

Present:
Mr. Justice Obaidul Hassan
And
Justice Krishna Debnath

01.04.2018 Ms. Hasina Jahan Hazari, Advocate
.....For the petitioner
Mr. Md. Mahbub Ali, Senior advocate with **Mr. Md. Razzakul Kobir**, Advocate
.....For the contemnor-OC
Mr. Shah Munjurul Haque, Advocate with **Mr. Muhammad Rafiul Islam**, Advocate
.....For the contemnor-Judge

By an order dated 07.03.2018 Mr. Poresh Chandra Sharma, Judge of the Nari O Shishu Nirjatand Daman Tribunal, Nilphamri was directed to explain why he should not be proceeded for contempt of Court for ignoring the lawyer's certificate issued by Ms. Hasina Jahan Hazari by which she informed the Judge of the Tribunal that the accused petitioner was granted ad-interim anticipatory bail for a period of 6 weeks. By the said order the Officer in-Charge (OC) of Nilphamari Police Station namely Md. Babul Akter, son of late Abdul Kader was also directed to explain why a contempt proceeding should not be drawn against him and why he should not be punished suitably for

violating the Court's order which was communicated to him by a certificate issued by Ms. Hasina Jahan Hazari, the learned advocate of this Court and arresting the accused petitioner.

This matter appeared in the daily cause list on 22.03.2018 and the same was adjourned till 27.03.2018. Thereafter, the matter was again adjourned till 01.04.2018.

The facts relevant for issuing two show cause notices are that, on 12.02.2018 one Hasina Jahan Hazari an advocate of this Court issued a certificate stating that she moved an application for anticipatory bail under section 498 of the Code of Criminal Procedure before the High Court Division of the Supreme Court of Bangladesh on behalf of Md. Mahmudul Hasan (accused petitioner), son of Md. Ferajul Islam in Nari O Shishu Nirjatan Case No.63 of 2018 arising out of Petition Case No.527 of 2017, now pending before the Nari O Shishu Nirjatan Daman Tribunal, Nilphamari. After hearing the learned advocate this Court enlarged Md.

Mahmudul Hasan (Accused petitioner) on an anticipatory bail for a period of six weeks from date. The tadbirkar of Md. Mahmudul Hasan (accused petitioner) submitted a certificate issued by Ms. Hasina Jahan dated 12.02.2018 to the Nilphamari Police Station, Nilphamari informing the Officer in-Charge (OC) about the anticipatory bail granted to the accused petitioner by this Court, accordingly, on 19.02.2018 the OC, Nilphamari Police Station received the said lawyer's certificate and forwarded the same to one Harisur Rahman, Sub-Inspector of Police, Nilphamari Police Station to take necessary steps.

On 20.02.2018 the police personnel of Nilphamari Police Station arrested the accused petitioner in connection with the said Nari O Shishu Nirjatan Case No.63 of 2018 arising out of Petition Case No.527 of 2017 and on the same day forwarded him to the Nari O Shishu Nirjatan Daman Tribunal, and the learned Judge in the Nari O Shishu Nirjatan Daman Tribunal sent him to the jail hazat, thereafter,

on 27.02.2018 the Nari O Shishu Nirjatan Daman Tribunal enlarged the accused petitioner on bail for a period of 6 weeks in the aforesaid case.

The learned advocate Ms. Hasina Jahan Hazari brought up the matter before this Court by filing a supplementary affidavit stating therein that after becoming aware about granting anticipatory bail to the accused petitioner the police personnel of Nilphamari Police Station arrested the accused petitioner in connection with the said Nari O Shishu Nirjatan Case No.63 of 2018 arising out of Petition Case No.527 of 2017. After hearing the learned advocate Ms. Hasina Jahan Hazari and considering the supplementary affidavit filed by her this Court vide an order dated 07.03.2018 passed the following order:

“The Officer in Charge, Nilphamari Police Station ignoring the certificate issued by the learned advocate arrested the accused petitioner which is nothing, but a clear violation of the judgment and order passed in

the case of *Chairman, Kushtia Co-operative Industrial Union Ltd. vs. Mujibur Rahman and others* reported in *44 DLR (AD) 219*. Since the Officer in Charge was duly informed about the bail granting order passed by this Court, we failed to understand why he became so enthusiastic to apprehend the petitioner?"

