

Present:

Mr. Justice A.K.M. Asaduzzaman

And

Mr. Justice Syed Enayet Hossain

Criminal Misc. Case No. 14258 of 2008

Tarique Rahman

.....Petitioner.

-Versus-

The State

.....Opposite party.

Mr. A.M. Mahbub Uddin, Senior Advocate with

Mr. Kayser Kamal, Advocate with

Mr. Md. Zakir Hossain Bhuiyan, Advocate with

Mr. Md. Moniruzzaman Asad, Advocate with

Mr. Gazi Kamrul Islam, Advocate with

Mr. Md. Shahiduzzaman, Advocate with

Mr. Md. Mahmudul Arefin, Advocate with

Mr. Maksud Ullah, Advocate with

Mr. K.R. Khan Pathan, Advocate with

Mr. Md. Roqonuzzaman, Advocate with

Mr. H.M. Shanjid Siddique, Advocate with

Mr. Khan Md. Moinul Hasan, Advocate with

Ms. Tamanna Khanam Irin, Advocate and

Mr. M. Sabbir Ahmed, Advocate and

Mr. Manabendrey Roy Mondo, Advocate and

Mr. Tariqul Islam, Advocate and

Mr. M. Mahbubur Rahman Khan, Advocate

.....For the petitioner.

Mr. Md. Jasim Sarker, D.A.G. with

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

Mr. Md. Geas Uddin Gazi, A.A.G. with

Mrs. Shamima Akhter Banu, A.A.G. and

Mrs. Laboni Akter, A.A.G.

.. ... For the state.

Heard and judgment on 23rd October, 2024.

A.K.M. Asaduzzaman,J.

This Rule was issued calling upon the opposite party to show cause as to why the proceedings of G.R. Case No. 240 of 2007 arising out of Gulshan P.S. Case No. 103 dated 27.03.2007 under section 385/386/387 of the Penal Code pending in the Court of Chief Metropolitan Magistrate, Dhaka should not be quashed.

Facts relevant for disposal of this rule are that on 27.03.2007 one Khan Md. Aftab Uddin as informant lodged an FIR with Gulshan Police Station being Gulshan P.S. Case No.103 dated 27.03.2007 under section 385/386/387 of the Penal Code implicating the 7 accused persons including one Mota Tareque stating, inter alia, that the informant has a construction firm

namely Roza and other business. On 23.06.2005 they got a package work permit combined with MBEL of Tk. 18,57,95,346.50/- for road construction under LGED and thereafter on 24.06.2005 accused Gias Uddin Al Mamun friend of the petitioner named Tarique Zia demanded 10% subscription of the said work and threatened him to pay the same as early as possible. The informant became scared and on 25.06.2005 at about 12.30 the informant paid Tk. 1,32,00,000/- by a cheque being Cheque No. 492872 from the OSOD account of Dhaka Bank Ltd. of Banani Branch, Dhaka. On 26.06.2005 the accuseds ultimately took the subscription by putting him in fear of death. Thereafter the informant lodged the FIR.

Thereafter the said case was initiated as Gulshan P.S. Case No. 34 of 2007 under section 4 of the Ain Srinkhola Bighnakari Aporadh Druto Bichar Ain, 2002 and on 21.04.2007 the Investigation Officer prayed for shown arrest to implicate the petitioner in the aforesaid case, which was accepted by the Chief Metropolitan Magistrate and also allowed the prayer for 7 days remand.

After hearing both the parties the Chief Metropolitan Magistrate, Dhaka allowed the prayer for interrogation in front of Jail gate. But during the remand no information was recovered from the petitioner regarding the case.

The said case against the petitioner has been included under Rule 19 Eo(1)(5) of the Emergency Powers Rules, 2007 in the name of public interest vide approval order No. স্বঃমঃ(আইন-১)জবি-১/২০০৭/১৯৯ dated 16.04.2007 issued by the Additional Secretary, Ministry of Home Affairs, Law section-1.

The petitioner was arrested from his residence on 08.03.2007. Thereafter the petitioner obtained bail from the High Court Division in a Writ Petition No. 10339 of 2007 on 04.03.2008 and then he filed this Misc. Case under section 561A of the Code of Criminal Procedure and obtained the instant Rule.

