

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)

Present:

Mr. Justice Md. Khairul Alam
and
Mr. Justice Md. Sagir Hossain

Criminal Miscellaneous Case No. 1261 of 1999.

Md. Abdus Salam and others.
.....Petitioners.

-Versus-

The State and another.
..... Opposite parties.

No one appears
..... For the petitioners.

Ms. Nahid Hossain (Liza), DAG
..... For the opposite parties.

Heard & Judgment on: 15.01.2026.

Md. Khairul Alam, J:

On an application under section 561A of the Code of Criminal Procedure, a Rule was issued calling upon the opposite parties to show cause as to why the proceeding of Criminal Case No. 425C of 1998, under sections 468/193/109 of the Penal Code, pending in the Court of Magistrate, 1st Class, Zone 'A', Bogura, should not be quashed.

The relevant facts, necessary for disposal of the Rule, are that on 30.09.1998, the present opposite party No. 2, as

complainant, filed a petition of complaint before the Court of District Magistrate, Bogura, implicating the present petitioners as accused, alleging, inter alia, that the complainant was the owner of the case land. Accused No. 1 had earlier instituted C.R. Case No. 300C of 1994 under sections 147/447/379 of the Penal Code regarding the said land implicating the present complainant and others as accused. In the said case, accused No. 1 submitted khatian No. 1082, which was marked as Exhibit-4, claiming the same to be the khatian relating to the case land. The learned Magistrate found the said khatian forged and fabricated, and dismissed the said C.R. Case on 25.03.1998, but despite the application of the complainant, no direction was given under section 476 of the Code of Criminal Procedure. Consequently, the complainant filed the present petition of complaint. On receipt of the petition of complaint the learned Magistrate, 1st Class, Zone 'A', Bogura, examined the complainant under section 200 of the Code of Criminal Procedure and issued process against the accused-petitioners under sections 468/193/109 of the Penal Code on 13.10.1998. Upon receiving summons, the

accused-petitioners voluntarily surrendered and obtained bail.

Being aggrieved by the impugned proceeding, the petitioners moved this Hon'ble Court and obtained the present Rule along with an order staying further proceedings.

No one appears in support of the Rule.

On the other hand, Ms. Nahid Hossain (Liza), the learned Deputy Attorney General, opposed the Rule.

We have considered the submissions advanced by the learned Deputy Attorney General and perused the application along with the connected papers.

It appears that the alleged offences are said to have been committed by the petitioners in the proceedings of C.R. Case No. 300C of 1994 concerning a khatian which was marked as Exhibit-4 in the said proceeding. Although the said case was dismissed, no proceeding was initiated by the concerned Magistrate under section 476 of the Code of Criminal Procedure despite a written application made by the complainant. Thereafter, the complainant, as a private party, instituted the present case.

The petitioners have mainly contended that the present proceeding is barred under section 195(1)(c) of the Code of Criminal Procedure, which reads as follows:

“195. Prosecution for contempt of lawful authority of public servants—

(1) No Court shall take cognizance—

(a) ...

(b) ...

(c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the Penal Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.”

On a plain reading of the aforesaid provision, it is evident that section 195 of the Code provides a specific exception to the general power of a Court to take cognizance under section 190 of the Code. Under this provision, cognizance of the specified offences can be taken

only upon a complaint made by the concerned Court itself, and not at the instance of a private individual, who is legally barred from directly instituting such criminal proceedings.

Once a Court considers that it is expedient in the interest of justice to inquire into any offence mentioned in section 195(1)(c), it may record a finding, make a written complaint signed by the presiding officer, and forward the same to a Magistrate having jurisdiction. The object of this provision is to prevent frivolous or vexatious prosecutions in respect of documents produced in judicial proceedings.

In the present case, the allegation relates to using a document in a previous judicial proceeding, and the alleged offence squarely falls within the ambit of section 195 of the Code. Therefore, in view of the express bar contained in section 195(1)(c) of the Code of Criminal Procedure, initiation of the impugned proceeding at the instance of a private complainant is wholly without lawful authority and not maintainable in law.

In view of the discussions made above and considering the facts and circumstances of the case, we find merit in the Rule.

Accordingly, the Rule is made absolute.

The impugned proceeding of Criminal Case No. 425C of 1998, under sections 468/193/109 of the Penal Code, pending in the Court of Magistrate, 1st Class, Zone 'A', Bogura, is hereby quashed.

Let a copy of this judgment and order be communicated to the concerned Court at once.

Md. Sagir Hossain, J.

I agree.

Kashem, B.O