



Star LAW report

Anti-Corruption officer enjoys powers of an investigating police officer

Appellate Division

The Supreme Court of Bangladesh
Civil Petition for Leave to Appeals No. 90 and 94 of 2000

Abu Siddique & Md. Mostafa Kamal V

Government of the People's Republic of Bangladesh represented by the Secretary, Ministry of Defence and Others

Before Justice Mahmudul Amin Choudhury, Chief Justice, Justice Ruhul Amin, Justice K.M. Hasan and Justice Abu Sayeed Ahammed

Judgment: April 2, 2002

Result: Petition dismissed

Background

Md Ruhul Amin J: These two leave petitions have been filed by the writ-petitioners of Writ Petitions No. 4864 of 1996 and 4863 of 1996 against the common judgment and order of 22nd March 1999 of a Division Bench of the High Court Division discharging the Rules. The writ petitions were filed challenging legality of the notices dated 5th November, 1996 and 6th November, 1996 in the respective writ petitions. The notices were issued under sections 94 and 160 of the Code of Criminal Procedure (CrPC) by the District Anti-Corruption Officer, Dhaka (Respondent No. 3 in the respective writ petitions) asking the respective petitioners to appear before him with the papers and documents in connection with an inquiry under the Anti-Corruption Act, 1957 against them upon a complaint received by the Anti-Corruption Bureau.

The petitioners challenged the respective notices firstly on the ground that the notice issued under sections 94 and 160 of the CrPC by the Bureau of Anti-Corruption were illegal, since in the absence of initiation of a case the Anti-Corruption Bureau, hereinafter in brief, the Bureau, is not authorised by law to issue the notices under the aforesaid sections of the CrPC. It was also contended that power under sections 94 and 160 of the CrPC could only be exercised by the police officer for the purpose of investigation where a case has been recorded and investigation officers of the Bureau are not authorised to exercise power under sections 94 and 160 of the CrPC at the inquiry stage.

On consideration of the provision of section 3 of the Anti-Corruption Act, 1957, hereinafter in brief the Act, the High Court Division as to the contention of the writ petitioners as regard exercise of power under sections 94 and 160 of the CrPC by the officers of the Bureau in connection with inquiry in respect of the complaint arrived at the finding that the officers of the Bureau in connection with the inquiry of a complaint can very well issue notice under the said sections of CrPC and exercise the powers thereunder.

In support of the Rule obtained by the writ petitioners it was also contended that power to make inquiry by the Bureau is not available against a private person. The High Court Division upon placing reliance on the decision of the Appellate Division reported in 4 BLT (AD) (1996) 58 and that also upon a decision reported in 50 DLR 306 held that the contention of the petitioners is of no merit.

The other contention of the petitioner was that notice impugned in the respective writ petitions were violative of Article 35(4) of the Constitution. The High Court Division upon observing:

"It is only an accused in a trial who cannot be compelled to be a witness against himself. Therefore it is our considered view that a person cannot seek the protection of Article 35(4) when a notice is sent by the Bureau of Anti-corruption under sections 94 and 160 CrPC. Section 3 of the Act, which

empowered an officer of Bureau of Anti-corruption to serve notice under sections 94 and 160 of the CrPC only for the purpose of inquiry to determine the truth of the information received or as about offences connected with community interest, that is offences in the schedule to the Anti-corruption Act."

Arrived at the finding that notices issued by the Bureau under sections 94 and 160 of the CrPC are not violative of Article 35(4) of the Constitution. The High Court Division while discharging the Rule has observed that the officer of the Bureau of Anti-corruption has the power to order and summon under sections 94 and 160 of the CrPC for the purpose of making a preliminary inquiry" and that the person who has been served with the notice under sections 94 and 160 of the CrPC would "have the right to know the nature of information and complaint the Bureau of Anti-Corruption has received so that he unknowingly does not make a statement to a question which might have a tendency to expose him to a criminal charge". The High Court Division on consideration of the provisions of the Act, particularly provision of section 3 of the Act and the provision of sections 94 and 160 of the CrPC finally arrived at the finding that in issuing the notice under sections 94 and 160 of the CrPC by the Bureau asking the petitioners to appear before the specified officer of the Bureau in connection with an inquiry has committed



no illegality.

