In the Supreme Court of Bangladesh
High Court Division
(Criminal Miscellaneous Jurisdiction)

Criminal Miscellaneous Case No. 11456 of 2015

In the matter of:
An application under Section 561A of the Code of Criminal Procedure.

In the Matter of :
Mst. Anjuara Khanam @ Anju
é é ..Accused-petitioner
-Versus-
The State and another
é é é é .Opposite parties
Mr. Raquibul Haque Mia with
Md. Mazedul Islam Patwary, Advocates
é For the petitioner
Mr. Md. Harun-ar-Rashid with
Mr. M. Masud Alam Chowdhury, A.A.G
Mr. M.A. Qumrul Hasan Khan, AAG
é For the State

Heard on: 20.5.2015
And
Judgment on: 08.7. 2015

Present:
Mr. Justice M. Moazzam Husain
And
Mr. Justice Md. Ruhul Quddus
And
Mr. Justice Md. Badruzzaman

M. Moazzam Husain, J:

This Rule, at the instance of one of the accused, was issued calling in question the legality of the proceedings in Petition (Nari-o-Shishu) Case No.71 of 2014 u/s 7, 9(1) read with section 30 of the Nari-o-Shishu Nirjatan Damon Ain, 2000, as amended up-to-date now pending in the Nari-o-Shishu Nirjatan Damon Tribunal No.1,

Lalmonirhat. At the opening of the hearing of the Rule before a Division Bench it appeared that the basic question upon which the proceedings was challenged is the question of maintainability of a *naraji* petition within the scheme of section 27 of the Nari-o-Shishu Nirjaton Damon Ain,2000. Since the question already gave rise to conflicting decisions the matter was referred to the Hon'ble Chief Justice for constituting a Full Bench as per Rule 1 of Chapter VII of the Supreme Court of Bangladesh (High Court Division) Rules, 1973 so that the issue may be settled along with other related issues raised by the petitioner. Hon'ble Chief Justice in his turn was pleased to constitute this Bench for the purpose.

Back on facts, it appears that a victim of rape is the complainant. She first approached the local *thana* in order to lodge a complaint but having been refused therefrom took recourse to the second option and filed the instant complaint-petition in the Nari-o-Shishu Nirjatan Damon Tribunal (hereafter referred to as ñthe Tribunalò) No.1, Lamonirhat. In the complaint-petition she said, *inter alia*, that she was a student of Haziganj BM College. On 10.6.2014 after attending classes she made a detour to visit the house of her friend Hosne Ara. On her way back home present petitioner Anjuara took her to Lalmonirhat by persuasion and from there to an unknown house at Rangpur. Other accused including accused Bipul Chandra Barmon, the principal accused, joined them on the way. At Rangpur accused Anju (present petitioner) compelled the victim under threat to stay with accused Bipul in a room at night. As the night advanced Bipul insisted her to have sex with him but failed at the face of resistance. As the night advanced the victim got growingly tired and exhausted under persistent pressure meted out to her. Taking the advantage Bipul finally overpowered and raped her

at late hours of the night. Accused Bipul thereafter stayed in the same room with her following three nights and raped her on several occasions. On 13.6.2014 Bipul went away and remained untraced. He came back on 15.6.14 and took the victim to Dhaka and stayed there in a rented house with the victim as husband and wife. The victim gradually accepted the incident as *fait accompli* but kept pressing the accused to complete the formality of marriage. As the pressure mounted accused Bipul suddenly disappeared leaving her alone in the house. On 15.8.2014 the victim was recovered by her brother from there and brought back home.

The Tribunal having received the complaint- petition sent the same to the Upa Zila Vice-Chairman to inquire and submit report. The Vice-Chairman inquired into and submitted his report against five out of the six persons against whom, according to him, a *prima facie* case was found established. The sixth one is the petitioner whose release from the case was recommended. Soon thereafter a *naraji* petition was filed by the complainant. Learned Judge having heard the parties and perusing the records found a *prima facie* case against the petitioner also. He accordingly rejected the recommendation for release and took cognizance of offence against all the six accused persons named in the complaint petition including this petitioner. Learned Judge while taking cognizance against all the accused made the following observations:

"bv_ chv jvPbvq I mvwnK we ePbvq `Lv hvq h Z` Í cwZ e` b gvgjvi ewn`Yxi Awf hv Mi ev¯Íe cwZdjb N U bvB| এইরূপ Ae¯vq AÎ UvBebv ji wbKU m ÍvmRbK cZxqgvb bv nIqvq Z` ÍKvix KgKZv KZK `wLjx Avmvgx আনজুয়ারা K gvgjvi `vq nB Z Ae¨nwZi mcwik m¤újZ AskUK AMvn¨ Kiv nBj| Ó

The petitioner being the person grossly affected by the order obtained this Rule. The petitioner, in her bid to get the proceedings quashed raised basically three contentions. First**,** there is no scope for *naraji* petition within the scheme of section 27 of the Nari-o-Shishu Nirjaton Damon Ain, 2000 (hereinafter referred to as **"**the Ainò), therefore, the learned Judge, in taking cognizance of the offence on *naraji* petition committed an error of law occasioning failure of justice. Second, *naraji* petition is, for all practical purposes, a fresh complaint, therefore, taking cognizance without examining the complainant u/s 200 of the Code of Criminal Procedure (hereinafter referred to as ñthe Codeò) is illegal. Third**,** had there been scope under clause (1Ka) of section 27(1) for investigation by police or any other specialized agencies having knowledge and experience of investigation truth behind the allegation could have been discovered on sufficient materials and the learned judge would have been satisfied about the innocence of the petitioner and finally, the complaint petition does not disclose any offence, hence, initiation and continuation of the proceeding is nothing but an abuse of the process of court.

Before we embark upon the merit of the contentions it would be apt to turn back on three of the series of decisions handed down by different Benches of this Division touching upon various questions-all, someway or other, relatable to *naraji*.

