

Present:
Mr. Justice Md. Nazrul Islam Talukder
And
Mr. Justice K.M. Hafizul Alam

Criminal Miscellaneous Case No. 32804 OF 2016.

Dr. Quazi Md. Emdadul Huque (Retired).

.....Accused-petitioner.

-Versus-

The State and another.

..... Opposite -parties.

Mr. Mohammad Ayub Ali, Advocate

..... For the Petitioner.

Mrs. Rona Naharin, D.A.G with

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

Mrs. Helena Begum (Chaina), A.A.G

.....For the State-opposite-party.

Mr. Md. Sazzad Hossain, Advocate

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

Heard & judgment on: 31.07.2018.

Md. Nazrul Islam Talukder, J:

On an application under Section 561A of the Code of Criminal Procedure, this Rule, at the instance of the accused-petitioner, was issued calling upon the opposite-parties to show cause as to why the proceeding of Special Case No.05 of 2016 arising out of special Case No. 02 of 2015 corresponding to

Ashulia Police Station Case No. 61 dated 29.09.2010 under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947, now pending in the court of learned Divisional Special Judge, Dhaka, should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution case, in short, is that one Md. Nazim Uddin, Deputy Assistant Director, Special Inquiry and Investigation-1, Anti-Corruption Commission, Head Quarter, Dhaka being informant lodged an FIR with Ashulia Police Station being Ashulia Police Station Case No.61 dated 29.09.2010 under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 against the accused-petitioner and others alleging, inter-alia, that Mr. Md. Abu Yusuf was the accounts

officer of Bangladesh Livestock Research Institute, Savar, Dhaka in the financial year 1998-1999, who selling livestock and other materials namely ducks, hens, eggs, cows, goats, sheep, milk, fishes, bananas and trees by way of auction, received Tk. 7,10,228.92/- as sale proceeds putting signature on the register and cash voucher books for depositing the same in the concerned bank account but he did not deposit the said amount of money to the bank account of the Institution. It is further alleged that the present accused petitioner Dr. Quazi Md. Emdadul Huque, Director General also signed the register and cash voucher books jointly and did not take any step in this regard. So it transpires that instead of depositing the monies, the accused in collaboration with each other misappropriated the same. Hence the F.I.R.

On 11.07.2011, on completion of investigation, the investigating officer of the Durniti Daman Commission having found prima-face case submitted charge-sheet being charge-sheet No. 30 dated 11.07.2011 against accused-petitioner and others under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

Having received the charge-sheet, the learned Divisional Special Judge, by an order dated 14.08.2016, framed charge against the accused-petitioner and others under the aforesaid sections.

Being aggrieved by the impugned proceeding, the accused-petitioner approached this Court with an application under Section 561A of the Code of Criminal Procedure and obtained the Rule along with an order of stay of the proceeding.

At the very outset, Mr. Mohammad Ayub Ali, the learned Advocate appearing on behalf of the accused-petitioner, submits that there is no specific allegation in FIR against the accused-petitioner and as such, the impugned proceeding is liable to be quashed to prevent abuse of the process of the Court and to secure the ends of justice.

He next submits that the FIR, charge-sheet, seizure list and other materials on record do not constitute any offence whatsoever against the accused-petitioner and as such, further continuation of the proceeding of the case requires to be stopped and the impugned proceeding is liable to be quashed.

He lastly submits that according to Section 19 and 20 of the Anti-Corruption Commission Act, 2004 and Rules 8 and 11 of the Anti-Corruption Commission Rules, 2007, the Anti-Corruption

Commission is supposed to hear and take deposition from the accused-petitioner but the investigation officer did not initiate any proceeding to hear and take deposition of the accused-petitioner and as such, further continuation of the proceeding of the case is an abuse of the process of the court and as such, the impugned proceeding is liable to be quashed.

On the other hand, Mr. Md. Sazzad Hossain, the learned Advocate appearing on behalf of the Anti-Corruption Commission, submits that the F.I.R and Charge-sheet have very clearly disclosed the ingredients of the alleged offences against the accused-petitioner and others; during the investigation, it is found that in the year 1998-1999 from selling of livestock and other materials, the accounts officer received Tk. 7,10,288/92 for depositing in the bank account of the Institution but instead of depositing the

same, the accused-petitioner with the help of other accused misappropriated the same and as such, the Rule may be discharged.

He next submits that the accused-petitioner committed offences under Sections 409/109 read with Section 5(2) of the Prevention of Corruption Act, 1947; the prosecution has sufficient evidence and materials to prove its case but the accused-petitioner has filed the instant application for quashing the proceeding just to delay the course of justice and as such, the Rule issued by this Court is liable to be discharged for ends of justice.

Mrs. Rona Naharin, the learned Deputy Attorney-General appearing for the State, has adopted the submissions of the learned Advocate for the Anti-Corruption Commission.

We have gone through the application under Section 561A of the Code of Criminal Procedure and perused the prosecution materials annexed therewith. We have also heard the learned Advocate Mr. Mohammad Ayub Ali for the accused-petitioner, the learned Advocate Mr. Md. Sazzad Hossain, who has appeared on behalf of the Anti-Corruption Commission and the learned Deputy Attorney-General for the State. It appears from a plain reading of the F.I.R that the allegation involves misappropriation of public money by the government servant against whom a criminal case under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 was initiated. The offences brought against the accused are the schedule offences of the Anti-Corruption Commission Act, 2004 and as such, the case should be tried by the Special Judge for

which there is no ground for quashing the proceeding. It further appears from the investigation report of the case that in the year 1998-1999 from selling of livestock and other materials, the accounts officer, that is, the F.I.R named accused No. 1 received Tk. 7,10,228/92 for depositing the same in the bank account of the Institution but instead of depositing the same, he in collaboration with each other misappropriated the same.

Anyway, following the charge-sheet, the learned Divisional Special Judge framed charge against the accused-petitioner and others under the aforesaid sections.

The allegations brought against the accused-petitioner and others are all disputed questions of facts which require to be proved before the trial court on taking evidence from the respective parties of the case.

This court exercising its jurisdiction under Section 561A of the Code of Criminal Procedure can not look into and resolve the disputed questions of facts. Furthermore, in respect of trial of the offences punishable under Section 409 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947, the accused may be tried for all such offences irrespective of dates of Commission of the same under Section 6(1B) of the Criminal Law Amendment Act, 1958. Section 6 (1B) of the aforesaid Act reads that “A person accused of more offences than one punishable under this Act, may be tried at one trial for all such offences.”

Apart from these, any order with regard to inquiry and investigation passed by the Commission is not subject to judicial scrutiny.

We have also gone through the order of framing charge. It is argued on behalf of the accused-petitioner that charge was not framed following the provisions of Section 222 of the Code of Criminal Procedure. On perusal of the same, it is evident that the learned Divisional Special Judge rightly framed charge. We do not find any illegality or impropriety in the order of framing charge.

Considering the facts and circumstances of the case and the propositions of laws, we do not find any merit in the Rule.

Accordingly, the Rule is discharged.

The order of stay granted at the time of issuance of the Rule stands recalled and vacated.

The learned Judge of the Trial Court is directed to proceed with the case in accordance with law and to conclude the trial of the case as early as possible

P:-12

preferably within 6 (six) months from the date of receipt of this judgment and order.

Let a copy of this judgment and order be communicated to the learned judge of the concerned Court below at once.

K.M. Hafizul Alam, J:

I agree.