Deliberation

In the background of judicial pronouncements the law is now at rest that in case of cognizable offences, receipt and recording of a first information report is not a condition precedent to the setting in motion of a criminal investigation. The offences specified in the schedule are cognizable

offence. The Bureau on receiving of complaint or information as regard any one of the offences specified in the schedule goes for inquiry into and investigation of such complaint to ascertain at the first truth of such complaint or information. The offence listed in the schedule being cognizable offence the inquiry into and investigation of the complaint or information without recording of case upon formal receiving and recording of First Information Report is permissible in law and that also legal. As per provision of sub-section (3) of section 3 of the Act, any officer of the Bureau is authorized to exercise, subject to any orders made by the government, "any of the powers of officer-in-charge of police station in the area in which he is for the time being and when so exercising such power shall," subject to any orders made by the government, "be deemed to be an officer in-charge of a police station discharging the function of such an officer within the limit of his station." This being the provision of law, officers of the Bureau are very much within the bounds of law in serving notice under sections 94 and 160 of the CrPC and to exercise power thereunder.

The other contention that action of the respondent no 3 was violative of Article 35(4) of the Constitution is also of no substance since the notices impugned were issued in connection with an inquiry as regard the information received against the petitioners. The petitioners are not accused of any offence and as such protection under Article 35(4) is not available to them.

Section 94 is in Chapter VII of the CrPC. The provision of the said section empowers or authorizes the officer-in-charge of the police station to make direction to a person for the production of any document or other things as considers necessary or desirable for the purposes of any investigation or inquiry, under the Code before such offence upon issuing notice in writing to the person "in whose possession or power such document or thing is believed to be, requiring him to attend and produce it or to produce it, at the time and place..." specified in the notice or order.

Section 160 of the CrPC is in Chapter XIV of Part V of the CrPC. This part amongst others also deals with the power of the police relating to investigation. As per provision of the said section any police officer while making an investigation under chapter XIV of Part V of the CrPC "may by order in writing require the attendance before himself of any person being within the limits of his own or any adjoining station, who from the information given or otherwise, appears to be acquainted with the circumstances of the case and such person shall attend as so required." It has already been spelt out herein above that in case of cognizable offence receipt and recording of first information report is not a condition precedent to the setting in motion of a criminal investigation. That being the position in law the officers of Bureau in connection with investigation of a complaint to ascertain truth thereof is authorized to issue notice under section 160 of the CrPC.

Provision of section 3(2) of the Act authorizes the officers of the Bureau to inquire into and investigate the offences specified in the schedule to the Act and in doing so the officers have all the powers, duties, privileges and liabilities which the police officers of Bangladesh have in connection with investigation of offences. Under sub-section (3) of section 3 of the Act officers of the Bureau are authorized to exercise any of the powers of an officer-in-charge of the police station in the area in which he is for the time being inquiring into and investigating into the offence specified in the schedule and that while exercising the said powers he would be deemed to be an officer-in-charge of a police station discharging the function of such an officer within the limit of his station.

Decision

In the background of the discussions made herein above we are of the view that High Court Division has committed no error of law in refusing to declare the impugned notices issued by the Anti-corruption Bureau to the petitioners under sections 94 and 160 of the CrPC illegal. Accordingly the petitions are dismissed.

Mr. Syed Ziaul Karim, Advocate for the petitioners in both the cases, instructed by Md. Nawab Ali, Advocate-on-Record. Respondents were not represented.

