

**8 SCOB [2016] AD 144**

**APPELLATE DIVISION**

**PRESENT:**

**Mr. Justice Surendra Kumar Sinha,**  
**Chief Justice**

**Mr. Justice Syed Mahmud Hossain**

**Mr. Justice Hasan Foez Siddique**

CRIMINAL APPEAL NO.01 OF 2013 WITH CRIMINAL APPEAL NO. 04 OF 2014 & CRIMINAL PETITION NO.305 OF 2014.

(From the judgment and order dated 11.10.2009, 27.10.2011 and 08.02.2012 passed by the High Court Division in Criminal Miscellaneous Case No.1839 of 2009, 23071 of 2009 and 334 of 2008 respectively)

**Anti Corruption Commission:**

Appellant.  
(In all the cases)

Versus

**Md. Rezaul Kabir and another :**

Respondents.  
(In CrI.A.No.01/13)

**Md. Bazlur Rashid and another :**

Respondents  
(In CrI.A. No.04/14)

**A.K.M. Lutfur Rahman & another:**

Respondents.  
(In CrI.P. No.305/12)

For the Appellant:  
(In CrI.A.No.01/13)

Mr. A.K.M. Fazlul Haque, Adv., instructed by Mrs. Mahmuda Begum, Advocate-on-Record.

For the Appellant:  
(In CrI.A.No.04/14)

Mr. Khorshed Alam Khan, Adv., instructed by Mrs. Sufia Khatun, Advocate-on-Record.

For the Petitioner:  
(In CrI.P.No.305/12)

Mr. Khorshed Alam Khan, Adv., instructed by Mrs. Sufia Khatun, Advocate-on-Record.

For the Respondent:  
(In CrI.A.No.01 /13)

Mr. A.J. Mohammad Ali, Senior Advocate, , instructed by Mr. Md. Abu Siddique, Advocate-on-Record.

For the Respondent:  
(In CrI.A. No.04/14)

Mr. Md. Nurul Islam Sujan, Adv., instructed by Mr. Syed Mahbubar Rahman, Advocate-on-Record.

For the Respondent:  
(In CrI.P.No.305/12)

Mr. Subrata Shaha, Adv., instructed by Md. Nawab Ali, Advocate-on-Record.

Date of hearing and judgment : 03-11-2015

**Section 161 of the Penal Code, 1860**

**read with Section 5(2) of the Prevention of Corruption Act, 1947**

**And**

**Section 561A of the Code of Criminal Procedure, 1898**

**And**

**Durnity Daman Commission Bidhimala, 2007**

**Rule 16:**

**A proceeding cannot be quashed depending on alleged procedural error in the method of collection of evidence to be adduced and used. The High Court Division failed to distinguish the allegations of demands, acceptance and attempts to accept gratifications and those with the procedure to collect evidence to substantiate allegations of acceptance**

