

READER *queries*

Your Advocate



This week your advocate is Mr. Probir Neogi of the Supreme Court of Bangladesh. His professional interests include civil law, constitutional law and banking law. Send your legal and human rights queries to the Law Desk, The Daily Star. A panel of lawyers will address your problems.

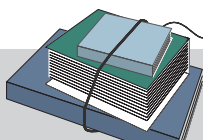
Q: I got married on June 15, 2001. On September 10, 2001, my husband and I went to Dhaka to visit my in-laws. My husband was suddenly called back to Chittagong to participate in a meeting and processions for the election campaign 2001. I was left back in Dhaka. Unfortunately, during my stay at Dhaka (which was supposed to be followed up by a foreign trip with my husband) he was assassinated on September 12, 2001. Even after his death, I was forced to stay with my in-laws. They freed me on October 30, 2001 impounding ornaments and furniture worth more than Tk. 1 lakh presented by my parents. In the meantime, I was blessed with a daughter on May 19, 2002. The hospital bills and other expense were borne by my parents. My husband's monthly income was approximately sixty thousand taka per month. My in-laws never offered my daughter or me any amount as maintenance. The original copy of the death certificate and Kabinnamah (Dower 4 Lakh taka) are with me. I have already blocked my husband's account with the Standard Chartered Grindlays Bank, GEC Circle Branch and am keen to know what other choice and legal options I have? Please advise.

Putool, Chittagong.

Your Advocate: You have mentioned that you have blocked the bank account of your husband but you have not mentioned whether there is any nominee of this bank account or not. If there is any nominee, he/she will get the amount lying with the bank account of your husband. If there is no nominee, the amount will be distributed among his legal heirs including you and your daughter according to the Muslim law.

First of all, you are entitled to get dower money from your husband's left property. Dower is a debt to wife. Succession opens with the death of the predecessor and predecessor's left properties are distributed among his legal heirs only after repayment of his debts and adjustment of liabilities incurred by him. After giving your dower money and paying other debts, if any, of your husband, the rest of all his movable and immovable properties will be distributed among his heirs as per Muslim law. In your case, you are entitled to inherit 1/8 and your daughter is entitled to inherit 1/2 shares of the property of your husband. To get shares of immovable properties including money lying with the bank account (if there is no nominee) you have to obtain succession certificate from the court. If after claiming your and your daughter's shares your in-laws do not concede to mutually then you will have to file partition suit to establish your claims and realise your share as well as that of your daughter.

To do all these things and to take many other complicated and prolonged steps to realise your right shares you possibly have to engage a lawyer with required knowledge of law and procedural steps in this regard. I am sure, there are good lawyers in Chittagong and hope you will find one able to render you required professional service.

LAW *lexicon*

Affidavit

A statement of facts which is sworn to (or affirmed) before an officer who has authority to administer an oath (e.g., a notary public). A statement which before being signed, the person signing takes an oath that the contents are, to the best of their knowledge, true. It is also signed by a notary or some other judicial officer that can administer oaths, to the effect that the person signing the affidavit was under oath when doing so. These documents carry great weight in Courts to the extent that judges frequently accept an affidavit instead of the testimony of the witness and are used in place of live testimony in many circumstances (for example, when a motion is filed, a supporting affidavit may be filed with it). An affidavit differs from a deposition in this, that in the latter the opposite party has had an opportunity to cross-examine the witness, whereas an affidavit is always taken ex parte.

Amnesty

Amnesty indicates a general remission of punishment, penalty, retribution, or disavowal to a whole group or class; it may imply a promise to forget. An act of oblivion of past offences, granted by the government to those who have been guilty of any neglect or crime, usually upon condition that they return to their duty within a certain period. An amnesty is either express or implied; it is express, when so declared in direct terms; and it is implied, when a treaty of peace is made between contending parties. Amnesty and pardon, are very different. The former is an act of the sovereign power, the object of which is to efface and to cause to be forgotten, a crime or misdemeanor; the latter, is an act of the same authority, which exempts the individual on whom it is bestowed from the punishment the law inflicts for the crime he has committed. Amnesty is the abolition and forgetfulness of the offence; pardon is forgiveness. A pardon is given to one who is certainly guilty, or has been convicted; amnesty, to those who may have been so.

