

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

Present:

Mr. Justice Md. Khairul Alam
and
Mr. Justice K.M. Emrul Kayesh

Criminal Miscellaneous Case No. 50668 of 2014

Abdur Rashid Munshi and another.
.....Accused-petitioners.
-Versus-
The State and another.
..... Opposite parties.
Mr. A.K. Rashedul Huq, Advocate
..... For the petitioners.
Mr. Md. Muzahedul Islam, Advocate
..... For the opposite party No.02.

Heard on: 30.01.2025

Judgment on: 13.03.2025.

Md. Khairul Alam, J:

This Rule was issued calling upon the opposite party No.1 to show cause as to why the criminal proceeding in C.R. Case No. 96 of 2013 arising out of M.P. Case No. 185 of 2012 under sections 279/447 and 506 of the Penal Code, now pending in the Court of Judicial Magistrate, 3rd Court, Patuakhali and the order dated 29.06.2014 framing charge against the accused petitioners should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

Relevant facts for disposal of the Rule are that on 13.06.2012 the present opposite party No. 2 as complainant filed a petition of complaint against the present accused petitioners alleging, inter alia, that the predecessor of the complainant purchased 22.50 decimals of the land of S.A. Khatian No. 976, Plot No. 85, J.L. No. 123 of Mauja-Das Para, Police Station-Bauphal, District-Patuakhali by three registered kabala deeds. The land was mutated in their name. On 10.06.2012, the accused persons entered the land and cut down a Raintree tree from the land with intent to theft. When the complainant tried to resist, the accused persons threatened to injure him. Hence, the complainant filed the petition of complaint. After receiving the petition of complaint, the learned Magistrate examined the complainant and issued a process and the accused persons obtained bail. On 29.06.20214, the learned Magistrate rejected the application filed by the petitioners to discharge them and thereby framed the charge against the petitioners under section 379 of the Penal Code and fixed the next date for the witness.

At this stage of the proceeding, the petitioners obtained the Rule and an order of stay of the impugned proceeding.

Mr. A.K. Rashedul Huq the learned Advocate appearing for the petitioners has submitted that the complainant is not the owner of the land, the accused cut the tree with the consent of the original owner i.e. the government, so the question of theft, as alleged, does not arise at all. He has next submitted that from the inquiry report, it appears that the allegation of theft is preposterous, therefore, the continuation of the proceeding would result in an abuse of the process of the court, and would not serve the ends of justice hence, the proceeding is liable to be quashed. In support of the submission, he has relied upon the case of Rajiv Thapar v. Madan Lal Kapoor reported in 3SCC330.

Mr. Md. Muzahedul Islam, the learned Advocate appearing for the opposite party No. 2 has submitted that the issue as raised by the petitioners is a disputed question of fact that cannot be adjudicated under section 561A of the Code of Criminal Procedure. In support of the submission, he has relied upon the decision of the case of Nizamuddin Mahmood vs. Abdul Hamid reported in 60DLR(AD)195.

We have gone through the criminal miscellaneous case and perused the materials on record as well as the cited cases as referred to by the learned Advocates for the contending parties.

It appears from the petition of complaint that the complainant in the petition of complaint clearly stated that his father purchased 22.50 decimals of land from the predecessor of the accused which was mutated in their name. On 10.06.2012, the accused persons entered the land and cut down a Raintree tree from the land with intent to theft. On consideration of the said fact, it appears to us that a prima facie allegation of section 378 of the Penal Code which is punishable under section 379 of the Penal Code has been disclosed against the accused petitioners. The trial court finding a prima facie in the allegations has framed a charge against the petitioners.

The learned Advocate for the petitioners contended that the tree was situated on the government land and the petitioners cut the tree with the prior permission of the government, so the act of the petitioners cannot be called theft in any way.

The claims and counterclaims of the contending parties make the issue of the theft a disputed question of facts.

It is a well-settled principle of law that the disputed question of facts cannot be decided by invoking the jurisdiction under section 561A of the Code of Criminal Procedure and it is

the function of the trial court to decide the factual aspects of the case by taking evidence.

Since the issue of the theft is a disputed question of fact to be ascertained at the time of trial by taking evidence and therefore, such a question cannot be decided in a proceeding under section 561A of the Code in view of the decision of this court in the case of Abdul Quader Chowdhury vs State reported in 28DLR(AD)38 wherein it was held that where an assessment of evidence is involved the case cannot be quashed.

In the case of Rajiv Thapar v. Madan Lal Kapoor, reported in 3SCC330, Monica Thapar died of a massive heart attack, but her father made a complaint alleging that he suspected that his daughter had been poisoned. Ultimately, the complaint was rejected holding that the death of Monica Thapar was determined to be natural. The father of Monica Thapar filed another complaint on the same issue. The subsequent complaint was quashed considering the materials of the earlier proceedings. Therefore, the facts and circumstances of the said case are fully distinguishable from the facts and circumstances of the present case.

In view of the above discussions, we do not find any merit in the Rule.

Accordingly, the Rule is discharged without any order as to costs.

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

Communicate a copy of the judgment and order to the concerned Court at once.

K.M. Emrul Kayesh, J

I agree

Kashem, B.O