

14 SCOB [2020] HCD

HIGH COURT DIVISION

(Criminal Appellate Jurisdiction)

Criminal Appeal No. 9143 of 2015

National Warehouse

... Appellant

... for respondent 1

-Versus-

Anti-Corruption Commission and others

... Respondents

Mr. Syed Hasan Zobair, Advocate

... for respondent 3

Mr. Moudud Ahmed, Senior Advocate
with Mr. Mustafa Jamal Pasha and Syed
Tazrul Hossain, Advocates

... for the appellant

Mr. Md. Khurshid Alam Khan, Advocate

Mr. M Amir-Ul Islam, Senior Advocate
Mr. Abdur Razaque Khan, Senior
Advocate

Mr. M I Farooqui, Senior Advocate

...Amicus Curiae

Judgment on 06.06.2016

Bench:

Mr. Justice Md. Ruhul Quddus

And

Mr. Justice Mahmudul Hoque

Section 14 of the Money Laundering Protirodh Ain 2012 and Principles of Natural Justice in Criminal Justice System:

The principle of natural justice by way of service of prior show cause notice are to be complied with, where any legal or vested rights of a citizen or entity are going to be taken away by an administrative order. Non service of prior show cause notice can be a very strong ground against such administrative/quasi judicial order that generates different type of writ petitions amongst others. However, natural justice in the sense of prior show cause notice is not available in criminal justice system. The criminal law, however, provides procedural fairness in enquiry/investigation, ensures the right to defence of an accused and fair trial. (Para-32)

For the purpose of freezing/attachment of property under section 14 of the Act V of 2012, no prior show cause notice is necessary. It may alert the offender, prompt him to transfer or take the property beyond his possession immediately after receipt of the notice thus defeat the purpose of law. ... (Para-35)

The ACC can proceed with an application for freezing even before completion of the investigation, if there are any credible documents/probative materials or information, which are gathered during investigation, subject to fulfillment of the conditions as provided in section 14 (2) of the Act V of 2012. It will depend on the facts and circumstances of a particular case. Even in rare cases, an order of freezing/attachment of one's property can be passed when such documents/materials or information are available to the prosecuting/enquiring agency at the time of receiving the initial complaint or at the initial stage of pre-FIR enquiry, but this must not be a general practice. ... (Para-36)

Where despite a prolonged inquiry, no FIR is lodged and the ACC fails to produce any primary evidence regarding one's involvement in any offence of money laundering or any predicate offence, his right to maintain and operate bank account cannot be infringed at the whim of Anti-Corruption Commission. .. (Para-38)

Section 16 of the Money Laundering Protirodh Ain 2012:

A person aggrieved by an order passed under section 14 of the Money laundering Protirodh Ain (Act V of 2012), can prefer an appeal directly to the High Court Division under section 16 without approaching the Court below under section 15 of the Act.

... (Para-31)

JUDGMENT

Md. Ruhul Quddus, J:

1. This appeal under section 16 of the Money Laundering Protirodh Ain, 2012 (Act V of 2012) at the instance of a partnership firm is directed against order dated 01.11.2015 passed by the Senior Metropolitan Special Judge, Dhaka in Permission Petition No. 91 of 2015 freezing its bank account under section 14 of the Act.

2. Facts placed in the petition of appeal in brief are that the appellant-firm is engaged in business of running a Diplomatic Bonded Warehouse catering the foreign nationals and privileged individuals with imported/local liquor, beverage, tobacco etc. The appellant is a regular vat and tax payer and has been running the business for more than 30 years with goodwill and reputation.

3. In course of an enquiry into a complaint made by the Financial Intelligence Unit of Bangladesh Bank, the Anti-Corruption Commission (in brief ACC) through one of its Deputy Director Sheikh Md. Fanafilla filed an application before the Metropolitan Sessions Judge (it would be the Senior Metropolitan Special Judge), Dhaka stating that some individuals and business entities were suspected to be engaged in money laundering through Habib Bank, Gulshan and Uttara Branches and the Standered Chattered Bank. He thus prayed for an order of freezing some bank accounts maintained with those banks including the appellant's one.