Golden handshake

Golden handshake is a payment, often tax-free, made by a company to its employee who is forced to retire before the expiry of a service contract, as a result of a merger, takeover, or any other reason. This form of severance pay may be additional to a retirement pension or in place of it; it must also be shown separately in the company's accounts. Because these payments can be very large, they are known as golden handshakes. Golden handshake is a clause in an employment contract that provides a lucrative severance package in the event of termination of its employees. Golden handshake may include a continuation of salary, bonus and/or certain benefits and perquisites, as well as accelerated vesting of stock options.

Parole

An early release from imprisonment in which the prisoner promises to heed certain conditions (usually set by a parole board) and under the supervision of a parole officer. Any violation of those conditions would result in the return of the person to prison.

Probation

A kind of punishment given out as part of a sentence which means that instead of jailing a person convicted of a crime, a judge will order that the person reports to a probation officer regularly and according to a set schedule. It is a criminal offence not to obey a probation order and is cause for being immediately jailed. If someone is "on probation", that means that they are presently under such a Court order. These orders may have special conditions attached to them such as not to leave the city, drink alcohol, consume drugs, not to go to a specific place or contact a certain person.

Star *LAW* report

The plaintiff is entitled to get maintenance for her daughter

**High Court Division
(Civil Revisional Jurisdiction)
Civil Revision No. 693 of 2000
Kowsar Chowdhury v.**

**Latifa Sultana
Before Ms. Justice Nazmun Ara Sultana
Judgment: October 28, 2001
Result: Rule discharged**

Background

Nazmun Ara Sultana, J: This Rule was issued calling in question the judgment and decree dated 28-9-1999 passed by the Additional District Judge, 7th Court, Dhaka, in Family Appeal No 47 of 1999 allowing the appeal and thereby reversing the judgment and decree dated 10-6-1999 passed by the Assistant Judge, 2nd Court, Dhaka, in Family Suit No 140 of 1998 dismissing the suit.

The opposite party as plaintiff filed the above Family Suit No. 140 of 1998 for getting maintenance for her daughter from the defendant-respondent-petitioner. The case of the plaintiff, in short, is that she was married with the opposite party No 1. on 23-11-1981 and on 19-12-1982 a daughter was born from their wedlock. However, their conjugal life did not go peaceful and there arose litigations in between them and as a result they became separated. Their minor daughter Antara Chowdhury remained in her custody. The plaintiff filed a petition case under Section 488 of the Code of Criminal Procedure being No. 994 of 1983 against the defendant before the Court of Chief Metropolitan Magistrate, Dhaka who was pleased to allow a maintenance for the daughter of plaintiff at the rate of Tk 200/- per month. Subsequently it was raised to Tk 400/- per month by the learned Metropolitan Magistrate, Dhaka. Thereafter several years have elapsed and the circumstances have changed. The little daughter of the plaintiff is now a college student. The maintenance of Tk 400/- only per month is very meagre for the daughter of the plaintiff now. That the defendant is a rich man having a two storied building and several business establishments in Dhaka town. The plaintiff demanded 2000/- per month as maintenance for her daughter Antara Chowdhury from the defendant on 4-4-1998, but the defendant refused and hence this suit.

The defendant contested the suit by filing written statement. His material case is that the suit is not maintainable at all. That since the plaintiff filed a case under section 488 of the Code of Criminal Procedure before the court of the Magistrate and has been getting maintenance for her daughter from the defendant in that criminal case this present civil suit is not maintainable at all.

The trial court dismissed the suit of the plaintiff on the observation that since the plaintiff has been getting maintenance for her daughter at the rate of Tk 400/- per month by filing a case under section 488 of the Code of Criminal Procedure she has now no cause of action for filing the present suit in the Family Court for the same relief. The trial court has made further observation that though there is no bar in coming to the Family Court for getting maintenance if the fresh cause of action arise but two cases, one in criminal court and another in Family Court, for the same relief cannot proceed side by side. Against this judgement of the trial court the plaintiff preferred appeal and the Appellate Court decreed the suit of the plaintiff setting aside the judgement of the trial court on the observation that under the changed circumstances the plaintiff is now entitled to get maintenance for her daughter Antara Chowdhury at the rate of take 2000/- per month from the defendant and as the defendant refused to give the same the fresh cause of action arose and on this fresh cause of action this present suit in the Family Court is well maintainable. The appellate Court, however, made order that the maintenance allowed by the Magistrate for the daughter of the plaintiff in the previous case under section 488 of the Code of Criminal Procedure would be stopped.

