

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

Criminal Revision No.2207 of 2005

Kala Chand Fakir

... Petitioner

-Versus-

The State

... Opposite Party

Mr. A. Y. Mashiuzzaman with Mr. M. G. Mahmud
Advocates
... for the petitioner

Mr. Khizir Hayat, D.A.G.

...for the State-opposite party

Judgment on 26.4.2012

Md. Ruhul Quddus, J:

This Rule at the instance of an accused was issued on an application under section 561A of the Code of Criminal Procedure for quashment of the proceedings in Nari-o-Shishu Nirjatan Damon Tribunal Case No.302 of 2004 under sections 7 and 30 of the Nari-o-Shishu Nirjatan Damon Ain, 2000 pending in the Nari-o-Shishu Nirjatan Damon Tribunal, Barisal.

One Masud Biswas filed a petition of complaint under sections 7(1), 5 (1) and 30 of the Nari-o-Shishu Nirjatan Ain read with section 200 of the Code before the Magistrate of first class, Second Court, Barisal on 24.1.2004 against the petitioner and eight others bringing allegation of abduction of his sister Tamanna Akhter Mili allegedly took place on 20.1.2004.

The Magistrate sent the petition of complaint to the concerned police station with a direction to do the needful, which gave rise to Uzirpur Police Station Case No.16 dated 29.1.2004. The police, after investigation, submitted charge sheet on 15.4.2004 against all the accused under sections 7 and 30 of the Nari-o-Shishu Nirjatan Damon Ain (hereinafter called the Ain). In the charge sheet previous reports of the accused were found nil. During investigation the police rescued the victim and produced her before a Magistrate of first class in order to record her statement under section 164 of the Code, but she declined to make any such statement.

After submission of the charge sheet, the case was sent to the Nari-o-Shishu Nirjatan Damon Tribunal, Barisal and was registered as Nari-o-Shishu Nirjatan Case No.302 of 2004. At that stage the petitioner, his wife Mukuli Begum and some other co-accused voluntarily surrendered before the Tribunal and obtained bail on 21.6.2004. Thereafter, he moved in this Court with the present application under section 561A of the Code for quashment of the proceedings and obtained the Rule with an order of stay.

Mr. A. Y. Mashiuzzaman, learned Advocate appearing for the petitioner submits that the police report shows that there was a love affair between the principal accused Zakir Hossain Fakir and the victim Tamanna Akhter Mili, out of which they had eloped and got married. During investigation, the victim was examined by a medical board, wherein she was found to be a girl of 17/18 years. But as a matter of fact she was 20 years old and had gone with Zakir Hossain Fakir at her free will. Out of their wedlock, one son named Md. Tanvir Hossain and one daughter named Mim were born on 8.5.2005 and 2.9.2009 respectively. They have been living conjugal life along with their two children with peace and

happiness. Since the victim was an adult and had gone with the principal accused at her free will, the foundation of the present criminal case i.e. the allegation of abduction of the victim Tamanna Akhter Mili does not stand. The informant initiated the case out of long standing family rivalry, which is causing endless harassment and humiliation to the petitioner, his family members and the two innocent children. The proceedings should be quashed otherwise to secure the ends of justice, he concludes.

From our anxiety to do justice, we ask Mr. Mashiuzzaman to produce the victim before this Court. In compliance therewith the alleged victim Tamanna Akhter Mili along with her two children appears before us. On our query, she states that she had gone willingly with accused Zakir Hossain Fakir and at that time she was 20 years old. They got married and have been living in the house of Zakir Hossain Fakir and leading a very happy conjugal life. From her Physical appearance she also appears to have grown adult much before. Learned Advocate for the petitioner also files a supplementary affidavit sworn by the victim Tamanna Akhter Mili in support of her contention.

Mr. Khizir Hayat, learned Deputy Attorney General appearing for the State does not file any counter affidavit, but faintly opposes the Rule and submits that since no charge has yet been framed, the petitioner has ample opportunity to approach the trial Court with an application for his discharge from the case. The application being premature is liable to be rejected.