4. The learned Judge without hearing the appellant or giving it any notice, passed the impugned order dated 01.11.2015 freezing the accounts as prayed for. Being aggrieved with the said order, so far it relates to the appellant's account, the appellant moved in this Court with the instant criminal appeal.

5. In view of the grounds taken in the petition of appeal and strenuous arguments made by Mr. Moudud Ahmed, learned Senior Advocate for the appellant while he was moving an application for stay that an order of freezing one's bank account without serving him a prior show cause notice violates the principles of natural justice as well as his right to property guaranteed under the Constitution and that section 14 of the Act V of 2012 does not contemplate to pass any such order, we felt it prudent to hear some of the learned Senior Advocates on the points and with their prior consents requested Mr. M Amir-Ul Islam, Mr. Abdur Razaque Khan, Mr. M I Farooqui, all Senior Advocates and also the learned Attorney General Mr. Mahbubey Alam to appear and make their valuable submissions on the points. Mr. Mahbubey Alam, learned Attorney General does not feel any necessity to appear.

However, Mr. M Amir-Ul Islam, Mr. Abdur Razaque Khan and Mr. M I Farooqui appear as Amicus Curiae and assist this court by making their thoughtful submissions.

6. Mr. Moudud Ahmed, learned Senior Advocate for the appellant agitates all the grounds taken in the petition of appeal and submits that the appellant's right to hold and enjoy property as guaranteed under the Constitution has been infringed by freezing its bank account without serving it any prior notice. The impugned order is apparently illegal due to non-compliance with the principles of natural justice. Mr. Ahmed then submits that the frozen account is the only dollar account maintained by the appellant-firm and due to its freezing the appellant is not being able to run its 30 years old business. Its goodwill is being damaged and its right to trade equally guaranteed under the Constitution is also infringed. In support of his submission on prior notice, Mr. Ahmed refers to the cases of Obaidul Kader (Md) Vs. State, 63 DLR 425, Jamuna Oil Company Ltd and another Vs. S K Dey and another 44 DLR (AD) 104 and Abu Hanifa (Md) Vs. Md Shafiul Bashar and others 65 DLR (AD) 243.

7. Mr. Ahmed further submits that section 14 of the Act V of 2012 gives authority upon a Special Judge to freeze or attach any property subject to fulfillment of some pre-conditions provided therein. But in the present case none of those preconditions is fulfilled. The appellant is not yet made accused in any criminal case, further there is no allegation of money laundering or commission of any other predicate offence against it. Still the learned Senior Special Judge froze the account by a non speaking order without assigning any reasons whatsoever. The impugned order is, therefore, out and out illegal and liable to be set aside.

8. Mr. Khurshid Alam Khan, learned Advocate for the ACC (respondent 1 herein) at the very outset raises objection to the maintainability of the appeal inasmuch the appellant without filing an application for release of the frozen account under section 15 of the Act V of 2012 in the court below, has directly approached this Division.

9. Mr. Khan further submits that it cannot be a ground for appeal that the impugned order is a non speaking one unless there is a gross illegality or miscarriage of justice. The principles of natural justice by a prior show cause notice are not applicable in a case of financial crime especially in our country. Service of prior notice as argued by the learned Advocate for the appellant would frustrate the very purpose of the law.

10. Mr. Khan lastly submits that the account in question was frozen in the course of an enquiry initiated on a complaint made by the Financial Intelligence Unit of Bangladesh Bank. In such a case, the account should not be released before the enquiry is completed. Any order of release may also frustrate the purpose of enquiry.

