Present:
Mr. Justice S M Kuddus Zaman
and
Mr. Justice A. K. M. Rabiul Hassan

Criminal Miscellaneous Case No.45791 of 2023.

Advocate Dev Dulal Das and others
.....Accused-Petitioners
-Versus-
The State
… Opposite Party
Mr. A.B.M. Altab Hossain, Senior Advocate with
Mr. Arpan Chakraborty, Advocate
.... For the accused-petitioner
Mr. Sujit Chatterjee, D.A.G with
Mr. Noor-Us-Sadik, D. A. G with
Ms. Moududa Begum, A. A. G with
Mr. Mirza Md. Soyeb Muhit, A. A. G. with
Mr. Zahid Ahmed (Hero), A. A. G
… For the State

Heard and Judgment on: 15.05.2024.

S M Kuddus Zaman, J:

On an application under section 561A of the Code of Criminal Procedure this Rule was issued calling upon the opposite party to show cause as to why the proceedings of G. R. No.64 of 2022 arising out of Kotwali Police Station Case No.27 dated 22.02.2022 under sections 419/468/471 of the Penal Code, now pending in the Court of learned Metropolitan Magistrate, Court No.11, Dhaka so far as it relates to the petitioners should not be quashed and/or pass such other or further order of orders as to this Court may seem fit and proper.

Facts in short are that Mr. Rezwan Khandakar, Nazir of the court of Chief Metropolitan Magistrate, Dhaka lodged an ejahar on 22.02.2022 at 21:05 hours alleging that at 12:15 hours instead of

Nabab Khan an accused of Motijheel Police Station Case No.41(12)21 his employee Fahim filed hazira and stood in the suspect dock of the Court of learned Chief Metropolitan Magistrate. Above co-accused Fahim also produced in above court a forged wokalatnama and a petition for bail of Nabab Khan forging the signature of Nabab Khan. Above cheating and forgery were detected in the court room of the Chief Metropolitan Magistrate and accused Fahim made a confession to the learned Chief Metropolitan Magistrate immediately after above occurrence. Above Fahim also made a second confession to the Metropolitan Magistrate under section 164 of the Code of Criminal Procedure, 1898 on 28.02.2022 alleging that he committed above offence of personation on the ill advice of the petitioners.

On conclusion of investigation police submitted charge sheet against five accused persons including the petitioners under section 419/468/471/34 of the Penal Code, 1860 on 30.06.2022 and the learned Metropolitan Magistrate on consideration of materials on record and the submissions of the learned Advocates for respective parties framed charge against five accused persons including the petitioners under sections 419/468/471/34 of the Penal Code, 1860 on 30.04.2023.

Being aggrieved by and dissatisfied with the initiation of above proceedings three accused persons who are the Advocates and Members of the Dhaka Bar Association namely, Advocate Deb Dulal Bas, Advocate Md. Anwar Islam Chowdhury and Advocate Afroza Khatun @ Mrs. Afroza Khatun @ Dipa as petitioners moved to this court with an application under section 561A of the Code of Criminal

Procedure, 1898 for quashment of above proceedings and obtained this rule.

Mr. A.B.M. Altab Hossain learned Senior Advocate for the petitioners submits that in above proceedings two forged documents, a wokalatnama and a petition for bail, were allegedly produced in the court of the learned Chief Metropolitan Magistrate by co-accused Fahim. As such this proceedings under section 468 and 471 of the Penal Code, 1860 involving above documents at the instance of a private individual namely Rezwan Khandakar was barred by section 195 (1C) of the Code of Criminal Procedure, 1898.

The learned Advocate further submits that co-accused Fahim an employee of accused Nabab Khan acted as an imposter and gave false hazira for his employer in the above court. The petitioners did not have any role in the commission of above cheating by personation. Co-accused Fahim confessed to have committed above cheating on the advice of an Advocate of the High Court Division. But none of the petitioners is an Advocate of the High Court Division. The petitioners are members of the Dhaka Bar Association and they practice law in the subordinate courts at Dhaka. As such above confession of co-accused Fahim cannot be relied upon for implicating the petitioners in above case. Since the petitioners had no involvement in the commission of above personation and forgery further continuation of this proceeding shall cause unnecessary plight and sufferings to the petitioners which amounts to abuse of the process of the court, concluded the learned Advocate.

Mr. Sujit Chatterjee, learned Deputy Attorney General submits that on consideration of facts and circumstances of the case and

materials on record the learned Metropolitan Magistrate has righty framed charge against the petitioners under sections 419/468/471/34 of the Penal Code which calls for no interference.

We have considered the submissions of the learned Advocate for respective parties and carefully examined all materials on record including the ejahar and confessions of co-accused Fahim.

Undisputedly the alleged offences of personation and production of two forged documents occurred in the court room of the Chief Metropolitan Magistrate Dhaka in course of hearing of C.R. Case No.41(12)21 and co-accused Fahim alone allegedly stood in the accused box in lieu of his employer Nabab Khan and also produced two above forged documents, a vokalatnama and a petition for bail of Nabab Khan.

As such this proceedings under section 468/471 of the Penal Code, 1860 regarding above documents would be barred by section 195(1)(c) of the Code Criminal Procedure, 1898 unless the same is initiated by above court or by a court to which above court is subordinate.

