



Star LAW report

Magistrate may visit and inspect any place at any stage of the proceeding if necessary

Appellate Division (Criminal Jurisdiction) The Supreme Court of Bangladesh Criminal Petition for Leave to Appeal No 100 of 2000 Md Zafarullah V Abu Bakar Siddique and others Before Justice Mainur Reza Chowdhury, Chief Justice, Justice Mohammad Fazlul Karim, Justice KM Hasan and Justice Md Fazlul Haque. Date of judgment: August 4, 2002 Result: Petition dismissed

Court Division committed an error of law in discharging the Rule without considering the law points that the learned Magistrate upon hearing naraji petition of the complainant against the submission of Final Report by the Investigation Officer in GR case, held local inspection by himself, arrived at finding and conclusion that the case is false and issued direction upon the complainant and the witnesses to show cause as to why they shall not be prosecuted under section 211 of the Penal Code.

Magistrate visited the place of occurrence and upon accepting the final report dated 10.6.1992 issued a show cause notice upon the petitioner as to why proceeding under Section 211 should not be drawn up against him within 15 days and the petitioner instead of showing cause has rushed to the High Court Division for quashing the notice to show cause.

In the case of Abu Tayab Md. Mashood and Tipu V. The State reported in 27 DLR 93 the incident alleged in the FIR was said to have taken place at night in the highway in which some persons driving a car alleged to have taken away some goods from the possession of another car under threat of violence.

Similarly in the case of Md. Abdus Sabur Khan and another V Md. Nurul Islam Shah and another reported in MLR (1996) AD 363 the order of the Sessions Judge directing further enquiry validly made on setting aside the order of the Magistrate accepting final report on discussion on merit in a case not tribal by him was not interfered with and refrained to quash the proceedings pursuant thereto under Section 561A of the Code of Criminal Procedure.

In the case of Solicitor, Government of Bangladesh VA.T. Mridha reported in 26 DLR (SC) 17, the question arose as to whether an order of detention passed by Sub-Divisional Magistrate under Clause (3) of Article 13 is an order passed by a Court or whether it is an administrative order and it was stated that the said order was not passed in exercise of judicial direction and it is not an order passed by the Court but is an administrative order that is passed during the stage of enquiry or investigation by an officer designated for the purpose.

In the said decision it has further been held that resort to the inherent power of the High Court Division to quash the proceeding under Section 561A of the Code of Criminal Procedure when hardly two months had passed since the start of investigation and the collection of evidence by the police was not complete and the tendency as to the existence of evidence or sufficiency thereof to ascertain the evidence is consistent with the accusation has been deprecated.

Upon showing cause by the petitioner, on perusal of the written statement showing cause or such other materials on record, the Magistrate, if satisfied, may either discharge the accused or proceed with the accused complying with appropriate provisions of law for initiating criminal proceeding against the accused.

Decision

In the instant case, there was no proceeding before the High Court Division for quashing the same under Section 561A of the Code of Criminal Procedure or to interfere with under Section 436 of the Code of Criminal Procedure.

In the result, we do not find any substance in the submissions of the learned advocate for the petitioner for our interference with the impugned judgement of the High Court Division.

The petition is dismissed.

Mr Muhammad Nazrul Islam, Senior Advocate, instructed by Mr Feroz Shah, Advocate-on-Record, for the Petitioner. Respondents were not represented.

Background

Mohammad Fazlul Karim, J: This petition for leave to appeal at the instance of the accused petitioner is directed against the judgment and order passed by a Division Bench of the High Court Division disposing of the Rule upholding the judgment and order dated 23-1-1994 passed by the Sessions judge, Kushtia in Criminal Revision No. 210 of 1992 with modification of the order dated 1-11-92 passed by the Thana Magistrate, Kushtia Sadar, Kushtia in GR Case No 124 of 1992 directing the complainant petitioner and the witnesses to show cause as to why proceedings under section 211 of the Penal Code should not be started against them.

The petitioner along with other employees of Islami Bank (Bangladesh) Ltd filed an application under section 561A read with section 436 of the Code of Criminal Procedure for quashing the proceeding in GR Case No. 124 of 1992 directing to show cause as to why the proceeding under section 211 of the Penal Code should not be started against them on the allegations that the respondent No. 1 was a loanee of the Islami Bank and was enjoying the credit limit to the tune of Tk 10,00,000/= (taka Ten lac) under the Murabaha System of the Islami Bank as was doing business of buying and selling of rice and its "kura" (wear and tear of rice) on condition that it should be kept in the godown of the Bank which belonged to the respondent No. 1 and let out to the Bank by the said loanee on monthly rental basis.

The petitioner instead of showing cause by filing written statement moved the High Court Division in revision as aforesaid which have been discharged.