11. Mr. Ahmed, in reply thereto, submits that it clearly appears from the language of section 16 that any person aggrieved by an order of freezing/attachment passed under section 14 of the Act can prefer an appeal before the High Court Division within 30 days of passing the order. The provision of section 16 is independent of section 15 of the Act. Admittedly the appellant-firm owns the frozen account and there is no bar to approach the High Court Division with an appeal directly under section 16 of the Act.

12. Syed Hasan Zobair, learned Advocate appearing for Bangladesh Bank (respondent 3 herein) supports the impugned order and makes his submission in the same line of Mr. Khan, learned Advocate for the ACC.

13. Mr. M Amir-Ul Islam, learned Senior Advocate and Amicus Curiae submits that the question whether the requirements of natural justice should be met would depend on the facts

and circumstances of a particular case, the constitution of the Tribunal and the rules under which it functions. Whenever a complaint is made before a Court that some principles of natural justice have been contravened, the court has to decide whether observance of those principles are necessary for a just decision under the given facts. The rules of natural justice are to secure justice and prevent its miscarriage. These rules can operate only in the areas not covered by any law. In other words they do not supplant the law but supplement it. It is true that if a statutory provision can be read consistently with the principles of natural justice, the Court should do so because it must be presumed that the legislatures and statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication exclude the application of any or all the principles, then the Court cannot ignore the mandate of the legislature. Mr. Islam makes the above submissions relying on the cases of *Suresh Koshy George Vs The University of Kerala and others* [1969] 1 SCR 317, *A K Kraipak and others Vs Union of India and others* [1970] 1 SCR 457 and *Union of India Vs Col J N Sinha and another* [1971] 1 SCR 791 and some other cases of similar nature from English jurisdiction.

14. Mr. Islam then refers to the different provisions of the Act V of 2012 and submits that the principles of natural justice are substituted by the Act itself. According to section 14, the enquiry/investigation authority has to make an application to the concerned Special Judge on fulfillment of the three preconditions as laid down in section 14 (2) of the Act. The Court only after being satisfied that the conditions are appropriately met, would pass an order of freezing/attachment of property. The order under section 14 of the Act is a judicial order. Thus it must not be mechanical one and contain sufficient reasons. Sections 15 and 16 thereof have provided a forum to seek remedy by the person aggrieved with the order. Mr. Islam concludes with the words that equity for both the State and individuals need to be ensured.

15. Mr. Abdur Razaque Khan, learned Senior Advocate and Amicus Curiae submits that the offences under Act V of 2012 are scheduled to the Durneeti Daman Commission Ain, 2004 (Act V of 2004) and triable by the Special Judge appointed under the Criminal Law Amendment Act, 1958. Sub-section (1) of section 9 of the Act V of 2012 provides investigation of the offence under Act V of 2004, while sub-section (3) empowers the ACC to act for investigation and identification of the property of an accused and also to exercise the powers under any other law. Rule 2 (a) of the Anti-Corruption Commission Rules, 2007 (in brief the Rules, 2007) spells out the scope of enquiry and enables the ACC to act with a view to ascertain the prima-facie truth of a complaint upon receipt thereof or being aware of an offence specified in the schedule of the Act, before acceptance and recording the same for investigation.

16. On the above premises, Mr. Khan submits that at the stage of enquiry one need not be an accused. An order of freezing/attachment of property can be passed by a Special Judge even in enquiry stage, but subject to fulfillment of the conditions laid down in section 14 of the Act. In absence of those conditions no order of freezing/attachment can be passed. In other words, the ACC cannot approach the Court for freezing/attachment on mere whims and caprices, or on any vague and unspecific allegation. The power exercisable thereunder is, therefore, not discretionary.

17. Mr. Khan further submits that the law does not bar the affected persons or entity from filing an appeal before the High Court Division directly under section 16, without exhausting the forum under section 15 of the Act. The instant appeal is therefore maintainable.