**and attempts to accept gratifications or demands, thereby, erroneously quashed the proceedings. ... (Para 12)**

### **Judgment**

**Hasan Foez Siddique, J:**

1. The delay in filing Criminal Petition for leave to Appeal No.305 of 2012 is condoned.
2. Criminal Appeal No.01 of 2013, Criminal Appeal No.04 of 2014 and Criminal Petition for Leave to Appeal No.305 of 2012 have been heard together and they are being disposed of by this common judgment since the points for adjudication of all the three cases are identical.
3. In Criminal Appeal No.04 of 2014, the respondent Md. Bazlur Rashid filed an application under Section 561A of the Code of Criminal Procedure (the Code) in the High Court Division for quashing the proceeding of G.R. Case No.331 of 2008 arising out of Thakurgaon Police Station Case No.01 dated 03.06.2008 under Section 5(2) of the Prevention of Corruption Act, 1947 (Act II of 1947). Facts, in a nutshell of this case, are that the respondent demanded tk.5000/- from the informant Abdur Rohman as bribe to prepare khatian in his name in respect of the land measuring an area of 2.28 acres recorded in Khatian No.383 of Kalishaguri Mouza. The informant, promising him to pay taka 2500/-, informed the same to the members of task force, Thakurgaon camp. Thereafter, the members of the taskforce, laying trap, caught Md. Bazlur Rashid, the then Sub- Assistant Settlement Officer, Thakurgaon red handed at the time of receiving those money. On such allegation, the instant proceeding was initiated.
4. In Criminal Appeal No.01 of 2013, the respondent Md. Rezaul Kabir filed an application under Section 561A of the Code in the High Court Division challenging the proceeding of Special Case No.01 of 2009 arising out of Bhaluka Model Police Station Case No.25 dated 18.07.2007 under Section 161 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 (Act II of 1947). Facts of the case, in short, are that one Ruhul Quddus Khan, S.I. of Police of Bhaluka Model Police Station lodged a First Information Report, stating that the respondent Md. Rezaul Kabir, who was the then Upozila Nirbahi Officer, Bhaluka Upazila, demanding taka 4,00,000/- as bribe, received taka 10,000/- from Mosharraf Hossain and, thereafter, at the time of receiving taka 49,500/- from said Md. Mosharraf Hossain, the members of the Joint Forces including the informant, that is , trapping party caught him red handed and seized the said money.
5. Facts of the Criminal Petition for Leave to Appeal No.305 of 2012, in short, were that the informant Md. Sona Miah lodged a First Information Report against the respondent A.K.M. Lutfor Rahman, the then Upazilla Nirbahi Officer, Habigonj under Section 161 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 ( Act II of 1947) stating that demanding taka 32000/- as bribe respondent A.K.M. Lutfor Rahman received taka 20,000/- from the informant. Thereafter, at the time of receiving the rest amount of taka 12,000/- the members of task force caught him red handed. On such allegation, the instant proceeding was initiated.
6. The High Court Division quashed the proceedings on the ground that before laying those traps, the members of the trapping parties did not take any permission from the Commission or the Commissioner who was in-charge of investigation or its designed officers. Against the judgment and orders of the High Court Division, the Anti-Corruption Commission has filed these appeals and petition.
7. Mr. Khurshid Alam Khan, learned Counsel for the A.C.C., submits that the accused respondents demanding gratifications, received considerable amount or attempted to accept the same. In order to collect evidence of said demands or payments of gratifications, the trap was lunched, which is a method of collecting evidence, to connect the accused with the offence, the High Court Division erred in law in quashing the proceedings relying upon the process of collecting evidence holding that the same was not made following the law.
8. The learned Counsel for the respondents of all the cases submits that since before laying traps the trapping parties did not follow the provisions of “Bidhi” 16 of Durnity Daman

Commission Bidhimala, 2007 (hereinafter referred as Rules), the High Court Division rightly quashed the proceedings.

9. The relevant provision of the Rules for laying trap is as follows:

০১৬/ দিউ গব্জি v (Trape case) | - (1) `bWZ c1ZtiVtai iBigtE AvBtbi Zdmj fZ AcitA RnoZ tKib e'w³ ev e'w³eMfK nitZbitZ aZ Kwi evi Dti tk" Z` tSd দায়িত্বপ্রাপ্ত কমিশনার এর অনুমোদনক্রমে তৎকর্তৃক  
 ৭গZvcitB KgRZPdivu gvgj v (Trape case) c`Z Kwi tZ ev cwi Pij bv Kwi tZ cwi tēb |  
 (২) ফাঁদ মামলা তদন্ত কার্যক্রম কেবল তদন্তে i`iqZcib Kigkbi ev Z`KZR. ৭gZvcitB Kigkbi cwi Pij K  
 c`ghvi iBt`wbtnb Ggb GKRB KgRZPKZR.m`ubdKwi tZ nBte | 0

10. The moot question in these cases, is that, whether prima facie case against the accused respondents that they had received or agreed to receive or attempted to accept from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 161 of the Penal Code, had been made out or not in view of the materials on records. In order to decide the cases the Court will consider whether (i) the respondents were public servant at the relevant times; (ii) they accepted or obtained or attempted to obtain gratifications other than legal remuneration; and (iii) those gratifications were accepted or attempted to accept by corrupt or illegal means or by otherwise abusing their position as a public servant or not.