LAW week



Appointment of judges under PSC stayed

The High Court Division of the Supreme Court has ordered the government to appoint judges in the lower court through Judicial Service Commission. The bench comprising Justice Mohammed Abdul Aziz and Justice Nazrul Islam issued the rule asking the government as to why the Public Service Commission's (PSC) advertisement relating to the recruitment of Assistant Judges should not be declared illegal and unconstitutional. The direction of the court came on a writ petition filed by Md. Idrisur Rahman, an advocate of the Supreme Court, challenging the legality of the advertisement of the Public Service Commission (PSC) published in different national dailies on 15 September. The advertisement invited application for the 102 posts of Assistant Judge in the lower court. Moving the petition Dr Shahdeen Malik submitted that the Appellate Division of the Supreme Court in a landmark decision in the case of Ministry of Finance Vs Masder Hossain in 1999 had set aside the momentum of recruitment of judges of the lower court through the PSC. Therefore the PSC can not recruit Assistant judges to the subordinate courts along with other civil service officials, he also argued. It can be noted that in this landmark judgement the High Court Division termed the service as Judicial Service instead of Civil Service and directed the government to set up a Judicial Service Commission for the recruitment of judges in the subordinate courts. -The Independent, 07 November.

Human Rights Commission bill approved

The Cabinet Sub Committee has approved the Human Rights Commission bill. It has primarily finalised all the clauses of the proposed bill to set up a Human Rights Commission. Under the proposed bill the president will appoint the chairman and the members of the commission without consultation with the Prime Minister or the Chief Justice which was required by the earlier draft bill. The chairman and the members of the commission will be appointed for three years. The status of the chairman of the commission will be as same as that of the Chief Justice of Bangladesh. Members of the commission will include one female member and one retired judge of the Supreme Court. The members of the commission will be treated as public servants and they will enjoy legal immunity for their work if it was done in good faith. The commission is to submit its yearly report to the president within the month of March of the year. The report will be submitted to the parliament for discussion by the president after 90 days of receipt of the report. It was reported that the bill does not contain any provision for the investigation of any human rights violated by the armed forces. -Law Desk.

Energy Conservation Act soon

The government is going to enact Energy Conservation Act (ECA) to curb wastage and illegal pilferage of energy and protect the rights of the consumers. The proposed law will be placed to the parliament soon for approval. The law will widen the operation of the Energy Regulatory Commission to ensure transparency and accountability in the energy sector. The law will also curb the harassment of the consumers by a section of officials. Under the law the concerned authorities would be able to ensure installation of modern equipment in industry to stop wastage of gas. The regulatory commission would ask the factories, power plants or industries which consume gas more than the demands to set up less energy consuming technologies to conserve the natural resources. The government also plans to bring some amendments to the existing regulations of the Bangladesh Petroleum Corporation (BPC) and the Petrobangla to ensure smooth and independent function of the commission. Existing regulations of the Bangladesh Mineral Development and the Explosive Act may also be changed to strengthen the commission. -Financial Express, 11 November.

Speedy trial tribunal formed

The government has set up speedy trial tribunals in the six divisions. The tribunals were set up under the Speedy Trial Tribunal Ordinance, 2002. The government's notification has confirmed that the tribunals have been set up in Dhaka, Chittagong, Rajshahi, Khulna, Barisal and Sylhet division. Against the backdrop of the increasing criminal offence and delay in justice delivery the government has passed the law to make sure the speedy trial of some offences. -Law Desk.

Special police squad for security

Special police squad will be deployed in 90 points within 2/3 days in the market places of Dhaka City to combat extortion, toll collection etc. The government decides to do so for the security of the common people who rush to different markets of the city for Eid shopping. -Sangbad, 09 November.

Convicts of Simi suicide case granted bail

The five convicts of the Simi suicide case were granted bail by the Metropolitan Sessions Court. The order of bail was passed upon two separate criminal appeals seeking bail submitted by the defence lawyer on behalf of the convicts. The convicts are Sub-inspector (SI) Abul Bashar of Kaligona police station in the city, Akibur Ziaul Khan, Mohammed Ripon, Mofajjal Hossain and Enayet Kabir Doel. It is noted that Simi Banu, 21, a final year student of Narayanganj Fine Arts Institute committed suicide making dying declaration that the above mentioned convicted persons were responsible for her unnatural death. The Metropolitan Sessions Judge on 28 September convicted the accused persons under the Metropolitan Police Ordinance for teasing in his judgement. The case was filed under the Penal Code but the accused persons were punished under the Metropolitan Police Ordinance. -Law Desk.