In ***Abdul Halim (Md) v State***, 60 DLR 393, the victim lodged an information with the local police station alleging commission of rape. After investigation police submitted ófinal reportô (Referred to as such in the Police Regulations Bengal, 1943, when the investigation officer submits report recommending release of any or all of the accused having found no *prima facie* case justifying a sent-

up for trial). The informant filed a *naraji* petition against the final report. Learned Judge of the Tribunal accepted the *naraji* petition and took cognizance of the offence. Trial was held and the accused was found guilty of the offence and accordingly sentenced to suffer imprisonment. In appeal no question of legality as to cognizance taken on *naraji* was directly raised. A Division Bench of this Division while deciding the appeal in the positive did not see anything wrong in *naraji* petition filed in a Nari-o-Shishu Case rather explained the position of final report and *naraji* petition by reference to a number of cases (mostly under the Penal Code decided in the context of the Code of Criminal Procedure) and held that ‘on receipt of *naraji* petition the Tribunal may take cognizance of the offence if it is found reasonable and proper or direct further investigation. (*Underlines are mine*)

Next comes the case of ***Ruma Khatun v Md. Abdun Noor*** (unreported), Cr. Appeal No. 7782 of 2011, a case of rape. The victim having failed to persuade the local *thana* to accept her complaint filed a petition of complaint in the Nari-o-Shishu Nirjaton Damon Tribunal. The Tribunal sent the petition back to the police station for investigation. The investigation yielded negative report recommending release of the accused. The report was responded by a *naraji* petition. Upon the *naraji* petition further investigation was directed. Further inquiry yielded the same result recommending release of the accused. Naraji petition was also filed against the second final report. This time the Tribunal rejected the *naraji* petition and accepted the final report consequently the accused was discharged. A Division Bench of this Division, while disposing of the appeal that was preferred by the complainant, took no exception of *naraji* petition rather in view of the facts disclosed in the *naraji*

petition was satisfied about existence of a *prima facie* case to be tried and held that the Tribunal rejected the *naraji* petition mechanically on the report tainted with bias and in total disregard of the facts that there were enough materials on records, namely, medical report and affidavits sworn by the witnesses in support of the case. (*Underlines are mine*.)

In both the cases courts appear to have dealt with na*r*aji-petitions in a manner as if the same were filed in a case under the Penal Code leaving an impression that, so far *naraji* petition is concerned, there is no difference between cases under the Penal Code and under a special law like Nari-o-Shishu Nirjatan Damon Ain. *Naraji*, in *nari-o-shishu* cases, has thus derived indirect approval in almost all the cases decided by different Benches of this Court as the question of maintainability of *naraji* never came up directly as an issue in the context of the Ain, as it did, in the case of Hafizur Rahman (*infra*).

In ***Hafizur Rahman v State***, (unreported), Cr. Miscellaneous Case No.27249 of 2013, the victim girl approached the local police station with an allegation of rape against the accused. The Officer-in-Charge refused to record a case on the complaint. The Tribunal sent the complaint-petition back to police station with a direction to treat the same as first information report and investigate. Police after investigation submitted final report recommending action against the alleged victim under section 17 of the Ain. This was followed by a *naraji* petition filed by the informant. In this case, amongst others, the question that came to the fore is the question of maintainability of *naraji* petition within the scheme of section 27 of the Ain. A Division Bench of this court upon a comprehensive discussion took the view that in cases initiated upon complaint Tribunal is not

empowered to take cognizance upon *naraji* petition which being redundant in the context of the law. The Court proceeded further to hold that question of examination of the complainant does not arise nor the Tribunal is empowered to send the complaint to police for inquiry and in that view the report submitted by police is no report within the meaning of section 27(1Ka) (Ka) of the Ain. No cognizance, therefore, can lawfully be taken on such report. (*Underlines are mine*).

The cast-iron bar on the competence of the Tribunal to entertain *naraji* petition and of sending complaint petition to the police station with direction to record a case as put in *Hafizur Rahman* has virtually denuded the Tribunal of a time-honored practice recognized by the courts of this sub-continent as a mechanism to cure an otherwise flawed investigation and curtailed the inherent discretion of the Tribunal, as a court, to send the complaint-petition to police station for recording a regular case, should necessity arise. At the same time the judgment not being comprehensively focused on the total scheme of section 27 virtually allowed many other questions, often raised, specially touching upon power of the Tribunal in proceedings initiated on information given to the police station and in proceedings initiated on complaint, *vis-à-vis,* scope of *naraji* in the scheme of section 27, to remain unanswered. Such as, **a)** if cognizance is taken on the report contemplated under sub-section (1) of section 27 is *naraji* maintainable, **b)** is the Tribunal competent to reject the report as aforesaid and direct further investigation or, where expedient, judicial inquiry, **c)** so far as the power of the Tribunal is concerned, is there any difference between the proceedings started on AwfÿhvM (referred to hereinafter as ñFIRò) as contemplated under sub-section (1) and the one started on

AwfÿhvM (shortly, ñcomplaintò) contemplated under clause (1Ka) of sub-section (1), **d)** is the Tribunal powerless in matters of sending back the complaint to the police station even, in its opinion, an investigation should be made **e)** in a case started upon complaint, is the Tribunal bound to be confined to óinquiry-reportô and the ócomplaintô for taking cognizance and devoid of power to take notice of *naraji*.

The Ain is silent about the term ó*naraji'*. So is the case with the Code. But *naraji* is there to play its role as an important tool at the hands of the courts to test the *bona fide* of the police investigation and take necessary correctional measures in order that the true offenders cannot escape trial.

If I am not far wrong, *naraji* is largely a sub-continental phenomenon which owes its origin to the ever declining public confidence in police investigation and found favour with the courts as a document specially focused on the flaws in investigation indicating possible ways to set things right.

Naraji petition, almost without exception, is filed by the informant of a case against the final report recommending release of any or all of the accused named in the first information report as a protest indicating flaws in the investigation and asking either for further investigation or judicial inquiry. In our socio-economic reality, lack of professionalism and susceptibility of the investigating officer to undue influence seems as much likely as to make it difficult for the courts to ignore the objection raised by the informant and rely on the credibility it ideally deserves. *Naraji*, thus, came to be recognized by courts as a safeguard against ill-attempts directed to screening offenders upon extraneous considerations or against an inefficient and perfunctory investigation leaving scope for the

criminals to go scot-free and gradually assumed the status of a fresh complaint by consistent judicial expositions with all the attendant formalities of a complaint petition contemplated in the Code.

Naraji is not to be confused with a partisan document by reason merely of the fact that it owes its origin in the grievance of a party. It is a document that works in aid of the court in its efforts to ascertain the nature and magnitude of the flaws, if any, in investigation and suggests the next course of action in detection mechanism. *Naraji* thus *has* turned into an instrumentality of justice germane to criminal jurisprudence. Curtailing the power of the court to take notice of *naraji* cannot, therefore, be possible without significantly impairing the power of a court to prevent investigation being misdirected with ulterior motive or flawed by inefficiency or inexperience.

With the jurisprudence in mind, let us see whether section 27 of the Nari-o-Shishu Nirjaton Damon Ain, 2000, (as amended upto date) can be construed to exclude *naraji* from its scheme as is sought to be canvassed on behalf of the petitioner. But before we turn to the scheme, we need to have a look through the preamble of the Ain and two other sections having direct bearing upon the issue.

