

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

Present

**Mr. Justice Md. Iqbal Kabir**

**And**

**Mr. Justice Md. Riaz Uddin Khan**

**Criminal Appeal No. 7345 of 2021**

In the matter of:

A petition of appeal under section 28 of the  
Nari-O-Shishu Nirjatan Daman Ain, 2000

-And-

In the matter of:

Sheikh Sirajum Munira

...Complainant-Appellant

Versus

The State and others

...Respondents

None

... For the Complainant-Appellant

Mr. Md. Abdul Alim Miah Jewel with

Ms. Momtaj Parvin, Advocates

...For the Respondent Nos. 2 and 4

Mr. Farid Uddin Khan, DAG with

Mr. Md. Anichur Rahman Khan, DAG

...For the State

Judgment on: 20.11.2024

**Md. Riaz Uddin Khan, J:**

This Criminal Appeal is directed against the order dated 12.09.2021 passed by the Nari-O-Shishu Nirjatan Daman Tribunal, No.1, Sirajgonj discharging the accused in Nari-O-Shishu Nirjatan Case No. 272 of 2020 arising out of Petition Case No. 235 of 2020 under Sections 11(ga)/30 of the

Nari-O-Shishu Nirjatan Daman Ain, 2000, now pending in the Court of Nari-O-Shishu Nirjatan Daman Tribunal No.1, Sirajgonj.

Succinct facts for disposal of this appeal is that the Complainant-Appellant filed the instant Complaint against the accused respondents alleging *inter alia* that the Complainant got married with the accused No.1 on 23.11.2011 and accused No.2 and 3 are the Mother-in-law and Father-in-law of the Complainant; on the occasion of marriage, father of the Complainant gave 3 lac taka in cash and 3 Vori gold ornaments; they have a baby girl named Maisha age about 6 years; on the 1<sup>st</sup> date of occurrence the accused No.1 in collaboration with other accused demanded 5 lac taka as dowry to her which she refused to pay for that reason the accused No.1 by holding her hair expelled her from the house and then she went to her father's house; on the 2<sup>nd</sup> date of occurrence on the request of the father of the complainant the accused came and took her with him in a microbus and on the way to the house of the accused at Ullapara Bridge the accused after torturing physically dropped the complainant with her daughter when he came to know that she did not bring the demanded money; thereafter, the Complainant went to her father's house and told the story to the witness and took treatment in General Hospital, Sirajgonj and then went to the

police station but police refused to lodge case for which she filed the Complaint case before the Tribunal.

The learned Judge of the Nari-O-Shishu Nirjatan Daman Tribunal sent the matter for Inquiry to the Upazilla Women Affairs Officer, Ullapara, Sirajgonj and after inquiry she submitted the Inquiry report on 08.07.2020 before the Tribunal finding prima facie case.

The Tribunal fixed the date for framing of charge on which date the accused petitioner filed an application for discharge. After hearing both the parties the judge of the tribunal was pleased to discharge the accused respondents by his impugned order dated 12.09.2021.

Being aggrieved by and dissatisfied with the impugned order of discharge the complainant filed the instant appeal before this Court.

The respondent Nos. 2 and 4 entered appearance and filed counter affidavit.

The matter appeared in the list for several dates with names of the learned advocates of both the parties but no one appeared on behalf of the complainant-appellant.

Mr. Mr. Md. Abdul Alim Miah Jewel along with Ms. Momtaj Parvin, learned advocates on behalf of the respondent Nos. 2 and 4 submits that the respondent no.2 divorced the complainant on 15.03.2020 and the complainant filed the case on

25.03.2020 long after the divorce; admittedly the complainant earlier filed Family Suit being No. 66 of 2020 before the learned Family Court (Assistant Judge Court), Sirajganj for recovery of dower money and maintenance against Respondent No. 2. In the said suit, the complainant was examined as PW-1, which has been annexed with the Supplementary Affidavit filed by the appellant being Annexure-E. It reflects from the said Annexure to the effect that she has admitted in her cross examination: "বিবাদী বিগত ১৫/০৩/২০০০ ইং তারিখে আমাকে তালাক দিয়েছে সত্য।" The complainant has filed the petition of complaint on 25.03.2020 by way of suppression of the aforesaid fact and consequently, the learned Judge of the Tribunal below rightly held that there is no ingredient of the offence as alleged in the petition of complaint and thereby, discharged the accused-respondents.

