

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

Criminal Revision No.1043 of 1992

Abdus Sattar Khan and others
... Petitioners
-Versus-
The State
... Opposite Parties

No one appears for the petitioner

Mr. Khizir Hayat, D.A.G. with Mr. Yousuf
Mahmud Morshed, A.A.G.
...for the Opposite Party

Judgment on 21.3.2012

Md. Ruhul Quddus, J:

This Rule at the instance of the accused-petitioners was issued on an application under section 561A of the Code of Criminal Procedure for quashment of the proceedings in C. R. Case No.69 of 1992 that was pending before the Thana Magistrate, Dashmina, Patuakhali and its order dated 22.6.1992 taking cognizance of offence under sections 427, 447 and 109 of the Penal Code against the accused.

Complainant Nur Mohammad, Tahsildar of Dashmina Union Land Office, Patuakhali sent a petition of complaint on 20.6.1992 to the Assistant Commissioner (Land), Dashmina alleging, *inter alia*, that petitioner No.1 was the President of Bangladesh Krishok Federation while petitioner No.2 was President of Krishani Sabha. All the accused

persons being united instigated the people to occupy *khas* land of the Government stating that they would allot the land to the people. They had illegally occupied the *khas* land as described in the schedule of complaint petition on 16.1.1992 and inducted three hundred seventy-six families therein, who demarcated the land and erected dwelling houses thereon, and thereby changed the nature and character of the land causing loss of Taka 1,14,500/- (one lac fourteen thousand five hundred) only to the Government.

The Assistant Commissioner forwarded the petition of complaint to the Thana Magistrate, Dashmina with a covering letter containing Memo No.194-Dash dated 22.6.1992, upon which the Magistrate took cognizance of offence against all the accused including the petitioners on the same day. The petitioners voluntarily surrendered before the Magistrate and obtained bail on 5.7.1992. Subsequently they moved in this Court with the present application under section 561 A of the Code challenging the proceedings and also the order of taking cognizance.

It appears that the learned Advocate for petitioners, Mr. Formanullah Khan died. Thereafter, notices in form N-10 were served upon them, but no one appeared. In view of its long pendency for nearly twenty years, we take it up for hearing and allow the Deputy Attorney General to make his submissions.

Mr. Khizir Hayat, learned Deputy Attorney General appearing for the State-opposite party opposes the Rule without filing any counter affidavit and submits that the petition of complaint discloses offence of

mischief and criminal trespass on the part of the petitioners and as such the Magistrate rightly took cognizance against them.

The petitioners have annexed some documents with the application. Of them, annex-D is a notice of eviction dated 20.4.1992 issued by the Additional Deputy Commissioner (Revenue), Patuakhali asking petitioner No.1 to vacate the case land to the extent of his possession within 10.5.1992. Annex-E, a demi official letter dated 3.5.1992 issued by the Member of Parliament from Patuakhali-3 constituency addressing the Hon'ble Minister for Land, wherein it was mentioned that a class of influential persons and *joteders* illegally occupied vast land rose out of river bed. The landless farmers and labourers of that area were agitating and launching movement in a disciplined manner demanding settlement of the land to the landless, but without any result. The Member of Parliament raised the issue on the floor, when the Hon'ble Minister for Land made a statement assuring to dissolve the matter. It was further mentioned that on 30.7.1991 thousands of landless women, under the leadership of petitioner No.1, went on hunger strike for fulfillment of their demand. In that situation, a committee headed by the Additional Deputy Commissioner (Revenue) under instruction of the Hon'ble Minister visited the spot, made an enquiry and assured them to cancel all illegal settlements and to prepare a correct list of landless farmers and labourers, so that the *khas* land could be settled in their favour. On such assurance, they withdrew from hunger strike. In spite of all the assurance from different levels of the State, the vast land was still under

illegal occupation of the *joteders* to the deprivation of the landless, who were legally entitled to get the land in accordance with law, policy and program of the Government. The Member of Parliament, however, made some recommendations to the Hon'ble Minister for his consideration. Annex-F, a telex copy sent on 4.5.1992 from the Ministry of Land to the Deputy Commissioner, Patuakhali shows that the Ministry repeatedly asked the District Administration to stop eviction of the landless, who took shelter in the land in question.

