

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Writ Petition No. 2108 of 2011.

In the matter of:

An application under Article 102(2)(a) (i) of the Constitution of the People's Republic of Bangladesh.

-AND-

In the matter of:

Md. Saiful Islam @ Pavel, Son of Md. Ambar Ali of Village: Matuail (Uttarpara) Mindibari, Police Station: Jatrabari, District: Dhaka.

.....Petitioner

-Versus-

Bangladesh represented by the Secretary, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Ramna, Dhaka and others

.....Respondents

Mr. M.H. Rashid, Advocate

.....For the petitioner

Mr. SK. Shaifuzzaman (Zaman), DAG

Mr. Md. Shafiquzzaman (Rana). A.A.G.

..... For the respondents

Judgment On 07.06.2023

Present:

Mr. Justice K.M. Kamrul Kader

And

Mr. Justice Mohammad Showkat Ali Chowdhury

Mohammad Showkat Ali Chowdhury, J: On an application under Article 102 of the Constitution of the People's Republic of Bangladesh the Rule Nisi was issued on 08.05.2011 in the following terms:

“Let a Rule Nisi be issued calling upon the respondents Nos.2 to 3 show cause as to why they shall not be directed to submit report to the Supreme Court of Bangladesh and the

government as well after expiry of the statutory period in concluding the trial in view of section 20 and 31 Ka of the Nari-O-Shishu Nirjatan Daman Ain, 2000 in Nari-O-Shishu Case No. 346 of 2008 corresponding to G.R.No.62 of 2008 arising out of Shampur P.S. Case No. 62 dated 27.01.2008 under section 9(1)/30 of the Nari-O-Shishu Nirjatan Ain, 2000 now pending in the Nari-O-Shishu Nirjatan Daman Trinunal No.1, Dhaka and/or such other or further order or orders pass as to this court may seem fit and proper. ”

2. Facts necessary for disposal of Rule Nisi in short are as follows:

Most. Parvin Akhter, victim’s mother lodged an F.I.R with the Shampur Police Station on 27.01.2008 stating inter alia that her daughter Miss Tahamina Akhter Popi (20) is a student of Hon’s 1st year in Eden College, Dhaka. At the time of going to the college Miss Tahmina Akhter had been familiar with the accused petitioner and the victim and the accused came very near with each other and very often, the accused and her daughter moved here and there. On 08.07.2007 at 9.00 a.m. Miss. Tahamina Akhter went out of her flat for going to College. On that date Tahamina Akhter has moved with accused Nos. 1,2, 3 and at 1.00 p.m and went to the residence of accused No.2-4, accused No.1 raped informant’s daughter twice against her will making proposal for marriage and after that the accused

petitioner used to rape the victim taking there for several times and as a result the victim became pregnant. During the pregnancy period of five months on 19.01.2008, the accused-petitioner along with accused Nos.2 and 3 took the victim to the accused No.5 while the victim was going to her college and accused No.5 forcibly made her abortion against her will and when the victim came back to her residence with the help of accused Nos.1, 2 and 3 knowing all the facts and found the victim was severely bleeding. The informant has admitted her daughter in Dhaka Medical College Hospital for treatment and then lodged FIR being Shampur P.S. Case No.62 dated 27.01.2008 under Section 9(1)/13 of the Nari-O-Shishu Nirjatan Ain, 2000 (in short the Ain, 2000) now pending in the Nari-O-Shishu Nirjatan Daman Trinunal No.1, Dhaka.

3. It appears from the materials on record that on the basis of the aforesaid allegation Shampur P.S. Case No. 62 dated 27.01.2008 under Section 9(1)/30 of the Ain, 2000 was started against the above mentioned accused persons and after investigation the Investigating Officer submitted charge sheet being No.285 dated 17.06.2008 under section 9(1) of the Ain, 2000 and section 313 of the Penal Code against the accused petitioner and 3 others. Thereafter, the case was transferred to Nari-O-Shishu Nirjatan Daman Tribunal No.1, Dhaka for trial. The Tribunal fixed on 23.07.2008 for taking cognizance against

the accused, thereafter; the Tribunal framed charge against the accused petitioner under section 9(1)/30 of the Ain, 2000 and discharged the other accused person.

4. It is stated in the petition that the case record was received by the Tribunal on 13.07.2008 for trial but the order No. 34 dated 31.01.2011 shows that the proceeding is still pending before the Tribunal which is a violation of section 31Ka of the Ain, 2000.

5. The procedure for trial has been laid down in section 20 of the Ain, 2000 which mandates that the trial of the case shall be concluded within 180 days from the receipt the case record. Section 31A of Ain, 2000 lays down the provision that in case of failure of conclusion of trial of the case within the time fixed by section 20 of the Ain, 2000, in that case, the Tribunal, Public Prosecutor and concerned Police Official shall within 30 days submit report to the Supreme Court and the Government stating the reason of failure of conclusion of trial within the time fixed by section 20 of the Ain, 2000 and the concerned authority after perusal the report will take appropriate action against the persons responsible for their failure in conclusion of trial.

