

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 2078 of 2019

Md. Rezaul Karim

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

Mr. Md. Asadur Rahman, Advocate with

Ms. Jannatul Ferdoushi (Rupa), Advocate with

Ms. Yeshita Parvin, Advocate with

Mr. Muhammad Nurul Kabir, Advocate

...For the convict-petitioner

Mr. Md. Akhtaruzzaman, D.A.G with

Mr. Sultan Mahmood Banna, A.A.G with

Mr. Mir Moniruzzaman, A.A.G with

Ms. Farhana Abedin, A.A.G with

Mr. Md. Kaium, A.A.G

...For the State

Mr. Muhammad Sazzad Hossain, Advocate

...For the complainant-opposite party No. 2

Heard on 22.01.2025, 04.02.2025 and 13.05.2025

Judgment delivered on 14.05.2025

On an application filed under section 439 read with Section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 14.07.2019 passed by Additional Sessions Judge, Court No. 1, Sirajgonj in Criminal Appeal No. 103 of 2018 affirming the judgment and order dated 31.05.2018 passed by Senior Judicial Magistrate, Court No. 2, Sirajgonj in C.R. No. 29 of 2017 (Kazipur) convicting the petitioner under Section 6(5)(Kha) of the Muslim Family Laws Ordinance, 1961 and sentencing him thereunder to suffer imprisonment for 01(one) year and fine of Tk. 10,000(ten thousand), in default, to suffer imprisonment for 02(two) months should not be set aside and/or pass such other order or further order or orders as to this Court may seem fit and proper.

The prosecution's case, in short, is that the complainant Ms. Rokeya Khatun is the wife of the convict-petitioner Md. Rezaul

Karim. She was residing along with her two daughters in the house of the convict-petitioner Md. Rezaul Karim. On 26.05.2016, he demanded dowry of Tk. 5,00,000 to the complainant. When she refused to pay the dowry, he drove her out of his house along with their daughters, and they took shelter in the house of her father. He threatened that he would marry elsewhere unless she paid Tk. 5,00,000 as dowry. Finding no other alternative, she filed Nari-O-Shishu Case No. 632 of 2016 in the Nari-O-Shishu Nirjatan Daman Tribunal, Sirajgonj against him. The marriage of the convict-petitioner and the complainant was solemnized on 14.10.1996 and without taking permission from the complainant, he married Mst. Maya Khatun on 25.06.2015 and they were enjoying their conjugal life in the house of the convict-petitioner. On 05.04.2017, she came to know about the second marriage of the convict-petitioner and collected the kabinnama. Before the second marriage of the convict-petitioner with Mst. Maya Khatun, he neither took the permission of the complainant nor informed the matter to the Chairman, and thereby he committed an offence under section 6(5) of the Muslim Family Laws Ordinance, 1961.

During trial, charge was framed against the convict-petitioner under Section 6(5) of the Muslim Family Laws Ordinance, 1961 and at the time of framing charge he was absconding, for which the charge so framed could not be read over and explained to him. The prosecution examined 2(two) witnesses to prove the charge against the convict-petitioner and the defence cross-examined the prosecution witnesses. After concluding the trial, the trial Court by judgment and order dated 31.05.2018 convicted the petitioner under Section 6(5) of the Muslim Family Laws Ordinance, 1961 and sentenced him thereunder to suffer imprisonment for 1(one) year and fine of Tk. 10,000, in default, to suffer imprisonment for 2(two) months. The convict-petitioner filed Criminal Appeal No. 103 of 2018 against the said judgment and order passed by the trial Court before the Sessions

Judge, Sirajgonj, which was heard by the Additional Sessions Judge, Court No. 1, Sirajgonj and the appellate Court by the impugned judgment and order affirmed the judgment and order passed by the trial Court against which he obtained the instant Rule.

P.W. 1 Mst. Rokeya Khatun is the complainant. She stated that the marriage between accused Md. Rezaul Karim and her was solemnized on 14.10.96 and after marriage, they were enjoying their conjugal life. On 05.04.2017, she came to know that without her permission or without the permission of the Arbitration Council, the accused married Mst. Maya Khatun. Thereafter, she collected the certified copy of the kabinnama of the second marriage of the accused. The column Nos. 21 and 22 of the kabinnama are blank. She proved the complaint petition as exhibit 1 and her signature on the complaint petition as exhibit 1(1) and 1(2). She submitted the certified copy of the kabinnama of the second marriage. During cross-examination, she stated that she and the accused were married on 14.10.1996 by registered kabinnama, and the dower money was fixed at Tk. 50,000. On 25.06.2015, the accused married Maya Khatun. She affirmed that on 26.06.2015, she and the accused got their second marriage by registered kabinnama and based on the said kabinnama, she is enjoying the conjugal life. She denied the suggestion that she is aware of her divorce dated 04.03.2015 or that after 04.03.2015, she remarried the accused, or that since there was a talak, she remarried.

