

Present:
Mr. Justice S M Kuddus Zaman
And
Mr. Justice Md. Aminul Islam

Criminal Revision No.3951 of 2022

Md. Babul Akter

.... Accused-Petitioner

-Versus-

The State and others

.... Opposite Parties

Mr. Mohammad Shishir Monir,

Mr. Mohammad Saddam Hossen,

Mr. Md. Mohammad Abdul Wadud,

Mr. Abdullah Sadiq, Advocates

.... For the petitioner.

Mr. Mohammad Mehedi Hasan Chowdhury, Additional
Attorney General with

Mr. Sujit Chatterjee, Deputy Attorney General

Ms. Farhana Afroze Runa, Assistant Attorney General

Mr. Md. Abdul Aziz Masud, Assistant Attorney General

Mr. Md. Shamim Khan, Assistant Attorney General

.... For the State

Heard and Judgment on 21.11.2023

S M Kuddus Zaman, J:

On an application under Section 435 read with Section 439 of the Code of Criminal Procedure this Rule was issued calling upon the opposite parties to show cause as to why the order No.04 dated 25.09.2022 passed by the Metropolitan Session Judge, Chattogram dismissing the petition of complaint (Petition Case No.01 of 2022) under Sections 15(1) and 5(2) of the নির্ধাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩

and also application under Section 11 of the নির্যাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩ should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that victim Mitu Akter, wife of the petitioner, a Superintendent of Police, was murdered in the board daylight on a public road by gun shots and on above occurrence the petitioner as informant lodged an ejahar. In course of investigation of above case by opposite party No.5 it was revealed that the petitioner was the mastermind of above murder and accordingly a new case was started at the instance of the father of above victim under Sections 302/34 of the Penal Code, 1860. In connection of above case the petitioner was taken on remand on 10.05.2021 by Investigating Officer of FBI opposite party No.5 for five days for interrogation.

The petitioner submitted a complaint on 08.09.2022 against six Police Officers of PBI including above Investigation Officer under Sections 15 and 5 of নির্যাতন এবং হেফাজত মৃত্যু (নিবারণ) আইন ২০১৩ (২০১৩ সনের ৫০ নং আইন). It was alleged that during above police custody he was subjected to physical and mental torture. He was blindfolded and handcuffed all the time of interrogation and the opposite parties pressured him to make a confession under Section 164 of the Code of Criminal Procedure to the Judicial Magistrate involving himself in the

commission of above murder of his wife. Someone from among the opposite parties struck a kick on the back of the chair he was sitting on 14.05.2021 and pushed his head from right to left and left to right and front to back. Opposite party No.2 the Chief of the Police Bureau of investigation monitored above torture virtually sitting in his Office at Dhaka.

On consideration of submissions of the learned Advocates for the respective parties and materials on record the learned Metropolitan Session Judge summarily rejected above petition.

Being aggrieved by and dissatisfied with above judgment and order of the learned Metropolitan Session Judge, Chattogram the petitioner moved to this Court and obtained this Rule.

Mr. Mohammad Shishir Monir, learned Advocate for the petitioner submits that the petitioner was taken in police remand for five days and during above period he was in the custody of the opposite parties who subjected the petitioner to physical assaults and mental torture and meted out inhuman and degrading treatment. The learned Advocate refers to Page No.29 of the Complaint and stated that the opposite parties asked the name of the father of the petitioner repeatedly and since the petitioner did not give any reply to above foolish question someone pushed his head to the left and another person pushed his head

to the right and this continued for several hours and kicked on the back of the chair the petitioner was sitting. The petitioner was blind folded and handcuffed for all the times excepting the time to eat and toilet.

The learned Advocate further submits that Section 2(6) of Act No.50 of 2013 has defined torture as an act which cause plight or pains both physical and mental. Since there is specific allegation in the complaint that besides sudden push of head to various directions the petitioner was also deprived from sufficient amount of water, food and sleeping which caused his mental pains. The learned Session Judge should have recorded the statement of the petitioner and proceeded with an inquiry into above allegations. But instead of initiation of above legal process the learned Session Judge has most illegally rejected above petition summarily which is not tenable in law.

On the other hand Mr. Mohammad Mehedi Hasan Chowdhury, learned Additional Attorney General for the State submits that torture has been defined in Section 2(6) of Act No.50 of 2013 as physical and psychological torture which causes pain. There cannot be an existence of psychological or mental torture without establishing the facts of physical torture. In the complaint there is no specific averment as to how the petitioner was subjected to physical torture. It has been stated that due to giving no reply to a question the chair of the accused was kicked and his

head was pushed on several directions. Above acts cannot be designated as physical torture. The petitioner was a Police Officer and he allegedly orchestrated the murder of his wife but lodged a false ejarah as to above occurrence. The PBI investigation revealed the truth that the petitioner was the mastermind of above murder.

