

Criminal-Question No-06 (Criminal Part):

'A' lodged an ejahar (First Information Report) against 'B' with Ramna police Station, Dhaka Metropolitan Police, Dhaka for commission of theft in his house on 10.10.2013. Police started a regular case and submitted final report against 'B' after investigation. Nu naraji petition (petition of protest) was filed by 'A' and the Court accepted the final report and discharged 'B' from the case. Anyway, after 6 months of the acceptance of the final report, 'A' filed a CR. Case against B. In the Court of the Chief Metropolitan Magistrate, Dhaka on the self- same occurrence. Now what remedy is open to B? Draft an application invoking the relevant provision of law. 130" November 2007, 25 July 2010, 9th August 2014)

প্রশ্নটি বাংলায় (ফৌজদারী) ৪ 'A' তাহার বাড়ীতে বিগত ১০.১০.২০১৩/২০২২ইং তারিখে চুরি হওয়ার সরুন 'B' এর বিরুদ্ধে ঢাকা মেট্রোপলিটন পুলিশের রমনা থানায় একটি এজাহার (এফ.আই.আর) দায়ের করেন। পুলিশ নিয়মিত মামলা শুরু করে এবং '13' এর বিরুদ্ধে তদন্ত অন্তে পুলিশ 'B' এর বিরুদ্ধে চূড়ান্ত প্রতিবেদন দাখিল করে 'A' কোন নারাজী দরখাস্ত (প্রতিবাদ লিপি) দাখিল না করায় আদালত চূড়ান্ত প্রতিবেদন গ্রহণ করিয়া (বা মঞ্জুর করিয়া) 'B' কে মামলার দায় হইতে অব্যাহতি প্রদান করে। যাহোক, চূড়ান্ত প্রতিবেদন গৃহীত হওয়ার ৬(ছয়) মাস পর একই ঘটনায় 'B' র বিরুদ্ধে ঢাকার মহানগর হাকিমের আদালতে সি. আর. মামলা দায়ের করেন। এইক্ষেত্রে কি প্রতিকার 'B' এর জন্য খোলা আছে, আইনের সংশ্লিষ্ট বিধান উল্লেখ পূর্বক একটি দরখাস্তের খসড়া প্রস্তুত করুন। ৩০ নভেম্বর ২০০৭, ২৫ জুলাই ২০১০, ৯ আগস্ট ২০১৪।

Answer to the question No. 06

Now what remedy is open to 'B':

Now being a lawyer of 'B' I will advice or suggest him to file an application before the High Court Division under section 561A of the Code of Criminal Procedure for quashing the C.R Case No. 188 of 2014/2022 which is pending in the Court of Chief Metropolitan Magistrate, Dhaka.

As per advice/In my opinion, it is the proper remedy for 'B' because the Proceeding of the C.R Case is abuse of the process of the Court and that

should be prevented to secure the ends of justice. Hence I have to draft a petition for presentation before the High Court Division under section 561A of the Code of Criminal Procedure and it has been drafted below as follows:-

Answer to the question No. 01 (Criminal)

DISTRICT: DHAKA

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CRIMINAL MISCELLANEOUS JURISDICTION)

CRIMINAL MISCELLANEOUS CASE NO. OF 2014/2022

IN THE MATTER OF:

An application under section 561A
of the Code of Criminal Procedure.

AND

IN THE MATTER OF:

'B'

Son of Korim Khan; Of Village of
Holding -207/A Segun Bagicha.
Police Station-Ramna. District
Dhaka

..... Accused-Petitioner. (On Bail)

-VERSUS-

1. The State

.....Opposite party

2. 'A'

Son of Kamal H of Holding 207/D
Segun Bagicha, Police Station
Raming, District- Dhaka.
.....Complainant Opposite party

AND
IN THE MATTER OF
Quashing the proceeding arising out
of C.R. Case Nov 1639 2014/2022
under SCOHOM 380/457 of the
Penal Code, now pending in the
learned Court of Chief Metropolitan
Magistrate, Dhaka.

To

Mr. Justice Hasan Foez Siddique, the Hon'ble Chief Justice of
Bangladesh and his Companion Justices of the said Hon'ble Court.

The humble petition of the petitioner
above named most respectfully-The
humble petition on behalf of the
petitioner most respectfully-

SHEWETH:

1. That the opposite party No.2 (A) as informant lodged an F.I.R. with
Ramna Police Station on 10.10.2013/8.09.2022 against the
accused-petitioner 'B' for commission of theft in his house.

Certified copy of the said FIR is
annexed herewith and marked as
Annexure-'A'

2. That the police started a regular case in the matter and after investigation
the police submitted final report against 'B'. No 'naraji' petition (petition of

protest) was filed by 'A' and thereafter the court accepted the final report and discharged 'B' from the case on 15.02.2014/2022.

