

Present:  
Mr. Justice Soumendra Sarker  
and  
Mr. Justice Md. Ruhul Quddus

Criminal Misc. Case No.1834 of 1997

Md. Forhad Hossain and another  
... Petitioners  
-Versus-  
Md. Tofazzal Hossain Faruque and another  
... Opposite Parties

No one appears for the petitioners

Mr. Shams-ud-Doha with Mrs. Yesmin Begum  
Bithi, Assistant Attorney Generals  
... for the State-opposite party

Judgment on 27.3.2012

*Md. Ruhul Quddus, J:*

This Rule was issued on an application under section 561 A of the Code of Criminal Procedure for quashment of the proceedings in Motijheel Police Station Case No.26 (1) of 1997 corresponding to G.R. No.26 of 1997 under sections 420 and 406 of the Penal Code pending in the Court of Chief Metropolitan Magistrate, Dhaka.

Opposite Party No. 1 Md. Tofazzal Hossain Faruque lodged an *ejahar* with Motijheel Police Station on 7.1.1997 against the accused-petitioners alleging, *inter alia*, that recently he had come back from abroad and decided to form a company for business of consultancy. He was also in search of a shareholder- investor. At that stage, one of his friends introduced him to Md. Forhad Hossain and his wife Shirin Hossain (herein petitioners), who assured him to procure

business for the company. Ultimately they formed a company under the name and style of National Architect and Consultant (Bd.) Ltd., where petitioner No.1 and complainant were made the Chairman and Managing Director respectively. The entire expenses for registration of the company, office rents, salaries of the employees and participation in bid were born by the complainant, but the petitioners did not deposit the money in the account of company against their shares, though gave repeated assurance. They also took away Taka 74,937/= from the account of company to meet their personal requirements. Petitioner No.1 also induced the complainant to obtain a power of attorney for another company named Hossain and Sons to complete construction work of a multistoried commercial building at Kakrail, Dhaka. Subsequently there was a dispute between the two companies, for which the complainant instituted a suit. It caused further loss of Taka 32,000/= to the complainant. In this way the petitioners caused loss of Taka 1,71,968/= to the complainant and thereafter, stopped all sort of communications with him. He sent a legal notice to them, which they declined to receive. Then the complainant through an employee of the company claimed the money from the petitioners, but they asked him not to claim it further and threatened him for dire consequence.

Police recorded Motijheel Police Station Case No.26 dated 7.1.1997 under sections 420 and 406 of the Penal Code and started investigation. The petitioners surrendered before the Chief Metropolitan Magistrate, Dhaka and obtained bail on 18.1.1997. Thereafter, they moved in this Court with the instant criminal miscellaneous case and obtained the Rule with an order of stay.

The case has been appearing in the cause list since 23.3.2012. Today it is posted with names of all the Advocates for the petitioners, but no one appears.

Mr. Shams-ud-Doha, learned Assistant Attorney General appearing for the State-opposite party opposes the Rule on the ground that there is nothing wrong in the impugned proceedings.

We have examined the lower Court's record, the miscellaneous application and the documents annexed therewith. It appears that during pendency of the Rule, police submitted charge sheet against the petitioners under sections 420, 406 and 109 of the Penal Code, which is lying with the record. The petitioners have taken a ground that the present case is of civil nature and the *ejahar* does not disclose any criminal offence against them.

This is correct that there is civil liability on the part of the petitioners, but at the same time it also discloses the offence of criminal breach of trust and cheating inasmuch as the allegations of dishonest misappropriation of the company's fund and use of the same for own purpose are brought against the petitioners in clear language. There is nothing in record whether any civil suit instituted on the same subject matter.

Meanwhile the police submitted charge sheet against the petitioners with findings of prima facie truth in the allegations. Since the charge is yet to be framed in the present case, it should be left on the trial Court to see whether the *ejahar*, charge sheet and other



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prosecution materials are satisfactory to proceed against the accused. At this stage, there is no scope to quash the proceedings on the plea that the case is of civil nature. We do not find any substance in the Rule.

Accordingly the Rule is discharged. The stay granted at the time of issuance of the Rule is vacated.

Send down the lower Court's record.

Soumendra Sarker, J:

I agree.