The preamble reads as follows:

> *h nZ bvix I wkï wbhvZbgjK Acivamgn K Vvifv e `g bi D Ï k¨ c qvRbxq weavb cYqb Kiv mgxPxb I c qvRbxq;*

Section 18 of the Ain says:

> *18| Acv ai Z` | (1) d R`wi Kvhwewa Z wfbZi hvnv wKQB _vKK bv Kb, GB AvB bi Aaxb Kvb Acv ai Z` Ñ*
>
> *(K) Awfh³ e¨w³ Aciva msNU bi mg q nv Zbv Z cwjk KZK aZ nB j ev Ab¨ Kvb e¨w³ KZK aZ nBqv cwj ki wbKU mvc` nB j, Zvnvi aZ nBevi ZwiL nB Z cieZx c bi Kvh w`e mi g a¨ m¤úb Kwi Z nB e; A_ev*

(L)AwfhÛ e¨w³ Aciva msNU bi mg q nv Zbv Z aZ bv nB j Zvnvi Aciva msNUb msµv cv_wgK Z_¨ cwß ev ¶ÎgZ, mswkó KgKZv ev Zvnvi wbKU nB Z ¶gZvcvß KgKZv A_ev UvBe¨bv ji wbKU nB Z Z` i Av `k cwßi ZwiL nB Z cieZx IvU Kvh w`e mi g a¨ m¤úb Kwi Z nB e|

(2) Kvb hw³msMZ Kvi Y Dc-aviv (1)-G DwjwLZ mg qi g a¨ Z` Kvh mgvß Kiv m¤e bv nB j, Z` Kvix KgKZv KviY wjwce× Kwiqv AwZwi³ wÎk Kvh w`e mi g a¨ Aciv ai Z` Kvh m¤úb Kwi eb Ges Zrm¤ú K KviY D jL ceK Zvnvi wbq YKvix KgKZv ev, ¶ÎgZ, Z` i Av `k c`vbKvix UvBe¨bvj K wjwLZfv e AewnZ Kwi eb|

(3) Dc-aviv (2)-G DwjwLZ mgqmxgvi g a¨I Z` Kvh m¤cb bv nB j, mswkó Z` Kvix KgKZv DI mgqmxgv AwZGv nBevi Pwe k NUvi g a¨ DI ic Z` Kvh m¤cb bv nIqv m¤c K Zvnvi wbq¤ÎYKvix KgKZv wKsev Z` i Av `k c`vbKvix UvBe¨bvj K wjwLZfv e AewnZ Kwi eb|

(4) Dc-aviv (3) Gi Aaxb Z` Kvh m¤cb bv nIqv m¤c K AewnZ nBevi ci wbq¤ÎYKvix KgKZv wKsev, ¶ÎgZ, Z` i Av `k c`vbKvix UvBe¨bvj D³ Aciv ai Z` fvi Ab¨ Kvb KgKZvi wbKU n¯v i Kwi Z cwi eb Ges D³i c Kvb Aciv ai Z` fvi n¯v i Kiv nB j Z` i fvicvß KgKZv-

(K) AwfhË e¨w³ Aciva msNU bi mgq nv Zbv Z cwjk KZK aZ nB j ev Ab¨ Kvb e¨w³ KZK aZ nBqv cwj ki wbKU mvc` nB j, Z` i Av `k cwßi ZwiL nB Z cieZx mvZ Kvh w`e mi g a¨ m¤cb Kwi eb; A_ev

(L) Ab¨vb¨ ¶ Î Z` i Av `k cwßi ZwiL nB Z cieZx wÎk Kvh w`e mi g a¨ m¤cb Kwi Z nB e|

(5) Dc-aviv (4) G DwjwLZ mgqmxgvi g a¨I Z` Kvh m¤cb Kiv bv nB j, mswkó Z` Kvix KgKZv DI mgqmxgv AwZÎv nBevi Pwe k NUvi g a¨ DI ic Z` Kvh m¤cb bv nIqv m¤c K Zvnvi wbq¤ÎYKvix KgKZv wKsev, ¶ÎgZ, Z` i Av `k c`vbKvix UvBe¨bvj K wjwLZfv e AewnZ Kwi eb|

(6) Dc-avivi (2) ev Dc-avivi (4)-G DwjwLZ mgqmxgvi g a¨ Kvb Z` Kvh m¤cb bv Kivi ¶ Î, Zrm¤c K e¨vL¨v m¤wjZ cwZ e`b chv jvPbvi ci wbq¤ÎYKvix KgKZv wKsev, ¶ÎgZ, Z` i Av `k c`vbKvix UvBe¨bvj hw` GB wmØv DcbxZ nb h, wbawiZ mg qi g a¨ Z` m¤cb bv nIqvi Rb¨ mswkó Z` Kvix KgKZvB `vqx, Zvnv nB j Dnv `vqx e¨wI i A`¶Zv I Am`vPiY ewjqv we ewPZ nB e Ges GB A`¶Zv I Am`vPiY Zvnvi ewlK Mvcbxq cwZ e` b wjwce× Kiv nB e Ges DchË ¶ Î PvKwi wewagvjv Abhvqx Zvnvi wei × e¨e¯nv MnY Kiv hvB e|

(7) Z` cwZ e`b `wL ji ci hw` UvBe¨bvj Z` mswkó Z_¨w` chv jvPbv Kwiqv GB g g m ó nq h, Z` cwZ e` b Avmvgx wnmv e Dwj-wLZ Kvb e¨w³ K b¨vqwePv ii ¯v_ mv¶x Kiv evÃbxq, Z e D³ e¨w³ K Avmvgxi cwie Z mv¶x wnmv e MY¨ Kwievi wb `k w` Z cwi e|

(8) hw` gvgjvi mv¶¨ MnY mgwßi ci UvBe¨bv ji wbKU cZxqgvb nq h, GB AvB bi Aaxb Kvb Aciv ai Z` Kvix KgKZv Kvb e¨wI K Aciv ai `vq nB Z i¶v Kivi D Ï k¨ ev Z` Kv h Mwdjwzi gva¨ g AcivawU cgv Y e¨envi hvM¨ Kvb Avjvgz msMn ev we ePbv bv Kwiqv ev gvgjvi cgv Yi c qvRb e¨wZ i K D³ e¨w³ K Avmvgxi cwie Z mv¶x Kwiqv ev Kvb Mi ZcY mv¶x K cix¶v bv Kwiqv Z` cwZ e`b `wLj Kwiqv Qb, Zvnv nB j D³ Z` Kvix KgKZvi wei × D³ Kvh ev Ae njv K A`¶Zv ev ¶ÎgZ, Am`vPiY wnmv e wPwn Z Kwiqv UvBe¨bvj D³ KgKZvi wbq¤ÎYKvix KZc¶ K Zvnvi wei × h_vh_ AvBbvbM e¨e¯nv Mn Yi wb `k w` Z cwi e|

(9) UvBe¨bvj Kvb Av e` bi cw¶ Z ev Ab¨ Kvb Z_¨i wfwË Z Kvb Z` Kvix KgKZvi cwie Z Ab¨ Kvb Z` Kvix KgKZv wb qv Mi Rb¨ mswkó KZc¶ K wb `k w` Z cwi e| (*underlines are mine*).

