

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)
CRIMINAL MISCELLANEOUS CASE NO. 7976 of 2022

IN THE MATTER OF:

An application under Section 561A of the
Code of Criminal Procedure.

-AND-

IN THE MATTER OF :

Md. Asif Ahammed

... Petitioner.

-Versus-

The State

... Opposite party

Mr. Ujjal Paul, Advocate

..... For the petitioner.

Mr. Apurba Kumar Bhattacharjee, D.A.G

....For the opposite party

Heard on: 05.01.2023 &

Judgment on: 01.03.2023

Present:

Mr. Justice Md. Badruzzaman

And

Mr. Justice S M Masud Hossain Dolon

Md. Badruzzaman, J

This Rule was issued calling upon the opposite party to show cause as to why judgment and order dated 05.09.2021 passed by learned Special Sessions Judge and Divisional Druto Bichar Tribunal, Khulna in Criminal Revision No. 453 of 2013 dismissing the revision by affirming judgment and order dated 12.01.2012 passed by Additional District Magistrate, Khulna in Criminal Appeal No. 07 of 2011 dismissing the appeal and affirming order of conviction and sentence dated 01.03.2011 passed by the Executive

Magistrate, Khulna in M.R. Case No. 11 of 2011 convicting the petitioner under section 509 of the Penal Code and sentencing him to suffer simple imprisonment for 01(one) month should not be quashed.

At the time of issuance of Rule, a Division Bench of this Court, vide order dated 08.02.2022, enlarged the convict-petitioner on bail.

Facts, relevant for the purpose of disposal of this Rule, are that one B.M. Alamgir Hossain, PSI, Sonadanga Police Station, Khulna arrested the convict-petitioner on 1.3.2011 and produced him before the Executive Magistrate, Khulna on 01.03.2011 with a prosecution report alleging that the convict-petitioner by violating the modesty of girls committed offence under section 509 of the Penal Code. The Executive Magistrate, on the same day proceeded against the convict-petitioner by conducting Mobile Court, recorded confessional statement of the petitioner, framed charge against him under section 509 of the Penal Code and then convicted him under section 509 of the Penal Code and sentenced him to suffer simple imprisonment for a period of 1(one) month under section 9(1) of the Mobile Court Ain, 2009 and sent him to jail. Against said order dated 1.3.2011 the petitioner filed Criminal Appeal No. 07 of 2011 before the District Magistrate, Khulna who, transferred the same to Additional District Magistrate, Khulna for disposal, who upon hearing, vide judgment dated 12.01.2012 dismissed the appeal by affirming the order of conviction and sentence passed by the Mobile Court against which the petitioner preferred Criminal Revision No. 453 of 2013 before the learned

Sessions Judge, Khulna which on transfer, was heard by learned Special Sessions Judge and Divisional Durto Bichar Tribunal, Khulna who, after hearing, vide judgment dated 05.09.2021 dismissed the revision by affirming the order of Additional District Magistrate. Challenging said judgment dated 05.09.2021, the convict-petitioner has come up with this application under section 561A of the Code of Criminal Procedure and obtained Rule and bail, as stated above.

Mr. Ujjal Paul, the learned Advocate appearing on behalf of the convict-petitioner submitted that the alleged occurrence did not take place before the Executive Magistrate and admittedly, the petitioner was produced by the police officer before the Executive Magistrate alleging that the accused petitioner committed the alleged offence in front of a school from where he was arrested and accordingly, the Executive Magistrate had no jurisdiction to conduct Mobile Court because of the fact that under section 6(1) of Mobile Court Ain, 2009 the Executive Magistrate is empowered to punish a person as Mobile Court when the offence under the Ain has been committed in his presence while conducting Mobile Court. Learned Advocate further submitted that the Additional District Magistrate as well as learned Session Judge without considering such legal aspect of the matter, illegally upheld the order of the Mobile Court and thus committed illegality.

Mr. Apurba Kumar Bhattacharjee, the learned Deputy Attorney General appearing for the State could not oppose the

submission of the learned Advocate for the petitioner in regards jurisdiction of the Mobile Court.

We have heard the learned Advocate for the convict petitioner and learned DAG for the State and also perused the impugned judgment and other materials available on record.

