

Present:  
Mr. Justice Borhanuddin  
and  
Mr. Justice Md. Ruhul Quddus

Criminal Appeal No.791 of 2003

Gazi Ahmed Ali

... Appellant

-Versus-

The State

... Respondent

No one appears for the appellant

Mr. Shah Abdul Hatem, A.A.G.

...for the respondent

Judgment on 27.3.2011

*Md. Ruhul Quddus, J:*

This criminal appeal under section 30 of the Special Powers Act, 1974 is directed against order dated 22.1.2003 passed by the Judge, Special Tribunal No.2, Satkhira in Special Tribunal Case No.132 of 2002 rejecting an application filed by the appellant under section 516 A of the Code of Criminal Procedure for custody of his pick-up used in commission of occurrence in the present case.

Facts leading to this criminal appeal are that the informant Md. Mozammel Haque, a *Subeder* of Bangladesh Rifles lodged an *ejahar* with Kaliganj police station on 18.4.2002 against the appellant and another bringing allegation of smuggling sugar from India into

Bangladesh by the seized pick-up owned by the appellant. The police recorded the case as Kaliganj Police Station Case No.11 dated 18.4.2002. After investigation, the police submitted charge sheet against the co-accused Kabir Hossain alias Bachchu on 25.7.2002 under section 25B (b) of the Special Powers Act and gave final report in favour of the appellant. On receipt of the said police report, the case was sent to Special Tribunal No.1, Satkhira and numbered as Special Tribunal Case No.132 of 2002. The learned Judge of Special Tribunal No.1 took cognizance of offence under section 25B (b) of the Special Powers Act against the said Kabir Hossain and exonerated the appellant by his order dated 10.9.2002. Thereafter the case was sent to Special Tribunal No.2, Satkhira for trial. The appellant being owner of the pick-up filed an application for custody of the same under section 516A of the Code of Criminal Procedure. The learned Judge of the Tribunal rejected the said application by his order dated 22.1.2003, challenging which the appellant has filed the instant criminal appeal.

It appears that while this Court admitted the appeal by order dated 23.4.2003, passed an ad-interim order directing to hand over the car (pick-up) bearing registration number: Dhaka Tha No.11-1435 in favour of the appellant on sufficient security.

This matter has been appearing in the cause list for several days with name of the Advocate for the appellant, but no one appears

either to press the appeal or apprise us the present position of the case.

We have perused the petition of appeal, *ejahar*, charge sheet and other materials including the impugned order. It appears that the police had submitted final report in favour of the appellant and the learned Judge of the Tribunal exonerated him by order dated 10.9.2002. It also appears that one Rafiqul Islam, a Sub-Inspector of police submitted a report on 21.5.2002 (annexe-D to the supplementary affidavit) with a finding that the appellant was the owner of the pick-up in question. In that view of the matter, we are inclined to allow the appeal.

Accordingly the criminal appeal is allowed and the impugned order dated 22.1.2003 passed by the Judge, Special Tribunal No.2, Satkhira in Special Tribunal Case No.132 of 2002 is set aside. The pick-up in question will remain in custody of the appellant till disposal of Special Tribunal Case No.132 of 2002 of the Special Tribunal No.2 of Satkhira, if the case is still pending.

Borhanuddin, J:

I agree.