11. The informant of the respective cases brought specific allegations against respondents that they accepted or demanded or attempted to accept illegal gratifications thereby, committed offence as alleged in the F.I.R. In support of the allegations, they narrated the facts of laying traps. It appears from the F.I.R. of all the three cases that there are specific allegations of accepting or agreement of accepting gratifications by accused respondents who are public servants. If a public servant, by corrupt or illegal means or by otherwise abusing his position as a public servant obtained for himself or for any other person any valuable thing or pecuniary advantage he would be guilty of criminal misconduct. The contents of the F.I.R. of each case, other facts and circumstances disclosed the elements of offences alleged and those offences had been committed even before laying traps. Without taking into consideration whether the prima-facie cases against the accused respondents had been made out or not in view of the facts and circumstances apparent from the F.I.R., charge-sheet and other materials, the High Court Division quashed the proceedings only on the ground that before making traps, the members of trapping parties did not take prior permission from the Anti-Corruption Commission or that the members of the trapping parties were not Commissioner-in-Charge of investigation or its designated officer empowered by the Commission inasmuch as laying a trap is a device of collecting evidence against bribe recipient. It is the functions of the Court to examine the reliability of evidence collected by way of trap after recording the evidence. The trapping party had followed the relevant Rules at the time laying trap or not or in other words, pre-arranged raid/trap carries any evidentiary value or not for non-compliance of procedural formalities before laying traps should be considered by the Courts after recording evidence along with other evidence. The Court may or may not accept the evidence of decoy witness considering the facts, circumstances, the procedure to be followed for laying traps and that the officials laying traps were designated or not. There may be other reliable evidence in the hand of prosecution against the respondents to connect with the offence. In two cases the allegations are that the accused respondents accepted considerable amounts as gratifications before laying traps. Accept means to take or receive with a consenting mind. Obviously such a consent can be established not only leading evidence of prior agreement but from the circumstances surrounding the transaction itself.

12. A proceeding cannot be quashed depending on alleged procedural error in the method of collection of evidence to be adduced and used. The High Court Division failed to distinguish the allegations of demands, acceptance and attempts to accept gratifications and those with the procedure to collect evidence to substantiate allegations of acceptance and attempts to accept gratifications or demands, thereby, erroneously quashed the proceedings.

13. Accordingly, we find the substance in the appeal and the criminal petition.

14. Consequently, the Criminal Appeal No.01 of 2013 and 04 of 2014 are allowed. The Criminal Petition for Leave to Appeal No.305 14 is disposed of.

15. The judgment and order of the High Court Division dated 27.10.2011 passed in Criminal Miscellaneous Case No.23071 of 2009 arising out of G.R. No.331 of 2008 corresponding to Thakurgaon Police Station Case No.01 dated 03.06.2008, judgment and order dated 11.10.2009 passed by the High Court Division in Criminal Miscellaneous Case No.1839 of 2009 arising out of Special Case No.01 of 2009 corresponding to Bhaluka Model Police Station Case No.25 dated 18.07.2007 pending in the Court of Special Judge, Mymensingh and judgment and order dated 08.02.2012 passed by the High Court Division in Criminal Miscellaneous Case No. 334 of 2008 arising out of Habigonj Police Station Case No.33 dated 30.05.2007 corresponding to G.R. No.165 of 2007 now pending in the Court of Chief Judicial Magistrate Habigonj are set aside.

16.The respective Court is directed to proceed the case in accordance with law.