In the circumstances, we are of the view that the Officer in Charge has violated the order of this Court as well as the decision taken in the case of *Chairman, Kushtia Co-operative Industrial Union Ltd. vs. Mujibur Rahman and others* reported in *44 DLR(AD) 219*. Thus we are inclined to direct him to appear before this Court personally on 21.03.2018 at 10:30 A.M. without fail and to explain why a contempt proceeding should not be proceeded against him and why he should not be punished suitably?

It is to be noted that on 25.02.2018 the learned lawyer of the accused petitioner filed an application for bail before the Nari O Shishu Nirjatan Daman

Tribunal, Nilphamari in connection with the aforesaid case. The learned advocate of the accused petitioner submitted a certificate before the tribunal and made his submission that the accused petitioner was enlarged on ad-interim anticipatory bail for a period of six weeks vide order dated 12.02.2018 passed by the High Court Division in connection with the aforesaid case. The learned advocate also submitted a lawyer's certificate issued by Ms. Hasina Jahan together with firisti form.

Mr. Paresh Chandra Sharma, Judge of the Nari O Shishu Nirjatan Daman Tribunal, Nilphamari has given an explanation swearing an affidavit. In his explanation he stated that after perusal of the certificate issued by the learned advocate Ms. Hasina Jahan Hazari and perusing the application filed by the advocate of the Nilphamari District Bar he (The Judge) did not find any number of Criminal Miscellaneous Case therein and for this reason the application was fixed for further hearing on 04.03.2018 subject to filing certified copy of the order

dated 12.02.2018 passed by the High Court Division in connection with the aforesaid Criminal Miscellaneous Case. He further stated that subsequently on 27.02.2018 the learned advocate for the accused petitioner filed an application before the Judge of the Nari O Shishu Nirjatan Daman Tribunal, Nilphamari for bail. On that date the learned advocate submitted a photocopy of the order dated 12.02.2018 passed in Criminal Miscellaneous Case No.7609 of 2018. After hearing the learned advocate on 27.02.2018 and perusing the photocopy of the order and verifying the authenticity of the order of the High Court Division from the Supreme Court Website the instant applicant passed an order enlarging the accused petitioner on bail.

He also stated that being a judicial officer and the Judge of the Nari O Shishu Nirjatan Daman Tribunal, the applicant has the highest respect for this Court's authority and dignity and is always obliged and duty bound to comply with the order of this Court and hereby undertakes to take appropriate

measures and to be most careful, as ever, so as to compliance of the order of this Court. The applicant however tenders unqualified, unconditional and unreserved apology for his unintentional and inadvertent violation of the order dated 12.02.2018 and placed him in the mercy of this Court and prays for exoneration. He also stated that the Hon'ble Court may graciously be pleased to accept the unconditional/unqualified and unreserved apology for his unintentional and inadvertent acts and thereby prays to exonerate and pardon him.

Mr. Md. Mahbub Ali, the learned advocate appearing on behalf of Md. Babul Akter, son of late Abdul Kader, Officer in-Charge, Nilphamari Police Station, Nilphamari submitted that it is evident from the certificate dated 12.02.2018 issued by the learned advocate Ms. Hasina Jahan Hazari that this Court enlarged the accused petitioner Md. Mahmudul Hasan on an anticipatory bail for a period of six weeks in the said Nari O Shishu Nirjatan Case No.63 of 2018 arising out of Petition Case No.527 of 2017. It

is also evident that the OC received the said lawyer's certificate on 19.02.2018 regarding the anticipatory bail order passed by this Court. Therefore, the question of non-receiving of the said lawyer's certificate by the OC does not arise at all. The OC admits that on 19.02.2018 he received the lawyer's certificate dated 12.02.2018 regarding anticipatory bail order passed by this Court in favour of the accused petitioner in the aforesaid Nari O Shishu Nirjatan Case, but arresting the accused petitioner and to forward him before the Nari O Shishu Nirjatan Daman Tribunal, Nilphamari was his unintentional mistake, now the OC of Nilphamari Police Station begs unconditional apology before this Court for his unintentional mistake, in this regard he seeks mercy of this Court for his unintentional mistake. The OC could realize his mistake, and undertakes before this Court that he will never do the same mistake in future.

