

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

Criminal Appeal No. 4618 of 2005

Sabina Akhter alias Moli
í Appellant
-Versus-
The State
... Respondent

No one appears for the appellant

Mr. Yousuf Mahmud Morshed, A.A.G.
í for the respondent

Judgment on 30.1.2012

Md. Ruhul Quddus, J:

This appeal under section 28 of the Nari-o-shishu Nirjatan Damon Ain, 2000 at the instance of a victim is directed against order dated 17.10.2005 passed by the Nari-o-Shishu Nirjatan Damon Special Tribunal No.2, Dhaka rejecting an application for her release from safe custody or to go under custody of her father in Criminal Miscellaneous Case No.353 of 2005 arising out of Uttara Police Station Case No.51 dated 28.9.2005 corresponding to G.R. No.517 of 2005 under sections 7 and 30 of the said Ain.

Facts leading to this appeal, in brief, are that the informant Md. Abdul Hai, father of the victim lodged an *ejahar* with Uttara Police Station against four accused parsons, bringing allegations of abduction of his daughter Sabina Akter Moly, a girl of 17 years and student of 1st year, Uadyan School and College, Uttara, Dhaka on 25.9.2005 at about 9 a.m.

Police recorded the case and started investigation. During investigation, police rescued the victim on 2.10.2005 and produced her before the Magistrate of first class, Dhaka, wherefrom she was sent to safe custody. Thereafter, the victim filed an application being Criminal Miscellaneous Case No.353 of 2005 before the Nari-o-Shishu Nirjatan Damon Tribunal for her release from safe custody or allow her to go under custody of her father or mother.

Learned Judge of the Nari-o-Shishu Nirjatan Damon Tribunal No.2, Dhaka ultimately heard the application and rejected the same by his order dated 17.10.2005. Against the said order, the victim herself moved in this Court with the instant criminal appeal.

This appeal has been appearing in daily cause list for several days with name of the Advocate for appellant. Today it is taken up for hearing, but no one appears either to press the appeal or to apprise us the present position of the case.

Mr. Yousuf Mahmud Morshed, learned Assistant Attorney General appearing for the State does not oppose the appeal.

We have gone through the materials on record including the impugned order. It appears that at the time of admission of appeal, this Court passed an ad-interim order on 8.12.2005 directing release of the victim-appellant under custody of her father.

In the present case, the victim has been claimed by her father to be a girl of 17 years. Her actual age can be determined in due course of trial. But in both the cases, if the victim is a minor, her father being legal guardian is entitled to her custody and in case she is a major, she has every right to go with her father. Besides that, this appeal is pending for more than last six years. In the mean time the victim definitely has attained to majority.

The impugned order shows that learned Judge of the Tribunal rejected the application on the ground that investigation of the case would be hampered, if she was allowed to go under her father's custody. In doing so, learned Judge of the Tribunal did not assign any reason. We do not find any reason as to why the victim's custody under her father would impair the investigation.

In view of the above, we hold that the impugned order should not sustain in law and as such it is liable to be set aside.

In the result, the appeal is allowed. The impugned order dated 17.10.2005 passed by the Nari-o-Shishu Nirjatan Damon Special Tribunal No.2, Dhaka in Criminal Miscellaneous Case No.353 of 2005 is hereby set aside. The victim girl Sabina Akhter alias Moli will remain under custody of her father or anywhere at her choice till disposal of the Case, if the case is still pending.

Communicate a copy of the judgment.

Mohammad Marzi-ul-Huq, J:

I agree.