

17 SCOB [2023] AD 79**APPELLATE DIVISION****PRESENT:****Mr. Justice Hasan Foez Siddique, CJ****Mr. Justice M. Enayetur Rahim****Mr. Justice Jahangir Hossain****CRIMINAL PETITION FOR LEAVE TO APPEAL NO. 1176 OF 2021**

(From the judgment and order dated 30.06.2021 passed by the High Court Division in Criminal Miscellaneous Case No.4354 of 2020)

Mst. Fatema

..... petitioner

=Versus=**The State and others**

..... Respondents

For the Petitioner

Mr. Mohammad Bakir Uddin
Bhuiyan, Advocate instructed by
Mr. Mohammad Ali Azam
Advocate-on-Record

For the Respondent No.01

Mr. S.M Monir
Additional Attorney General
(with leave of the Court)

For the Respondent Nos.2-3, 5-6, 10, 18 and 20

Mr. Md. Abdul Hye Bhuiyan
Advocate-on-Record

Respondent Nos. 4, 7-9, 11-17, 19 and 21

Not represented

Date of hearing & judgment : The 18th of December, 2022**Editors' Note**

In the instant case the Appellate Division elaborated when police should be given direction to give protection to the witnesses so that they can adduce evidence in the Court without fear. An FIR was lodged by the petitioner following murder of her husband in which police submitted charge sheet and the Court framed charge against the accused persons. But due to continuous threat from the accused persons to the informant and witnesses no witness came forward to adduce evidence in the Court. Rather, they filed several General Diaries in the concerned police station. Thereafter, informant filed a case in the High Court Division under section 526 of the Code of Criminal Procedure for transferring the case from Narayanganj to Dhaka. The High Court Division did not allow the application. Appellate Division, however, considering the fact that witnesses lodged several GDs mentioning the threat from the accused persons opined that High Court Division ought to have directed the law enforcing agency to take necessary steps for ensuring security of the informant and the witnesses of the case so that they could adduce their evidence in the court without any fear and accordingly, directed the police for ensuring the security of the witnesses.

Key Words:

Section 526 of the Code of Criminal Procedure; Witness protection

Security of the informant and the witnesses has to be ensured:

On perusal of the impugned judgment it reveals that the High Court Division came to a finding that both the parties forced each other to give false testimony or give testimony in favour of either of the parties. And as such the High Court Division ought to have directed the law enforcing agency to take necessary steps for ensuring security of the informant and the witnesses of the case so that they could adduce their evidence in court without any fear. (Para 11)

We are of the view that justice would be best served if we direct the Superintendent of Police, Narayanganj to take all necessary steps for ensuring security of the informant and witnesses of the case, so that they may adduce their evidence in the Court without any fear and interruption from any corner. Accordingly, the Superintendent of Police, Narayanganj is directed to take necessary steps in ensuring security of the informant [petitioner] and witnesses of the case so that they may adduce their evidence in the Court in accordance with law. (Para 13 and 14)

JUDGMENT**Jahangir Hossain, J:**

1. This Criminal petition for leave to appeal is directed against the judgment and order 30.06.2021 passed by the High Court Division in Criminal Miscellaneous Case No. 4354 of 2020 discharging the Rule.

2. The facts leading to filing of this Civil Petition for Leave to Appeal, in short, are that while the victim Joynal Abedin was running business of supplying soil in the brick field, one month before the occurrence, the accused Samad demanded taka 10 lakh as subscription from the said Joynal Abedin who denied to give the same and thereby the accused threatened to kill him and disappear his dead body. On 09.08.2018 at 7.00 p.m in the evening Joynal Abedin left for his work-place 'Rahim brick field' by trawler and the moment he reached the bank of river, all the accused at the direction of accused Samad Ali, being armed with deadly weapons such as ballam, teta, ramda, chapati etc, demanded again money of Tk 10 lacs but Joynal Abedin refused to give and then all the accused in a pre-planned manner attacked him to kill; the accused No.02 let him fall on the ground and beat him with lathi and also ordered other accused to kill him with teta and sharp weapon; that the accused No.03 penetrated with the teta into the forehead of victim Joynal and thereby caused grievous blood stained injury; the accused No.04 dealt a ballom blow on the left eye of the victim while the accused No.07 gave blows on the body of the victim with ballom in order to kill him. On hearing hue and cry of the victim, the uncle of the informant- Israfil, labourer Raihan and Aslam came to rescue the victim, then the accused No.05 inflicted on the thigh of witness Raihan with a teta; that the accused No.08 attacked witness Aslam by teta which caused grievous injury in his thumb and forefinger; the accused No.12 inflicted witness Israfil by teta and thereby caused grievous bleeding injury in his left thumb and forefinger; that upon hearing hue and cry of the injured persons, the local people came to the spot while the accused left the place giving threat of dire consequences, if not meet up their demand and further threatened not to take any legal action in this regard. Thereafter, the victim Joynal Abedin was taken to Dhaka Medical College Hospital for treatment and on 10.08.2018 at 4.30 a.m. he died under treatment. Thus, the present case was started.

