



READER'S queries

Your Advocate



This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law. Send your queries to the Law Desk, The Daily Star. A panel of lawyers will address your problems.

Q: In early 2001 I got myself involved in a computer related business in Dhaka with a Bangladeshi partner who was known to me for several years. My partner ran the business from February 2001 to December 2001 along with few other staff. My partner acted as the Chief Executive Officer (CEO) and I acted as the Chairman and gave remote support via e-mails and phone. We made a partnership business deed. In this business we had equal investment and we agreed to share the net profit on an equal basis. As per our written agreement the CEO reported to me on business status and sent profit & loss statements via e-mails during the first one year and all his reports showed an all-time monthly profit. At the end of the year (2001) my partner suddenly notified me that due to an 'unavoidable personal circumstance' he had to close the business and also had to withdraw all invested money including my profit share. According to our agreement upon written policies no parties should be able to take out any amount of invested money within the first two years of business and also CEO was supposed to notify the Chairman in advance if he was going to make a major decision like the closure of business operations or even dismissing a staff from office. Unfortunately my partner did not care at all and acted as per his own wishes and well being. In January 2002 we made a new deed in which he agreed that he'd pay me back all my invested money along with my profit share within December 2002. Until September, 2002 he maintained email-based communications with me. However, after that time I could never communicate with him, nor did he ever respond to my email/telephone queries. Then I had my family members try to meet him but they could never meet. One of my family member tried to settle the matter peaceful but failed. In March 2003, I came to know that my partner has left for a foreign country. At this point I made a G.D entry to the thana in the area where my partner used to reside in and reported this issue to the local embassy of the country where my partner has been residing, which failed to bring me any results. Given this situation, I would like to know what legal actions/options I have at this moment and what would be the best option towards a normal solution of this problem. I would much appreciate your advice.

Ahmed Shamim,
Tokyo, Japan.

Advocate: I have gone through your query. It reminds me of the oft quoted saying- money is a good servant but worst master. If you fail to handle it in a scrupulous way it may turn counter-productive and may serve to do you any harm that you can not imagine. History of partnership business of the kind with a friend is the history of the end of friendship. So you lose both- a otherwise good friend and your money. No, No! you need not be disappointed. These are mere words of caution not of disappointment. Law is there to help you out. The substance of your grievance is you started a partnership business with one of your friend. There was a formal partnership deed duly executed by the parties. Since you work abroad your partner ran the actual business under your remote supervision. For some time he behaved properly and used to send you profit-loss statements. At a certain point of time he suddenly informed you that he was going to close down the business and withdraw the entire investment including yours from the business for some unavoidable personal reasons. You came back home, had discussion with the partner. He agreed to pay you back your share of the capital and profit which was supported by a second documentation. But eventually your partner melted away from the scene severing all contacts with you with the apparent intention to misappropriate all your money due from the business. Meanwhile you came to know that your partner had left the country on a short visit. You have by now made a G.D Entry. All right. It may serve you some purpose. Letters of your query suggests that you are still expecting a peaceful settlement at the family level. No doubt, it is the best if could be done. If you fail, you can file a money suit in the civil court for recovery of your money and in addition lodge an FIR in the police station or alternatively initiate a proceeding against your partner in the court of Magistrate alleging a commission of criminal breach of trust. The legal course, if taken, may be a bit troublesome and lengthy. So this should be the last option.

FACT file

Pakistan

Thousands of women burnt to death

A Rawalpindi-based NGO's revelations about women victims of violence are horrifying. According to the data collected by it, some 5,000 women were burnt to death in the last five years by their husbands or in-laws in Rawalpindi-Islamabad and the adjoining areas alone. Revealing the gory details, the rights group's spokeswoman noted with shock and horror the latest method of torturing women to death by electrocution.

