

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)

WRIT PETITION NO. 6332 OF 2010

In the matter of:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh

AND

In the matter of:

Dr. Sharmin Maria

.....Petitioner

Versus

Major Dr. Nurun Nabi Ibn Hossain
and others

.....Respondents

Ms. Abantee Nurul with
Mr. Saifur Rashid on behalf of
Ms. Mahjabin Rabbani

.....For the petitioner

Mrs. Fawzia Karim Firoze with
Mrs. Rebeka Sultana,
Mr. Khandaker Aminul Haque

.....For respondent No. I

Heard on the 20th & 22nd February

And

Judgment on the 23rd February, 2012

Present:

Mr. Justice Abdul Awal

And

Mr. Justice Md. Akram Hossain Chowdhury

ABDUL AWAL, J:

Rule Nisi was issued calling upon the respondents to show cause as to why the detenus Farhan Sadik and Ipshita Mourin, son and daughter of both the petitioner and respondent No. I, now detained in the custody of respondent No. I, should not be brought before this court so that it may satisfy itself that the detenus are not being held in her custody without lawful authority or in an unlawful manner and/or such other or further order or orders passed as to this court may seem fit and proper.

The short facts of the case are that the petitioner and respondent No. I got married on 4.4.2003 according to Muslim Sahria Law and the marriage has duly been consummated. Immediately after the marriage, it has been noticed that the respondent Not I. is a man of ill-tempered and arrogant in nature. Despite arrogant behaviour, the petitioner continued /her conjugal life with the respondent

No. I and out of their wed-lock two children, namely, (1) Farhan Sadik, born on 27.8.2004 and (2) Ipshita Mourin, born on 27.12.2006. Since the birth of their first child the petitioner used to stay with her father's family for which the respondent No. I's family became hostile to the petitioner and to her family and brought an allegation of non-caring of her newly born baby. The respondent No, I compelled the petitioner to live with him at the house of the respondent No. I's father. In the meantime, the petitioner appeared in BCS (Health) Cadre Examination and on her success in the examination she joined Gabtoli Health Complex at Bogra as Medical Officer in July, 2005 and started living with her child at her father's house at Bogra where the respondent No. I used to come from his working place during .his holidays. In December, 2006 the petitioner gave birth to a second child. Thereafter, the respondent No. 1 started misbehaving with the petitioner and stopped giving maintenance to her and the 'children and created pressure upon the petitioner to hand over her earnings to her father-in-law. The petitioner gave some portion of her income to her

father-in-law. But when the misbehaving of the respondent No. I crossed its limit the petitioner refused to give any amount from her income. Resultantly, the respondent No. I and his family members became violent and started torturing the petitioner in various ways when it reached to an unbearable condition, the petitioner started living separately from the respondent No. I since July, 2007. Consequently, a divorce took place between them. On 25.5.2010 at night the respondent No. I came to the house of the petitioner at Bogra' and without the consent of the petitioner, the respondent No. 1 took away the children forcefully from her custody. The petitioner despite her best effort could not contact with the respondent No. I and her children.

The instant writ petition was filed on 9.8.2010 to which Rule Nisi was issued asking the respondents to show cause as to why the detenus Farhan Sadik and Ipshita Mourin, son and daughter of both the petitioner and respondent-No. 1, now detained in the custody of respondent No. 1, should not be brought before this court so that it may satisfy itself that the

detenus are not being held in her custody without lawful authority or in an unlawful manner.

On receipt of the notice the respondent No. 1 appeared through his Advocate Mrs. Fawzia Karim who filed power on behalf of the respondent No. 1.

By an order dated 26.8.2010 this court directed the respondent No. 1 to hand over the detenus, namely, Farhan Sadik and Ipshita Mourin to the petitioner and the said order was executed duly.

Ms. Abantee Nurul, learned Advocate along with Mr. Saifur Rashid appeared on behalf of the petitioner while Mrs. Fawzia Karim Firoze, learned Advocate along with Mrs. Rebeka Sultana and Mr. Khandaker Aminul Haque appeared on behalf of the respondent No. 1.

From the order dated 26.9.2010 it is found that the learned Advocates of both the parties were reached to an agreement so as to have a visiting opportunity to the detenus by the respondent No. 1 from time to time and it is further found from the order that the matter was adjourned for a week.

A supplementary affidavit has been filed on behalf of the petitioner wherein it has been stated that the respondent No. 1 by this time got married. The copy of the supplementary affidavit has been served upon the learned Advocate for the respondent No. 1. From the side of respondent No. I the same has not been controverted.

During the delivery of judgment, an agreement dated 28.8.2010 for access to the children filed and that too has been placed before us. In the said agreement as many as nine terms and conditions have been incorporated. We have gone through the terms and conditions very carefully. We are of the view that these terms and conditions would be difficult to follow by the parties.

Both the parties admitted that the order passed by this court on 26.8.2010 has been carried out by them in its true terms. Be it mentioned here that no case has yet been filed before the competent court for ascertaining the custody of the children. In course of arguments, it is admitted by the petitioner that the children are living with the petitioner and the respondent No. I has been paying the maintenance to the children regularly and no complaint has yet been made as to any negligence in taking care of the children by the petitioner.

Considering the submissions of the learned Advocates of both the sides including the materials available on record we do not find any controversy at present between the parties.

In view of the facts and circumstances as discussed above the Rule is

disposed of.

MD. AKRAM HOSSAIN CHOWDHURY, J:

Abdul Awal

I agree

Akram H.Chowdhury