

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No.14465 of 2012.

In the matter of:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

AND

In the matter of:

Advocate Asaduzzaman Siddiqui

..... Petitioner.

-Versus-

Bangladesh, represented by the Secretary,
Ministry of Home Affairs, Bangladesh
Secretariat, P.S. Ramna, Dhaka and others.

.....
Respondents.

Mr. Md. Manzill Murshid, Advocate

... For the Petitioner.

Mr. Md. Mokleshur Rahman, D.A.G.

... For the Respondent No. 4.

Mr. Khan Ziaur Rahman, Advocate

... For Respondent Nos. 5 and 8.

THE 8TH DAY OF NOVEMBER, 2012.

Present:

Ms. Justice Naima Haider

&

Mr. Justice Muhammad Khurshid Alam Sarkar

Naima Haider, J

This writ petition designed and styled as a public interest litigation has been filed by an Advocate and a human rights activist who is the Member of this Bar.

The petitioner has come up with a case and has sought an direction upon the respondents to ensure Rule of Law and to take necessary steps against the law violators.

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why the inaction of the respondents to take legal action against the respondent no.5 should not be declared illegal and without lawful authority and why a direction should not be given upon the respondent nos.1-4 to take legal

action against the respondent no.5-8 under the provision of Penal Code and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts leading to the issuance of the Rule, in brief, are : A news was published in the daily “Ittefaq” on 20.10.2012 with the headline that “দোররায় ক্ষত বিক্ষত নাজিরপুরের নিলুফাঃ মিথ্যা অপবাদে চেয়ারম্যানের ফতোয়া” with a photo of injured Nilofar lying at Upazilla Hospital, Nazirpur (Pirujpur) stating the fact that “পরকীয়ার অপবাদে সালিশী বৈঠকে ফতোয়া দিয়ে তিন সন্তানের জননী নিলুফাকে ৪০ দোররা মেরে রক্তাক্ত করলেন এক ইউপি চেয়ারম্যান। ঔদ্যায়, স্বামী সন্তানসহ তাকে গ্রামছাড়া করেছেন মাওলানা পরিচয়ধারী ওই জনপ্রতিনিধি। ” It is further stated in the application that the respondents have failed to perform their duties and responsibilities as per the Constitution. The petitioner being aggrieved by the news which depicts the horrifying tale moved this application as a PIL.

Mr. Manzill Murshid, learned Advocate for the petitioner submits that the Rule was issued by a vacation Bench of this Court which directed respondent Nos. 4 and 8 to appear in person on 08.11.2012 and, in view of the fact that the said Rule issuing Bench is not in seisin, the instant Rule has been posted in the Cause List by this Court at the instance of the petitioner.

Mr. Murshid next submits that he has received a copy of an application for acceptance of appearance of respondent Nos. 5 and 8 and draws our attention to Annexure-1 to the said application and submits that respondent No. 4 has registered a criminal case against respondent Nos. 5, 8 and others under Sections 323/325/354/114/343 and 506 of the Penal Code upon receiving an F.I.R. from the victim on 21.10.2012. It is his contention that from a plain reading of the said F.I.R. the offence, committed by respondent Nos. 4-8, appears to be heinous in nature and, therefore, respondent No. 4 ought to have registered the case under the relevant provisions of the Nari-0-Shishu Nirjatan Daman Ain or under any other rigorous provision of the Penal Code aiming at securing exemplary punishment to the offenders.

On the other hand, Mr. Md. Mokleshur Rahman, the learned Deputy Attorney General appearing for respondent No. 4, submits that the offence was committed on 14.10.2012 and the victim herself lodged the F.I.R. on 21.10.2012 with an explanation for the delay of 7(seven) days in lodging the said F.I.R. and the news item, based on which the instant Rule has been issued, was published in the “Daily Ittefaq” on 20.10.2012. He submits that usually the Constitutional Courts intervene in these types of matter in order to oblige the law enforcing agencies to initiate criminal proceedings against the offenders. In view of the fact that, in the case at hand, the victim herself has lodged the F.I.R. before issuance of the instant Rule and the principle accused, i.e., respondent No. 5, who is the Chairman of the concerned Union Parishad and alleged to have conducted the Shalish, and respondent No. 8, who have allegedly beaten the victim, have already been arrested by the law enforcing agencies, there is no point in proceeding with the instant Rule inasmuch as the action has already been taken as per the terms of the Rule issued in the instant writ petition. Then, he makes a prayer that if this Court wishes to proceed with the Rule, in that event, respondent No. 4 should be exempted from personal appearance. The learned Deputy Attorney General further submits that a Division Bench in Writ Petition Nos. 5863 of 2009, 754 of 2010 and 4275 of 2010 has set down criteria for the police and other law enforcing agencies as to how to deal with these types of cases and the relevant and applicable sections of the Penal Code. He submits that and respondent No. 4 has registered the case under the appropriate section of the Penal Code, namely,

Sections 323/325/354/114/343 and 506 as per the aforesaid guidance of this Court.

Mr. Khan Ziaur Rahman, the learned advocate appearing for respondent Nos. 5 and 8, adopts the submissions made by the learned Deputy Attorney General and submits that they are public servants and fully respectful to the order of the Court. He submits that since they are to appear before the concerned court to face the trial of the criminal case lodged by the alleged victim, they should be exempted from personal appearance, if this Court wishes to proceed with the instant Rule.

We have considered the submissions advanced by both the sides and perused the writ petition and the application filed today on behalf of the respondent Nos. 5-8. It appears from the terms of the Rule issued by this Court that the law enforcing agencies and the other government authorities (Respondent Nos. 1-4) were asked to show cause as to why the inaction of the respondents to take legal action against respondent No. 5 should not be declared illegal and without lawful authority and why a direction should not be given upon respondent Nos. 1-4 to take legal action against respondent Nos. 5-8 under the provisions of the Penal Code. It transpires from Annexure-1 to the application filed today on behalf of respondent Nos. 5-8 that the F.I.R. was lodged on 21.10.2012, which is 10(ten) days prior to issuance of the instant Rule. It further appears that the offenders, i.e., respondent Nos. 5-8, were arrested by the law enforcing agencies and currently they are on bail. The submissions advanced by the learned advocate Mr. Manzill Murshid, that the criminal case against the offenders ought to have been registered under some rigorous provision of the Penal Code or under Nari-0-Shishu Nirjatan Daman Ain, does not deserve consideration by this Court at this point in time, in light of the fact that a competent Court of the land is already in seisin of the case. However, the submission advanced by the learned Advocate Mr. Manzill Murshid appears to be a matter for consideration by the concerned trial court.

Accordingly, we are of the view that the present Rule has lost its purpose when the F.I.R., in connection with the occurrence reported in the "Daily Ittefaq" on 20.10.2012 based on which the Rule was issued, has been lodged and further, in the light of the fact that the offenders have already been brought under trial, hence, we are of the view that it would not be a prudent exercise for this Court to continue and proceed with this Rule and, thus, the Rule is liable to be disposed of.

Accordingly, the present Rule is disposed of with a direction to the concerned trial Court to proceed with the case in accordance with law and it shall be at liberty to consider the submission of the learned advocate Mr. Manzill Murshid as discussed above.