The situation in many other parts of the country is no better either. Considering the alarming number of women becoming victims of violence - harassment, physical abuse, selling of girls in marriages or offering them to adversaries, compensation to settle tribal disputes, rape, imprisonment under false charges of fornication, mutilation, acid throwing, burning, electrocution, honour killing - not enough is being done at any level - legal, social or political - to fight these evils and to safeguard women's rights, interests and, above all, their physical safety and well-being. The fact that their tormentors are seldom, if ever, brought to justice, makes it only more alarming.

Regressive social practices, rooted in tribal and feudal customs and traditions, coupled with an obscurantist interpretation of religious edicts, are the main hurdles in way of acceding women their due rights, status and protection.

The discriminatory Hudood, Qisas and Diyat Ordinances and the Law of Evidence are repressive in spirit and application and deserve to be repealed or suitably modified. Increased representation of women as legislatures now provides the right conditions and opportunity to get things moving on this very important front.

Source: Foundation for the Advancement of Community Education (FACE), Pakistan.

Star LAW report

Privilege of MP doesn't include total immunity from judicial formalities

Appellate Division (Criminal)

Bangladesh Supreme Court
KM Obaidur Rahman (Appellant)

Vs

State (Respondent)

Before Mr. Justice M Amin Chowdhury, CJ, Mr. Justice M Reza Chowdhury, MR. Justice Md Ruhul Amin and Mr. Justice Md Fazlul Karim.

Background

Mahumudul Amin Chowdhury CJ: This appeal by leave is against judgement and order dated 22nd day of August, 2001 passed by the High Court Division in Criminal Miscellaneous Case No. 6218 of 2001 which arose out of Sessions Case No. 7 of 1999 now pending before the learned Metropolitan Sessions Judge, Dhaka which is corresponding to Lalbagh PS Case No. 11 (II) 75 under sections 120B/302/448/449/109/34 of the Penal Code. The High Court Division by judgement dated 22nd day of August, 2001 summarily rejected the appellant's prayer for bail.

The short fact leading to this petition is that this appellant was arrested by the police on 29-9-1998 in connection with aforesaid Lalbagh PS Case which is in connection with the murder of four national leaders inside the jail on the night following 3-11-1975. Thereafter on completion of investigation police submitted charge sheet against this appellant along with others who are now facing trial in the aforesaid Sessions Case and by this time 7 witnesses have been examined. The appellant moved the High Court Division in the aforesaid Miscellaneous Case praying for bail, which was rejected by a Division Bench of the High Court Division. Leave was granted by this Division. Leave was granted by this Division to consider the following:

"Mr. Khandaker Mahabubuddin Ahmed, learned Counsel appearing on behalf of the petitioner, submits that the case is pending before the learned Metropolitan Sessions Judge for about 930 days from the date of receipt of record by that court and out of 75 witnesses only six witnesses have so far been examined. The learned Advocate submits that the trial started before the learned Sessions Judge in November 1999 and it is still continuing. He also submitted that the prosecution is not taking any effective step for producing and examining their witnesses and this petitioner is languishing in Hazot for no fault of his own. In such a case when the prosecution failed to complete the trial within the stipulated time the court below may very well consider enlarging the petitioner on bail. Mr. Khandaker submits that the petitioner is seriously ill and at the moment he is in Bangabandhu Sheikh Mujib Medical University Hospital. It is further submitted that from inside the custody the petitioner fought the last parliamentary election from Faridpur 2 Constituency and he came out successful and in such a situation he may be allowed to participate in the parliamentary activities and the petitioner will not misuse the privilege of bail if granted. Mr. Khandaker submits that out of 75 cited witnesses no one has directly implicated the petitioner for any offence punishable under section 120B/302 of the Penal Code or of any other law and in such a situation may be favoured with bail".

