

2 SCOB [2015] HCD 21**HIGH COURT DIVISION
(Criminal Miscellaneous Jurisdiction)**

Criminal Misc. Case No. 19511 Of 2012

Bo-Sun Park,
South Korean Citizen
son of Tae-Yung Park
Chairman & Managing Director
Tea-Hung Packaging (BD) Limited
Teen Sarak, Police Station-Joydevpur
District-Gazipur and another
... Petitioners

Versus

The State
Represented by the Deputy Commissioner
Gazipur
... Opposite-party

Ms. Tania Amir with
Mr. Sheikh Rafiqul Islam
... For the petitioners

Ms. Salma Rahman, AAG
... For the opposite-parties

Ms. Ok Kyung Oh
... The informant in person

Heard on the 14th & 15th September
And
Judgment on the 16th September, 2015

Present:

Ms. Justice Zinat Ara
And
Mr. Justice A.K.M. Shahidul Huq

Delay is no ground for quashing the criminal proceeding:

There is no dispute that the F.I.R. has been lodged with a delay of about four years. But, according to the F.I.R. as well as the Criminal Miscellaneous Application, the informant is a Korean woman and she received the copies of forged documents long after from the investigating officer of a previous case. Moreover, delay by itself is no ground for quashing the criminal proceeding.
...(Para 27)

Code of Criminal Procedure**Section 561A:**

As the F.I.R. discloses criminal offence under the Penal Code, the proceeding should not be interfered with by this court under its inherent jurisdiction under section 561A of the Code at this stage.
...(Para 29)

JUDGMENT**Zinat Ara, J:**

1. On an application made by the petitioners under section 561A of the Code of Criminal Procedure, 1898, a Rule was issued in the following terms:-

“Record need not be called for and a Rule be issued calling upon the opposite parties to show cause as to why the proceedings of Joydevpur Police Station Case No. 53 dated 14.08.2008 corresponding to G. R. No. 915 of 2008 under sections 406/420/468/471 of the Penal Code, now pending in the Court of Chief Judicial Magistrate, Gazipur should not be quashed and/or such other or further order or orders passed as to this court may seem fit and proper.”

2. At the time of issuance of the Rule, all further proceedings of the aforesaid Joydevpur P. S. Case No. 53 dated 14.08.2008 corresponding to G. R. No. 915 of 2008 was stayed by this court.

3. The facts of the case, in brief, are as under:-

Both the accused persons and the complainant are Korean citizens. The complainant/informant Ok Kyung Oh is the Ex-wife of accused No. 1 Bo Sun Park. Accused No. 1 is the Chairman and Managing Director of Taehung Packaging (BD) Limited (shortly, the Company) and accused No. 2 is the Director of the Company. They have got a significant foreign investment in Bangladesh and set up an ISO 9001 2000 certified Garments Packaging Industries at Gazipur. Ok Kyung Oh, as complainant, filed a criminal miscellaneous case before the Court of Chief Judicial Magistrate, Gazipur (the CJM, in short) alleging that, with a view to prevent the complainant from functioning as Managing Director (MD) of the Company, the accused had submitted some forged documents before the Registrar of Joint Stock Companies and Firms (RJSC). Whereupon, RJSC filed a case under section 397 of the Companies Act, 1974 against accused No. 1 in the Court of Chief Metropolitan Magistrate, Dhaka (the CMM). The CMM by Memo No. 433 dated 30.01.2005 sent the said complaint to Motijheel Police Station, Dhaka for investigation into the matter by treating the same as F.I.R. After receiving the CMM's order, Motijheel Police Station Case No. 72 dated 20.03.2005 was lodged under sections 465/471/420/406 of the Penal Code. During investigation of the aforesaid P. S. case, the accused handed over some documents of the Company to the investigating officer. The complainant collected photo-stat copies of those documents from the investigating officer and on receiving the copies of documents from the investigating officer of the previous case, the complainant found that the Notices, Board Resolutions, etc. are fake and forged documents, because all the Notices and Board Resolutions submitted by the accused contain the Orion ISO mark and false signatures of the complainant. There was no scope for the Company to use Orion ISO Logo before obtaining the ISO certificate in April, 2001. Therefore, it is evident that the copies of the Board Resolutions of the Company submitted to the Chartered Accountant Firm and RJSC with Orion ISO Logo are forged documents. This was done with a view to prevent the complainant from functioning as Managing Director of the Company. In absence of the complainant, accused No. 1 was the custodian of all the original documents of the Company and taking this opportunity, he, in collaboration with accused No. 2, manufactured the false and fabricated Notices and Board Resolutions of the Company by putting false signatures of the complainant for depriving the right of the complainant in the Company and for harassing her.

