

Present:
Mr. Justice Mohammad Marzi-ul-Huq
and
Mr. Justice Md. Ruhul Quddus

Criminal Revision No.1268 of 1992

Sahajahan and others
... Petitioners
-Versus-
The State
...Opposite party

No one appears for the petitioners

Mrs. Syeda Rabia Begum, A.A.G.
... for the opposite party

Judgment on 19.6.2012

Md. Ruhul Quddus, J:

This Rule at the instance of the accused-petitioners was issued on an application under section 439 of the Code of Criminal Procedure calling in question the legality of order dated 19.7.1992 passed by Special Tribunal No.2, Narayangonj rejecting an application filed by the petitioners for stopping the proceedings in Special Tribunal Case No.77 of 1990 and releasing them under section 339 C of the Code.

Informant Mirza Abdullah, a Sub-Inspector of Police lodged an *ejahar* with Fatullah Police Station, Narayangonj on 10.2.1988 alleging, *inter alia*, that he along with forces was on petrol duty to maintain law and order during the ongoing Union Parisad election in different polling centers. At about 9.30 a.m. they were approaching towards Shahi Maholla Primary School Polling Centre. On the way their vehicle had

gone out of order near to Pagla Primary School Polling Centre, for which they stopped there to repair the vehicle. At that point of time, they heard a thunderous sound of bomb explosion inside the centre and saw the voters to run away. One of the candidates for the office of Chairman named Selim Chowdhury rushed to the police, pointed his finger towards petitioner No.2 Babu alias Shahid Ali and informed that he was carrying a revolver. Police attempted to apprehend him, but he quickly shifted his position and transferred the revolver to his accomplice Rocket. Police arrested him (Rocket) instantly, seized the revolver and kept him under custody of Havilder Md. Delwar Hossain. Immediately after the petitioners along with some others attacked the police, exploded cocktails to them and snatched him (arrested Rocket) away along with the seized revolver.

The informant transmitted a radio message to his superior authority and requested for additional police force. On being reinforced with additional force, the police team had restored law and order at the polling centre, rescued one of the injured persons from the house of Selim Chowdhury, collected the names of the offenders from the local eyewitnesses and thereafter, lodged the *ejahar*.

The *ejahar* gave rise to Fatullah Police Station Case No. 10 dated 10.2.1988. Police, after investigation, submitted charge sheet on 3.8.1988 against petitioner No.2 Babu alias Shahid Ali and absconding accused Rocket under section 19A of the Arms Act, and under sections

3 and 4 of the Explosive Substance Act against eight co-accused including petitioner Nos.1 and 3-7.

The case having been ready for trial was sent to the Senior Special Tribunal, Narayangonj and was registered as Special Tribunal Case No.77 of 1990. Learned Judge of the Tribunal framed charge against eight co-accused including petitioner Nos.1 and 3-7 under sections 3 and 4 of the Explosive Substance Act, and under section 19 (a) and (f) of the Arms Act against petitioner No. 2 Babu alias Shahid Ali and absconding Rocket by order dated 23.3.1991. Subsequently the case was transferred to Special Tribunal No.2 and Additional Sessions Judge, Narayanganj.

Learned Judge of Tribunal No.2 received the record on 27.7.1991 and proceeded with the trial. In course of trial, the prosecution examined the informant on 26.4.1992 and fixed next date for further trial. The accused-petitioners filed an application before the Tribunal on 19.7.1992 for stopping the proceedings and releasing them under section 339 C of the Code. Learned Judge heard the application and rejected the same by order dated 19.7.1992 on the ground that the time-limit for conclusion of trial was not yet over. Against the said order of rejection, the petitioners moved in this Court with the present application under section 439 of the Code and obtained the Rule with an order of stay.

This criminal revision has been appearing in the cause list for several days. Today it has been posted with name of the Advocate for

petitioners, but no one appears. In view of its long pendency for nearly twenty years, we take it up for disposal and allow the Assistant Attorney General to make her submissions.

Mrs. Syeda Rabia Begum, learned Assistant Attorney General appearing for the State-opposite party, submits that the first information report clearly discloses offence of holding illegal arms, explosion of bombs, creating terror in a polling centre and obstructing public servants from discharging public functions. Police, after investigation, submitted charge sheet. The trial Court had framed charge and the prosecution already started examining the witnesses. There is no illegality in the proceedings. She further submits that during pendency of the Rule, the scope of stopping any criminal proceedings for non-conclusion of trial within the time-limit under section 339C (4) has been repealed. Now any criminal proceedings though initiated earlier, will be governed by the amended procedural law.

We have considered the submissions of learned Assistant Attorney General, perused the record including the revisional application and consulted the relevant provisions of law. It appears that there are specific allegations of holding illegal arms, explosion of bombs, attacking the police, creating reign of terror in a polling centre and obstructing public servants from discharging public functions on the part of the petitioners and their accomplices. After framing of charge, prosecution already examined the informant.

During the Rule was pending, section 339C of the Code was amended by The Code of Criminal Procedure (Second Amendment) Act, 1992 (Act No.XLII of 1992) on 1.11.1992. Upon a comparative study of the old and amended sections, we find that the amended sub-section (4) of section 339C of the Code has taken away the scope of stopping the proceedings in respect of trial of a criminal case and that of releasing the accused for non-conclusion of trial within the specified time. Act No. XLII of 1992 has also repealed section 339D of the Code and thereby has taken away the scope of revival of the proceedings stopped under sub-section (4) of section 339C.

Now the question arises as to whether the present case will be governed under the amended law. In this regard we find the case of Abdul Wadud Vs. State, 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 stopping proceedings of the case and releasing the accused under section 339C of the Code.

Leave was granted, amongst other, to consider whether the amendment of section 339C by Act No. XLII of 1992, by which sub section (4) of section 339C was substituted during pendency of the criminal revision, would take away the right of release of the accused as it stood before amendment of the law. The Appellate Division dismissed the appeal by a unanimous decision. His lordship Mr. Justice Mustafa Kamal in paragraph 7 of the judgment observed as follows:

“ 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 person. 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 paragraph 21 of the same judgment as referred to above, his lordship Mr. Justice Md. Ismailuddin Sarker observed:

“In view of the repeal of sub-section (4) of section 339C Cr P C 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 ratio laid down in the case of Abdul Wadud that the amended procedural law will be applicable in the pending cases although instituted when the old provision of law was in force, is also applicable in the present case. We are, therefore, of the view that the instant case will be governed by the amended procedural law.

It is to be kept in mind that the purpose of old section 339C (4) was to expedite the trial and not to give a safe passage to the offenders to go unpunished. In the present case, the impugned order even if was passed on an untenable ground, it will not help the petitioners in any manner, as the procedural law has been amended by this time and settled otherwise by the apex Court.

In view of the above, we do not find any substance in the Rule. Accordingly the Rule is discharged. Stay granted at the time of issuance of the Rule is vacated. Trial Court is directed to proceed with the case in accordance with law and conclude the trial expeditiously. Before holding further trial, the Court will serve notices upon all the accused persons and give them reasonable opportunity to appear before the Court and shall consider their prayers for bail, if any.

Send down the lower Court's record.

Mohammad Marzi-ul-Huq, J:

I agree.