

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

Criminal Appeal No. 1049 of 2006

Moulana Farid Uddin Masud
í Appellant
-Versus-
The State
... Respondent

Mr. Sheikh Atiar Rahman, Advocate
... for the appellant

No one appears for the respondent

Judgment on 25.1.2012

Md. Ruhul Quddus, J:

This appeal under section 30 of the Special Powers Act, 1974 at instance of the discharged-appellant is directed against order dated 22.2.2006 passed by the Metropolitan Special Tribunal No.2, Dhaka in Metropolitan Special Tribunal Case No. 1145 of 2005 arising out of Zia International Air Port Police Station Case No.43(8)2005 under sections 3 and 6 of the Explosive Substance Act rejecting an application for return of some articles seized from him, while he was arrested in connection with the case.

Facts leading to this appeal, in brief, are that the police arrested the appellant as a suspect in the above case on 22.8.2005 from Zia International Airport, when he was about to fly abroad. Police also seized some articles such as his air-ticket, pass ports, compact discs, Islamic journals, visiting cards, mobile phones, telephone index etc. from his possession. After investigation of the case, police submitted charge sheet against one Md. Rezaul Huq alias Reza and three others, while gave final report in favour of the appellant and two others by same police report dated 20.11.2005. Articles seized from the appellant were mentioned in the said police report against serial Nos.4-15 and were proposed to be returned in his favour.

The case after being ready for trial, was sent to the Metropolitan Special Tribunal No.1, Dhaka, wherein it was numbered as Special Tribunal Case No.1145 of 2005, and subsequently was sent to the Metropolitan Special Tribunal No.2 for hearing and disposal. The learned Judge of the Special Tribunal No.2 took cognizance of offence against the accused by order dated 24.11.2005, while discharged the present appellant and two others, who were not sent up in the police report. Thereafter the discharged-appellant Moulana Farid Uddin Masud filed an application for return of his articles as mentioned against serial Nos.4-15 in the police report. The learned Judge of the Tribunal heard the application and rejected the same by order dated 22.2.2006, challenging which the appellant moved in this Court with the instant criminal appeal and obtained an ad-interim order for releasing the articles in his favour.

Mr. Sheikh Atiar Rahman, learned Advocate appearing for the appellant submits that he (appellant) is not named as an accused either in the *ejahar* or in police report. The Tribunal concerned discharged him on accepting the police report in his favour. In such a position, the Tribunal has got no authority to detain his air-ticket, pass ports and other articles, which were seized from his possession at the time of securing his arrest.

We have gone through the records including charge sheet, order of discharge and the impugned order. It transpires that the police exhaustively investigated the case and submitted a comprehensive report stating all necessary facts and findings in detail. It further transpires that the learned Judge in rejecting the application referred to submissions of learned Public Prosecutor to the effect that in course of trial those articles would be required to be proved as material exhibits and accepted his contention without assigning any reason as to why those would be required to be proved, when owner of the same was already discharged from the case. It also does not appear that the articles seized from the appellant are required for the purpose of showing *alamats* in any other case. Since the appellant has been discharged in the present case, question of proving the articles as *alamats* in the present case does not arise.

In view of the above, we find substance in submissions of learned Advocate for the appellant. Learned Judge of the Tribunal appears to have committed wrong in rejecting the

appellant's application for returning his lawful articles and as such the impugned order should not sustain in law.

Accordingly, the appeal is allowed. The impugned order dated 22.2.2006 passed by Metropolitan Special Tribunal No.2, Dhaka in Metropolitan Special Tribunal Case No. 1145 of 2005 is hereby set aside.

Communicate a copy of the judgment.

Mohammad Marzi-ul-Huq, J:

I agree.