

Present:

Mr. Justice Mohammad Marzi-ul-Huq
and
Mr. Justice Md. Ruhul Quddus

Criminal Appeal No. 282 of 2006

Mst. Nisha Khatun

í Appellant

-Versus-

Md. Nazrul Islam and others

... Respondents

No one appears for the appellant

Mr. Yousuf Mahmud Morshed, A.A.G.

í for the state-respondent

Judgment on 18.1.2012

Md. Ruhul Quddus, J:

This appeal under section 28 of the Nari-o- Shishu Nirjatan Daman Ain, 2000 at the instance of victim-complainant is directed against order dated 17.1.2006 passed by the Nari-o-Shishu Nirjatan Damon Tribunal No.2, Rajshahi discharging all the accused (herein respondent Nos.1-7) in Nari-o-Shishu Case No.191 of 2004.

Facts leading to this appeal, in brief, are that the victim-complainant (herein appellant) filed a petition of complaint before the Nari-o-Shishu Nirjatan Damon Tribunal, Rajshahi bringing allegation of physical torture on demand of dowry and attempt to kill her by pouring poison at her mouth against accused-respondent Nos.1-7.

On receipt of the said complaint, learned Judge of the Tribunal passed an order of judicial inquiry to be conducted by a Magistrate of third class,

Rajshahi. The Magistrate after holding judicial inquiry submitted a report on 28.2.2004 with a finding of prima-facie truth in the allegation. On the said report, learned Judge of the Tribunal took cognizance of offence against the accused and proceeded with the case.

The accused-respondents had surrendered before the Tribunal, obtained bail and subsequently filed an application for their discharge from the case. Learned Judge of the Tribunal heard the application and discharged them by order dated 23.3.2004 on the ground that the victim did not go for medical examination by any Government hospital or private hospital recognized by the Government in compliance with the provision of section 32 of the Nari-o-Shishu Nirjatan Damon Ain (hereinafter called the Ain). Challenging the said order of discharge, the victim-complainant moved in this Court with the present criminal appeal.

This appeal has been posted in daily cause list with name of the Advocate for appellant, but when it is taken up for hearing, no one appears to press the appeal.

Mr. Yousuf Mahmud Morshed, learned Assistant Attorney General appearing for the State-respondent faintly opposes the appeal submitting that according to section 32 of the Ain, a victim has got obligation to approach a Government hospital or a private hospital recognized by the Government for medical examination. He, however, leaves it upon this Court to decide whether compliance with section 32 of the Ain is a condition precedence for filing a case under the said Ain.

We have gone through the petition of complaint, judicial inquiry report, medical certificate issued by a private medical practitioner named Dr. Md.

Nasiruddin having registration No.48 and the impugned order. We have also consulted the law including section 32 of the Nari-o-Shishu Nirjatan Damon Ain. For better appreciation of law, the said section 32 is quoted below:

32- (1) GB AvBxi Aaxb msNWJZ Acivxi wkKvi e"wl j vjWK"vj cixq"v miKvix nvmcvZvxi wkKsev miKvi KZGZ`pik" -Kv"v"b vvi Kvi x nvmcvZvxi m"ubKiv hvBx |

(2) Dc-aviv (1) G DxiLZ vvb nvmcvZvxi GB AvBxi Aaxb msNWJZ Acivxi wkKvi e"wl j vjWK"vj cixq"v AwZ`az m"ubKvi x Ges DE, vjWK"vj cixq"v msT, %Kiu mviUdKU msikó e"wl, c" vb Kvi x Ges GBi e Aciva msNUxi vel qiu -Kiq _vbx AeinZ Kvi x | +

From a close reading of the aforequoted law, this section appears to be a law beneficial for a victim under the Ain, so that she/he can be examined quickly by the attending doctors of any hospital and get necessary medical certificate issued at once and the police can bring the criminals on book on receipt of the information provided. There is nothing in law that without medical examination by any Government or private hospital, a victim will be disqualified to file a case under the Ain. Compliance with the said provision of law is not condition precedence.

It transpires from the petition of compliant that there are specific allegations of inflicting injuries upon the victim on demand of dowry and attempting to kill her by pouring poison at her mouth, which constitute offense under the Ain. Whether the allegations are true or false, are questions of fact, which can be determined after taking evidence in due course of trial. In the present case, the Magistrate held judicial inquiry and got prima-facie truth in the allegations brought against the accused-respondents. Whether those materials are satisfactory to commence trial against the accused, it is to be

decided by the learned Judge of the Tribunal. But we do not think that in a case under the Ain, the accused should be discharged on the ground of non-examination of victim by any Government or private hospital.

In view of the above discussion, the impugned order should not sustain in law and is liable to be set aside. Therefore, we are inclined to allow this appeal.

Accordingly, the appeal is allowed. The impugned order dated 17.1.2006 passed by the Nari-o-Shishu Nirjatan Damon Tribunal No.2, Rajshahi in Nari-o-Shishu Case No.191 of 2004 is hereby set aside. The Nari-o-Shishu Nirjatan Damon Tribunal No.2, Rajshahi is directed to hear the matter afresh and to pass necessary order in accordance with law, after proper examination of the petition of complaint, judicial inquiry report and materials available. In doing so, learned Judge of the Tribunal will be at liberty to frame charge against any or all of the accused, or discharge any or all of them.

Communicate a copy of the judgment.

Mohammad Marzi-ul-Huq, J:

I agree.