

Present:

Mr. Justice Mohammad Marzi-ul-Huq
and

Mr. Justice Md. Ruhul Quddus

Criminal Misc. Case No.17012 of 2006

Lavlu Gazi

... Petitioner

-Versus-

The State and another

... Opposite Parties

No one appears for either of the parties

Judgment on 22.2.2012

Md. Ruhul Quddus, J:

This Rule at the instance of the principal accused was issued on an application under section 561A of the Code of Criminal Procedure for quashment of the proceedings in Nari-o-Shishu Case No.119C of 2006 arising out of Miscellaneous Petition No.221 of 2006 pending in the Nari-o-Shishu Nirjatan Damon Tribunal, Khulna.

Facts necessary for disposal of the Rule, in brief, are that the petitioner's wife Monira Parvin (herein Opposite Party No.2) filed a petition of complaint before the Nari-o-Shishu Nirjatan Damon Tribunal, Khulna on 21.5.2006 bringing allegation of physical assault on demand of dowry and attempt to kill her by pouring poison at her mouth against the petitioner

and others. The said complaint was numbered as Miscellaneous Petition No.221 of 2006.

In a judicial enquiry, the Upazila Magistrate, Kaira, Khulna examined five witnesses and submitted his report on 2.7.2006 with findings of prima facie truth in the allegations. In the report, the Magistrate also mentioned that none of the witnesses stated whether they approached the concerned police station for lodgment of any *ejahar*. On receipt of the said report, learned Judge of the Tribunal by his order dated 4.7.2006 took cognizance of offence against seven accused including the petitioner under sections 11 and 30 of the Nari-o-Shishu Nirjatan Damon Ain (herein called the *‘Ain*) and proceeded with the case.

The petitioner and some other co-accused voluntarily surrendered before the Tribunal and filed an application for bail. Learned Judge of the Tribunal heard the application, allowed the same in part granting bail to the co-accused, while rejected the prayer for bail of the petitioner by his order dated 31.8.2006 and fixed date for framing charge. In that event, the petitioner moved in this Court with the present application under section 561A of the Code of the Criminal Procedure challenging the entire proceedings in the Nari-o-Shishu Case and obtained an ad-interim order staying all further

proceedings of the case, and also an ad-interim order of bail in his favour.

It appears from the record that the Rule was issued on the ground that no affidavit with regard to non-acceptance of *ejahar* by the concerned police station was filed with the petition of complaint.

We have given our anxious thought over the matter and meticulously examined the record. Order No.1 dated 21.5.2006 (annexóD to the supplementary affidavit) speaks that the learned Judge of the Tribunal had examined the complaint along with papers including an affidavit, while sent the petition for judicial enquiry. It appears from order No.2 dated 4.7.2006 that the learned Judge of the Tribunal examined the judicial enquiry report, petition of complaint and an affidavit. In order No.3 dated 31.8.2006 (annex-C to the application) reference to an affidavit was made. From the statements recorded by the Upazila Magistrate in course of his enquiry (Annex-B series to the application), it appears that the judicial witnesses including the victim-complainant are completely silent on whether she had approached the concerned police station to lodge any *ejahar* before filing the petition of complaint. In course of recording her statement, no question to that effect was put towards her (victim-complainant). Therefore, it cannot be said readily that she did not approach the concerned police station. Her silence does not mean that she did not do so, especially

when there is repeated reference to an affidavit in the order sheet indicating that she approached.

In the present case, charge has not yet been framed. If there is no affidavit in compliance with section 27 (1 Ka) of the Ain, or that the prosecution materials are not that much satisfactory to proceed against the petitioner or any of the accused, they can file a proper application at the time of framing charge. But in any view of the matter the proceedings, where the petition of complaint discloses specific allegations against the petitioner, cannot be quashed at this stage.

We also do not find that the Tribunal in taking cognizance of offence against the petitioner has ever misused the process of Court, or that continuance of the proceedings in the present case would defeat justice.

In the result, the Rule is discharged. The order of stay granted at the time of issuance of the Rule is hereby vacated. The petitioner will, however, remain on bail till disposal of the case under the same bail bond furnished earlier. The concerned Nari-o-Shishu Nirjatan Damon Tribunal, Khulna is directed to proceed with the case in accordance with law.

Mohammad Marzi-ul-Huq, J:

I agree.