

Present:  
 Mr. Justice Borhanuddin  
 and  
 Mr. Justice Md. Ruhul Quddus

Criminal Appeal No. 8124 of 2009

Md. Jasim Uddin  
 ...Appellant  
 -Versus-  
 Raqib Mia and others  
 ... Respondents

Mr. Md. Mizanur Rahman, Advocate  
 ... for the appellant

Dr. Rafiqur Rahman with Mr. Hasnat Quaiyum  
 and Ms. Nasima A. Rahman, Advocates  
 ... for respondent Nos.2-3

Judgment on 16.10.2011

*Md. Ruhul Quddus, J:*

This appeal at the instance of a complainant is preferred under section 28 of the Nari-o-Shishu Nirjatan Damon Ain, 2000 against order dated 2.11.2009 passed by the Nari-o-Shishu Nirjatan Damon Tribunal, Narshingdi in Nari-o-Shishu Nirjatan Damon Case No.201 of 2009 rejecting a *naraji* petition filed by the complainant.

Facts relevant for disposal of the appeal, in brief, are that the appellant as complainant filed a petition of complaint being Nari-o-Shishu Nirjatan Damon Case No.201 of 2009 before the Nari-o-Shishu Nirjatan Damon Tribunal, Narshingdi against the respondents alleging *inter alia*, that his daughter Ibana

Akhter Sumi was a minor girl and a student of class-IX at Karimganj Darul Ulum Alim Madrasah within the police station of Raipura. The respondents were unruly young men of the area and used to tease her very often on the way of going to and coming back from the Madrasah. The complainant and his daughter tried to stop them (respondents) in different manner and being failed raised the matter to the Principal of the Madrasah, for which they became furious.

In the above background, the respondents obstructed her on the way of going to the Madrasa on 12.4.2009 at about 9.30 a.m. and violated her modesty. The complainant took initiative for holding a *shalish*, for which they became more furious and hatched up a conspiracy to give him a good lesson. Accordingly the respondents being equipped with *dao*, stick and hockey-sticks obstructed the victim Ibana Akhter Sumi again on 15.4.2009 when she was going to the Madrasah to sit in examination. As her brother Shohan (witness No.2) protested their activities, respondent No.1 Raqib Mia dealt him a *dao* blow causing bloodily injury on him and fracture of his knee-cup. For the latter occurrence, the complainant had lodged Raipura Police Station Case No.11(4)2009, which was pending.

On receipt of the said complaint, learned Judge of the Tribunal examined the complainant and directed the police to enquire into the matter and submit a report within seven days by his order dated 3.5.2009. In compliance therewith, a Sub-Inspector of Police, Raipura Police Station enquired into the matter and submitted a report with a finding that on the self same occurrence Raipura

Police Station Case No.11(4)2009 was pending. The complainant being aggrieved by the said report filed a *naraji* petition on 5.7.2009, upon which the learned Judge of the Tribunal heard the parties and found that the complaint case and the aforesaid Raipura police station case did not arise out of self same occurrence. Thus the learned Judge accepted the *naraji* petition and directed the Officer-in-charge, Raipura Police Station to hold an enquiry by himself within seven days and submit a report to the Tribunal by order dated 18.8.2009. Accordingly the Officer-in-charge of Raipura Police Station held the enquiry and submitted a report on 28.9.2009 with findings as follows:

