

Present:

Mr. Justice A.K.M. Asaduzzaman

And

Mr. Justice Syed Enayet Hossain

Criminal Misc. Case No. 4673 of 2007

Tarique Rahman

.....Petitioner.

-Versus-

The State

.....Opposite party.

Mr. A.M. Mahbub Uddin, Senior Advocate with

Mr. Kayser Kamal, Advocate with

Mr. Md. Zakir Hossain Bhuiyan, Advocate with

Mr. Md. Moniruzzaman Asad, Advocate with

Mr. Gazi Kamrul Islam, Advocate with

Mr. Md. Shahiduzzaman, Advocate with

Mr. Md. Mahmudul Arefin, Advocate with

Mr. Maksud Ullah, Advocate with

Mr. K.R. Khan Pathan, Advocate with

Mr. Md. Roqonuzzaman, Advocate with

Mr. H.M. Shanjid Siddique, Advocate with

Mr. Khan Md. Moinul Hasan, Advocate with

Ms. Tamanna Khanam Irin, Advocate with

Mr. M. Sabbir Ahmed, Advocate and

Mr. Manabendrey Roy Madol, Advocate and

Mr. Tariqul Islam, Advocate and

Mr. M. Mahbubur Rahman Khan, Advocate

.....For the petitioner.

Mr. Md. Jasim Sarker, D.A.G. with

Mr. Rasel Ahmmad, D.A.G. with

Mr. Md. Geas Uddin Gazi, A.A.G. with

Mrs. Shamima Akhter Banu, A.A.G. and

Mrs. Laboni Akter, A.A.G.

.. ... For the state.

Heard and judgment on 23<sup>rd</sup> October, 2024.

A.K.M. Asaduzzaman,J.

This Rule was issued calling upon the opposite party to show cause as to why the proceedings of G.R. Case No. 171 of 2007 arising out of Gulshan P.S. Case No. 34 dated 08.03.2007 under section 4 of the Ain Srinkhola Bighnakari Aparadh (Druta Bichar) Ain, 2002, now pending in the Court of Druta Bichar Adalat No.2, Dhaka should not be quashed.

Facts relevant for disposal of this rule are that the informant is a contractor and owner of Al-Amin Construction Co. Ltd. The accused invited him at Hawa Bhaban and demanded Tk. 1(one) crore as subscription and threatened that the informant would not be allowed to carry on with his business if he fails to meet the demand of the accused. The informant succumbed to the demand

of the accused out of fear. Accordingly on 30.12.2006 at about 7.30 p.m. the informant along with Captain (Rtd.) Sheikh Abdul Hye went to the Hawa Bhaban and handed over a cheque of Tk.1(one) crore to the accused but the accused refused to accept the cheque and asked the informant to pay in cash. Thereafter the informant went to his constituency and sent his younger brother Faroque Ahmed to Dhaka with the cheque, which was encashed on 04.01.2007 and on the same day at about 3.00 p.m. said Faruque Ahmed paid the money to one Apu at the instance of accused Tarique Rahman. Thereafter the informant lodged the FIR.

The petitioner was arrested on 08.03.2007 and was taken to police remand for 4 days. But during the remand no information was recovered from the petitioner regarding the case.

After investigation police submitted charge sheet on 17.03.2007 under section 4 of the Ain Srinkhola Bighnakari Aporadh Druto Bichar Ain, 2002.

Thereafter he filed this Misc. Case under section 561A of the Code of Criminal Procedure and obtained the instant Rule.

Mr. A.M. Mahbub Uddin, the learned Advocate appearing for the petitioner in support of the rule submits that from the plain reading of the entire FIR it will appear that neither the petitioner was named in the FIR as an accused nor any offence was disclosed against him in the FIR and as such the proceedings against the petitioner is nothing but an abuse of the process of the court. Drawing our attention to the decision of the case of The State Vs. Md. Shahjahan Ali and ors. reported in 19 MLR(AD) 2014 submits that in the similar case the Appellate Division has held that the inordinate delay in lodging of the F.I.R. giving political colour created the prosecution story doubtful and unbelievable.

In that view of the matter when the occurrence was shown in the instant case on 04.01.2007 and thereafter case was initiated after long delay on 08.03.2007 having no explanation, got the reliance of the decision referred to above in the instant case. Since it was a colourful exercise of power while initiate the proceedings, it is nothing but an abuse of process of the court, which is liable to be quashed. The learned advocate further submits that upon perusal of the instant FIR it will be evident that the petitioner was

implicated with alleged occurrence out of political animosity with the direction of a vested quarter as such the story of FIR is false, fabricated and concocted and as such the proceedings is liable to be quashed.

The learned advocate further submits that from the plain reading of the FIR it will further appear that the petitioner is not involved in the alleged offence in any way and the informant lodged the instant case implicating the accused petitioner with a view to harass and humiliate him and to tarnish his image and to destroy his political career. He further submits that the threat of extortion was made on 30.12.2006 and Tk.1(one) crore was delivered on 04.01.2007 exactly after 2 months and 4 days without any tenable explanation case was lodged on 08.03.2007 since on the dates alleged the accused petitioner even if desirous of doing so was not in any position to exert the kind of attitude and intimidation as alleged, which casts grave doubt on the prosecution story, particularly given the vagueness and absurdities in the complaint itself and as such the proceeding of the instant case is liable to be quashed.

Mr. Md. Jasim Sarker, the learned Deputy Attorney General on the other hand although opposes the rule but find it difficult to oppose the submission as been made by the learned advocate appearing for the petitioner.

Heard the learned Advocate and perused the documents annexed to the application and the judgment cited by the learned advocate appearing for the petitioner.

It appears that in the instant case petitioner although was not been named in the FIR. Upon perusal of the FIR it will appear that in the instant case the accused petitioner was shown to be committed an offence of taking ransom from the informant, wherein the occurrence was shown to be happened on 04.01.2007 but the case was shown to be initiated long thereafter on 08.03.2007 having no explanation of causing delay. The aforesaid inordinate delay in lodging the FIR obviously create some doubt about the commission of any offence if at all been there as narrated in the FIR.

In that view of the matter our Appellate Division in the cited case namely in the case of the State Vs. Md. Shahjahan Ali and ors. reported in 19 MLR(AD) 2014 has opined that:

“the inordinate delay in lodging of the F.I.R. giving political colour created the prosecution story doubtful and unbelievable.”

Regard being had to the above law, fact and circumstances of the case together with the decision cited above, we find substances in the submission of the learned advocate for the petitioner.

The impugned criminal proceedings, which is initiated on 08.03.2007 showing the date of occurrence on 04.01.2007 contents smells of sufficient doubtful thereby causing the story very shaky, unbelievable and preposterous accordingly the proceedings is liable to be declared as abuse of the process of court, and is quashed.

Moreover upon going through the fact narrated in the FIR we also find substance in the submission of the learned advocate for the petitioner that if the story is taken to be true it contains no

ingredients of an offence under section 4 of the Ain Srinkhola Bighnakari Aparadh (Druta Bichar) Ain, 2002 at least as against the petitioner.

In all view of the matter we find substances in the submission of the learned advocate for the petitioner.

In the result, the Rule is made absolute.

The impugned criminal proceedings as has been initiated against the petitioner which is lying before the Druta Bichar Adalat No.2, Dhaka under section 4 of the Ain Srinkhola Bighnokari Aparadh (Druta Bichar) Ain, 2002 is hereby quashed.

The order of stay granted earlier is hereby recalled and vacated.

Communicate the judgment at once.

Syed Enayet Hossain, J:

I agree.