

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

Criminal Misc. Case No.3663 of 1997

Md. Abdul Kader
... Petitioner

-Versus-
The State and another
... Opposite Parties

No one appears for the petitioner

Mr. Shams-ud-Doha, A.A.G.
õ for the State-opposite party

Judgment on 28.3.2012

Md. Ruhul Quddus, J:

This Rule at the instance of the sole accused was issued on an application under section 561 A of the Code of Criminal Procedure for quashment of the proceedings in Criminal Case No. 150 C of 1997 under sections 406 and 420 of the Penal Code that was pending before the Magistrate of first class, Zone-A, Bogra.

Opposite Party No.2 Md. Mahfuzar Rahman filed a petition of complaint on 8.4.1997 before the Magistrate of first class, Zone-A Bogra alleging, *inter alia*, that the accused-petitioner Md. Abdul Kader took loan of Taka 1,68,000/- (one lac sixty-eight thousand) only from him on execution of a bond on a non-judicial stamp paper worth Taka 50/-. Thereafter, he did not pay the money and at one stage denied to make any payment.

The Magistrate examined the complainant, took cognizance of offence under sections 406 and 420 of the Code and issued warrant of

arrest against the petitioner. Subsequently he surrendered before the Magistrate and obtained bail on condition of compromise. As he failed the Magistrate cancelled his bail. Subsequently he obtained bail from the Court of Sessions Judge, Bogra in Criminal Miscellaneous Case No.529 of 1997 again on condition of compromise and thereafter moved in this Court with the instant criminal miscellaneous case for quashment of the proceedings.

The case has been appearing in the cause list with names of the Advocates for petitioner since 23.3.2012. Today it is taken up for hearing, but no one appears for the petitioner to press the Rule.

Mr. Shams-ud-Doha, learned Assistant Attorney General appearing for the State-opposite party opposes the Rule on the ground that there is no illegality in the impugned proceedings.

We have examined the record including the petition of complaint and order sheets. It appears that charge has not yet been framed in the present case. It transpires from the petition of complaint that the accused took loan from the complainant on execution of a bond on a non-judicial stamp paper, but in spite of expiry of stipulated time, he did not pay the loan and lastly denied to make any payment.

The Magistrate examined the complainant, took cognizance of offence under sections 406 and 420 of the Code and issued warrant of arrest against the accused.

In view of allegations of taking loan on execution of a bond and subsequent denial of payment as made in the petition of complaint, it cannot be said that the petition does not disclose any offence of criminal breach of trust or cheating against the accused. It also appears

from order dated 15.6.1997 passed by the trial Court and order dated 26.6.1997 passed by the Sessions Judge, Bogra in Criminal Miscellaneous Case No.529 of 1997 that the accused-petitioner undertook to make payment against the loan.

Under the facts and circumstances, we do not find any illegality in the proceedings or in taking cognizance of offence against the petitioner. Moreover, the charge has not yet been framed in the present case. The petitioner has ample opportunity to pray for his discharge by filing an application before the trial Court. At this stage there is no reason to interfere with the proceedings by this Court in exercise of its inherent power under section 561A of the Code of Criminal Procedure.

The Rule having no merit is, therefore, discharged. The stay granted at the time of issuance of Rule is vacated.

Communicate a copy of the judgment.

Soumendra Sarker, J:

I agree.