The learned Additional Attorney General further lastly that the alleged occurrence took place during the period from 10.05.2021 to 17.05.2021. At Paragraph No.2 of the complaint the petitioner has stated that he had talked to his Advocate on 17.05.2021. The petitioner was produced before the Court on numerous dates. But this complaint was lodged after more than one year. Section 4(1)(Kha) of Act No.50 of 2013 provides for physical examination of the complainant by a registered physician to find out the marks of torture or its effect. Above unexplained and inordinate delay in lodging the complaint has made above provision useless.

The petitioner has made above frivolous and false allegations against the Officers of the Police Bureau of Investigation for implicating revealing his role in above murder case. The learned Session Judge has rightly rejected above frivolous and unfounded complaint summarily which call for no interference.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

As mentioned above Mitu Akhter, wife of the petitioner who was a Superintendent of Police was brutally murdered by gun shots on a public road in the daytime and the petitioner lodged an ejahar for above occurrence. It was revealed by opposite party No.5 in course of the investigation of above case that the petitioner was the mastermind of above murder of his wife and a new ejahar was lodged under Sections 302/34 of the Penal Code by the father of above victim implicating the petitioner as the principal accused.

On 10.05.2021 the learned Judicial Magistrate allowed a petition of the Investigation Officer opposite party No.5 Santosh Kumar Chakma for five day remand of the petitioner for interrogation. A Court while allowing a petition for police remand of an accused gives that accused in the custody of the Investigating Officer for interrogation and the Investigating Officer alone is primarily responsible for the safety and well being of the accused during the period of remand. But besides above Investigating Officer, the Chief of the Police Bureau of Investigation, two Superintendent of Police and two other Police Inspectors have been made accused in the complaint without attributing any specific overact against any of them. No mention has been made in

the complaint as to who role opposite party Nos.3-4 and 6-7 had in above remand or interrogation. It has been alleged in the complaint that the petitioner was blind folded during all the time of interrogation. There is no explanation as to how the blind folded petitioner could recognize above opposite parties.

Section 2(6) of Act No.50 of 2013 defines torture in the following terms:

২। বিষয় বা প্রসংগের পরিপন্থী কোন কিছু না থাকিলে, এই আইনে-

(৬) নির্যাতন অর্থ কণ্ট হয় এমন ধরনের শারীরিক ও মানসিক নির্যাতন;

এতদব্যতিত-

(ক) কোনো ব্যক্তি বা অপর কোনো ব্যক্তির নিকট হইতে তথা অথবা স্বীকারোক্তি আদায়ে;

(খ) সন্দেহভাজন অথবা অপরাধী কোনো ব্যক্তিকে শাস্তি প্রদানে;

(গ) কোনো ব্যক্তি অথবা তাহার মাধ্যমে অপর কোনো ব্যক্তিকে ভয়ভীতি দেখানো;

(ঘ) বৈষম্যের ভিত্তিতে কারো প্ররোচনা বা উস্কানি, কারো সম্মতিক্রমে অথবা নিজ ক্ষমতাবলে কোনো সরকারি কর্মকর্তা অথবা সরকারি ক্ষমতাবলে-

এইরূপ কর্মসাধনও নির্যাতন হিসেবে গণ্য হইবে;

On a careful and detailed analysis of the complaint we are unable to find any specific allegation as to causing physical assaults. It has been

alleged that the petitioner was repeatedly asked the name of his father but he did not give any reply and then his head was pushed. No act can be classified as torture unless the same causes pain. There is no mention as to the consequence of above push of the head. No mention has been made as to any scar or injury in the head or of any pain the petitioner allegedly suffered due to above push of the head.

In Act No.50 of 2013 the words, “physical and psychological” are conjunctive not disjunctive. As such, there cannot be any separate physical or mental torture. The presence of both are necessary. Since the complaint does not disclose any credible allegation of physical torture the claim of the petitioner as to the mental torture has no leg to stand.

Section 4 of above Act No.50 of 2013 provides for recording of statement of the victim and his examination by a registered Doctor after receipt of a complaint. The object is to collect scientific evidence of torture on the person and mind of the victim. Above purpose of the Act is totally defeated if inordinate delay occurs in the presentation of the complaint. As mentioned above this complaint has been lodged after about a year of the alleged occurrence. It has stated in the complaint that the petitioner had consulted his Advocate on 17.05.2021. The petitioner was regularly produced in Court. There is no reasonable explanation in

the complaint as to above inordinate delay in the lodging of the complaint.

In above view of the above facts and circumstances of the case and materials on record we are unable to find any illegality in the impugned judgment and order passed by the learned Metropolitan Session Judge, Chattogram.

This petition under Section 439 of the Code of Criminal Procedure is devoid of the substance and the Rule issued in this connection is liable to be discharged.

In the result, this Rule is discharged.

However, there is no order as to costs.

Communicate this judgment and order to the Court concerned at once.

Md. Aminul Islam, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER