

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

Criminal Appeal No. 4653 of 2005

Shah Md. Saiful Alam alias Liton and another
õ Appellants
-Versus-
The State
... Respondent

Mr. M. A. Wahab, Advocate
... for the appellants

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

Judgment on 2.2.2012

Md. Ruhul Quddus, J:

This appeal under section 28 of the Nari-o-Shishu Nirjatan Damon Ain, 2000 at the instance of two accused is directed against order dated 3.5.2005 passed by the Nari-o-Shishu Nirjatan Damon Tribunal No.5, Dhaka framing charge against the accused-appellants under section 6(1) of the said Ain on rejection of their application for discharge in Nari-o-Shishu Case No.98 of 2004 arising out of Mirpur Police Station Case No.80 (9) 03 corresponding to G. R. No.3910 of 2003.

Facts leading to this appeal, in brief, are that the victim Shahida Begum filed a petition of complaint before the Nari-o-Shishu Nirjatan Damon Tribunal, Dhaka against the appellants bringing allegation of sexual harassment, attempting to rape and violation of her modesty, and also apprehending kidnap of her husband Md. Kamruzzaman.

On receipt of the said complaint, learned Judge of the Tribunal sent it to Mirpur Police Station for recording an *ejahar* and to investigate the case by Criminal Investigation Department (in brief CID) of Police. Accordingly, the Police recorded the case as Mirpur Police Station Case No.80(9)03.

The CID of Police, after investigation submitted final report in favour of the appellants. Taking objection thereto, the victim-informant filed a *naraji* petition, on which the learned Judge of the Tribunal passed an order of judicial enquiry to be conducted by a Magistrate. The Magistrate held judicial enquiry and submitted a report with finding of prima-facie truth in the allegation. On receipt of the said report, learned Judge took cognizance of offence against the appellants under section 10(1) of the Ain and proceeded with the case.

Thereafter, the appellants filed an application before the Nari-o-Shishu Nirjatan Damon Tribunal for their discharge from the case. Learned Judge of the Tribunal heard the application, rejected the same and framed charge against the appellants under section 10(1) of the Ain by order dated 3.5.2005 giving rise to the instant criminal appeal.

Mr. M. A. Wahab, learned Advocate appearing for the appellants submitted that they have been falsely implicated in the present criminal case out of a civil dispute with one Nurunnabi Chowdhury. The CID of Police had thoroughly investigated into the allegations and submitted final report in their favour. The informant's husband Md. Kamruzzaman himself made a statement before the Chief Metropolitan Magistrate, Dhaka stating that he was not kidnapped. Thus the prosecution materials are not satisfactory to proceed against the appellants and therefore, the impugned order of framing charge against them is liable to be set aside and they are entitled to be discharged from the case.

On the other hand, Mr. Yousuf Mahmud Morshed, learned Assistant Attorney General appearing for the State-respondent

submitted that the impugned order does not suffer from any illegality and as such the appeal is liable to be dismissed.

We have gone through the materials on record including the impugned order. It appears from the *ejahar* that there are specific allegations of commission of offence under section 10(1) of the Ain against both the appellants. The final report annexed with the application for stay shows that the victim-informant was a maid-servant at the house of appellant No.2. Both the appellants are police personnel. It is very unusual that a maid-servant would dare to file a false case against her master, who belongs to police. A statement made by one Kamruzzaman has also been annexed with the application, from the text of which it does not appear that author of the said statement and husband of the informant is same person. The address of the said Kamruzzaman is also different from that in the *ejahar*.

No copy of the *naraji* petition or judicial enquiry report has been filed to see the nature of allegation made in the *naraji* and the findings of judicial enquiry, upon which cognizance was taken against the appellants. We brought it into notice of Mr. M. A. Wahab, learned Advocate for the appellants, but he also failed to produce those materials before us.

Both the appellants are police personnel. So the report submitted by a department of Police namely, the Criminal Investigation Department may not reflect the truth. In such a position, the accused should not be discharged on the basis of only a final report, objecting which a there is *naraji* petition and judicial enquiry report with findings of *prima facie* truth of the allegations against the appellants. Learned Judge of the Tribunal framed charge against the accused on the basis of materials available before him.



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We do not find any illegality in the order challenged. Under the facts and circumstances the appeal merits no consideration and is liable to be dismissed.

Accordingly, the appeal is dismissed. The impugned order dated 3.5.2005 passed by the Nari-o-Shishu Nirjatan Damon Tribunal No.5, Dhaka in Nari-o-Shishu Case No.98 of 2004 is hereby maintained. The order of stay dated 26.1.2006 passed at the time of admission of this appeal is vacated. The Tribunal concerned is directed to proceed with the case in accordance with law.

Communicate a copy of the judgment.

Mohammad Marzi-ul-Huq, J:

I agree.