

**4 SCOB [2015] HCD 1****High Court Division  
(Criminal Miscellaneous Jurisdiction)**

Criminal Misc. Case No.8286 of 2012

Mr. Md. Yousuf Hossain Humayun with  
Ms. Shamima Sultana  
.....For petitioner.**Md. Mahbub Alam**

.....Petitioner

Ms. Sakila Rawshan, D.A.G. with  
Ms. Sharmina Haque, A,A,G, and  
Mr. Md. Sarwardhi,A.A.G

-Versus-

.....For opposite party No.1.

**The State**

.....Opposite party

Heard and judgment on 6<sup>th</sup> September,  
2015**PRESENT:****Madam Justice Salma Masud Chowdhury****And****Mr. Justice F.R.M. Nazmul Ahasan****Code of Criminal Procedure, 1898****Section 561A:**

**The allegations as made in the first information report do not disclose any offence against the petitioner. Interference of this Court in exercise of its inherent power under section 561A of the Code of Criminal Procedure before framing charge is justified only when this Court finds, as in the present case, that the allegations as made in the first information report or charge sheet do not constitute the offence alleged against the accused or that on admitted facts no case can stand against the accused. ... (Para 11)**

**Judgment****SALMA MASUD CHOWDHURY, J.**

1. This Rule arising out of an application under section 561A of the Code of Criminal Procedure at the instance of the accused petitioner was issued calling upon the opposite party to show cause as to why the proceedings of Poba Police Station Case No.24 dated 25.9.2011 corresponding to G.R. No.199 of 2011 under section 19A and 19(f) of the Arms Act read with section 332/353 of the Penal Code, now pending in the Court of Chief Judicial Magistrate, Rajshahi should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. The prosecution case in short is that one Nayeb Subeder Md. Firoz Alam lodged a first information report with the Poba Police Station against the accused persons alleging that on 24.9.2011 at about 23.05 hours accused Nos.1,2 and 3 asked the informant party to stop their motor cycle and then asked them to switch off the light but they did not switch off and consequently accused No.1 aimed a revolver at the chest of the informant and other accused dealt blows on the members of the informant party and thereafter with the help of the witnesses, the informant party caught the accused persons red handed and recovered one 0.32

bore revolver and 20 rounds of cartridges and the accused persons assaulted the informant group and prevented them from performing their duties and hence the present case.

3. The accused petitioner was arrested on 24.9.2011 and was enlarged on bail by the Sessions Judge, Rajshahi.

4. The police investigated the case and submitted charge sheet against the accused persons under section 332/353 of the Penal Code.

5. Being aggrieved by the proceedings of the case, the petitioner filed an application under section 561-A of the Code of Criminal Procedure before this Court and obtained the present Rule.

6. Mr. Md. Yousuf Hossain Humayun, the learned Advocate appearing on behalf of the petitioner submits that the petitioner is innocent and he is not involved in the alleged offence in any way and as such the instant proceeding against him is liable to be quashed. He also submits that from the plain reading of the first information report the allegation brought against the petitioner is totally absurd and concocted. The learned Advocate brings into our notice the charge sheet, from where it was found that since the petitioner possessed a valid licence for his pistol sections 19A and 19(f) of the Arms Act were dropped from the charge sheet and it is also evident from charge sheet that the petitioner did not believe the informant and his group to be the members of law enforcing agency and thought them to be terrorists and are pretending to be members of law enforcing agency which is very much happening these days especially in the locality of the petitioner and is coming out in the news media. He also brings into our notice that the present case is Paba Police Station Case No.24 and in Poba Police Case No.25, filed on the same day i.e. on 24.9.2011, at 23.50 hours, allegations have been brought that from an abandoned car one unsealed and open whisky bottle and five bottles of phensidyle of which two bottles being uncorked and open were recovered. He also submits that this Court in Criminal Miscellaneous Case No.8290 of 2012 quashed the proceedings of Poba Police Station Case No.25 dated 24.9.2011. He next submits that the petitioner knowingly did not assault or used force to deter public servants from discharge of their duties. The learned Advocate submits that the ingredients of section 332 and 353 of the Penal Code are totally absent against the petitioner.

7. Ms. Sakila Rawshan, the learned Deputy Attorney General appearing on behalf of the State opposes the Rule. She also submits that quashment of proceedings at the stage before framing of charge is not permissible. In support to her contention the learned Advocate has referred decisions as reported in 28 D.L.R.(AD) page 39 and 13 M.L.R. (AD) page 185.

8. We have heard the learned Advocate appearing on behalf of the petitioner and the learned Deputy Attorney General representing the State and perused the application under section 561A of the Code of Criminal Procedure along with other materials on record.

9. It appears that although the first information report was lodged under section 19A and 19(f) of the Arms Act read with section 332/353 of the Penal Code, subsequently it was revealed that the petitioner was holding a pistol with a valid license and thereafter the said pistol was handed over to the petitioner by way of Jimma and the charge sheet was submitted under section 332/353 of the Penal Code.

10. There is nothing on record to show that the petitioner caused hurt to the informant group. It has been stated in the charge sheet that the petitioner did not believe that the

informant and his group belonged to the law enforcing agency rather the petitioner challenged the informant group as terrorists who were creating terror in the locality for quite some time in the guise of the members of the law enforcing agency. During investigation it was revealed that the petitioner disbelieved the informant and challenged them. The police report does not disclose that the petitioner assaulted or used force upon the informant group to deter them, the public servants, from discharging their duties. The ingredients of section 332/353 of the Bangladesh Penal Code do not attract the petitioner in the present case, as evident from first information report and charge sheet.

11. The exercise of jurisdiction under section 561A of the Code of Criminal Procedure will depend upon the facts and circumstances of each case. 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 and that a further prolongation of the proceeding would amount to harassment to an innocent party and abuse of the process of the Court. This view has been adopted in the case of Abdul Qader Chowdhury versus the State as reported in 28 D.L.R. (AD) page 38. In the present case it would be legitimate for this Court to hold that it would be manifestly unjust to allow process of the Criminal Court to be continued against the accused petitioner. The inherent power of this Court are applied for ends of justice when the allegations even if accepted as true do not constitute any offence. The allegations as made in the first information report do not disclose any offence against the petitioner. Interference of this Court in exercise of its inherent power under section 561A of the Code of Criminal Procedure before framing charge is justified only when this Court finds, as in the present case, that the allegations as made in the first information report or charge sheet do not constitute the offence alleged against the accused or that on admitted facts no case can stand against the accused.

12. Considering the facts and circumstances of the case, we are of the view that the further proceedings of the case against the petitioner would be sheer abuse of the process of the Court.

13. In the result, the Rule is made absolute. The proceedings of Poba Police Station Case No.24 dated 25.9.2011 corresponding to G.R. No.199 of 2011 under section 19(1) and (f) of the Arms Act read with section 332/353 of the Penal Code, now pending in the Court of Chief Judicial Magistrate, Rajshahi are hereby quashed, so far as it relates to the present petitioner.

14. The order of stay granted earlier by this Court stands vacated.

15. Communicate a copy of the judgment and order to the Court concerned.