

**DISTRICT-DHAKA**

**IN THE SUPREME COURT OF BANGLADESH**

**HIGH COURT DIVISION**

**(CRIMINAL REVISIONAL JURISDICTION)**

**CRIMINAL REVISION CASE NO. 2610 OF 2016**

**IN THE MATTER OF:**

Durnity Daman Commission

**-----Petitioner**

**-VURSUS-**

Hussain Mohammad Ershad and others

**----- Opposite Parties**

Mr. Md. Khurshid Alam Khan, Advocate

**--For the Petitioner**

**Present:**

MR. JUSTICE M. ENAYETUR RAHIM

AND

MR. JUSTICE J.B.M. HASSAN

**The 24<sup>th</sup> November, 2016.**

By filing an application under section 10(1A) of the Criminal Law Amendment Act, 1958 informant, Durnity Daman Commission has challenged an order dated 07.11.2016 passed by the Metropolitan Senior Special Judge, Dhaka in Metro Special Case No.415 of 2014 arises out of Cantonment Police Station Case No.8 dated 04.05.1992 under sections 409/109 of the Penal Code read with section 5(2) of the Prevention of

Corruption Act 1947 (II of 1947) rejecting an application for withdrawing the case from the stage of argument and for taking further evidence.

The opposite party nos. 1 to 4 are facing trial in the court of Metropolitan Senior Special Judge, Dhaka in Special Case No.414 of 2014 on the charge under Sections 409/109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act 1947.

The prosecution case in short is that opposite party nos. 1 to 4 had made a conspiracy and abuse their power for buying a Radar for Bangladesh Air Force. They purchased the Radar in question more than the higher price of local market price. For that, the Government of Bangladesh incurred loss at Tk. 64,04,42,998.10. It is further alleged that the Former Chief of the Air Force Sadar Uddin made a proposal to the President on October 1988 for buying the necessity of the High power and low-looking/level Radar. On 28.11.1980 the president gave permission for buying one High power and two low-looking/level Radar. Thereafter a team which includes 03(three) officers of Bangladesh Air Force, namely Captain Towfiqur Rahman, Captain M Mokbul and Commander M. Kamal investigated the technical side and operational system of the France, Poland, United States and

United Kingdom's Radar. The team proposed for the 'Thomsonsi-S-F' company, France and on 25.05.1981 the Chief of Air Force, Air vice Marshal Sadar-Uddin made a proposal to the Government for one power (T.R.S-2215) Radar and two Low-Looking/Level Radar (T.R.S-2100). However, due to the insufficient funds of the Ministry, they took a step through the foreign ministry and made a proposal for taking foreign loan and requested to the defence Ministry to provide the necessary information about the 'Make and Type' but they did not provide any information. On 06.05.1982, 25.05.1982 and 15.06.1982 the Ministry requested to provide the information but did not receive any reply from the Bangladesh Air Force and they having prepared a new situation sent a proposal letter to the defence ministry for sending a team to the UK, USA, Italy. On 19.01.1983 the Chief of the Air Force was taking preparation to visit the Westing House (T.P.S-63 and T.P.S.-43) without the permission of the Government and sent them a message through a Telex. However, a team of the Bangladesh Air force submitted a proposal of USA, Sweden and UK's Radar but they did not mention anything which country's Radar is suitable for Bangladesh Air Force and without considering the circumstance they submitted a proposal for buying the 'Westing House' Radar dishonestly for their own benefit. On 23.09.1986

