

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Writ Petition No. 7977 of 2008.

In the matter of

An application under Article 102(2) (a) (ii)
of the Constitution of the People's Republic
of Bangladesh.

And

In the matter of

Dr. Shipra Chaudhury and Another.
..... the petitioner

Versus

Government of Bangladesh and Others
..... the respondents

Ms. Sara Hossain

..... for the petitioners.

Mr. Md. Ruhul Quddus with

Mr. Md. Toufiq Inam

.... for respondent Nos.1-3

Mr. Razik-Al-Jalil, DAG

.....for respondent No. 4

Mr. Md. Abdur Rouf

..... for respondent No. 9.

Present:

Mr. Justice Syed Mahmud Hossain

And

Mr. Justice Quamrul Islam Siddiqui

Heard on 15.1.2009
Judgment on 19.1.2009.

Syed Mahmud Hossain, J

In this application under Article 102 of the Constitution of the
People's Republic of Bangladesh, a Rule Nisi has been issued calling upon
the respondents to show cause as to why Dr. Humayra Abedin alias Dorothy,

daughter of Mohammad Joynal Abedin, now being detained in the custody of respondent Nos. 1 and 2 should not be brought before this Court so that it may satisfy itself that she is not being held in custody without lawful authority or in an unlawful manner.

Later, on an application filed by the petitioners, the Officer-in-Charge, Tejgaon Police Station, Dhaka, and Major Wahhab Chief Executive Officer, High Tech Modern Psychiatric Hospital 150, Monipuri Para, Tejgaon Police Station, Tejgaon were respectively impleaded as respondent Nos. 6 and 7 and a supplementary Rule Nisi was issued upon them. On 19.1.2009, Dr. Khondoker Md. Abu Zalal filed an application for addition of party and that application was allowed too.

The facts leading to the issuance of the Rule Nisi, in brief, are:

The writ petition was filed by Dr. Shipra Chaudhry, a cousin of the detenu, and Ain O Salish Kendra, a society registered under the Societies Registration Act, 1860. The detenu is aged about 32 years and a doctor by profession. She has been living and working in the United Kingdom since August 2002. Respondent Nos. 1 to 3 are father and mother and paternal uncle respectively of the detenu.

The detenu's relationship with her parents began deteriorating in 1999 when as a medical student at Dhaka Medical College, she married a fellow student, namely, Syed Farhan Ali (Rajib) of her own volition. For fear of a hostile reaction from her parents the detenu did not inform of the marriage and continued the marital relationship with Syed Farhan Ali in a clandestine manner. When respondent Nos. 1 and 2 came to learn of this marriage, they

subjected her to intense emotional and psychological pressure. They refused to let the detenu live with her husband claiming that he was merely a student of Rajshahi Medical College and that being so, he was not suitable for her. However, they ultimately compelled her to divorce her husband.

In those painful circumstances, the detenu left for the United Kingdom in August 2002 in the pursuit of further studies. Meanwhile, she obtained MPH and PLAB qualifications. She was due to start the last phase of the training as a G.P Registrar in General Practice Surgery in London scheduled to commence on 6.10. 2008 and conclude in 2009.

On 27.2.2008, the detenu travelled to Bangladesh to visit respondent Nos. 1 and 2 having obtained leave from her hospital for one week. On her arrival, the detenu met with various prospective grooms over the next week at her parents' request. Petitioner No. 1 attended the ceremony held at a Chinese restaurant in Dhanmondi, Dhaka as a guest unaware of this situation. Petitioner No. 1 had no opportunity to meet the detenu as she left early for Rajshahi but she learned on the following day that the detenu had immediately thrown away the engagement ring after the ceremony and refused to go ahead with the marriage and returned to the U.K by the next available flight.