Deliberation

We have gone through the available materials and it appears that the case was received initially by the learned Sessions Judge, Dhaka on 24-11-1998 and then the same was sent to learned Metropolitan Sessions Judge on 12-1-1999 and charge was framed on 12-10-2000 and since then only 7 witnesses have been examined out of 75 cited witnesses. It appears that on several occasions the proceeding was stayed at the instance of one or the other of the accused persons including the appellant and, as such, the appellant is not entitled to any benefit as provided under section 339(4) of the Code of Criminal Procedure. Furthermore, in the petition before this Division or even before the High Court Division it has also been mentioned that over 930 days have passed since receipt of the record by the trial Court but the detail of time consumed has not been given which is the responsibility of the appellant for getting the advantage out of it. Section 339 (2) provides that such a trial shall be concluded within 360 days from the date on which the case is received by the learned Sessions Judge.

Here in the present case the case record was received by the learned Metropolitan Sessions Judge on 12-1-1999 and he failed to complete the trial with that period. Sub-Section (4) of this section provides that if a trial could not be concluded within the specified time the accused in the case if he is accused of non-bailable offence may be released on bail to the satisfaction of the court unless for the reason recorded by the court otherwise direct. Admittedly, the trial Court failed to dispose of the case within the stipulated time because of certain stay orders obtained by one or other accused persons including the appellant. For getting the benefit of section 339(4) of the Code the accused must come with a definite case that he was not instrumental in delaying the disposal of the case. But here in the present case it appears that this appellant and other accused persons were instrumental in delaying the disposal of the case within 360 days as provided under section 339(2) of the Code of Criminal Procedure. So, in that view of the matter though the case was received on 12-1-1999 the appellant is not entitled to any advantage of sub-section (4) of section 339C of the Code and we find no force in the submissions made by the learned Advocate for the appellant.

The next ground is that the prosecution though cited 75 witnesses in the charge-sheet they have only examined 7 witnesses so far and out of 7 witnesses none has implicated the appellant in the offence alleged. None of the witnesses deposed that this appellant was a conspirator in the commission of murder of four national leaders in the jail on the fateful night. It is also submitted that the prosecution is not taking any step for speedy and early disposal of the case and they are not producing witnesses as required under the rule. They are only producing one or two witnesses as required under the rule. They are only producing one or two witnesses on a date and the learned Sessions Judge is also not taking any effective step for examination of the cited witnesses.

It is true that the case is proceeding at a snail's pace and conduct of the prosecution indicates that they have lost interest in the early disposal of the case. We had the privilege of going through the case diary and it appears that almost all the witnesses are from this metropolitan area and in such circumstances we find no reason why the prosecution failed to produce the witnesses before the trial Court by now. And why the trial Court also failed to secure attendance of the cited witnesses, most of whom are very much known in the political arena of our country and some of whom were even Ministers in the last Cabinet. From the conduct of the prosecution and the way the trial Court is proceeding with the trial led us to hold that the case has been dumped in the no man's land and the way the case is being proceeded with it can very well be presumed that the trial will continue for many more years to come which cannot be appreciated.

