

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Revision No.486 of 2023

Jahangir Alam

.....convict-petitioner

-Versus-

The State and another

..... opposite-parties

Mr. Mohammad Sajjadur Rahman, Advocate

.....For the convict-petitioner

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

No one appears

.....For the opposite party No.2

Heard on 15.11.2023 and
Judgment on: 19.11.2023

Md. Kamrul Hossain Mollah.J:

This is an application under Section 439 read with section 435 of the Code of Criminal Procedure. This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order of conviction and sentence dated 05.02.2020 passed by the learned Additional Sessions Judge, 5th Court, Chattogram in Criminal Appeal No.555 of 2018 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 23.10.2017 passed by the learned Senior Judicial Magistrate, Chattogram in C.R. Case No.7 of 2017(Zoraranj)

convicting the petitioner under section 4 of the Dowry Prohibition Act, 1980 and sentencing him to suffer rigorous imprisonment for a period of 01(one) year and also to pay a fine of Tk.5000/- in default to suffer simple imprisonment for a period of 02(two) months more should not be set-aside and or pass such other order or further order or orders as to this court may seem fit and proper.

At the time of issuance of the Rule this Court granted bail to the petitioner for a period of 06(six) months and stayed the realization of fined till disposal of the Rule.

The relevant facts necessary for disposal of the Rule are that the complainant got married with the convict-petitioner with on 18.05.2015. Thereafter, the petitioner demanded dowry amount of Tk.2,60,000/- at the time of marriage ceremony. One son was born from their wedlock named Arfin Nahid Toshar age about 11 months. After passing few days the petitioner abused the complainant for demanding dowry and for that the petitioner made torture upon her, but the complainant did not argue with the petitioner due to she has a son including she is a daughter of Muslim Family. On 30.10.2016 when the petitioner demanded dowry amount of Tk.1,00,000/- from the complainant and when she denied the matter then the petitioner caused injury upon the complainant by fisting and kicking more, so caused her indiscriminately. Thereafter, the petitioner when tried to

assault the victim with stick upon her head then she abstain herself by her hand which caused injury upon her shoulder and she became injured. After hearing the shouting of victim the witnesses came to spot then the petitioner sent her into her parents house and disclosed that if she be able to give Tk.1,00,000/- then the petitioner will continue conjugal life with her, otherwise he will marry other girl as a wife. Thereafter, the complainant went to her parents house with his son age of 11 months. For this reason, the complainant filed C.R. Case No.07 of 2017(Zorargonj) under section 4 of the Dowry Prohibition Act, 1980 against the petitioner before the Chief Judicial Magistrate, Chattogram.

After conclusion of the trial and hearing both the parties the learned the Senior Judicial Magistrate, Chattogram on perusal of the evidence on record and document convicted the petitioner under section 4 of the Dowry Prohibition Act, 1980 and sentenced him to suffer rigorous imprisonment for a period of 01(one) year and also to pay a fine of Tk.5,000/- in default to suffer simple imprisonment for a period of 02(two) months more by his judgment and order of conviction and sentence dated 23.10.2017.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 23.10.2017 passed by the learned Senior Judicial Magistrate, Chattogram in C.R. No.07 of 2017(Zorargonj) the convict-petitioner filed Criminal Appeal No.555 of 2018 before the learned Sessions Judge, Chhattiogram. Thereafter, it was transferred to the learned Additional Sessions Judge, Chattogram for disposal.

After hearing both the parties and upon considering the materials on record, the learned Additional Sessions Judge, Chattogram dismissed the Criminal Appeal No.555 of 2018 and affirmed the impugned judgment and order of conviction and sentence dated 23.10.2017 passed by the learned Senior Judicial Magistrate, Chattogram in C.R. Case No.07 of 2017(Zorargonj) by his judgment and order of conviction and sentence dated 05.02.2020.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 05.02.2020 passed by the learned Additional Sessions Judge, Chattogram in Criminal Appeal No.555 of 2018, the petitioner filed this Criminal Revision before this Hon'ble High Court Division.

Mr. Mohammad Sajjadur Rahman, the learned Advocate appearing for the petitioner by filing an application for compromise submits that the convict-petitioner compromised the matter with complainant-opposite party No.2 out of Court in presence of both the parties including the relatives of same and they are continuing their conjugal life as a husband and wife with each other jointly peacefully in their locality with knowledge of their relatives. The complainant has no claimed against the convict-petitioner, if he be acquitted. Accordingly, he prays for acquitting the convict-petitioner and making the Rule absolute.

I have perused the revisional application, the application for compromise, the impugned judgment and order of conviction and sentence the Courts' below, the submissions of the learned Advocate for the petitioner, the papers and documents as available on the record.

It appears from the submissions of the learned Advocate for petitioner that an amicable settlement has been held between the parties and they are continuing their conjugal life and there is no claim to each other.

In the light of the above discussion, it is my view that since an amicable settlement has been held between the parties, they are continuing their conjugal life and there is no any claim to each other, Therefore, the judgment and order of conviction and sentence dated 05.02.2020 passed by the learned Additional Sessions Judge, 5th Court, Chattogram in Criminal Appeal No.555 of 2018 is not maintainable against the convict-petitioner and it will be fair to interference there.

Accordingly, I find cogent and legal ground in the submissions of the learned Advocate for the petitioner and to interfere with the impugned judgment and order of conviction and sentence dated 05.02.2020. Therefore, the instant Rule has merit.

In the result, the Rule is made absolute on the basis of the compromise petition.

The impugned judgment and order of conviction and sentence dated 05.02.2020 passed by the learned Additional Sessions Judge, 5th Court, Chattogram in Criminal Appeal No.555 of 2018 dismissing the appeal and hereby affirming the judgment and order of conviction and sentence dated 23.10.2017 passed by the learned Senior Judicial

Magistrate, Chattogram in C.R. Case No.07 of 2017 (Zorargonj) convicting the appellant under section 4 of the Dowry Prohibition Act, 1980 and sentenced him to suffer rigorous imprisonment for a period of 01(one) year and also to pay a fine of Tk.5,000/- in default to suffer simple imprisonment for a period of 02(two) months more is hereby set-aside and the convict-petitioner be acquitted.

The order of bail granted at the time of issuance of the Rule is hereby recalled and cancelled and the order of stay of realization of fine is hereby vacated.

Send down the lower Court records along with a copy of this judgment and order to the concerned Court below at once.

Md. Anamul Hoque Parvej
Bench Officer