

In the Supreme Court of Bangladesh
High Court Division
(Criminal Revisional Jurisdiction)

Present:

Mr. Justice Md. Khairul Alam

Criminal Revision No. 678 of 1998.

In the matter of:

Md. Bahauddin Gazi.

.....Petitioner.

-Versus-

The State.

..... Opposite parties.

None appears.

..... For the petitioner.

Ms. Shiuli Khanom, D.A.G along with

Mr. S.M. Emamul Musfiqur, A.A.G

Mr. Md. Humayun Karim Siddique, A.A.G

..... For the state.

**Heard On: 24.10.2024 &
Judgment on: 28.10.2024**

Md. Khairul Alam, J:

This Rule was issued calling upon the opposite party to show cause as to why the judgment and order dated 02.08.1998 passed by the learned Sessions Judge, Khulna in Criminal Appeal No. 14 of 1998 affirming the judgment and order of conviction and sentence dated 12.03.1998 passed by the learned 1st Class Magistrate, Khulna in C.R. Case No.39 of 1996 (Fultala)

convicting the accused petitioner under section 7(2) of the Muslim Family Law Ordinance, 1961 and sentencing him to suffer simple imprisonment for 01 (one) year and also to pay a fine of Tk. 5,000.00 (five thousand) in default to suffer imprisonment for 03 (three) months more should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Relevant facts for disposal of the Rule, are that Tahmina @ Lelin, the ex-wife of the present petitioner as complainant filed a petition of complaint before the Court of Magistrate, 1st Class, Khulna implicating the present petitioner as an accused alleging, inter alia, that the petitioner married the complainant on 01.09.1989. During their wedlock, they were blessed with one daughter and one son. On 18.02.1996, the petitioner divorced the complainant in contravening the provision of section 7(1) of the Muslim Family Laws Ordinance, 1961 by sending a letter to P.W. 3 from abroad, hence, the complainant filed the petition of complaint. On 10.11.1996, charge was framed against the petitioner under section 7(2) of the Muslim Family Law Ordinance, 1961. During the trial, the prosecution examined as many as 3 witnesses including the complaint. The defence cross-examined the prosecution witnesses but did not examine any

defence witnesses. After the conclusion of the trial, the learned Magistrate considered evidence on record and by the judgment and order of conviction and sentence dated 12.03.1998, found the petitioner guilty under section 7(2) of the Muslim Family Law Ordinance, 1961 and sentenced him to suffer simple imprisonment for 01 (one) year and also to pay a fine of Tk. 5,000.00 (five thousand) in default to suffer imprisonment for 03 (three) months more.

Against the said judgment and order of conviction and sentence dated 12.03.1998 the petitioner filed an appeal before the Court of Sessions Judge, Khulna. The learned Sessions Judge by the judgment and order dated 02.08.1998 dismissed the said appeal and thereby affirmed the the judgment and order of conviction and sentence passed by the trial Court.

Being aggrieved thereby the petitioner filed this revisional application and obtained this Rule.

None one appears for the petitioner to support the Rule.

Mr. S.M. Emamul Musfiqur, the learned Assistant Attorney General appearing for the state supports the impugned judgment and order and submits that by sending the letter exhibit No. 1 the petitioner divorced his wife but did not give notice to the

Chairman and thereby committed the offence under section 7(1) which is punishable under section 7(2) of the Muslim Family Law Ordinance, 1961 therefore, the courts below rightly passed the impugned judgment and order.

The point to be adjudicated is whether the petitioner pronounced 'Talak' without giving notice and thereby committed the offence under section 7(1) of the Muslim Family Laws Ordinance, 1961.

Let us examine the evidence in the light of the said issue.

P.W. 1, Thamina deposed that the accused married her in the year 1989 by a registered kabin-nama. During their wedlock, they were blessed with one son namely, Tanim and one daughter namely, Ayasa. She also deposed that from P.W. 3 she could come to know that the petitioner divorced her but no notice was given. P.W. 2, Abdul Razzaque the local Union Parishad Chairman deposed that he heard that the petitioner divorced his wife, the present complainant but he did not receive any notice of talak. P.W. 3, Farad Hossain deposed that he received a letter from the petitioner informing that the petitioner divorced the complainant. He exhibited the letter as exhibit No. 1 and the envelope as exhibit No. 1/1.

After scrutinizing the evidence it appears that the petitioner by sending a letter exhibit No.1, informed the complainant and others that he divorced her wife, the complainant.

The Court of appeal below, being the last Court of facts, compared the signature of the accused on the exhibit No. 1 with an admitted signature and observed that both the signature appears to be the same and under one hand. From the cross-examination, we do not find any suggestion concerning the fact that exhibit No. 1 was not sent by the accused or that he gave any written notice of Talak to the Chairman. Therefore, it appears that the prosecution beyond any reasonable doubt proved that by sending exhibit No. 1 the petitioner pronounced the talak without giving any written notice to the Chairman.

According to section 7(1) of the Muslim Family Laws Ordinance, 1961 if any man wishes to divorce his wife, he shall, as soon as may be after the pronouncement of talak in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to his wife and whoever contravenes the said provision shall be punished under section 7(2) of the said Ordinance.

In the attendant facts and circumstances, I am of the view that the petitioner pronounced ‘Talak’ without giving notice and thereby committed the offence under section 7(1) of the Muslim Family Laws Ordinance, 1961. In such view of the matter, I am inclined to hold that the Courts below were perfectly justified in finding the petitioner guilty of the offence charged with. But in the attending circumstances of the case, I am of the view that the sentence of imprisonment would be harsh, hence the sentence of the petitioner is set aside keeping the fine intact.

In the result, the Rule is discharged with modification of the sentence.

Let a copy of this judgment be sent down to the concerned court.