Section 25 of the Ain reads as follows:

25| dR`vix Kvhwewai c qvM,BZ¨w`| (1) GB AvB b wfbic wKQ bv _wK j, Kvb Aciv ai Awf hvM `v qi, Z` , wePvi I wb®úwËi ¶ Î dR`vix Kvhwewai weavbvejx c hvR¨ nB e Ges UvBe¨bvj GKwU `vqiv

Av`vjZ ewjqv MY¨ nB e Ges GB AvB bi Aaxb h Kvb Aciva ev Z`bmv i Ab¨ Kvb Aciva wePv i i ¶ Î `vqiv Av`vj Zi mKj ¶gZv c qvM Kwi Z cwi e|

(2) UvBe¨bv j Awf hvMKixi c ¶ gvgjv cwiPvjbvKvix e¨w³ cvewjK cwmwKDUi ewjqv MY¨ nB eb|

There are in all 34 sections in the Ain out of which twelve are penal and rest is procedural. The Ain is in the sense a mixed legislation sought to be made as far as possible self-contained. The preamble of the Ain suggests that the law was enacted in order to effectively curb the crimes against women and children. Under the enabling provisions of section 18(8) the Tribunal, *albeit* after examination of witnesses, may direct the controlling authority of the investigating officer to take necessary action against him, if it is satisfied that he, with intent to shield any offender, refrained from collecting evidence required to be collected or willfully omitted to examine any important witness. Sub-section (9) of the section empowers the Tribunal to issue direction to change the investigating officer and appoint a new one in his place if it finds expedient so to do ó<u>on the basis of an application</u>ô or ó<u>any other information received</u>ô from any source whatsoever. Subject to anything to the contrary appearing in the Ain section 25 makes the provisions of the Code of Criminal Procedure applicable to filing, investigation, trial and disposal of cases under the Ain. Under the section Tribunal is deemed to be a Court of Session and will have all powers of a Court of Session in matters of trial of any offence under the Ain. (*Underlines are mine*).

The aforesaid two sections read with the preamble and limitation clauses of the Ain makes it amply clear that the legislature while making the law has taken adequate care to devise a more effective

mechanism for detection of criminals responsible for commission of offences against women and children and ensure punishment of the offenders through speedier investigation and trial. Furthermore, the Ain has made the Code applicable to filing, investigation, trial and disposal of the *nari-o-shishu nirjatan* cases and as abundant caution has equipped Tribunal with all the powers of the Court of Session in matters of trial of offences under the Ain. Nothing is there indicating exclusion of *naraji* rather the Tribunal is obviously better placed than the Court of Session in matters of control and supervision of investigation so that it enjoys an additional power to take steps for changing the investigating officer on the basis of an application, irrespective of *naraji*, or on information received from any source whatsoever.

Down to section 27, the centerline of the controversy. For ready reference excerpts of the section may profitably be quoted.

> *27| UvBe¨bv j i GLwZqvi | (1) mve-B m c±i c`ghv`v i wb ¯ b nb Ggb Kvb cwjk KgKZv ev GZ` Ï k¨ miKv i i wbKU nB Z mvavi Y ev we kl Av `k Øviv ¶gZvcvß Kvb e¨w³ i wjwLZ wi cvU e¨wZ i K Kvb UvBe¨bvj Kvb Aciva wePviv_ MnY Kwi eb bv |*
>
> *(1K) Kvb Awf hvMKvix Dc-avi v (1)-Gi Aaxb Kvb cwjk KgKZv K ev ¶gZvcvß e¨w³ K Kvb Aci v ai Awf hvM MnY Kwievi Rb¨ Ab iva Kwiqv e¨_ nBqv Qb g g njdbvgv mnKv i UvBe¨bv j i wbKU Awf hvM `wLj Kwi j UvBe¨bvj Awf hvMKvix K ci x¶v Kwiqv-*
>
> *(K) m ó nB j Awf hvMwU AbmÜv bi* (inquiry) *Rb¨ Kvb g¨wR ÷U wKsev Ab¨ Kvb e¨w³ K wb `k c`vb Kwi eb Ges AbmÜv bi Rb¨ wb `kcvß e¨w³ Awf hvMwU AbmÜvb Kwiqv mvZ Kvh w`e mi g a¨ UvBe¨bv j i wbKU wi cvU c`vb Kwi eb;*
>
> *(L) m ó bv nB j Awf hvMwU mivmwi bvKP Kwi eb |*

(1L) Dc-avivi (1K) Gi Aaxb wi cvU cwßi ci Kvb UvBe¨bvj hw` GB gg m ó nq h,

(K) Awf hvMKvix Dc-avivi (1) Gi Aaxb Kvb cwjk KgKZv K ev ¶gZvcvß e¨wl K Kvb Acivai Awf hvM MnY Kwievi Rb¨ Ab iva Kwiqv e¨_ nBqv Qb Ges Awf hv Mi mg_ b cv_wgK mv¶¨ cgvY Av Q mB ¶ Î UvBe¨bvj DI wi cvU I Awf hv Mi wfwË Z AcivawU wePviv_ MnY Kwi eb;

(L) Awf hvMKvix Dc-avivi (1) Gi Aaxb Kvb cwjk KgKZv K ev ¶gZvcvß e¨wl K Kvb Acivai Awf hvM MnY Kwievi Rb¨ Ab iva Kwiqv e¨_ nBqv Qb g g cgvY cvIqv hvq bvB wKsev Awf hv Mi mg_ b Kvb cv_wgK mv¶¨ cgvY cvIqv hvq bvB mB ¶ Î UvBe¨bvj Awf hvMwU bvKP Kwi eb;

(1M) Dc-avivi (1) Ges (1K) Gi Aaxb cvß wi cvU Kvb e¨wl i wei × Acivai msNU bi Awf hvM ev Zrm¤c K KvhÎ g Mn Yi mcwik bv _vKv m ZI UvBevbvj, h_vh_ Ges b¨vqwePv ii ¯v _ c qvRbxq g b Kwi j, KviY D jLceK DI e¨wl i e¨vcv i mswkó Acivai wePviv_ MnY Kwi Z cwi eb|

(2) *** *** *** *** *** ***

(3) *** *** *** *** *** ***

(*Underlines are mine)*

A plain reading of the section suggests that cognizance can be taken through two procedures: one upon report submitted by ópoliceô or by óan authorized personô and another upon inquiry- report submitted by the óMagistrateô or óany other personô assigned by the Tribunal so to do. Within the scheme of section 27 a proceedings under the Ain should ordinarily be initiated by lodging information in the police station. The second or, more appropriately, the alternative procedure sets in by default with a complaint-petition directly filed in the Tribunal subject to refusal by a police officer to accept the same. Sub-section (1), providing the first procedure, read with section 25 suggests that the Tribunal has been clothed with

power wide enough to cover all the power of a Magistrate and of the Sessions judge rolled together in ignoring investigation-report with concomitant power to entertain *naraji* and sending back the case for further investigation or, (where practicable) judicial inquiry. Sub-section (1) and (1Ga) of section 27 read with section 18 goes to show that the Tribunal is further equipped with power more robust than that of an ordinary criminal court in taking cognizance absolutely on its own satisfaction, *albeit* by assigning reason, gathered from any materials, irrespective of *naraji*, or information received in disregard of the final report submitted by police or the person authorized by the Government in this behalf. The enormously unqualified power of the Tribunal to take cognizance of offences on its own satisfaction in total disregard of everything means by necessary implication that the Tribunal enjoys power to take into consideration anything including the naraji-petition for its satisfaction without any formality attached to it in general law.

