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B.O (Mr. Justice Farid Ahmed
Mr. Justice Md. Atoar Rahman)

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M/16/23

Present:
Mr. Justice Farid Ahmed
And
Mr. Justice Md. Atoar Rahman

Criminal Misc. Case No.35976 of 2021.

Rowshan Sheikh and another
... Accused-petitioners.
- Versus -
The State and another
....Opposite parties.

Mr. S.M. Shafiqul Islam Babul with
Mr. Muhammad Robiul Islam Rana
Advocates For the petitioners.

Mr. Kamrul Alam Kamal, Advocate
... For opposite party No.2.

Mr. Abdul Wahab, D.A.G with
Mr. Prince-Al-Masud with
Ms. Sabiha Yasmin with
Mr. Md. Ashikuzzaman Bablu, A.A.Gs
..... For opposite party No.1- State.

Heard on 21.05.2023 and 01.06.2023.
Judgment on 01.06.2023.

Farid Ahmed, J.

This Rule was issued on an application under section 561A
of the Code of Criminal Procedure.

Facts of the case in short is that petitioners Rowshan Sheikh
and Babu Sheikh as petitioners filed this application against the

order dated 17.02.2021 passed by the learned Sessions Judge, Narail in Criminal Revision No.23 of 2020 arising out of Lohagora Police Station Case No.25 dated 17.02.2018 under sections 302/34 of the Penal Code corresponding to G.R. No.70 of 2018 (L).

Learned Senior Counsel Mr. S.M. Shafiqul Islam Babul along with learned Advocate Mr. Muhammad Robiul Islam Rana appearing on behalf of the accused-petitioners submits that these accused persons named in the F.I.R. in serial Nos.8 and 7 of the above noted case.

Police after investigation submitted charge sheet by non-sent up these two petitioners and prayed to discharge them from the murder charge. Against that the informant filed naraji petition. Thereafter inquiry was held but result was same. There was no accusation against the present accused-petitioners. Ultimately it was turned to file criminal revision before the Sessions Judge, Narail being Criminal Revision No.23 of 2020. Learned Sessions Judge considered the whole case pros and cons and observed that the matter may be further investigated by the Police Bureau of Investigation and thereby allowed the revision and set aside the order dated 04.03.2020. Upon delivering the judgment by the

revisional court on an application under section 439A. In the garb of filing application under section 561A actually it is the 2nd revision, it is not maintainable. In this case same circumstance appeared. Above all of the observation it is apparent from the record that the accused petitioners are not accused on record after submission of charge sheet except them, in the Lohagora P.S. Case No.25 dated 17.02.2018. It is very astonished since they are not accused how and why they have filed an application under section 561A of the Code of Criminal Procedure. On this single count the application filed under section 561A of the Code of Criminal Procedure is not maintainable.

In the result, the Rule is discharged as not maintainable.

This case has another scenario which is the pain picture of the judicial arena. We are inclined to elaborate that scenario in the instant case.

Learned Advocate Mr. Muhammad Robiul Islam Rana frankly submitted before this Court that firstly he filed an application under section 561A of the Code of Criminal Procedure on 21.06.2021. The application appeared in the cause list on 21.06.2021 as item No.5 and Rule and stay order was passed by the concerned Bench. After passing the order as per normal

practice the concerned Bench Officer entered the result in the on line portal of the Supreme Court website. On the basis of that result learned Advocate for the petitioners issued certificate on 25.06.2021 accordingly. He further submits that after passing the order of the Hon'ble Court and entering the result in the on line portal the original file was missing during three months. Consequently no written order was passed by that Bench. Subsequently previous original file was traced. Learned Advocate moved the self same application in the self same court. That court practically on recalling the earlier order issued only Rule on 16.09.2021. Learned Advocate for the petitioners communicate the Rule to the lower court. But he did not inform the court below that earlier order of stay is no longer in force. In spite of communicate this Rule issuing order by issuing Advocate certificate learned lower court continued to stay proceeding as per earlier certificate. It was the first and foremost duty of the lower court to proceed with the proceeding as there was no stay order in latter Advocate certificate.

Today learned Senior Counsel Mr. S. M. Shafiqul Islam Babul appearing before the Court submits that the filing Advocate is his Junior. He could not understand what is actual fact, what

was his duty. He apologized before this Court and assured that it will not happen in future and he will not do the same practice in future. Since the learned Advocates apologized the learned Advocate for the petitioner is cautioned not to do the same practice in future. If he does the same practice legal action will be taken against him.

The practical scenario of issuing Advocate certificate is very serious in nature. Our Hon'ble Appellate Division in case of Chairman Kushtia Co-operative Industrial Union Ltd. Vs. Mujibur Rahman and others, reported in 44 D.L.R. (AD) 219 it is held,

“ When a certificate from an advocate of a superior court is placed before a subordinate court conveying a prohibitory order (the under line is ours) the latter should rather believe than doubt the authenticity of such communication.”

Learned Advocate Mr. Kamrul Alam Kamal appearing on behalf of the opposite party No.2 the informant very forcefully submitted that on and from 15.02.2018 till today the proceedings of the instant murder case being Lohagora Police Station Case No.25 dated 17.02.2018 is still stayed for last more or less 5 years.

