

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Revision No. 3849 of 2023

Mohammad Shahidul Islam Prodhania alias

Md. Shahidul Islam

...Convict-petitioner

-Versus-

The State and another

...Opposite

parties

Mr. Saifur Rashid, Advocate with

Mr. Amio Chackrabarti, Advocate with

Mr. Masum Saifur Rahman, Advocate

...For the convict-petitioner

Mr. S.M. Golam Mostofa Tara, D.A.G with

Mr. A. Monnan, A.A.G

...For the State

Mr. Rafiqul Islam Mehedi, Advocate with

Mr Md. Mansur Rahman Sarker, Advocate with

Ms. Buddrun Nahar, Advocate

...For the complainant-opposite party

No. 2

Heard on 01.07.2024, 08.07.2024 and

15.07.2024

**Judgment delivered on 24.07.2024**

On an application under Section 439 read with Section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 30.08.2023 passed by Sessions Judge, Chandpur in Criminal Appeal No. 310 of 2023 affirming the judgment and order of conviction and sentence dated 22.05.2023 passed by Senior Judicial Magistrate, Court No. 3, Chandpur in C.R. Case No. 22 of 2022 (Chandpur Sadar) convicting the petitioner under Section 6(5) of the Muslim Family Laws Ordinance, 1961 and sentencing him thereunder to suffer rigorous imprisonment for 4(four) months and fine of Tk. 10,000, in default, to suffer simple imprisonment for 1(one) month should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The prosecution case, in short, is that the complainant Rehana Yasmin is the wife of the convict-petitioner Mohammad Shahidul Islam Prodhania. Their marriage was solemnized on 08.10.2002 under the Mohammedan Law. During their conjugal life, the complainant gave birth to her son Md. Mahi Hasan and daughter Meherun Mohini. Since their marriage, the convict-petitioner used to torture the complainant for dowry. He also developed extra-marital relations with other women. The complainant came to know that the convict petitioner married second time without her permission. She collected a copy of the nikahnama on 31.12.2021 and came to know that the convict-petitioner married second time violating condition No. 17(2) of the Kabinnama or without taking permission from the Arbitration Council constituted under the Muslim Family Laws Ordinance, 1961 and he committed offence under Section 6(5) of the Muslim Family Laws Ordinance, 1961. After that, the complainant filed the complaint petition on 04.01.2022 under Section 6(5) of the said Ordinance.

After filing the complaint petition, the complainant was examined under Section 200 of the Code of Criminal Procedure, 1898 and the learned Magistrate was pleased to take cognizance of the offence against the accused under Section 6(5) of the Muslim Family Laws Ordinance, 1961. Thereafter the case was sent to the Chief Judicial Magistrate, Chandpur who again sent the case to the Senior Judicial Magistrate, Court No. 3, Chandpur for trial. The trial Court framed charge on 06.07.2022 which was read over and explained to the convict-petitioner and he pleaded not guilty to the charge and claimed to be tried in accordance with law.

During trial, the prosecution examined 3(three) witnesses to prove the charge against the convict-petitioner. After examination of the prosecution witnesses, the trial Court by judgment and order dated 22.05.2023 convicted the petitioner under Section 6(5) of the Muslim Family Laws Ordinance, 1961 and sentenced him

thereunder to suffer rigorous imprisonment for 4(four) months and fine of Tk. 10,000, in default, to suffer imprisonment for 1(one) month against which the convict-petitioner filed Criminal Appeal No. 310 of 2023 before the Sessions Judge, Chandpur who by impugned judgment order dated 30.08.2023 affirmed the judgment and order passed by the trial Court against which the convict-petitioner obtained the instant Rule.

P.W. 1 Rehana Yasmin stated that she and the convict-petitioner are husband and wife. She gave birth to a son and a daughter. On 15.10.2021 the convict-petitioner married one Nilufa Akter without her permission. On 31.12.2021 she collected their nikahnama and came to know about his second marriage. She proved the complaint petition as exhibit 1 and her signature as exhibit 1/Ka. She proved the nikahnama of her marriage as exhibit 2. Nikahnama of the second marriage of the convict-petitioner as exhibit 3. She also submitted the certificate and the declaration. During cross-examination, she stated that she filed two cases against the accused. She also filed four other cases and the accused submitted the compromise in those cases. Her dower money was fixed at Tk. seventy lakh. She denied the suggestion that on 24.05.2021 the accused divorced her and that the accused submitted a copy of the divorce to the local Chairman. She affirmed that the local Chairman issued a certificate stating that he did not receive any copy of the divorce. She also denied that on 24.05.2021 the divorce was given correctly. She affirmed that she did not file any case for restitution of the conjugal life.

P.W. 2 Meherun Mohini is the daughter of the complainant. She stated that on 15.10.2021 at 2.30 pm, she came to know about the second marriage of the accused. Her father married second time without the permission of her mother and no divorce took place between her father and mother. The defence declined to cross-examine P.W. 2.

P.W. 3 Baby Akter stated that on 15.10.2021 having received the copy of the nikahnama of the second marriage of the accused, she came to know about his second marriage. She did not hear that the accused divorced the complainant.