Mr. Mahbubey Alam, learned Advocate for the prosecution submits

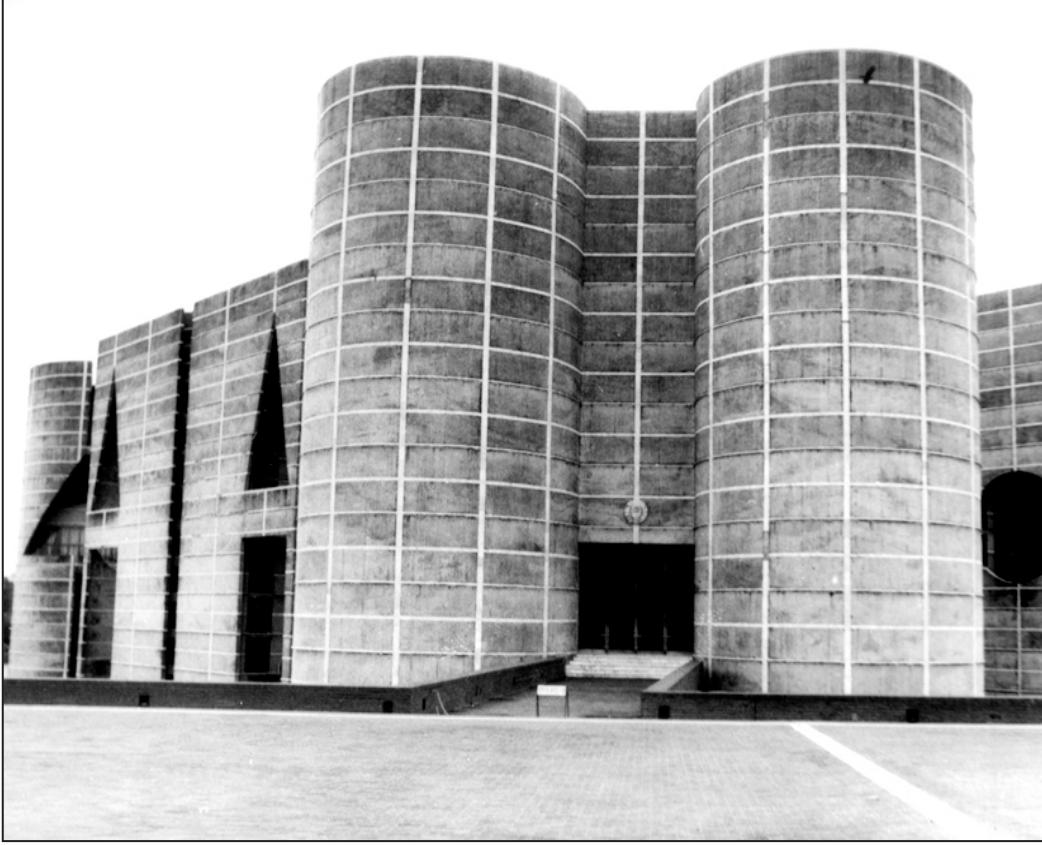
that at least 5-6 witnesses in their statement recorded under section 161 of the Code of Criminal Procedure have disclosed the complicity of this appellant for an offence punishable under section 120B of the Penal Code which will be looked into at the time of trial.

It is true that some witnesses may have named the appellant in their statement recorded under section 161 of the Code of Criminal Procedure but why the prosecution is not producing and examining them before the trial Court and what is preventing the prosecution in examining those vital witnesses? This attitude indicates that the prosecution had probably lost interest in the case for reasons best known to them. However when, according to prosecution, at least 5/6 witnesses have implicated the appellant simply on the ground that there is no direct evidence against this appellant we are not inclined to enlarge the appellant on bail.

Mr. Khandaker Mahabubuddin Ahmed, learned Advocate, submits that admittedly the appellant is aged 63 years and suffering from various ailments and at the moment he is in Bangabandhu Sheikh Mujib Medical University Hospital's prison cell for quite a long time. He submits that earlier also he had to be transferred to the hospital due to his serious ailment. This contention of the learned advocate has not been controverted from the sides of the prosecution.

Mr. Mahabubuddin Ahmed also submits that this appellant in custody has been elected to the Jatiyo Sangsad and he may be enlarged on bail to perform his national obligations. But being an elected Member of Parliament cannot be a ground of enlarging an accused on bail. We find no force in the submission of Mr. Khandaker in this respect.

But when the appellant is admittedly in a frail condition of health and is



in prison cell of the aforesaid hospital simply on that ground we are intended to consider enlarging him on bail and not on any other ground as pressed aforesaid. But it must be understood that being a Member of Parliament on being enlarged on bail he cannot avoid appearance before the trial Court on the date of trial simply on the plea that the Parliament is in Session. When there is a session of the Parliament on any date fixed for the trial the appellant should not claim any privilege as being a Member of the Parliament and should attend the trial so that the same may proceed in accordance with law. If on this ground the appellant seeks any adjournment that should be rejected outright by the trial Court and that court will be at liberty to cancel the bail of the appellant and take him into custody.