In the face of continuing and relentless telephone from respondent Nos.1 to 3, the detenu made arrangements to travel to Bangladesh just for one day, booking a ticket on a flight by Emirates Airways on 2.8.2008 with a confirmed return ticket to the UK dated 3.8.2008. However, on her arrival in Dhaka on 3.8.2008, the detenu again became scared apprehending that the

respondents would prevent her from returning to the UK. She then booked a seat on another Emirates flight and decided to visit respondent No. 2 to say goodbye on her way back to the U.K. The detenu's relationship with her parents had been increasingly tense and hostile over the years as they had subjected her to threats and acts of physical violence. The detenu has since 5.8.2008 to date been held captive against her will and under duress by respondent Nos. 1 and 2 aided by respondent No. 3 thus debarring her from communicating with her friends or professional colleagues in the UK or Bangladesh.

The petitioner sought assistance of the administration and the police to rescue the detenu from the illegal detention of respondent Nos. 1 to 3, but to no avail.

Finding no other alternative, petitioners filed the instant Writ Petition and obtained the present Rule Nisi.

When the case was fixed for hearing, respondent No. 9 filed an application for addition of party. In the application for addition of party, respondent No. 9 stated that he married the detenu, annexing a nikanama (certificate of marriage) to the supplementary affidavit filed in support of the application for addition of party. He was added on 15.1.2009 but the detenu was set at liberty on 14.12.2008.

Ms. Sara Hossain, learned Advocate for the petitioners, submits that the detenu was illegally detained by respondent Nos. 1 to 3 and that such detention infringes her right to freedom enshrined in the Constitution. The learned Advocate for the petitioners further submits that respondent Nos. 1-3

restrained the movement of the detenu and as such she could not go back to the UK to pursue her studies there. She then submits that even the parents are not entitled to detain their adult sons and daughters, who should be given the right of freedom to choose their own destiny.

Mr. Toufiq Inam, learned Advocate appearing on behalf of respondent Nos.1 to 3, submits that the Rule has become infructuous as the detenu was released on 14.12.2008 and as such the Rule should be discharged as being infructuous.

Mr. Md. Abdur Rouf, learned Advocate for respondent No. 9, submits that respondent No. 9 is the husband of the detenu and that the marriage between this respondent and the detenu was solemnized on 14.11.2008.

We have perused the Writ Petition, its annexures, the supplementary affidavit filed in support of the application for addition of party.

On the date of issuance of the Rule, we directed respondent Nos. 1-3 to produce the detenu, Dr. Humayra Abedin, before this Court on 4.11.2008 at 10-30 a.m. without fail. Notices were duly served upon the respondents but they neither appeared nor produced the detenu before the Court.

Afterwards, the petitioners filed an application for recovery and production of the detenu. On 10.11.2008, we directed the Inspector General of Police to take effective measures for recovery of the detenu from the custody of respondent Nos. 1-3. On 17.11.2008, Mr. T.H. Khan, a learned Advocate of this Court, appeared on behalf of respondent Nos. 1-3 and assured us that the detenu would be produced on Sunday next, that is, 23.11.2008. On that date, Mr. Khondker Mahabubuddin Ahmed, learned

Advocate appearing on behalf of respondent No. 1 to 3, submitted that respondent Nos.1-3 had taken steps for filing a 'Leave Petition' before the Appellate Division of the Supreme Court against the order directing them to produce the detenu before this Court. On 26.11.2008, the learned Advocate for respondent Nos. 1-3 submitted that Civil Petition for Leave to Appeal No. 2179 of 2008 was filed before the Appellate Division against the orders dated 27.10.2008, 10.11.2008 and 17.11.2008 passed by us. The learned Advocate also submitted that on 24.11.2008, an application for stay was moved before the learned Chamber Judge of the Appellate Division, who, without passing any interim order, posted the matter for hearing before the full Court on 6.1.2009. Therefore, the learned Advocate for respondent Nos.1-3 prayed for adjournment of the case till 6.1.2009. Since no interim order was passed by the learned Chamber Judge, we are of the opinion that the order of this Court was being flouted by respondent Nos.1-3 and as such, we issued *Suo Motu Contempt Rule* being No. 6 of 2008. On that date, we directed the respondent Nos. 1-3 who were contemnors in this *Suo Motu Contempt Rule* to appear in person before this Court on 3.12.2008. On that date, the contemnors appeared in person. Since the order passed in the writ petition for production of the detenu was not carried out, we directed the contemnors to appear again before this Court on 14.12.2008. On that date, the respondents produced the detenu before this Court.