While draftsmanship went halfway through well enough in dressing-up the Tribunal with powers in keeping with legislative policy to effectively suppress the ever increasing offences against women and children the drafters suddenly lapsed into contextual oblivion and embarked upon a drastic cut-back on power depriving the Tribunal of its important armory required for detection of crime and the criminals : a new segment of provisions including clauses (1Ka) to (1Kha) were engrafted in section 27 introducing procedure of cognizance to be taken on report submitted by a Magistrate or any other person assigned by the Tribunal so to do, on materials collected through ôinquiryô apparently leaving no scope for the Tribunal to make a direction for ôinvestigationô by police or other specialized investigating agencies, even in the peculiar facts of the

case, the Tribunal is of the opinion that nothing less than an investigation is enough to discover the truth behind the offence. This paradigm shift taken through semantically incoherent provisions has practically given rise to two types of prosecutions in similar cases: one equipped with adequate materials collected through investigation conducted by professional investigators leaving the other only with a report submitted by a Magistrate or any other person assigned by the Tribunal, almost without any exception, prepared on statements made by a handful of witnesses and the complaint, that too, if the report does support the allegations made in the complaint. In any case, if inquiry-report does not support the allegations made in the complaint the Tribunal is left with only complaint, nothing else as prosecution materials upon which trial may be held -an occasion in which success of prosecution may hardly, if ever, be expected. The textual shift or error fairly attributable to inept draftsmanship in effect divided the victims into clear two classes: fortunate and unfortunate. The victim whose case is accepted by police is fortunate as the trial, if any, would be held on enough materials collected through investigation whereas the one whose complaint was not accepted by police would have to depend on prosecution-materials at best comprising of statements of few witnesses recorded by Magistrate/ any other person and the complaint-petition, *a fortiorari*, if the report so submitted lends support to the complaint-version**.**

Save as the exception made in clauses (1Ka) and (1Kha) of sub-section (1) of section 27 the phraseologies regained its contextual upbeat just from the next section, namely, section 28, which says, *inter alia*: ó any party aggrieved by an order, judgment or sentence passed by the Tribunal may prefer an appeal in the High Court

Division against the order, judgment or sentence adversely affecting him or her which by its plain meaning suggests that the Ain, unlike the Code, did not limit the right to appeal only to the formal parties of the case instead has widened the same to the extent of persons directly affected by the order passed or any decision taken by the Tribunal exactly in keeping with the overriding power otherwise vested in the Tribunal.

The reason for sudden exclusion of investigation and drastic curtailment of power of the Tribunal made by clauses (1Ka) and (1Kha) is nothing but refusal of ôa police officerô or an authorized person to receive the complaint alleging cognizable offences (all offences under the Ain are cognizable) where such refusal by police, without lawful excuse, is itself a misconduct. The apparent ineptitude of the drafters in harmonizing the provisions with the context even with sub-section (1) of section 27 has not only stood in contrast with the legislative intent but also begged the question mooted here and many more crowding the courts with avoidable litigations. We think it apt to carve out the exclusionary clauses from section 27 (already quoted) and reproduce here once again for a ready glance.

> *(1K) Kvb Awf hvMKvix Dc-aviv (1)-Gi Aaxb Kvb cwjk KgKZv K ev ¶gZvcvß e¨w³ K Kvb Aciv ai Awf hvM MnY Kwievi Rb¨ Ab iva Kwiqv e¨_ nBqv Qb g g njdbvgv mnKv i UvBe¨bv j i wbKU Awf hvM `wLj Kwi j UvBe¨bvj Awf hvMKvix K cix¶v Kwiqv-*
>
> *(K) m ó nB j Awf hvMwU AbmÜv bi* (inquiry) *Rb¨ Kvb g¨wR ÷U wKsev Ab¨ Kvb e¨w³ K wb `k c`vb Kwi eb Ges AbmÜv bi Rb¨ wb `kcvß e¨w³ Awf hvMwU AbmÜvb Kwiqv mvZ Kvh w`e mi g a¨ UvBe¨bv j i wbKU wi cvU c`vb Kwi eb;*
>
> *(L) m ó bv nB j Awf hvMwU mivmwi bvKP Kwi eb|*

(1L) Dc-avivi (1K) Gi Aaxb wi cvU cwßi ci Kvb UvBe¨bvj hw` GB g g m ó nq h,

(K) Awf hvMKvix Dc-avivi (1) Gi Aaxb Kvb cwjk KgKZv K ev ¶gZvcvß e¨wl K Kvb Aciv ai Awf hvM MnY Kwievi Rb¨ Ab iva Kwiqv e¨_ nBqv Qb Ges Awf hv Mi mg_ b cv_wgK mv¶¨ cgvY Av Q mB ¶ Î UvBe¨bvj DI wi cvU I Awf hv Mi wfwË Z AcivawU wePviY_ MnY Kwi eb;

(L) Awf hvMKvix Dc-avivi (1) Gi Aaxb Kvb cwjk KgKZv K ev ¶gZvcvß e¨wl K Kvb Aciv ai Awf hvM MnY Kwievi Rb¨ Ab iva Kwiqv e¨_ nBqv Qb g g cgvY cvIqv hvq bvB wKsev Awf hv Mi mg_ b Kvb cv_wgK mv¶¨ cgvY cvIqv hvq bvB mB ¶ Î UvBe¨bvj Awf hvMwU bvKP Kwi eb;

(*Underlines are mine)*

If we take a bit of pains in reading through the provisions particularly of sub-clauses (Ka) of both the clauses (1Ka) and (1Kha) of sub-section (1) we notice a legal obligation created for the Tribunal to take recourse to ôinquiryô for collection of evidence without leaving option for investigation to put in place, in case it is needed. This means the Tribunal, which was supposed to be fortified by power more robust than usual, is relegated to a position weaker than that of a Magistrate who, in the circumstances, can direct the police to treat the complaint as first information report and investigate. The proposition upon which the Tribunalôs discretion exercised *ex debito justiciae* is curtailed stands sharply opposed to criminal jurisprudence. Secondly, sub-clause (Ka) of clause (1Ka) and sub-clause (Ka) of clause (1Kha) read together may fairly be taken to mean that the Tribunal is confined to the report submitted by a Magistrate or any other person in taking cognizance and holding trial on the basis of aforesaid two documents. It is totally unclear how on earth a clueless, secret or mysterious crime which needs in-depth investigation by professional investigator or an

specialized agency for detection can be detected by a Magistrate, more so, through ónquiryô within the meaning of the Code and for that matter how the Tribunal, meant to be instrumental to curbing dreadful, organized and sometimes high-tech crimes against women and children, will proceed with trial depending on the meager materials, if any, that can be collected within the limit of ónquiryô by a Magistrate or any other lay person as indicated in the law.