The jurisdiction of conducting Mobile Court by Executive Magistrate or District Magistrate, as the case may be, has been laid down in section 6 of the Mobile Court Ain, 2009. Sub-section (1) of section 6 is relevant in this case. For better understanding section 6(1) of the Mobile Court Ain, 2009 is reproduced below:

“৬। মোবাইল কোর্টের ক্ষমতা- (১) ধারা ৫ এর অধীন ক্ষমতাপ্রাপ্ত এক্সিকিউটিভ ম্যাজিস্ট্রেট বা ধারা ১১ এর অধীন ক্ষমতাপ্রাপ্ত ডিস্ট্রিক্ট ম্যাজিস্ট্রেট আইনশৃঙ্খলা রক্ষা ও অপরাধ প্রতিরোধ কার্যক্রম পরিচালনা করিবার সময় তফসিলে বর্ণিত আইনের অধীন কোন অপরাধ, যাহা কেবল জুডিসিয়াল ম্যাজিস্ট্রেট বা মেট্রোপলিটন ম্যাজিস্ট্রেট কর্তৃক বিচার্য, তাহার সম্মুখে সংঘটিত বা উদ্ঘাটিত হইয়া থাকিলে তিনি উক্ত অপরাধ তাৎক্ষণিকভাবে ঘটনাস্থলেই আমলে গ্রহণ করিয়া অভিযুক্ত ব্যক্তিকে, স্বীকারোক্তির ভিত্তিতে, দোষী সাব্যস্ত করিয়া, এই আইনের নির্ধারিত দণ্ড আরোপ করিতে পারিবেন।”

The above provisions under section 6(1) of the Mobile Court Ain, 2009 is clear and unambiguous which clearly stipulates that when an offence, as described in the schedule of the Ain, is committed by a person or unfolded before the Executive Magistrate or District Magistrate while conducting Mobile Court for the purpose of protecting law and order and preventing crime, he may instantly take cognizance of such offence on the spot against such person. Said Magistrate is also empowered to convict

the accused and award the prescribed sentence to him if he pleads guilty.

The Mobile Court Ain, 2009 does not give any authority to the Executive Magistrate or District Magistrate to proceed against a person in the name of Mobile Court for an offence which is not committed before him while he was conducting Mobile Court for the purpose, as stated above. In other words, there is no scope under the Ain, 2009 to proceed against a person for an offence covered by the Ain, in the name of Mobile Court who was apprehended or arrested or detained by the police from elsewhere and thereafter, was produced before the Executive Magistrate for proceeding against him through Mobile Court. If any person is proceeded or convicted in violation of such mandatory provisions of law, as discussed above, the whole proceeding of the Mobile Court would be vitiated and the order of conviction and sentence would be illegal and without jurisdiction.

In the instant case, admittedly, the alleged occurrence did not take place before the Executive Magistrate while he was conducting Mobile Court and convict-petitioner was arrested by police officer from elsewhere on the allegation of committing offence of violating modesty of women under section 509 of the Penal Code and then he was produced before the Executive Magistrate, Khulna who instantly formed Mobile Court, framed charge against the convict petitioner upon extracting confession from him and convicted him under section 509 of the Penal Code and sentenced him to suffer simple imprisonment for 1(one) month under section 9(1) of the Mobile Court Ain, 2009.

Having discussed and considered, as above, we are of the opinion that the Mobile Court without complying with the mandatory provision of Mobile Court Ain, 2009 convicted and sentenced the petitioner which is without jurisdiction and as such, the Additional District Magistrate and the learned Special Sessions Judge committed gross illegality in upholding the order of the Mobile Court. Accordingly, we find merit in this Rule.

In the Result, the Rule is made absolute. The impugned judgment dated 05.09.2021 passed in Criminal Revision No. 453 of 2013 as well as order dated 12.1.2012 passed by the Additional District Magistrate and order dated 1.3.2011 passed by the Executive Magistrate are quashed and set aside.

The convict-petitioner be acquitted from the charge brought against him and he be released from the bail bond.

Communicate at once.

S M Masud Hossain Dolon, J

I agree