

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 6745 OF 2014.

IN THE MATTER OF:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

AND

IN THE MATTER OF:

Ideal Co-operative Society Limited represented
by H.N.M Safiqur Rahman

.....Petitioner.

-Versus-

Government of the People's Republic of
Bangladesh and others.

.....Respondents.

Mr. Mohammad Ayub Ali, Advocate

..... For the Petitioner.

Mr. A.K.M. Amin Uddin, D.A.G with

Ms. Anna Khanom Koli, A.A.G and

Mr. Md. Shaifour Rahman Siddique, A.A.G

.....For the Respondents.

Mr. S. M. Abdur Rouf, Advocate,

..... For the Anti-Corruption Commission.

Present:

Mr. Justice Md. Nazrul Islam Talukder

And

Mr. Justice Kazi Md. Ejarul Haque Akondo

Heard & judgment on: 01.06.2022.

Md. Nazrul Islam Talukder, J:

On an Application under Article 102 of the Constitution of the Peoples Re-public of Bangladesh, this Rule, at the instance of the petitioner, was issued calling upon the respondents to show cause as to why

Manikgonj Police Station Case No. 37 dated 20.05.2014 under Sections 406/420/506(II)/34 of the Penal Code, corresponding to G.R. Case No. 206 of 2014, now pending before the Court of Chief Judicial Magistrate, Manikgonj, C.R. Case No. 340(Ma) of 2013 dated 08.09.2013 under Sections 406/420/506(II)/34 of the penal Code, C.R. Case No. 269(Ma) of 2014 dated 25.06.2014 under Sections 406/506(II)/109 of the penal Code, both are pending before the court of learned Judicial Magistrate, Court No. 02, Manikgonj, C.R. Case No. 96 of 2014 dated 25.02.2014 under Sections 420/406/109/506 of the penal Code, now pending before the court of learned Chief Metropolitan Magistrate, Dhaka and M.S. No.36 of 2013 dated 20.05.2013, now pending before the court of 5th Joint District Judge, Dhaka which were filed without sanction of the Registrar, Office of the Directorate of Co-operative or any delegated person by the registrar violating the provision of Section 86(2) of the Samabaya Samity Act, 2001, should not

be declared to have been lodged/initiated without lawful authority and is of no legal effect and/or pass such other or further order of orders as to this Court may seem fit and proper.

It may be noted that at the time of issuance of the Rule, all further proceedings of the above mentioned cases were stayed and the respondents were directed to comply with the order vide Memo No. 135(71) dated 23.09.13 issued by the Registrar, Office of the Directorate of Co-operative and also comply with the Section 86(2) of the Samabaya Samity Act, 2001 and not to entertain any case without sanction of the Registrar, Office of the Directorate of Co-operative or any delegated person by the Registrar.

The facts of writ petition, in short, are that the petitioner is prominent Co-operative Society namely Ideal Co-operative Society which was incorporated under the Samabaya Samity Act, 2001, having its office at the address as given in the cause title. Ideal Co-operative Society is one of the leading national

Samabaya organizations of the country. The petitioner is represented by H.N.M Safiqur Rahman, the Managing Director of the Co-operative Society. The Co-operative Society was registered on 13.03.2001 for the area of Dhaka Metropolitan Area. Subsequently, it was registered on 09.12.2007 to approve its activities for the area of Dhaka Division. The Management Committee of the Co-operative Society was also approved. The petitioner is one of largest and famous Samabaya organization of the country. The petitioner has been contributing for the poor and marginalized people of the country from the beginning. The petitioner receives monies from the members of the co-operatives society and gives loans to the members of the co-operatives society under the provisions of the Samabaya Samity Act, 2001. The petitioner was awarded in the year of 2009 for contributing their good samabaya activities by Office of the Directorate, Co-operative Adidoptor. At present, the financial Sector and Co-operative Sector of the country is facing

