

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

WRIT PETITION NO. _____ OF 2007.

IN THE MATTER OF:

An application under Article 102(2)(a)(i) of
the constitution of the People's Republic of
Bangladesh.

AND

IN THE MATTER OF:

For a direction upon the Respondents to take
legal action against the persons who forced to
get hilla marriage and to take necessary steps
to stop activities against the provision of law

by the fatwabaz at the village of Doshtika,
District-Bogura.

AND
IN THE MATTER

1. Human Rights and Peace for Bangladesh
(HRPB) Represented by it's President Advocate
Manzill Murshid, 36 Mirpur Road, Dhanmondi,
Dhaka, Bangladesh.

2. Advocate Asaduzzaman Siddique,
Secretary, Human Rights and Peace for
Bangladesh (HRPB), Hall No. 2, Supreme Court
Bar Association Bhaban, Dhaka, Bangladesh.

3. Advocate Sarwar Ahad Chowdhury,
Organizing Secretary, Human Rights and Peace

for Bangladesh (HRPB) of 3/14 Bashbari Bosila
Road, Mohammadpur, P.S.: Mohammadpur,
Dhaka.

..... Petitioners.

-V E R S U S-

1. Bangladesh represented by the Secretary
Ministry of Home Affairs, Bangladesh
Secretariat, P.S.: Ramna, District: Dhaka.

2. The Inspector General of Police (IGP)
Police Bhaban, Phulbaria, P.S.; Ramna, District-
Dhaka.

3. The District Magistrate, Bogura, District-
Bogura, Bangladesh.

4. The Police Super, Bogura, District-
Bogura, Bangladesh.

.....Respondents.

To

Mr. Justice Md. Ruhul Amin, the Hon'ble Chief Justice of Bangladesh
and the companion Judges of the Hon'ble Supreme Court.

The humble Petition of the Petitioner above named most
respectfully;-

S H E W E T H:

1. That the petitioners are practicing lawyer of this Hon'ble court.
The petitioners being conscious and respectable member of the Bar and
challenging inaction of the Respondents and violation of the provision
of the existing law and seeks to bring this application by invoking
Article 102 of the Constitution as a public interest litigation in order to

maintain the dignity of the law of the land, and religious freedom of the citizen guaranteed by the laws.

2. That the petitioners are members of a human rights and legal aid organization engaged in promoting and defending human rights and prosecuting violation of it including supporting the victims of human rights violations. The organization is actively engaged in programs for raising awareness among the citizens about their rights and obligations and for promoting and protecting human rights including the rights of women.

3. That the respondent No. 1 is Bangladesh, Represented by the Secretary, Ministry of Home Affairs, Bangladesh Secretariat, P.S.; Ramna, District- Dhaka. The Respondent No. 2 is inspector general of police (IGP) Police Bhaban, Phulbaria, P.S; Ramna, District-Dhaka. The Respondent No. 3. is the District Magistrate, Bogura, District-Bogura,

Bangladesh. That the Respondent No. 4 is the Police Super, Bpgura, District- Bogura, Baangladesh. That the addresses of the Petitioners and the Respondents given above are correct for the purpose of service of notices.

4. That it is stated here that the Respondents No. 4 are serving under the respondents no. 1 to 2. He is the chief of the law enforcing agency of Bogura District. Some peoples living within the jurisdiction of the Respondents No. 4 are causing threat to helpless people and bound them to get hilla marriage violating the provision of law and as it involves great public importance, so this petition may be treated as public interest litigation.

5. That it is stated here that it is in the interest of the petitioners and for the benefit of the citizens of the country and in order to establish the

provision of law, the petitioners move this public interest Litigation (PIL) before this Hon'ble court.

6. That it is stated here that a news was published in the daily News Papers on 01.05.2007 stating the headline that “ বগুড়া শহরঘেঁষা দশটিকা হিল্লা বিয়ের গ্রাম” . The petitioners read the news and then feel very much aggrieved about the hilla marriage by force violating the provision of the muslim law. It was also reported that in case of some unlawful divorce the women were forced to get hilla marriage and fatwa is giving in this regard by some fatwabaz. Though the land of the law do not permit such kinds of hilla marriage but due to illegal fatwa given by the unauthorized persons, it is continuing at the area repeatedly.

Copy of the paper cutting is annexed here with
and marked as **‘ANNEXURE-A.’**

7. That it is stated here that the practice of Fatwa against the existing law and failure of the authorities to take any action against them or to prevent or punish the perpetrators of Fatwa results in the violation of existing applicable laws, human rights. It is contrary to the laws of Bangladesh and against the Constitution.

8. That it is stated here that the Fatwa in respect of hilla marriage as the Facts and circumstances reported in news paper resulted in inhuman, having no authority under the law to force a married woman to marry another person against her wish.

