

Present:
Mr. Justice Mohammad Marzi-ul-Huq
and
Mr. Justice Md. Ruhul Quddus

Criminal Revision No.1743 of 1993

Fakir Alamgir Hossain

... Petitioner

-Versus-

The Deputy Commissioner, Dhaka and another

... Opposite Parties

No one appears for the petitioner

Mr. Khizir Hayat, D.A.G. with
Mr. Yousuf Mahmud Morshed, A.A.G.

...for Opposite Party No.1

Judgment on 5.1.2012

Md. Ruhul Quddus, J:

This Rule at the instance of an accused was issued on an application under section 561A read with sections 439 and 344 of the Code of Criminal Procedure for postponement of the proceedings in C. R. Case No.1233A-1 of 1991 under section 6 (5) of the Muslim Family Laws Ordinance, 1961 pending before the Chief Metropolitan Magistrate, Dhaka and also to examine the legality of judgment and order dated 12.6.1993 passed by the Additional Sessions Judge, Fifth Court, Dhaka in Criminal Revision No.69 of 1992.

Facts relevant for disposal of the Rule, in brief, are that opposite party No.2 Jahanara Khanam filed a petition of complaint being C. R. Case No.1233A-1 of 1991 in the Court of Chief Metropolitan Magistrate, Dhaka against the petitioner on 10.11.1991 bringing allegation of second marriage without her permission. It is pointed out that the complainant was his first wife.

The concerned Court of Metropolitan Magistrate, Dhaka took cognizance of offence against the petitioner and framed charge against him under section 6 (5) of the Muslim Family Laws Ordinance by order dated 11.1.1992. Thereafter, the petitioner filed an application for staying all further proceedings of the case till disposal of Family Suit No.178 of 1991, which was previously instituted by the complainant and was pending before the Second Court of Assistant Judge and Family Court, Dhaka. The petitioner moved the said application for stay (annex-B to the present application) on the ground that at the time of his second marriage, the complainant was a divorcee i.e she was no more his wife and this material issue was to be adjudicated in the suit first. The Metropolitan Magistrate by order dated 9.2.1992 rejected the said application, against which the accused-petitioner filed Criminal Revision No.69 of 1992 before the Sessions Judge, Dhaka.

The Additional Sessions Judge, Fifth Court, Dhaka ultimately heard the said criminal revision and rejected the same by his judgment and order dated 12.6.1993 and thereby affirmed order dated 9.2.1992 passed by the Metropolitan Magistrate. In that event, the accused-petitioner moved in this Court with the present application under section 561A read with sections 439 and 344 of the Code of Criminal Procedure, obtained the Rule and an ad-interim order staying all further proceedings in C. R. Case No.1233A-1 of 1991.

This criminal revision has been appearing in the cause list for several days with name of the Advocate for the petitioner. Today it is taken up for hearing, but no one appears either to press the Rule or to apprise us the present position of the family suits referred to in the application before us.

Mr. Khizir Hayat, the Deputy Attorney General appearing for opposite party No.1 submits that the petitioner miserably failed to make out a case

and show any reasonable cause as contemplated under section 344 of the Code of Criminal Procedure and therefore, the Rule is liable to be discharged.

We have gone through the revisional application and the documents submitted therewith including the impugned judgment and order. It appears from the application that the petitioner has taken a ground that the complaint case has got direct bearing upon the two family suits on self-same matter and in order to avoid conflicting decisions, the Courts below ought to have postponed the complaint case. But it does not appear from anywhere of the records that the petitioner had divorced his first wife before his second marriage allegedly took place on 26.4.1991. Therefore, the said ground has no leg to stand.

It further appears that the complainant had withdrawn from Family Suit No.178 of 1991 and instituted Family Suit No.194 of 1992 afresh. Since stay of the complaint case was sought for on the ground of pendency of Family Suit No.178 of 1991, the instant Rule has become infructuous with withdrawal of the said suit. Moreover, the plaint in Family Suit No.178 of 1991 and that of Family Suit No.194 of 1992 have not been annexed to show that the issues involved in the cases are co-related.

By now it is well settled that mere pendency of an earlier civil suit is no ground to stay proceedings in a subsequent criminal case. The Court is to take into consideration all the relevant facts and circumstances including the nature of allegations and the points involved in the cases. Adjournment of a criminal proceeding *sine die* against the policy of criminal law. No stay in respect of a criminal proceeding should be granted *sine die* or for indefinite period on the plea of pendency of a civil suit. It is of great public importance that an accused should be brought to trial as early as possible [reliance placed on 7 BCR (AD) 165, 4 BLD 319 = 4 BCR 214]. In the present case

the Rule was issued and stay was granted on 21.11.1993 i.e. nearly nineteen years before. During this long period the petitioner did not take any step to get the Rule heard.

In view of the above discussion, we do not find any substance in the Rule. There is no illegality in the impugned judgment and order dated 12.6.1993.

In the result, the Rule is discharged. The stay granted at the time of issuance of the Rule is vacated.

Communicate a copy of this judgment to the Court of Chief Metropolitan Magistrate, Dhaka.

Mohammad Marzi-ul-Huq, J:

I agree.