

Present:

Mr. Justice A S M Abdul Mobin

and

Mr. Justice Md. Mahmud Hassan Talukder

Criminal Appeal No. 5055 of 2023

Md. Rofiquzzaman @ Rana

... appellant

Versus

The State

... respondent

Mr. Md. Azharul Islam Chowdhury, advocate

... for the appellant

Mr. Sanjoy Kumar Kundu, advocate

... for the respondent

Heard and Judgment on: 29.01.2024.

**A S M Abdul Mobin, J:**

This appeal is directed against the order dated 21.03.2023 passed by the learned Judge, Nari-O-Shishu Nirjatan Damon Tribunal, Dinajpur in Nari O Shishu Case No. 90 of 2023 under section 11(Ga) of Nari-O-Shishu Nirjatan Daman Ain, 2000, now pending in the Nari-O-Shishu Nirjatan Daman Tribunal, Tribunal, so far it relates to the direction upon the accused appellant to pay Tk. 4,00,000/- lacs to the complainant for her maintenance. At the time of admission of the appeal, the impugned order so far relates to aforesaid direction is stayed for a period of 6(six) months on 07.12.2023

and thereafter, the stay was extension for a period of 6(six) months.

The complainant respondent initiated the case by filing a complaint in the Nari-O-Shishu Case No. 90 of 2023 on 16.01.2023 stating that the accused appellant demanded dowry of ten lacs. On her refusal he assaulted her and dragged her out of the house on the day of occurrence. Thereafter, the complainant got treatment at the local Hospital. Afterwards, she filed the complaint. The learned judge of the Tribunal on receipt of the complaint sent it to the Chief Judicial Magistrate, Dinajpur for inquiry. After receiving the inquiry report, took cognizance against the accused appellant under section 11(Ga) of Nari-O-Shishu Nirjatan Daman Ain, 2000 on 02.02.2023 and issued warrant of arrest against him.

He was arrested and was produce before the learned Judge on 06.01.2023. It appears that he was granted bail on 07.03.2023 on a condition that he would compromise the dispute with the complainant. When the accused appellant prayed for confirmation of his bail, the learned Judge passed the impugned order for payment of Tk. 4,00,000/- lac to the complainant for her maintenance. He, meanwhile, paid Tk.

90,000/- to the complainant on different dates. The accused appellant being aggrieved by the order filed the instant appeal.

Mr. Md. Azharul Islam Chowdhury, the learned advocate appearing for the appellant submits that the very order of direction upon the appellant to pay Tk. 4,00,000/ to the complaint for her maintenance is not permissible in law and the order is illegal and liable to be set aside.

Mr. Sanjoy Kumar Kundu, the learned advocate submits that meanwhile the order has been acted upon and the accused appellant has already paid Tk. 90,000/- out of the money as being directed by the learned Judge of the Tribunal. So the appeal has become infructuous and liable to be dismissed.

We have considered the submission of the learned advocate, perused the record. On perusal of the record, it appears that the case is a under section 11(Ga) Nari-O-Shishu Nirjatan Daman Ain, 2000. The petitioner has been granted temporary bail but when he has prayed for confirmation of his bail, the learned Judge has directed him to pay of Tk. 4,00,000/- to the complainant for her maintenance.

The very order of such direction upon the accused appellant is not sanctioned in law. This is not case of recovery

of dower money and maintenance. The complainant may pray for dower money of maintenance in a proper family suit. However, it appears that the accused appellant, meanwhile, has already paid of Tk. 90,000/- to the complainant out of the money as he has been directed to make payment for the maintenance of the complainant.

Since the order of direction upon the accused appellant to make payment of Tk. 4,00,000/- for maintenance of the complainant is not permissible in law, the same is liable to be set aside.

Accordingly, the appeal is allowed and the order dated 21.03.2023 so far it relates to make payment of Tk. 4,00,000/- to the complainant for her maintenance is set aside. However, the accused appellant is not permitted to make a demand for repayment of the money he has already paid.

The learned Judge of the Tribunal is directed to proceed with the trial of the case in accordance with law.

Md. Mahmud Hassan Talukder , J:

I agree.

