

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CRIMINAL MISCELLANEOUS JURISDICTION)

Present

**Mr. Justice Ashish Ranjan Das**

**And**

**Mr. Justice Md. Riaz Uddin Khan**

**Criminal Miscellaneous Case No. 8110 of 2017**

In the matter of:

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

**In the matter of:**

Md. Nader Ali

...Accused Petitioner

Versus

The State and another

...Opposite Parties

Mr. Mohammad Kafil Uddin Khan, Advocate

...For the Petitioner

Mr. Md. Emran Khan, Advocate

... For the opposite party No.2.

Mr. S.M. Asraful Hoque, D.A.G

...For the State

**Heard on: 23.04.2024**

**Judgment on:30.04.2024**

**Ashish Ranjan Das, J:**

Rule under section 561-A of the Code of Criminal  
Procedure for quashment of the criminal proceeding being  
C.R. No. 17(Singair) of 2017 attracting sections 406/407/  
417/506(II)/109 of the Penal Code was issued in the  
following terms:

*“Let a Rule be issued calling upon the opposite party to show cause as to why the proceedings of the C.R. No. 17(Singair) of 2017 attracting under sections 406/ 407/ 417/ 506(II)/109 of the Penal Code, now pending in the Court of learned Chief Judicial Magistrate, Manikganj should not be quashed and/or pass such other or further order or orders as to this court may seem fit and proper.”*

Short fact relevant for the purpose that could be gathered from the file is that according to the petition of complaint, the petitioner accused was a high official of an NGO called ARAB and in the capacity he is said to have been involved in embezzlement of a huge amount of money for which the administration of NGO being represented by an officer brought this petition of complaint and cognizance was taken without sending the matter for inquiry. The matter is under trial and the sole accused was standing when as it appears from the impugned order No.14 dated 22.12.2016 of the learned Magistrate, that the matter was awaiting recording of evidences but the complaint party remained continuously absent for 6 dates

including the date fixed. Hence by taking order the learned Senior Judicial Magistrate, Manikganj dismissed the case and acquitted the sole accused under section 247 of the Code of Criminal Procedure.

The same complainant with the same allegation brought another C.R. case that too was dismissed as being not maintainable and in the 3<sup>rd</sup>. attempt the complainant opposite party brought this C.R case being No.T.R.386 of 2015 in the self same court with the same allegation.

We have heard get and submissions of the learned Advocates of both the sides. The learned lawyer for the petitioner relied on a decision reported in 7 SCOB(2016)(AD) page 50 and that on reported in 19 BLD(AD) in 1999 page 128 in the case of Dewan Obaidur Rahman -Vs- The State and another wherein it has been held that once C.R. case under section 247 of the Code of Criminal Procedure a second petition case on the self same allegation does not lie.

We find nothing to disagree rather the learned lawyer for the opposite party also conceded praying that it was a fault on the part of the lawyer in the lower Court.

Be that as it may, we find apparent merit in the rule and the same is therefore made absolute and the proceeding of C.R. No. 17(Singair) of 2017 attracting sections 406/407/417/506(II)/109 of the Penal Code, now pending in the Court of learned Chief Judicial Magistrate, Manikganj is hereby quashed.

The ad-interim order if any is recalled and vacated.

Communicate the judgment and order at once.

**Md. Riaz Uddin Khan, J:**

*I agree.*