“ ev`xi Kb`v`K t`c`g w`b`e``t`b`i w`e`l`q` t`K`v`b m`w`K` Z`\_`w`i` c`v`l` q`v` h`v`q` b`v`B`| Z`f`e`  
K`w`i` g`M`b`R` `v`i`"j` D`j`g` g`v` `i`m`v`i` K`i`g`u`U` M`V`b`t`K` t`K`>`^`a` K`w`i` q`v` G`e`s` g`v` `i`m`v` c`w`i` P`v`j` b`v`i`  
w`e`l` q` w`b`q`v` G`j` v`K`v`i` g`t`a`" t`M`v`j` g`v`j` i` w`n`q`v`t`Q` h`v`n`v`i` t`R`i` w`n`t`m`t`e` M`Z` B`s` 15/4/2009`  
Z`w`i` t`L` w`c`i`w`K`t`b` e`w`b`Z` e`v` `x` w`e`e`v` `x`i` g`t`a`" t`M`v`j` g`v`j` n`q`| A`I` w`c`i`w`K`t`b`i` e`v` `x` R`m`x`g`  
D`w`i` b` (t`m`>U`y` m`v`t`n`t`e`i` A`w`f`t`h`v`t`M`i` w`f`w`E`t`Z` i`v`q`c`j`v` \_`v`b`v`i` g`v`g`j`v` b`s` 11` Z`v`s`  
18/4/2009` B`s` a`v`i`v` 143/323/325/326/354/379/307` `t` w`e`t` i`"R`y`n`q` h`v`n`v`  
e`Z`g`v`t`b` w`e`P`r`i`v`a`x`b`| e`Z`g`v`t`b` g`v` `i`m`v` G`j` v`K`v`i` c`w`i` w`-`w`Z` f`v`j`| A`S`0`0`i` A`t`b`K`U`v`B`  
A`e`m`v`b` N`w`J`q`v`t`Q`| B`w`Z`c`f`e`^`g`v` `i`m`v`i` t`M`v`j` g`v`t`j` i` t`R`i` w`n`t`m`t`e` B`s` 15/4/2009`  
Z`w`i` t`L`i` N`U`b`v`i` m`x`o` n`q` Z`f`e` 12/4/2009` Z`w`i` L` w`c`i`w`K`t`b` e`w`b`Z` N`U`b`v`i` t`K`v`b` m`Z`"Z`v`  
c`v`l` q`v` h`v`q` b`v`B`|”

Against the said report the complainant filed another *naraji* petition on 26.10.2009, on receipt of which the learned Judge of the Tribunal heard his learned Advocate and directed him to remain present before the Tribunal on 2.11.2009 along with judicial witnesses. Accordingly, the complainant appeared before the Court on 2.11.2009 and filed *hajira* of eight judicial

witnesses, but the learned Judge did not examine those witnesses and rejected the *naraji* petition accepting the enquiry report filed by the Office-in-charge. Thus the learned Judge rejected the complaint case by order dated 2.11.2009, challenging which the complainant moved in this Court with the instant criminal appeal.

Mr. Mizanur Rahman, learned Advocate for the appellant appeared before us on 23.8.2011 and made his submissions assailing the impugned order. His submissions in brief were that when the learned Judge by his order dated 26.10.2009 directed the complainant to appear before the Tribunal on 2.11.2009 along with the judicial witnesses, it was incumbent upon the Tribunal to examine the said witnesses and pass a decision on the *naraji* petition. Without doing so, the learned Judge accepted the enquiry report furnished by the Officer-in-charge flatly rejecting his *naraji* petition and thereby committed illegality calling for interference by this Court.

On the other hand Dr. Rafiqur Rahman, learned Advocate appearing for respondent Nos.2 and 3 submits that the Nari-o-Shishu Nirjatan Damon Tribunal is creation of a special law namely, Nari-o-Shishu Nirjatan Damon Ain, 2000 and therefore, the Tribunal should be governed strictly by the provisions of the said Ain. He further submits that section 27 of the Ain does not confer any authority upon the Nari-o-Shishu Nirjatan Damon Tribunal to entertain any *naraji* petition. The Tribunal can only accept an enquiry report favouring the accused and discharge them or without accepting the report, can take cognizance of offence against the accused. In that view of the matter, the

learned Judge of the Tribunal did not commit any illegality in rejecting the *naraji* petition without examining the judicial witnesses produced by the complainant.

