

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present

Mr. Justice Ashish Ranjan Das

And

Mr. Justice Md. Riaz Uddin Khan

Criminal Appeal No. 37 of 2023

In the matter of:

A petition of appeal under section 84 of the
Information and Communication Technology Act,
2006

In the matter of:

Mohammad Hafizur Rahman

...Complainant- Appellant

Versus

The State and another

...-Respondents

Mr. Sarwar Ahmed with

Mr. A.K.M. Mamunur Rashid, Advocates

...For the Complainant-Appellant

Ms. Salina Akter, Advocate

...For the Respondent No. 2

Mr. S.M. Asraful Hoque, D.A.G with

Mr. Sheikh Serajul Islam Seraj, D.A.G

Ms. Fatema Rashid, A.A.G

Mr. Md. Shafiquzzaman, A.A.G. and

Mr. Md. Akber Hossain, A.A.G

...For the State

Judgment on: 11.01.2024

Md. Riaz Uddin Khan, J:

This Criminal Appeal is an outcome of the
order dated **07.10.2021** passed by the learned
Judge of the Cyber Tribunal, Rajshahi dismissing
a petition of complaint filed directly before

the Cyber Tribunal alleging offence under section 25 and 29 of the Digital Nirapatta Ain, 2018.

Succinct facts for disposal of this appeal are that the complainant appellant filed the petition of complaint before the Cyber Tribunal, Rajshahi alleging inter alia that he found from his Facebook ID that the accused from his (accused) facebook link uploaded some false and defamatory statements regarding his promotion at Bangladesh Border Guard and his father's certificate of valiant freedom fighter claiming that those are false which constitute offence under section 25(1)(ka) and 29(1) of the Digital Nirapatta Ain, 2018 hence the petition of complaint against the accused.

After receiving the petition of complaint the Tribunal examined the complainant under section 200 of the Code of Criminal Procedure and perusing the petition of complaint and other materials enclosed thereto dismissed the case on the finding that there is no ingredient of any offence under Digital Nirapatta Ain, 2018 to take cognizance of the case. Challenging this

order the complainant preferred this Appeal before this Court with an application for condonation of delay of 301 days.

This Court initially issued rule on delay and however, finally condoned the aforesaid delay.

Mr. Sarwar Ahmed, the learned Advocate appearing for the appellant submits that the finding of the Cyber Tribunal is wrong as there are materials or ingredients of section 25 as well as section 29 of the Digital Nirapatta Ain, 2018 in the petition of complaint against the respondent No.2 as he posted through his facebook link some false defamatory story about the complainant and his father.

He then submits that according to section 48 of the Ain, 2018 the Tribunal could not take cognizance of any case other than on receiving a report from the police and as such the complainant ought to have go to the Police Station but instead he filed complaint directly to the Tribunal and in such circumstances the Tribunal should have sent the case to the Police Station, the appropriate authority and to ask

the police to proceed in according with law. The Tribunal committed illegality by not sending the case to the police or asking the complainant to go to the police to register the case. In support of this submission the learned advocate cited a Full Bench decision of this Court in the case of Mst. Anjuara Khatun Vs. the State and another reported in 2016 BLD 318.

He finally submits that the complainant went in wrong forum and because of that substantial time has been elapsed to go the Police Station now and if this Court thinks it fit may give observation on the unusual delay caused for going to the wrong forum upon which the complainant had no negligence or control.

On the other hand the opposite party No. 2 though did not file any counter affidavit but entered appearance through his learned Advocate. Ms. Salina Akter, the learned Advocate appearing for the opposite party No. 2 submits that the Digital Nirapatta Ain, 2018 is a special law and special provision should prevail over the provision of the general law, that is, Code of Criminal Procedure. According to section 48 of

the Ain, 2018 irrespective of anything provided under the Code of Criminal Procedure, the Cyber Tribunal has no jurisdiction or authority to entertain any complaint other than on a report by Police and in such view of the matter the Tribunal rightly dismissed the petition of complaint. It is not the court's duty to give advice to the litigant people to go to the appropriate forum or authority to register their allegation but it is the court's discretion and it cannot be said that court committed illegality for not sending the case to the police or asking the complainant to go to the police, the learned advocate for the respondent no.2 finally submits.

We have heard the learned Advocates of both the parties, perused the materials on record available before us including the impugned order and the relevant law.

It appears from the impugned order that the Cyber Tribunal in dismissing the petition of complaint did not give any reason except in a single sentence saying that there is no ingredient of any offence under Digital

Nirapatta Ain, 2018. It is well settled provision of law that when cognizance is taken the Court or Magistrate does not need to give any reason but in dismissing the complaint the court or Magistrate must briefly stated the reason for dismissing the same.

There is no doubt that Digital Nirapatta Ain, 2018 is a special law having special procedure. Any alleged offence under the Ain is triable by the Cyber Tribunal established under the Information and Communication Technology Act, 2006. Section 3 of the Ain, 2018 provides that if any provision of any other law is inconsistent with any provision of this Ain, the provision of this Ain shall apply. Chapter VII of this Ain provided the procedure of investigation of offences and trial. There is time limit for investigation provided in section 40 of the Ain.

Section 48 of the Ain, 2018 starts with a *non obstanti* clause saying that notwithstanding anything contained in the Code of Criminal Procedure, the Tribunal shall not take cognizance of any offence except upon a report

made in writing by any police officer. Section 50 of the Ain provides that save as anything contrary to the provision of this Ain, the provision of the Code of Criminal Procedure shall be applicable to the investigation, trial, appeal and all incidental matters related to any offence under this Ain. So, it is crystal clear that the Code of Criminal procedure is applicable only where there is no specific provision provided in the Ain, 2018.

Unlike the Nari-O-Shishu Nirjatan Daman Ain, 2000 there is no provision in the Digital Nirapatta Ain, 2018 that if anyone is refused by the police to register a case (s)he can directly go to the Cyber Tribunal. However, in the present case admittedly the complainant appellant did not even approach the police. The decision cited by the learned advocate for the complainant appellant regarding the jurisdiction and authority of Nari-O-Shishu Nirjatan Daman Tribunal is not in any way helps his argument as there is specific provision in the Ain, 2000 to go to the Tribunal after being refused by police but in the Ain, 2018 there is no such provision.

It appears from section 48 of the Digital Nirapatta Ain, 2018 that there is specific bar in taking cognizance of any offence alleged to have been committed under the Ain, 2018 other than on a report in writing by a police officer. The Cyber Tribunal rightly refused to take cognizance of the offence citing wrong reason but should held that without a report in writing by police officer, the Tribunal is barred to take cognizance of any offence directly. So, the Cyber Tribunal did not commit any illegality in dismissing the petition of complaint directly filed before it. In such view of the matter, the instant appeal has no substance.

It trans out from the record that the instant criminal appeal has been filed in delay of 301 days and the delay has been condoned though causing of delay was not adequately explained. However, it is long settled provision of law that generally a criminal offence cannot be abated because of the time limit except there is any specific time limit provided in any law. For example section 138 of the Negotiable Instruments Act, 1881, section 7(b) of the Dowry

Prohibition Act, 1980 etcetera. In the present case we do not find any prohibitory provision of time limit in filing case under Digital Nirapatta Ain, 2018. It is also long settled that if any delay occurs in filing any case there must be reasonable explanation of such delay.

In the result, the Appeal is dismissed with the above observations.

Send down the lower court's record along with a copy of this judgment at once.

Ashish Ranjan Das, J:

I agree.