3. After holding investigation, police submitted charge-sheet against 13 FIR named accused and 7 others. The case was transferred to the court of Sessions Judge, Narayanganj where the same was re-numbered as Sessions Case No. 2104 of 2019. All the accused except Arif, Salam and Sohid obtained bail. The trial court fixed 03.09.2019 for charge hearing and on that date all the accused except absconded accused filed three separate applications for discharge under section 265C of the Code of Criminal Procedure. The trial court, after rejecting the said applications, framed charge against 20 accused including the fugitive accused under sections 147/323 /324/307/385/302 /506 /114/34 of the Penal Code by order dated 30.09.2019. Thereafter, the date was fixed for evidence and lastly on 15.01.2020, but none of the witnesses has been produced.

4. At this stage, the present petitioner filed an application under section 526 of the Code of Criminal Procedure alleging, inter alia, that after obtaining bail the accused along with absconded accused are continuously giving life threat to the informant and other vital witnesses of the case for not giving true testimony before the trial court. The eye witness Aslam, who made statement before the judicial magistrate, elaborately described as to how the accused in a preplanned manner with deadly weapon attacked the victim. On his alarming, local people came and then the accused left the place giving life threat to him that if he would give testimony in the present case they would kill him like Joynal Abedin. Thereafter, the said Aslam filed Petition Case No.130 of 2019 against the accused before the Executive Magistrate, Narayanganj under section 107 of the Code of Criminal Procedure and the accused Samad Ali, Osman Gani and Rajib appeared in the said petition case by filing written undertaking promising that they would not give any more threat to him and their written undertaking was treated as bond by order dated 04.08.2019.

5. It is also stated that on 19.08.2019 the accused threatened the informant to withdraw the present case. They also threatened the informant and other witnesses to give false testimony, otherwise, they would kill the informant and other vital witnesses. In this regard the informant lodged a GD Entry being No.944 dated 20.08.2019 with Fotulla Model Police Station, Narayanganj. It is further stated that on 19.08.2019 at 6.00 am the accused went to Tayeb Brick Field where they threatened the charge-sheeted witness, Md. Tajuddin not to give testimony. Thereafter, Md. Tajuddin lodged a G.D. Entry being No.892 dated 19.08.2019 with Fatullah Model Police Station, Narayanganj. Earlier on 26.02.2019, the informant went to the Narayanganj District Court in connection with this case where the accused assaulted her and other witnesses in the court premises. A case has been lodged with Fatullah Model Police Station Case No.15 dated 04/03/2019 under sections 143/323 /307/379/506 of Penal Code in this regard and subsequently the charge sheet has been submitted in the said case. In the above circumstances, the informant filed an application before the learned Sessions Judge for cancellation of bail of the accused on 25.08.2019 and the learned Sessions Judge directed the officer-in-charge of Fatullah Model Police Station to hold an inquiry in the matter. Accordingly, one Md. Arifur Rahman, Sub-inspector of Fatullah Model Police Station submitted an inquiry report wherein he found truthfulness of the allegation made by the informant. Under the compelling circumstances, the petitioner prayed to transfer the Sessions Case No. 2104 of 2019 pending in the court of Sessions Judge, Narayanganj to the Court of Sessions Judge, Dhaka but in vain.

6. The petitioner, thereafter, moved the High Court Division with an application for transfer of the aforesaid case under section 526 of the Code of Criminal Procedure and obtained a Rule. The High Court Division, upon hearing the parties and on perusal of the materials on record, discharged the Rule by the impugned judgment and order. Hence, this

Criminal Petition for Leave to Appeal has been filed for redress.

7. Mr. Mohammad Bakir Uddin Bhuiyan, learned Advocate instructed by Mr. Mohammad Ali Azam, Advocate-on-Record, appearing on behalf of the petitioner contends that although there was specific allegation of putting continuous life threat to the informant party which was supported by the inquiry report dated 02.09.2019 but most surprisingly the learned Sessions Judge, Narayanganj did not cancel the bail of the accused-opposite parties which is evident from the subsequent orders passed by the learned Sessions Judge, Narayanganj in the instant Sessions Case No. 2104 of 2019 and this position has not also been considered while passing the impugned judgment and order.

