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

Dated: 06th day of March, 2019

Present:

Mr. Justice Md. Nazrul Islam Talukder

And

Mr. Justice K. M. Hafizul Alam

CRIMINAL REVISION NO. 292 OF 2002 (Arising out of Order No. 13 dated 03.07.2001 passed by Senior Special Judge, Bogra in Case No. 12 of 1999, accepting the report of the District Anti Corruption Officer, Bogra rejecting Naraji Petition of the complainant-Petitioner, and directing institution of regular Police Case.

And

In the matter of:

Agrani Bank Thana Road Branch, Thana road, Bogra, Police Station and District-Bogra Represented by Moksud Alam, Assistant General Manger, Agrani Bank, Thana Road Branch, Bogra.

..... Complainant-Petitioner

- Versus -

1. Abdul Mannan Son of late Komzed Hossain Proprietor of Messers Mannan Traders, Mahasthan Bazar, Post Office-Mahasthan Museum an village-Sat Simulai, Post Office-Bharanigonj, Police Station and District-Bogra. 2. Wajed Ali Proprietor of Messers Sumon Enterprise Clearing and Forwarding Agent, Benapole Land Custom, Post Office-Benapole, Police Station-Benapole, District-Jessore. 3. A.K.M. Wakil Ahmed Joint Commissioner Customs Division, Benapole Post Office-Benapole, Police Station-Benapole, District-Jessore.

..... Accused-Opposite Parties

4. The State. 5. Anti Corruption Commission Dhaka.

..... Opposite party.

“সমস্তকার্যে শরণা বিধি স্বাধীনতার বিধান বিধি”



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Present:

Mr. Justice Md. Nazrul Islam Talukder
And
Mr. Justice K.M. Hafizul Alam

Criminal Revision No.262 of 2002

Agrani Bank

.... *Complaint-petitioner*

-Versus-

Abdul Mannan and others

... *Accused-opposite-parties*

Mr.Kingshuk Das, Advocate and

Mr. Shaikh Mohammad Zakir Hossain, Advocate

..... *For the Petitioner*

Mr. A.K.M. Amin Uddin, D.A.G with

Mrs. Helena Begum (China), A.A.G. and

Mrs. Kazi Samsun Nahar, A.A.G with

.... *For the State-opposite party*

Ms. Fowjia Akhter, Advocate

.... *For the Anti-Corruption Commission*

Heard on 12.12.2018 and 06.03.2019
Judgment on 06.03.2019

Md. Nazrul Islam Talukder, J.

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On an application under section 439 of the Code of Criminal Procedure, 1898, this Rule, at the instance of the complaint-petitioner was issued calling upon the Deputy Commissioner, Bogura as

“সেশপ্রেরিত শপথ জিন, দুর্নীতিকে বিসর্জন দিন”



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well as opposite-party Nos. 1-3 to show cause as to why the impugned order No.13 dated 03.07.2001 passed by the learned Senior Special Judge, Bogura in Special Case No. 12 of 1999 rejecting the Naraji Petition and directing the complainant-petitioner to commence fresh criminal proceedings in the Police Station should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Facts, relevant for the purpose of disposal of this Rule, in brief, are that the petitioner as complainant filed a petition of complaint before the learned Senior Special Judge, Bogura alleging, *inter alia*, that accused-opposite party No.1 on 05.08.1998 opened a letter of credit for Tk. 24,14,030/- with Agrani Bank, Thana Branch, Bogura to import 200 metric tons of Indian Basanti Rice and deposited Tk. 6,04,000 in his account. Accused-opposite party No. 2 (Benapole Land

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“দেশভেদে মগধ মিন, দুর্নীতিকে বিচার মিন”



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Customs) received the rice in question on account of accused-opposite party No. 1. The exporter sent original shipping documents to the complainant-petitioner who opened PAD Account for Tk. 28,80,296.06/- in the name of the accused opposite party No. 1. As per the letter of credit a sum of Tk. 18.46.216.06/- became immediate payable. On several occasions the accused-opposite party No. 3 was requested to ensure that the imported rice be not released without the clearance of the complainant-petitioner and without the original shipping documents. But when the complainant-petitioner inquired about the state of the imported rice it appeared that on 02.09.1998 and 03.09.1998 the accused-opposite party No. 1 in connivance with the accused-opposite party Nos. 2 and 3 dishonestly, fraudulently, illegally and with intention of avoiding payment of the dues of the complainant-petitioner had taken delivery of the imported rice, thereby caused financial loss of Tk.