Deliberation

Learned Counsel appearing for the petitioner has submitted that the High



On perusal of section 539B of the Code of Criminal Procedure it appears that any Judge or Magistrate may at any stage of any enquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection, which shall form part of the record.

In the instant case while disposing of the naraji against the final report in GR Case No. 124 of 1992 arising out of Kushtia PS Case No. 11 dated 5.9.1992 under Section 143/148/342/461/380 of the Penal Code, the

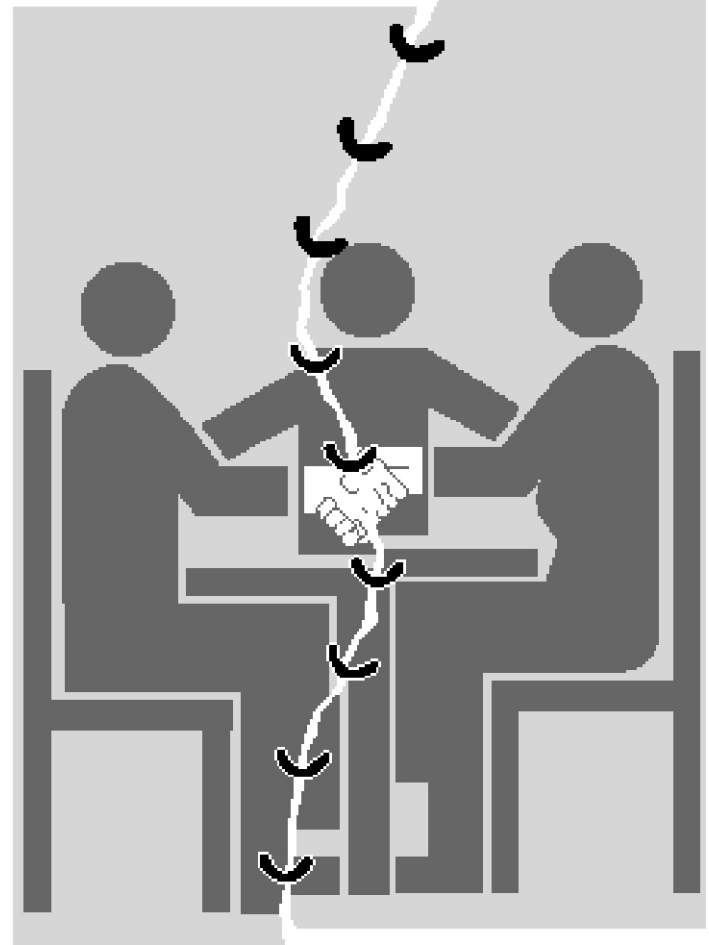
COURcorridor

Informal Justice System: Bangladesh Perspective

MD NUR ISLAM

THERE can be a kingdom without an army. But public confidence in the authority of the state cannot remain if there are no courts of justice. In ancient time, the king or emperor dispensed justice in person sitting in court. But as the art of governance grew, the king or the emperor wielded his power to his three organs of government, the parliament, the executive and the judiciary. This very judiciary is known as the formal justice system existed from time immemorial. The courts (formal justice system) are infested with a lot of problems and especially due to unusual delay in dispensation of justice, the courts have become overburdened with a huge backlog of suits/cases.

Moreover, professional legal representation is not a characteristic of the informal justice system, nor can it be regarded as required. The arbitrator is supposed to carry out the work normally performed by lawyers/advocates. Furthermore, in this system parties are allowed to make full deliberations of facts and arguments without feeling for hesitation. Apart from this, reports show that the informal court can sharply weigh the evidences as adduced before it. The speedy appreciation of evidence can be possible. Another feature is that social pressure plays an important role in achieving compli-



ance of decisions of informal justice mechanisms.

Some instances

The study shows that the Madaripur Legal Aid Association (MLAA), which is one of the oldest NGOs of these kind, started facilitating mediation between parties in 1983 and now around 80 per cent of the cases are resolved without going to court. This task has been possible only by organizing local mediation committees, positively affecting the knowledge and attitudes of the influential community members who voluntarily serve on those committees.

The family courts of Bangladesh established under the Family Courts Ordinance 1985 started informal method of mediation or shalish in adjudicating disputes/matters. The success rate of mediation judges of these courts is more than 70 percent till-date.