4. The CJM, after receiving the complaint, directed the Officer-in-Charge, Joydevpur Police Station for holding investigation and taking legal action accordingly. Upon receiving the complaint through the CJM, Joydevpur P. S. Case No. 53 dated 14.08.2008 has been registered with Joydevpur Police Station.

5. On 27.08.2008, the accused petitioners surrendered before the Court of CJM and prayed for bail. The CJM was pleased to enlarge the accused petitioners on bail.

6. Now, the case is under investigation by the investigating officer.

7. After obtaining bail, the accused-petitioners have filed the instant miscellaneous case seeking quashment of the proceedings in Joydevpur Police Station Case No. 53 dated 14.08.2008 corresponding to G. R. No. 915 of 2008 under sections 406/420/468/471 of the Penal Code, now pending in the Court of CJM mainly on the grounds that the facts of the instant case are so preposterous and absurd upon which no criminal case can be continued; that the informant/complainant, Ex-wife of accused No. 1, with a malafide and ill motive lodged the instant case with a view to harass the accused-petitioners and that no offence is constituted from the contents of the F.I.R.

8. The petitioners have filed two supplementary affidavits annexing a huge bundle of documents and by referring some decisions, have tried to establish that none of the allegations as contained in the F.I.R. constitute any criminal offence.

9. The complainant/informant has filed a counter-affidavit supporting the complaint/F.I.R. stating that specific criminal offence is disclosed from the contents of the F.I.R.

10. Ms. Tania Amir, the learned Advocate appearing for the accused-petitioners, submits that the allegations made in the F.I.R. are preposterous and therefore, the proceeding of the case is liable to be quashed. She next submits that the allegations made in the F.I.R. do not constitute any criminal offence and, as such, there is sufficient grounds for not proceeding further with the maliciously instituted case inasmuch as accused-petitioner No. 1 is the Ex-husband of the informant and after the divorce, out of personal grudge, she has filed the complaint/F.I.R. with some absurd and preposterous allegations. She finally submits that the inordinate delay of about four years in filing the case without satisfactory explanations makes the case doubtful and therefore, the proceedings of Joydevpur Police Station Case No. 53 dated 14.08.2008 corresponding to G. R. No. 915 of 2008 under sections 406/420/468/471 of the Penal Code, now pending in the Court of CJM is liable to be quashed under section 561-A of the Code of Criminal Procedure, 1898 (shortly stated as the Code).

11. In support of her submissions, Ms. Tania Amir has relied on the decisions in the cases of Dewan Mominul Mouzdin Vs. the State, reported in 23 DLR (HCD) 365 and Md. Shokrana Vs the State, reported in 21 BLD (HCD) 296.

12. In reply, Ms. Salma Rahman, the learned Assistant Attorney General, appearing on behalf of the opposite-party-State, takes us through the contents of the F.I.R. and the materials on record and contends that the contents of the F.I.R. constitute definite criminal offence under the Penal Code. She next contends that the documents and papers submitted by the accused-petitioners are to be examined by the investigating officer during investigation stage and at this initial stage of investigation, there is no scope to consider the defence documents by this court. She further contends that since the F.I.R. prima-facie discloses the criminal offence under the Penal Code, there is no scope to quash the impugned proceedings under section 561A of the Code. She also contends that the allegations made in the F.I.R. against the accused-petitioners are neither preposterous nor absurd. She next contends that the complainant/informant being a Korean woman may have lodged the F.I.R. or complaint with some delay, as she came to know about the forged documents afterwards on getting copies thereof from the investigating officer. But, simply for this reason, the investigation of this case should not be interfered with by the Court. She finally contends that in the facts and circumstances of the case, the Rule is liable to be discharged.

