

Bench
 Mr. Justice Bishmadev Chakraborty
 and
 Mr. Justice A.K.M. Zahirul Huq

Criminal Miscellaneous Case No.25564 of 2024

Md. Abdul Wadud Akanda
accused-petitioner

-Versus-

The State and anotheropposite parties

Mr. Md. Anowarul Islam (Shaheen) with
 Mr. Md. Sagir Hossain, Advocates
 for the petitioner

Mr. Mintu Kumar Mondal, Advocate
 for opposite party 2

Judgment on 05.09.2024.

Bishmadev Chakraborty, J:

In this Rule opposite parties were called upon to show cause as to why the proceedings of CR Case No.737 of 2023 (Madaripur Sadar) under section 3 of ‘সৌতুক নিরোধ আইন, ২০১৮’ (the Ain, 2018) now pending in the Court of Chief Judicial Magistrate, Madaripur should not be quashed and/or such other or further order or orders passed to this Court may seem fit and proper.

At the time of issuing the Rule all further proceedings of the aforesaid case was stayed for a limited period which still subsists.

The material facts for disposal of the Rule, in brief, are that opposite party 2, Zarin Raza Neelanti filed a petition of complaint in the Court of Chief Judicial Magistrate, Madaripur stating, *inter alia*, that she was given in marriage with the accused on 17.04.2019 according to Muslim Law at dower money of Taka 3.00 lac. The accused is an Assistant Secretary in the Ministry of Foreign Affairs. After marriage the accused left for his work place at Switzerland. After 3 (three) months the complainant went there. In Switzerland she found some changes in the behavior of the accused. There the accused started torturing her physically and mentally disclosing his status as an officer of foreign cadre service. He used to abuse her with filthy languages. In the meantime, she became pregnant and the accused drove her away to Bangladesh. However, in this country she gave birth to a female child on 27.06.2020. After giving birth to the female child, the accused increased his bad behavior with her. Thereafter, the accused was transferred to Delhi in India as consular and the complainant with her mother and child went there. The accused abused her there for giving birth to a female child and claimed Taka 40.00 lac and a plot containing 5 katha from her and sent

her to this Country. After return to this Country the complainant and her parents in one occasion on 07.10.2022 went to a relative's house situated at Madaripur. The accused then made a phone call to her and wanted to know the reason for her visit there. In the moment of her reply the accused started abusing her and demanded Taka 40.00 lac and a plot of 5 katha as dowry from her. She switched on the speaker of her phone and all the witnesses present there heard the fact of demanding dowry. The accused told her that if she fails to arrange the dowry, he will divorce her. Hence the petition of complaint under section 3 of the Ain, 2018.

Learned Judicial Magistrate, Cognizance Court, Sadar, Madaripur examined the complainant under section 200 of the Code of Criminal Procedure (the Code), took cognizance of offence under the aforesaid section of the Ain, 2018 and issued summons upon the accused. The accused-petitioner then voluntarily surrendered before the learned Magistrate and prayed for bail which was rejected but subsequently he was granted bail by the Chief Judicial Magistrate.

At this stage, the accused approached this Court with this application under section 561A of the Code upon which the

Rule was issued and interim order of stay of the proceedings was passed.

Mr. Md. Anowarul Islam, learned Advocate for the petitioner taking us through the materials on record submits that the allegations against the petitioner is preposterous and do not disclose any offence under the aforesaid section of the Ain, 2018. He then submits that the case has been filed against the petitioner only to harass and humiliate him after sending divorce notice to her. In the petition of complaint although she stated that the petitioner claimed dowry from her through a mobile phone call but no phone number is cited/noted there. Therefore, no offence has been disclosed under section 3 of the Ain, 2018 and as such the proceedings against the petitioner is an abuse of the process of the Court and would be quashed. Mr. Islam finally submits that from the materials on record it is clear that since the petitioner is a member of foreign cadre and now posted as consular in Bangladesh High Commission situated at New Delhi, India he has been implicated in this fancy criminal case just to harass and humiliate him and as such the proceedings would be quashed to secure the ends of justice.

Mr. Mintu Kumar Mondal, learned Advocate for opposite party 2 on the other hand opposes the Rule and submits that the charge against the petitioner is yet to be framed and as such this application for quashing the proceedings is prematured one. He then submits that earlier the petitioner filed a miscellaneous case under section 526 of the Code in this division for transferring the case from the Magistracy of Madaripur to any other nearby district and during pending of the aforesaid Rule he has obtained this Rule which cannot be maintained. He further submits that the grounds taken in this application are disputed question of facts which is to be decided in the trial of the case. Since *prima facie* case under section 3 the Ain, 2018 is found against the petitioner in the complaint petition, therefore, the proceedings cannot be quashed. Mr. Mondal finally submits that the claim of the petitioner that 'on receipt divorce notice the complainant has filed this petition case' is a defence material which cannot be considered at this stage to quash the proceedings of the case. In the aforesaid premises, this Rule having no merit would be discharged.

We have considered the submissions of both the sides and gone through the materials on record. It is admitted fact that

the complainant was given in marriage with the petitioner on 17.04.2019 at dower money of Taka 3.00 lac. It is also admitted fact that the petitioner is an officer of foreign cadre and that earlier he was posted in Switzerland now as a consular at New Delhi in India. Opposite party 2 brought allegation in the complaint that after few months of her marriage, the petitioner started misbehaving with her which increased after giving birth to a female child. Lastly while she was at Madaripur on 07.10.2022 with her parents, the petitioner claimed the aforesaid dowry from her and the witnesses heard the demand because she switched on the speaker of her mobile phone.