9. That it is stated here that in Bangladesh, laws relating to the dissolution of a muslim marriage and the re-marriage after the dissolution are codified in the Muslim Family Laws Ordinance 1961, which takes effect notwithstanding any law, custom and usage. The

provision of Section 7 of the Muslim Family Laws Ordinance, 1961, are as follows:-

৭) তালাক- (১) কোন ব্যক্তি তাঁর স্ত্রীকে তালাক দিতে চাইলে যে কোন প্রকারের তালাকে, তালাক উচ্চারণ করার পরপরই তাঁর এরূপ করার বিষয়ে চেয়ারম্যানকে লিখিত নোটিশ দেবেন এবং স্ত্রীকে এর একটি অনুলিপি সরবরাহ করবেন।

(২) কেউ (১) উপধারার বিধান লঙ্ঘন করলে তিনি এক বছর পর্যন্ত যে কোন মেয়াদের বিনাপ্রম কারাদন্ডে অথবা (দশহাজার টাকা) পর্যন্ত জরিমানায়, অথবা এতদুভয় দন্ডে দন্ডনীয় হবেন।

(৩) (৫) উপধারার বিধান অনুসারে প্রকাশ্যে বা অন্য কোনভাবে কোন তালাক আগে প্রত্যাহার করা না হয়ে থাকলে, (১) উপধারা মোতাবেক চেয়ারম্যানের কাছে নোটিশ প্রদানের তারিখ থেকে নব্বই দিন অতিক্রান্ত না হওয়া পর্যন্ত কার্যকর হবে না।

(৪) চেয়ারম্যান (১) উপধারা মোতাবেক নোটিশ প্রাপ্তির তিরিশ দিনের মধ্যে পক্ষদ্বয়ের মধ্যে পুনর্মিলন ঘটানোর উদ্দেশ্যে একটি সালিশী পরিষদ গঠন করবেন এবং সালিশী পরিষদ পুনর্মিলন ঘটানোর জন্য প্রয়োজনীয় সব ধরনের পদক্ষেপ গ্রহণ করবেন।

(৫) তালাক ঘোষনার সময় স্ত্রী গর্ভবতী থাকলে, (৩) উপ-ধারায় বর্ণিত সময়কাল বা

গর্ভাবস্থা, যেটি পরের শেষ হয়, অতিক্রান্ত না হওয়া পর্যন্ত তালাক কার্যকর হবে না।

(৬) অত্র ধারা অনুযায়ী কার্যকর তালাক দ্বারা যে স্ত্রীর বিয়ে সমাপ্ত হয়েছে, সে বিয়ের

সমাপ্তি তৃতীয় বারের মত এভাবে কার্যকর না হয়ে থাকলে, তৃতীয় কোন ব্যক্তির সাথে

মধ্যবর্তী বিয়ে ছাড়া তাঁর পূর্ব স্বামীর সঙ্গে পুনর্বার বিয়েতে কোন বাধা থাকবে না।

10. That it is submitted here that the facts as reported in the news paper, the marriage had not been dissolved. Even if it was taken that the marriage was dissolved, even then law permit for remarry without an intervening marriage with a third person except third time. These acts are not only derogatory to the Constitution and therefore void but also discloses commission of further criminal offences by forcing a lawfully married women to marry another person against her wish. Hence the fatwa in question is wrong.

11. That it is submitted here that as per the provision of talaq- any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the chairman notice in writing of his having done so, and shall supply a copy thereof to the wife. More over a talaq unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under subsection (1) is delivered to the Chairman. So facts as reported in the news paper there was no talaq between the parties but forced to get hilla marriage is totally illegal and against the sprit of law. The persons who gave fatwa for such kinds of hilla marriage, they are liable to be prosecuted under the law. The law enforcing agency has failed to do their job as vested upon them, hence a direction may be given upon them to take necessary steps against the violators of the law .

12. That it is stated here that the persons who forced to get hilla marriage are liable to be punished under section 508 and 506 of the Bangladesh penal code. More over as per Article 21 of the constitution of the Peoples Republic Of Bangladesh duty of every citizen and public servant is to observe the constitution and law.

13. That it is submitted here that the duty and responsibility vested upon the law enforcing agency to protect the citizen of the country from unlawful activities. The respondents are also duty bound to obey the provisions of law. It is the duty of a police officer to investigate the case where offence committed against the existing provision of law . But they have failed to perform the duties and responsibility as per the constitution.

14. That on 02.05.2007 a legal notice has been sent by the learned lawyer to the respondents and requested them to take legal action against

the persons who are involved in the illegal acts . But the respondents did not inform anything to the learned lawyer about the request, so it is presumed that the respondents have not taken any action as required by law.

A copy of the legal notice is annexed here with
and marked as **“ANNEXURE-B”**.

15. That being aggrieved by and dissatisfied with the inaction of the respondents and having no other equally efficacious remedy the petitioners beg to move your Lordships on the following amongst others;-

GROUND S

I. For that the duty and responsibility vested upon the law enforcing agency to protect citizen from the unlawful activities. The

respondents are also duty bound to obey the provision of law. It is the duty of a police officer to investigate the case where provision of law has been violated. But they have failed to perform the duties and responsibility as per the law. Hence direction may be given upon the respondents to take legal action against the violators of the law.

11. For that the persons who forced to get hilla marriage are liable to be punished under section 508 and 506 of the Bangladesh penal code. More over as per Article 21 of the constitution of the Peoples Republic Of Bangladesh duty of every citizen and public servant is to observe the constitution and law but failed it by the respondents. Hence a direction may be given upon the Respondent.