18. Mr. M I Farooqui, learned Senior Advocate and an Amicus Curiae submits that freezing or attachment of property affects the fundamental right of a citizen to hold, transfer

or otherwise dispose of her/his property guaranteed under article 42 of the Constitution. A subordinate legislation is to be strictly construed as it takes away the right guaranteed under the Constitution. The person/entity would be affected by the order of freezing or attachment must be served with a notice to show cause as the procedural fairness demands for considering the contrary view points, even if there is any 'primary evidence' on the record.

19. Mr. Farooqui further submits that the Act V of 2012 is a special law having overriding effect over all other laws on the subject. Section 9 of the Act provides investigation and trial of an offence thereunder and an approval of the ACC is made inevitable under section 12 for taking cognizance of the offence. There is no proceeding against the appellant-firm or any of its owners and as such they are not accused. Section 14 (2) (b) prescribes 'grounds and primary evidence' in support of freezing/attachment of a property due to its involvement in money laundering or in any predicate offence. Section 14 is not an independent provision and has a nexus with section 9 of the Act. Section 14 can only be invoked on the basis of primary evidence gathered on an investigation under section 9 of the Act. So, an order of freezing/attachment cannot be passed without primary evidence based on logically probative materials, otherwise it would result in 'no evidence' rule. The power must be exercised on sound judicial principles. On the face of record, the impugned order is passed on no primary evidence and without assigning any reasons as such this court is competent to interfere with the same on that count as well.

20. Mr. Farooqui lastly submits that the forum of appeal under section 16 of the Act is provided to any person or entity affected by an order under section 14, who has rightful claim over the frozen/attached property. But section 15 is available to any person or entity other than the accused. In both the sections 15 and 16, limitations of 30 days are prescribed for filing an application for return of the attached property and preferring an appeal respectively from the date of passing the order under section 14 of the Act. There is no interrelation between the two sections 15 and 16 and these are independent of each other.

21. Mr. Farooqui refers to the cases of *Ashbridge Investments Ltd Vs Minister of Housing and Local Government* [1965] 3 All ER 371, *Coleen Properties Ltd Vs Minister of Housing and Local Government* [1971] 1 All ER 1048 and *Regina Vs Deputy Industrial Injuries Commissioner*, [1965] 1 QB 456 to substantiate his submission on passing an order basing primary evidence or probative materials and also refers the case of *The University of Dacca Vs. Zakir Ahmed* 16 DLR (SC) 722 on passing of an order on sound judicial principles as well as on compliance with the principles of natural justice.

22. We have gone through the decisions cited. In the case of Obaidul Kader (Md) as cited by Mr. Ahmed, the petitioner being a former Minister was charged under section 161 of the Penal Code read with section 5 (2) of the Prevention of Corruption Act, 1947 (Act II of 1947) allegedly for taking bribe. The High Court Division on an application under section 561A of the Code of Criminal Procedure quashed the proceedings with observations amongst others that during enquiry/investigation, the ACC did not ask him (accused Obaidul Kader) to furnish any statements under rules 8 and 11 of the Rules, 2007.

23. The said observation in the case of Obaidul Kader was made without considering the legal proposition that non compliance with any procedural rule before lodgment of FIR cannot be brought for judicial inquiry, which was settled earlier in the case of *Habibur Rahman Mollah Vs. The Anti-Corruption Commission* 61 DLR 1. Subsequently the said decision in Habibur Rahman Mollah's case was upheld by the Appellate Division in 62 DLR (AD) 233. However, in the present case, the question of serving notice during the enquiry is still there as the enquiry is not yet concluded and since no FIR has yet been lodged, question

of service of notice during investigation does not yet arise. Moreover, use of the words “যদি মনে করে” and “সুযোগ প্রদান করিতে পারিবে” in rules 8 and 11 of the Rules, 2007 makes it clear that service of notice upon a suspect/accused for hearing him about the allegation is not mandatory in each and every case. The case cited is clearly distinguishable from the present one.

