

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

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 4772 of 2022

Md. Nasir Uddin

.....Convict petitioner

-Vs-

The State and another

....respondents

Mr. Mohammad Mosarof Hosen Sikder,
Advocate with

Mr. Md. Enamul Hoque, Advocate

.For the convict petitioner.

Mr. Advocate

..For the opposite party No.2

Mr. Sultan Mahmood Banna, AAG with

Mrs. Sharmin Hamid, AAG

..... For the State

Heard on 08.01.2025

Judgment delivered on: 14.01.2025

On an application filed under section 439 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 31.08.2022 passed by Sessions Judge, Jamalpur in Criminal Appeal No. 49 of 2021 affirming the judgment and order of conviction and sentenced dated 28.01.2021 passed by Senior Judicial Magistrate, Court No. 4, Jamalpur in C.R. No. 190(1)/2019 convicting the accused under section 3 of the Dowry Prohibition Act, 2018 and sentencing him thereunder to suffer rigorous imprisonment for

01(year) year should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution case, in short, is that the complainant Most. Champa Akter is the legally married wife of the accused Md. Nasir Uddin. The accused Nos. 2 and 3 are his parents and accused No. 4 is his brother. At the time of the marriage solemnized on 19.06.2013 the father of the complaint Champa Akter paid Tk. 2,30,000 in cash and other materials. While she was enjoying their conjugal life on 03.04.2019 at 11.00 am at the instigation of the parents and brothers of the accused Md. Nasir Uddin, he demanded Tk. 200,000 as dowry. The complainant refused to pay the dowry. Consequently, at the instigation of the accused Nos. 2 to 4 the accused Md. Nasir Uddin bit her and drove her out of his house. She came back to the house of her father and disclosed about the demand for dowry by the accused persons. After that, on the same date at 4.00 pm, the father of the complainant along with witnesses went to the house of the accused Md. Nasir Uddin and requested him to enjoy the conjugal life without dowry. On several dates, shalish took place and lastly on 26.05.2019 at 4.00 pm the father of the complainant along with the witnesses went to the house of the accused Md. Nasir Uddin and again he demanded Tk. 200,000 as dowry failing which he threatened to divorce the complainant.

After filing the complaint petition, the complainant was examined under section 200 of the Code of Criminal Procedure, 1898 and the learned Magistrate was pleased to take cognizance of the offence against the accused. During the trial, the charge was framed under section 3 of the Dowry Prohibition Act, 2018 which was read over and explained to the accused present in court and he pleaded not

guilty to the charge and claimed to be tried following the law.. The prosecution examined 3 witnesses to prove the charge against the accused. After examination of the prosecution witnesses, the accused was examined under section 342 of the Code of Criminal Procedure, 1898 and he declined to adduce any D.W.

After concluding the trial, the trial court by the impugned judgment and order dated 28.01.2021 was pleased to convict the petitioner under section 3 of the Dowry Prohibition Act, 2018 and sentenced him thereunder to suffer imprisonment for one year against which he filed the Criminal Appeal No. 49 of 2021 before the Sessions Judge, Jamalpur who after hearing the appeal was pleased to affirmed the judgment and order of conviction and sentence passed by the trial court against which the convict petitioner obtained the Rule.

P.W. 1 Most. Champa Akter is the complainant. She stated that she is the legally married wife of the accused Md. Nasir Uddin. On 03.04.2019 at 11.00 am accused demanded dowry amounting to Tk. 200,000. When she refused to pay dowry, he drove her out of his house. At the time of marriage, Tk. 230,000 was paid to the accused. She also paid her salary to the accused. After coming from the house of her husband, she informed him about the demand for dowry to her father and the witnesses including Intaj. On the same date, she along with witnesses went to the house of the accused and he again refused to lead the conjugal life. A shalish took place on 26.05.2019 at 4.00 pm and in that shalish, the accused again demanded dowry. P.W. 1 proved the complaint petition as exhibit-1 and her signature on the complaint petition as exhibit-1 series. During cross-examination, she stated that on the date of occurrence, the accused claimed dowry in the presence of her uncle Shahjan and others. Subsequently, she stated

that her brother Nazrul, her parents, uncle and aunty were also present there. The accused also bitten her and the doctor treated her. She was also admitted to the Dewanganj Upazilla Health Complex for 3/4 days. She denied the suggestion that the accused divorce her or he sent notice or she filed a false case. She also denied the suggestion that the accused did not demand any dowry from her. After getting notice of the divorce, she filed a false case.

P.W. 2 Md. Rezaul stated that the P.W. 1 is her niece. The occurrence took place on 20th Choitra, Wednesday at 3.00 pm. On that day, he along with the complainant went to the house of the accused and requested him to lead their conjugal life who again demanded Tk. 200,000. During cross-examination, he admitted that the accused divorced the complainant. He denied the suggestion that after receiving the notice of the divorce, the complaint petition was filed or he deposed falsely.