Against the judgment of the appellate Court the defendant-respondent-petitioner has preferred this civil revision on the main ground that as the same matter was disposed of earlier by the Magistrate granting a maintenance of Tk 400/- per month to the daughter of the plaintiff-appellant-opposite party the present suit is not maintainable at all and that the appellate court has erred in law in decreeing the suit of the plaintiff for maintenance.

Deliberations

It is evident that in this Rule the moot point raised for determination is whether the suit filed by the plaintiff for maintenance of her daughter is maintainable or not. The petitioner has contended that since the plaintiff filed

another case under section 488 of the Code of Criminal Procedure before the court of Magistrate and also got an order of maintenance from that court and since the defendant-petitioner has been paying maintenance regularly as per that order of the magistrate the present suit in the Family Court for maintenance at an enhanced rate is not maintainable. But this contention of the defendant-petitioner cannot be accepted. The Family Courts Ordinance, 1985 has been given an overriding power. Section 3 of this Ordinance provides "the provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force." Section 5 of the Ordinance further provides, "a Family Court shall have exclusive jurisdiction to entertain, try and dispose of any suit relating to, or arising out of, all or any of the following matter, namely, (a) dissolution of marriage, (b) restitution of conjugal rights (c) dower, (d) maintenance and (e) guardianship and custody of children."

Admittedly, the earlier case under section 488 of the Code of Criminal Procedure was filed in the year 1983 and order for maintenance at the rate of 400/- per month also was made before 1985 i.e. before coming of Family Court Ordinance into operation. After that more than 15 years have elapsed and the little daughter of the plaintiff is now a grown up girl reading in college. So, undisputedly the circumstances have changed much and the plaintiff can now legitimately claim maintenance for her daughter at an enhanced rate. The plaintiff, in her pleadings and in evidence, has stated that she claimed maintenance at the rate of Tk 2000/- per month for her daughter from the defendant, but he refused. So the plaintiff has a fresh cause of action to come to court and this time since the Family Court is the proper forum having exclusive jurisdiction to entertain this claim of the plaintiff, the present suit filed by the plaintiff in the Family Court is well maintainable.

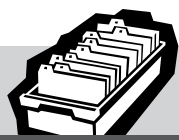
The learned advocate for the defendant petitioner has frankly conceded that after the promulgation of the Family Courts Ordinance the power of the Magistrate under section 488 of the Code of Criminal Procedure has been ousted. But the learned advocate's contention is that as the previous case under section 488 of the Code of Criminal Procedure still remains pending and the plaintiff even now can make a prayer under section 489 of the Code of Criminal Procedure in that case for enhancement of the maintenance of her daughter this present suit for the same relief in the Family Court is not maintainable. In support of his contention, the learned advocate has cited a decision of the High Court Division reported in 50 DLR at page 47. In this case it was held that "after coming into force of the Family Courts Ordinance the Criminal Court's jurisdiction has been ousted in respect of awarding maintenance except in case of pending proceedings." I have nothing to differ with this above quoted decision. But I differ with the contention of the learned lawyer that the previous case under section 488 of Criminal Procedure Code is still pending. It has already been mentioned above that in that previous case under section 488 of Criminal Procedure Code the learned Magistrate firstly allowed maintenance at the rate of Tk 200/- per month and subsequently he raised that to Tk 400/- per month in the previous case under section 488 of Criminal Procedure Code. That case can no more be treated as a pending case, at least, so far it relates to a prayer for enhancement of maintenance. So I am unable to accept the learned lawyer's contention that the previously filed case under section 488 of Criminal Procedure Code is still pending and as such the present suit in the Family Court is not maintainable.

