

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present:

Mr. Justice M. Enayetur Rahim

And

Mr. Justice J.B.M. Hassan

Criminal Appeal No. 4417 of 2016

Md. Milad Hossain @ Milad Uddin

....Accused-Appellant

-Versus-

The State

..... Respondent

Mr. Cumar Debul Dey with

Mr. Gazi Md. Giash Uddin, Advocates

..... For the appellant

Mr. A. K. M. Zahirul Huq, D.A.G with

Mr. Md. Shahidul Islam Khan, A.A.G

.....For the State

Heard and Judgment on 05.12.2016.

J. B. M. Hassan, J.

This appeal, under section 28 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) is directed against the order dated 21.03.2016 passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal No.2, Chittagong rejecting prayer for bail of the accused appellant in Nari-O-Shishu Case No. 723 of 2015 arising out of Rangunia Police Station Case No. 20 dated 19.02.2015 corresponding to G. R. No. 33 of 2015 under section 11(ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as

amended in 2003), now pending before the Nari-O-Shishu Nirjatan Daman Tribunal No.2, Chittagong.

The accused appellant and his mother have been entangled in the Rangunia Police Station Case No. 20 dated 19.02.2015 under section 11(ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003), hereinafter referred to as the Act, 2000, on the basis of a First Information Report (FIR) lodged by one Md. Ilias.

The allegations appeared in the FIR, in brief, are that sister of the informant, namely, Nur Akter (the victim) was married to the accused appellant one year prior to the occurrence. After the marriage, the appellant in connivance with his mother had been demanding dowry on several occasions. On 18.02.2015 at around 5:30pm the appellant intimated the informant that his sister faced a severe heart attack and that she was admitted in the Chandraghona Mission Hospital. At around 6:00 pm the informant rushed to the hospital and found the dead body of his sister, Nur Akter. The informant found sign of injuries on the person of the dead body and that after collection of evidence from the neighbors, he lodged the FIR on 19.02.2015 with the Rangunia Police Station against the accused appellant and his mother.

The doctor examined the dead body and submitted postmortem report. Thereafter, police arrested the accused appellant on 19.02.2015 and that a confession of the accused appellant was recorded under section 164 of the Code of Criminal Procedure (the Code). After investigation charge sheet No. 58 dated 22.04.2015 was submitted against the sole accused appellant under section 11(ka) of the Act, 2000. Thereafter, the case was transferred to the Nari-O-Shishu Nirjatan Daman Tribunal No.2, Chittagong (the Tribunal) and fixed the case for framing charge. Before the Tribunal the accused appellant unsuccessfully moved an application for bail and thereafter, preferred this appeal against the impugned order dated 21.03.2016 rejecting his prayer for bail.

At the time of admission of appeal, Mr. Cumar Debul Dey, the learned Advocate with Mr. Gazi Md. Giash Uddin, the learned Advocate appearing for the accused-appellant submitted that the Tribunal was required to conclude the trial within 180 days in accordance with section 20(3) of the Act, 2000 and on such failure, the Tribunal as well as the Public Prosecutor and the concerned Police Officer had to submit a report before the Supreme Court and the concerned Ministry respectively in accordance with section 31ka of the said Act. But this requirement

having not been followed, the appellant petitioner had been suffering a long custody without any trial.

Finding prima facie substance in the submission of Mr. Dey, this Court admitted the appeal and also directed the Registrar General of the Supreme Court of Bangladesh and the Secretary, Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs, Government of Bangladesh to submit a comprehensive report within 03(three) weeks from the date of receipt of the order as to whether the learned Judges of the Nari-O-Shishu Nirjatan Daman Tribunal (in all the districts), the respective Public Prosecutors and the concerned Police Officers were submitting any report to them in compliances of the provision of section 31ka of the Act, 2000 explaining the cause of failure in concluding the trial within 180 days from the date of receipt of the concerned case records and whether they had taken any step against the concerned Judges, Public Prosecutors and Police Officer on failure of such compliance, if any, as required in sub-section (3) of the said section. Accordingly, the Registrar General, Supreme Court of Bangladesh and the Secretary, Ministry of Law and Justice submitted their respective reports which have been kept in the record.

At the time of hearing of the appeal, Mr. Dey has reiterated his submissions as to compliance of sections 20(3) and 31Ka of the Act, 2000. He further submits that the provision of said section 31ka is mandatory and therefore, the concerned authorities have to follow the same for quick dispensation of justice, in particular, in respect of proceeding under the Act, 2000 as per desire of the legislature.

Mr. A. K. M. Zahirul Huq, the learned Deputy Attorney General (D.A.G) with Mr. Md. Shahidul Islam Khan, the learned Assistant Attorney General (A.A.G) appearing for the state finds it difficult to make any contrary submission. However, referring to the submitted reports of the concerned authorities, the learned DAG submits that the provisions of section 31Ka of the Act, 2000 have to be followed and the concerned authorities as well as the Government shall be vigilant towards compliance of the said provisions.

