IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Criminal Miscellaneous Jurisdiction)

Present
Mr. Justice Md. Salim
And
Mr. Justice Shahed Nuruddin

CRIMINAL MISCELLANEOUS CASE NO.16374 OF 2012

Shamim Ahmed
.....Accused-Petitioner.
-VERSUS-
The State and another
.....Opposite Party.

No one appears
------- For both the parties.

Mr. B.M. Abdur Rafell, D.A.G. with

Mr. Binoy Kumar Ghosh, AAG

Mr. A.T.M. Aminur Rahman (Milon), AAG

Ms. Lily Rani Saha, AAG .....For the State.

Heard and Judgment on 22.11.2023

Shahed Nuruddin,J:

By this Rule, the accused-petitioner by filing an application under Section 561A of the Code of Criminal Procedure sought for quashing the proceedings of C.R. Case No.432 of 2010 under Sections 420/406/109 of the Penal Code,

now pending before the learned Senior Judicial Magistrate, Court No.3, Sylhet.

Material facts leading to this Rule are that the allegation brought against the accused petitioner is punishable under Sections 420/406/109 of the Penal Code 1860.

The learned Magistrate took cognizance of the offence and later charge was framed. The case is now pending for trial.

Feeling aggrieved the accused petitioner preferred the instant application and obtained the present Rule on 22.05.2012.

Heard the learned Deputy Attorney General and perused the record.

On exploration of the materials on record it transpires that the complainant categorically narrated the manner of crime committed by the accused. The learned Magistrate after considering the entire materials on record rightly framed charge under same section against the accused. Moreso, in defence the accused denied the entire allegations. So, when there is such denial, the question of innocence does not arise with this regard reliance has been placed in the case of Abdur Rahim alias A.N.M Abdur Rahman Vs. Enamul Haq and another reported in 43 DLR **(AD) 173. In** the instant case the accused stand indicted for offence punishable under the same section. **We have**

meticulously examined the allegations made by the complainant and we find that the offence punishable under the above offence has been clearly disclosed in the instant case against the accused. We have gone through the grounds taken in the application under Section 561A of the Code of Criminal Procedure and we find that such grounds are absolutely the disputed question of facts and the same should be decided at the trial. The pleas of the petitioners are nothing but the defence plea. Be that as it may the proposition of law is now well settled that on the basis of defence plea or materials the criminal proceedings should not be stifled before trial; when there is a prima-facie case for going for trial. In view of such facts, the grounds taken in the petition of Misc. case are not the correct exposition of law. Moreso interruption of the course of Justice will set up a wrong precedent by which the course of justice instead of being advanced readily been stifled inasmuch as the grounds advanced before us are not correct or legal exposition of law. Therefore we hold that there are sufficient grounds for proceeding against the accused for going for trial under the same section. To that end in view we are at one with learned Judge of the Court below regarding framing of charge against the accused. In view of the above we failed to

discover any merit in this Rule. Thus the Rule having no merit fails.

Since the ground taken by the petitioner is disputed question of fact and all the submissions are settled principle by the Hon'ble Appellate Division.

In the light of discussions made above and the preponderant judicial views emerging out of the authorities refer to above we are of the view that the impugned proceedings suffers from no legal infirmities which calls for no interference by this Court.

In view of foregoing narrative the Rule is discharged. The order of stay granted earlier stands vacated.

The office is directed to communicate the judgment at once.

MD. SALIM, J.

I agree

Hanif/Bo