It is found that in the petition of complaint the complainant did not cite her mobile phone number and that of the accused through which the offence alleged to have been committed. In the case of Major General (Retd) Mahmudul Hasan vs. the State, 52 DLR 612 it has been held that since the identity of caller cannot be proved and as such the continuation of the proceedings shall be abuse of the process of the Court. In the case in hand since there is no phone number in the petition of complaint, we find no reason to proceed with the case. Even the statements made in the petition of complaint is considered

as true there could be no reason of success in the case if evidence is taken.

In the complaint petition, we find that the address of the complainant and petitioner have been shown in Dhaka and Mymensingh respectively but the complaint case has been filed in the Court of Judicial Magistrate, Madaripur stating only that while the accused demanded dowry through phone call the complainant was in the house of one of her relative at Madaripur. In paragraph 8 of this Rule petition, the petitioner made out a specific case of filing the complaint case at Madaripur to take undue advantage against the accused. The case as narrated in the aforesaid paragraph (not to be written here) is found correct because in such a case the learned Magistrate had rejected the petitioner's prayer for bail as it evident from the order passed on 24.08.2023 (annexure-B). The order passed by the Chief Judicial Magistrate, Madaripur on the same day granting bail to the petitioner on condition to revoke the divorce notice dated 17.05.2023 proves the statements made in the aforesaid paragraph true.

In the supplementary affidavit, the petitioner annexed the certificate of divorce annexure-F issued by the competent

authority. It appears in the aforesaid annexure that this petitioner divorced opposite party 2 on 14.05.2023 (sent on 17.05.2023) which was ultimately registered in the *kazi office* on 22.08.2023. The petition of complaint was filed on 05.08.2023, *i.e.*, after service of divorce notice upon the complainant. Mr. Mondal, learned Advocate for opposite party 2 did not disown the authenticity of the aforesaid certificate but he argued that this is a defence material and relying such document this case cannot be quashed. We do not accept his submission because this is a public document and it appears that the complaint case has been filed in Madaripur after service of divorce notice upon her only to harass and humiliate the petitioner. Opposite party 2 received the above divorce notice duly which is found in the order dated 24.08.2023 passed by the Chief Judicial Magistrate that the petitioner undertook to revoke the divorce notice dated 17.05.2023 and the learned Advocate for the complainant did not oppose the application for bail for such undertaking. When the materials on record is sufficient to hold that the complainant received divorce notice and thereafter filed the complaint case against the petitioner, the proceedings cannot be run on the plea that it is defence material

or it is to be proved in the trial. In the case of Rawshan Ara Begum vs. Md. Mizanur Rahman and others, 12 ADC 96 and the State vs. Md. Rafizul Haque, 6 ALR (AD) 90 our Appellate Division disapproved of framing charge or holding trial in a case under section 11(Ga) of the Nari-o-Shishu Nirjatan Daman Ain, 2000 against the husband after divorce of the wife. The aforesaid principle shall apply in this case equally considering the facts of this case that at the time of filing the case the relationship between the husband and wife was not existed. The allegation brought in the petition of complaint is found preposterous and the case has been filed with *malafide* intent only to harass and humiliate this petitioner who has been serving abroad in the foreign cadre. We find no bar in proceeding with quashment application even the miscellaneous case for transfer of district is found pending in this Court. In fact, the Rule issued in the miscellaneous case for transfer was subsequently rejected being not pressed at the instance of the petitioner. Apart from the above fact, the complainant filed another CR Case No.136 of 2024 in the Court of Chief Metropolitan Magistrate, Dhaka against this petitioner alleging that he committed forgery. Learned Magistrate after examining

her under section 200 of the Code rejected the same on 12.02.2024 which proves continuous harassment of the petitioner by opposite party 2.

The proceedings of a complaint case may be quashed at the very initial stage, if it is found that it do not disclose any offence as alleged or even the fact stated therein is considered to be true and trial is held the result would be fruitless. In this case since the allegation is found preposterous and brought with *malafide* intent only to harass and humiliate the petitioner and that the relationship of husband and wife was ceased before filing of the case and the complaint does not disclose any offence of section 3 of the Ain, 2018, we are inclined to quash the proceedings of the case. On the basis of materials on record, we have no hesitation to hold that the instant proceeding is an abuse of the process of the Court and is to be quashed to secure the ends of justice to protect the petitioner from unnecessary harassment. In this regard we can safely rely on the principles of quashing a proceedings as enunciated in the case of Ali Akkas vs. Enayat Hossain and others, 17 BLD (AD) 44 in which the *criterion* for quashing of proceedings laid in the case of Abdul Quader Chowdhury and others vs. the State, 28 DLR

(AD) 38 and Bangladesh vs. Tan Khang Hock, 31 DLR (AD) 69 has been relied upon. In the premises above, we find merit in this Rule.

Accordingly, the Rule is made absolute. The proceedings against the petitioner in CR Case No.737 of 2023 (Madaripur Sadar) now pending in the Court of Chief Judicial Magistrate, Madaripur is hereby quashed.

Communicate the judgment and order to the Court concerned.

A.K.M. Zahirul Huq, J:

I agree.