P.W. 3 Md. Shahjal stated that the occurrence took place on 20th Chaitra last year at 11.00 am. The accused Md. Nasir Uddin is his neighbour. The accused demanded Tk. 200,000 and drove his wife out of his house. A shalish took place on the same day at 4.00 pm. In the Shalish, he refused to lead their conjugal life without dowry. He admitted that the complainant Most. Champa in living for 7 years in his house. The accused is his nephew and the complainant Champa was admitted to the hospital for three days. He went along with the Champa to the Hospital. After 4 days, she came back to her house. He along with Champa also went to the house of her father. After one day of the occurrence, he went to the house of the accused. He is not aware whether the accused divorced the complainant. He denied the

suggestion that the accused did not demand any dowry or he divorced his wife.

The learned Advocate Mr. Md. Mosharof Hossain Sikder appearing on behalf of the convict petitioner submits that the complainant filed the case after the divorce showing a false date of demand of dowry. Although P.W. 1 stated that on 03.04.2019 the accused Md. Nasir Uddin having bitten the complainant drove her out of his house and she was admitted to the hospital but during trial, no medical certificate of P.W. 1 was proved. The evidence of P.Ws. 1 and 2 contradicted by P.W. 3 and the prosecution failed to prove the charge against the accused beyond all reasonable doubt and the courts below without proper assessment and evaluation of the evidence of witnesses illegally passed the impugned judgment and order. He prayed for setting aside the impugned judgment and order passed by the courts below.

The learned Assistant Attorney General Mrs. Sharmin Hamid appearing on behalf of the state submits that both the courts below arrived at a concurrent finding of fact that on the date of occurrence, the accused demanded dowry amounting to Tk. 200,000 to the complainant and subsequently he refused to lead the conjugal life without dowry. P.Ws. 1 to 3 proved the charge against the accused beyond all reasonable doubt. She prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Md. Mosharof Hossain Sikder who appeared on behalf of the convict petitioner and learned Assistant Attorney General Mrs. Sharmin Hamid who appeared on behalf of the state, perused the evidence,

impugned judgment and order passed by the courts below and the records.

On perusal of the evidence, it appears that the complainant Most. Champa Begum is the legally married wife of the accused Md. Nasir Uddin who was implicated in the case along with his parents and brothers. The learned Magistrate took cognizance of the offence against only accused Md. Naris Uddin. The statement made by P.W. 1 in the complainant petition that at the instigation of the parents and brother, the accused demanded dowry was disbelieved by the learned Magistrate.

In the complaint petition, it has been alleged that on 03.04.2019 at 11.00 am the accused demanded dowry of Tk. 200,000 to the complainant and after beating her, the accused drove her out of his house. Thereafter, she came back to her house and informed the matter to her father. On the same day, her father along with witnesses went to the house of the accused at 4.00 pm and requested him to take the victim without dowry. No statement is made by the complainant in the complaint petition that on 03.04.2019 at 4:00 pm she also went along with her father. Therefore, the statement made by P.W. 1 that on 03.04.2019 she along with the witnesses went to the house of the accused is an exaggeration regarding the demand of dowry at 4.00 pm. Furthermore, P.Ws. 1 and 2 stated that on the date of occurrence on 03.04.2019 they went to the house of the accused to request him to lead their conjugal life without dowry. P.W. 3 is the witness of the complaint petition. He stated that after one day, he went to the house of the accused. Therefore, the evidence of P.W.s. 1 and 2 regarding their visit to the house of the accused on 03.04.2019 is contradicted by P.W. 3.

During cross-examination, P.W. 2 admitted that the accused divorced her wife. It was suggested to P.W. 2 that after service of notice of divorce a false case was filed against the accused which has been denied him. No statement was made by P.W. 2 that after filling the case, the accused divorced P.W. 1. The divorce of P.W. 1 by her husband accused Nasir Uddin is admitted by the prosecution. No evidence was adduced to prove that after filing the case, accused Md. Nasir Uddin divorced his wife. Therefore, I am of the view that before filing the case the accused divorced his wife P.W. 1. P.Ws. 2 to 3 are close relatives of the victim P.W.1. No independent, reliable and credible witness was examined by the prosecution to prove that the accused demanded dowry on the date, time and place of occurrence.

Because of the above evidence, I am of the view that the complaint petition was filed after the divorce of the complainant and the prosecution failed to prove the charge against the accused beyond all reasonable doubt.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgments and orders of conviction and sentence passed by the courts below against the accused Md. Nasir Uddin are hereby set aside.

However, there will be no order as to costs.

Send down the lower Court's records at once.