Another stunning picture appeared in the following criminal miscellaneous cases being Criminal Miscellaneous Case

Nos.31817 of 2017, 31818 of 2017, 31819 of 2017 and 31820 of 2017. In all these miscellaneous cases learned Advocate for the accused-petitioner Mr. Abdul Alim issued Advocate certificate before moving the motion for quashing the proceeding of Sessions Case No.5813 of 2015 and prayed for time as he filed application under section 561A of the Code of Criminal Procedure. Learned court below paying proper respect adjourned the trial on 30.03.2016 fixing 13.06.2016 for submitting High Court's order. On 13.06.2016 another application was filed for adjournment for submitting the High Court's order. The court below also allowed the same and fixed on 08.08.2016, more or less two months after the previous date. On 08.08.2016 learned Advocate for the accused filed another application for adjournment keeping the accused-petitioner Raihan as absent for submitting the High Court's order. Learned court fixed next date on 07.09.2016. Subsequently by Order No.5 dated 04.02.2016 the court below heard the charge. On that date accused Md. Raihan prayed for adjournment as well. That application was rejected by the court below and the Court framed charge under section 138 of the Negotiable Instruments Act, 1881. Thereafter on 11.04.2017 learned Advocate issued another certificate with an application for

staying the proceeding of the lower court and annexed the copy of the order of Criminal Miscellaneous Case No.27703 of 2016 of the Hon'ble High Court. The order is “ Not press” হওয়ায় reject হয়েছে। On that date this Advocate Mr. Abdul Alim told the lower court lawyer that he filed a fresh criminal revision before the High Court Division and issued certificate in his pad and prayed for adjournment for submitting the High Court's order. Ultimately criminal revision was not proceeded even not moved before any Bench. The reason unwritten to the order sheet. Learned court below perceiving that, learned Advocate Abdul Alim by issuing certificate again and again by taking separate plea he is prolonging the trial. On that count court below rejected the application for adjournment. After passing the said order on 12.06.2017 this Advocate Mr. Abdul Alim filed instant Criminal Miscellaneous Case No.31817 of 2017 on 11 March, 2021.

Complaint case was filed in the year of 2015 and the same was continued and stayed the court's proceeding by issuing Advocate certificate up to 12.06.2017. Above noted 4 (four) criminal miscellaneous cases filed before the court staying the proceeding of the lower court case. In the meantime 7(seven) years already passed. Without obtaining any stay order of this

Court learned Advocate by issuing Advocate certificate stayed the proceeding by violating the decision reported in 44 D.L.R. (AD) 219 and also violating the Constitutional provision of Article 111 and Article 35(3) of the Constitution. Some of the Advocates issuing certificate without quoting the High Court's order. They are issuing certificate on the following manner:-

- (a) Learned Advocate after filing Motion by taking Tender number issued certificate before the court below and the court below considering the same stayed the proceeding as noted herein above,
- (b) Learned Advocate after filing the Motion do not move the same in proper time. In the above noted case learned Advocate Mr. Abdul Alim moved the application more or less after one year. Within one year lower court could not proceed with the trial,
- (c) Learned Advocate issued Advocate certificate without specific order of the court, only stating that they filed an application before the High Court, may be under section 561A of the Code of Criminal Procedure, or under section 439 or 435 of the Code of Criminal Procedure.

In this way they have set up a shadow high court in parallel

to the constitutional court. This circumstance should not be continued for the interest of justice and for reducing the huge backlog of the cases and early disposal of other cases. It was not the decision of the Hon'ble Appellate Division to pay respect to lawyer certificate without specific court's order as reported in 44 D.L.R. (AD) 219.

Now for long time this practice have been going on. For interest of early disposal and early hearing not to stay any proceeding civil or criminal without specific highest court's order. The subordinate judiciary is directed not to entertain any Advocate certificate without containing any specific stay order of the High Court, and stay order of the Apex Court nothing else. We feel above noted circumstance i.e. issuance of Advocate certificate by violating the judgment of the Hon'ble Appellate Division as noted herein above the litigant people of this country are blaming the court that court is not administering justice in proper time. Issuing Advocate certificate without containing specific stay order is one of the reasons for creating backlog of cases. The circumstance is prevailing after delivery of judgment reported in 44 D.L.R. (AD) 219. It should not be continued in judicial arena. We feel that if any learned Advocate issues any certificate conveying prohibitory

order, the party who is represented by such certificate issuing Advocate shall submit a certified copy of such prohibitory order to the concerned court below and validly of such advocate certificate shall not be in force after expiration of 30(thirty) days. For greater interest of the litigant people and for early hearing of the cases pending before the subordinate courts Registrar of this Court is directed to issue a circular in the light of judgment of the Hon'ble Appellate Division as well as the judgment of this Court. At the same time learned Advocates are debarred to issue any Advocate certificate before signing of prohibitory order of the Court.

With the above observation the Registrar of this Court is directed without making any further delay issue circular to all subordinate courts not to entertain Advocate certificate without quoting specific prohibitory order and proceed with the case in accordance with law.

Md. Atoar Rahman,J.

I agree.

M.Islam.
B.O.