Present
Madam Justice Kashefa Hussain

Criminal Appeal No. 2051 of 2019

Mst. Mobina Begum
..... Complainant-Respondent-petitioner
-Versus-
Md. Abdul Alim and another
------- Opposite parties.
Mr. Mohammad Ahsanuzzaman with
Ms. Aynunnahar Siddique, Advocates
.... for the Petitioner
Ms. Buddrun Nahar, Advocate
.... for the opposite parties
Mr. Md. Mohiuddin Dewan, D.A.G with
Ms. Syeda Sabina Ahmed Molly, A.A.G
------- For the State.
Heard on: 25.01.2024, 31.01.2024,
07.02.2024 and
Judgment on 08.02.2024

Rule was issued calling upon the opposite party No. 1 to show cause as to why the judgment and order dated 26.06.2019 passed by the learned Sessions Judge, Tangail in Criminal Appeal No. 62 of 2019 allowing the appeal and thereby set aside the judgment and order of conviction and sentence dated 06.02.2019 passed by the learned Senior Judicial Magistrate, 4th Court, Tangail in C.R. Case No. 52 of 2016 under Section 6(5) of the Muslim Family Law Ordinance, 1961 should not be set

aside/or pass such other or further order or orders as to this court may seem fit and proper.

The instant petitioner as complainant filed C.R Case No. 52 of 2016 before the court of Senior Judicial Magistrate, 4th Court, Tangail impleading the instant opposite party as accused defendants in the suit. The trial court upon hearing the parties sentenced and convicted the accused-appellant-opposite party with 1(one) year simple imprisonment under Section 6(5) of the Muslim Family Law Ordinance, 1961. Being aggrieved by the judgment of the trial court the accused in the complainant case husband filed Criminal Appeal No. 62 of 2019 which was heard by the Sessions Judge, Tangail. The appellate court upon hearing the parties allowed the appeal by its judgment and order dated 26.06.2019 and thereby acquitted the accused convict opposite party from the sentences. Being aggrieved by the judgment and order of acquittal the complainant in the case wife petitioner filed a Criminal Revision which is instantly before this bench for disposal.

The complainant's case in short is that on 19.01.2016 the complainant respondent petitioner filed a petition of complaint before the Judicial Magistrate Cognizance Court, Tangail being

No. 52 of 2016 against the accused appellant opposite party alleging inter alia that the complainant petitioner and accused appellant opposite party entered into wedlock on 13.01.2002 under the rules of Islamic Shariyat and by registered kabinnama fixing dower of an amount of Tk. 1,50,000/- in presence of relatives of both the parties and during their conjugal life the complainant gave birth to a son namely Ratun Ahmed Fardin who is now 11 years old. The convict accused appellant opposite party during their conjugal life started to demand dowry and lastly on 01.06.2015 accused demanded dowry taka 2,00,000/- and after beating and torturing the complainant along with her son were sent to her parents house. The accused opposite party again on 25.08.2018 along with his brother and sister came to the complainant-petitioner's parent's home and he again demanded 2,00,000/- Tk. as dowry from the father of the complainant and having failed he left his wife and son there and no maintenance was given for them since then. Complainant petitioner from reliable source learnt that her husband (Accused-Appellant-opposite party) got married for a second time without her permission or without any permission of the Chairman of concerned Union parishad or arbitration council. On query the complainant came to know that accused

opposite party on 29.04.2013 married second time with one Mst. Sahanaz Parvin (Ruma) daughter of Md. Dulal Miah of Village: Rakushail, Police Station: Kishoreganj Sadar, District: Kishoregainj by fixing dower, 3,00,000/- (there lacs) taka and accordingly complainant petitioner collected the registered kabinnama of aforesaid second marriage of her husband. The accused-opposite party by suppressing the fact of their first marriage without permission, got married second time and performing conjugal life with second wife Mst. Sahanaz Parvid (Ruma), and since then complainant petitioner is totally neglected by the accused opposite party and he is not paying any maintenance to them. The accused opposite party committed an offence under Muslim Family Ordinance, 1961 being married second time without permission of the first wife complainant petitioner and hence on 19.01.2016 complainant petitioner filed the instant C.R. Case No. 52 of 2016 in the court of learned Judicial Magistrate cognizance Court, Tangail against the accused-appellant-opposite party.

Learned Advocate Mr. Mohammad Ahsanuzzaman along with Ms. Aynunnahar Siddique appeared for the complainant Respondent Petitioner while learned advocate Ms. Quamrun

Nesa represented the opposite party while learned Deputy Attorney General Mr. Md. Mohiuddin Dewan along with Ms. Syeda Sabina Ahmed Molly, A.A.G represented the opposite party No.2.

Learned Advocate for the complainant petitioner submits that the trial court correctly upon thoroughly discussing the facts and circumstance appropriately decided on the factual merits. She points out to the judgment of the trial court and submits that it is clear from the judgment that the trial court after evaluating the evidences and after examining the witnesses arrived at its decision and gave correct findings. She submits that however the appellate court upon total misapplication of mind wrongly misdirected itself and allowed the appeal on jurisdictional grounds only. She points out that it is clear from the judgment of the appellate court that the appellate court wrongly and unjustly did not even discuss any of the factual merits of the judgment.