6. In view of section 31Ka of the Ain, 2000, the respondent Nos.2 and 3 are required to submit report by stating reasons of failure of conclusion of trial to the Supreme Court of Bangladesh and the Government and the concerned authority

after considering the report will take appropriate action against those responsible person or persons for whom the trial could not be completed within the period fixed by law. The respondent Nos.2 and 3 having failed to do so, they may be directed to submit report to the Supreme Court of Bangladesh and the Government as well what they are required by law to do.

7. The respondent No.2 Tribunal has neither concluded the trial within the statutory period as per section 20 nor sent the report to the Supreme Court of Bangladesh and the Government as per section 31ka of the Ain, 2000, what he is required by law to do so and the Tribunal not doing so, the continuation of the proceeding of Nari-O-Shishu Case No.346 of 2008 by the Tribunal No.1 is violation of mandatory provision of law and as such, the Tribunal is duty bound to stay all further proceeding of the aforesaid case.

8. In such scenario, the accused petitioner being aggrieved by and dissatisfied with the impugned proceedings pending before the respondent No.2 and there being no other alternative speedy and equally efficacious remedy provided by law moved this petition under Article 102 of our Constitution and obtained the present Rule.

9. During hearing, Mr. M.H. Rashid, the learned Advocate on behalf of the petitioner informed us that the accused petitioner

took case file from him and he has got no instruction to make submission before this court.

10. On the other hand, Mr. SK.Shaifuzzaman (Zaman), the learned Deputy Attorney General with Mr. Md. Shafiquzzaman (Rana), the learned Assistant Attorney General on behalf of the Respondents 1-3 contested the Rule and by opposing submits that the proceeding of the Nari-O-Shishu Nirjatan Damon case cannot be stayed as because for making no report to the Supreme Court of Bangladesh as well as to the Government by the Tribunal and others concerned for non conclusion of trial within the stipulated period of time and for that in no way affect the proceeding of the case rather law suggests to take appropriate action against the persons who are answerable to the authorities and in view of the above and prayed for discharging the Rule.

11. We have heard learned Advocate for the accused petitioner about the matter that he has got no instruction to make submission and also the learned Deputy Attorney General along with learned Assistant Attorney General, perused the materials on record and relevant sections 20 and 31Ka of the Ain, 2000.

12. It appears from the material on record that the accused petitioner was enlarged on bail by the Tribunal on 11.06.2009. It further appears from the record that the learned Tribunal on 23.07.2008 took cognizance against accused persons, (1) Md. Saiful Islam @ Pavel (2) Md. Lokman Bhuiyan and (3) Anowara

Begum under Section 9(1)/30 of the Ain, 2000 along with section 313 of the Penal Code and discharged accused Md.Kamal and Md. Sidu. The other accused have been granted bail by the Tribunal.

13. Record further reveals that the charge was framed against the accused petitioner Md. Saiful Islam @ Pavel under section 9(1)/30 of the Ain, 2000 which was read over and explained to him who pleaded not guilty and claimed to be tried.

14. On the other hand, accused Anowara Begum and Md. Loakman Bhuiyan were discharged by the Tribunal and the Tribunal fixed the case for examination of witnesses on 07.11.2010 and on that date no witnesses appeared before the Tribunal and the Public Prosecutor prayed for time and the case was fixed for examination witnesses on 13.03.2011.

15. From the date 07.11.2010 to the date of issuance of Rule on 08.05.2011 the interval was only six months, it is our common knowledge the Nair-O-Shishu Nirjaton Damon Tribunal of Dhaka Tribunal No.1 and other Tribunals are overburdened with huge number of cases..

16. In order to appreciate the legal position, we would to like to reproduce the provisions of sections 20 and 31A of the Ain, 2000 hereunder. Section 20 runs as under,

বিচার পদ্ধতি-(১)এই আইনের অধীন কোন অপরাধের বিচার কেবলমাত্র ধারা ২৫ এর অধীন গঠিত নারী ও শিশু নির্যাতন দমন ট্রাইব্যুনালে বিচারযোগ্য হইবে

(২) ট্রাইব্যুনালে মামলার শুনানী শুরু হইলে উহা শেষ না হওয়া পর্যন্ত প্রতি কর্মদিবসে একটানা চলিবে।

(৩) বিচারের জন্য মামলা প্রাপ্তির তারিখ হইতে একশত আশি দিনের মধ্যে ট্রাইব্যুনাল বিচারকার্য সমাপ্ত করিবে।

(৪)

17. Section 31A of the Ain, 2000 which runs as under :

৩১ ক। ট্রাইব্যুনাল, ইত্যাদির জবাবদিহিতা। (১) কোন মামলা ধারা ২০ এর উপ-ধারা (৩) এ উল্লিখিত সময়ের মধ্যে নিষ্পত্তি না হইবার ক্ষেত্রে ট্রাইব্যুনালকে উহার কারণ লিপিবদ্ধ করিয়া একটি প্রতিবেদন ত্রিশ দিনের মধ্যে সুপ্রীম কোর্টের নিকট দাখিল করিতে হইবে, যাহার একটি অনুলিপি সরকারের নিকট প্রেরণ করিতে হইবে।