bad conditions. Many Co-operative Societies of the Country appear to have remained closed due to various reasons. One of main reasons is that the members of the co-operative societies came simultaneously to withdraw their deposited money. The Co-operative societies failed to refund the deposited money to the members because the said deposited money was invested in various ways such as Credit programs, Micro Credit, SOD and C.C Loan etc. As a result, the Co-operative societies have failed to refund the invested money to the co-operative members and at the same time, the investor members of the Society filed cases against the Management Committee of respective Societies. Ideal is the largest and famous co-operative society in the country. All most all the members of the said Co-operative Society came at the self same time to withdraw the deposited money as such the other Co-operatives society of the country as well as the Ideal Co-operatives Society failed to refund money to investors properly. As a result, the members

of the co-operative society filed various cases in many districts against the Management Committee, officers and employees of Ideal Co-operative Society. One member of the society lodged an F.I.R being Manikgonj Police Station Case No. 37 dated 20.05.2014 under Sections 406/420/506(II)/34 of the penal Code, corresponding to G.R. Case No. 206 of 2014, now pending before the court of Chief Judicial Magistrate, Manikgonj, C.R. Case No. 340(Ma) of 2013 dated 08.09.2013 under Sections 406/420/506(II)/34 of the Penal Code, C.R. Case No. 269(Ma) of 2014 dated 25.06.2014 under Sections 406/506(II)/109 of the penal Code both are pending before the Court of learned Judicial Magistrate, Court No. 02, Manikgonj and C.R. Case No. 96 of 2014 dated 25.02.2014 under Sections 420/406/109/506 of the penal Code, now pending before the court learned Chief Metropolitan Magistrate, Dhaka.

It is stated in the writ petition that the members of the Co-operative Society filed various cases in

many districts against the Management Committee, officers and employees of Ideal Co-operative Society without taking any sanction under Section 86(2) of the Samabaya Samity Act, 2001 from the Registrar, Office of the Directorate of Co-operative or from any delegated persons by the Registrar.

Being aggrieved by the impugned criminal proceedings, the petitioner approached this court under Article 102 of the Constitution of the People's Republic of Bangladesh challenging the same and obtained this Rule along with an order of stay of the above mentioned criminal proceedings and direction to comply with the order vide Memo No. 135(71) dated 23.09.13 issued by the Registrar, Office of the Directorate of Co-operative and also comply with the Section 86(2) of the Samabaya Samity Act, 2001 and not to entertain any case without sanction of the Registrar, Office of the Directorate of Co-operative or any delegated person by the Registrar.

At the very outset, Mr. Mohammad Ayub Ali, the learned Advocate appearing on behalf of the petitioner, submits that the impugned criminal cases were lodged/initiated against the petitioner without taking any sanction under Section 86(2) of the Samabaya Samity Act, 2001 from the Registrar, Office of the Directorate of Co-operative or from any delegated persons by the Registrar and for this reason, the impugned criminal proceedings are liable to be declared to have been lodged/initiated without lawful authority and of no legal effect.

On the other hand, Mr. S.M. Abdur Rouf, the learned Advocate appearing on behalf of the Anti-Corruption Commission, submits that Manikgonj Police Station Case No. 37 dated 20.05.2014 under Sections 406/420/506(II)/34 of the Penal Code, corresponding to G.R. Case No. 206 of 2014, now pending before the Court of Chief Judicial Magistrate, Manikgonj, C.R. Case No. 340(Ma) of 2013 dated 08.09.2013 under Sections 406/420/506(II)/34 of the

penal Code, C.R. Case No. 269(Ma) of 2014 dated 25.06.2014 under Sections 406/506(II)/109 of the penal Code, both are pending before the court of learned Judicial Magistrate, Court No. 02, Manikgonj, C.R. Case No. 96 of 2014 dated 25.02.2014 under Sections 420/406/109/506 of the penal Code, now pending before the court of learned Chief Metropolitan Magistrate, Dhaka and M.S. No.36 of 2013 dated 20.05.2013, now pending before the court of 5th Joint District Judge, Dhaka, are filed lawfully following the provisions of law and those are pending against the petitioner.

He next submits that it is now well settled principle of law that criminal proceedings can't be challenged under the writ jurisdiction.

He then submits that the allegations brought against the petitioner and others are all disputed and complicated questions of fact which cannot be inquired into by this Court under writ jurisdiction.