Pursuant to the notion of informal justice system, some family courts have been introduced in different places of Bangladesh. By applying this mediation process, these courts have got a tremendous success in disposing of suits. From 1995 to 1999, a pre-mediation period, the total money realized in connection with Family Courts cases by the Dhaka Judgeship is Tk. 30,27,130.00 whereas the total realisation through mediation since the introduction of mediation from June 2000 up to 28 February 2002 i.e. in

twenty months is Tk. 89,68,202.00. This has been achieved without changing the law, but through introducing mediation and activating the law available in the Family Courts Ordinance. Within this short span of time 164 cases have been finally disposed of through mediation against which an appeal or execution cases can be preferred. Similarly in all other divisions we are getting more or less the same result. On 12.2.2001 a Family Court started functioning in Chittagong with 507 cases. Out of which 117 cases have been disposed of through mediation and Tk. 73,55,000.00 has been realized. Previously the average yearly realization through execution cases was only Tk. 12,38,224.00. For want of accommodation Family Court of Khulna is not functioning exclusively. With this limitation the court has started functioning on 1st September 2001. Up to February 2002, only 48 cases have been disposed of through mediation. Out of which 26 families were reconciled and Tk. 4,71,000.00 was realized from the rest 22 cases. Whereas previous annual rate of realization of money was below one lac through execution cases. Mediation was started in the Family Court of Rajshahi on 7.5.2001 with 1371 cases. Within this short period 95 cases have been disposed of through mediation and Tk. 8,28,176.00 has been realized. It has been possible because of incorporation of section 10 and section 13 into the ordinance. The section 10 (3) of this ordinance lays down, "At the pretrial hearing, the court shall ascertain the points at issue between the parties, and attempt to effect a compromise or reconciliation between the parties, if this be possible." And under section 13 (1) it has been stated after the close of evidence of all parties, the family court shall make another effort to effect a compromise or reconciliation between the parties. Thus the family court has got the legal force with regard to mediation process under informal justice system.

Community courts in Mozambique, the Headman's Courts and Chief's Courts in Zimbabwe, Street Committees and People's Courts in South Africa, Lok Adalats and Naya Panchayats in India, Maroon Court in Jamaica are some of the successful instances of informal justice mechanism. Under the formal system, state coercion is the main means employed in securing attendance and compliance with the decision, whereas social pressure plays the key role in informal justice system.

Drawbacks

Our society still not matured enough to accept the notion of informal justice system, so it has to face some drawback in many respects. Attempts in various countries to incorporate virtues of informal justice system into the formal one have generally failed. The South African law commission recommends informal justice system having compulsory jurisdiction and binding legal obligation. The main drawback lies with settlement reached may reflect the unequal bargaining strengths of the parties. Apart from this, public may side with the weaker party where the stronger insists on excessive compensation or refuses to accept a reasonable demand for compensation.

Legislation

We do not still have enough laws with regard to informal justice system. But informal justice mechanism should not be allowed to interpret the religious edicts without having its valid authority to do so. If there is adequate law to refer civil disputes at pre trial stage to informal justice mechanism, it will lessen the burden of cases on existing courts. Creative approach is necessary to improve the informal legal system and establish a just society. Only new thinking, new values, new projection and positive outlook with determined action can achieve this.

Md Nur Islam is an assistant judge

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LAWweek



UP Polls without army!

The government has decided not to deploy army in the upcoming union parishad polls. However the government will provide all logistic support to the Election Commission in holding UP polls free and peaceful. The decision was taken in a high level meeting, which came to conclusion that, the current law and order situation did not warrant army deployment in election of grassroots level. There is no precedent to deploy army in the Union parishad polls, the meeting said. The meeting was chaired by the Prime Minister and it unanimously decided that army would not be deployed in the UP polls. The Election Commission wrote a letter to the armed forces division seeking deployment of army in the union parishad polls earlier. Chief Election Commissioner M.A Sayeed in his reaction said that if the government failed to comply with the desire of the Election Commission it would violate the Constitution. The election of the lowest tier of local government will take place from January 25. The government pleads that election of the union parishad usually takes place like a festival and the deployment of army may hinder the festive mood of the people. LawDesk.

Code of conduct for the govt. officials

The government has issued the "Rules for Code of Conduct of the Government Employee" 2002. The rule is issued as the Statutory Rules and Order of the president. This is the code of conduct of the government officials. According to the rules dissatisfaction over the decision of the government or protest against the decision, decline to abide by the decision will be considered as punishable offence. Under the rule the government officials will submit reports about their property and the value of the property. They will also have to inform the government whether any member of his family indulges in politics. The rules also require government officials to behave properly with the female officials. One may be expelled from the job or went to force retirement or compelled to pay damages due to failure to comply with the rules. -Prothom Alo, 05 January.

