

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

Present

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

Criminal Miscellaneous Case No. 69034 of 2022

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Md. Shahabuddin and others

...Accused- Petitioners

Versus

The State and another

...Opposite Parties

Mr. Ibrahim Khalil Khan, Advocate

...For the Petitioners

Mr. Nazmul Hassan Rabik, Advocate

...For the Opposite Party No. 2

Mr. Farid Uddin Khan, DAG with

Mr. Md. Anichur Rahman Khan, DAG

...For the State

Judgment on: 12.12.2024

Md. Riaz Uddin Khan, J:

By this Rule the opposite parties were asked to show cause as to why the judgment and order dated 26.04.2022 passed by the learned Additional Sessions Judge, 2nd Court, Gazipur in Criminal Revision No. 295 of 2019 arising out of Complaint Register Case No. 1523 of 2019 under sections 467/468/471 and 506 of the Penal Code, pending in the Court of Judicial Magistrate, Court No. 3, Gazipur should not be quashed and or pass such

other or further order or orders as to this court may deem fit and proper.

At the time of issuance of Rule all further proceedings of Complaint Register Case No. 1523 of 2019 was stayed initially for a period of 03(three) months from date which was subsequently extended time to time.

The facts for disposal of the rule, in brief, is that on 07.11.2019 one Md. Kabir Hossain filed Complain Register (C.R) Case No. 1523 of 2019 against the accused-petitioners alleging *inter alia* that a peach of land measuring .0075 ajutangsha of Joydebpur mouza under Gazipur district was belonged to Hazi Kitabuddin, the grandfather of the complainant who died on 29.11.1971 leaving behind 6 sons and 2 daughters as his heirs who owned and possessed the same in ejmali by erecting a 3-storied building thereon. There is a pharmacy called Kaiser Medical Hall in the name of complainant's brother wherein his father Dr. Abdul Quddus used to practice and sell medicine which is currently possessed by the accused no.1 who is his maternal uncle. Recently the accused persons declared that accused no.1 is the owner of the property by purchase from Hazi Kitabbuddin and at one stage showed a photocopy of a forged deed being no.9759 dated 26.04.1975 showing registered at Dhaka Sub-registry office but on search he could not get any certified copy of the same from the sub-

registry office. On the face of the record it looks like a forged one as it is not like other registered deeds of the locality. Since Hazi Kitabuddin died on 29.11.1971 the question of executing and registering the same on 26.04.1975 does not at all possible. The accused no.1 with the help of the other 2 accused who are his sons dispossessed the complainant and other owners on 07.07.2019 from the disputed land. With these allegations the petition of complaint was filed under Sections 467, 468, 471 and 506 of the Penal Code.

After receiving such complaint the learned Magistrate examined the complainant under section 200 of the Code of Criminal Procedure and dismissed the same by his order dated 07.11.2019 under section 203 of the said Code on the finding that the case has been filed on allegation of crating forged document in the year 1975 and it is not proper to complaint after such a long period.

Challenging the said order of dismissal the complainant filed criminal revision before the learned Sessions Judge, Gazipur which was ultimately heard by the Additional Sessions Judge, 2nd Court, Gazipur who by his judgment and order dated 26.04.2022 was pleased to allow the revision setting aside the order of the court of Magistrate.

Being aggrieved by and dissatisfied with the said judgment and order the accused-petitioners filed the instant application under section 561A of the Code of Criminal Procedure and obtained the Rule and order of stay as stated above.

Mr. Ibrahim Khalil Khan, the learned advocate for the accused-petitioners submits that the dispute between the parties is regarding ownership of land which is absolutely civil in nature and there is partition suit between the parties being Title Suit No. 239 of 2019 pending before the learned Joint District Judge, 1st Court, Gazipur filed by the complainant party and the accused-petitioners filed written statement in that suit on 23.01.2023. That Kitabuddin, the father of the accused petitioner No.1 sold the land to him by executing the deed on 14.11.1971 but could not be registered due to absence of the Sub-registrar on that date and Kitabuddin deed on 29.11.1971 and thereafter considering the same the deed was registered on 26.04.1975. In that view the instant criminal proceeding is barred under Section 195(1)(c) of the Code of Criminal Procedure and as such further continuation of the impugned proceeding would be an abuse of the process of the Court.

