

Present:  
Mr. Justice Soumendra Sarker  
and  
Mr. Justice Md. Ruhul Quddus

Criminal Misc. Case No.2936 of 1997

Md. Mostafa  
... Petitioner

-Versus-

Bedena Khatun and another  
... Opposite Parties

Mr. Md. Shamsur Rahman, Advocate  
õ for the petitioner

Mr. Gazi Md. Mamunur Rashid, A.A.G.  
õ for the State-opposite party

Judgment on 1.4.2012

*Md. Ruhul Quddus, J:*

This Rule at the instance of the sole accused was issued on an application under section 561 A of the Code of Criminal Procedure for quashment of the proceedings in Nari-o-Shishu Nirjatan Damon Case No.95 of 1996 under section 6 (1) of the Nari-o-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995 pending in Nari-o-Shishu Nirjatan Damon Bishesh Adalat No.2, Bogra.

Opposite Party No.1 Bedena Khatun filed a petition of complaint being Case No.58P of 1996 (Dup:) on 29.6.1996 before the Magistrate of first class, Gha anchal, Bogra alleging, *inter alia*, that the accused-petitioner Md. Mostafa was her cousin brother. She visited her aunts (also the mother of accused) house on 12.1.1996, when taking advantage of his mother's absence, the petitioner suddenly grasped her

tight from backside, pushed a piece of cloth into her mouth and repeatedly raped her taking inside of his room. She kept silent over the occurrence for the sake of her honour and dignity. Subsequently she became pregnant because of the occurrence, which she could not yet feel. At that stage, she got married with one Shahidul of village Barachapra on 25.4.1996. After three months, all the symptoms of her pregnancy were exposed. Her husband got her examined by a doctor and came to know that she was carrying for six months. Because of the pre-marriage pregnancy she was left by her husband and took shelter at her parents house. In that situation, she had to disclose the reason of her pregnancy. The local elites also interrogated the accused, to which he confessed his guilt, but did not compromise the matter.

On receipt of the petition of complaint, the Magistrate sent it to the Officer-in-charge, Dupchachia Police Station directing to hold an inquiry. In pursuance thereto, an Assistant Sub-Inspector of Police, Dupchachia Police Station held inquiry and submitted a report stating that there was longstanding sexual relation between the complainant and the accused. He did not find any ingredients of rape under section 376 of the Penal Code, but found ingredients of offence under some other section.

Against the said report, the complainant filed a *naraji* petition. The Magistrate heard the matter, and as the alleged offence was triable by a Nari-o-Shishu Nirjatan Damon Tribunal, advised her to approach the Tribunal and thus filed the case by his order dated 28.9.1996. Subsequently on an application filed by the complainant, the Magistrate

sent the record to the Nari-o-Shishu Nirjatan Damon Tribunal, Bogra by his order dated 14.10.1996.

The complainant then filed a fresh complaint before the Nari-o-Shishu Nirjatan Damon Tribunal, Bogra upon which the learned Judge took cognizance of offence under section 6 (1) of the Nari-o-Shishu Nirjatan (Bishesh Bidhan) Ain (hereinafter called the Ain) against the accused and issued warrant of arrest against him by order dated 9.11.1996. Subsequently the accused surrendered before the Tribunal on 24.11.1996 and obtained bail. At that stage, the case was transferred to Nari-o-Shishu Nirjatan Damon Tribunal No.2, Bogra. Learned Judge of Tribunal No.2 heard the case on 27.3.1997 regarding framing of charge and fixed 30.3.1997 for order. In the meantime, the accused-petitioner moved in this Court with the instant criminal miscellaneous case for quashment of the proceedings and obtained the Rule with an order of stay.

Mr. Md. Shamsur Rahman, learned Advocate appearing for the petitioner submits that there is neither a report filed by a police officer not below the rank of a Sub-Inspector nor the complainant stated in her petition of complaint that she failed to lodge a first information report in spite of her approach to a police officer to that effect. So it is apparent on the face of record that the Nari-o-Shishu Nirjatan Damon Tribunal took cognizance of offence against the accused in clear violation of section 17 (1) of the Ain, which is an abuse of the process of the Court and as such the proceeding is liable to be quashed.

Mr. Gazi Md. Mamunur Rashid, learned Assistant Attorney General appearing for the State-opposite party with reference to the petition of complaint submits that it discloses the offence of rape against

the accused-petitioner in clear language. The complainant also submitted a medical certificate in support of her pregnancy, which caused as a result of rape allegedly committed on her. In our society, a woman generally does not raise any false allegation touching her own reputation and character. In such a case, truth of her allegation cannot be ascertained without holding trial and therefore, the Rule is liable to be discharged.

In the petition of complaint there is clear allegation of rape to have been committed on the victim-complainant by the accused-petitioner on 12.1.1996 at his house, when she went there to meet her aunty. Initially she kept silent over the occurrence because of her reputation and dignity, but when she was left by her husband on exposure of her pregnancy, she had no way but to disclose the truth. Her initial silence over the occurrence is quite believable in our socio-cultural context.

It appears that earlier on 29.6.1996 the victim-complainant filed another petition of complaint being Case No.58 P of 1996 (Dup:) under section 376 of the Penal Code before the concerned Magistrate, which was inquired by the police in pursuance of an order of the Magistrate. Thereafter, on receipt of a *naraji* filed against the inquiry report, the Magistrate asked her to approach the Nari-o-Shishu Nirjatan Damon Tribunal by his order dated 28.9.1996 as he found the offence triable by the Tribunal. The accused- petitioner did not challenge the said order. Under this uncommon circumstance, there was no legal requirement on the part of the victim-complainant to approach the police for lodgment of a first information report. So, we do not accept the submission of learned Advocate for the petitioner to that effect.

It further appears from order dated 24.11.1996 that out of the pregnancy in question, the victim-complainant already gave birth to a child. In response to our query, learned Advocate for the petitioner apprised that by this time the child has grown up. Under the circumstance, it is very ease to ascertain fatherhood of the child by DNA test. Whether the pregnancy was an outcome of consented sexual intercourse between the parties, or rape committed on the victim-complainant, these are all questions of facts to be determined in due course of trial. Moreover, charge has not yet been framed in the instant case. The Tribunal is fully competent to see whether the materials before it are satisfactory to proceed against the petitioner. In any view of the matter, we do not find any reason to interfere with the proceedings at this stage.

The Rule, having no merit, is discharged. The stay granted at the time of issuance of Rule is vacated.

Communicate a copy of the judgment.

Soumendra Sarker, J:

I agree.