, 2006, without approval from the Ministry, conditions of the Securities and Exchange Commission dated 12.12.2006 and without approval of the Board of Directors out of 25% shares, 10% shares (3,17,798) were allocated at face value of Tk. 100 for its staffs/officers and members of the Board of Directors of DESCO and officers and staffs of the Ministry hiding their designation including the petitioner and thereby caused loss of Tk. 10,20,00,891 [3,15,548 x (Market value

423.25- Face Value 100)=10,20,00,891] to the Government.

In the facts and circumstances of the case, it appears that *prima-facie* case has been disclosed against the petitioner in the prosecution materials. Moreover whether the petitioner is guilty or not is a disputed questions of fact. With regard to the maintainability of the application Mr. Ahmed referred the cases reported in 57 DLR (AD) 114, 62 DLR (AD) 283, 63 DLR (HCD) 40, 63 DLR (HCD) 425, 11 BLC (HCD) 106, 15 BLT (AD) 185, 47 DLR (HCD) 519 and 8 BLD (AD) 93 and submits that at any stage the case may be quashed if the facts of the case is so preposterous and the prosecution materials do not disclose any offence but on going through above decisions and the FIR as well

as the charge-sheet we don't find any applicability of the said decisions in the instant case as we find that the case is not preposterous and prima facie case has been clearly disclosed against the petitioner in the prosecution materials.

The pertinent question is as to whether the instant proceeding can be quashed on the basis of mere denial of allegations by the petitioner, when disputed questions of fact are involved, *prima-facie* case is disclosed against the petitioner and when there is no legal bar for continuation of the proceeding.

In this context, let us have a look on the point of issue in the light of the judgment of our apex court. In this regard, Ms. Quamrun Nessa, learned Advocate, for the opposite-party no. 2 has referred the case of **Faridul**

**Alam vs State reported in 61 DLR (AD) 93**

wherein it has been held:

"This is not a case which is barred by any law nor this is a case in which the contentions of the complaint, even if admitted in its entirety, no offence is disclosed. The stage of considering the evidence has also not yet reached as the recording of evidence has not even started."

She next refers the case of **Anti-Corruption Commission vs. Mehedi Hasan reported in 67 DLR (AD) (2015) 137**

wherein it has been held:

"It is a settled principal of law that disputed questions of fact

cannot be determined by the High Court Division by invoking its extraordinary jurisdiction under section 561A of the Code of Criminal Procedure. What's more is whether the allegations of abetment in manipulating the tender for sale of disputed properties are true or false can only be resolved during the trial of the case. In addition, the admissibility, propriety or sufficiency's of materials collected by the prosecution are matter of evidence.”

We have also found the similar view of our apex court in a recent case of **Khaleda**

**Zia vs. State reported in 70 DLR (AD) (2018) 99** wherein it has been held:

"For quashing a proceeding under section 561A of the Code, the High Court Division has scope only to see whether there are materials on record showing that the allegations made in the FIR and charge sheet, constitute an offence. If there be any such material the proceeding shall not be quashed, in that case the trial Court will decide the case on the basis of evidence to be adduced by the parties in the case."

The Appellate Division in the above case also discussed the case of **Ali Akkas vs Enayet Hossain, reported in 17 BLD (AD) 44 = 2 BLC (AD) 16** and held:

"On this point, this Division in the case of *Ali Akkas vs. Enayet Hossain*, reported in 17BLD(AD) 44 = 2BLC (AD)16 held to bring a case within the purview of section 561A of the Code for the purpose of quashing a proceeding, one of the following conditions must be fulfilled:

- (i) Interference even at an initial stage may be justified where the facts are so preposterous that even on admitted facts no case stands against the accused;



(ii) Where the institution and continuation of the proceeding amounts to an abuse of the process of the Court;

(iii) Where there is a legal bar against the initiation or continuation of the proceeding;

(iv) In a case where the allegations in the FIR or the petition of complaint, even if taken at their face value and accepted in their entirety, do not constitute the offence alleged and

(v) The allegations against the accused although constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced

clearly or manifestly fails to prove the charge."

We have very carefully gone through the decisions referred above and considered the principles laid down in the said cases for quashment of a proceeding. It is apparent from the referred decisions that there is no scope to quash a proceeding where disputed questions of fact are involved and *prima-facie* case is disclosed. The learned counsel for the petitioner also could not make out any case which could attract either of the conditions as laid down in the aforesaid decisions.

In view of the above, we don't find any application of the principles with regard to quashing a proceeding in the instant case at hand.

Considering the facts and circumstances of the case and the propositions of law settled by the Appellate Division, we are of the view that in the instant case, the petitioner cannot get any remedy under section 561A of the Code of Criminal Procedure.

In view of the above, we don't find any merit in the Rule.

**Accordingly the Rule is discharged.**

The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

The learned Judge of the trial court is directed to conclude the trial within 1(one) year from the date of receipt of the copy of this judgment and order.

Let a copy of this judgment and order be communicated to the learned judge of the concerned court below at once.

**Kazi Md. Ejarul Haque Akondo, J.**

I agree.