Innocent child sent to child home

The Rangpur Jail Authority released an unclaimed one-year-old child and sent it to the Rajshahi baby home. The baby was in jail for one year. In response to a suo moto rule issued by the High Court Division, the district administration and the jail authority sent the baby to the child home. A Division Bench comprising Justice M A Aziz and Justice Nazrul Islam Chowdhury issued the rule upon a prayer for the safe custody of the child. The bench also ordered the Inspector General of the jail to take up measures to find out his parents. -Daily Star, 05 November.

Violation of prisoners rights

The rights of the prisoners have been extremely violated in Kishoreganj jail as it is overcrowded for 4/5 times than its capacity. The district jail of Kishoreganj has a capacity to accommodate 231 prisoners whereas 831 prisoners have been detained in the jail. The prisoners have to sleep by turn at night which is a blatant violation of the rights of the prisoners. -Prothom Alo, 11 November.

Int Jurist's legal support to Bangladeshis

The International Commission of Jurist (ICJ) will extend its legal support to the helpless Bangladeshis whose human rights have been violated. The ICJ will also stretch out its legal support for the women and children who have been trafficked. As the persecution and domestic violence were increasing in Bangladesh alarmingly and the victims did not get proper legal support, the ICJ wished to expand its legal support towards them. -Bangladesh Today, 06 November.

UN resolution against Iraq

The United Nations Security Council has unanimously approved a resolution (UN Resolution 1441) for the inspection of Iraq's weapons of mass destruction. The resolution is the last chance given to Iraq for the elimination of its weapons of mass destruction. The resolution was drafted by the United States with the help of Great Britain. The resolution gives the Arms Inspectors, who have been out of Iraq for the last four years, "immediate, unimpeded and unconditional" rights to search anywhere including the presidential palaces of Saddam Hossain for chemical, biological or nuclear weapons. The Security Council gave Iraq 7 days to accept the new resolution. Iraq accepted the resolution unconditionally on 13 November saying that it was choosing peaceful means to protect the country from threat of war. In a letter to the UN Secretary General the Iraqi government said that it accepted the resolution without condition to avoid the war. -Daily Star, 09 & 15 November.

Corresponding Law Desk

Please send your mails, queries, and opinions to: post - Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, 8124966; fax 8125155, 8126154; email dslawdesk@yahoo.co.uk; interactive email lawdesk20@hotmail.com

READER queries



Your Advocate



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 work as a civilian staff officer in the Navy. My wife is pregnant. We have one child we decided not to have the 2nd one. We went to the lady medical officer and told her about our decision. But that lady tried to persuade my wife and told, "Why will you kill the baby? This is a gift of Allah; it will be sin" etc. She refused to refer it to the Gynecologist at Combined Military Hospital, Dhaka where my family is entitled to get medical treatment. She told us to go to the outside clinic. I asked her to give written advice to go to outside clinic. But she vehemently refused. I informed the matter to the authority but they did not pay attention to my complaint rather blamed me. I forced the doctor to do MR/DSC of my wife. By this time that lady propagated that I tried to force her to kill the baby. I told my concerned authority that I want to give written complain against her act. But the authority declined to forward my complaint. My questions are: can that doctor force us to accept her decision? Is our decision illegal? Please advise.

Mr. & Mrs. Kashem Chittagong

Your Advocate: So far I know, apart from the provisions laid down in Bangladesh Penal Code there is no further legal contemplation in this regard in our country. Sections 312 through 316 of the Penal Code deal with this subject. Section 312 is relevant here which reads: "312. Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation: A woman who causes herself to miscarry, is within the meaning of this section."

It is very much clear from the above provisions of Section 312 that if a woman causes herself to miscarry that will also constitute offence under Section 312 and she will be liable to be punished. Only exception is that if miscarriage is caused in good faith for the purpose of saving the life of the woman, then it will be no offence. Question is who can cause miscarriage in good faith for the purpose of saving the life of the woman? Answer is very simple- only a qualified registered doctor.

LAW letter

"Kakababu, we will be your guests tonight."