He lastly submits that the allegations that have been brought against the petitioner and others can be decided on taking evidence from the witnesses of the respective parties and under the aforesaid circumstances, there is no scope to challenge the impugned criminal proceedings under the writ jurisdiction.

Mr. A.K.M Amin Uddin, the learned Deputy Attorney-General appearing for the respondents has adopted the submissions advanced by the learned Advocate for the Anti-Corruption Commission.

We have gone through the writ petition and perused the materials annexed therewith. We have also heard the submissions made by the learned Advocate for the Anti-Corruption Commission and the learned Deputy Attorney-General for the respondents. We have also considered their submissions to the best of our wit and wisdom. On going through the record of the writ petition, it appears that Manikgonj Police Station Case No. 37 dated 20.05.2014 under Sections

406/420/506(II)/34 of the Penal Code, corresponding to G.R. Case No. 206 of 2014, now pending before the Court of Chief Judicial Magistrate, Manikgonj, C.R. Case No. 340(Ma) of 2013 dated 08.09.2013 under Sections 406/420/506(II)/34 of the penal Code, C.R. Case No. 269(Ma) of 2014 dated 25.06.2014 under Sections 406/506(II)/109 of the penal Code, both are pending before the court of learned Judicial Magistrate, Court No. 02, Manikgonj, C.R. Case No. 96 of 2014 dated 25.02.2014 under Sections 420/406/109/506 of the penal Code, now pending before the court of learned Chief Metropolitan Magistrate, Dhaka and M.S. No.36 of 2013 dated 20.05.2013, now pending before the court of 5th Joint District Judge, Dhaka are filed against the petitioner and others and those are pending against them. It is now well settled that criminal proceedings cannot be challenged under the writ jurisdiction. Furthermore, the vires of the law involved in this case has not been challenged in this writ petition. In the decision taken in the case of **ACC vs. Mehedi Hasan,**

reported in 67 DLR(AD)137, it was held that: “There is no scope for quashing a criminal proceeding under the writ-jurisdiction unless the vires of the law involved is challenged. The vires of the law involved in the case has not been challenged. Therefore, there is no scope for aggrandizement of jurisdiction of the High Court Division in quashing a criminal proceeding”. Similar view has been expressed in the decision taken in the case of **Begum Khaleda Zia vs Anti-Corruption Commission, reported in 69 DLR (AD)181**. Apart from the above, this Court cannot look into the disputed and complicated questions of facts under writ jurisdiction. In the decision taken in the case of **Begum Khaleda Zia vs Anti-Corruption Commission, reported in 70 DLR (AD)50**, it has been decided that: “In proceedings under Article 102 of the Constitution it is not open to the High Court Division to hold an elaborate enquiry into disputed and complicated questions of fact. The High Court Division would only interfere with the proceeding of a criminal court if it is

found that such proceeding is without jurisdiction and if there is no other efficacious relief provided in laws against such proceeding or the vires of the law basing on which the proceeding initiated is challenged.” Furthermore, the matter with regard to taking sanction before filing any case under Section 86(2) of the Samabaya Samity Act, 2001 from the Registrar, Office of the Directorate of Co-operative or from any delegated persons by the Registrar, is an administrative act and if there is any illegality and impropriety in the matter of sanction that may be looked into by the learned trial judge during trial of the case.

Having considered all the facts and circumstances of the case, the submissions advanced by the learned Advocates for the respective parties and the propositions of law, we do not find any merit in this Rule.

Consequently, the Rule is discharged.

Resultantly, the order of stay of the impugned criminal proceedings and direction to comply with the order vide Memo No. 135(71) dated 23.09.13 issued by

the Registrar, Office of the Directorate of Co-operative and also to comply with the Section 86(2) of the Samabaya Samity Act, 2001 and not to entertain any case without sanction of the Registrar, Office of the Directorate of Co-operative or any delegated person by the Registrar passed by this court at the time of issuance of the Rule stands vacated.

The learned Judges of the courts below are directed to proceed with the cases in accordance with law and conclude the trial of the cases as early as possible preferably within 1 (one) year from the date of receipt of this judgment and order.

Let a copy of this judgment and order be communicated to the learned Judges of the concerned courts below and other respondents at once.

Kazi Md. Ejarul Haque Akondo, J

I agree.