400 children languishing in Dhaka central jail

Four hundred children are languishing in inhuman condition in Dhaka Central Jail. But there is no progress in the cases against them. The children are in jail with the adult criminals. According to the Children's Act 1974 no child should be kept in the jail with the adult criminals. Most of the children were arrested in relation to arms and drug related offences. But the officials of the court said that police arrested them at random before hartal to abstain them from picketing. Police filed arms or drug related case after keeping them in jail for a long time. But police did not mention the age of the children in the First Information Report (FIR) which hinders the court to recognise them as child. Sometimes the court asked the police to submit its report about the age of the children but often the police comply with the court's order. The officials of the Dhaka central jail confessed that there are 400 children in the jail but the authority kept hides it, as it is not possible to comply with the obligation under the law in respect of children. A High Court division bench comprising Justice Amirul Kabir Chowdhury and Justice Nizamul Haq has issued a rule upon the IG prison to send report about the actual condition of the children detained in jail on 4 January. The report includes the health and accommodation condition, age of the children and the case filed against them. The higher court issued the suo moto rule after the matter was brought to the court by Advocate Idrisur Rahman and Advocate Dr. Shahdeen Malik. They said in the court that keeping of the children with the convicted criminals is violation of the Children's Act 1974. -Prothom Alo, 04 January.

Detention of Shahrir Kabir and Shafi declared illegal

The High Court Division of he Supreme Court has declared the detention of writer journalist Shahrir Kabir and Shafi Ahmed, a leader of Awami League. A division bench comprising Justice Hamidul Haq and Justice Salma Masud Chowdhury declared the detention illegal upon two separate writ petitions challenging the detention order. They were arrested on December 8 without any specific charge but were implicated in seditious case later. Both of them were granted ad-interim bail by the High Court division but the lower court sent them to jail after awarding one-month detention under Special Powers Act 1974. However they were released on 07 January from jail. -Prothom Alo, 05 January.

Concern over violation of constitutional rights

Former Chief Justice Muhammad Habibur Rahman has said that section 54 of the Criminal Procedure Code has been misused indiscriminately under he Special Powers Act 1974 by the law-enforcing agency. Basic fundamental rights guaranteed by Article 31 and 33 are at stake in the hands of the police. People whose rights are violated are unwilling to go to the court due to further harassment. He expressed his deep concern over the corruption of the lower courts while addressing a seminar at Sherpur on 25 December last year. He further said that separation of judiciary was discussed in this sub-continent during the last 200 years but no government had taken effective initiatives for the separation. The proposed human rights commission without effective power and jurisdiction will become a powerless organisation, he revealed. -Sangbad, 3 January.

Special project to eliminate child labour

The government has taken a Tk 132.7 million special project to stop risky jobs for children at different mills and factories. The project will introduce informal education and training around 10 thousand child labourers from 16 industrial belt in Dhaka and Chittagong City. The project will be funded by USAID, according to Labour and Employment Ministry. Parents of around five thousand children will be brought under micro credit programme to reduce dependency on the children. -Financial Express, 05 January.

Child labour increasing in Laksham

Child labour is increasing at Laksham in Comilla district. Children are frequently employed mainly in the hotels. They also work as rikshawpuller, helper of bus, minibus etc. They were also deprived of the actual wages for the work they engaged. Poverty is the cause behind the increasing of child labour in this area. But child labour is prohibited under Children Act 1974 as well as labour laws. Employment of child in any work is punishable offence under labour laws. But the laws are hardly followed or enforced properly by the concerned authority. -Sangbad, 07 January.

Joint efforts of NGOs to combat trafficking

The speakers at a seminar have said that joint cooperation of NGOs is necessary to combat human trafficking. The non-governmental organisations both national and grassroots levels should undertake collective efforts to combat women and children trafficking. The seminar on "Insight into the Trafficking Sector of Bangladesh" was organised by ATSEC (Action against Trafficking and Sexual Exploitation of Children) held on 06 January in BRAC Center, Dhaka. The goal for reducing human trafficking has not been achieved due to lack of information sharing and data preservation by the NGOs working in this field, the speakers said. At least 129 NGOs have been working in this respect for the last couple of years in the country. -Independent, 07 January.

Cabinet approved amendment to banking laws

The Cabinet has approved the amendment to three banking laws to give Bangladesh Bank a limited autonomy. Three banking laws are the Bangladesh Bank Order 1972, Bank Companies Act 1991 and Bangladesh Bank (Nationalisation) order 1972. Under the proposed amendments the governor of Bangladesh Bank will be responsible to the Parliamentary Standing Committee instead of Finance Ministry. The amendments also opted for more secrecy in banking affairs and proposed enhancement of financial penalty on any official of Bangladesh Bank for leak out the banking information. Proposed amendment of Bank Companies Act speaks for inclusion of two depositors in the board of commercial banks to protect depositors' interest. It also proposed inclusion of people with economic and banking background and not political in the board. As per the proposed amendment to the Bangladesh Bank Order 1972 the central bank would fix the exchange rate of taka on the basis of foreign exchange reserve. It also proposed for the formation of monetary and fiscal policy coordination committee headed by the finance minister, reduction of the tenure of the central bank governor and appointment of deputy governor. -Daily Star, 07 January.