We had the occasion to talk to the detenu exclusively. The portion of the order dated 14.12.2008 necessary for disposal of the instant Rule is quoted below:

“We talked to her for more than half an hour. She told us, in unequivocal terms, that her movement was severely restricted for the last five months. We do not like to state her version in detail because she does not want to put her parents in difficulty. She wants to pursue her education in England and wants to go to England. Having heard the entire version of the detenu, we would like to request the British High Commission to arrange her safe journey to the United Kingdom. We also request the British High Commission that the detenu be kept in its custody till she leaves Bangladesh.

In this connection, it is important to mention that the High Court of Justice, Family Division, England has taken up the issue of the detenu as evidenced by Annexure-L1 to the supplementary affidavit. A copy of the order (Annexure-L1) of High Court of England is annexed to this order.

The Police Commissioner, Dhaka is directed to ensure her safe journey to the British High Commission. A Court Keeper of this Court is directed to handover the detenu to the British High Commission. The detenu also stated her version in writing.”

Let a copy of this order be communicated to the British High Commission and the Metropolitan Police Commissioner, Dhaka.”

Ms. Sara Hossain, the learned Advocate for the petitioners, informed the Court that the British High Commission in Dhaka arranged the detenu’s safe journey to the U.K and that meanwhile, she reached London on 16.12.2008.

On 14.12.2008, the detenu gave her statements in writing as well in the court-room and in presence of the learned Advocates for both the sides. In those statements she stated in no uncertain terms that her movement for the last five months was restricted and that she was given in marriage against her will.

Forced marriage is not at all permissible in our country. But the line between forced and arranged marriages is often not drawn in our culture with a deeply traditional respect for the family hierarchy.

Article 31 of the Constitution of Bangladesh provides, among others, that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. Article 32 provides that no person shall be deprived of life or personal liberty save in accordance with law. Those inalienable fundamental rights enshrined in the Constitution cannot not only be taken away by anybody including the parents of the detenu.

Bangladesh is a member of United Nations and is a signatory to the **“Convention on the Elimination of all Forms of Discrimination against Women”** which in its Article 16 enjoins all members states as under:

“States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women.

- (a) the same right to enter into marriage;
- (b) the same right freely to choose a spouse and to enter into marriage only with their free and full consent: (emphasis is ours)
- (c) The same rights and responsibilities during marriage and at its dissolution.”

Bangladesh is also a signatory to the **“Declaration on the Elimination of Violence against Women** (Resolution No. 48/104 of 20 December 1993)” which in its Article 1 states as under:

“For the purposes of the Declaration, the term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercions or arbitrary deprivation of liberty, whether

occurring in public or in private life.”

(emphasis is ours)

The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (Resolution 1763 A (XVII) of 7 November 1962) was also signed by Bangladesh. Article 1 of the Convention is as under:

1. No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.
2. Notwithstanding anything in paragraph 1 above, it shall not be necessary for one of the parties to be present when the competent authority is satisfied that the circumstances are exceptional and that the party has, before a competent authority and in such manner as may be prescribed by law, expressed and not withdrawn consent.

Article 25 occurring in Part II (Fundamental Principles of State Policy) of the Constitution states, amongst others, that the state shall respect for international law and the principles enunciated in the United Nations Charter.