13. In support of her arguments, Ms. Salma Rahman has relied on the decisions in the cases of Md. Shamsuddin alias Lambu and others Vs the State and others, reported in 40 DLR (AD) 68 and Ali Akkas Vs. Enayet Hossain and others, reported in 17 BLD (AD) 44.

14. Informant Ok Kyung Oh is present before the Court. She, with the permission of the Court, takes us through the counter affidavit and supports the F.I.R. case.

15. We have examined the criminal miscellaneous application, supplementary affidavits thereto, counter affidavit and the connected materials on record. We have also studied the decisions as referred to by the learned Advocate for the accused-petitioners and the learned Assistant Attorney General for the State.

16. First, we would like to discuss the decisions as referred to by the contending parties before going into the merit of the Rule.

17. In the decision reported in 23 BLD (HCD) 634, as referred to by Ms. Tania Amir, their lordships have referred to the decisions reported in 51 DLR (AD) 159 and 36 DLR (AD) 14. But relying on the latter decision i.e. 36 DLR (AD) 14 made the Rule absolute and the proceeding in that case was quashed. In the decision reported in 51 DLR (AD) 159, it has been held that before exhausting the remedies provided under sections 265C or 241A of the Code of Criminal Procedure initiation of any proceeding under section 561A of the Code of Criminal Procedure for quashing the proceeding is premature which is an admitted principle under law. But at the same time in the ruling reported in 36 DLR (AD) 14 it has been decided that interference even at the initial stage may be

justified where the facts are so preposterous that even on admitted facts no case stand against the accused.

18. In the case reported in 21 BLD (HCD) 296, as relied upon by the accused side, it was decided by their lordships as under:-

“In a criminal case firstly, any allegation whether in the FIR or in the charge-sheet, must constitute an offence within the meaning of Code of Criminal Procedure. Secondly, the allegations must be based on materials on record and not on mere surmises or suppositions. The process of law must not be used as the engine of harassment. It is found to be so absurd, it will be imperative on the part of the High Court Division to interfere and quash such proceedings in exercise of its inherent jurisdiction.”

(Bold, emphasis given)

19. In the case reported in 17 BLD (AD) 44, as referred to by the learned Assistant Attorney General, their lordships held as under:-

“In the case of Abdul Quader Chowdhury and others Vs The State reported in 28 D.L.R. (AD) 38, this Division has clearly spelt out the categories of cases where the High Court Division should interfere to quash a criminal proceeding. In the decision this Division observed as follows:-

(1) Interference even at an initial stage may be justified where the facts are so preposterous that even on the admitted facts no case can stand against the accused.

(2) Where institution or continuance of criminal proceedings against an accused person may amount to an abuse of the process of the court or when quashing of the impugned proceedings would secure the ends of justice.

(3) Where there is a legal bar against institution or commence of a criminal case against an accused person.

(4) In a case where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged and in such cases no question of weighing and appreciating evidence arise.

(5) The allegations made against the accused persons do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge.”

20. Keeping in mind the aforesaid principles for quashment of a criminal proceeding under section 561A of the Code, let us now examine the merit of the Rule considering the facts and circumstances of the instant case.

21. The main argument as advanced by Ms. Tania Amir is that the allegations made in the F.I.R. do not constitute any offence.

22. We have carefully examined the four corners of the F.I.R.

23. It transpires from the certified copy of the F.I.R. (Annexure-A to the miscellaneous application) that it is a detailed F.I.R. of several pages. But the sum and substance of the F.I.R. is that the complainant/informant is a foreign investor in Bangladesh and she is the Managing Director of the Company having 7,000 shares and accused-petitioner No. 1 is the Chairman and accused-petitioner No. 2 is the Director of the Company and that both the accused-petitioners illegally created some forged papers for preventing the complainant/informant from functioning as the Managing Director of the Company; that the accused-petitioners filed four resignation letters and some Resolutions of the Board of the Company and notices and those are all fake and forged documents. It has further been stated that the notices and Board Resolutions contain Orion ISO and false signatures of the complainant, inasmuch as, the Orion ISO Certificate was obtained in April, 2001, the alleged Resolutions of the Board of Directors of the Company and the Notices containing the Orion ISO are of the previous dates and so, those are forged documents created for the purpose of preventing the

informant from acting as the Managing Director of the Company and depriving her right in the Company and to harass her.