24. In the case of *Abu Hanifa (Md) Vs. Md. Shafiul Bashar and others* 65 DLR (AD) 243, the Government in the Ministry of Law revoked a license of Nikah Registrar, which was issued earlier in favour of respondent 1, Md. Shafiul Bashar without giving him any opportunity of being heard, and approved appointment of the petitioner, Abu Hanifa (writ respondent 4) for the same area. The incumbent Nikah Registrar Md. Shafiul Bashar challenged the order by moving an application under article 102 of the Constitution, obtained Rule from this Division and ultimately succeeded. Challenging the said judgment of the High Court Division, writ respondent 4, Abu Hanifa moved in the Appellate Division with a Civil Petition for Leave to Appeal and the same was dismissed summarily. The laws involved therein were article 102 of the Constitution, Muslim Marriage and provisions of the Divorce (Registration) Act, 1974 and rules 5(1) and 8 (2) of the Muslim Marriage and Divorce (Registration) Rules, 1975.

25. In the case of *Jamuna Oil Company Ltd. and another Vs. S K Dey and another* 44 DLR (AD) 104, the respondent 1 S K Dey, an employee of Jamuna Oil Company Ltd., an abandoned company placed under the control and management of Bangladesh Petroleum Corporation, instituted a suit for declaration against his dismissal order. A competent civil Court on admitted facts of non service of second show cause notice declared the dismissal order to be illegal and so did the lower appellate court. The High Court Division also summarily rejected the revisional application brought by the employer company i.e., Jamuna Oil Company Ltd. The matter was taken up to the Appellate Division, which set aside all the judgments and dismissed the suit on the ground that no second show notice was required to be served. In the said case, article 135 of the Constitution; provisions of the Bangladesh Industrial Enterprises (Nationalisation) Order, 1972 read with Bangladesh Industrial Enterprises (Nationalisation) (Second Amendment) Act, 1974; Bangladesh Petroleum Act, 1974 and the principles of natural justice were discussed and considered. We fail to understand as to how this case would help the appellant in the present case.

26. In the well known case of *The University of Dacca Vs. Zakir Ahmed* 16 DLR (SC) 722 as referred to by Mr. Farooqui, respondent 1 Zakir Ahmed, a student of Dacca University and an elected Member of its Central Students Union was expelled therefrom without any opportunity of being heard. He moved in the High Court Division with a writ of certiorari. A Special Bench of five Judges heard the petition and declared the order of expulsion void and of no legal effect. Challenging that judgment the University moved in the Supreme Court with a certificated appeal, which was also dismissed. The Constitution of Pakistan (1962), General Clauses Act, 1899 and the principles of natural justice were discussed and considered in that case.

27. It thus appears that none of the above cases except that of Obaidul Kader was of criminal nature. The offences related to money laundering or any other penal provisions were also not involved therein. The facts, circumstances and laws involved in those cases are therefore, distinguishable from the case in hand.

28. The case of *Ashbridge Investments Ltd Vs Minister of Housing and Local Government* [1965] 3 All ER 371, *Coleen Properties Ltd Vs Minister of Housing and Local Government* [1971] 1 All ER 1048 and *Regina Vs Deputy Industrial Injuries Commissioner* [1969] 1 QB

456 as referred to by Mr. Farooqui are also not of criminal nature. However, these can be referred to for limited purpose only to lend support to his contention that an order of subordinate Tribunal which affects one's existing right/interest must be passed on primary evidence based on 'probative materials' and on objective satisfaction of the Tribunal. We shall discuss later whether the present case is lacking primary evidence and objective satisfaction on the part of the Special Judge.