He further submitted that the OC never had any intention to violate, disregard or disrespect the

judgment and order passed in the case of *Chairman, Kushtia Co-operative Industrial Union Ltd. vs. Mujibur Rahman and others* reported in *44 DLR(AD) 219* or the order dated 12.02.2018 passed by this Court upon the said anticipatory bail application in connection with the Nari O Shishu Nirjatan Case No.63 of 2018. The OC is always obedient to the order of the highest Court of the country. The OC did not have any intention at all to disregard the lawyer's certificate regarding the anticipatory bail order dated 12.02.2018 passed by this Court, he begs an unconditional apology before this Court if he has committed any disregardful act which is out of his knowledge. If any action of the OC is amount to the disregardful or disobey to the order dated 12.02.2018 passed by this Court upon anticipatory bail in the said Nari O Shishu Nirjatan Case he again begs unconditional apology before this Court and seeking for mercy from this Court for his unintentional mistaken.

When the matter was taken up for passing this order no one appeared on behalf of Mr. Poresh Chandra Sharma.

We have gone through the affidavits filed on behalf of Mr. Poresh Chandra Sharma, Judge of Nari O Shishu Nirjatan Daman Tribunal, Nilpharmi and the OC of Nilphamari Police Station, Nilphamri namely Md. Babul Akter. It appears that the learned Judge of the Nari O Shishu Nirjatan Daman Tribunal, Nilphamari in his affidavit stated that on the certificate there was no number of criminal miscellaneous case. Thus he fixed the next date on 04.03.2018 for hearing the application subject to obtaining the certified copy of the order dated 12.02.2018 and after seeing the photocopy of the said order on 27.02.2018 and verifying its authenticity from the Supreme Court Website he passed an order enlarging the accused petitioner on bail. From the language used in his explanation Mr. Poresh Chandra Sharma tried to justify his action. In the case of *Chairman, Kushtia Co-operative Industrial Union*

Ltd. vs. Mujibur Rahman and others, reported in 44 DLR (AD) 219 it has been held that “In a contempt matter there cannot be both justification and apology. If an apology is to be offered in right earnest then it must be offered unequivocally and at the earliest opportunity. A belated apology hardly shows the contrition that is the essence of the purging of a contempt. One who has the courage of his convictions may however take the risk and run the gauntlet of proving that he is not in contempt.”

In this case we find that the concerned Judge tried to justify his action and also offered unconditional apology which is done in contrary to the decision laid down in the aforesaid case. In the aforesaid case My Lord Justice MH Rahman as he then was also held that “When a certificate from an Advocate of a superior Court is placed before a subordinate Court conveying a prohibitory order of a superior Court the subordinate Court should rather believe than doubt the authenticity of such communication. In case of any doubt the subordinate

court may ask the party producing the certificate to file an affidavit. Lest the practice of communicating the Court's order by a lawyer's certificate is not abused, the party relying on such certificate should rather file an affidavit." It was further held that "Where there is no justification for doubting the authenticity of an order of the superior Court it is the duty of the subordinate Court to carry out that order and it cannot take up the plea that as the order had not been officially communicated it was at liberty to ignore it." In the said case My Lord Justice Mustafa Kamal as he then was held that "Normally, therefore, an advocate's information will be honoured by the Court, unless strong case for refusal is made out by the Court in its order of refusal." The contents in the explanation given by the learned Judge of the Nari O Shishu Nirjatan Daman Tribunal, Nilphamari reflects lack of his knowledge about the decision in the case of *Chairman, Kushtia Co-operative Industrial Union Ltd. vs. Mujibur Rahman and others*, reported in 44 DLR (AD) 219

From the explanation given by the OC it appears that he unconditionally apologized for his unintentional mistake. In the circumstances the explanation is accepted with a caution to be more careful in future in dealing with the judicial order and directives which is communicated with him by a lawyer issuing a certificate and it is for all to keep in mind that the decision of the Supreme Court (either Division) is binding upon all as per Article 111 of the Constitution. The provision of the said Article runs as follows:

“111. The law declared by the Appellate Division shall be binding on the High Court Division and the law declared by either division of the Supreme Court shall be binding on all courts subordinate to it.

As per Article 112 of our Constitution all branches of the State shall act in the aid of the Supreme Court. The provision of Article 112 runs as follows:

“All authorities, executive and judicial, in the Republic shall act in aid of the Supreme Court.”