Learned Advocate Mr. Saifur Rashid appearing along with learned Advocate Mr. Amio Chackrabarti and learned Advocate Mr. Masum Saifur Rahman on behalf of the convict-petitioner submits that before second marriage, the convict-petitioner divorced his wife complainant Rehena Yasmin on 04.02.2021 and sent notice on 07.02.2021 complying all the procedure provided in Section 7 of the Muslim Family Laws Ordinance, 1961 and the divorce was registered on 24.05.2021 with the Office of the Nikah Register of No. 7 Paikpara Union Parishad and after that, the complainant filed the case on 04.01.2022. Therefore no offence under Section 6(5) of the said Ordinance was committed by the convict-petitioner. He further submits that the trial Court misconstrued the registered postal receipt and the talaknama and made an adverse remark about those documents. Having drawn the attention of this Court to the order sheets of the appellate Court below, the learned Advocate submits that the Criminal Appeal No. 310 of 2023 was filed on 31.05.2003 and before service of the notice upon the convict-petitioner, the appellate Court below without fixing any date of hearing and without giving any opportunity of hearing to the convict-petitioner illegally passed the impugned judgment on 30.08.2023 beyond his knowledge. Both the Courts below committed serious illegality in convicting the petitioner. Therefore, he prayed to make the Rule absolute.

Learned Advocate Mr. Rafiqul Islam Mehedi appearing along with learned Advocate Mr. Md. Mansur Rahman Sarker and learned Advocate Ms. Buddrun Nahar on behalf of the complainant-opposite party No. 2 submits that admittedly P.W. 1 Rehena Yasmin is the wife of the convict-petitioner and he married one Nilufa Akter

on 15.10.2021 without permission of the Arbitration Council and the accused failed to prove that he divorced the complainant before second marriage. Therefore, he committed the offence under Section 6(5) of the Muslim Family Laws Ordinance, 1961. However, he conceded that without service of notice upon the convict-petitioner and also without fixing the date of hearing the appellate Court heard the appeal and the criminal appeal may be sent back on remand to the appellate Court below for rehearing of the appeal.

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

The issue involves the Rule whether the convict-petitioner married second time without the permission of the Arbitration Council during the subsistence of their marital ties.

On perusal of the records, it appears that there is no denial of the fact that the complainant is the first wife of the convict-petitioner and that he married second time on 15.10.2021 to one Nilufa Akter. P.W. 1 Rehana Yasmin stated that the convict-petitioner married one Nilufa Akter on 15.10.2021 without permission. She proved the kabinnama of the second marriage as exhibit 3. She denied the suggestion that on 24.05.2021 the accused divorced her. She affirmed that she did not file any case for restitution of the conjugal life. P.W. 2 Meherun Mohini, the daughter of P.W. 1, stated that her father married second time without the permission of her mother.

On perusal of the records, it appears that the talaknama dated 24.05.2021, and the registered postal receipts dated 07.02.2021 and 07.03.2021 were not proved during the trial of the case but the trial Court relied on those documents in convicting the petitioner. Therefore trial Court committed illegality in relying on the photocopy of the talaknama and the postal receipts dated 07.02.2021 and 07.03.2021. The defence case is that before the second marriage, the convict-petitioner divorced his wife.

On perusal of the records, it reveals that the photocopy of the registered postal receipt dated 07.02.2021 sent to Rehena Yasmin, Mayor Chandpur Pourashova and Chairman No. 10 Paikpara Union Parishad, another registered postal receipt dated 07.03.2021 sent to Chairman No. 7 Paikpara Union Parishad, three copies of the notice of divorce under Section 7(1) of the Muslim Family Laws Ordinance, 1961, a copy of the talaknama dated 24.05.2021 issued by the Nikah Registrar Moulana Md. Nasir Uddin and an affidavit sworn on 04.02.2021 by the accused before the Notary Public, Chandpur are lying with the records. Attested copy of the nikahnama issued by the Nikah Registrar Md. Maniruzzamam Khan of No. 2 Ashikathi Union Parishad was proved by the complainant as exhibit 3. The certificate issued by the local Chairman is lying with the records. Exhibit 3 was issued by the Nikah Registrar. The photocopy of the nikahnama of the complainant issued by the Nikah Registrar was proved by the complainant.

A witness who issued the document is the competent witness to prove the said documents. The nikahnama (exhibit 3) was not proved by the Nikah Registrar and the Chairman who issued the certificate was also not examined by the prosecution. Although the talaknama dated 24.05.2021 and the copy of the postal receipts dated 07.02.2021 and 07.03.2021 were not proved by the defence but the trial Court illegally relied on those documents and made adverse findings about those documents.

It further appears that the appellate Court below without service of notice of the Criminal Appeal No. 310 of 2023 upon the convict-petitioner and without fixing a date of hearing passed the impugned judgment beyond his knowledge. Therefore, the impugned judgment and order passed by the appellate Court below is not sustainable in law. The trial Court illegally relied on the photocopy of the talaknama dated 24.05.2021 and the postal receipts dated 07.02.2021 and 07.03.2021 and made an adverse remark about

those documents. Therefore, I am of the view that ends of justice would be best served if the case is sent back on remand to the trial Court to prove the documents of both parties lying with the records.

In view of the above evidence, findings, observation and proposition, the impugned judgments and orders passed by both the Courts below are hereby set aside. The case is sent back on remand to the trial Court. Both parties are entitled to adduce evidence to prove the documents mentioned hereinabove. The convict-petitioner is at liberty to produce evidence regarding divorce between the convict-petitioner and the complainant.

The trial Court is directed to dispose of the case within 6(six) months from the date of receipt of this judgment.

In the result, the Rule is made absolute and the case is sent back on remand to the trial Court.

Send down the lower Court's records at once.