We have gone through the impugned order and other materials on records. It appears that the learned Judge of the Tribunal in rejecting the *naraji* petition referred to the cases of Abul Kashem Khan Vs. State reported in 56 DLR 435 and Nakib Ashraf Ali alias Ashraf Nakib and another Vs. State and another reported in 14 BLC 527. In those cases two different Benches of the High Court Division consistently held the view that on receipt of a police report, the Tribunal has jurisdiction to direct further investigation or to take cognizance of offence or to discharge the accused by recording its satisfaction, but in any case the Tribunal has no jurisdiction to entertain any *naraji* petition and to hold enquiry by itself. In the first case of Abul Kashem Khan, as cited above, their lordships observed:

*“ 8. It does not appear from the aforesaid provision of section 27 of the Ain that after submission of police report recommending discharge of the accused there was any scope for the informant to submit any naraji petition against such FRT. It, however, conferred jurisdiction upon the Tribunal to take cognizance of an offence under the said Ain by stating grounds, even though FRT was submitted in favour of the accused. In the instant case before us, it is found, before acceptance of the FRT by the Tribunal or before its taking any action on it, the petitioner submitted a naraji petition containing allegations against the police to the effect that*

*FRT was submitted without examination of any witness, while his victim son was not till then recovered. The learned Tribunal, we have mentioned earlier, had the jurisdiction to take cognizance refusing to accept the FRT. He was not required to examine any witness under the law to determine the truth or falsity of the allegation. So, it was beyond the scope of law or the Tribunal to examine such witnesses and record a finding on their statements towards accepting or refusing to accept the FRT. It has also the option, for ends of justice, to direct further investigation in terms of section 18 of the Nari-o-Shishu Nirjatan Daman Ain, 2000 without undertaking any judicial inquiry by itself.”*

This view was affirmed by a different Bench of the High Court Division in the latter case of Nakib Ashraf, wherein their lordships observed:

*“ 13. Though it is well settled that a naraji petition is a fresh complaint, the Tribunal had no jurisdiction to take cognizance of the offence under section 11(Ga)/30 of the Ain against the accused-appellants and another accused on the basis of the naraji petition as before filing of such naraji petition, treated as fresh complaint the police officer did not refuse to accept the complaint being requested. The police officer recorded the case and after investigation submitted police report under section 173 of the Code of Criminal Procedure. The Tribunal did not take cognizance of the offence on the basis of that police report nor directed further investigation on the basis of naraji petition. Thus*

*the Tribunal on receipt of naraji petition acted without jurisdiction directing enquiry to be held by the Magistrate and on receipt of enquiry report taking cognizance of the offence against three accused persons on the basis of naraji petition and enquiry report. In view of the matter under section 27 of the Ain, the Tribunal had no jurisdiction to take cognizance of the offence on the basis of the naraji petition.... Thus the impugned order of taking cognizance of the offence against the accused-appellants and another accused is without jurisdiction and lawful authority.”*

In the present case the Tribunal had accepted an earlier *naraji* petition, which was wrong and this wrong precedence would not confer any jurisdiction upon the Tribunal to entertain another *naraji* petition beyond the scope of law.

From a close reading of section 27 of the Ain and the decisions cited, it is clear that the Tribunal has no jurisdiction to take cognizance of an offence under the Ain except on a report in writing made by a competent police officer, but if the Tribunal, on receipt of a petition of complaint is satisfied that the concerned police officer refused to accept the complaint, will direct enquiry on the complaint to be held by a Magistrate or any other person and then on receipt of enquiry report and if on consideration of such report and petition of complaint is satisfied that there is prima-facie evidence in support of the complaint, may take cognizance of any offence under the Ain against any accused. But the Tribunal itself cannot hold an enquiry or examine any judicial

witness or entertain any *naraji* petition against any enquiry report filed in a complaint case.

Furthermore, it appears from the first information report in Raipura Police Station Case No.11(4)2009 that it was lodged in respect of an occurrence allegedly took place on 15.4.2009 against the same accused by the same complainant, but no reference to the occurrence of the present case which allegedly took place on 12.4.2009 was made in the *ejahar* of that case. It indicates that the allegations made in the present petition of complaint are afterthoughts.

In view of the above, we do not find any illegality in the impugned order. The appeal, having no merit, is dismissed.

Send down the lower Court records.

Borhanuddin, J:

I agree.