It turns out from the ejahar that the same was lodged by the Nazir of the court of Chief Metropolitan Magistrate, Dhaka namely Rezwan Khandakar in his official capacity on the basis of order No.4 dated 22.02.2022 passed by the learned Chief Metropolitan Magistrate, Dhaka in above case. In view of above materials on record we are unable to find any substance in the above submission of the learned Advocate for the petitioners that this proceedings was initiated by a private individual and the same was barred by section 195 (1)(c) of the Code of Criminal Procedure.

At paragraph 1 of the FIR it has been alleged that co-accused Fahim alone was arrested from the accused dock after his surrender in lieu of Nabab Khan. As far as two forged documents as mentioned above. One concerned there is no allegation that the petitioners had any role in the forgery and production of above two documents. There is no allegation that the petitioners jointly participated in the commission of above offence of personation by sharing common intention with co-accused Fahim punishable under section 34 of the Penal Code, 1860. Most unusually co-accused Fahim gave two confessions in this case, first confession was given to the learned Chief Metropolitan Magistrate on 22.02.2022 immediately after the alleged occurrence and the second confession was recorded on 28.02.2022 by the learned Metropolitan Magistrate Mr. Md. Sheikh Sadi. But in no confession co-accused Fahim has confessed that the petitioners shared common intention with him in the commission above offences. Above co-accused has merely alleged that he was given ill advice (কুপরামর্শ) or instigation (প্ররোচনা) for standing in the accused box which do not fall within the purview of section 34 of the Penal Code, 1860. As such framing of charge against the petitioners under section 468, 471 and 34 of the Penal Code, 1860 was without any lawful basis and the same is not tenable in law.

As mentioned above the ejahar of this case was prepared on the basis of first confession made by co-accused Fahim to the learned Chief Metropolitan Magistrate immediately after the occurrence. At page 2 of the FIR following statement has been made.

"আসামী ফাহিম আহমেদ বিজ্ঞ হাইকোর্টের একজন বিজ্ঞ আইনজীবীর পরামর্শক্রমে মূল আসামী নবাব খানের পরিবর্তে প্রতারণামূলকভাবে বিজ্ঞ আদালতে আত্মসমর্পণ করিয়াছেন বলিয়া স্বীকার করেন।"

In this case no Advocate of the High Court Division has been made an accused. The learned Deputy Attorney General concedes that none of the petitioners is an Advocate of the High Court Division. All three petitioners are members of the Dhaka Bar Association and they practice law in the subordinate court at Dhaka.

The last and sole paragraph of the ejahar which apparently implicates the petitioners in the abatement of the offence of personation runs as follows:

"আসামী নবাব খান ও তার সংশ্লিষ্ট আইনজীবী (১) এ্যাডভোকেট দেব দুলাল দাস, সদস্য নং ১০৮৪ এবং তাহার সহকারী (২) এ্যাডভোকেট মো: আনোয়ার ইসলাম চৌধুরী এবং (৩) এ্যাডভোকেট আফরোজা খাতুনদের কু-পরামর্শে আসামী নবাব খান এর রুপ ধারণ করিয়া প্রতারণামূলকভাবে বিজ্ঞ আদালতে আত্মসমর্পণ করেন, ওকালনামা ও জামিন আবেদনে স্বাক্ষর প্রদান করত বিজ্ঞ আদালতে উপস্থাপনের জন্য দন্ডবিধি ৪১৯/৪৬৮/৪৭১ ধারায় অপরাধ করিয়াছেন।"

Above statement has not been expressly attributed to the confession of co-accused Fahim. The same appears to be an expression of perception of the informant who lodged this case in official capacity. In spite of above position let us analyze above statement for further clarity. Undisputedly accused Nabab Khan was not present in the court on 22.02.2022 and none of the petitioners was an appointed Advocate of co-accused Fahim. As such the petitioner had no legal or ethical capacity as an Advocate to give advice or ill advice to co-accused Fahim. There is no mention of the date, time or place as to giving of above ill advice by the petitioners jointly with

Nabab Khan. Nor any mention has been made as to exactly what ill advice was given by the petitioners. Above statements also contradicts the confession given by co-accused Fahim on 28.02.2022 that Nabab Khan was stuck in the traffic jam before the Bansal Police Station on his way to the court.

An Advocate is also an officer of the court whose principal duty is to assist the court in the dispensation of justice. Any allegation of professional misconduct against an Advocate should be forwarded to the Bangladesh Bar Council. Before entertaining a complaint against an Advocate involving allegation of commission of a criminal offence in connection of a judicial proceeding the court should demand consistent and credible materials supporting the allegation.

This case exposes the deficiency in suspect or accused identification process in our judicial system and demands effective measures to eliminate the scope of cheating by personation. We need to introduce photo identification document of the informant, accused ad witnesses in the case docket through an innovative process.

The implication of the petitioners in above proceeding rests solely on the confession of co-accused Fahim and we have found that above materials do not disclose a prima facie case punishable under section 468/471 and 34 of the Penal Code, 1860 against the petitioners.

On consideration of above facts and circumstances of the case and materials on record we hold that further continuation of this still born and preposterous proceeding shall cause unnecessary plight and sufferings to the petitioners which amounts to abuse of the process of the court.

In above view of the materials on record we find substance in this petition under section 561A of the Code of Criminal Procedure, 1898 and the rule issued in this connection deserves to be made absolute.

In the result, the rule is made absolute.

The proceedings of G. R. No.64 of 2022 arising out of Kotwali Police Station Case No.27 dated 22.02.2022 under sections 419/468/471 of the Penal Code so far as it relates to the petitioners is quashed.

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

A.K.M. Rabiul Hassan, J:

I agree.

Md. Kamrul Islam
Assistant Bench Officer