We have gone through the petition of appeal and the materials on records as well as the relevant provisions of law.

In this regard, first of all, let us examine sections 20(3) and 31ka of the Act, 2000 which run as follows:

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(১-২).....

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

কোন মামলা ধারা ২০

এর উপ-ধারা (৩) এ উলে-খিত সময়ের মধ্যে নিষ্পত্তি না হইবার ক্ষেত্রে ট্রাইবুনালকে 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-ধারা (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’

On a plain reading of the aforesaid provisions, it is crystal

clear that on failure to conclude a trial within 180 days, the Tribunal has to submit a report within 30 (thirty) days before the Supreme Court with a copy thereof to the Government i.e Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs. At the same time, the concerned Public Prosecutor and the Police Officer are also required to submit their respective reports within 30 (thirty) days to their concerned Ministries i.e Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs and the Ministry of Home Affairs respectively with a copy thereof to the Supreme Court explaining the reasons for the failure to conclude the trial within the stipulated time. Section 31ka (3) of the Act, 2000 also requires that on consideration of the above mentioned reports the concerned authorities shall take appropriate

action against the responsible person(s) for his/their failure. From the reports submitted as per order dated 01.11.2016 of this Court, it appears that before passing the said order, the aforesaid provision was never been complied with which is undesirable and gross violation of law in dispensation of justice, in particular, regarding the proceedings under the Act, 2000.

However, the concerned authorities have now realized about the mandate of law and that they have expressed their vigilance in compliance to the aforesaid provision. Therefore, from now on failure to conclude trial in a case under the Act, 2000 within 180 days in accordance with section 20(3) of the Act, 2000 all the Nari-O-Shishu Nirjatan Daman Tribunals of the country shall submit the respective reports within 30 (thirty) days before the Supreme Court of Bangladesh forwarding a copy thereof to the Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs explaining the reason for such failure. At the same time, the concerned Public Prosecutor shall submit his report within 30 (thirty) days explaining the reasons for such failure to his concerned Ministry i.e Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs forwarding a copy thereof to the Supreme Court and the concerned Police

Officer shall also submit a report within 30 (thirty) days explaining the reason in not concluding the trial caused on his part to the concerned Ministry i.e Ministry of Home Affairs with a copy thereof to the Supreme Court.

Section 31Ka (3) of the Act, 2000 incorporates that on consideration of such reports the appropriate authority(যথাযথ কর্তৃপক্ষ) shall take action against the responsible person(s) who failed to conclude the trial within the stipulated period. Although, in the Act, 2000, the appropriate authority (যথাযথ কর্তৃপক্ষ) has not been defined, but from legal parlance, we are led to hold that it is the concerned authorities of the persons, who are submitting the reports. i.e the Supreme Court, Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs and the Ministry of Home Affairs.

But before taking such action those three reports submitted under sub sections (1) and (2) have to be considered in a combining form which can only be done by a Monitoring Cell. Therefore, to apply this provision for taking appropriate action against the responsible persons, there has to be a Monitoring Cell who shall consider all the aforementioned reports by making co-ordination among the aforementioned three authorities i.e the

Tribunal, the concerned Public Prosecutor and the concerned Police Officer.

Section 31Ka of the Act requires all three concern persons to submit respective copies of the reports to the Supreme Court. As such, the Registrar General of the Supreme Court of Bangladesh, having all the reports from the concerned persons under sub-sections (1) and (2) of section 31Ka of the Act, can play this role by constituting a Monitoring Cell headed by him with the participation of the concerned authorities.

Therefore, the Registrar General of the Supreme Court of Bangladesh is directed to constitute a Monitoring Cell headed by him or the Registrar of the High Court Division along with the Secretary or his representative not below the rank of Additional Secretary of the Ministry of Home Affairs and Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs. The Monitoring Cell shall monitor this aspect and shall submit report from time to time to the concerned authorities of the responsible persons for taking appropriate action in accordance with section 31Ka (3) of the Act, 2000 with a copy thereof to the Monitoring Committee for the Subordinate Judiciary of the Supreme Court.

So far bail of the accused appellant, we find that there is specific allegation against him and that the appellant also made inculpatory confession. Therefore, we are of the view that justice would be best served, if the trial is concluded within a given time frame. Accordingly, the Trial Court is directed to conclude the trial within 01(one) year from the date of receipt of this judgment.

With these directions and observations, the appeal is disposed of.

Let a copy of this judgment and order be communicated to the 1. Registrar General of the Supreme Court of Bangladesh, 2. the Secretary, Ministry of Home Affairs and 3. the Secretary, Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs at once.

M. Enayetur Rahim, *J*

I agree.