

Present:

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

Criminal Revision No.2206 of 2005

Foyzar Ali Fakir alias Foyzar Fakir

... Petitioner

-Versus-

The State

... Opposite Party

Mr. A.Y. Mashiuzzaman with Mr. M.G. Mahmud
Advocates

... for the petitioner

Mr. Khizir Hayat, D.A.G.

...for the State-opposite party

Judgment on 26.4.2012

Md. Ruhul Quddus, J:

This Rule at the instance of an accused in a criminal case was issued on an application under section 561A of the Code of Criminal Procedure for quashment of the proceedings in Nari-o-Shishu Nirjatan Damon Tribunal Case No. 479 of 2004 under sections 7 and 30 of the Nari-o-Shishu Nirjatan Damon Ain, 2000 pending in the Nari-o-Shishu Nirjatan Damon Tribunal, Barisal.

Informant Masud Biswas lodged an *ejahar* on 3.5.2004 with Uzirpur Police Station, Barisal against the petitioner and twelve others bringing allegation of abduction of his sister Tamanna Akhter Mili allegedly took place on 2.5.2004. The *ejahar* gave rise to Uzirpur Police Station Case No.2 dated 3.5.2004. The police, after investigation, submitted charge sheet on 23.6.2004 against all the accused under the aforesaid penal sections of the Nari-o-Shishu Nirjatan Damon

Ain (hereinafter called the Ain), wherein the previous reports of the accused were found nil. During investigation the police arrested the petitioner and produced him before the Court, wherefrom he was taken into custody. Subsequently he obtained bail from the Nari-o-Shishu Nirjatan Damon Tribunal, Barisal and moved in this Court with the present application under section 561A of the Code and obtained the Rule with an order of stay.

Mr. A. Y. Mashiuzzaman, learned Advocate appearing for the petitioner submits that earlier the same informant filed Uzirpur Police Station Case No.16 dated 29.1.2004 against the principal accused Zakir Hossain Fakir and his family members allegedly for abduction of the same victim Tamanna Akter Mili. The police report submitted in the said case revealed that there was a love affair between Zakir Hossain Fakir and Tamanna Akhter Mili, out of which they had eloped and got married. During investigation in that case, the victim was examined by a medical board, wherein she was found to be a girl of 17/18 years. But as a matter of fact she was 20 years old and had gone with Zakir Hossain Fakir at her free will. Out of their wedlock, one son named Md. Tanvir Hossain and one daughter named Mim were born on 8.5.2005 and 2.9.2009 respectively. They have been living conjugal life along with their two children with peace and happiness. Since the victim was an adult and had gone with accused Zakir Hossain Fakir at her free will, the foundation of the present criminal case i.e. the allegation of abduction of the victim Tamanna Akhter Mili does not stand. The informant initiated the present criminal case out of long standing family rivalry, which is causing endless harassment and humiliation to the petitioner, his family members including the two innocent children and as such the proceedings should be quashed otherwise to secure the ends of justice.

From our anxiety to do justice, we ask Mr. Mashiuzzaman to produce the victim before this Court. In compliance therewith the alleged victim Tamanna Akhter Mili along with her two children appears before us. On our query, she states that she had gone willingly with her husband Zakir Hossain Fakir and at that time she was 20 years old. Now she has been living in her husband's family and leading a very happy conjugal life. From her Physical appearance she also appears to have been grown adult much before. Learned Advocate for the petitioner also files a supplementary affidavit sworn by the victim Tamanna Akhter Mili in support of her contention.

Mr. Khizir Hayat, learned Deputy Attorney General appearing for the State does not file any counter affidavit, but faintly opposes the Rule and submits that since no charge has yet been framed, the petitioner has ample opportunity to approach the trial Court with an application for his discharge from the case. The application being premature is liable to be rejected.

We have considered the submissions advanced by the learned Advocates of both sides and gone through the application under section 561A of the Code with the documents annexed. The present criminal case has been heard simultaneously with Criminal Miscellaneous Case No.2207 of 2005, wherein a charge sheet submitted in Uzirpur Police Station Case No.16 dated 29.1.2004 has been annexed. That case was also filed by the same informant on the allegation of abduction of her sister Tamanna Akter Mili, who is also victim in the present case. The said charge sheet shows that in a medical examination, the victim was found to be a girl of 17/18 years. It was also revealed that there was a love affair between the victim and the principal accused Zakir Hossain Fakir. Annex-E shows that their marriage was registered on 24.1.2004 before a Marriage

Registrar. Annex-F is an affidavit jointly sworn by the principal accused Zakir Hossain Fakir and his wife the alleged victim Tamanna Akter Mili in support of their love affair, inseparable bondage and willful marriage. In both the documents her age is mentioned as 20 years. Annex-G is a registered conveyance deed showing transfer of 1.30 acres of land in favour of the alleged victim Tamanna Akter Mili by her father-in-law Fayzar Ali Fakir (herein petitioner). Annex-H is another affidavit sworn in on 30.8.2004 by the alleged victim Tamanna Akter Mili stating that she had willingly gone with her husband and was never abducted.

Learned Deputy Attorney General has not challenged the authenticity of the documents referred to above. The informant has also not approached us to oppose the Rule or to challenge the authenticity of the documents. Since these are public documents and its authenticity is not challenged, the Court can take notice of it and consider the same to arrive at a correct decision otherwise to secure the ends of justice despite most of these are defense materials and generally are not considered except in due course of trial.

Beside that the occurrence allegedly took place on 2.5.2004 at about 7.30 p.m, but the *ejahar* was lodged on the next day at about 8.45 p.m. There is no reasonable explanation as to why there was such delay in lodgment of the *ejahar*. There is no recovery of victim in the instant case. It does mean that she has been living still with her husband, the accused Zakir Hossain Fakir.

This is our common experience in many criminal cases under Nari-o-Shishu Nirjatan Ain that when elopement of an unmarried girl takes place, her parents and family members do not accept it easily because of their ego,

honour and reputation and try to give the lover a good lesson. In doing so, they file cases under the Ain implicating his family members and old parents. But our social values do not suggest that parents instigate their son to commit an offence or elope with a girl against the will of her parents. In the present case the petitioner is the father of the principal accused Md. Zakir Hossan. He was 72 years old at the time of occurrence, was arrested by the police and imprisoned in custody for a considerable period.

Under the above facts and circumstances, this Court is satisfied that the victim was an adult, she willingly had gone with the principal accused Zakir Hossain Fakir, their marriage was lawfully solemnized and that out of their wedlock two children were born. The foundation of the present criminal case i.e. the allegation of abduction of the victim thus does not stand and the further proceedings in the case will bring about nothing but harassment and humiliation of some innocent persons. There is no possibility of conclusion of this case with any conviction and therefore, it is quite useless to proceed with the case. Its continuance would be detrimental to the welfare of the children as well and as such it should not be allowed to continue otherwise to secure the ends of justice.

In the result, the Rule is made absolute. The proceedings in Nari-o-Shishu Nirjatan Damon Tribunal Case No. 479 of 2004 pending in Nari-o-Shishu Nirjatan Damon Tribunal, Barisal is hereby quashed.

Communicate a copy of the judgment.

Mohammad Marzi-ul-Huq, J:

I agree.