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“দেশপ্রেমের অপথ নিঃসূর্ণাভিত্তিক বিদায় দিন”



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8,75,372.06/- to the complainant-petitioner who was the lawful owner of the imported rice until the outstanding dues was adjusted. Therefore in the circumstances as stated above the accused-opposite party Nos.1 to 3, in collusion with each other have committed offence under sections 409/109 of the Penal Code and section 5(2) of the Prevention of Corruption Act, 1947.

On the date of filing of the petition of complaint, the learned Senior Special Judge, Bogura having registered the case sent it to the District Anti-Corruption Officer, Bogura for submission of report after investigation.

After holding investigation, the District Anti-Corruption Officer, submitted report stating that the complainant Md. Maksudul Alam, ex-Assistant Manager and witness Abdul Matin Sarkar, Senior Officer both are of Agrani Bank inspite of having not previous satisfactory transaction and without taking

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“দেশভেদে শপথ নিঃসূত্রিতিকে বিদায় দিন”



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any collateral security in violation of the Banking Rules recommended to open LC for importing Indian rice in favour of the accused importer Abdul Mannan. Complainant Masudul Alam was earlier arrested for his misdeed in relation to business transaction. It is also stated that *prima facie* case against the accused Abdul Mannan and his brother Abdul Quddus has been disclosed under sections 406/409/420 of the Penal Code. It is further stated that rice was also released from the Benapole Land Port pursuant to the no objection letter dated 30.08.1998 issued by the Agrani Bank which was claimed by the Bank as forged. Engaged C & F agent namely M/S Sumon Enter Prize submitted the document and got the rice released. So far accused No. 3 A.K.M. Wakil Ahmed, Joint Tax Commissioner it stated that he joined Benapole Customs on 14.10.1998 and the goods were released on 02.09.1998 and 03.09.1998; therefore he is not involved with the alleged offence and he

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“দেশপ্রেমের শপথ নিঃসূনীতিকে বিদায় দিন”



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কর্তৃপক্ষ



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has been involved due to subsequent communication in response to the Bank. It is also stated that the owner of Sumon Enter Prize A. Rouf who died on 22.10.1997 and his son became the owner of Sumon Enter Prize. Wazed Ali, the brother in law of late A. Rouf look after the said business and the Shawkat Ali, Manager of Sumon Enter Prize submitted all document including no objection certificate with bill of entry. Inspector of Customs Mostofa Kamal and Superintendent Motiar were the concern customs officer who dealt the issue in question. In these circumstance since the role of the complainant of the case and witness appeared as accomplice of the main accused and they appeared to have misused power in discharge of duties of the Government, the present case be discharged and a direction be given to Agrani Bank authorities to commence fresh proceedings in the police station subject to consideration and approval

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of the learned court.
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After submission of report on 20.03.2001, the complainant-petitioner filed a naraji petition against the said Investigation Report. The learned Judge on 03.07.2001 after hearing the parties rejected the said naraji-application and directed the Agrani Bank to commence regular proceedings in the Police Station in respect of the matter in question.

Being aggrieved by and dissatisfied with the impugned order dated 03.07.2001 the complainant-petitioner, approached this court with an application under section 439 of the Cr.P.C and obtained this Rule on 17.04.2002 with an interim order of stay of the impugned order dated 03.07.2001.

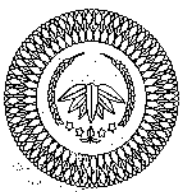
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At the time of Rule hearing, Mr. Kingshuk Das, the learned Advocate appearing on behalf of the complainant-petitioner, submits that the learned Judge erroneously failed to consider that the petition of complaint contained specific allegation of

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commission of offence by the accused and therefore the impugned order lacked propriety and the same is liable to be set aside.

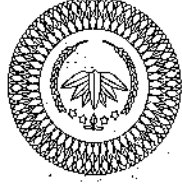
He next submits that the District Anti-Corruption Officer, after investigation has submitted investigating report in which the offence alleged in the petition of complaint against the accused persons were *prima facie* established on the basis of documentary evidence which having not been considered by the learned Judge, the impugned order is not tenable in law.

He further submits that the investigation officer having found the offence against the accused persons submitted report, therefore, the learned Court ought to have proceeded to the next stage of the proceedings as such the impugned order rejecting the naraji petition and directing Agrani Bank to commence fresh criminal proceedings at the police station has no legal or factual basis.

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He lastly submits that the learned Judge committed error in mechanically accepting the recommendation contained in the report of the Investigation Officer and dismissing the naraji and directing the complainant to commence fresh proceedings in the police station.

