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

WRIT PETITION NO. 18163 OF 2017

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Babul Hossain
..... Petitioner.

-Versus-

Government of the People's Republic of Bangladesh
represented by the Secretary, Law and Justice
Division, Ministry of Law, Justice and Parliamentary
Affairs, Bangladesh Secretariat, Ramna, Dhaka-1000
and others

..... Respondents.

Mr. A.B.M. Hamidul Mishbah, Advocate
..... For the petitioner.

Mr. Md. Motaher Hossain (Sazu), DAG with
Ms. Purabi Rani Sharma, AAG,
Ms. Purabi Saha, AAG and
Mr. Md. Mizanur Rahman, AAG
... For the respondents.

The 8th January, 2018.

Present:

Mr. Justice Moeenul Islam Chowdhury
And
Mr. Justice J.B.M. Hassan

This is an application under Article 102 of the Constitution of the
People's Republic of Bangladesh.



Madrasha at Jatrabari, married a Rohingya woman, namely, Rafiza at Kutupalong Refugee Camp, Cox's Bazar within the 'special areas' as designated by the Government and as the husband Shoaib Hossain Jewel has been residing, his father has invoked the writ jurisdiction of the High Court Division under Article 102 of the Constitution by filing this Writ Petition.

Mr. A.B.M. Hamidul Mishbah next submits that although the marriage could not be registered as per the law of the land, yet the fact remains that the marriage between Shoaib Hossain Jewel and the Rohingya woman Rafiza was solemnized according to the tenets of Islam and that being so, they want to live a happy conjugal life; but because fear of the law-enforcing apparatus, they are not in a position to live a normal conjugal life and in this perspective, they need protection from this Constitutional Court and as such the father of Shoaib Hossain Jewel has come up with the instant Writ Petition.

We have heard the submissions of the learned Advocate Mr. A. B. M. Hamidul Mishbah and perused the Writ Petition and relevant Annexures annexed thereto.

Indisputably the Rohingya woman Rafiza was at Kutupalong Refugee Camp, Cox's Bazar within the 'special areas' as designated by the Government. The Government has the power to make any orders with regard to all foreigners or with regard to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting their entry into Bangladesh or their departure therefrom or their presence or continued



However, according to Mr. A.B.M. Hamidul Mishbah, Shoaib Hossain Jewel fell in love with the Rohingya woman Rafiza at first sight and driven by emotion, he married her and secretly brought her to Manikganj and ultimately they went into hiding for fear of harassment by the law-enforcing agency.

This very act of the petitioner's son Shoaib Hossain Jewel, as we see it, is a criminal offence within the ambit of the Foreigners Act, 1946. The penalty for commission of any offence has been spelt out in Section 14 of the Foreigners Act, 1946. As this is a criminal offence, this Court can not pass any order that will amount to putting a premium on the criminality of Shoaib Hossain Jewel. Furthermore, the alleged ^{marriage} married between Shoaib Hossain Jewel and the Myanmar national Rafiza is a blatant contravention of the Notification being No. বিচার-৭/২এন-৭৫/২০১৬-৯০৯ dated 25.10.2017 issued by the Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Dhaka. On top of that, as Shoaib Hossain Jewel is a law-breaker within the meaning of the Foreigners Act, 1946, he can not get any relief from this Court by way of invocation of the writ jurisdiction of the High Court Division at the instance of his father. Given this scenario, we do not find any merit in this Writ Petition for issuance of any Rule Nisi.

Accordingly, the Writ Petition is rejected in limine with costs of Tk. 1,00,000/- (one lac). The petitioner is directed to deposit the amount of Tk. 1,00,000/- (one lac) within 30 (thirty) days to the concerned Section of this Court from date, failing which, necessary legal steps will be taken to realize the amount from him.

M. I. Chowdhury

J.B.M. Hassan.