(২) অনুরূপ ক্ষেত্রে পাবলিক প্রসিকিউটর ও সংশ্লিষ্ট পুলিশ কর্মকর্তাকেও উহার কারণ লিপিবদ্ধ করিয়া একটি প্রতিবেদন ত্রিশ দিনের মধ্যে সরকারের নিকট দাখিল করিতে হইবে, যাহার একটি অনুলিপি সুপ্রীম কোর্টে প্রেরণ করিতে হইবে।

(৩) উপ-ধারার (১) বা (২) এর অধীন পেশকৃত প্রতিবেদন পর্যালোচনার পর যথাযথ কর্তৃপক্ষ নির্ধারিত সময়ের মধ্যে মামলা নিষ্পত্তি না হওয়ার জন্য দায়ী ব্যক্তি বা ব্যক্তিবর্গের বিরুদ্ধে যথাযথ ব্যবস্থা গ্রহণ করিবেন।

18. From perusal of section 20 (3) of the Ain, 2000, it appears that the above section of the Ain, 2000 requires the Tribunal shall conclude the trial of the case within 180(one hundred and eighty) days from the date of receipt of the case record and from perusal of section 31Ka of the Ain, 2000, it appears that if the trial of the case is not concluded within 180 (one hundred and eighty) days then the Tribunal within 30 (thirty) days shall submit a report to the Supreme Court stating the reasons of failure of conclusion of trial of the case within 180 (one hundred and eighty) days and a copy of the said report be

also sent to the government and in the same matter the Public Prosecutor and concerned Police Officer within 30 days also submit report to the Government stating reason of failure of conclusion of trial within the time limit and a copy of that report be sent to the Supreme Court and if the appropriate authority on perusal of the report is not satisfied then the concerned authority will take appropriate action against those responsible persons for their failure to conclude the trial of the case within the prescribed time limit.

19. From careful examination of section 30A of the Ain, 2000, it appears that for failure of the conclusion of the trial of the case by the Tribunal, the proceeding of Nari-O-Shishu case by no stretch of imagination be stayed and the statutory provision of 180 (one hundred and eighty) days for conclusion of trial of Nari-O-Shishu case is not mandatory but directory because no consequences thereof has been provided in sections 20 and 31 Ka of the Ain, 2000.

20. To our utter surprise it appears to us that that the accused petitioner moved this petition to stay proceedings of Nari-O-Shishu Case No. 346 of 2008 but above mentioned sections of the Ain, 2000 do not warrant to stay proceedings of the case, in case of failure of conclusion of the trial of the case within the specified time.

21. Record also reveals that since accused Md. Lokman Bhuiyan and Anowara Begum remained absconding that is why the Tribunal on 05.10.2008 issued proclamation and attachment of the properties of those accused persons.

22. It further appears from the material on record that the Tribunal received case record on 13.07. 2008 and on 06.05.2009 the Tribunal passed order fixing the date on 11.06.2009 for return of publication of notice in the newspaper against the absconding accused and on 11.04.2010 the Tribunal got the notice published in the newspaper against the absconding accused. So, it is crystal clear that the Tribunal was engaged in taking some procedural steps so that the case be ready for trial and the record reveals that the case is not long pending but the accused petitioner without any valid reason moved this writ petition.

23. The material on record next reveals that the accused petitioner submitted discharge petition and it appears that on 04.08.2010 Saiful Islam @ Pavel prayed for adjournment for hearing of petition of discharge prayer.

24. It appears from the record that on 07.11.2010 no witnesses appeared to adduce evidence and prayed for time which was allowed and fixed the next date on 13.03.2011 for examining witnesses but record reveals that the accused petitioner did not submit any certified copy of the next orders of

the Tribunal and withheld those orders and out of the blue, he moved this writ petition under Article 102 of our Constitution on 08.05.2011 before this court and obtained the instant Rule and thereby the proceeding of Nari-O-Shishu case No. 346 of 2008, now pending in the Nari-O-Shishu Nirjaton Daman Tribunal No.1, Dhaka stayed for 3(three) months and extended from time to time.

25. In view of the discussion made above and on consultation sections 20 and 31Ka of the Ain, 2000, it appears that the case is pending for not long time and the petitioner very cleverly withheld the next orders after the order 07.11.2010 which appears to be malafide action of the accused petitioner and the grounds which have been taken for staying the proceeding of the said Nari-O-Shishu Case is not infringement of fundamental right of the petitioner because of no legal right has been accrued in favour of the accused petitioner.

26. Considering the fact and circumstance and provisions of law, we find no merit in this Rule.

27. In the result, the Rule is discharged, however, without any order as to costs.

28. The order of stay granted earlier by this Division is hereby recalled and vacated. The concerned Tribunal is directed to conclude the trial of Nari-O-Shishu Case No. 346 of 2008 corresponding to G.R.No.62 of 2008 arising out of Shampur P.S.

Case No.62 dated 27.01.2008 under section 9(1)/30 of the Ain, 2000 expeditiously preferably within 6(six) months from the date of the receipt of this judgment and order.

29. The office is directed to communicate the judgment and order of this court to the concerned Tribunal at once.

K.M. Kamrul Kader, J

I agree