The learned advocate for the defendant-respondent-petitioner has further argued that the defendant is poor man, he has no ability to give maintenance at the rate of Tk 2000/- per month to his daughter. But this is a question of fact, which has already been decided by the court of fact in view of the evidence before it. The appellate court, in her judgment, has considered the evidence and facts and circumstance thoroughly and made clear observations that the plaintiff is entitled to get maintenance for her daughter at the rate of Tk 2000/- per month and that the defendant has ability to pay the same. I find nothing to interfere with this finding of fact made by the final court of fact in exercise of any revisional jurisdiction.

Decision

It is evident that the impugned judgment does not suffer from any legal infirmity and as such cannot be interfered by this revisional court. In the result, the Rule is discharged without any order as to cost. The order staying the proceeding of the Family Execution Case No. 2 of 2000 pending in the court of the Assistant Judge, 2nd Court, Dhaka issued at the time of issuance of the Rule is hereby vacated.

Mr Mujibar Rahman Advocate for the Petitioner, Mr Md Korban Ali Advocate for the Opposite Party.

FACT *file*

China vows to improve calibre of 'incompetent' judges

China's chief justice has slammed "incompetent" judges for blindly following orders from superiors, and promised sweeping reforms to the way they are recruited and trained, state media said. Xiao Yang, President of the Supreme People's Court, told a conference on Sunday that incompetent judges were "one of the most vital factors in judicial inequity" the Xinhua news agency reported. "Courts have often been taken as branches of the government, and judges viewed as civil servants who have to follow orders from superiors, which prevents them from exercising mandated legal duties like other members of the judiciary," Xiao said. The unusually stern criticism marks yet another attempt by China to improve the quality of its famously ill-qualified judges. Seventy percent of them have no college degree, only a



vocational training degree and not necessarily in law, according to earlier reports by China's state media. Xiao told the conference that judges should be immune from local interference, be better paid and "revered for their integrity", Xinhua said. Although China has trimmed the number of judges by 10 per cent, of those remaining "many are incompetent to hold the position of judge," he said. A new class of professional judge should be brought in, "a chosen group of elites who speak the same legal language, think in a unique legal formula, believe in and pursue social justice," Xiao said.

Reforms to speed this change along will include making new judges pass two exams, and forcing incumbent ones to take a law degree within a set time or face dismissal. Additionally, to prevent outside influence, judges should not be fired or disciplined without due process. China has pledged many times in the past to improve its legal system, especially the calibre of the 200,000 plus judges that administer it. The system is heavily influenced by traditional legal values with a high premium placed on rulings that conform with and protect state policies. Western legal experts in Beijing say. This also opens the way for rampant corruption in the areas of civil litigation where rulings are often awarded to the highest bidders, they say. Apart from miscarriages of justice to its own citizens, the lack of legal consistency has prompted concern among foreign companies doing business there, some of which complain they have been the victims of arbitrary and biased rulings.

Source: AFP

LAW *letter*

A Sub-inspector of Police speaks...

In our country there are some people who occasionally speak without understanding the issue. I am talking about recently held 'The Daily Star Dialogue on Arrest and Police Remand'. I am a sub-inspector of police. From the practical painful experience, I dare to say that field level police officers are the worst victim of human rights violations. They have to buy "posting and transfer" by giving bribe to the higher police officials. If anything wrong, be it due to lack of administrative efficiency or proper functioning of the higher officials, a sub-inspector is always found to bear the responsibility. In the discussion, the speakers only blamed and criticized the police without understanding the anxieties and agonies of the field level police officers. The real problem of policing is the lack of job satisfaction and commitment to the profession of which no body is concerned at all.

The field level officers have never been asked what their problems are. They are unable to bear family expenditure with their poor income. The government has allotted a lot of money for the defence forces in the budget but we are always neglected. We do not have social or physical security. How will we dedicate ourselves for providing security to the people? The salary of the field level police officers (FLPO) must be increased.

The status of the FLPO is inadequate. Without raising their sense of dignity you can not expect higher level of ethics and efficiency from them. After one year of basic training in Sardah and two years of probation period, I am not even a second class gazetted officer for which I have to wait and struggle for 15-25 years.

The present system has made a police personnel slave of the superintendent of police. A sub-inspector of police should be made a first class officer. Independence of investigation is a very important part of a case. To ensure it, the SP should be kept under direct control of district magistrate. The Police Act must be amended to suit the changed situation and cast based system within the police must be removed.