III. For that the facts as reported in the news paper there was no talaq between the parties but forced to get hilla marriage, is totally illegal and against the sprit of law. The persons who gave fatwa for such kinds of hilla marriage, they are liable to be prosecuted under the law. The law enforcing agency has failed to do their job as vested upon them, hence a direction may be given upon them to take necessary steps against the violators of the law .

IV. For that the practice of Fatwa against the existing law and failure of the authorities to take any action against them or to prevent or punish the perpetrators of Fatwa results in the violation of existing applicable laws, human rights. It is contrary to the laws of Bangladesh and against the Constitution.

Wherefore it is most humbly prayed that your Lordships would graciously be pleased to issue: -

A) A Rule Nisi calling upon the Respondents to show cause as to why the Respondents should not be directed to take legal action against the violators of the law and why direction should not be given upon the Respondents to take proper steps to stop activities of the fatwabaz against the provision of law and pass such other and further order or orders as may seem fit and proper to your Lordships.

c) Pending hearing of the Rule direct the respondent No. 1 to make an investigation and

find out the persons who are liable for the illegal act and submitted a report before this Hon'ble Court within 30 (thirty days).

E) Make the Rule absolute upon hearing the cause if any shown by the Respondent.

And for this act of kindness your petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Advocate Manzill Murshid, President, Human rights and Peace for Bangladesh, 36 Mirpur Road, Dhanmondi, Dhaka, Bangladesh. aged about 47 years by faith Muslim by occupation Lawyer by Nationality Bangladeshi by birth do hereby solemnly affirm and say as follows:-

1. That I am the Petitioner No. 1 in this case and acquainted with the facts and circumstances of this application and am competent to swear this affidavit

2. That the statement made hereinabove in this application are true to the best of my knowledge and belief.

Prepared in my office.

Manzill Murshid
মনজিল মোরসেদ
Advocate

(DEPONENT)

THE DEPONENT IS KNOWN
TO ME
AND IDENTIFIED BY ME

Manzill Murshid
মনজিল মোরসেদ
Advocate

SOLEMNLY AFFIRMED BEFORE
ME THIS THEDAY OF
.....:2007 AT..... AM/PM

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

AFFIDAVIT

I, Advocate, Asaduzzaman Siddique, Secretary Human rights and Peace for Bangladesh of Hall No. 2, Supreme Court of Bangladesh, aged aboutyears by faith Muslim by occupation Lawyer by Nationality Bangladeshi by birth do hereby solemnly affirm and say as follows:-

1. That I am the Petitioner No. 2 in this case and acquainted with the facts and circumstances of this application and am competent to swear this affidavit
2. That the statement made hereinabove in this application are true to the best of my knowledge and belief.

Prepared in my office.

Manzill Murshid

মনজিল মোরসেদ

Advocate

SOLEMNLY AFFIRMED
BEFORE

ME THIS THEDAY OF
.....:2007 AT..... AM/PM

(DEPONENT)

THE DEPONENT IS KNOWN
TO ME
AND IDENTIFIED BY ME

Manzill Murshid

মনজিল মোরসেদ

Advocate

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

AFFIDAVIT

I, Advocate Sarwar Ahad Chowdhury, Organizing Secretary, Human Rights and Peace for Bangladesh of 3/14 Bashbari Bosila Road, Mohammadpur, P.S.: Mohammadpur, Dhaka, aged aboutyears by faith Muslim by occupation Lawyer by Nationality Bangladeshi by birth do hereby solemnly affirm and say as follows:-

1. That I am the Petitioner No. 3 in this case and acquainted with the facts and circumstances of this application and am competent to swear this affidavit.
2. That the statement made hereinabove in this application are true to the best of my knowledge and belief.

Prepared in my office.

Manzill Murshid
মনজিল মোরসেদ
Advocate

(DEPONENT)

THE DEPONENT IS KNOWN
TO ME
AND IDENTIFIED BY ME

SOLEMNLY AFFIRMED
BEFORE
ME THIS THEDAY OF
.....:2007 AT..... AM/PM

Manzill Murshid
মনজিল মোরসেদ
Advocate

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
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IN THE MATTER OF:

Advocate Manzill Murshid and others.

.....Petitioners.

-V E R S U S-

1. Bangladesh, Represented by the
Secretary, Ministry of Home Affairs,
Bangladesh Secretariat, Ramna, Dhaka and
others.

.....Respondents.

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Manzill Murshid
মনজিল মোরসেদ
Advocate
For the Petitioners

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
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.....Respondents.

Manzill Murshid
মনজিল মোরসেদ
Advocate
For the Petitioners

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
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WRIT PETITION NO.....OF 2007.

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-V E R S U S-

Bangladesh and others.
.....Respondents.

To
The Attorney General
The Peoples Republic of Bangladesh

Dear Sir,

Please take notice that an application under Article 102(2)(a)(i) of the constitution, will be filed and moved before this Court, a copy of which is enclosed herewith for your kind information.

Manzill Murshid
মনজিল মোরসেদ
Advocate
Supreme Court of Bangladesh