the defence secretary Mr. M Anisuzzamn submitted a summary of proposal for buying Radar to the then President Hussain Mohammad Ershad (Opposite Party No.1) and on that proposal it also mentioned that the price of the 'Thomsonsi-S-F' company, France Radar was 50% less than the Westing House Radar and they also provide the training without any extra fees and also provide the necessary parts after sale. But without considering any proposal, Hussain Mohammad Ershad had taken a decision and contacted straightway to the LOREST Company whereas no proposal was made for that company. However, Bangladesh Air Force had not take any steps to contact directly with the Westing House and finally they contacted with the local agent Lorest Company which raised a question of the procedure. The accused persons made a contact for buying Radar with the local agent Lorest company at 4,09,62,000 US dollar though 'Thomsonsi-S-F' company, France was ready to provide Radar at 20.48 Million US dollar and also ready to provide training and technical support. For that reason, Bangladesh Government incurred loss at Tk. 64,04,42,918.10. After the signing of the contract the former Chief of Air force attended the commonwealth program with the president Hussain Mohammad Ershad and stayed between 16.10.1985 and 19.10.1985. During that time he visited Westing House on 19.10.1985 and

20.10.1985 with an ill motive and it also appeared from the fact that Hussain Mohammad Ershad aided them for completing the procedure and abuse his power for his own gain and others.

After examination of 12 witnesses out of 38 charge sheeted witnesses evidence was closed on 24.04.2014 and the accused opposite parties were also examined under section 342 and thereafter date was fixed for hearing argument and in the meantime several dates were fixed for hearing argument but it has not been done as yet.

However, on 21.09.2016 the informant Anti Corruption Commission filed an application before the learned Metropolitan Senior Special Judge for withdrawing the case from argument stage and taking further evidence. The learned Senior Special Judge after hearing the said application rejected the same by the impugned order dated 07.11.2016.

Thus, this application.

Mr. Khurshid Alam Khan, the learned Advocate appearing for the informant petitioner submits that the learned Metropolitan Senior Special Judge in rejecting the application failed to consider and appreciate the facts of circumstances of the present case and the proposition of law regarding the examination of witnesses and thereby, committed serious error

of law. Mr. Khan further submits that the prosecution will be seriously prejudiced if it would not get the chance to examine the important charge sheet witnesses. Mr. Khan further informed the court that Anti Corruption Commission has already taken action against the conducting public prosecutor as he did not take appropriate steps before the court in proper time and provide the latest position of case to the Commission.

Heard the learned Advocate for the petitioner and perused the impugned order.

In rejecting the application the learned Special Judge observed that the accused were examined on 15.05.2014 and thereafter so many dates were fixed for hearing argument and in the meantime more than two years have elapsed but the informant Commission did not take any step for adducing the witnesses before the court. The learned Judge further observed that the prosecution witnesses were not turned up despite issuance of process against them in accordance with law.

On perusal of the impugned order and materials before us, we have no hesitation to observe that the concerned public prosecutor as well the Commission have failed to show their due diligence in conducting the case and their negligence is not excusable. But, if we consider

the allegations made against the accused persons that they incurred loss of taka more than 64 crore of State money for their personal gain and for the gain of others abusing their high position, then we have no other option but to hold that the prosecution should be given a chance to prove its case for the greater interest of the country. Because, the victim of financial crime is the every citizen of the country.

It is pertinent to be mentioned here that if the prosecution examines more witnesses, the accused persons will not be prejudiced in any way as they will get chance to cross examine the witnesses.

In the case of **Dayal Sing Vs. State of Uttranchal, reported in (2012) 8 SCC, page-263** it has been held that:

"During the course of the trial, the learned presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subverted. For truly attaining this object of a 'fair trial', the court

should leave no stone unturned to do justice and protect the interest of the society as well."

Thus, in deciding a particular issue court should not be acted mechanically, rather object of the court is to ensure fair and proper justice and protect the interest of the society.

Having considered as above and to avoid further delay in disposal of this case it is our considered view that justice would be best served if we dispose of the present application interfering with the impugned order without issuing any Rule giving the following directions.

Accordingly, the application is disposed of.

The learned Metropolitan Senior Special Judge, Dhaka is directed to withdraw case form the stage of hearing argument and give an opportunity to the prosecution to examine charge sheeted witnesses in accordance with law and conclude trial within 31<sup>st</sup> March 2017.

Communicate the order at once.

Md. Kawser