Decision

In view of the aforesaid we are inclined to allow the appeal. The appeal is accordingly allowed.

Khandaker Mahabubuddin Ahmed, Senior Advocate (Mainul Hosein, Advocate with him) instructed by Md Aftab Hossain, Advocate-on-Record For the Appellant.

AK Hassan Arif, Attorney General, (Md Ataur Rahman Khan, Deputy Attorney General with him) instructed by Sufia Khatun, Advocate-on-Record For the Respondent.

Mahbubey Alam, Senior Advocate on Behalf of Serajul Huq, Senior Advocate M Farooq Ahmed, Anisul Huq and Mosharaf Hossain, Advocates Special appointment by the Government.

LAW letter

Public interest should be given priority

The Bangladeshis are passing probably the worst time now since the emergence of Bangladesh. Political as well as non-political terror activities, violence towards women, deceiving, cheating, and bribery in the institutions i.e. everything worse is increasing everyday. Observing all these people are getting nervous because they are not seeing any symptom that the law and order situation will turn good and they will have secure and friendly environment. The most regrettable thing is that our law enforcing agency i.e. police department is reported to the most corrupt institution while the lower court the second top one where men go to get justice. To change this circumstances the media world can play the most influential role by propagating through publishing, screening, airing or broadcasting our enumerable problems as well as their reasons, consequences and the way of prevention, and thus making public aware of their rights and obligations. As a matter of fact, so long as we are not being aware of our rights and responsibilities towards others we cannot overcome our problems. In this respect, The Daily Star seems the pioneer. Introducing a special section named 'Law & our rights' it starts the campaign first few years ago. What 'Law & our rights' has done so far and is doing no doubt good but our expectation to it is more. It must publish the most public-helping i.e. people-friendly writings. There are many constraints to the way to access justice, there are numerous loopholes in laws, about which people should be made conscious. In this regard, I would like to mention that there should not be any policy that the writers should be Bar-at law or PhD holder or university teacher and so on. Designation or high-ranking position of writer can never be the criteria to justify whether the writing is publishable or not. There are many lawyers who are practising for years in the lower courts. They have no mentionable degrees but have invaluable practical experiences. Law & our rights can encourage them to write in its pages.

Farha,
Kolyanpur, Dhaka.

LAW week



WCRP (Amendment) Bill passed

The JS has passed Women and Children Repression Prevention (WCRP) (Amendment) Bill, 2003 bringing in major reforms in laws concerning women and children repression. With the passes of the Bill, the age of child (in the definition) has been raised to 16 years from 14. The bill says if a woman commits suicide fearing losing her chastity due to wilful act of a person, the person will be then accused as a provocateur and for that offence he will be punished with maximum ten years and minimum five years of imprisonment. The bill has the provision that a baby born out of rape will be kept under the care of mother and the baby will be known after his/her mother or father or both. Besides, the state will take the responsibility of that baby until he/she attains the age of 21 years. In case of a girl child, the state will take care of her until she gets married. Under this provision, the state will be able to realise the money spent for upbringing of such a baby from the rapist. The bill amends a provision of the original law of 2000 by omitting 'indecent gesture' from the lists of sexual harassment offences, as it is overexploited to harass the opponents. The bill also relaxed certain provisions of dowry saying that only people directly linked in dowry seeking would be considered for trial. The bill provisioned that opinion of the rape victims has to be taken if the need for camera trial arises or if the victim has to be taken under safe custody. - *Ittefaq, 14 July*.

