

Present:

Mr. Justice Md. Rais Uddin

and

Mr. Justice Md. Ruhul Quddus

Criminal Revision No. 3475 of 1991

Kesmatullah Pk. and others

... Petitioners

-Versus-

The State and another

...Opposite parties

No one appears for the accused-petitioner

Mr. Abdullah Al Mamun, D.A.G.

í for the opposite party state

Judgment on 5.10.2011

Md. Ruhul Quddus, J:

This Rule at the instance of the accused on charge of murder in a criminal case was issued on an application under section 561A of the Code of Criminal Procedure for quashment of proceedings in Session Case No.17 of 1984 pending before the Sessions Judge, Serajgonj including order dated 30.12.1984 passed therein rejecting the petitioners' application for stopping proceedings of the said case.

Facts necessary for disposal of the Rule, in brief, are that opposite party No.2 lodged an *ejahar* with Shajadpur Police Station, Pabna (now Sirajganj) on 23.3.1983 bringing allegation of murder of his cousin brother Nabab Ali Sarkar and grievously injuring his neighbor Osman Ali Joarder. The police recorded the case and after investigation submitted charge sheet on 15.6.1983 against the petitioners under sections 147, 148, 324, 325, 326, 307, 302 and 114 of the Penal Code.

The case, after being ready for trial, was sent to the Sessions Judge, Pabna, who received the record on 3.11.1993 and registered it as Session Case No.179 of 1983. During pendency of the case Sirajgonj Sessions Division was established and as the territorial jurisdiction of Shajadpur Police Station fell within the Sirajgonj Sessions Division, the case was transferred to the Sessions Judge, Sirajgonj for disposal, wherein it was renumbered as Session Case No.17 of 1984.

The petitioners filed an application before the Sessions Judge, Sirajgonj on 30.12.1984 for stopping the proceedings and releasing them under section 339 C (4) of the Code of Criminal Procedure. The learned Sessions Judge heard the application and rejected the same by the impugned order. Thereafter the petitioners moved in this Court with the present criminal revision and obtained the Rule with an ad-interim order of stay.

This criminal revision has been appearing in the cause list for several days with name of the learned Advocate for the petitioner. Today it is taken up for hearing but no one appears to press the Rule. It appears from the record that this Rule was issued on 14.2.1985 and was numbered as Criminal Revision No.27 of 1985. Subsequently it was renumbered with its present number possibly on transfer from Rangpur Bench, though the reason of such renumbering is not recorded. In view of its long pendency for more than 26 years, we take it up for disposal and allow the Deputy Attorney General to make his submissions.

Mr. Abdullah Al Mamun, learned Deputy Attorney General appearing for the State submits that there are specific allegations of murder against the petitioners, after investigation the police submitted charge sheet and the Additional Sessions Judge, Pabna framed charge against them in accordance

with law. Since there is no illegality or any abuse of process of the Court, the Rule is liable to be discharged. He further submits that during pendency of the Rule, the law has been amended and the provisions of stopping the proceedings as well as revival of the same have been repealed. The present case will be governed by the new procedural law

We have perused the revisional application, the paper and documents submitted therewith and the counter affidavit filed by opposite party No.2. It appears that the petitioners moved the application on the ground that by virtue of the provision of section 339 C (4) of the Code, trial of the instant case having not been concluded within 150 days from 3.11.83 i.e. the date of receipt of the case by the Sessions Judge of Pabna, the further proceedings of the case stood stopped and the accused-petitioners were entitled to be released and therefore continuation of the case on transfer to the Sessions Judge, Sirajgonj is illegal and wholly without jurisdiction.

During pendency of this Rule section 339C of the Code has been further amended extending the period of conclusion of trial to 240 days with a grace period of 30 days. Thereafter the said section was amended again by Ordinance No.XLII of 1992 and thereby the provision of stopping the proceeding and releasing the accused for not concluding the trial within the time limit under section 339 C (4) and the provision of revival of the case under section 339D have been repealed. After so amendments, section 339C of the Code as it stands today is as follows:

“ 339C. Time for disposal of the cases:- A Magistrate shall conclude the trial of a case within ¹[one hundred and eighty days] from the date on which the case is ²[received by him] for trial.