Certified copy of the said final report and the order of discharge are annexed herewith and marked as Annexure-'B' and 'B1'.

3. That after 6(six) months of the acceptance of the final report opposite party No 2 ('A') filed a C.R. Case against 'B' being C.R. Case No 188 of 2014/2022 in the learned Court of Chief Metropolitan Magistrate, Dhaka on the self-same occurrence on which is now pending in the Court of Chief Metropolitan Magistrate, Dhaka.

The certified copy of the said C.R. case No.188 of 2014/2022 is annexed herewith and marked as Annexure-'C'

4. That the aforesaid C.R Case was registered as C.R Case No. 188 of 2014/2022 and on 19.09.2014/2022 after hearing the Chief Metropolitan Magistrate was pleased to take cognizance of the case and referred the case to Ramna Police Station for investigation and report.

5. That the petitioner voluntarily surrendered before the Chief Metropolitan Magistrate and obtained bail on 11.10.2014/2022.

Certified copy of order sheet dated is annexed herewith and marked as Annexure 'D'.

6. That it is submitted that the learned Magistrate discharged the petitioner in the previous case lodged on the same occurrence and hence the instant C.R Case against the accused petitioner on the same occurrence is absolutely barred by law as well as abuse of the process of the Court and as such the same is liable to be quashed.

7. That it is submitted that no criminal offence has been disclosed against the petitioner in the C.R Case and no allegation will come within the purview of section 380/457 of the Penal Code and hence the continuation of the instant proceeding against the petitioner is completely abuse of the process of the Court and as such the same is liable to be quashed.

8. That it is submitted that the instant case is against the provision of article 35(2) of the Constitution and hence the instant proceeding against the petitioner is absolutely abuse of the process of the Court and as such the same is liable to be quashed.

9. That it is submitted that the instant case is against the provision of section 403 of the Code of Criminal Procedure and as such the proceeding of C.R. Case No.188 of 2014/2022 is liable to be quashed to prevent abuse of the process of the court to secure ends of justice.

10. That being aggrieved by and dissatisfied with the impugned proceeding of C.R Case and the accused petitioner begs to move this application on the following amongst other-

GROUND

I. For that the proceeding of this case is bad in law as well as in facts and circumstances, and as such the same is liable to be quashed.

II. For that the learned Magistrate discharged the petitioner in the previous case lodged on the same occurrence and hence the instant C.R Case against the accused petitioner on the same occurrence is absolutely barred by law as well as abuse of the process of the Court and as such the same is liable to be quashed. 380/457 of the Penal Code and hence the continuation of the instant proceeding against the petitioner is completely abuse of the process of the Court and as such the same is liable to be quashed.

III. For that no criminal offence has been disclosed against the petitioner in the C.R Case and no allegation will come within the purview of section

IV. For that the instant case is against the provision of section 403 of the Code of Criminal Procedure and as such the proceeding of C.R. Case No. 188 of 2014/2022 is liable to be quashed to prevent abuse of the process of the court to secure ends of justice.

V. For that the instant case is against the provision of article 35(2) of the Constitution and hence the instant proceeding against the petitioner is absolutely abuse of the process of the Court and as such the same is liable to be quashed.

VI. For that the proceeding of the impugned case is illegal, improper, unreasonable and unjust. Hence,

the proceeding is liable to be quashed for ends of justice.

Wherefore, it is most humbly prayed that your Lordships would graciously be pleased to issue a Rule calling upon the opposite parties to show cause as to why the impugned proceeding of CR Case No.188 of 2014/2022 under Section 380/457 of the Penal Code, now pending in the Court of Chief Metropolitan Magistrate, Dhaka should not be quashed and after hearing the parties and perusing the cause shown, if any, make the Rule absolute and/or pass such other or further order or orders as to your Lordships may deem fit and proper.
AND

Pending hearing of the Rule your Lordships may kindly be pleased to

stay all further proceedings of the
said C. R. Case be stayed / of the
said instant case.

AFFIDAVIT

I, "X/ Kalam Khan, son of Badal Hossain and Hasna Begum, Of Village / of Holding -207/A Segun Bagicha, Police Station-Ramna, District- Dhaka, aged about 38 years, by Faith-Muslim, by Profession-Business, by Nationality- Bangladeshi by birth, ID No. 111222333444 do hereby solemnly affirm and say as follows :-

1. That I am the petitioner and tadbirkar in this case and as such I am acquainted with the facts and circumstances of this case and competent to swear this Affidavit.
2. That the statements of facts made in this application are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

(Md. WXYWXYXYXY)
Advocate

EPONENT

The deponent is known to me and
identified by me.

Solemnly affirmed before me by the
said deponent on this the 07th day
of July, 2022 at 11 AM.

Md. XYXYXYXY

Advocate

Membership No.

Room No

COMMISSIONER OF AFFIDAVIT SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.