8. It is further submitted that one of the witnesses of the instant sessions case, namely Md. Tajuddin on 19.08.2019 lodged a GD entry being No. 892 dated 14.08.2019 with Fatullah Model Police Station, Narayanganj stating that on 19.08.2019, some accused came to his work-place and had given threat for not giving evidence in the case and the informant i.e, the wife of the victim on 20.08.2019 also lodged Fatullah Model Police Station G.D. Entry No. 944 dated 20.08.2019 stating that on 19.08.2019 while she went to the house of a relative at Fatullah, the principal accused directed her to withdraw the case upon taking some money, otherwise, dire consequence will occur to her and her son. The accused opposite party-respondent No.5 on 09.07.2019 had given a dirty, filthy status in his 'face book wall' regarding the fate of the case. Under the above facts and circumstances surrounding the sessions case in hand, if the instant case is not transferred from the Court of Sessions Judge, Narayanganj to the Court of Sessions Judge at Dhaka, the informant petitioner shall be highly prejudiced and as such the impugned judgment and order of the High Court Division is liable to be set aside.

9. Mr. S.M Monir, learned Additional Attorney General appearing on behalf of the Respondent No.01 submits that the High Court Division did not commit any illegality in passing the impugned judgment and order by which the Rule has been discharged since the informant-petitioner has failed to comply with the provision of sub-section (3) of section 526 of the Code of Criminal Procedure. He also submits that since there are allegations against the accused regarding continuous life threat to the informant-petitioner as well as the witnesses of the case for filing the case and giving evidence in the case and there was an inquiry report submitted by the Sup-Inspector, Fotullah Model Police Station following the Complaint Petition Case No. 130 of 2019 wherein the allegation of life threat to the informant has been found to be true, the High Court Division ought to have directed the law enforcing agency on the ensurement of the security of the informant and witnesses of the case for providing their evidence in Court.

10. Having heard the learned Advocates and perused the materials on record along with impugned judgment and order passed by the High Court Division it appears that the present petitioner as informant filed the case under sections 147/323 /324/307 /385/302 /506/114/34 of the Penal Code and the investigating officer after thorough investigation submitted charge sheet and thereafter, the case was transmitted to the learned Sessions Judge, Narayanganj where the case was registered as Sessions Case No. 2104 of 2019. The charge was framed on 03.09.2019 against 20 accused-persons under sections, noted above. It appears that one of the witnesses named Aslam filed Petition Case No. 130 of 2019 against accused Nos. 1, 2, 4 and 6 alleging that they threatened him not to give evidence against them. It further appears that another witness named Taj Uddin also lodged G.D. Entry dated 19.08.2019 against accused Nos. 2,3, 4, 5, 6, 10 and 14 alleging that they threatened him not to give testimony against

them and the informant also filed a G.D entry against accused No. 01 on the allegation that he threatened to withdraw the case. It also appears that the inquiry officer found the allegation of threat to be true. It is surprising that none of the prosecution witnesses has been examined till date in the said murder case although the charge was framed on 03.09.2019.

11. On perusal of the impugned judgment it reveals that the High Court Division came to a finding that both the parties forced each other to give false testimony or give testimony in favour of either of the parties. And as such the High Court Division ought to have directed the law enforcing agency to take necessary steps for ensuring security of the informant and the witnesses of the case so that they could adduce their evidence in court without any fear.

12. It appears from the inquiry report submitted by the inquiry officer to the learned Sessions Judge, Narayangonj that the informant went to the father-in-law's house of her daughter on 19.08.2019 and at the time of her return on the same date, the FIR named accused No.01 along with other accused stopped her Rickshaw and used abusive and filthy language and also threatened to withdraw the case filed against them, otherwise, they would kill her. The inquiry officer also stated in his report that the allegation of life threat to withdraw the case, has been found to be true. So this being the position of the case, the High Court Division ought to have considered the security concerns of the informant as well as witnesses of the case.

13. Under such circumstances, we are of the view that justice would be best served if we direct the Superintendent of Police, Narayangonj to take all necessary steps for ensuring security of the informant and witnesses of the case, so that they may adduce their evidence in the Court without any fear and interruption from any corner.

14. Accordingly, the Superintendent of Police, Narayangonj is directed to take necessary steps in ensuring security of the informant [petitioner] and witnesses of the case so that they may adduce their evidence in the Court in accordance with law.

15. In the Result, this Criminal Petition for Leave to Appeal is disposed of with the said observations.