Army has been deployed by the Bangladesh government presumably to bring under control the acute law and order situation of the country that seemed to be beyond the control of the country's police force and other law enforcement agencies. A few weeks' army operation has generated mixed reactions both within and outside the country. Gravity of the situation is easily comprehensible from Masud Kamal's news story (The Daily Janakantha of October 12, 2002) about the law and order situation in Bagerhat area. "Kakababu, we will be your guests tonight." This single sentence uttered by some young 'mastans' comes as the entire sky fallen and broken onto the head of an old Hindu gentleman. "Kakababu", well known for his hospitality, is well aware about the ugly desires of the self-invited night guests. This kind of incidence is hardly reported because there is life threat from the 'mastans'. Even if it is reported, no action is taken against these 'powerful' political gangsters. Masud Kamal comments that this kind of 'silent rape' is a common feature of the social life of that area. He further comments that the members of the Hindu community are the main victims of this heinous crime.

It is not hard to believe that due to obvious reasons as many crimes of this kind are not reported by the victims as they are committed. Our newspapers are also not very generous about bringing to light this kind of attacks on the minority communities because of political reasons. Even the Janakantha report may be described as 'acute lies', 'baseless', and 'fabricated' by some quarters. As a nation, historically we have developed the habit of denying everything. What we say sometimes converges with what a typical home ministry spokesperson says about the law and order situation of the country. We deny because 'we do not want to tarnish the bright image of the country.' We deny because we believe that our people are peace loving. Our 'patriotism' is so blind that we fail to distinguish between common people and the criminals. The very selection of this kind of topic for a write-up is described by some as a selection bias. Some one giving moral support to the anti persecution campaign by a 'controversial and politically motivated human rights organization' is accused of 'defending the communalists'.

Ignorance, indifference and inaction simply let this kind of communal

violence continue and increase over time. The young antisocial elements work hard for their godfathers. They forgo a decent healthy career. They risk their life to keep the opponents under control. Perhaps one day some of them will fall victim to the sniper's shots and face premature death. Their sacrifice for their godfathers is unlimited. So naturally they deserve all the entertainment of life. But one day more able 'kakababus' will be gone. His young daughters or sisters will be sent to India or to a nearby town. What will these political miscreants do then? Probably they will throw the same string of words to an economically, politically, and socially weak Muslim gentleman: "Chachamkia, we will be your guests tonight."

Subimal Chakrabarty
Texas, USA

A Note of Thanks

The article named "Sexual Harassment in Bangladesh: Prevention and Penalty" written by Mohammad Ziaul Hoque and published in the Daily Star in "Law & Our Rights" page on 27 October has drawn my attention. I want to thank the writer for pointing the glaring deficiency in our legal system regarding the definition of sexual harassment in our social and cultural context.

In a country like ours where everyday many women and girls - even little girls are falling victim to sexual harassment both physically and mentally, there should be definite laws to deal with these specified harassment. Not only physical but mental harassment is also a deplorable crime. Girls in our country have to face many kinds of mental nuisance in different spheres of life.

Our country has a wide range of female garments and NGO workers who are getting molested both in their workplace and on their way to and from their workplace. They do not have the courage to protest; they have to tolerate this humiliation silently.

Another point that worries me is the 'hostile working environment'. Harassment, both physical and mental, in workplace not only in garments sector but also in other jobs has become a serious social problem in our country. There should be clear and transparent guidelines for the employers to follow. I think government should enact appropriate laws and sincerely implement them to prevent

sexual harassment in the country.

Iffat Hossain
Jahangirnagar University



LAW quotations

"It is the role of the judges in developing the law. Many judges of England have said that they do not make law. They only interpret it. This is an illusion which they have fostered. But it is a notion which is now being discarded everywhere. Every new decision on every new situation is a development of the law. It is on his work that civilised society itself depends."

-Lord Denning.

"A lawyer must be prepared to live like a hermit and work like a horse."

-Lord Eldon

Courtesy: Mohammad Shahidullah (Munna), Narinda, Dhaka.

LAWSCAPE

Why was the lawyer skimming the Bible right before he died? He was looking for loopholes!

What's the difference between a lawyer and a boxing referee? A boxing referee doesn't get paid extra for a longer fight.

The judge admonished the witness, "Do you understand that you have sworn to tell the truth?"

"I do."

"Do you understand what will happen if you are not truthful?"

"Sure," said the witness. "My side will win."