Authenticity of the documents referred to above or the contents therein are not denied by the State. Since the documents fall within the definition of public documents and are not denied by the State, this Court can take notice of the same and consider those in deciding the present application otherwise to meet the ends of justice, despite these are defense materials and generally not considered except in due course of trial.

It transpires from the documents referred to above that against whom the present criminal case was initiated were landless farmers and labourers. They were organized under the banner of Bangladesh Krisok Federation and Krisani Sabha, two organizations working for the landless. It also transpires that the vast land rose out of river bed was illegally occupied by the *joteders*. The District Administration did not take proper step for eviction of the *joteders* and settle the land to landless farmers and labourers, which they were legally entitled to get.

In view of the directive made under article 7 of the Land Reform Ordinance, 1984 and also the National Land Reform Program initiated by the Government as mentioned in section 41 of the Land Management Manual, 1990 and the implementing guideline framed thereunder, it was the legal obligation of the State to settle the khas land to the landless farmers and labourers, whom the petitioners organizationally represent. It did not do so, instead a petty-officer like Tahshilder prosecuted them for taking shelter in the land of Government in assertion of their right to life guaranteed under the Constitution. It is pertinent to mention that in urban area, under similar socio-economic condition, the poor and helpless people float and flock together in certain vacant spaces and start living there by constructing huts thereon. In number of cases against eviction of such people, this Court observed that our Constitution, both in fundamental principles of State policy and in preservation of fundamental rights provided that the State shall direct its policy towards securing the citizens' right to life that includes right to shelter and livelihood, and thus restrained the Government from evicting the slum dwellers without rehabilitation. (reliance placed on Bangladesh Legal Aid and Services Trust and others Vs. Government of the People's Republic of Bangladesh and others, 13 BLC 384; Ain-o-Salish Kendra and others Vs. Government of Bangladesh and others, 19 BLD 488; Kalam and others Vs. Bangladesh and others, 21 BLD 446). So, if the instant criminal case, allegedly for entering into the *khas* land and erecting dwelling houses thereon for shelters of some landless farmers and labourers is allowed to proceed

against them, it will virtually impair their right to life guaranteed under the Constitution. Peoples movement towards implementation of law or fulfillment of any program or commitment of the Government or to establish their legal and fundamental rights cannot constitute any criminal offence. Their actions taken in course of such movement should also be considered with a lenient view.

In the present case, petition of complaint was filed on 20.6.1992 and the time of alleged occurrence was shown as 16.1.1992. There is no explanation as to why there was such inordinate delay in filing the complaint. The Magistrate took cognizance of offence under section 427 of the Penal Code against the petitioners allegedly for committing mischief causing damage to *khas* land of the Government and also under section 447 of the Code for committing criminal trespass into the land. But from the facts and circumstances of the case it does not appear that the helpless farmers and labourers including the petitioners intentionally did any wrongful loss or damage to the public or any person or that they caused destruction to the *kahs* land by entering therein for shelter. It also does not appear that they entered into the land with any motive/intent to commit an offence or to intimidate, insult or annoy the person in possession i.e. the Government. Therefore, the necessary legal ingredients of offence under sections 427 and 447 of the Code are also absent here. From the facts and circumstances of the case it cannot be logically inferred that the petitioners had any dominant criminal intention, even if they had entered into the land. It rather appears that the two organizations were struggling to get the *khas* land

free from illegal occupation of the *joteders* and settle it in favour of the landless.

There is another aspect to consider in the present case. The complainant, a Tahshilder sent the petition of compliant to the Assistant Commissioner (Land), who forwarded the same to the concerned Magistrate. Both of them did it in their official capacity. When the Ministry of Land itself instructed the District Administration, Patuakhali not to evict the landless, who took shelters in the land in question (vide annex-F), they had no authority to prosecute the case against the policy of their controlling Ministry.

In view of the discussions made above, we do not find any ingredients of offence under sections 427 and 447 of the Code or any other criminal offence against the accused-petitioners and also do not find that the complainant has got any authority to prosecute the case in his official capacity. The Rule thus merits consideration.

Accordingly the Rule is made absolute. The order dated 22.6.1992 passed by the Thana Magistrate, Dashmina, Patuakhali in C. R. Case No. 69 of 1992 taking cognizance of offence under sections 427, 447 and 109 of the Penal Code against the accused is set aside and proceedings of the case is also quashed.

Communicate a copy of this judgment.

Mohammad Marzi-ul-Huq, J:

I agree.