The apparent power imbalance between the two segments of section 27 created by textual shift has made room, amongst others, for argument that in the scheme of section 27, at least so far as it relates to the alternative procedure, there is no scope for *naraji*.

The Ain being a social defense legislation (as the similar statutes are often so called) the Tribunal created under it is designed to effectively curb the growing crimes against women and children by ensuring flawless investigation or (where practicable) inquiry and speedy trial. No contextually defiant and discordant phrases, expressions and terminologies found place in the law, however clear in meaning, cannot be put to strict literal construction divorced from context, without betraying the cause of the legislation. It is precisely for the reason, sub-clauses (Ka) of both clauses (1Ka) and (1Kha) need be put to strained construction so as to be synchronized with the rest of the statute for that matter the purpose of the Ain. Any otherwise a number of absurd and illogical consequences is bound to follow. **First,** if the report is in the negative the Tribunal would be left with no materials except the complaint to decide the fate of the case. Thus a hardened criminal committing the offence alleged may find an easy exit to walk away from punishment or even trial. **Second**, making the Tribunal confined to two documents only would invariably enhance the importance of the report and thereby render

the inquiry more susceptible to undue influence often difficult to ward off resulting in miscarriage of justice. **Third**, Tribunalôs power as a court to circumvent the vices of inquiry with the help of other materials, like *naraji*, or any information received would be significantly impaired for no good reasons. **Finally**, and most importantly, the opinion of the Tribunal would be subjected to the opinion of the inquiry- officer if the Tribunal is bound down to the inquiry-report-a proposition unknown to criminal jurisprudence.

Furthermore, in the alternative procedure the proceedings is basically dependant on óinquiryô as against óinvestigationô where there is no arrest, interrogation, police dossier, case diary, *alamats*, expert opinion, inquest, post-mortem reports etc. *Naraji,* in the circumstances, remains to be the most crucial document for the Tribunal to test the credibility of the inquiry-report. Strict literal interpretation of a contextually inconsistent provision and/or expression seeking to exclude *naraji* is, therefore, too ingenious to be accepted.

One of the basic principles of common law is, law should serve the public interest. By the same strain, Parliament, as a body representing the people, is presumed not to intend absurd or illogical result from the applications of its enactments. Consequently, interpretation of statute finally turns on discovery of the intention of legislature. In this juncture I might well borrow the words of Fancis Bennion in ***Understanding Common Law Legislation: Drafting & Interpretation*** *(First Indian Reprint, 2004, Page 39-41):* óThe historic purpose of statutory interpretation is to arrive at the presumed intention of the legislators in promulgating the enactmentéé The so-called literal rule of interpretation nowadays dissolves into a rule that the text is the primary indication of

legislative intention...There are occasions when, as Baron Parke said, the language of the legislature must be modified to avoid inconsistency with its intentioné There are four reasons which justify stretching the literal meaning 1) where consequences of applying a literal construction are so obviously undesirable that Parliament cannot really have intended them 2) an error in the text which falsifies Parliamentôs intention 3) a repugnance between the words of the enactment and those of some other relevant enactments and 4) changes in external circumstances since the enactment was originally drafted.ô

Decisions of the superior courts of the common law world including our sub-continent reflecting the aforesaid principles abound the pages of law reports. The following are but few:

In ***Attorney General for Canada v Hallet & Carey Ltd***. [1952] AC 427, it is held that- óOf all the rules of interpretation, the paramount rule remains, laws should be construed to carry out the intention of legislature,ô and where in the ordinary grammatical meaning of the words legislative intent is missing it must be construed by reference to the context of the whole Act. In the words of Francis Bennion occurring in ó*Understanding Common Law Legislation*ô (*supra*, page 50):

> *'Where the literal meaning of the enactment goes narrower than the object of the legislator, the court may need to apply rectifying construction widening that meaning. Nowadays it is regarded as not in accordance with legal policy to allow a drafter's ineptitude to prevent justice (sic) being done and the legislator's intention implemented'*

In ***SA Haroon v Collector of Customs,*** 11 DLR (SC) 200, Pakistan Supreme Court held:

> *"All rules of interpretation have been devised as aids to the discovery of the legislative intents behind an enactment. Where the words are plain and unambiguous, that intent can best be judged by giving full effect to the ordinary grammatical meaning of those words. But when this is not the case an attempt should be made to discover the true intent by considering the relevant provisions in the context of the whole Act in which it appears and by having regard to the circumstances in which the enactment came to be passed. The previous state of law, the mischief sought to be suppressed and the new remedy provided are relevant factors to be given due consideration*ò

In a relatively recent case, ***K Anbazhagan v Superintendent of Police****, AIR 2004 SC 524,* Indian Supreme Court observed:

> *"Every law is designed to further the ends of justice and not to frustrate it in technicalities. The court should construe a statute to advance the cause of the statute not to defeat it."*

Apart from what is said above, strict literalism, one of the principles of statutory interpretation deeply rooted into the parliamentary supremacy in England, is difficult to be fitted into our constitutional dispensation, even though the language of law is clear beyond doubt but produces absurd and illogical result. Here in our jurisdiction Constitution is supreme and every piece of legislation made by Parliament must follow the parameters of the American due

process principles enshrined in Art.31, in order to qualify as law as well as being enforceable by the Supreme Court. Law, therefore, cannot travel far beyond its context and afford to be arbitrary, discriminatory or unreasonable yielding absurd and illogical consequences. When purpose of the enactment is clear strained construction may legitimately be put to any expression or phrase used inadvertently. It is held in ***Sutherland Publishing Co. v Caxton Publishing Co***. *[1938] ch 174,* tható- ó Where the purpose of an enactment is clear, it is often legitimate, to put a strained interpretation upon some words which have been inadvertently usedô Reverting to Bennion: ñ The truth is that, sometimes the argument against a literal construction are so compelling that even though the words are not, within the rules of language, capable of another meaning they must be given oneò. [***Understanding Common Law Legislation,*** *supra p 43*]. Since the enactments in question apparently go narrower than the purpose of the law we have no hesitation to reject the contentions built upon strict literalism in interpretation totally isolated from the context. The language of clauses (1Ka) and (1Kha) must, therefore, be harmonized with the rest of the statute and be construed to include power not only co-equal with powers provided by section 27(1) but also the Tribunal must be taken to include powers to take notice of *naraji* as well as all other powers incidental to carrying out the purpose of the Ain.

