

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 627 OF 2011

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Human Rights and Peace for Bangladesh (HRPB) and others

..... For the Petitioners.

-VERSUS-

Bangladesh, represented by the Cabinet Secretary, Cabinet Division, Bangladesh Secretariat, Ramna, Dhaka and others.

..... Respondents

Mr. Manzill Murshid

.....for the petitioners.

Mr. Md. Khurshedul Alam, D.A.G with

Mr. Farida Yeasmin, A.A.G and

Mr. Titus Hillol Rema, A.A.G

.....for the Respondents

Mr. Abdur Rezzak Khan

.....for the Respondents No. 8

Heard on 19th November, 2014 and
Judgment on 20th November, 2014.

Present :

Ms. Justice Salma Masud Chowdhury

And

Mr. Justice Md. Khasruzzaman

Salma Masud Chowdhury, J:

The Rule Nisi was issued calling upon the respondents to show cause as to why Amendment of Column 7 of Schedule II, Act V of 1898 by the Code of Criminal Procedure (2nd Amendment) Ordinance, 1985 (Ordinance No. XLIX of 1985) and amendment of section 304B, Act XLV of 1860 by the penal Code (Second Amendment) Ordinance, 1985, inserting the words 3 years substituting the words 7 years, published in the official gazette on 10.10.1985 should not be declared to be void and ultra vires to the Constitution as being violative of the fundamental rights of the citizen and/ or pass such other or further order or orders as to this Court may seem fit and proper.

It transpires from the present Writ Petition that the petitioners purports to challenge in the present Writ Petition the amendment of column 7 of schedule II in relation to section 304B of the Code of Criminal Procedure, 1898 (Act V of 1898) by the Code of Criminal Procedure (Second Amendment), 1985 (Ordinance No. XLIX of 1985) and amendment of section 304B of the Penal Code 1860 (Act XLV of 1860) by the Penal Code (Second Amendment) Ordinance, 1985 (Ordinance No. XLVII of 1985) published in the Bangladesh Gazette, Extraordinary, dated 10th October, 1985 inserting the words "three years" substituting the words "seven years" being ultra vires, disproportionate, unreasonable, and illegal as it is in violation of fundamental right of right to life guaranteed by the Constitution and obtained the present Rule.

Mr. Manzill Murshid, the learned Advocate appearing on behalf of the petitioner submits that the penalty provided in impugned amendment is not proportionate to any offence related to homicide and thus the amendment is disproportionate. He also submits that the reason for increasing the number of deaths by negligent and rash driving is the provision for minimum punishment for the offence and thought the right to live of the citizen is guaranteed by the Constitution of Bangladesh but due to minimum punishment under section 304B of the Penal Code, fundamental right of the citizen have been violated and so the amendment made under the Ordinance No. XLVII and XLIX are inconsistent with the Constitution and violative of the provisions of the Constitution of Bangladesh. Lastly the learned Advocate submits that the Government has no reasonable ground to reduce the penalty of this sever offence and thus the amendment of column 7 of schedule II in

relation of section 304B of the Code of Criminal Procedure, 1898 (Act V of 1898) by the Code of Criminal Procedure (Second Amendment), 1985 (Ordinance No. XLIX of 1985) and the amendment of section 304B of the Penal Code, 1860 (Act XLV of 1860) by the Penal Code (Second Amendment) Ordinance, 1985 (Ordinance NO. XLVII of 1985) are unreasonable acts by the Government.

Mr. Khurshedul Alam, the learned Deputy Attorney General representing respondent No. 1 and Mr. Abdur Rezzak Khan appearing on behalf of the respondent No. 8 oppose Rule.

We have heard the learned Advocates for the petitioner and the respondent No. 8 and the learned Deputy Attorney General representing respondent No. 1 and perused the Writ Petition along with other materials on record. It appears that as per the impugned amendment punishment for causing death by negligent and rash driving has been reduced from seven years to three years. The petitioner challenged the impugned amendment of column 7 of schedule II in relation of section 304B of the Code of Criminal Procedure, 1898 (Act V of 1898) by the Code of criminal Procedure (Second Amendment), 1985 (Ordinance No. XLIX of 1985) and the amendment of section 304B of the Penal Code, 1860 (Act XLV of 1860) by the penal Code (Second Amendment) Ordinance, 1985 (Ordinance No. XLVII of 1985) published in the Bangladesh Gazette, Extraordinary, dated 10th October, 1985 inserting the words "three years" substituting the words "seven years". Human Rights and Peace for Bangladesh, a non profitable organization, having its object to uphold the human rights of the citizens filed the present Writ Petition after being concerned with the rise of deaths of innocent citizens by reckless driving of careless drivers which has further increased on the reduction of sentence or punishment by impugned amendment. It is the condition of the petitioner that as per impugned amendment where a person causes death to others while driving recklessly will be imprisoned for not more than three years or with fine or with both. Before the amendment, the term of imprisonment was seven years and reducing penalty of such a severe crime resulting in death to others is disproportionate and unreasonable to the offence and moreover by reducing the term of imprisonment of the offence, the Government is indirectly inducting people to be more careless by which the Government is violating the "right to life" of the citizens guaranteed by the Constitution under fundamental rights, which is ultra vires and illegal. There can be no

reasonable ground to reduce the penalty of this severe offence of causing death to a person by reckless and negligent driving and thus the amendment of column 7 of schedule II in relation of section 304B of the Code of Criminal Procedure, 1898 (Act V of 1898) by the Code of Criminal Procedure (Second Amendment) 1985 (Ordinance No. XLIX of 1985) and the amendment of section 304B of the Penal Code, 1860 (Act XLV of 1860) by the Penal Code 1985(Ordinance No. XLV of 1860) by the Penal Code (Second Amendment) Ordinance, 1985 (Ordinance No. XLVII of 1985) was unreasonable. Under the facts and circumstances of the case we are of the view that the amendment as brought in Column 7 of Schedule II, Act V of 1898 by the Code of Criminal Procedure (2nd Amendment) Ordinance, 1985 (Ordinance No. XLIX of 1985) and amendment of section 304B, Act XLV of 1860 by the Penal Code (Second Amendment) Ordinance, 1985, inserting the words 3 years substituting the words 7 years, published in the official gazette on 10.10.1985 is inconsistent to the offences committed under the above mentioned section. In fact seven years imprisonment as punishment or sentence is also insufficient for causing death of a person by reckless and negligent driving.

In the result, the Rule is made absolute. The Amendment of Column 7 of Schedule II, Act V of 1898 by the Code of Criminal Procedure (2nd Amendment) Ordinances, 1985 (Ordinance No, XLIX of 1985) and amendment of section 304B, Act XLV of 1860 by the Penal Code (Second Amendment) Ordinance, 1985, inserting the words 3 years substituting the words 7 years, published in the official gazette on 10.10.1985 are declared to be void being Violative of the fundamental rights of the citizens.
