

DISTRICT-MADARIPUR

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

CRIMINAL MISCELLANEOUS CASE NO.25615 OF 2019

IN THE MATTER OF:

An application under Section 561A of the Code of Criminal Procedure.

IN THE MATTER OF:

Md. Nazmul Huda

---- Petitioner

-VERSUS-

The State and another

----- Opposite Parties

Mr. Md. Moniruzzaman, Advocate

--For the Petitioner

Mr. Farhad Ahmed, D.A.G with

Ms. Nusrat Jahan, D.A.G

----- For the State

Present:

MR. JUSTICE M. ENAYETUR RAHIM

AND

MR. JUSTICE MD. MOSTAFIZUR RAHMAN

The 3rd February, 2019

By filing an application under section 561A of the Code of Criminal Procedure the accused petitioner has sought quashment of the proceedings in Nari-O-Shishu Case No.106 of 2018 under section 11(ga) of the Nari-O-Shishu Nirjatan Damon Ain,2000 (as amended,2003), now pending in the Court of Nari-O-Shishu Nirjatan Daman Tribunal, Madaripur.

Heard the learned Advocate for the accused petitioner, perused the petition of complaint, inquiry report, order of framing charge and other materials as placed before us.

The accused petitioner has sought quashment of the proceedings mainly on the plea that in the inquiry report it was not mentioned whether the complainant went to the police

station for lodging the First Information Report and the concerned police officer refused to lodge the First Information Report and thus the Tribunal took cognizance of the offence against the accused illegally.

To address the above issue it is needed to examine section 27(1ka) (ka) (kha) of the Nari-O-Shishu Nirjatan Daman Ain, 2000, (hereinafter after referred to as Ain, 2000) which runs as follows:

“(১ক) কোন অভিযোগকারী উপ-ধারা (১)-এর অধীন কোন পুলিশ কর্মকর্তাকে বা ক্ষমতাপ্রাপ্ত ব্যক্তিকে কোন অপরাধের অভিযোগ গ্রহণ করিবার জন্য অনুরোধ করিয়া ব্যর্থ হইয়াছেন মর্মে হলফনামা সহকারে ট্রাইব্যুনালের নিকট অভিযোগ দাখিল করিলে ট্রাইব্যুনাল অভিযোগকারীকে পরীক্ষা করিয়া-

(ক) সম্ভষ্ট হইলে অভিযোগটি অনুসন্ধানের (inquiry) জন্য কোন ম্যাজিস্ট্রেট কিংবা অন্য কোন ব্যক্তিকে নির্দেশ প্রদান করিবেন এবং অনুসন্ধানের জন্য নির্দেশপ্রাপ্ত ব্যক্তি অভিযোগটি অনুসন্ধান করিয়া সাত কার্য দিবসের মধ্যে ট্রাইব্যুনালের নিকট রিপোর্ট প্রদান করিবেন;

(খ) সম্ভষ্ট না হইলে অভিযোগটি সরাসরি নাকচ করিবেন।” [underlines supplied to give emphasis]

On a careful examination of section 27(1ka) coupled with sub-section (ka) it becomes crystal clear that on receipt of a complaint supported by an affidavit if the Tribunal is satisfied upon examining the complainant that after being refused by the concerned police officer or the authorised person he/she directly came to the Tribunal in that event an order for holding inquiry can be made.

It appears that in the case in hand, the complainant filed the petition of complaint before the Tribunal along with an

affidavit stating that she went to the police station but the police refused to accept her complaint and the concerned Tribunal being satisfied about the same, upon examining the complainant, directed to hold inquiry into the allegation.

Since the complainant by swearing an affidavit before the Tribunal asserted that the concerned police officer refused to accept her complaint and the Tribunal has also been satisfied about the said complaint, in our view, there is no legal necessity to make an inquiry into the said issue afresh.

Moreso, the word ‘অভিযোগটি অনুসন্ধানের জন্য’ as contemplated in section 27(1ka) is very significant. It means that an inquiry should be done on the allegations brought against an accused. It does not mean that inquiry should be done to ascertain whether the complainant went to the police station and he/she was refused by the police.

Section 27(1ga) of the Nari-O-Shishu Nirjatan Ain, 2000 speaks as follows:

(১গ) উপ-ধারা (১) এবং (১ক) এর অধীন প্রাপ্ত রিপোর্ট কোন ব্যক্তির বিরুদ্ধে অপরাধ সংঘটনের অভিযোগ বা তৎসম্পর্কে কার্যক্রম গ্রহণের সুপারিশ না থাকা সত্ত্বেও ট্রাইব্যুনাল, যথাযথ এবং ন্যায়বিচারের স্বার্থে প্রয়োজনীয় মনে করিলে, কারণ উল্লেখপূর্বক উক্ত ব্যক্তির ব্যাপারে সংশ্লিষ্ট অপরাধ বিচারার্থ গ্রহণ করিতে পারিবেন।

In view of the above provision, the Tribunal has given unfettered power to take cognizance of the offence against an accused assigning cogent reasons, despite no recommendation is made for accusation in the report.

Further, when upon an inquiry by a competent person the allegations made against an accused is prima facie found to be true then the concerned accused should not be given a go by merely on any hiper technical issue.

In view of the above, we find no merit in the application.

Accordingly, the application is rejected summarily.

Communicate a copy of this order at once.