He then submits that the present criminal proceeding has been launched with the oblique motive of exerting pressure upon the accused

petitioners to make some concessions and pecuniary benefits to the complainant. The allegations in the petition of complaint are patently absurd and inherently improbable and the basic ingredients of the offences alleged are not prima facie made out but filed with an allegation of forgery allegedly committed in the year of 1975 after long delay of 44 years and in that view the learned Magistrate rightly dismissed the same while the learned Additional Sessions Judge failed to consider that point and as such the impugned judgment and order should be quashed.

He next submits that the dispute being essentially one of a civil nature and the criminal Court should not take cognizance of such a dispute and there is a specific relief under Section 39 of the Specific Relief Act, 1877 but the complainant filed this criminal case against the accused-petitioners though earlier on 20.06.2019 the complainant party filed a partition suit and as such impugned proceedings is an abuse of the process of the Court.

The Complainant Opposite Party No. 2 entered appearance and filed counter-affidavit wherein it is stated that the accused-petitioners filed this application challenging the judgment and order passed by learned Additional Session Judge, 2nd Court, Gazipur in a Criminal Revision arising out of a Complaint Register (C.R) Case No. 1523 of

2019, without obtaining order of bail, being fugitive in the eye of law. A fugitive has no right to seek any kind of redress as against his grievance, if any, against the judgment and order of a court. Accused-petitioners are not entitled to get any protection of law without surrendering before the court of law. That C.R Case No. 1523 of 2019, which is now pending in the Court of learned Senior Judicial Magistrate, Gazipur who passed an order for inquiry by the CID of police and to submit report. No process has yet been issued against the petitioner. That admittedly Hazi Kitab Uddin died on 29.11.1971. The accused petitioners prepared a forged deed being Sale Deed No. 9759 dated 26.04.1975 for the purpose of cheating and then fraudulently or dishonestly used that sale deed as genuine document to deprive the complainant-opposite party no. 2 and other co-sharers from their inherited properties. Complainant-opposite party no. 2 came to know about that forged deed on 30.06.2019 after death of his uncle Abdus Sattar on 27.06.2019. Moreover, there is no credible reason to believe that Hazi Kitab Uddin transferred that property to one of his own sons at Tk.3000/ by way of Sale Deed without informing his other 5 sons, wife and 2 daughters.

Mr. Nazmul Hassan Rakib, learned Advocate on behalf of the complainant opposite party No. 2 by

referring the above facts submits that the accused-petitioners obtained this rule without appearing before the court of Magistrate or without obtaining bail from court and as such they are fugitive in the eye of law. A fugitive has no right to seek any kind of redress as against his grievance, if any, against the judgment and order of a court. Accused-petitioners are not entitled to get any protection of law without surrendering before the court of law. As such the Rule is liable to be discharged in the interest of justice. In support of his contention he cited the case of Dr. Zubaida Rahman Vs. State and another [74 DLR (AD) 185].

He then submits that the impugned C.R Case No. 1523 of 2019 is now pending in the Court of Senior Judicial Magistrate, Gazipur who after receiving the impugned judgment and order of the Additional Sessions Judge passed an order for inquiry by the CID of police and to submit report. No process has yet been issued against the petitioners. The case is still in an initial stage and in that view no proceeding is started. Without exhausting the procedure the respondents are not entitled to make application for quashing of a criminal case. Accused has to exhaust all the procedures he is entitled to, before making application under section 561A of the Code of

Criminal Procedure for quashing any criminal proceeding.