Be that as it may, the controversy is set at naught by clause (1Ga) of section 27 which spelt out in no uncertain terms that notwithstanding any recommendation made in the report submitted either by police/authorized person or by Magistrate/any other person as contemplated in sub-section (1) and clause (1Ka) respectively, not sending the accused for trial, the Tribunal, if considers proper for

ends of justice, may take cognizance of the offence against the accused assigning its reasons thereof. The language of the law leaves no doubt that the Tribunal, as distinguished from the Court of Session or the Magistrate, enjoys an added statutory power to reject the investigation/ inquiry report and take cognizance on its own satisfaction. It follows, by parity of reasoning, that the Tribunal which is free to take cognizance regardless of the nature of the report is free to take into notice any information supplied under any name, *naraji* or otherwise, if the same proves to be of use in testing the veracity of the report and by necessary implication enjoined with power to direct a further investigation or inquiry (where practicable) regardless of how the proceedings was started, upon FIR or complaint.

Viewed in the light of expositions made hereinabove, it logically follows that Tribunal is well within its competence to entertain *naraji* leaving no room for argument that there is no scope of *naraji* petition in the scheme of section 27 of the Ain.

Now two different but closely interrelated questions that fall to be addressed, that is, whether *naraji* is to be treated as a fresh complaint and if so whether the complainant is required to be examined u/s 200 of the Code when it is filed in a case under Nari-o-Shishu Nirjaton Damon Ain.

The answer is not very far to seek. It is implicit in the language of sub-section (1Ga) of section 27 of the Ain. As we have already stated, the Nari-o-Shishu Nirjaton Damon Ain, 2000, is a special and stringent legislation made with intent to detect the persons alleged to have committed crimes against women and/or children and to suitably punish them through speedier investigation, inquiry and trial. With the end in view the Ain, unlike the Code, has taken care

to equip the Tribunal, as far as possible, with unqualified power to take cognizance of offences on its own satisfaction gathered from any materials (*naraji* or otherwise) regardless of what is said in the report. In the realm of almost unqualified power directed to achieving the object of law, *naraji* stands to lose its ordinary legal signification and is relegated merely to the status of a document supplying important information indicating flaws in the investigation or inquiry making the formalities in taking notice of it totally redundant. There is, therefore, no scope in the Ain, to ascribe the status of fresh complaint to *naraji*-petition. In the same vein, examination or non-examination of the informant/complainant under section 200 for taking *naraji*-petition into consideration is of no consequence. Examination of complainant, thus, being unnecessary, non-examination under section 200 does not furnish any ground for quashing.

The contention finally raised is whether section 27(1Ka) of the Ain takes away power of the Tribunal to send back the petition of complaint to the police station, for recording a regular case and proceed with investigation. The issue incidentally came up and already decided down the line, however, without any special reference to the question pointedly raised. Mr. Raquibul Haque, learned Advocate, tried to argue by reference to the special wordings of section 27(1Ka), that the section puts a clear bar on the Tribunalôs power to send back the petition to the police, as according to him, fair investigation cannot be expected from an agency that refused to accept the complaint as a case. He sought to lend support from the case of ***Sirajul Islam v State*** reported in 17 BLC 740.

No doubt the point raised demands independent treatment in view of its importance. Nevertheless, before we go for addressing

the contention we need to dwell in the concept of ‘inquiryô and ‘investigationô at a certain length.

The Nari-o-Shishu Nirjatan Damon Ain, 2000, does not define any of the terms. Naturally, the pre-existing law ie., the Code of Criminal Procedure, will come into play in filling up the gap as per settled principles of interpretation. So far as the wordô investigationô occurring in the Ain is concerned, the Code will apply specially by virtue of section 25 of the Ain. Section 4(k) of the Code describes ‘inquiryô as one- ‘*that includes every inquiry other than a trial conducted under the Code by a Magistrate or Court.'* Section 4(l) describes ‘investigationô as one-‘*that includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by Magistrate in this behalf*. Since the meaning of the words ‘inquiryô and ‘investigationô appearing in the Ain borrow their meaning from the Code there is no difference of meaning of those words occurring in the Code and in the Ain. Nevertheless, the word ‘inquiryô appearing in section 27(1Ka) (Ka), in view of its special wordings, seems to differ, if at all, in degree from ‘inquiryô within the scheme of the Code. An inquiry within the meaning of the Code, especially when follows a *naraji* petition, is generally an *indoor* activity of *quasi* judicial nature conducted by a Magistrate or court that includes recording of oral evidence adduced by a handful of witnesses, in most cases selected by the informant, in order to examine whether there is *prima facie* materials to justify cognizance which has nothing to do with visiting place of occurrence, search, seizure, detection and tracking down accused, arrest, interrogation, collection of evidence on ground-level including expert opinion etc. as is done during investigation.

On the other hand, ñinquiryò as contemplated under section 27(1Ka)(Ka) may fairly be construed to include spot- visit and recording statements of witnesses at the field level before preparing a report to be submitted in the Tribunal. Here the inquiry-officer is either a Magistrate or óany other personô assigned so to do by the Tribunal. It is knowledge *a priori* that a Magistrate is not a professional investigator. So is the case with the persons generally assigned by the Tribunal to make the inquiry, such as, the local Upa-Zila Chairman, Vice-Chairman (as is the case here) or a Government officer**.** Furthermore, it is difficult to ascribe an extended meaning to the phrase, ñany other personò so as to include an officer belonging to police or any other investigating agencies for the simple reason that had the legislature, by the phrase, meant to include any officer belonging to any of those agencies it had no reason not to specify the name of the agency. More importantly, if it is an óinquiryô with its legal import as aforesaid, persons assigned matters a little because of the fact that inquiry made even by a member of an investigating agency is an óinquiryô not óinvestigationô and being circumscribed by its inherent limitations is incapable of making any significant difference.

It is, thus, clear that the words óinquiryô and óinvestigationô are not words meant to bear the same connotations in the Code as well as in the Ain. They finally remain to be distinctly different in connotations to be taken recourse to by the Magistrate or the Tribunal according as the nature of a particular case, they respectively sit on, permits.

