

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

Criminal Miscellaneous Case No. 15917 of 2015

In the matter of:

An application under section 561-A of the
Code of Criminal Procedure

-And-

In the matter of:

Khandaker Abdus Sabur

..... Accused-Petitioner

-Versus-

Jamsher Ali and others

.....Opposite Party

Mr. Dr. Md. Bashir Ullah, Advocate

.....for the petitioner

Mr. Sarwar Hossain Bappi, D.A.G with

Mst. Moududa Begum Fancy, A.A.G

Ms. Hasina Momtaz, A.A.G

Mr. Md. Salim, A.A.G and

Mr. Md. Akter Hossain, A.A.G

.....for the State

Present:

Mr. Justice Jahangir Hossain

And

Mr. Justice Md. Atoar Rahman

Judgment delivered on 12.12.2021

Jahangir Hossain, J:

By order dated 05.05.2015 this Court issued a Rule calling upon the opposite parties to show cause as to why the order dated 10.07.2014 passed by the learned Sessions Judge, Dhaka in Criminal Revision No. 110 of 2014 rejecting the petition summarily should not be quashed and direct the Senior Judicial

Magistrate and Amoli Adalat Ga Anchal, Dhaka to accept the Naraji petition and to pass an order for further investigation by the Criminal Investigation Department [C.I.D] or Detective Branch of Police [D.B] and/or such other or further order or orders passed as to this Court may seem fit and proper.

The prosecution case is briefly described as under:

The petitioner as informant lodged a first information report with Saver Police Station under sections 186/353/332/333 /342/379 of the Penal Code implicating the accused-opposite parties alleging, inter alia, that on 11.07.2012 the petitioner received information that (1) Md. Jamsher Ali, (2) Md. Kohinor Hossain, (3) Sultana Begum, (4) Md. Abul Hossain, (5) Hazi Md. Samsu Mia son of late Abdul Ali and (6) Md. Abdur Rahman were using unauthorized gas burners and thereby consuming gas illegally. Subsequently, an inspection team was formed and sent them to make inspection for taking proper measures. At the time of inspection, the team got illegal connection of gas line and unauthorized burners in the house of the accused. Thereafter, the team disconnected the illegal gas line. When the team was lastly disconnecting the line of Abdur Rahman, then the accused-persons along with their hired 20/25 terrorists attacked and assaulted the members of the team by

stick. The accused persons made obstruction in discharging public functions. They caused grievous hurt to the members of the team. Thereafter, the accused wrongfully confined the injured persons and snatched the gas equipments from the members of the team. After getting information, the informant informed the matter to Saver Police Station. Thereafter, police rescued the victims from the accused and sent them to hospital for treatment. Hence, the FIR was registered with the Saver Police Station vide Savar Police Station Case No. 35 dated 12.07.2012.

The investigating officer, after holding investigation, submitted charge sheet being No. 598 dated 10.10.2012 against others, who were not named in FIR, under sections 186/353/332/342/379 of the Penal Code. But the FIR named accused persons were not sent up in the charge sheet.

After knowing this, the informant filed a Naraji petition against the police report before the learned Chief Judicial Magistrate, Dhaka stating that the investigation-officer did not make proper investigation even following the Rules and procedure of the Cr.P.C and submitted a funfactory charge sheet.

On 19.06.2013, the learned Senior Judicial Magistrate, Dhaka, after hearing the parties, rejected the naraji petition and

discharged the FIR named accused by accepting the Charge-Sheet.

Being aggrieved by and dissatisfied with the impugned order dated 19.06.2013 passed by the learned Senior Judicial Magistrate, the petitioner filed the Criminal Revision No. 110 of 2014 before the learned Sessions Judge , Dhaka along with an application for condonation of delay of 388 days. The learned Sessions Judge heard the application for condonation of delay but did not consider the reasons of delay and was pleased to reject the Criminal Revision on 10.07.2014, accordingly. Hence, the present Rule.

Mr. Dr. Bashir Ullah, learned Advocate, appearing on behalf of the informant-petitioner submits that the Courts below did not apply their judicial mind in not considering the explanation of delay, evidence on record and facts and circumstances of the case. The accused-opposite parties were FIR named accused and involved directly in the commission of offence but the judicial magistrate discharged them on the basis of so called police report without taking into consideration of other aspects of the case which is seriously abuse of the process of Court and hence the impugned order is liable to be quashed.

There are specific allegations and overt act against the accused-opposite parties and it should be determined by holding further investigation through special law enforcing agency, while, rejecting the naraji petition is bad in law being without any consideration of material-evidence on record of the case. Even the medical reports have not been documented properly before the Court concerned and the learned judicial magistrate also committed serious abuse of the process of the court and hence, the proceeding of the case shall be brought against the accused-opposite parties for securing ends of justice.

Heard the learned Advocate, perused the impugned order along with other materials on record. It appears that the investigating officer submitted charge sheet on 10.10.2021 and the present petitioner filed a naraji petition against the said charge sheet before the Chief Judicial Magistrate, Dhaka. The learned Senior Judicial Magistrate ultimately heard the said naraji petition and by order dated 19.06.2013 rejected the said naraji petition. Against which the petitioner moved the court of Sessions, Dhaka along with an application for condonation of delay of 388 days in filing the revision. But the learned Sessions Judge, upon hearing, rejected the criminal revision along with application for condonation of delay summarily by his order

dated 10.07.2014 affirming the order of the learned Senior Judicial Magistrate, who rejected the naraji petition.

From the impugned order, Annexure-F, it appears that the petitioner caused delay of 388 days in filing the Criminal Revision No. 110 of 2014 before the learned Sessions Judge, Dhaka. In the application for condonation of delay, it has been stated that the learned Advocate did not inform the informant about the rejection of Narazi petition. Simply this explanation is not sufficient to be condoned for delay of 388 days. The learned Sessions Judge rightly rejected the application holding that the explanation for causing the delay is not satisfactory. The finding arrived at by the learned Sessions Judge does not call for any interference by this division. Because the petitioner has failed to make out or give any satisfactory explanation as to what prevented him to file the criminal revision in time before the Court of Sessions and as such we do not find any merit in this Rule.

Therefore, the Rule, issued by this Court, is discharged without any order as to costs.

Communicate the Judgment and order at once.

Md. Atoar Rahman,J

I agree