

In the Supreme Court of Bangladesh  
High Court Division  
(Criminal Revisional Jurisdiction)

Bench:

Mr. Justice Muhammad Abdul Hafiz

and

Mr. Justice Md. Ruhul Quddus

Criminal Revision No.1338 of 2005

In the matter of :

An application under sections 439 and 435 of the Code of  
Criminal Procedure;

And

In the matter of :

1. Md. Abdul Mannan, son of late Abdul Zabbar Miah,  
of village Khagra Baria;
2. Rustom Ali, son of Dudu Khan, of village-  
Aruakandi, both of Police Station-Kashiani, District-  
Gopalganj.

...Petitioners

-Versus-

1. The State

... Opposite Party

2. Anti-Corruption Commission, represented by its  
Chairman, having its office at 1, Shegun Bagicha,  
Dhaka.

...Added Opposite Party

Mr. Sk. Baharul Islam , Advocate

... for the petitioners

Mr. Hasan Shahid Kamruzzaman, Advocate

... for the added opposite party

Judgment on 27.01.2014

*Md. Ruhul Quddus, J:*

This Rule at the instance of the two accused was issued on an application under section 439 read with 435 of the Code of Criminal Procedure challenging the order dated 21.06.2005 passed by the Special Judge, Faridpur in Special Case No. 67 of 2004 arising out of Gopalganj Police Station Case No. 36 (4) 02 framing charge against the petitioners under sections 467, 468, 471 and 109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947 (Act II of 1947).

Md. Harunur Rashid, an Inspector of the then Bureau of Anti-Corruption, Gopalganj District lodged an *ejahar* with Gopalganj Police Station on 30.4.2002 against the petitioners alleging, *inter alia*, that on an enquiry held by the Bureau under Nothi No. ER 17/1998 it was revealed that petitioner 1 had filed an application for release of 50 decimals of land appertaining to different plots of Mouja Aroakandi under Kashiani Police Station of Gopalganj District from the list of vested property. The Additional Deputy Commissioner (Revenue) on receipt of the said application directed the Assistant Commissioner (Land), Kashiani to enquire into the matter and submit a report. In compliance thereto the Assistant Commissioner (Land) asked the *Tahshilder* of Aroakandi Tahshil Office to submit a report to that effect. Although the original owner of the said land Basu Deb Das had left the country long before, the *Tahshilder* Mr. Rustom Ali Khan (herein petitioner 2) submitted a report that the said Basu Deb Das transferred the land to petitioner 1 by executing and registering a sale deed. On receipt of the said report the Assistant Commissioner (Land)

recommended release of the land from the list of vested property and accordingly the office of Deputy Commissioner, Gopalganj released the land on 15.02.1998. The report further revealed that no sale deed as claimed by the petitioner 1 was ever registered in Kashiani Sub-Registry Office. The petitioner 1 in order to grab the public property created false document and used it releasing the property and mutation of record for illegal gain.

The then Bureau of Anti-Corruption, investigated the case and submitted a charge sheet on 31.05.2004 against the petitioners under the aforesaid penal sections. In course of proceedings the matter being ready for trial was sent to the Special Judge, Gopalganj wherein it was registered as Special Case No. 67 of 2004. The petitioners filed an application under section 241A of the Code of Criminal Procedure for their discharge from the case, which the learned Special Judge rejected by the impugned order dated 26.06.2005 and framed charge against them. Challenging the said order the accused-petitioners moved in this Court with the instant criminal revision and obtained the Rule with an order of stay.

Mr. Sk. Baharul Islam, learned Advocate appearing for the petitioners submits that in the first information report it was clearly stated that the document in question which is subject matter of the present case was used before the Deputy Commissioner in an application for release of the land in question from the list of vested property and mutation of the record. In such a position section 195 of the Code of Criminal Procedure imposes a bar against bringing the present criminal case by the Bureau. Since the sale deed No. 87 dated 11.01.1979 upon which petitioner 1 claimed his title and which is the subject matter of the present criminal case was used in a proceeding

for release of the property and mutation of record in the name of petitioner 1 and was produced before the Deputy Commissioner/Additional Deputy Commissioner (Rev), only the Deputy Commissioner/Additional Deputy Commissioner was competent to refer the matter by a complaint in writing to the criminal Court. No other person/authority was competent to initiate such criminal proceeding except the Deputy Commissioner/Additional Deputy Commissioner.

On the other hand, Mr. Hasan Shaheed Kamruzzaman, learned Advocate for the added opposite party, the Anti-Corruption Commission submits that there are ingredients of offences under sections 467, 468 and 109 of the Penal Code read with section 5(2) of the Act II of 1947. The Additional Deputy Commissioner (Rev) sitting in a mutation proceeding being not a Court, the barring clause of section 195 of the Code of Criminal Procedure will not apply in the present case. The Rule is therefore liable to be discharged.

We have considered the submissions of the learned Advocates and gone through the record. On this point we find the case of Idrish Ali and another vs. The State, 38 DLR 270. In the said case Justice Bimalendu Bikash Roy Chowdhury observed:

*It provides that when an offence specified in section 195(1) (c) of the Criminal Procedure Code appears 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 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 requires that without a complaint in writing of the Court concerned or some other Court to which it is subordinate no prosecution for an offence mentioned in clause (c) of sub-section (1) of section 195 of the Code can be taken cognizance of.”*

.....

*“....We are, therefore, of the opinion that a Revenue Officer dealing with a mutation proceeding under the State Acquisition and Tenancy Act and the Rule framed thereunder does not constitute a Court....”*

In the said case their lordships relied upon the cases of *Bharat Bank Ltd. vs. Employees of Bharat Bank Ltd.*, AIR 1950 (SC) 188; *Brajnandan Sinha vs. Jyoti Narain* PLD, 1956 (SC) (Ind) 65 and many other cases of the Superior Courts of this Subcontinent. We have no reason to deviate or defer with the principle enunciated in those cases. The Additional Deputy Commissioner sitting in a mutation proceeding or in a proceeding for release of a vested property cannot be construed as a Court and therefore there was nothing wrong in initiation of the present criminal case by the then Bureau of Anti-Corruption.

Before parting we note it that the mutation in question was done on the recommendation of the Assistant Commissioner (Land), Gopalganj as well and he was likely to be made an accused in the present criminal case, but neither in the first information report nor in the charge sheet his name is included. No explanation for such exclusion has been offered. Under the circumstances, the Anti-Corruption Commission is directed to enquire into the matter as to how he was excluded from the case and whether the



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Informant and Investigating Officer of the case Mr. Md. Harunur Rashid, Inspector of the then Bureau of Anti-Corruption was justified in not including his name. If it is found that he was not justified in doing so the Commission will take appropriate action against him.

The Rule having no merit is thus discharged. The stay granted earlier stands vacated. The trial Court is directed to dispose of the case expeditiously.

Send down the lower Court's record.

Muhammad Abdul Hafiz, J:

I agree.