

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

Criminal Miscellaneous Case No. 3278 of 1999

Md. Abdul Hannan Shah  
....Informant -Petitioner

-Versus-  
Atiar Rahman and another  
....Opposite parties

No one appears  
....For the informant -Petitioner

No one  
....For the Opposite Party No. 1

Mr. Rasel Ahmmad, D.A.G. with  
Mr. Md. Shahadat Hossain Adil, A.A.G.,  
Mr. Md. Shamsil Arefin, A.A.G. and  
Ms. Zohura Khatoon (Jui), A.A.G.  
....For the Opposite Party No. 2

Judgment on 20.02.2025.

Md. Iqbal Kabir, J:

This Rule was issued calling upon the Deputy Commissioner, Nilphamari, to show cause as to why the judgment and order dated 08.02.1999 passed by the Additional Sessions Judge, Nilphamari, in Criminal Revision No. 32 of 1997, affirmed those dated 23.02.1997 passed by the Additional District Magistrate, in G.R. No. 59/96, discharging the accused opposite party No. 1 from the charge shall not be quashed and/or such other or further order or orders passed as to this Court may seem fit and proper.

The facts, in a nutshell, for the disposal of the Rule are that one Md. Abdul Hannan Shah, present petitioner as informant, lodged

the First Information Report with Nilphamari Police Station on 20.3.1996, stating that on 7.3.1996 at about 9-9:15 hours in the morning, while he was returning from the paddy field to his home, the accused Md. Atiar Rahman along with 19 FIR named and 7/8 unknown persons forming an unlawful assembly with arms, iron rod and lathi stopped the informant and others, at one point informant raised objection therefore accused Abdul ordered other accused to kill informant and others and just after receiving the order the accused Atiar gave a violent blow with the Iron rod over the head of informant with the intention to kill him and with that blow he received grievous injury, thereafter accused chased him and intruded his house that the accused Oshu, Mokles, Mekru, Ayub, Abdullah and Saidul gave a several blows in his body with the Lathi and thereby caused blood stained injury; thereafter while his mother and brother came to rescue him the accused started beating them with the lathi in their hand consequently his mother was fell down on the earth and the accused Ashraful ride on the chest of his mother and the accused Rahidul tried to kill her by suffocation and his brother Abdul Mannan rescued his mother from the attack of the accused Ashraful and Rahidul and as such she was narrowly escaped; that thereafter the accused Laltu, Joynul, Mazir Ali and Azizul started beating his younger brother and caused blood stained injury; that the accused Ayub Ali and Abdur Rahman took away TK. 1700/ by breaking Trunk and snatching away 2 gold Makuris from his mother's ears, amounting to TK. 3,500/=-, hearing the shouting of their neighbors, came to the occurrence and restrained the accused, who threatened to kill the witnesses. At that time, some people came to the place, seeing such accused leave the place. But the condition of the

informant deteriorated, and thus was taken to the Hospital with the help of the witnesses. The accused took a total of Tk. 5,200/= from him, and the informant urged the Nilphamari Police Station to take necessary steps.

The Investigating Officer submitted a final report in respect of the accused Atiar Rahman, presently opposite party No. 1, along with some other co-accused, and filed a charge sheet against the other co-accused. Knowing the above position, the Informant-petitioner filed a naraji petition against the part of the final report. The Court allowed naraji petition in part, and accused Atiar Rahman has been implicated in the charge sheet.

The case was transferred to the Court of a learned Additional District Magistrate for Trial, and the case was fixed for charge hearing, wherein the opposite party filed an application under section 241/A of the Code of Criminal Procedure. However, upon hearing the parties, the Court below vide its order dated 23-02-97 discharged the Atiar Rahman/FIR named accused at present opposite party No. 1 from the charge.

Against the said order dated 23-02-97, the informant petitioner filed criminal revision being Criminal Revision No. 32 of 1997, upon hearing the same Additional Session Judge by his judgment and order dated 8-2-1999 affirmed the judgment and order passed by Additional District Magistrate and rejected the said revisional application holding that as a school teacher and on the alleged date of occurrence Atiar Rahman was engaged in election duties, thus can't take part in the alleged occurrence.

Being aggrieved against the order dated 8-02-99 passed by the Additional Session Judge, Nilphamari, in Criminal Revision No.

32 of 1997, the informant petitioner filed this application under section 561A of the Code of Criminal Procedure. According to him, discharge of the said accused from the charge will frustrate the criminal proceedings, and as such, the same is an abuse of the process of the court.

On perusal, it appears that the petitioner alleged there is a specific allegation against the opposite party No. 1 and implicated in the FIR as an accused. However, the court below, without following the procedure of law, discharged the opposite party No. 1. According to him, the Court below committed a serious error of law in discharging the opposite party No. 1, and for ends of justice, the order passed by the Courts below is liable to be set aside.

It has been alleged opposite party gave a lathi blow and, upon threat, forcefully took cash, gold, and other household items from the possession of the informant. But in the investigation, it was found that being a school teacher on the alleged date, Atiar Rahman was engaged in election duties and participated in training as an Assistant Presiding Officer. However, after the investigation, the police submitted a final report against the opposite party No.1.

Further, it appears that the occurrence took place on 7-3-96, but the ejaher was lodged on 23-03-96. Accused Atiar Rahman/the opposite party, is a school teacher and was engaged in election duties; thus, it is not possible to take part in the alleged occurrence. Thus, mere allegations made in the ejaher do not suffice to bring the charge.

In the facts and circumstances of the case and the materials on record, we are of the view that there is no illegality and wrong made by the trial Court below in passing the impugned order.

In view of the above, we hold that there is no reason for interference by this Court at this stage by invoking inherent jurisdiction under section 561A of the Code of Criminal Procedure.

Accordingly, the Rule is discharged.

The order of stay granted earlier by this Court stands vacated.

There will be no order as to cost.

Communicate the judgment and order at once.

Md. Riaz Uddin Khan, J:  
I agree.