

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

PRESENT:

MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN
AND
MR. JUSTICE KHANDAKER DILIRUZZAMAN

CRIMINAL MISCELLANEOUS CASE NO. 37385 OF 2022

Md. Sultan Miah and others..... Petitioners

-versus-

The State and another..... Opposite parties

None appears.....For the petitioners

None appears.....For the opposite party No. 2

Mr. Imran Ahmed Bhuiyan, DAG with
Mr. Mehadi Hasan (Milon), AAG and
Ms. Aleya Khandker, AAG

.....For the state

Heard on: 10.08.2023 and 16.08.2023

Judgment on: **The 16th of August, 2023**

ABU TAHER MD. SAIFUR RAHMAN, J:

This Rule was issued on an application filed by the accused-petitioners under section 561A of the Code of Criminal Procedure, 1898 calling upon the opposite parties to show cause as to why the proceedings of C.R. Case No. 313 of 2021 (Naria) under section 3 of the Dowry Prohibition Act, 2018 now pending before the Chief Judicial Magistrate, Shariatpur should not be quashed so far as it

relates to the accused-petitioners only and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court was pleased to stay all further proceedings of the aforesaid C.R. Case for 6 (six) months from the date which was subsequently extended till to disposal of the Rule.

For disposal of the Rule, the relevant facts may be briefly be stated as follows:

That the opposite party No. 2 as the complainant filed a C. R. Case No. 313 of 2021 (Naria) before the Chief Judicial Magistrate, Shariatpur against the accused-petitioners alleging inter alia, that the complaint named accused No.1 was married to the complainant on 12.09.2019. The accused Nos. 2 and 3 are her in-laws, accused No.4 is her sister-in-law and accused No. 5 is her brother-in-law. It is further stated that after marriage, her husband went to Qatar. Thereafter, the accused No.1 with bad persuasion of accused Nos.2 to 5 demanded Taka **5,00,000/-** (Five lac) as dowry from her for purchasing a micro-bus and used to torture her physically and mentally. Subsequently, the accused-petitioners sent her to father's house. The local Councillor of Ward No.7 tried to settle the matter but failed. On the date of occurrence, the accused- petitioners came to her father's house and again demanded **Taka 5,00,000/-** (Five lac) as

dowry, otherwise they will not bring her back. Hence, the complainant filed the aforesaid C.R. Case against the accused-petitioners under Section 3 of the Dowry Prohibition Act, 2018. After having an inquiry, the learned Court took cognizance of the aforesaid case against the complaint named accused Nos. 2 to 5. Thereafter, the accused-petitioners appeared before the court below and obtained bail. After obtaining the bail, the accused-petitioners filed the instant application before this Court under Section 561A of the Code of Criminal Procedure for quashing the aforesaid proceedings and obtained the Rule and Stay.

None appears for the accused-petitioners to press the Rule.

No one also appears for the opposite party No. 2 to oppose the Rule.

On perusal of the instant application, it transpires that the charge is not yet framed against the accused-petitioners. At the time of the framing of charge, the accused-petitioners could have preferred an application under section 241A of the Code of Criminal Procedure for their discharge. It is well settled principle of law that the jurisdiction under section 561A is of an extra-ordinary nature intended to be used only in extra-ordinary cases where there is no other remedy available and cannot be utilized where there is other express remedy provided by the Criminal Procedure Code.

In the instant case, the accused-petitioners without invoking the statutory provision of section 241A of the Code of Criminal Procedure, filed the instant application under section 561A of the Code of Criminal Procedure, which is not sustainable in law.

In such aforesaid legal position, we are of the view of that the instant Rule is not maintainable.

As a result, the Rule is discharged.

The order of stay granted earlier by this Court is hereby stand vacated.

Communicate the judgment and order at once.

Khandaker Diliruzzaman, J:

I agree