

Report on

‘মিথ্যা মামলা দায়ের ও মিথ্যা সাক্ষ্য প্রদান রোধকল্পে আনীত বিল’

On 20-12-2000 the Ministry of Law, Justice and Parliamentary Affairs forwarded a draft bill of a proposed enactment entitled, ‘মিথ্যা মামলা দায়ের ও মিথ্যা সাক্ষ্য প্রদান রোধ আইন, ২০০০,’ along with a letter of reference under memo No. 1378 under the signature of Mr. Md. Mainul Kabir, Senior Assistant Secretary, for opinion and comments of the Law Commission.

In pursuance of the above reference, the Law Commission studied the draft bill for the proposed enactment and the connected existing law on the issue, namely, the Penal Code, 1860 (Act XLV of 1860 and the Code of Criminal Procedure, 1898, (Act V of 1898).

A perusal of the draft bill shows that the objects of the proposed enactment are two-fold, first, to empower all courts set up under any law for the time being in force including civil, criminal, revenue and family courts and tribunals to take cognizance and try all cases of filing false cases before them and also all cases of giving false evidence before them and secondly, the taking of cognizance and trial of those offences simultaneously with the matters pending before such courts and during the proceedings of which the aforesaid offences are committed (see section 9 of the proposed Act). In the proposed Act, abetment of the above offences has also been made a punishable offence. Although filing of false case ‘(মিথ্যা মামলা দায়ের)’, giving false evidence, ‘(মিথ্যা সাক্ষ্য প্রদান),’ and abetment of the above two acts have been made punishable offences in the proposed enactment, (see sections 4, 5, 6 and 7 of the proposed Act), the above two offences have not been defined anywhere in the proposed Act although definition of offences in all penal laws is essential.

A perusal of the Penal Code, 1860, shows that in Chapter XI thereof giving false evidence and fabricating false evidence are punishable offences. These two offences have also been clearly defined and include giving and/or fabricating false evidence in any court whatsoever. It also appears that the punishments for these offences are, in certain circumstances, higher than what has been proposed in the proposed Act.

So far as false accusation is concerned, section 250 of the Code of Criminal Procedure, 1898, makes false accusation a punishable offence and a magistrate before whom a person charged with false accusation is either discharged or acquitted has been empowered to punish the maker of such false accusation to imprisonment and fine in addition to the award of compensation to the victims of the false accusation.

The difference between the existing provisions in the Penal Code, 1860, and the Code of Criminal Procedure, 1898, cited above and the provisions of the proposed Act are as follows:-

(1) In the proposed Act, the power to take cognizance, try and punish the offences of making false accusation and of giving false evidence has been proposed to be vested in the court which hears the proceeding in which the offences are committed whereas, under the existing law, these offences are not triable by the court before which these offences are committed (except the cases of false accusation before a magistrate in view of section 250 of the Code of Criminal Procedure, 1898) but by some other court according to the procedures laid down in section 476 of the Code of Criminal Procedure, 1898, read with section 195 of the same Code.

(2) In the proposed Act, the courts have been enjoined to take cognizance and try the offences of making false accusation and giving false evidence simultaneously in the same proceedings in which these offences are committed

whereas, under the existing law, these offences are triable separately in separate proceedings (except the cases of false accusation falling under section 250 of the Code of Criminal Procedure, 1898).

It appears to us that the purposes expressed in the draft bill may be achieved by amendment of one or two provisions of the Code of Criminal Procedure, 1898. As such, it is not advisable to enact a separate law when the existing law is sufficient to achieve those purposes, because, more than one law on the same issue often results in conflict of laws which should better be avoided.

It further appears to us that the power to take cognizance of and try the offences in question by the court before which these are committed should be confined only to all types of criminal courts and should not be extended to all other courts, such as civil courts, revenue courts, village courts, various tribunals of civil nature such as, the Election Tribunals, Administrative Tribunals, etc. If these courts and tribunals are also required to try cases of false accusation and false evidence along with the main proceedings, they will be over-burdened, cases will multiply and the main proceedings before them will be delayed. As such, we are of the view that in addition to the existing procedure laid down in section 476 of the Code of Criminal Procedure, 1898 the power to take cognizance and try the two offences in question should remain confined to all types of criminal courts alone. All other courts may follow the existing procedures as laid down in section 476 of the Code of Criminal Procedure, 1898.

In the Bill, abetment of the two offences in question has been proposed to be tried by the same court before which it is committed. We feel that the abettor of these offences should be left to be tried under the existing procedure as laid down in section 476 of the Code of Criminal Procedure, 1898, since in most of the cases the abettor of these offences is not likely to be before the court where these offences may be committed.

Recommendations

We, accordingly, recommend as follows:-

1. In the Code of Criminal Procedure, 1898, (Act V of 1898):-

The following new section being section 477 may be inserted after section 476 B as follows:-

Summary
procedure of
trial for
giving false
evidence

“477. (1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Criminal Court expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment for a term which may extend to two years, or to fine which may extend to five thousand taka or with both.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trial.

(3) Nothing in this section shall affect the power of the Court to make complaint for the offence under sub-section (1) of section 476 or section 476A, where it does not choose to proceed under this section.

(4) Where, after any action is initiated under sub-section (1), it is made to appear to the Criminal Court that an appeal or an application for revision has been preferred or filed against the judgement or order in which the opinion referred to in that sub-section has been expressed, it or he shall stay further proceedings of the

trial until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision.

(5) For the purposes of this section, “Criminal Court” includes any Tribunal established for trial of offences under any law for the time being in force.”

2. Section 250 may be deleted and the following new section being section 478 may be inserted after section 477:-

False,
frivolous or
vexatious
accusations.

“**478** (1) If in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate, one or more persons is or are accused before a Criminal Court of any offence triable by a Criminal Court, and the Criminal Court by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Criminal Court may, by its order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or, if such person is not present direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Criminal Court shall record and consider any cause which such complainant or informant may show and if it is satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that compensation to such amount not exceeding one thousand taka or, if the Criminal Court is a Magistrate of the third class, not exceeding five hundred taka, as it may determine, be paid by such complainant or informant to the accused or to each or any of them.

(3) The Criminal Court may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding thirty days.

(4) When any person is imprisoned under sub-section (3), the provisions of sections 68 and 69 of the Penal Code shall, so far as may be, apply.

(5) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him;

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(6) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second or third class to pay compensation or has been so ordered by any other Criminal Court to pay compensation exceeding one hundred taka, may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Criminal Court.

(7) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order.

(8) Notwithstanding anything contained in this section, the Criminal Court may, in addition to the order directing payment of the compensation under sub-section (2), further order that the person ordered to pay such compensation shall also suffer imprisonment for a period not exceeding six months or pay a fine not exceeding three thousand taka.

(9) For the purposes of this section, “Criminal Court” includes any Tribunal established for trial of any offence under any law for the time being in force.

3. Section 486 may be amended as follows:- In sub-section (1) before the words, “section 480”, the words, “section 477 or section 478”, shall be added.

4. Section 487 may be amended as follows:- In sub-section (1) of section 487 after the words, “except as provided in sections” the number and comma “477,” shall be added.

5. No separate enactment for trial of the offences of making false accusation and giving false evidence is necessary.

Justice Naimuddin Ahmed
Member –2

Justice B.B. Roy Chowdhury
Member-1

Justice Kemaluddin Hossain
Chairman