

1 SCOB [2015] HCD 147**HIGH COURT DIVISION**

(Criminal Miscellaneous Jurisdiction)

Criminal Miscellaneous Case No.17553 OF 2006

Md. Mahbubar Rahman @ Babu and others
... Petitioners

-Versus-

The State

... Opposite party

None appears

..... For the petitioners
Mr. Biswojit Roy, D.A.G. with
Mr. Bibhuti Bhuson Biswas, A. A.G.
..... for the opposite partyHeard on 26.07.2015, 02.08.2015 and
Judgment on 03.08.2015**Bench:****Mr. Justice Md. Ruhul Quddus****And****Mr. Justice Bishmadev Chakrabortty****Children Act, 1974****Section 4 and section 3:****Considering the above provisions of section 4 and section 3 of the Act, 1974 is has been held in the case of Bimal Das –Vs- The State, reported in 46 DLR 460, that the Sessions Judge may also, where the situation demands it, exercise the power of a Juvenile Court. ...(Para 10)****Children Act, 1974****Sub-section 2 of section 7****and****Rule 4 of the Children Rules 1976:****Although Druto Bichar Tribunal No.1, Dhaka has the jurisdiction to try and proceed with Juvenile Druto Bichar Case No.01 of 2006 simultaneously with Druto Bichar Sessions Case No. 12 of 2006, but in dealing with the Juvenile Case it is bound to follow the provisions of law as laid down in sub-section 2 of section 7 of the Act, 1974 and Rule 4 of the Rules 1976, i.e., either it has to sit in a building or room different from that in which the ordinary sittings of the Court are held, or on different days or at different times from those at which the ordinary sittings of the Court are held. It means that at least the case should be tried at different times even on the same day than that of other cases of ordinary jurisdiction. ...(Para 13)****Judgment****Bishmadev Chakrabortty, J.**

1. This Rule at the instance of seven accused persons of a criminal case was issued calling upon the Deputy Commissioner, Dhaka to show cause as to why the impugned proceedings of Druto Bichar Tribunal Juvenile Case No.01 of 2006 arising out of Kotwali (Faridpur) Police Station Case No.54 dated 28.03.2005 now pending in the Court of Druto Bichar Tribunal No. 1, Dhaka should not be quashed.

2. At the time of issuance of the Rule, the proceedings of Druto Bichar Tribunal Juvenile Case No.1 of 2006 was stayed till disposal of the Rule.

3. The facts for disposal of the Rule, in short, are that the informant, Md. Milon Mia, lodged a First Information Report (briefly the FIR) with the Kotwali Police Station implicating the petitioners and others bringing allegation of killing his younger brother Jewel by them. The said FIR was registered as Kotwali Police Station Case No.54 dated 28.03.2005 corresponding to G.R. No.147 of 2005 under sections 143/147/302 and 114 of the Penal Code.

4. The police after investigation submitted charge sheet on 29.04.2005 bearing No.162 (Ka) against 9 persons including these petitioners under sections 143/149/302 and 114 of the Penal Code. Another charge sheet

bearing No.162 dated 29.06.2005 out of the same FIR was also submitted against other 3(three) persons namely Masud, Parvez and Pappu as they were major at that time.

5. In course of time the record of Kotwali Police Station Case No.54 dated 28.03.2005 corresponding to G.R. No.147 of 2005 was sent to the Sessions Judge, Faridpur for trial. Subsequently the Government in the Ministry of Home Affairs vide gazette notification dated 01.12.2005 sent the said Case to the Court of Druto Bichar Tribunal No.1, Dhaka for speedy trial. The case against the present petitioners was renumbered as Druto Bichar Tribunal Juvenile Case No.1 of 2006 and the case against other co-accused who were major was renumbered as Druto Bichar Tribunal Sessions Case No.12 of 2006. The Druto Bichar Tribunal No. 1, Dhaka took up both the cases for trial simultaneously. In course of trial the present petitioners on 04.07.2006 filed an application before the Druto Bichar Tribunal under Sections 6, 7(2) and 7(4) of the Children Act, 1974 (briefly the Act, 1974) on the ground that the provisions of law as laid down in sections 6, 7(2) and 7(4) of the Act, 1974, both the cases should not be tried together, and as such they prayed for stay of further proceeding of Druto Bichar Juvenile Case No.1 of 2006 till disposal of Druto Bichar Tribunal Sessions Case No.12 of 2006. The Druto Bichar Tribunal No.1, Dhaka by its order No.16 dated 29.08.2006 rejected the said application holding that the trial of both the cases are going on simultaneously, and as such the contents of the application are not tenable in the eye of law.

6. Being aggrieved by the proceedings of Druto Bichar Tribunal Juvenile Case No. 1 of 2006 now pending in the Court of Druto Bichar Tribunal No.1, Dhaka the above accused petitioners moved this application before this Court under Section 561A of the Code of Criminal Procedure and obtained the present Rule and interim order of stay.

7. None appears on behalf of the petitioners to press the Rule, although the matter has been appearing in the list for several days with the name of the learned Advocate for the petitioners.

8. On the other hand, Mr. Biswojit Roy, the learned Deputy Attorney General, appearing on behalf of the State has submitted that the Druto Bichar Tribunal No.1, Dhaka having the power of Sessions Judge has been conducting the case as Juvenile Court and there is no bar to hold trial of both the cases simultaneously, and as such the Rule should be discharged.

9. We have heard the learned Deputy Attorney General and perused the FIR, charge sheet, connecting orders and provisions of law of Sections 4, 5 and 7 of the Children Act, 1974.