Code of Civil Procedure amended

The Code of Civil Procedure (Amendment) Bill, 2003 has been passed provisioning some measures for quick dispensation of justice. This bill significantly enhances fines for certain offences to curb the trend of filing false cases and vests the district judges with the powers of case-revision in certain cases. It also provides that no ad-interim or temporary injunction against government's development activities can be served without hearing the government, and puts some new measures in case of serving ad interim or temporary injunction on the government. With the passes of the Bill, the amount of compensation has been increased from Tk 5,000 to Tk 1,00,000 to curb the trend of filing false cases. - *Ittefaq, 14 July*.

E-policing to be introduced

The government is planning to introduce e-policing systems to equip the technologically backward law-enforcement agency with modern Internet facility. This will provide people with the opportunity to register case electronically, replacing the need for physical presence at mostly unpleasant police stations. In the first phase, five police stations - Mohammadpur, Dhanmondi, Kafral, Tejgaon and Mirpur -- will be brought under e-policing. The system will be later introduced to other police stations as well. Targeted police stations will have Internet connections and their own web sites. People will be able to file general diary (GD) and First Information Report (FIR) through the Internet, after which police will supply printed acknowledgement. To reduce the hassle of record keeping databases for charge sheet or FIR will be developed. A secret web-based database of criminals of particular areas under the police station will also be developed. An electronic register will be developed to keep records and statistics of arrests, attendance of officials, accounts of the police station and so on. Police officials on the move, within their areas, will be able to get connected to the databases at the police station via Internet phone. - *Law Desk*.

Two convicts executed at Comilla Jail

Two convicts in a murder case were executed in the Comilla Central Jail early yesterday. The convicts, identified as Haji Giasuddin, 58, and Jamaluddin, 48, were from Char King Boaliar village of Hatia upazila in Noakhali district. The District and Sessions Judge's Court awarded them death penalty for killing UP member Abul Kasem in 1990. Their appeal to the High Court and Supreme Court were rejected and they also failed to get pardon from the President. Deputy commissioner, ADC (Revenue), two first class magistrates and civil surgeon of Comilla were present during the execution. - *Daily Star, 11 July*.

Justice Ruhul Amin at Appellate Division

The government yesterday appointed Justice MM Ruhul Amin to the Appellate Division of the Supreme Court by superseding a senior judge of the High Court Division. Justice MM Ruhul Amin superseded senior judge Syed Amirul Islam in the appointment that was signed by President Iajuddin Ahmed. The appointment was made to fill up the vacancy created by the retirement of Justice Fazlul Haq on June 30. The Supreme Court Bar Association expressed its resentment over the appointment. - *Prothom Alo, 13 July*.

Two cops jailed for extortion

The Speedy Trial Court 2, Dhaka, yesterday sentenced two constables to rigorous imprisonment for three years in an extortion case. The convicts are Sohel and Ferdous of Mirpur Riot Control Department. Magistrate Al Mamun gave the verdict in presence of the accused. The court acquitted two others, as charges brought against them were not proved. They are Constables Ohiduzzaman and Mohammad Shahedul Hossain alias Rana of the same department. In the case filed with the Tejgaon Police Station, it was alleged that at about 4:00 pm on May 1 this year, Kazi Rashedul Hasan went to a shop at Green Road in the city to buy cigarette. The accused, on duty at the road, picked up Rashedul from there. They took him to custody and demanded Tk 500 from him. - *Daily Star, 13 July*.

HC for drivers with extra bumpers

The High Court (HC) has ordered the government not to harass drivers with extra bumpers on their motor vehicles till disposal of a rule issued earlier in this regard. The HC order followed a petition filed by Kamruzzaman Chowdhury challenging the legitimacy of a government's order for removal of extra iron bumpers from all motorised vehicles in the capital and seeking an injunction against the order. The decision to remove extra bumpers was taken following the tragic death of a physician of the Orthopedic Hospital who was dragged to death after his foot got stuck to the bumper of a car on Mirpur Road on July 1. Before passing the order, the bench comprising Justice Shah Abu Naim Mominur Rahman and Justice Abdul Awal held that the government has not framed any rule under section 82 of the relevant ordinance and as