29. In Suresh Koshy George Vs University of Kerala and others [1969] 1 SCR 317, the Vice-Chancellor of Kerala University debarred the appellant, Suresh Koshy George, a student of an Engineering College affiliated therewith from appearing for any examination up to a certain period. Before that an internal inquiry was held, the student was served with a show cause notice and submitted explanation in response thereto. The student successfully challenged the order before a Single Judge of Kerala High Court, but the decision of the Single Judge was reversed on appeal by a Division Bench of the High Court. The matter was taken up to the Supreme Court on the grounds amongst other that no copy of the inquiry report was made available to the appellant before he was called upon to submit his explanation. The appeal by special leave was ultimately dismissed. In so doing, K S Hedge, J observed:

"No rule either statutory or otherwise was brought to our notice which required the Vice Chancellor to make available to the appellant a copy of the report submitted by the Inquiry officer. It is not the case of the appellant that he asked for a copy of that report and that was denied to him. The rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions."

30. In the cases of *A K Kraipak and others Vs Union of India and others* [1970] 1 SCR 457 and *Union of India Vs Col J N Sinha and another* [1971] 1 SCR 791, K S Hedge, J held similar view. The cases cited by Mr. Islam are administrative and service matters unlike the present one. Still the requirement of natural justice has been dealt in a very critical way on the facts and circumstances of the particular cases, nature of inquiry, the rules under which the Tribunals has acted, the subject matter that has been dealt with and so forth.

31. Let us examine first whether this appeal is competent or not because of not approaching the Court below for release of the account under section 15 of the Act. In both the sections 15 and 16, the limitation of 30 days is prescribed for filing an application for release and preferring an appeal respectively against the order of freezing/attachment under section 14 of the Act. If it is mandatory to file an application for release/return under section 15 before preferring an appeal under section 16, the limitation would run from the date of passing the order under section 15. The Act V of 2012 is a special law having overriding effect on all other laws on the selfsame subject. Section 14 (1) of the Act gives authority upon a Special Judge to freeze/attach any property subject to fulfillment of the pre-conditions as provided in section 14 (2) and publication of notice of the said order in official gazette as well as in two well circulated national dailies, one Bengali and the other English under section 14 (3) thereof. On perusal of the impugned order, we do not find any satisfaction within section 14 (2) of the Act and publication of notice as provided in section 14 (3). Section 15 of the Act provides a forum of filing application for return of the property before the concerned Court within 30 days from publication of the notice meaning publication in news papers under section 14 (3), while section 16 provides a forum of appeal before the High Court Division within 30 days from passing the impugned order under section 14.

Section 22 of the Act provides another forum of appeal against any other interlocutory order or final judgment within 30 days from passing of the same. Since no gazette notification and paper publications have been made in the present case, the question of filing any application under section 15 is yet to arise. We thus find substance in the submission of Mr. Farooqui on this point. It cannot be said that the appellant could have approached the Court, which passed the impugned order of freezing the account. It is, therefore, not correct to say that the instant appeal is not competent due to not availing the forum under section 15 of the Act.

32. The principle of natural justice by way of service of prior show cause notice are to be complied with, where any legal or vested rights of a citizen or entity are going to be taken away by an administrative order. Non service of prior show cause notice can be a very strong ground against such administrative/quasi judicial order that generates different type of writ petitions amongst others. However, natural justice in the sense of prior show cause notice is not available in criminal justice system. The criminal law, however, provides procedural fairness in enquiry/investigation, ensures the right to defence of an accused and fair trial. To be more particular, procedural fairness is maintained by an impartial and proper enquiry/investigation guided by law, satisfaction of the trial Court in taking cognizance of offence and thereafter in framing of charge upon consideration of prosecution materials as to whether there are sufficient grounds to presume an accused to be the offender. Holding of trial in public by an independent, impartial and competent court, giving the accused full opportunity of taking defence and providing him a forum of appeal are the most important indicators of a fair trial. The right to defence of an accused is ensured by service of summons/issuance of process/warrant to make his appearance in trial, and by publication of warrant in newspapers and sometime in official gazette where the accused is absconding. Where the accused is facing trial, reading over the charge to him with all material particulars, giving right to cross-examine the prosecution witnesses during trial and bringing into his notice all the incriminating evidence after closing the prosecution evidence, so that he can explain any circumstance appears in the evidence and can establish the defence case by examining defence witnesses, are the guarantees of his right to defence.