The learned advocate next submits that there is no statement in the Complaint Petition that accused-petitioners filed that forged document in any proceeding of a suit or in any court. Therefore, Section 195(1)(c) of the Code of Criminal Procedure will not be applicable here. Only the production of original copy of a alleged forged deed before any court can attract provision of Section 195(1)(c) of the Code of Criminal Procedure barring private party to file criminal case and as such the instant CR Case No. 1523 of 2019 is not barred under section 195 of the Code of Criminal Procedure. He cited the case of M Amir Ali Mostafa Vs. Shah Md. Nurul Alam and others [74 DLR (AD) 79].

He further submits that it is a settled principle of law that if there are criminal cases and civil suits between the same parties in respect of the same properties, even then it cannot be a bar to the continuation of the criminal proceeding ie. the criminal proceeding will run in its own way. In support of his contention he cited the decisions of State Vs. Sailendra Chandra Borman [13 BLC (AD) 65]; Khandaker Abul Bashir Vs. State and another [63 DLR (AD) 79] and Khondoker Mahtabuddin Ahmed and others Vs. State [49 DLR (AD) 132].

He then submits that Hazi Kitab Uddin died on 29.11.1971 but the accused petitioners created a forged deed for the purpose of cheating and then fraudulently and dishonestly used that sale deed as genuine document to deprive the complainant- opposite party no. 2 and others from their inherited properties by claiming the properties on the strength of that forged deed. Moreover, there is no credible reason to believe that Hazi Kitab Uddin sold that property to his own son at Tk. 3000/ by way of Sale Deed without informing his other sons and daughters.

The learned advocate strenuously submits that the learned Magistrate failed to understand that there cannot be any limitation for filing criminal case on allegation of creating and using forged document. In the petition of complaint it is clearly stated that the Complainant-opposite party no. 2 came to know about that forged deed on 30.06.2019 when a photocopy of the same was at first shown by the accused no.1. The revisional court by the impugned judgment and order rightly set aside the order of the Magistrate which calls no interference by this Court.

The learned advocate lastly submits that the truthfulness of the allegation brought against the accused-petitioners can only be ascertained by taking evidence, thus at this stage the complaint case cannot be quashed. Unless the trial court takes cognizance there is no scope to

exercise the extraordinary power of the High Court Division under section 561A of the Code of Criminal Procedure. As such the Rule is liable to be discharged in the interest of justice and this Court should direct the accused-petitioners to appear before the concerned court within a prescribed period.

We have heard the learned Advocates for both the parties, perused the application, supplementary affidavit and counter affidavit along with the annexures.

The complainant brought allegation against the accused-petitioners that they have created a false document of valuable property showing Hazi Kitabuddin as executants of a sale deed registered on 26.04.1975 while Hazi Kitabuddin died/killed on 29.11.1971 about which the complainant came to know on 30.06.2019 and then searched for certified copy of the same but could not find it. Then he filed this case.

It appears that the learned Magistrate dismissed the complaint on the finding that allegation of creating false document was in 1975 but after a long period of time the complaint has been brought before the court.

On revision the revisional court by the impugned judgment and order set aside the order of dismissal on the finding that the case is not barred by limitation, there is allegation of creating of forged document and attesting witness

denied his signature and though there is a civil suit but it is not of the same property.

The main contention of the learned advocate of the accused petitioners is that the case is civil in nature and there is no ingredient of criminal offence. The complainant should go for cancellation of the deed under section 39 of the Specific Relief Act. We do not find any substance in the submission. Because there are ingredients of criminal offence made in the complaint as the allegation is of creating forged deed, executant died in 1971 but the date of registration is of 1975, so there is allegation of false personation. These are the ingredients of criminal offence.

The 2nd contention that the case is barred under section 195 of the Code of Criminal Procedure has also no substance. Because, in the four corner of the petition of complaint, there is no mention that the alleged forged document has been produced in any court in any litigation. Even the accused petitioners did not claim that the document is before any court in any suit or case.

The accused petitioners claimed that Hazi Kitabuddin executed the deed before his death and was subsequently registered following due process of law. This is a defence plea which is to be proved before the trial court by adducing and producing evidence and witness.

