

Present:

Mr. Justice Mohammad Marzi-ul-Huq

and

Mr. Justice Md. Ruhul Quddus

Criminal Appeal No.876 of 2006

Md. Tariqul Islam and another

í Appellants

-Versus-

The State and another

... Respondents

No one appears for the appellants

Mr. Khizir Hayat, D.A.G.

í for respondent No.1

Judgment on 26.1.2012

*Md. Ruhul Quddus, J:*

This appeal under section 28 of the Nari-o- Shishu Nirjatan Daman Ain, 2000 at the instance of two accused is directed against order dated 1.3.2006 passed by the Nari-o-Shishu Nirjatan Daman Tribunal No.3, Dhaka in Nari-o-Shishu Nirjatan Daman Special Case No.240 of 2005 arising out of Sutrapur Police Station Case No.12 dated 2.8.2005 framing charge against the appellants under section 11(ga) and 30 of the Nari-o-Shishu Nirjatan Damon Ain.

Facts leading to this appeal, in brief, are that the victim-complainant Mst. Naznin (herein respondent No.2) lodged an ejahar on 2.8.2005 with Sutrapur police station against her husband Md. Khairul Islam, and his mother and brother (herein appellants) bringing allegations of physical torture for dowry on her.

Police recorded the case as Sutrapur Police Station Case No.12 dated 2.8.2005 and after investigation submitted charge sheet against all the accused on

18.10.2005. Eventually the case was sent to Nari-o-Shishu Nirjatan Daman Tribunal No.3, Dhaka for hearing and disposal. In the meantime the appellants obtained bail from the Tribunal. After the case was transferred to Nari-o-Shishu Nirjatan Daman Tribunal No.3, they filed an application under section 265C of the Code of Criminal Procedure for their discharge from the case. Learned Judge of the Tribunal heard the application and rejected the same by his order dated 12.2.2006 and subsequently framed charge against them under sections 11(ga) and 30 of the Nari-o-Shishu Nirjatan Daman Ain by order dated 1.3.2006. Challenging the said order of framing charge, two of the accused (herein appellants) moved in this Court with the instant criminal appeal and obtained an ad-interim order of stay.

The appeal has been appearing in the cause list for several days with name of their (appellants) learned Advocate. Today it is taken up for hearing, but no one appears to press the appeal.

Mr. Khizir Hayat, learned Deputy Attorney General appearing for the State-respondent opposes the appeal submitting that there is no illegality in the impugned order.

We have meticulously examined the first information report, charge sheet and statements of the witnesses recorded under section 161 of the Code. It appears that none of the witnesses except one neighbour named Jamila Khatun is eye-witness. She stated that in the evening on 2.8.2005 she saw accused Khairul Islam to beat his wife (victim-complainant). She did not see the present appellants

to commit any such offence. In the first information report or in charge sheet there is no specific allegation against the appellants.

The prosecution materials including statement of the only eye-witness recorded under section 161 of the Code do not disclose any offence under sections 11(ga) and 30 of the Nari-o-Shishu Nirjatan Daman Ain, 2000 against the appellants and therefore, we do not find any satisfactory reason to proceed against them.

In view of the above, the impugned order of framing charge so far it relates to the appellants should not sustain in law, and the appeal merits consideration.

In the result, the appeal is allowed. The impugned order dated 1.3.2006 passed by the Nari-o-Shishu Nirjatan Daman Tribunal No.3, Dhaka in Nari-o-Shishu Nirjatan Daman Special Case No.240 of 2005 so far it relates to framing charge against the appellants Md. Tariqul Islam and Khaleda Islam is hereby set aside. Accordingly these two appellants are discharged from the case. The order relating to framing charge against the principal accused Md. Khairul Islam is maintained. The stay granted at the time of admission of appeal is vacated. The case will proceed against the principal accused Md. Khairul Islam in accordance with law.

Communicate a copy of the judgment.

Mohammad Marzi-ul-Huq, J:

I agree.