33. In a criminal case relating to cognizable offence, the police even a private individual can arrest the offender without warrant even before lodgment of FIR curtailing his right to free movement. But in such a case the question of violation of one's fundamental right guaranteed under article 36 of the Constitution does not arise. This arrest is secured to bring the offender to book without delay, prevent him from committing any other offences and raise confidence and a sense of security in people's mind. The offence of money laundering is made cognizable under section 11 of the Act V of 2012. It is such an offence, which threatens the financial system and institutions both domestic and international. It hits the lifeline of a nation i.e. economy of the Country. Therefore, where there is sufficient materials to meet the tests of primary evidence and objective satisfaction, the ACC can/should proceed for freezing/attachment of the tainted property for the purpose of preventing the criminals from legitimating their ill-gotten money, and also to prevent them from committing any other predicate offence with the money/property and finally to bring it into public exchequer for greater public interest. There is no scope to adopt delatory procedures, which are not specifically provided by law, in dealing with such offences.

34. Any person/entity aggrieved with an order of freezing/attachment of property under section 14 of the Act, has right to move under sections 15 and 16 thereof for return of the property and setting aside the order. By this way he gets full opportunity of presenting his case, which is one of the essentials of the principles of natural justice. Mr. Islam rightly

submitted that in the present case natural justice is substituted by the provisions of the Act V of 2012 itself.

35. In the above premises, we can safely conclude that for the purpose of freezing/attachment of property under section 14 of the Act V of 2012, no prior show cause notice is necessary. It may alert the offender, prompt him to transfer or take the property beyond possession immediately after receipt of the notice thus defeat the purpose of law.

36. If an application is filed on fulfillment of all the conditions as laid in section 14(2) of the Act, namely, (i) full description of the property proposed to be frozen/attached, (ii) grounds and primary evidence in support of its involvement in the offence, and (iii) apprehension of transfer of the property before disposal of the complaint; and the concerned Special Judge is fully satisfied with all the tests, he would pass an order of freezing/attachment of the property to prevent such transfer or dispossession. The ACC can also proceed with such application even before completion of the investigation, if there are any credible documents/probative materials or information, which are gathered during investigation, subject to fulfillment of the above conditions. It will depend on the facts and circumstances of a particular case. Even in rare cases, an order of freezing/attachment of one's property can be passed when such documents/materials or information are available to the prosecuting/enquiring agency at the time of receiving the initial complaint or at the initial stage of pre-FIR enquiry, but this must not be a general practice. The submissions of Mr. Abdur Razaque Khan, Amicus Curiae lend support to this view.

37. In the present case the application filed by ACC for freezing the appellant's bank account does not fulfill any single condition mentioned in section 14 of the Act. It contains only the names of some other suspected persons and business entities, who were allegedly engaged in money laundering, but no allegation whatsoever was made against the appellant-firm except mentioning its name at the bottom of a list given therein. The impugned order also appears to be a non speaking and mechanical one. In the meantime more than six months have elapsed, but no formal FIR has yet been lodged. It is also not clear whether the enquiry in the meantime has been concluded. The ACC has also failed to produce any primary evidence regarding the appellant's involvement in any offence of money laundering or any predicate offence, even before this Division.

38. Under the circumstances, the appellant's right to maintain and operate its account cannot be infringed because of an order apparently passed without application of mind and at the whim of the Inquiry Officer of the ACC. We are, therefore, unable to accept the contention of Mr. Khurshid Alam Khan that the account should not be released till conclusion of the enquiry. The appeal, therefore, merits consideration.

39. Accordingly, the appeal is allowed. The impugned order dated 01.11.2015 passed by the Senior Metropolitan Special Judge, Dhaka in Permission Petition No. 91 of 2015 so far it relates to freezing of the bank account of the appellant firm is set aside.