24. Thus, from the contents of the F.I.R. as a whole, it transpires that the accused-petitioners created forged resignation letters of the complainant/informant and forged Board Resolutions of the Company and the Notices with a view to prevent the informant from functioning as the Managing Director of the Company. Therefore, it cannot be said that the contents of the F.I.R. in their entirety do not disclose offence as alleged.

25. It is true that a voluminous supplementary affidavit has been filed by the accused-petitioners, which shows that there are series of litigations between the accused and the complainant/informant. But, at this stage, there is no scope to examine the said documents and decide the merit of the case. Our considered view is that the accused may submit those documents before the investigating officer, if they so desire. Further, it transpires from order dated 24.05.2012 (Annexure-A-1 to the Criminal Misc. Application) that the learned Senior Judicial Magistrate, Gazipur considering the facts and circumstances of the case by order dated 24.05.2012 directed the accused to produce certain documents as those documents were found to be in the custody of the accused for the purpose of ascertaining about the forged signatures of the complainant/informant on the said documents, etc. Thus, during investigation, if the documents are found to be not forged or collusive or manufactured, the concerned investigating officer would, no doubt, take necessary action in accordance with law. At this initial stage, it cannot be said that the F.I.R. in its entirety does not constitute any criminal offence as alleged against the accused-petitioners and so, we do not think it proper to interfere with the proceedings of Joydevpur Police Station Case No. 53 dated 14.08.2008 corresponding to G. R. No. 915 of 2008 at this stage on this ground.

26. Now let us consider the delayed F.I.R. issue.

27. There is no dispute that the F.I.R. has been lodged with a delay of about four years. But, according to the F.I.R. as well as the Criminal Miscellaneous Application, the informant is a Korean woman and she received the copies of forged documents long after from the investigating officer of a previous case. Moreover, delay by itself is no ground for quashing the criminal proceeding.

28. The above view of ours is supported by the decision reported in 40 DLR (AD) 68, wherein their lordships decided as under:-

“A proceeding is liable to be quashed when the allegation upon which it is based is, on the face of it, groundless or so preposterous that no man of ordinary prudence will take any notice of it. As to the contention that politically rivalry gave rise to the filing of this case, there is hardly any material on record at this stage to substantiate it. **It is only the delay of nine years in filing the case which is sought to be taken as the ground for quashing the proceeding. Mere delay in lodging a complaint is not a ground for quashing a proceeding, for there are varied circumstances in which lodging of any information as to the commission of an offence may be delayed. It is true that no explanation for the delay has been given by the informant while lodging the first information report.** The report itself shows that accused persons had organized a Unit of the “Lalbahini” in the locality, set up a camp in the house of one of the accused and detained many persons and carried out various acts of plunder, torture and extortion. It was stated there that out of fear of life from these persons who were very influential at that time the informant and members of his family dared not to inform the authorities about the incident. Delay of course raises doubt about the truth of the allegation; but it is for the prosecution to prove their case beyond reasonable doubt by adducing all the evidences at their disposal; whether such evidence can be relied upon is a matter which will be considered by the trial Court.”

(Bold, to give emphasis)

29. So, we are of considered opinion that as the F.I.R. discloses criminal offence under the Penal Code, the proceeding should not be interfered with by this court under its inherent jurisdiction under section 561A of the Code at this stage.

30. From the contents of the F.I.R., it does not appear to us that the allegations brought in the F.I.R. against the accused-petitioners are preposterous or absurd so, as to quash the proceeding.

31. In view of the above, we find no merit in the submissions of Ms. Tania Amir and we find merit and force in the submissions of Ms. Salma Rahman.

32. In the result, the Rule is discharged.

33. Joydevpur Police Station Case No. 53 dated 14.08.2008 corresponding to G. R. No. 915 of 2008 under sections 406/420/468/471 of the Penal Code, now pending in the Court of Chief Judicial Magistrate, Gazipur will proceed as usual in accordance with law.

34. The order of stay stands vacated.

35. Communicate the judgment to the learned Chief Judicial Magistrate, Gazipur, at once for information and necessary action.