P.W. 2 Abdul Khaleque stated that the complainant and the accused are known to him. The accused Rezaul Karim is the husband of the complainant. On 05.04.2017, he came from the locals that the accused had married second time. After that, he went to the house of the accused and saw that he was enjoying conjugal life with his second wife. After coming back from the house of the accused, he informed the complainant. The accused did not take permission for second marriage. During cross-examination, he stated that the accused

and the complainant are teachers of Primary School. He is a witness of the case lodged by the complainant. He is not aware about divorce took place between the accused and the complainant. He denied the suggestion that at the time of second marriage of the accused, there was no marital tie between the accused and the complainant or that concealing the divorce of the complainant, she deposed falsely.

Learned Advocate Mr. Md. Asadur Rahman, appearing along on behalf of the convict-petitioner, submits that before the second marriage on 25.06.2015, the convict-petitioner divorced his wife on 04.03.2015 and admittedly, the accused remarried the complainant on 26.06.2015 by registered kabinnama and at the time of second marriage of the convict-petitioner with Maya Khatun, there was no marital tie between the convict-petitioner and the complainant. Therefore, no offence was committed by the convict-petitioner under Section 6(5) of the Muslim Family Laws Ordinance, 1961.

Learned Advocate Mr. Muhammad Sazzad Hossain appearing on behalf of the complainant-opposite party No. 2 submits that the convict-petitioner admitted that he married Maya Khatun on 25.06.2015 but the convict-petitioner failed to prove that he took permission of the complainant or the Arbitration Council for second marriage. Therefore, he committed offence under Section 6(5) of the Muslim Family Laws Ordinance, 1961 and both the Courts below on correct assessment and evaluation of the evidence legally passed the impugned judgment and order. He prayed for the discharging the Rule.

I have considered the submission of the leaned Advocates of both parties, perused evidence, impugned judgments and orders passed by the Courts below and the records.

On perusal of the evidence, it reveals that the complainant was the wife of the convict-petitioner Md. Rezaul Karim. P.W. 1 stated that on 25.06.2015, the accused married Maya Khatun without her permission. Although P.W. 1 submitted the certified copy of the

second marriage of the convict-petitioner but the same was not exhibited in the case. The accused admitted that he married Maya Khatun on 25.06.2015. During cross-examination, P.W. 1 admitted that on 26.06.2015, she remarried the convict-petitioner by registered kabinnama. She denied the suggestion that on 04.03.2015, the convict-petitioner divorced her and she is aware of that. She admitted that on the basis of remarriage on 26.06.2015, she is enjoying her conjugal life with the accused Md. Rezaul Karim.

It reveals that the complainant remarried the convict-petitioner Md. Rezaul Karim on 26.06.2015 by registered kabinnama and based on remarriage, complainant P.W. 1 is enjoying her conjugal life. Therefore, it is crystal clear that before remarriage on 26.06.2015, the complainant was a divorcee and there was no marital tie between the convict-petitioner and the complainant at the time of marriage of the convict-petitioner and Maya Khatun on 25.06.2015. Therefore, no permission of the complainant or the Arbitration Council was required on 25.06.2015 for second marriage of the convict-petitioner and Maya Khatun.

An admitted fact need not be proved. P.W. 1 complainant Mst. Rokeya Khatun admitted that on 26.06.2015, she remarried convict-petitioner Md. Rezaul Karim and based on the remarriage, they were enjoying their conjugal life. Therefore, the convict-petitioner need not prove that he obtained the permission from his wife or the Arbitration Council for second marriage. The prosecution failed to prove that at the time of the second marriage on 25.06.2015 of the convict-petitioner and Maya Khatun, complainant P.W. 1 was the wife of the convict-petitioner.

In view of the above evidence, findings, observation and the proposition, I am of the view that at the time of second marriage of the convict-petitioner on 25.06.2015, the complainant Mst. Rokeya Khatun was not the legally married wife of the convict-petitioner, and

the prosecution failed to prove the charge against the convict-petitioner Md. Rezaul Karim, beyond all reasonable doubt.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgment and order of conviction and sentence passed by the Courts below against the convict-petitioner Md. Rezaul Karim is hereby set aside.

However, there will be no order as to costs.

Send down the lower Court's records at once.