He then submits that section 2 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 defines Dowry and there cannot be any offence under section 11(ga) of the Ain after dissolution of marriage. The complainant filed the petition of complaint on 25.03.2020 showing that the alleged occurrence took place on 21.03.2020 and 24.03.2020, respectively. Admittedly, the marriage between the complainant and the accused-Respondent No. 2 was dissolved on 15.03.2020 and as such, there is

no ingredient of the offence under Section 11(Ga) of the said Ain and considering the same, the learned judge of the Tribunal rightly passed the impugned order.

He lastly submits that the appellant along with her daughter being plaintiffs filed the Family Suit No. 66 of 2020 before the learned Assistant Judge and Family Court, Ullapara, Sirajganj along with a prayer for recovery of dower money and maintenance. The said suit was decreed on contest holding that their divorce was acted upon, and the accused-Respondent No. 2 duly paid the decretal amount of dower money and maintenance to the instant appellant and he has been paying maintenance of his daughter regularly and the appellant filed the instant appeal against the Respondents with *malafide* intention and for unnecessary harassment.

On the other hand the learned Deputy Attorney General appearing for the state submits that the learned judge of the Tribunal committed illegality in considering defence material at the time of hearing of framing of charge.

We have heard the learned advocate for both the parties, perused the application along with supplementary affidavit and all the annexures.

It appears from the impugned order that the learned judge of the Nari-O-Shushu Nirjatan Daman Tribunal discharged the accused respondents on

consideration of deposition of the complainant-appellant which she made earlier in a family suit filed by the appellant against the accused respondent for dower and maintenance.

Section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 provides for penalty for causing simple hurt by the husband or in laws or any other person on his behalf to the wife for demanding dowry.

The definition of dowry having been provided in section 2(ঞ) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 which reads as follows:

"(ঞ) "যৌতুক" অর্থ-

(অ) কোন বিবাহের বর বা বরের পিতা বা মাতা বা প্রত্যক্ষভাবে বিবাহের সহিত জড়িত বর পক্ষের অন্য কোন ব্যক্তি কর্তৃক উক্ত বিবাহের সময় বা তৎপূর্বে বা বৈবাহিক সম্পর্ক বিদ্যমান থাকাকালে, বিবাহ স্থির থাকার শর্তে, বিবাহের পণ হিসাবে বিবাহের কলে পক্ষের নিকট দাবী কৃত অর্থ, সামগ্রী বা অন্যবিধ সম্পদ অথবা

(আ) কোন বিবাহের কলে পক্ষ কর্তৃক বিবাহের বর বা বরের পিতা বা মাতা বা প্রত্যক্ষভাবে বিবাহের সহিত জড়িত বর পক্ষের অন্য কোন ব্যক্তিকে উক্ত বিবাহের সময় বা তৎপূর্বে বা বৈবাহিক সম্পর্ক বিদ্যমান থাকাকালে, বিবাহ স্থির থাকার শর্তে, বিবাহের পণ হিসাবে প্রদত্ত বা প্রদানে সম্মত অর্থ, সামগ্রী বা অন্যবিধ সম্পদ"

From reading the above definition it is clear that dowry is to be demanded by either party of bride or bridegroom directly connected with the marriage before or at the time of marriage or during continuance thereof as consideration for marriage or as a condition for

continuing the marital relation. This means, there cannot be any demand of dowry after dissolution of marriage.

In the present case it is an admitted fact that the appellant in her deposition in the Family Suit filed by her against the respondent (husband) for dower and maintenance that divorce took place on 15.03.2020. It is not clear from the record in hand, who brought this document to the judicial notice of the learned judge of the Tribunal at the time of hearing the charge. Be that as it may, it is a public document which was with the record and the learned judge considered the same. It is true that ordinarily at the time of hearing/framing charge the court does not consider any defence material. According to section 241A or 265C of the Code of Criminal Procedure the Magistrate/Judge as the case may be only to consider the record of the case and the documents submitted therewith and after hearing the accused and the prosecution, if he thinks that there is no sufficient ground for proceeding against the accused, shall discharge the accused recording the reasons for so doing. In the present case since the appellant will not be legally depose anything contrary to her earlier deposition though made in another case. In that view of the matter the learned judge of the tribunal did not commit any illegality in passing

the impugned order discharging the accused respondents from the case. There is no merit in the instant appeal.

In the result, the Appeal is **dismissed**.

Communicate the judgment and order at once.

**Md. Iqbal Kabir, J:**

I agree.