

IN THE SUPREME COURT OF BANGLADESH

Appellate Division

PRESENT:

Mr. Justice Md. Nuruzzaman

Mr. Justice Borhanuddin

Ms. Justice Krishna Debnath

CIVIL APPEAL NO. 191 OF 2004

(From the judgment and order dated 25.06.2001 passed by the High Court Division in Writ Petition No.2148 of 1994).

Abdul Gaffar (Officer-in-Charge, Tejgaon :
Police Station, Dhaka) and another. ...Appellants.

=Versus=

Md. Mohammad Ali (Writ Petitioner) and : ...Respondents.
others.

For the Appellants. :Mr. Shah Monjurul Hoque, Advocate
instructed by Mr. Md. Tawfique Hossain,
Advocate-on-Record.

For Respondent Nos.2-3. :Mr. Sk. Md. Morshed, Additional Attorney
General with Mr. Md. Jahangir Alam,
Deputy Attorney General (with the leave
of the court).

Respondent No.1. :Not represented.

Date of Hearing. :The 1st, 8th, 15th March and 6th April, 2022.

Date of Judgment. :The 6th April, 2022.

J U D G M E N T

Borhanuddin,J: This civil appeal by leave is directed against the judgment and order dated 25.06.2001 passed by the High Court Division in Writ Petition No. 2148 of 1994 making the Rule absolute and imposing fine of Tk.5000/- upon each of the appellants.

Brief facts are that the respondent no.1 herein as petitioner filed the writ petition claiming enforcement of his fundamental rights as enshrined under Article 43 read

with Article 31 of the Constitution, stating interalia that one Md. Ashfaq Hussain and his niece Ms. Mina Mallik came to Bangladesh from India on 14.11.1994 to attend wedding reception of petitioner's daughter; Md. Ashfaq Hussain stayed in the house of his brother-in-law Dr. Mohammad Yunus of Grameen Bank and Ms. Mina Mallik became the house guest of the petitioner; On 17.11.1994 Ms. Mina Mallik went out with Mr. Md. Ashfaq Hussain to see around the city taking some apples with a fruit-knife in her bag; The writ-petitioner's wife and his family came to know that Ashfaq and Mina were arrested when writ-respondent no.2 alongwith some constables forcibly entered the house of the petitioner and searched without any warrant at 10.00 p.m. on 17.11.1994 but found nothing incriminating in the house; Still the writ-respondents no.3 and 4 with a contingent of police force entered and searched the house of the petitioner on 18th, 19th and 20th of November, 2004 at odd hours after midnight and on 19.11.2004 the writ-respondent no.2 took away the bag of Mina without giving any receipt or preparing any seizure list but left her suitcase under lock and key; The petitioner was also served a notice under section 16 of the Code of Criminal Procedure on 19.10.1994

delivered to his wife after midnight and the notice contained instruction to handover the passport of Mina within 6.00 p.m. on that day; On each occasion the police entered and searched the house without warrant and without permission of the petitioner; The police also came with a microphone and loudly calls for the petitioner asking him to come out of the house as if they were looking for a criminal; Md. Ashfaq Hussain and Ms. Mina Mallick were shown arrested under section 54 of the Code of Criminal Procedure and later were released on bail; The police personnel led by the respondent nos.3 and 4 continued harassing the petitioner and members of his family as such the petitioner constrained to file the writ petition.

Upon hearing the petitioner a Division Bench of the High Court Division issued a *Rule Nisi* upon the respondents to show cause.

The respondent no.1 Secretary, Ministry of Home Affairs entered appearance and contested the Rule by filing an affidavit-in-opposition denying the allegations made in the writ petition and stating interalia that the respondent nos.3 and 4 neither went to the house of the petitioner as alleged nor made search for passport and did not seized the

bag of Ms. Mina Mallik from that house; A GD entry numbered 1122 dated 17.11.1994 lodged with Tejgaon Police Station under section 54 of the Code of Criminal Procedure and thereafter on 20.11.1994 G.R. Case No.77 dated 20.11.1994 under section 14 of the Foreigners' Act was initiated on the basis of the written complaint made by the Assistant Superintendent of Police, Special Branch, on 17.11.1994; G.D entries dated 17.11.1994, 18.11.1994 and 19.11.1994 are recorded showing visits of police to the house of the petitioner who was found absent; Md. Ashfaq Hussain and Ms. Mina Mallik being Indian Nationals were reported staying in Bangladesh illegally and therefore a case under section 14 of the Foreigners' Act was initiated against them. The rule is liable to be dismissed.

