

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

Present

Mr. Justice Md. Salim

And

Mr. Justice Shahed Nuruddin

CRIMINAL MISCELLANEOUS CASE NO.55442 OF 2022

Monfor Ali and others

..... Accused- Petitioners

Versus

The State

.....Opposite Party

Mr. Md. Ashif Hasan with

Mr. Nur Alam, Advocate

----- For the petitioners

Mr. B.M. Abdur Rafell, DAG with

Mr. Binoy Kumar Ghosh, A.A.G.

Mr. A.T.M. Aminur Rahman (Milon), A.A.G.

Ms. Lily Rani Saha, A.A.G.

.....For the State.

Heard on 08.11.2023, 09.11.2023 and 15.11.2023

Judgment on 22.11.2023

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MD. SALIM, J:

By this Rule, the opposite parties were asked to show cause as to why the proceedings of Chatak Police Station Case No.29 dated 20.06.2018 corresponding to G.R. No.177 of 2018 under Section 143 / 147 / 342 / 323 / 325 / 326 / 307 and 506(2) of the Penal Code, now pending before the learned Chief Judicial Magistrate, Sunamgonj should not be quashed.

The facts, in a nutshell, to disposal of the rule are that on 22.05.2018 accused persons being armed with local weapons surrounded the informant and having received the order from Monfor Ali accused Abdullah inflicted an iron rod blow on the head of the informant of causing serious injury to the left hand and eye of the informant, that accused Barkat Ali inflicted a Sulfi to the left chest of Insanur causing serious injury on the right side of the chest of the Insanur, that accused Lal Mia inflicted a Sulfi blow on the nose of Abul Hossain, that accused Mamunur Rashid inflicted an iron rod blow on the head of the Abul Hossain of causing serious injury to the right hand of the Abul Hossain, that accused Ashik Mia inflicted an iron rod blow on the head of Sazzad Noor of causing serious injury on the right shoulder of Sazzad Noor and accused Humayun Rashid indiscriminately beat him, that accused Mamunur Rashid inflicted an iron rod on the head of Gias Uddin and accused Dugu and Saju also indiscriminately beat him, that accused Amir Ali and Sukkur Ali beat Sazzad Noor of causing injury to several parts of the body of Sazzad Noor. Thereafter all

of the victims were admitted to the Kaitak govt Hospital, Chhatak for treatment.

The case was investigated by the police. After investigation, the police submitted a charge sheet on 31.12.2018 against 14 accused persons including the present petitioners under Section 143 / 323 / 325 / 326 / 307 / and 506 of the Penal Code but the informant being dissatisfied with the charge sheet filed a Naraji petition.

The learned Senior Judicial Magistrate, Sunamganj after considering the Naraji petition by an order dated 06.05.2019 directed the investigating officer to record the statement of witness Insanur correctly and submit a supplementary charge sheet. According to the direction of the Magistrate, police recorded the statement of the witness namely Insanur, and submitted a supplementary charge sheet against 14 accused persons including the present petitioners on 28.05.2019 under Sections 143 / 323 / 325 / 326 / 307 and 506 of the Penal Code.

The accused petitioners surrendered before the Senior Judicial Magistrate, Chattak on 06.05. 2019 and obtained bail.

Subsequently, the charge was framed on 07.01.2020 by the Additional Chief Judicial Magistrate, Chattak against 14 accused persons including the present petitioners under sections 143 / 323 and 506 of the Penal Code and under Section 326 and 307 of the Penal Code against accused Lal Mia and also framed charge under Section 325 and 307 of the Penal Code against the accused Mamunur Rashid.

Being aggrieved by and dissatisfied with the charge farming order the accused petitioners preferred Criminal Revision No.30 of 2020 before the Sessions Judge, Sunamgonj. Eventually, the learned Sessions Judge by the judgment and order dated 22.05.2022 rejected the Criminal Revision and affirmed those passed by the trial Court. Thereafter the accused petitioners preferred an application before this court under Section 561A of the Code of Criminal Procedure for quashing the proceeding of the instant case and obtained the instant Rule and an order of stay.

Mr. Md. Ashif Hasan, the learned Counsel appearing on behalf of the accused petitioner submits that the Magistrate in his judicial capacity cannot direct the investigation officer to record the statement of a specific witness and submit the supplementary chargesheet against the accused person and based on the Magistrate's order such charge sheet was submitted moreover, the Magistrate frame the charge based on such supplementary charge sheet thus the proceedings of the instant case is tantamount to abuse of the process of the court.

On the other hand, Mr. B.M. Abdur Rafell, the learned Deputy Attorney General appearing for the State opposes the contention so made by the learned Counsel for the petitioners and submits that the Court below did not commit any error in law in framing of charge against the accused petitioners.

We have given our anxious consideration to the above submission of the learned Counsel for the accused petitioners and the learned Deputy Attorney General for the state and other materials on records.

Notably, sub-section (3B) of section 173 of the Code of Criminal Procedure provides that after the submission of a report of section 173 of the Code of Criminal Procedure, the police may under sub-section 3(B) thereof make further investigation in respect of an offense and, whereupon such further investigation, police obtain further evidence, the investigating officer shall forward to the Magistrate a further report regarding such evidence, known as a supplementary charge sheet. The code of criminal procedure does not seem to have empowered a Magistrate competent to take cognizance of a police report to interfere with the decision of the police officer after he has submitted his report under section 173 of the code of criminal procedure and any direction to the police officer to submit charge sheet or to submit a final report after charge sheet has been submitted will be illegal. However, it is open to the informant to submit a Narazi Petition before the Magistrate. The Magistrate may treat the Narazi Petition as a petition of complaint. After examining the petitioner under section 200 of the code of criminal procedure take cognizance against the

accused person under section 190(1)(a) of the code of criminal procedure. The Magistrate may also direct further investigation under the power conferred upon him under section 156(3) of the code of criminal procedure.

Nevertheless, we may come to the conclusion that when the police after the investigation have submitted a final report or a charge sheet once there is no scope in the scheme of the code of criminal procedure to direct the investigating officer to submit a supplementary charge sheet.

This view gets support from a case of Parul Bala Sen Gupta Vs the State reported in A. I. R. 1957 Calcutta 379 the Privicouncil held:--

“The proceedings before the police in the investigation are proceedings over which the police alone have full control, and neither the Magistrate nor even this court has the power to interfere with such proceeding.....that investigation will come to its natural end only under section 173 of the Code of Criminal Procedure, either by final report or by a charge sheet.”

In the instant case a charge sheet was once submitted by the police. Subsequently, the Magistrate after accepting the Nariji Petition directed the investigation officer to record the statement of the witness namely Insanur correctly and to submit the “supplementary charge sheet” against the accused persons. Accordingly, the police submitted the supplementary charge sheet against the accused petitioner. The Magistrate based on the supplementary charge sheet framed charges against the accused petitioners.

Be that as it may, in the facts and circumstances of the case we are of the opinion that the proceeding of the instant case is a sheer abuse of process of the court. Therefore, the proceeding of the case is liable to be quashed to secure the ends of justice.

Resultantly, the Rule is made absolute.

The proceeding of Chatak Police Station Case No.29 dated 20.06.2018 corresponding to G.R. No.177 of 2018 under Section 143 / 147 / 342 / 323 / 325 / 326 / 307 and 506(2) of the Penal Code, now pending

before the learned Chief Judicial Magistrate, Sunamgonj is hereby quashed.

Communicate the judgment and order to the Court concerned at once.

Shahed Nuruddin, J:

I agree.