As is suggested by its definition read with chapter XIV of the Code investigation is an independent discipline to be mastered by long training and experience, adequate knowledge of criminal law,

law of evidence, forensic science, art of tracking down the suspects and of interrogation and priorities in collection of evidence (material, documentary and oral) including expert-opinion enough to establish interlinkage between the offence and the offender. Investigation may be hidden or open unbounded by territorial limits involving various scientific methods, instruments and devices to be used in order to unearth the secret behind the crime. Investigation knows no time limit except sheer professionalism of performance and untiring efforts of the investigating officer directed to discovering the truth behind a crime, often clueless and shrouded with mystery. With the progress of science and technology crimes are also gaining newer and newer dimensions. Dreadful offences against women and children, including killing and grievous hurt throwing acid or other corrosive substance are being regularly recorded. Cases of rape and gang-rape have risen to an epidemic scale. Routine rape over months under constant threat of posting nude images of young girls in the website often resulting in suicide committed by the victims has become a regular phenomenon. Women and children trafficking is now a subject of gang operation having international network. Extra-marital conception of unmarried girls, question of paternity of the baby and identification of the real criminal have posed a threat to social harmony. The offences are often so complicated, clueless and deep- rooted into influential quarters that nothing less than a full-scale investigation by a professional investigator is enough to unearth the truth behind them.

Investigation is a goal- oriented mission, like a tiger chasing a deer, not to stop short of the target and must be allowed exactly as much time as it needs in its bid to reach the target. Statutory limitation giving deadline for the report is, therefore, bound to

produce abortive and distorted result to the advantage of the true offenders. Investigation being a process that follows its own rules must be allowed to go unhindered unless its goal is reached. What is important is not to squeeze a report within a deadline but constant vigilance by the supervisory authority to see whether the investigation is going in right order and in right pace and take drastic measures against the investigating officer should any laches, negligence or foul-play on his part is noticed.

The factual perspective illustrates the difference between the two terms and makes it amply clear that they are not mechanisms to be used interchangeably irrespective of the nature of the cases. Investigation must be directed to be carried out either by police or by any other specialized agency where facts of a particular case requires the Tribunal so to do. A police officer is not police. Refusal by him to accept the complaint need not be construed as refusal by police. If in the peculiar facts of a case Tribunal is satisfied that nothing less than a threadbare investigation is needed for detection of the crime and the criminals it has no choice but to exercise its inherent power and send back the complaint- petition to the police station with direction to treat the same as an FIR and cause investigation to be made by any competent police officer (other than the one who refused to accept the complaint) or by an officer belonging to any other specialized investigating agency. The power to make such direction must not be limited to any stage or difference of title of the information upon which the proceedings was started, FIR or complaint precisely for the reason that justice is the *raison d'ętre* of a court or tribunal and no law, however clear in meaning, seeking to deter the court/tribunal in passing any order for securing ends of justice can stand without being indicted. Direction may be made on

receipt of the complaint-petition or even after receiving inquiry-report if the report, in the opinion of the Tribunal, suggests that the facts are not as obvious and plain as is narrated in the complaint petition and the inquiry-report is not enough to support a fruitful prosecution.

Over and above, police is duty bound to receive complaint alleging commission of cognizable offence and cannot refuse it without lawful excuse. Since all the offences under the Ain are cognizable arbitrary refusal by police to accept the complaint alleging commission of any of them amounts to misconduct. It is an absurd proposition to suppose that mere refusal by a police officer or in other words, dereliction of duty of a police officer or for that matter an authorized person may be taken to create a legal binding upon the Tribunal to take recourse to inquiry-procedure although, in its opinion, investigation should be directed in the peculiar facts of the case. This is a proposition which militates against the ultimate authority of the Tribunal to take its own decision and runs contrary to the ódast sayô doctrine.

It may not be out of place to mention here that a Magistrate or óany other personô for that matter a Judge, how high soever, is not an expert in investigation. They are not persons, merely because of their higher credibility in the society, to act as a substitute for a competent police officer or a member of other investigating agencies nor a direction for inquiry by one or more of them may be given interchangeably with investigation regardless of the nature of the case.

The case of ***Sirajul Islam*** (*supra*), sought to be relied upon by the learned Advocate is clearly distinguishable because the issue in that case was whether the phrase ñany other personò occurring in

section *27(1Ka) (Ka) includes* a police officer or not and their Lordships answered the question in the negative. We see no difference between the view taken by their Lordships and the one taken by us on the point in the sense, in our view, if it is óinquiryô a person merely by virtue of being a police officer is of no consequence. Learned Advocate seemingly missed the position that here we are not on interpretation of the phrase ñany other personò occurring in section 27(1Ka) (Ka) but on acceptability of the proposition that mere refusal by a police officer leaves the Tribunal with no choice but to go for inquiry. The citation, therefore, is misplaced in the context and is of no avail for the petitioner.

The last and the final contention raised as a faint attempt to show that the allegation does not constitute any offence fades away as a cry in wilderness. We have meticulously gone through the complaint petition. Unfortunately for the petitioner, we notice her name consistently appearing throughout the complaint-petition indicating her direct involvement (true or false) in the commission of the offence. There is obviously a strong *prima facie* case against the petitioner to be tried. The report submitted by the Vice-Chairman of the local Upa-Zila Parishad is clearly biased and the Tribunal has rightly taken cognizance of the offence against the petitioner by rejecting the report.

To sum up:

1. *Naraji* petition filed by the informant/complainant or any other person aggrieved against any report within the meaning of section 27 of the Ain, submitted by police, Magistrate or any person authorized by the Government or appointed by the Tribunal is maintainable and the Tribunal is competent to take notice of the *naraji*-petition

for its own satisfaction about the acceptability of the investigation or inquiry-report and as an aid to the process taking cognizance.

2. The informant/complainant or person aggrieved filing *naraji* petition against investigation/inquiry report within the meaning of section 27 of the Ain is not required to be examined u/s 200 of the Code for any purpose.
3. On receipt of the complaint the Tribunal may, if thinks fit, withhold direction for inquiry as contemplated under sub-clause (Ka) of section 27(1Ka) and send the complaint-petition back to the police station for recording a regular case, with direction to cause the investigation to be made by any competent police officer, other than the one who refused to accept the complaint, or direct any other investigating agency to investigate.
4. Without prejudice to the findings made in the preceding paragraph, the Tribunal may, if it appears after receiving the inquiry-report that the facts are not as plain and obvious as narrated in the petition of complaint and an inquiry is not enough for discovery of truth behind the offence, send the complaint-petition to the local police station with direction to cause an investigation to be made by a competent police officer, other than the one who refused to accept the same, or otherwise direct any other investigating agency to investigate, and report.

For what we have stated above, we see no merit in the Rule. In the result, the Rule is discharged. The order of stay granted earlier is hereby vacated. The Tribunal is directed to proceed with the trial of the case in accordance with law.

Communicate at once.

Md. Ruhul Quddus, J

I agree

Md. Badruzzaman, J

I agree