

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)
CRIMINAL MISCELLANEOUS CASE NO. 19779 of 2011.

IN THE MATTER OF:

An application under section 561A of the
Code of Criminal Procedure.

-AND-

IN THE MATTER OF :

Md. Saiful Islam Roni (Jamal) and others

...Accused-Petitioner.

-Versus-

The State and another

... opposite party.

Mr. Ruhul Quddus with

Mr. Md. Habibur Rahman, Advocates

... For the Petitioner.

Mr. Mohammad Ashraf Uddin Bhuiyan,
Advocate

...For the A.C.C

Heard and Judgment on: 08.07.2023.

Present:

Mr. Justice Md. Badruzzaman

And

Mr. Justice S M Masud Hossain Dolon

Md. Badruzzaman,J

Upon an application under section 561A of the Code of Criminal Procedure this Rule was issued calling upon the opposite parties to show cause as to why the proceedings of Special Case No. 12 of 2007 under section 161/164/406/409/468/471/477(Ka)/109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947 now

pending in the Court of learned Special Judge, Barguna should not be quashed.

At the time of issuance of Rule, this Court vide ad-interim order dated 19.07.2011, stayed further proceedings of the aforesaid case for a period of 03(three) months which was subsequently extended from time to time.

Facts relevant for the purpose of disposal of this Rule are that one Mir Mahfuzur Rahman filed a petition of complaint before Special Judge, Barguna implicating the accused-petitioners and others (which was registered as Special Case No. 12 of 2007) alleging *inter alia*, that the accused-petitioners and others in collusion with each other by committing forgery withdrew money from Government fund in the name of construction of Road in Barguna district. The learned Special Judge, after receiving the complaint, directed the Anti-Corruption Commission for investigation of the case. Upon receipt of the complaint from the Special Judge, Anti-Corruption Commission through its one of the Assistant Directors investigated the case who, after investigation, submitted charge sheet on 10.12.2008 having found *prima-facie* case against the accused-petitioners and others under section 406/409/ 420/467/471/201/109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947 being memo No. 779 v 0/ /08 B. Thereafter, accused-petitioners surrendered before the High Court Division in Criminal Miscellaneous Case No. 4418 of 2011 and obtained

anticipatory bail for a period of 02(two) months and after submitting bail bonds to the Tribunal, have come up with this application under section 561A of the Code of Criminal Procedure and obtained the instant Rule.

Anti-Corruption Commission has entered appearance by filing Vokatnama.

Mr. Ruhul Quddus, learned Advocate appearing for the accused-petitioners submits that the original complainant is a private individual having no relation with the transaction and he is not an aggrieved party to lodge the complaint against the accused-petitioners on the allegation of committing offence of corruption or any other offence. By referring to section 17(c) of the Anti-Corruption Commission Act, 2004 and proviso to rule 13 of Anti-Corruption Commission Rules, 2007 submits that the complainant should have approached before the Anti Corruption Commission before filing the petition of complaint in the Court of Special Judge and being failed to do so, the proceeding suffers from legal basis and as such, the same should be quashed. Learned Advocate further submits that as per rule 13 of the Anti Corruption Commission Rules, 2017 no person can file a petition of complaint directly to the Special Judge and as such, taking cognizance by the Special Judge against the accused-petitioners and continuation of the proceeding is an abuse of the process of the Court and liable to be quashed.

Mr. Mohammad Ashraf Uddin Bhuiyan, learned Advocate appearing for the Anti-Corruption Commission submits that any person can file petition of complaint before the Special Judge or Anti Corruption Commission who has not been personally aggrieved since the matter involves with corruption. Learned Advocate further submits that after receiving the petition of complaint from the Special Judge the Anti-Corruption Commission investigated into the matter and upon thorough investigation found that the accused-petitioners and others in collusion with each other by creating forged vouchers and other documents have embezzled the money from the Government Treasury and accordingly, being found *prima-facie* case against the accused-petitioners and others submitted charge and all the requirements of law have been complied with and the learned Special Judge, upon considering the materials on record and the provisions of law, rightly took cognizance of offence against the accused-petitioners and others and as such, the proceeding can not be quashed at this stage.

We have heard the learned Advocates and perused the application and other materials as available on record.

Section 4 of Criminal Law Amendment Act, 1958 authorizes Special Judges to take cognizance of any offence committed or deemed to have been committed within such limits and triable under the said Act upon receiving a complaint of facts which constitute such offence or upon a report in writing of such facts made by any police officer. On

the face of it, section 4 of the Criminal Law Amendment Act does not create any bar to lodge a complaint by a private individual before the Special Judge on the allegation of committing corruption by any person. Though sub-rule (3) of rule 13 of Anti-Corruption Commission Rules, 2007 made an embargo that a complaint cannot be received directly by the Special Judge but such provision can not override the provision under section 4 of the Criminal Law Amendment Act, 1958 against the settled principle of law that in case of any conflict between the Act and Rules, the provisions of the Act will prevail. Accordingly, we are of the view that the complainant has locus standi to lodge the complaint before the Special Judge.

Now coming to the point, whether a prima-facie case under sections 406/409/420/467/471/201/109 of the Penal Code read with Section 5(2) of Prevention of Corruption Act, 1947 has disclosed against the accused-petitioners. On perusal of the investigation report submitted by the Anti-Corruption Commission, it appears that upon detailed investigation and assessment of evidence and relevant documents the Investigation Officer of the Anti-Corruption Commission found prima-facie case against the accused-petitioners and others and recommended to proceed against them under the aforesaid provisions of law. Moreover, the learned Special Judge, after perusing the prosecution materials, having found prima-facie case against

the accused-petitioners rightly took cognizance of offence under aforesaid provisions of law.

Whether the allegations brought against the accused-petitioners are true or false are disputed questions of fact which can only be decided by the learned Special Judge upon taking evidence.

In that view of the matter we find no merit in the Rule.

In the result, the Rule is discharged.

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

The Court of Special Judge, Barguna is directed to proceed with the case and conclude the trial as expeditiously as possible.

Communicate a copy of this judgment at once to the Court below.

S M Masud Hossain Dolon, J

I agree.