Upon hearing the parties and perusing the relevant laws, a Division Bench of the High Court Division made the Rule absolute with a direction to the respondent nos.3 and 4 each to pay, as token compensation, an amount of Tk.5000/- to the petitioner within 4(four) months and also directed the respondent no.2 Commissioner of the Dhaka Metropolitan Police to arrange the payment of the aforementioned token compensation amount to the petitioner

realizing the same from the respondent nos.3 and 4 within the time prescribed above.

The High Court Division thoroughly and meticulously discussed the provisions of law relating to search and seizure contained in the Code of Criminal Procedure as well as the Dhaka Metropolitan Police, Ordinance 1976 alongwith Article 26, 27 and 47 of the Constitution. The High Court Division observed that:

"The news items published in the National Daily Newspapers, with facts and figures, show that the misdeeds and excesses done by many of the police personnels abusing their power or office are paining the society to consider the necessity for maintaining such police with the public exchequer and that the confidence of the people on the police is diminishing day by day."

And further observed that:

"The allegations being against the respondent nos.3 and 4, the denial given in the affidavit-in-opposition by the deponent having no personal knowledge is of no use. More so when neither the writ-respondent no.1 nor the deponent of the affidavit are competent to refute the personal allegations leveled against the respondent nos.3 and 4, the allegations having made on oath and not being controverted by the respondent nos.3 and

4, according to law those are treated as true and correct and the allegations have been established. The respondent nos.3 and 4 were not prevented from appearing in this Rule and they did not refute the allegations at their risk. Thus the respondent nos.3 and 4 are found to have acted illegally in doing excesses in abuse of their power and without any lawful authority and that too beyond their local jurisdiction in the name of search for recovery of the passport of Ms. Mina Mallik and at midnight causing loss, injury, humiliation and harassments to the petitioner and the inmates of the house and damaging the house hold Articles. Such loss and injury appears to be irreparable and cannot be adequately compensated with money, however, the respondent nos.3 and 4, in the facts and circumstances should be burdened with token compensation which may give consolation to the petitioner and inmates of the house to some extent."

Feeling aggrieved, the writ-respondent nos.3 and 4 as petitioners filed Civil Petition for Leave to Appeal No.209 of 2002. Upon hearing the learned Advocate for the leave-petitioners, leave has been granted on 21.07.2004 alongwith an order of stay of the judgment and order passed by the High Court Division on 25.06.2001.

This matter was taken up for hearing by this Division on 01.03.2022, 08.03.2022 and 15.03.2022. Though learned Advocate for the appellants appeared but no one represented the respondent-writ petitioner. An application on behalf of the appellant no.2 for condoning the compensation money filed on 15.03.2022 and similar application filed by the appellant no.1 on 27.03.2022. Both the appellants filed separate application for condoning the compensation money stating that the applicants are law abiding citizens and have utmost respect for the law of the land. Both of them admitted that being junior police officer they could not dealt with the matter in appropriate manner and tenders unconditional apology before this Court. Both of them also stated that they served throughout their service life with due diligence in accordance with law and prayed to condone the compensation money considering their entire service career.

We have perused the applications filed by the appellants.

Since both the appellants filed application admitting that being junior police officer they could not dealt with the matter in appropriate manner and tenders unconditional

apology and also considering their entire service career, we are inclined to condone the compensation amount of Tk.5000/- as directed by the High Court Division to pay by each of the appellant nos.1 and 2 to the petitioner.

The police personnels should keep in mind that the police force being specially trained as disciplined force and enjoys extra benefits and protection are maintained by the Government with tax money of the public for the purpose to serve the public as such the police personnels should be more cautious to maintain dignity of their profession as well as protect human rights of the citizens alongwith other rights enshrined in the constitution.

The applications for condoning the compensation money are allowed. The appellants are exonerated from paying the compensation money.

Accordingly, the appeal is disposed of with the above observation.

No order as to cost.

Let a copy of the judgment and order be sent to the respondent no.2 Secretary, Ministry of Home Affairs and

respondent no.3 Inspector General of Police and the
Commissioner, Dhaka Metropolitan Police, Dhaka, for
information and taking necessary measures.

J.

J.

J.