The framers of the Constitution were particularly impressed by the formulation of the basic rights in the **Universal Declaration of Human Rights**. If we make a comparison of Part III of the Constitution with the **Universal Declaration of Human Rights** (UDHR) we shall find that most of the rights enumerated in the Declaration have found place in some form or other in Part III and some have been recognised in Part II of the Constitution. The Declaration was followed by two Covenants-Covenant on Civil and Political Rights (ICCPR) and Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the United Nations General Assembly in December, 1966 making the rights contained in the UDHR binding on all states that have signed the treaty, creating human rights law. Article 16 of UDHR states that men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and found a family and that they are entitled to equal rights as to marriage, during marriage and its dissolution and that marriage shall be entered into with the free and full consent of intending parties.

Our courts will not enforce those Covenants as treaties and conventions, even if ratified by the State, are not part of the *corpus juris* of the State unless these are incorporated in the municipal legislation. However, the court can look into these conventions and covenants as an aid

to interpretation of the provisions of Part III, particularly to determine the rights implicit in the rights like the right to life and the right to liberty, but not enumerated in the Constitution.

In the case of *H.M. Ershad v. Bangladesh*, 2001 BLD (AD) 69, it is held: “The national courts should not straightway ignore the international obligations which a country undertakes. If the domestic laws are not clear enough or there is nothing therein the national courts should draw upon the principles incorporated in the international instruments.”

In the case of *Apparel Export Promotion Council v. Chopra*, AIR 1999 SC 625 it is held, “In cases involving violation of human rights, the courts must for ever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field.”

In this connection, it is important to note that the parents, of course, have the right to advise their children but they must not treat their children as their slaves who must have their freedoms particularly when they are adults. The parents must remember that they are not living in old ages, but in the twenty-first century where freedom of every human being irrespective of sex is universally recognized. The petitioner’s liberty enshrined in the Constitution shall mean and include her right to make decision concerning her groom free of coercion, violence and discrimination.

In the supplementary affidavit the petitioners stated that the detenu was taken to a private psychiatric hospital in Dhaka which she subsequently

knew to have been owned by Major Wahhab and was treated by Dr. Mohit Kamal. It is alleged that at the hospital Dr. Humayra was injected with what she believed to be mood stabilisers and anti-psychotic medication being told that the reason for this was that she was unstable. If the allegations made by the petitioners are true, then it is a matter of great concern. Such practice is beyond the ethics of medical profession. A doctor cannot prescribe and administer medicine to a patient at the desire of anybody.

Ms. Sara Hossain, learned Advocate for the petitioners, cites the case of Ms. Humaira Mehmood Vs. The State, PLD 1999 Lahore 494, in which it is held as under:

“It was Islam which declared equality between a man and a woman. In matters of marriage a woman was given equal right to choose her life partner. After obtaining the age of puberty, she could exercise her option and choice. Unfortunately, in our practical lives we are influenced by host of other prejudices bequeathed by history, tradition and feudalism.”

From the above, it appears that in Islam marriage lacking in consent of the bride is not valid.

Added respondent No. 9 alleges that he married the detenu on 14.11.2008 as it appears from Annexure-X (a photo copy of the Nikah-Nama) to the supplementary affidavit filed by him but the Rule Nisi was issued on 27.10.2008. Respondent Nos. 1 to 3 were directed to produce the detenu before this Court on 4.11.2008 at 10-30 A.M without fail. The Rule was made returnable within 1(one) week and the notices were served upon respondent Nos. 1 to 5 by a special messenger of this Court at the cost of the

petitioners. The office note dated 4.11.2008 reveals that notices were duly served upon respondent Nos. 1 to 5 but respondent Nos. 1 to 3 failed to produce the detenu on 4.11.2008. Therefore, the alleged marriage dated 14.11.2008 took place during the pendency of the Rule Nisi. Whether the marriage is valid or not cannot be the subject matter of this Rule. The parties may have recourse to appropriate fora to get the desired relief(s).

In the light of the findings made before, we find substance in this Rule.

Accordingly, the Rule is made absolute. The detenu was illegally detained by respondent Nos. 1 to 3 from 5.8.2008 to 14.12.2008 without any lawful authority and in an unlawful manner.

There is no order as to costs.

Quamrul Islam Siddiqui, J.

I agree.