Nazmur Rahman

A Sub-inspector of police

Congratulations!

I just finished reading the current issue of the 'Law and Our Rights' (July 14, 2002). The change in its format and arrangement is significant; it is, almost, a refreshing start... Introduction of new section 'Law Week' is informative and substantial. This surely deserves praise. But I could not help congratulating 'Law Desk' for publishing detail information on arrest and remand. It is very relevant and timely addition to common knowledge in a reader-friendly format. I think many people like me were earnestly waiting to learn about it. Though we are live in a democratic society, we still live with fear of unreasonable and indiscriminate arrest on mere suspicion by the police. Hence, every conscious citizen should have a concrete concept about what to do next after being arrested. In this issue, Law Desk has provided in a concise manner, a lot of information about it. It is, indeed, a marvelous gift for the readers. I personally express my heartfelt thanks to the Law Desk.

Zahid Biswas

Department of Law,
University of Dhaka.

LAW *week*

Quickest Trial in Bangladesh?

Four accused were sentenced to death and two were acquitted in Shihab murder case. Khondokar Shihab Ahmed, 13, a student of class seven of Motijheel Model School and College was kidnapped on 7 February 2002. On the fateful day, he was brutally killed and his body was slashed into pieces by the accused. On that day, a General Diary was filed by Shihab's father to the Motijheel police station, which turned into regular case of abduction on February 10. The charge sheet was submitted by the police to the Chief Metropolitan Magistrate Court on 17 April. The trial of this sensational case was started on 19 May and the judgement was pronounced on 17 July. Possibly, this is the quickest trial of the case under section 302 of the Penal Code. It is also an example of speedy trial in the history of the country's judiciary as it is completed within 17 working days. The Second Additional Metropolitan Sessions Judge, Hossain Shaid, convicted the accused Monir Hossain Liton, Abu Sayeed and absconding accused Faysal Sharif Raju and Emran Hossain Sabuj to death by hanging. The Judge brought the charge against them under section 302/34 of the Penal Code. They were also found guilty under section 201/34 of the Penal Code for concealing the document. The Judge concluded the judgement saying, "No doubt the nature of the murder is so heinous that the lesser sentence of imprisonment for life can not meet the demand of justice in this case. The accused committed such heinous and horrible offence that deserves no sympathetic considerations. I think if there ever be a case in which the punishment of death is reserved in the penal code, it is such a case." - Law Desk

Judges divided on the Special Powers Act, 1974

A Division Bench gave split judgements in a writ petition in respect of detention of an Awami League leader of Keraniganj. In his judgment Justice Ali Asgar Khan held that as per Section 10 of the Special Powers Act production of the detenu before the Advisory Board within 120 days of arrest is mandatory. While the other judge of the Division Bench Justice Md. Shamsul Huda held that mere submission of necessary papers can be considered as production of the detenu before the Advisory Board. Justice Ali Asgar Khan ruled the detention order of Mr Mahubur Rahman illegal where as Justice Shamsul Huda held it legal. As two judges have given split judgements, the matter will now be decided by a third judge who will be appointed by the Chief Justice of Bangladesh. - Daily Prothom Alo, 10 July.

Attempt to control public University

The government plans to take full control of public universities by amending the University Ordinance, 1973. As per the Ordinance of 1973 (Dhaka University Order, 1973) some public universities including Dhaka University are regarded as autonomous institutions. Teachers and employees of these universities are allowed to involve in national politics under article 56(2) and 45(1) of this order as a pre-condition of their service. The government is thinking to repeal or, at least, amend this ordinance to restrain university teachers and employees from indulging in national and/or party politics. - Daily Aker Kagoj, 10 July.

