

Present:
Mr. Justice Md. Iqbal Kabir
And
Mr. Justice Md. Riaz Uddin Khan

Criminal Miscellaneous Case No. 8811 of 2012

Md. Yahnus Ali alias Yunus Ali and another
.... Accused-Petitioners

Versus
The State and another
....Opposite parties

Mr. K.B. Shahriar Ahmad, Advocate
.... For the Accused-Petitioners

Mr. Farid Uddin Khan, D.A.G. with
Mr. Md. Anichur Rahman Khan, D.A.G.,
Mr. Md. Shahadat Hossain Adil, A.A.G.,
Mr. Rezbaul Kabir, A.A.G.,
Mr. Sultan Mahmood Banna, A.A.G. and
Mr. Md. Azadul Islam, A.A.G.
...For the Opposite Party No. 1

Mr. Nirmal Kanti Chowdhury, Advocate
...For the Opposite Party No. 2

Heard and Judgment on 28.11.2024.

Md. Iqbal Kabir, J:

The Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 19.08.2010 passed by the learned Additional Sessions Judge, Additional Sessions Judge Court, Rajshahi in Criminal Revision No. 75 of 2007 affirming the judgment and order dated 25.05.2005 passed by the learned Additional District Magistrate, Additional District Magistrate Court, Rajshahi in Tonore Police Station Case No. 19 dated 25.09.2000 corresponding to G.R. Case No. 15 of 2000 farming charge under sections 467/468/471/109 of the Penal Code, after rejecting the application filed under section 241A of the Code of

Criminal Procedure should not quashed and/or pass such other or further order or orders as to this court may seem fit and proper.

Short facts, leading to the issuance of the Rule, are, *inter-alia*, that the accused in collusion with another tried to grab the property situated in R. S. Khatian No. 2, Plot No. 1625 measuring 10 acres of land which has been recorded in the name of District Counsel by creating forged documents. The disputed land has been recorded in the name of Jaminder Sree Bidhu Bhuson Moitra in S. A. Khatian No. 2 in Plot No. 952 and R. S. record was prepared in the name of Rajshahi District Counsel and in the attested Khatian No. 2 (ka) lying in the record room, the name of the Jaminder Bidhu Bhuson Moitra has not been written in the book of C. A. Roll No. A; that even though the accused Md. Afser Ali by creating some fake Dakhilia amended name and by using those documents as genuine has created the S. A. Khatian No. 2 (ka) fraudulently; on the basis of the disputed Khatian No. 2 (ka) the accused No. 2 executed and registered kabala deed on 26.07.1998 being No. 4973 fraudulently claiming the owner who was the legal heir of his father only to grab the land and thus accused committed an offense which is punishable under Sections 420/467/468/471 and 109 of the Penal Code and hence the informant lodged the First Information Report.

On an investigation, a charge sheet has been submitted by the District Anti-Corruption Bureau against the accused who obtained bail. However, on the date of farming of the charge, the petitioners filed an application under Section 241A of the Cr.PC to discharge them from the charge. But, the charge has been framed against the accused without disposing of the application filed by the accused persons.

Being aggrieved by and dissatisfied with the order dated 25.04.2005 accused preferred Criminal Revision No. 75 of 2005 under sections 435 and 439(A) of the Cr.PC in the Court of Session Judge, Rajshahi. Eventually, it was transferred, and heard by the Additional Sessions Judge, 2nd Court, Rajshahi who rejected the

revision petition by affirming the order dated 25.04.2005 by its order dated 16.08.2010.

That being the position, the petitioners being aggrieved filed this petition to this Court against the Judgment and order dated 16-08-2010.

Mr. Nirmal Kanti Chowdhury, learned Advocate appearing for the opposite party No. 2 submits that the allegations made in the F.I.R. and charge sheets are matters of fact. According to him the case of the petitioner can be considered at the time of trial, without evidence and trial of the case the innocence of the accused petitioners cannot be determined in an application under section 561A of the Cr.PC and as such, the Rule is liable to be discharged for ends of justice. He submits that the accused persons created false and fake registered deeds to engulf the government property. The accused persons committed forgery intending that the document would be used for cheating. He submits that there is no legal bar to continue the instant case and it cannot be barred by the civil case. According to him section 195(1)(C) of the Cr.PC is not attracted when the accused are charged for the offense under sections 420/467/468/471/109 of the Penal Code and as such, the Rule may kindly be discharged.

Mr. K.B. Shahriar Ahmad, learned Advocate brings notice to this Court that the accused-petitioner No. 1 as plaintiff earlier filed Title Suit No. 79 of 1998 in the Court of Tanor Assistant Judge, Rajshahi for declaration of title against the District Board, Rajshahi and two others basing a deed dated 26.07.1998 and the said deed is lying with the record of the said Civil Suit, wherein accused No. 1 got decree on 25.09.2000. However, on the same date, i.e., on 25.09.2000 Tanore Police Station Case No. 19 dated 25-09-2000 was lodged stating that the documents placed before the Assistant Judge, Rajshahi were forged, fabricated, and fraudulent. Moreover, against the decree respondents preferred an appeal being Title Appeal No. 202 of 2000, and on 12.06.2003, the Additional District

Judge, Second Court, Rajshahi being the Appellate Court, reversed the judgment and decree dated 07.05.2000 passed by the Assistant Judge, Tanore, Rajshahi in Title Suit No. 79 of 1998. Thereafter, accused No. 1 plaintiff-respondent-petitioner filed Civil Revision No. 4838 of 2003 before the Hon'ble High Court Division wherein a Single Bench of this Court issued Rule, which is pending for hearing.

