

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

Present

Mr. Justice Ashish Ranjan Das

And

Mr. Justice Md. Riaz Uddin Khan

Criminal Miscellaneous Case No. 49186 of 2023

IN THE MATTER OF :

An application under Section 561A of the Code of
Criminal Procedure

-And-

IN THE MATTER OF :

Md. Chonchal

... Petitioner

Versus

The State

...Opposite Party

Mr. Md. Masudul Alam Doha

...For the Petitioner

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

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:15.02.2024.

Md. Riaz Uddin Khan, J:

Rule was issued calling upon the opposite party State to show cause as to why the order dated 14.01.2020 passed by the Shishu Adalat, No.1, Naogaon in Sessions Case No. 993 of 2018 arising out of Naogaon Model Police Station Case No. 14 dated 06.12.2017 corresponding to G.R. No. 824 of 2017 (Naogaon) under sections 302/34 of the Penal Code, now pending in the Court of Additional Sessions Judge, 1st Court, Naogaon should not be

quashed and/or pass such other or further order or orders as to this Court may deem fit and appropriate.

At the time of issuance of Rule a Division Bench of this Court was pleased to stay all further proceedings of Sessions Case No. 993 of 2018, now pending in the Court of Additional Sessions Judge, 1st Court, Naogaon.

The petitioner along with another is charged under section 302/34 of the Penal Code for alleged commission of murder who made a judicial confession. When the case was fixed for examination of witnesses, the accused petitioner filed an application before the Shishu Adalat to ascertain his age claiming himself a shishu by submitting photocopies of school certificate and birth registration certificate. He was examined by a Medical Board who opined that the age of the petitioner is between 18 to 19 years. After considering all the documents including chargesheet, confessional statements, medical opinion and other certificates the learned judge of the Shishu Adalat by his impugned order was pleased to reject the petitioners application. Being aggrieved thereby the accused petitioner filed the instant application under section 561A of the Code of Criminal Procedure and obtained Rule and order of stay as stated at the very outset.

The learned advocate for the accused petitioner submits that the learned judge of Shishu Adalat should have held that the petitioner was a shishu at the time of alleged commission of offence.

On the other hand Mr. Md. Shafiquzzaman, learned Assistant Attorney General appearing for the state supports the order passed by the Shishu Adalat and submits that the petitioner was not a shishu at the time of commission of offence and prays for discharging the Rule.

We have heard the learned advocate for both sides, perused the allocation, impugned order and other documents available before us. The Shishu Ain, 2013 provides a provision of appeal under section 41(1) of the Ain against any order or judgment passed by the judge of the Shishu Adalat within 60 days before the High Court Division. The limitation of 60 days for filing appeal is special limitation and delay in filing appeal cannot be condoned by any Court. However, Section 41(2) provides that against any judgment and order the aggrieved person may file revision before this Court. The accused petitioner neither filed appeal in time nor revision before this Court as provided by the Shishu Ain, 2013.

The present application has been filed before this Court under section 561A of the Code of Criminal Procedure but nowhere in the application

had the petitioner explained any reason why he could not file appeal or revision as provided under section 41(1) or 41(2) of the Shishu Ain, 2013 before this Court. In such view of the position of law, this application is not maintainable. Consequently, the Rule issued under section 561A of the Code of Criminal Procedure is liable to be discharged.

Moreover, it appears that the petitioner made a confession under section 164 of the Code of Criminal Procedure before the magistrate wherein he states his age as 19(nineteen) years. The investigation officer submitted charge sheet showing the petitioner's age as 19(nineteen) years. The charge sheet was accepted by the court of Magistrate and then the matter was sent for trial and the trial court framed charge and thereafter the matter was fixed for examination of witness. Until that date, the petitioner did not raise any question regarding his age. However, in a belated stage the petitioner filed instant application before the Shishu Adalat wherein he submitted photocopies of school certificate and birth registration certificate. The learned Judge after examining those certificates and the others materials on record including the confession and charge sheet and also medical examination report came to the conclusion that the petitioner was not a minor at the time of commission of offence. The

learned Advocate before this Court also did not file any certificates or documents showing that the petitioner was minor at the time of alleged commission of offence by filing original or photocopy of birth registration certificate or school certificate. Since the petitioner could not raise any believable dispute which can be investigated and examined to ascertain the real age of the accused petitioner we also do not find any reason to send the case before the Shishu Adalat to ascertain the age after taking evidence as provided under section 21 of the Shishu Ain, 2013 by examining the witnesses who issued relevant certificates and other relevant witnesses. The record available before us shows that the petitioner was not a minor at the time of alleged commission of offence of murder. Hence, we do not find any reason to interfere with the findings of the learned Judge of the Shishu Adalat.

In the facts and circumstances of the case and the position of law as discussed above, there is no merit in the instant Rule, which is destined to fail having no legs to stand.

In the result, the Rule is **discharged**.

The order of stay passed earlier by this Court stands vacated.

The trial court is directed to conclude the trial as early as possible keeping in mind that

the alleged occurrence was took place in the year of 2017.

Communicate the judgment and order at once.

Ashish Ranjan Das, J:

I agree.

Ziaul Karim
Bench Officer