Poor security in court premises

The poor security arrangement for the lower courts situated in old Dhaka is not conducive to the justice delivery functions. Parties and witnesses of different cases are often being threatened. Even the lawyers feel intimidated and judges are not in a better position as well. Only a platoon of police is regularly being deployed in the courtyard which is not enough as hundreds of different kinds of people converge on the area every working day for various purposes. A special PP (public prosecutor), on condition of anonymity, told that armed terrorists of different groups roam around the court yard every day. A judge told that the security of the court premises is not sufficient and the judges are not pleased at it. He liked to be anonymous. The PP Abdullah Mahmud Hasan told that the government has formed a cell of 15 members to face the situation. A number of violent offences took place in the past few years in the court premises. In 1995 JCD president of Mohammadpur Thana Abu Morshed, in 1997 a terrorist Azad of Kafurl and in 2000 Milon of Elephant Road (Murgil Milon) were killed in broad day light in the court premises. - Daily Prothom Alo, 11 July

Falu Mia gets decree after death

Falu Mia, who had been in jail without trial for more than 21 years and who died on 7 May 2001, has got a decree for damages. He was arrested mistakenly by the police of Savar thana on 27 August 1972 in three dacoity cases. Advocate Alina Khan submitted bail petition on behalf of Falu Mia and subsequently he was released on bail on 14 November 1993 and discharged from the case later. He filed a case against the government claiming damages for his miserable sufferings. Finally the case is disposed of and Falu Mia has got the decree after passing away. - Daily Manavzamin, 11 July.

Suo moto rule upon lower court

A High Court Division Bench comprised of Justice SK Sinha and Justice Nazrul Islam Chowdhury issued a suo moto rule asking lower court as to why Mukuli Begum was not convicted under Section 302/109 of the Penal Code. Roksana Begum alias Mukuli Begum was convicted in the Rubel Murder case under Section 342/109 of the penal code and sentenced to 1 year rigorous imprisonment and compensation of one thousand taka. The other offenders of the case were convicted under section 302/109 and sentenced to death consequently. The question is, why Mukuli Begum as an abettor of the Rubel murder case, will not be incurred identical punishment. - Daily Bhorer Kagoj, 11 July.

Monir could escape police but not death

Monir Hossain, 38, while being chased by police drowned in the pond. He jumped into a pond when a team of more than five policemen in plain-clothes started chasing. Police became silent spectator when Monir cried for help while swimming in the pond. Police threatened to fire on him if he did not come back to them. Finally the game was over and Monir preferred death to police arrest. - The Bangladesh Observer, 13 July.

Concern over torture in police remand

Bangladesh Bar Council has expressed its deep concern over the indiscriminate arrest under section 54 of the Code of Criminal Procedure and subsequent torture in police remand. They demand the presence of a lawyer at the time of interrogation under section 167 of the said code. They also criticized the government's initiative to increase the court fees saying that it is a violation of our fundamental right to access to justice for all. They also demand immediate separation of the judiciary from the executives. - Daily Janakantha, 13 July.

Error in inquest report

The inquest report prepared by the police are not reportedly made with due diligence and is full of errors. Inquest report is very important in a criminal case but the police make it callously which comes into conflict with autopsy report. Lack of training, professional ethics, and knowledge leads them to make erroneous inquest report, which is questioned at the time of prosecution. It was alleged that police make it without going to the spot. They are also bribed in making inquest report erroneously, which causes the criminal exempt from punishment. - The Daily Jugantor, 13 July.

Legal battle for freedom of expression

A High Court Division Bench, comprising of justice Shah Abu Nayeem Mominur Rahman and Justice Md Arayesuddin, issued a rule Nisi calling upon the government as to why the order of cancellation of the declaration of Uttarbanga Barta should not be declared illegal. This rule was issued in a writ petition filed by the Editor, Publisher and Printer of the Daily. Earlier, the Deputy Commissioner of Natore on 4 July, cancelled the declaration of the daily by an order, on the ground of publishing wrong name of Prime Minister and President of the country and on other grounds. - The Bangladesh Observer, July 14.

High Court comes to rescue Ashulia

The High Court has directed the Jamuna Builders Ltd. to stop unlawful earth filling of the Ashulia flood flow zone. This direction came in a writ petition filed by Bangladesh Environmental Lawyers Association (BELA). In the petition BELA, alleged that the earth filling by the Jamuna Builders Ltd. and other developer in Ashulia flood flow zone for housing purposes has no approval from RAJUK. Moreover, it will change the nature, character and utility of the natural water and was gross violation of the master plan of the city prepared by RAJUK and also the Act XXXVI of 2000 that aims at protecting the open spaces including flood flow zone from filling up. - BELA