Mr. A.M. Mahbub Uddin, the learned Advocate appearing for the petitioner in support of the rule submits that from the plain reading of the entire FIR it will appear that neither the petitioner was named in the FIR as an accused nor any offence was disclosed against him in the FIR and as such the proceedings

against the petitioner is nothing but an abuse of the process of the court. Drawing our attention to the decision of the case of The State Vs. Md. Shahjahan Ali and ors. reported in 19 MLR(AD) 2014 submits that in the similar case the Appellate Division has held that the inordinate delay in lodging of the F.I.R. giving political colour created the prosecution story doubtful and unbelievable.

In that view of the matter when the occurrence was shown in the instant case on 24.06.2005 and thereafter case was initiated after long delay on 27.03.2007 having no explanation, got the reliance of the decision referred to above in the instant case. Since it was a colourful exercise of power while initiate the proceedings, it is nothing but an abuse of process of the court, which is liable to be quashed. The learned advocate further submits that upon perusal of the instant FIR it will be evident that the petitioner was implicated with alleged occurrence out of political animosity with the direction of a vested quarter as such the story of FIR is false, fabricated and concocted and as such the proceedings is liable to be quashed.

He further submits that from the plain reading of the FIR it will further appear that the petitioner was neither been shown to have asked for any subscription or directed to anybody to receive the money or have received the money by himself and accordingly there is no ingredients of offence under section 385/386/387 of the Penal Code, the impugned criminal proceedings does not stands against him, which is unbelievable and preposterous and it is liable to be quashed.

Mr. Md. Jasim Sarker, the learned Deputy Attorney General on the other hand although opposes the rule but find it difficult to oppose the submission as been made by the learned advocate appearing for the petitioner.

Heard the learned Advocate and perused the documents annexed to the application and the judgment cited by the learned advocate appearing for the petitioner.

It appears that in the instant case petitioner although was not been named in the FIR but one Mota Tareque was shown to be accused as serial No.7 in the FIR. Upon perusal of the FIR it will appear that in the instant case the accused persons were shown to

be committed an offence of taking ransom from the informant, wherein the occurrence was shown to be happened on 24.06.2005 but the case was shown to be initiated long thereafter on 27.03.2007 having no explanation of causing delay. The aforesaid inordinate delay in lodging the FIR obviously create some doubt about the commission of any offence if at all been there as narrated in the FIR.

In that view of the matter our Appellate Division in the cited case namely in the case of the State Vs. Md. Shahjahan Ali and ors. reported in 19 MLR(AD) 2014 has opined that:

“the inordinate delay in lodging of the F.I.R. giving political colour created the prosecution story doubtful and unbelievable.”

Regard being had to the above law, fact and circumstances of the case together with the decision cited above, we find substances in the submission of the learned advocate for the petitioner.

The impugned criminal proceedings, which was initiated on 27.03.2007 showing the date of occurrence on 24.06.2005

contents smells of sufficient doubtful thereby causing the story very shaky, unbelievable and preposterous accordingly the proceedings is liable to be declared as abuse of the process of court, and is quashed.

Moreover upon going through the fact narrated in the FIR we also find substance in the submission of the learned advocate for the petitioner that if the story is taken to be true it contains no ingredients of an offence under section 385/386/387 of the Penal Code at least as against the petitioner.

In all view of the matter, we find substances in the submission of the learned advocate for the petitioner.

In the result, the Rule is made absolute. The impugned criminal proceedings as has been initiated against the petitioner which is lying before the Court of Chief Metropolitan Magistrate, Dhaka under section 385/386/387 of the Penal Code and subsequently included under Rule 19 Eo(1)(5) of the Emergency Powers Rules, 2007 giving the approval by the Additional Secretary, Ministry of Home Affairs, Law Section-1 through

order No.স্বঃমঃ(আইন-১)জবি-১/২০০৭/১৯৯ dated 16.04.2007 are hereby quashed.

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

Communicate the judgment at once.

Syed Enayet Hossain, J:

I agree.