She next argues on the issue of jurisdiction wherein the appellate court found lack of jurisdiction of the concerned court. She draws upon Section 11(A) of the amended Muslim Laws Ordinance 1961 to establish her argument of the

concerned trial court having jurisdiction. She points out that so far the instant case is concerned Section 11A(b) of the Muslim Family Laws Ordinance, 1961(by amendment in 1986) is applicable. She draws upon Section 11A(b) and points out Section 11A(b) clearly provides that these cases will be tried by a court where the local limits within whose jurisdiction the complainants or the accused resides or last resided. She submits that it is clear that the appellate court upon ignoring the clear provisions of Section 11A(b) totally misdirected itself and wrongly held that the petitioner and the accused opposite party were married in another area and not within the area of the concerned trial court and wrongly concluded that such court lack jurisdiction. She persuades that Section 11A(b) requires that a complaint case may be filed in the address where either the complainant or accused resides or last resided. She argues that it is clear that the complainant subsequently resided in her parent's home and the case was filed in the court in the local limits of jurisdiction where she resided lastly. She submits that therefore in pursuance of Section 11A(b) there is no lack of jurisdiction for the trial to be held by the concerned court.

She next submits that it is clear from the records that the appellate court unjustly adjudicated upon the issue of jurisdiction only and did not even enter into the factual issues and unjustly acquitted the accused of its offence. She asserts that such a judgment is totally unlawful and the judgment of the appellate court be set aside and the judgment of the trial court be upheld and the Rule bears merits and ought to be made absolute for ends of justice.

On the other hand learned advocate for the opposite party opposes the Rule. He submits that the court correctly held that there was no jurisdiction of the concerned court to try the case since the couple was married in another jurisdiction and not the jurisdiction where the trial was held. In support of the finding of the appellate court he asserts that the judgment of the appellate court was correctly allowed and the judgment of the appellate court need not be interfered with.

There was a query from this bench as the why the appellate court did not decide on the factual merits. The learned council however could not give any satisfactory reply to such query.

There was further query from this bench on the provisions of Section 11A(b) of the Muslim Family Laws Ordinance, 1961 amended in 1986. To this query he replies that if there is no jurisdiction therefore since the factual merits has not been adjudicated upon therefore ends of justice would be best served if the matter is sent back to the court having the jurisdiction. He concludes his submissions upon assertion that the Rule bears no merit and ought to be discharged for ends of justice.

I have heard the learned advocates from both sides and I have perused the materials before me. Apparently the complaint case was filed under Section 6(5) of the Muslim Family Law Ordinance, 1961. The trial court decided on the factual merits of the case and evaluated upon the factual merits relying on evidence of the case including giving findings on the provisions of Section 6 of the Family Court Ordinance, 1961. The trial court found that Section 6 was not complied with in this case and allowed the case by sentencing the accused to 1(one) year imprisonment. However from the judgment of the appellate court it is clear that the appellate court even without entering into the factual merits totally adjudicated on the issue of

jurisdiction only of inter alia made observation that the concerned court lacked jurisdiction since the complainant and the accused were not married within the jurisdiction where the trial was held. After examining the judgment of the appellate court, I am of the considered view that such observations of the appellate court is totally wrong. After perusal of Section 11A it is clear that the provisions of Section 11A of the Muslim Family Laws Family Ordinance, 1961 (by way of amendment in 1986) expressly provide that a trial in such a case may be held in a court within the local limits of jurisdiction where the complainant or the accused reside or lastly resided. Therefore it clearly also contemplates a place where the accused or the complainant is presently residing. In this case it is clear that after leaving the husband's house the accused is residing at her parents' house and the trial was held in the court within that jurisdiction.

However the appellate court for reasons best to know to it did not examine the relevant amendment of the law which was amended in 1986 and it is evident that the instant case was filed much later in the year 2016.

Therefore I am of the considered view that the appellate court wrongly allowed the appeal on the ground of 'lack' of jurisdiction only. It is my considered finding that the trial court had jurisdiction to try the complaint case since the complainant was residing within the local limits of the jurisdiction of such court.

It also appears from the judgment of the appellate court that without discussing the factual merits and demerits of the case the appellate rather acquitted the accused on the ground of 'lack' of jurisdiction of the concerned trial court. I am constrained to hold that such approach of the appellate court is totally wrong.

For sake of discussion, even if the concerned trial court lacked jurisdiction even in that case the appellate court ought to have sent the case back to the appropriate court for trial on the factual merits. Acquittal in a complaint case or whatever case without even discussing the case on its factual merits is totally unwarranted.

Under the facts and circumstances I am of the considered view that ends of justice would be best served if the matter is sent back to the appellate court to try and adjudicate the

disputed merits of facts, that is on the factual merits and demerits of the case.

In the result, the appeal is disposed of. The judgment and order dated 26.06.2019 passed by the learned Sessions Judge, Tangail in Criminal Appeal No. 62 of 2019 is hereby set aside. The appellate court is directed to try the matter on the factual merits of the case upon adducing evidences following the relevant laws. The appellate court is further directed to dispose of the matter as expeditiously as possible within 3(three) months of receiving the judgment and order.

Send down the lower courts record.

Communicate the judgment at once.

Shokat (B.O.)