

ICT-BD (ICT-2) Case No.02 of 2013

The Chief Prosecutor -Versus- A.K.M. Yusuf (Accused)

Order No.45

Dated 11.12.2013

This is an application of the Defence seeking adjournment of the proceeding fixed for cross-examination of P.W.17. Mr. Gazi M.H. Tamim, the learned Advocate for the Defence upon placing the petition submits that due to unavoidable situation his senior Mr. Syed Mizanur Rahman could not turn up before this tribunal who was supposed to cross-examine the witness and on that score, he prays for two days time.

On the contrary, Mr. Zahid Imam, the learned prosecutor steadfastly opposes the said prayer contending that it has become the fashion on the part of the Defence to pray for adjournment on the date of blockade called by opposition political parties though fact remains, Mr. Syed Mizanur Rahman, the learned Advocate has been staying in Dhaka and all the learned prosecutors and other Defence counsels even, the relatives of the accused who also resides in Dhaka city have been appearing the tribunal on the day fixed for the case peacefully and without any hindrance.

We have heard the learned counsels of both the parties and perused the application for adjournment. It is on the record, earlier on several occasions we have rejected petition for adjournment sought by the Defence stating similar causes. It is also on record that since 25.11.2013 Mr. Syed Mizanur Rahman has kept himself absent from turning up before this Tribunal. We expressed our intention to provide with police protection to the defence counsel on the day of hartal or blockade while traveling this tribunal on the date fixed for the case if they, at all, feel insecure. But the learned Advocate Mr. Mizanur Rahman refrained from appearing the Tribunal and cross-examine the PWs and repeatedly got petitions filed through his junior counsel Mr. Tamim seeking adjournment

on the ground of blockade though in the meantime, 5 PWs could not be cross examined due to his deliberate absence.

On 08.12.2013 we have inquired the whereabouts of learned Advocate Mr. Syed Mizanur Rahman from Mr. Tamim who readily informed us that his senior has still been living in Dhaka city. Furthermore, the Defence one of its adjournment application dare to show audacity by stating that, since the Supreme Court and High Court are not sitting on the day of blockade so, this court being subordinate to Supreme Court may not sit on the day of blockade.

In that posture, we have very candidly expressed our view that this Tribunal is absolutely independent and conducting its proceeding following it's own rules of procedure in the exercise of its judicial function and there is no any order or direction from the Hon'ble Chief justice directing the tribunal not to sit on the hartal days.

However, since we feel it urge that the accused may have been prejudiced if he is not given opportunity to cross-examine the PWs as well as would be rendered undefended if his Advocate eventually does not turnout to cross examine the remaining PWs we on 08.12.2013 talked to the accused and made him understand about the consequence of not cross examining the witnesses and asked him to let us know his decision about further conduction of his case by 10.12.2013. Yesterday Mr. Yusuf informed us that he already talked to Mr. Syed Mizanur Rahman and needed to talk to him further and feedback his decision by today.

Today the case has been fixed for cross examination of P.W.17 and hearing of the review application. But as the learned junior counsel expressed his inability to cross-examine P.W.17, and the accused has not conveyed any decision about his engaged counsel the cross-examination of

P.W.17 is closed and prosecution is permitted to take deposition of P.W.18.

Given the aforesaid proposition, our considerate view is that, Mr. Syed Mizanur Rahman, the learned counsel for the Defence has intentionally and deliberately skipped the proceeding of the case and refrained from turning up before this Tribunal since 25.11.2013 which is far from his professional ethics and kept the accused undefended knowing it very well that his such negligence towards conducting the case would gravely prejudice the accused.

We find many senior counsels have been appearing before this tribunal on the day of hartal and blockade. In view of the matter, in order to safeguard the interest of the accused, we find no other option but to debar Mr. Syed Mizanur Rahman, Advocate to defend the accused in the instant case. It is further ordered that, Mr. Syed Mizanur Rahman, the learned Advocate can not appear in any case in favour of any parties before this International Crimes Tribunal-2. The review application scheduled to dispose of today be adjourned till 15.12.2013 when other review application filed on 10.12.2013 be heard together.

To 12.12.2013 be fixed for further cross-examining of P.W.18 and 15.12.2013 is fixed for hearing of the review applications.

The accused is hereby directed to appoint another lawyer of his choice by 12.12.2013 failing which the Tribunal will appoint a State defence lawyer.

Justice Obaidul Hassan, Chairman
Justice Md. Mozibur Rahman Miah, Member
Justice Md. Shahinur Islam, Member