We have considered the submissions advanced by the learned Advocates of both sides and gone through the application under section 561 A of the Code with the documents annexed. The petition of complaint turned into *ejahar* (Annex-A)

shows that the occurrence allegedly took place at about 4 p.m on 20.1.2004 but the complaint was filed before the Magistrate on 24.4.2004. The explanation offered for such delay is not satisfactory and there is no mention as to whether the complainant approached a competent police officer before filing of the complaint. The complaint was filed particularly mentioning sections 7(1), 5 (1) and 30 of the Ain, but it is not clear under what legal authority the Magistrate without referring it to a Nari-o-Shishu Nirjatan Damon Tribunal sent it to the police station. The charge sheet (Annex-B) shows that in a medical examination, the victim was found to be a girl of 17/18 years. It was also revealed that there was a love affair between the victim Tamanna Akter Mili and the principal accused Zakir Hossain Fakir. Order dated 16.3.2004 (Annex-C) shows that during investigation the police rescued the victim and produced her before a Magistrate of first class in order to record her statement under section 164 of the Code, but she declined to make any such statement. Annex-E shows that their marriage was registered on 24.1.2004 before a Marriage Registrar. Annex-F is an affidavit jointly sworn by the principal accused Zakir Hossain Fakir and his wife the alleged victim Tamanna Akter Mili in support of their love affair, inseparable bondage and willful marriage. In both the documents her age is mentioned as 20 years. Annex-G is a registered conveyance deed showing transfer of 1.30 acres of land in favour of the alleged victim Tamanna Akter Mili by her father-in-law Fayzar Ali Fakir.

Learned Deputy Attorney General has not challenged the authenticity of the documents referred to above. The informant has also not approached us to oppose the Rule or to challenge the authenticity of the documents. Since these are public documents and its authenticity is not challenged, the Court can take notice

of it and consider the same to arrive at a correct decision otherwise to secure the ends of justice despite some of these are defense materials and generally are not considered except in due course of trial.

The present criminal case has been heard simultaneously with Criminal Miscellaneous Case No.2206 of 2005 that has arisen out of Uzirpur Police Station Case No. 2 dated 3.5.2004. The said case was also filed by the same informant on the allegation of abduction of her sister Tamanna Akter Mili (victim in the present case as well) allegedly took place on 2.5.2004 i.e more than three months after the date of occurrence in the present case. In that case the victim was not recovered. It does mean that she was still living with her husband, the principal accused Zakir Hossain Fakir.

This is our common experience in many criminal cases under Nari-o-Shishu Nirjatan Ain that when elopement of an unmarried girl takes place, her parents and family members do not accept it easily because of their ego, honour and reputation and try to give the lover a good lesson. In doing so, they file cases under the Ain implicating his family members and old parents and elder brothers. But our social values do not suggest that parents or elder brother instigate their son or younger brother as the case may be to commit an offence or elope with a girl against the will of her parents. In the present case the petitioner is the elder brother of the principal accused Zakir Hossan Fakir. His wife Mukuli Begum has also been implicated in this case. In another case, which has been heard simultaneously with the present case, his father Fayzar Ali Fakir an old man of 72 years was implicated, arrested by the police and was imprisoned in custody for a considerable period.

Under the above facts and circumstances, this Court is satisfied that the victim was an adult, she willingly had gone with the principal accused Zakir Hossain Fakir, their marriage was lawfully solemnized and that out of their wedlock two children were born. The foundation of the present criminal case i.e. the allegation of abduction of the victim thus does not stand and the further proceedings in the case will bring about nothing but harassment and humiliation of some innocent persons. There is no possibility of conclusion of this case with any conviction and therefore, it is quite useless to proceed with the case. Its continuance would be detrimental to the welfare of the children as well and as such it should not be allowed to continue otherwise to secure the ends of justice.

In the result, the Rule is made absolute. The proceedings in Nari-o-Shishu Nirjatan Damon Tribunal Case No.302 of 2004 pending in Nari-o-Shishu Nirjatan Damon Tribunal, Barisal is hereby quashed.

Communicate a copy of the judgment.

Mohammad Marzi-ul-Huq, J:

I agree.