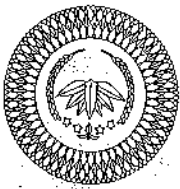
On the other hand, Ms. Fowjia Akhter, the learned Advocate appearing for the Anti-Corruption Commission, submits that learned Judge rightly passed the impugned order accepting the recommendation contained in the report of the Investigation Officer and dismissing the naraji and directing the complainant to commence fresh proceedings in the police station and as such the Rule should be discharged.

She next submits that the learned Judge of the Court below rightly passed the impugned order as there is no laches in the face of the record as such the Rule should be discharged for ends of justice.

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We have gone through the application and perused the prosecution materials annexed therewith. We have also considered the submissions advanced by the learned Advocates for the respective parties.

On perusa of the records it appears that in the complaint there is specific allegation that accused-opposite party No.1 by opening letter of credit for Tk. 24,14,030/- with Agrani Bank imported 200 metric tons of Indian Basanti rice but without clearancé and without the original shipping documents from the Bank, he in connivance with accused-opposite party Nos. 2 and 3 got the said rice released, thereby caused financial loss of Tk. 8,75,372.06/- till 30.11.1998 to the complainant-petitioner who was the lawful owner of the imported rice until the outstanding dues was adjusted.

From the investigation report, it also appears that the imported 200 metric tons of Indian rice was

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released without clearance from the complainant Bank and accordingly the complainant Bank suffered loss of Tk.8,75,372.06 till 30.11.1998. Though the investigation officer apart from the accused mentioned in the complaint also found involvement of Md. Muksedul Alam, Assistant Manager, and Abdul Matin, Senior Officer Agrani Bank but that cannot be ground to recommend to commence fresh prosecution with Police station. Because complainant is the Agrani Bank Ltd. which is a juristic person and Md. Moksedul being mere representative filed the complaint. All the transactions are based on documents. Therefore there is no legal bar to proceed with case of the Bank. Apart from this, from the report it also reveals that rice was also released from the Benalpole Land Port pursuant to the no objection letter dated 30.08.1998 issued by the Agrani Bank which was claimed by the Bank as forged. Engaged C & F agent namely M/S Sumon Enter Prize

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“দেশপ্রেমের অপথ বিন, দুর্নীতিকে বিচার দিন”



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submitted the document and got the rice released. So far accused No. 3 A.K.M. Wakil Ahmed, Joint Tax Commissioner, it is stated that he joined Benapole Customs on 14.10.1998 and the goods were released on 02.09.1998 and 03.09.1998, therefore, he is not involved with the alleged offence and he has been involved due to subsequent communication in response to the Bank. It is also stated that the owner of Sumon Enter Prize A. Rouf who died on 22.10.1997 and his son became the owner of Sumon Enter Prize. Wazed Ali, the brother-in-law of late A. Rouf looked after the said business and the Shawkat Ali, Manager of Sumon Enter Prize submitted all documents including no objection certificate with bill of entry. Inspector of Customs Mostafa Kamal and Superintendent Motiar were the concerned customs officer who dealt the issue in question



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In view of the above, it appears that the complaint petition and police report disclose the names of the persons who are involved with alleged incident of misappropriating huge amount of money of the complainant bank, therefore the impugned order dated 03.07.2001 rejecting the naraji petition and directing the complainant Bank to commence fresh case with Police Station is not sustainable in law and the same is ~~to be~~ ^{like to be} set aside. The learned Court ^{judge of the} ought to have proceeded to the next stage of the proceedings.

Having considered all the facts and the circumstances of the case and the submissions made by the learned Advocate for the petitioner, we find merit in this Rule.

Accordingly, the Rule is made absolute.
Accordingly, the impugned order No. J.P. (C) 03.07.2001 passed by the learned judge of the court is hereby set aside. No. 127-13/2001.

The learned court below is directed to proceed with the case in accordance with law in the light of the observation made above.

“দেশপ্রেমের শপথ নিঃ, স্মৃতিতেকে বিদায় দিন”

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Let a copy of this judgment and order be
communicated to the court below at once.

K.M. Hafizul Alam, J

Md. Nazrul Islam Talukder
I agree
K.M. Hafizul Alam

Typed By: Ripon
28.12.2022

Read by: *Ripon*

Exd by: *Ripon*
28.12.2022

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প্রত্যায়িত অবিকল প্রতিলিপি
K.M. Hafizul Alam
28.12.2022
সহকারী রেজিস্ট্রার

গণপ্রজাতন্ত্রী বাংলাদেশ কোর্ট হাইকোর্ট বিভাগ
(১৮-৭২ ইং সেক্টর ১নং ডায়েরী)
১৬ বারানগরে জামতা গ্রাভ 28.12.2022

Ripon
28.12.2022