It is settled principle of law that pendency of a civil suit cannot bar the proceedings of criminal case for criminal offence. There is no legal impediment to file a criminal case even if a civil suit is pending on the selfsame allegations provided the ingredients of the offence are present. There is nothing in law precluding a criminal case on account of a civil suit pending against the petitioners on the same facts. Moreover, the revisional court in the impugned judgment clearly observed that the civil suit is filed regarding different scheduled land.

It appears from record that the accused-petitioners did not appear before the trial court. Moreover, the instant case is in a very initial stage and no process has been issued yet. So, at the moment there is no proceeding against the accused petitioner. The case is under inquiry and the accused petitioners should appear before the court of Magistrate if they desire to seek any relief before any court.

It is long standing settled law of this subcontinent that accused can seek relief for quashing any criminal proceeding at any stage of the case, even after the passing of the judgment. But in that case there are some conditions. The scope of the interference under section 561A of the Code of Criminal Procedure has been elaborately discussed in the case of Emperor Vs.

Khaja Nazir Ahmed [AIR 1945 PC 18] wherein their lordships observed:

“It has sometimes been thought that Section 561A has given increased powers to the Court which it did not possess before that section was enacted. But this is not so. The section gives no new powers, it only provides that those which the Court already inherently possess shall be preserved and is inserted, as their Lordship think, lest it should be considered that the only powers possessed by the court are those expressly conferred by the Criminal Procedure Code, and that no inherent power had survived the passing of that Act.”

In the case of Ghulam Mohammad Vs. Mozammel Khan [19 DLR (SC) 439] the Pakistan Supreme Court held:

The inherent jurisdiction given by section 561A is not an alternate jurisdiction or an additional jurisdiction but it is a jurisdiction preserved in the interest of justice to redress grievances for which no other procedure is available or has been provided by the Code itself. The power given by this section can certainly not be utilized as to interrupt or divert

the ordinary course of criminal procedure as laid down in the procedural statute. The High Court, as has repeatedly been pointed out in a number of decisions, should be extremely reluctant to interfere in a case where a competent Court has, after examining the evidence adduced before it, come to the view that a *prima facie* case is disclosed and has framed charges or summoned the accused to appear, unless it can be said that the charge on its face or the evidence, even if believe, does not disclose any offence.

In the case of Abdul Quader Chowdhury and others Vs. The state [28 DLR (AD) 38] in paragraph 12 their lordships of our Appellate Division observed five situations (though not exhaustive) when this Court can invoke inherent jurisdiction which may be categorizes 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 the quashing of the impugned proceedings would secure the ends of justice.

(3) Where there is a legal bar against institution or continuance 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 arises.

(5) The allegations made against the accused person 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.

In the case of Sher Ali (Md) Vs. State [46 DLR (AD) 67] our apex Court went one step ahead by saying that even the convicted persons are also competent to invoke the jurisdiction and observed:

The Inherent power may be invoked independent of powers conferred by any other provisions of the Code. This power is neither appellate power, nor

revisional power, nor power of review and it is to be invoked for the limited purpose such as to give effect to any order under the Code, to prevent abuse of the process of the Court or otherwise to secure ends of justice. This power may be exercised to quash a proceeding or even a conviction on conclusion of a trial if the Court concerned got no jurisdiction to hold the said trial or the facts alleged against the accused do not constitute any criminal offence, or the conviction has been based on 'no evidence' or otherwise to secure ends of justice.

In the present case we have already noticed that the accused petitioners have challenged a judgment and order of a revisional court and could not substantiate any point for our interference.

In view of the discussions made above and the reasons stated hereinbefore we hold that there is no reason for interference by this Court at this stage by invoking inherent jurisdiction under section 561A of the Code of Criminal Procedure. We find that there is a prima-facie case to be tried by the trial court and the revisional court committed no mistake in setting aside the order of dismissal by the court of

Magistrate and thus the rule has no legs to stand being devoid of substance, is destined to fail.

In the result, the Rule is **discharged**.

The trial court is at liberty to proceed with the C.R. Case No. 1523 of 2019 in accordance with law.

Communicate the judgment and order at once.

Md. Iqbal Kabir, J.

I agree.