Section 4 of the Children Act, 1974 reads as follows:

The powers conferred on a Juvenile Court by this Act shall also be exercisable by-

- (a) *The High Court Division,*
- (b) *a Court of Session,*
- (c) *a Court of an Additional Sessions Judge and of an Assistant Sessions Judge,*
- (d) *a Sub-Division Magistrate, and*
- (e) *a Magistrate of the First Class, whether trying any case originally or on appeal or in revision.*

10. Considering the above provisions of section 4 and section 3 of the Act, 1974 it has been held in the case of Bimal Das –Vs- The State, reported in 46 DLR 460, that the Sessions Judge may also, where the situation demands it, exercise the power of a Juvenile Court.

11. Section 5 of the Act, 1974 has given certain power to the Court for conducting the cases of Juveniles. Section 6 of the Act, also prohibits joint trial of child and adult. Sub-Section 2 of section 7 of the Act, 1974 also provides:

In the trial of a case in which a child is charged with an offence a Court shall, as far as may be practicable, sit in a building or room different from that in which the ordinary sittings of the Court are held, or on different days or at different times from those at which the ordinary sittings of the Court are held.

Rule 4 of the Children Rules 1976 (briefly the Rule, 1976) prescribes:

(1) *The heading of all cases and proceeding shall be conducted in as simple a manner as possible without observing any formality and care shall be taken to ensure that the child against whom the case or proceeding has been instituted feels home-like atmosphere, during the hearing.*

(2) *The Court shall see that the child brought before it is not kept under the close guard of a police officer but sits or stands by himself or in the company of a relative or friend or a Probation Officer at some convenient place.*

12. In the instant case, initially the case record was sent to the Sessions Judge, Faridpur for trial which was subsequently sent to the Court of Druto Bichar Tribunal No.1, Dhaka by gazette notification dated 01.12.2005 for speedy trial. The Druto Bichar Tribunal constituted under the provisions of Druto Bichar Tribunal Ain, 2002 holds similar jurisdiction as of Sessions Judge. In the petition nowhere it has been stated or alleged that the Druto Bichar Tribunal No. 1, Dhaka has got no authority to proceed with the above Juvenile case. So considering the facts and provisions of law we are of the view that the Druto Bichar Tribunal No.1, Dhaka is empowered to proceed with the cases of Juveniles, i.e., it is empowered to hold the trial of Druto Bichar Tribunal Juvenile Case No.01 of 2006. Since Sessions Case No.166 of 2005, subsequently renumbered as Druto Bichar Sessions Case No.12 of 2006, and Sessions Juvenile Case No.01 of 2005, which was subsequently renumbered as Druto Bichar Tribunal Juvenile Case No.01 of 2006 arises out of the selfsame Kotwali Police Station Case No.54 dated 28.03.2005 corresponding to G.R. No.147 of 2005, the Druto Bichar Tribunal No.1, Dhaka proceeded with the hearing of both the cases simultaneously legally without violating any provisions of law.

13. Although Druto Bichar Tribunal No.1, Dhaka has the jurisdiction to try and proceed with Juvenile Druto Bichar Case No.01 of 2006 simultaneously with Druto Bichar Sessions Case No. 12 of 2006, but in dealing with the Juvenile Case it is bound to follow the provisions of law as laid down in sub-section 2 of section 7 of the Act, 1974 and Rule 4 of the Rules 1976, i.e., either it has to sit in a building or room different from that in which the ordinary sittings of the Court are held, or on different days or at different times from those at which the ordinary sittings of the Court are held. It means that at least the case should be tried at different times even on the same day than that of other cases of ordinary jurisdiction.

14. We are unable to ascertain whether in conducting the juvenile case the Druto Bichar Tribunal No.1, Dhaka as Juvenile Court has followed the procedure as laid down in sub-section 2 of section 7 of the Act, 1974. We are also unable to ascertain whether in conducting aforesaid case the procedure as laid down in Rule 4 of the Rules, 1976 was at all followed, i.e., whether trial commenced in home-like atmosphere.

15. In view of the above we find no bar for the Druto Bichar Tribunal No. 1, Dhaka to proceed with the Juvenile Case and the Druto Bichar Tribunal Case arising out of same case and selfsame offence simultaneously, but in holding trial of the case of Juveniles, the Court in exercising the jurisdiction of the Juvenile Court is bound to follow the provisions of sub-section 2 of section 7 of the Act, 1974 and Rule 4 of the Rules, 1976.

16. In the above facts and circumstances, we find no illegality or infirmity by the Druto Bichar Tribunal No. 1 Dhaka in proceeding with the trial of those two cases simultaneously, but the Tribunal in conducting trial of the Druto Bichar Tribunal Juvenile Case No. 1 of 2006 shall follow the provisions of law of sub-section 2 of Section 7 of the Act, 1974 and Rule 4 of the Rules, 1976.

17. In the above facts and circumstances of the case, we find no ground to quash the proceedings of Druto Bichar Tribunal Juvenile Case No.01 of 2006 pending before the Druto Bichar Tribunal No.1, Dhaka.

18. In the result, the Rule is discharged. The order of stay granted earlier stands vacated. The Druto Bichar Tribunal No.1, Dhaka is directed to proceed with the juvenile case in accordance with law and during the trial of the case it shall follow the provisions of sub-section 2 of section 7 of the Act, 1974 and Rule 4 of the Rules, 1976, in the light of observation made in the body of the judgment.

19. Send a copy of the judgment to the concerned Court at once.