Mr. K. B. Shahriar Ahmad submits whether the principle of section 195 Cr.PC would apply or not is the only question left for consideration. It is at this juncture it has alleged the words "document produced or given in evidence" of clause (c) of the 195(1) of the Cr.PC contemplated to production of an original document alleged to have been forged and not a photocopy. The word 'or' between words 'produced' and "given in evidence", in the section shows that the two things are disjunctive. According to him, it is a settled proposition of law that where the original document in respect of forgery has not been given in evidence clause (C) of Section 195(1) does not apply.

Relying upon a decision of Abu Daud (Md) Sarder vs. State, 8 BLC (AD) 162 he submits that opposite party No. 2 may approach the Court for taking appropriate steps against the petitioner since he used a deed in the suit as genuine in spite of knowing the same as being forged and then it is for the Court alone that may decide as to whether it would initiate proceeding for committing one of the offences or more as mentioned in clause (c) of section 195(1) of the Cr.PC.

Further, relying upon a decision of Makhan Baral and others vs. Shaylendra Nath Mondal, 6 MLR (AD) 161 he claims it was the duty of the Court to send the complaint to the Magistrate of competent jurisdiction for prosecution for filing and using the fraudulent document in a proceeding before such Court. Relying upon another decision of Syed Ahmed Chowdhury vs. Abdur Rashid Mridha, 54 DLR 498 he brought to notice that the offenses alleged to have been committed in connection with the proceeding of a Civil Court cannot be tried by any other Court except upon a complaint by the said Court.

We have heard the submissions made by the contending parties, pursued the petition, affidavit-in-opposition, and other materials on record brought before this Court, and considered the facts, submissions, and circumstances of the case.

At this juncture, it would be profitable to a just conclusion if we see section 195 (1) (c) of the Code of Criminal Procedure along with the decision passed by our Apex Court. Section 195(1) of the Cr.PC runs as follows:

“No court shall take cognizance-

(a).....

(b).....

(c) of any offence described in Section 463 or punishable under Section 471, Section 475, or Section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.”

Upon plain reading of the above-noted section, it appears that when an offence under clause (c) of Section 195(1) of the Code appears to have been committed by a party to any proceeding to any court in respect of a document or given in evidence in such a proceeding, no court is competent to take cognizance of such an offence except on the complaint in writing of the court concerned or some other court to which it is subordinate. This provision thus puts restriction on the general power conferred upon all courts of the Magistrate by Section 190 of the Cr.PC to take cognizance. It is also found that to bring a case within its fold in particular, an offence must be an offence of forgery in respect of a document that is produced or given in evidence in a proceeding; secondly, the said offence in respect of a document must have been committed by a party to that proceeding. Clause (c) of Section 195(1) of the Cr.PC does not bear

any restricted interpretation as it was spelled out by the Appellate Division in the case of Abdul Hye Khan and others vs. The State, reported in 40 DLR (AD) 226.

However, the petitioner brings notice two questions as it was raised by the Court, 1st one is about whether the original alleged document/deed has been laid down in Title Suit being No. 79 of 1998 could not be determined without examining the plaint of the said title suit as well as seeing the firishtri (ফিরিশ্তি) form of the suit filed by the petitioner No. 1 being plaintiff as claimed in paragraph No. 9 at page 6 of the main application which has not been annexed documenting in the petition. Against such question, documents have been adduced by the supplementary affidavit (Annexure-H, H-1 and H-2). Another question is whether the questionable deed claimed to be forged has been exhibited through the deposition of any witnesses and thus, the deposition of the petitioner being the plaintiff needs to be examined and the same has been adduced by supplementary affidavit for proper adjudication of the Rule (Annexure-I).

It is pertinent to note that the Civil suit started on 03.08.1998 and the Criminal case (FIR) was lodged on 26.09.2000, which was long after the initiation of the Civil Suit and thus, the matter is seisin before a Civil Court with the original deed alleged to have been forged. Therefore, only the said Civil Court has the authority to initiate any criminal proceedings regarding any fraud in respect of the said deeds or documents.

Indeed criminal proceeding was initiated after the civil suit, that being so relying upon a decision of Humayun Majid vs. Bangladesh Bureau of Anti-Corruption, reported in 54 DLR 12 the petitioner submits when a question of right, title, and interest relating to any immovable property is *in seisin* of the Court, the Anti-Corruption Department has no jurisdiction to hold any inquiry under Articles 31 and 50 of the Anti-Corruption Manual.

It is at this juncture, from the above, that section 195(1)(c) of the Cr.PC does attract to initiate the instant proceeding as having not been initiated by the complaint of the civil court.

Accordingly, the Rule is made absolute.

The proceedings of Tanore Police Station Case No. 19 dated 25.09.2000 corresponding to G.R. Case No. 15 of 2000 under sections 467/468/471/109 of the Penal Code, now pending before the Additional District Magistrate Court, Rajshahi is hereby quashed.

The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

There will be no order as to cost.

Communicate the order.

Md. Riaz Uddin Khan, J:

I agree