(2) *A Sessions Judge, an Additional Session Judge or an Assistant Sessions Judge shall conclude the trial of a case within ³[three hundred and sixty days] from the date on which the case is received by him for trial.*

⁴*[(2A) Notwithstanding anything contained Sub-section (1) or sub-section (2), where a person is accused in several cases and such cases are brought for trial before a Magistrate or a Court of Sessions, the time limit specified in sub-section, (1) or sub-section (2) for the trial of such cases shall run consecutively.]*

⁵*[(2B) Notwithstanding the transfer of a case from one Court to another Court, the time specified in sub-section (1) or sub-section (2) shall be the time for concluding the trial of a case.]*

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⁷*[(4) If a trial cannot be concluded within the specified time, the accused in the case, if he is accused of a non-bailable offence, may be released on bail to the satisfaction of the Court, unless for reasons to be recorded in writing, the court otherwise directs.]*

¹*[(5) Nothing in this section shall apply to the trial of a case under section 400 or 401 of the Penal Code (Act XLV of 1860), or to the trial of a case to which the provisions of chapter XXXIV apply.]*

²*[(6) In this section, in determining the time for the propose of a trial.--*

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(b) *the days spent on account of the absconsion of an accused after his release on bail, if any, shall not be counted.”*

From a close reading of the above quoted law, we find that the substituted sub-section (4) of section 339 C of the Code has taken away the scope of stopping a criminal case and releasing the accused for not concluding trial within the specified time. Ordinance No.XLII of 1992 has also repealed section 339 D of the Code and thereby has taken away the scope of revival of a case stopped under sub-section (4) of section 339 C. Now the question arises whether the present case will be governed under the new law. We get the reply in the case of Abdul Wadud Vs. State reported in 48 DLR (AD) 6. In that case the High Court Division discharged the Rule in a criminal revision and thereby affirmed an order of Sessions Judge, Munshigonj rejecting an application for releasing the accused under section 339C of the Code.

Leave was granted amongst other to consider whether the amendment of section 339C by Ordinance No. XLII of 1992, by which sub section (4) of section 339C was substituted during pendency of the criminal revision, will take away the right of release of the accused as it stood before amendment of law. The Appellate Division dismissed the appeal by a unanimous decision, wherein his lordship Mr. Justice Mustafa Kamal observed as follows:

“7. It is therefore of no consequence if the learned Sessions Judge has made a mistake in holding that since he had taken charge of the Sessions Division on January 23, 1991, a fresh period of 270 days will start from that date. Section 339C referred to an offence, not to a parson. The learned Sessions Judge was obviously wrong in his view. But the wrong will not bring any relief to the appellant. During the pendency of the criminal revision the new Act came into force on the 1st November, 1992 and his supposed right of stoppage of proceeding and release evaporated

along with the amendment, because the prosecution too lost the right of revival". (emphasis supplied)

In the same judgment as referred to above, his lordship Mr. Justice Md. Ismailuddin Sarker observed:

"21. In view of the repeal of sub-section (4) of section 339C CrPC followed by reenactment of the said sub-section the new procedural law will be applicable in the pending cases although instituted when the old provision was in force and the pending cases are to be governed by the new procedure under the amended law." (emphasis supplied)

The present case is fully identical to the aforesaid case of Abdul Wadud. Therefore, in view of the facts and circumstances and the decision of the Appellate Division as cited above, we do not find any substance in the Rule.

In the result, the Rule is discharged. The stay granted at the time of issuance of the Rule is vacated. The trial Court is directed to conclude the trial as expeditious as possible preferably within one year from receipt of this judgment. Before starting the trial, the trial Court will serve notice upon the accused persons and give them reasonable opportunity to appear before the Court and shall consider their prayer for bail, if any.

Send down the lower Court records.

Md. Rais Uddin, J:

I agree.