The decision given by either of the Divisions is binding upon all. “All authorities, executive, judicial in the republic shall act in aid of the Supreme Court means the judgment, order, directives or other observations given by the Supreme Court (either Division) is to be carried out by all authorities, executive and judicial of the republic. Thus, if any judgment, order or directives passed by this Court and is communicated with any authority or any person of the executive or judiciary by issuing any certificate primarily no one should doubt to its authenticity rather this certificate should be accepted giving a reasonable time to produce the certified copy or any official copy of the order or judgment from the Supreme Court.

The police officers are being trained in different training academies of the country. Bangladesh Police Academy, Shardah, Rajshahi was established during British rule for the purpose of providing training to

the police officers. Curriculum of the academy is designed by the Senior Officers of police from the Police Head Quarters. The concerned authority of the Academy is hereby directed to take initiative to educate the trainee officers about the constitution of the country particularly about the 3rd part of the constitution, which guarantees the fundamental rights of the citizens of the country and other relevant Articles including Article 111 and 112 of the Constitution so that if any judgment or order or directive is given from the Supreme Court (either Division) and it comes to the knowledge of any police officer he can act in accordance with law i.e. he can act in aid of the Supreme Court.

Since the OC of Nilphamari Police Station is a police officer he may not be well conversant with the decision pronounced in the case of *Chairman, Kushtia Co-operative Industrial Union Ltd. vs. Mujibur Rahman and others* reported in 44 DLR(AD) 219 he might have caused wrong for lack of sufficient knowledge about the said decision and since he has

committed this offence for the first time, we are of the view that he may be apologized for his unintentional mistake and accordingly he is exonerated from the charge and no contempt Rule thereby issued against him. However, he is cautioned to be more careful in future in dealing with the judgment, order and directives issued from the highest Court of the Country and from any Court of law of the country as well.

Mr. Poresh Chandra Sharma, learned Judge of Nari O Shishu Nirjatan Daman Tribunal, Nilphamari should have been more careful in dealing with the order passed by this Court, which was communicated with him by a lawyer's certificate. It was the duty of judge to keep in mind that the certificate was issued regarding a person who was not in custody, who obtained anticipatory bail from the highest Court of the country and was directed to surrender before him after expiry of the said period and this order was communicated to him by a lawyer's certificate issued by a practicing lawyer of

the Supreme Court. The lawyers practicing in the Supreme Court are the officers of this Court. When they issue any certificate regarding any judgment or order passed by this Court no one in the judiciary, executive or any authority should doubt it rather they should accept its context as true, but if the accused person is in custody and a certificate is issued by any officer of this Court (Lawyer) to the effect that the accused has been enlarged on bail by the highest Court the concerned Judge need not take any action for accepting bail bond on the basis of this certificate. In that case he should ask the learned advocate to produce a certified copy or any kind of communication from the particular section of the office of the Registrar of the Supreme Court of Bangladesh in this regard. It should be kept in mind that when anticipatory bail is concerned the accused person is not in custody. He usually communicates the order to the Court to any subordinate Court of other authority through his advocate to inform it that

he has been enlarged on bail for a particular period and he intends to submit bail bond.

The accused by producing the certificate usually informs the directions given by this Court at the time of granting bail. When the content of the order is communicated by a lawyer's certificate to the Judge, the concerned Judge is duty bound to accept the contents of the certificate as true. He may not accept the bail bond unless he received any certified copy or any order from the High Court Division, but in no way he can take the person in custody doubting the lawyer's certificate.

In this case Mr. Poresh Chandra Sharma not only has taken the accused petitioner in the jail custody but also he waited till the photostat copy of the order passed by this Court was submitted before him by the learned advocate and till authentication of the order is done from the concerned section of the Supreme Court. In this way he kept the accused petitioner in custody for a few days which is nothing but a clear violation of the highest Court's order and

violation of the decision passed in the case of *Chairman, Kushtia Co-operative Industrial Union Ltd. vs. Mujibur Rahman and others* reported in *44 DLR(AD) 219*. However, since Mr. Paresh Chandra Sharma is at the fag end of his service life we have taken a lenient view. Without issuing contempt rule he is cautioned to be more careful in future in dealing with the judgment, order or any directives passed by the Supreme Court (either Division) of Bangladesh.

With the above observations the matter relating to contempt of Court against two persons namely Mr. Paresh Chandra Sharma, the leaned Judge of the Nari O Shishu Nirjatan Daman Tribunal, Nilphamari and Mr. Md. Babul Akter, Officer in Charge of the Nilphamari Police Station, Nilphamari is hereby disposed of.