Present:
Mr. Justice Md. Nazrul Islam Talukder
And
Mr. Justice K.M. Hafizul Alam

CRIMINAL REVISION NO.2792 OF 2016

Mirza Abbas

..... Accused-petitioner.

-Versus-

The State and another

..... Opposite -parties.

Mr. Md. Zainul Abedin, Senior Advocate with
Mr. Md. Sagir Hossain, and
Mr. Md. Jahirul Islam (Sumon), Advocates,
..... For the Accused-petitioner.

Mr. A.K.M. Amin Uddin, D A.G with
Mrs. Helena Begum (China), A.A.G.
..... For the State-opposite party

Mr. Md. Khurshid Alam Khan, Advocate,
..... For Anti-Corruption Commission.

Heard on: 02.01.2019, 17.01.2019, 04.02.2019, 24.02.2019, 26.02.2019, 06.03.2019, 16.04.2019, 17.04.2019, 18.04.2019, 28.04.2019 and judgment on: 13.05.2019.

Md. Nazrul Islam Talukder, J:

On an application under Section 10(1A) of the Criminal Law Amendment Act, 1958, this Rule, at the instance of the accused-petitioner, was issued calling upon the opposite-parties to show cause as to why the impugned order dated 20.10.2016 passed by the learned Special Judge, 4th Court, Dhaka in Special

Case No.22 of 2015 arising out of Shahbagh Police Station Case No.11 dated 06.03.2014 corresponding to A.C.C G.R. No.26 of 2014 framing charge against the accused-petitioner under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947, now pending in the court of learned Special Judge, Court No.4, Dhaka, should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution case, in short, is that on 06.03.2014, one Jatan Kumer Roy, Deputy Director (inquiry and investigation-1), Anti-Corruption Commission, Head office, Dhaka being informant lodged an FIR with Shahbag Police Station, DMP, Dhaka alleging, inter-alia, that for personal gains and benefits, the FIR named accused, in collusion with each other, leased out 7(seven) acres of government

land to Dhaka Journalist Co-operative Society at the lowest price of Tk.3,38,80,000/- ignoring the market value of Tk.18,91,30,900/- of the same. On an inquiry held by Anti-Corruption Commission in connection with Nothi No. দুদক/অনু ও তদন্ড়-১/অনুঃ১৪৪/ঢাকা ২০১৩ খ্রিঃ, it was revealed that the former State Minister of Housing and Public Works Alamgir Kabir without receiving any application from journalists, literary authors, cultural activists, writers and others sent DO letter dated 16.06.2002 to the then Prime Minister for allocation of land for establishment of their residence. Following the same, the office of the then Prime Minister directed the Secretary, Ministry of Housing and Public Works to take necessary steps in this regard in accordance with law. During pendency of the matter, one Amirul Islam, a so-called journalist of the Daily Dinkal submitted an application to the State

Minister of the Ministry of Housing and Public Works to lease out some land in favour of the journalists at Pallabi, Mirpur. On receiving the application, on 23.12.2002, the State Minister directed the Chairman of National Housing Authority to take urgent steps for leasing out the land in favour of the Journalists. On 22.02.2004, following an application filed by one M.A. Aziz, Secretary of Dhaka Journalist Co-operative Society, the State Minister also directed the Secretary, Ministry of Housing and Public Works for taking steps for leasing out the land in favour of the journalists. Thereafter, on 31.08.2003, the Secretary of the concerned Ministry directed the Chairman of National Housing Authority to lease out 7.99 acres of land in favour of journalists, literary authors, cultural activists and different artists. Subsequently, on a meeting presided over by the Secretary of the

concerned Ministry, it was decided to cancel the lease and approved scheme of land for the Jhilmil Bohumukhi Co-operative Society. On 30.08.2008, the accused Md. Azharul Haq, former Deputy Director, Land and Property Management, Office of the National Housing Authority leased out the land in question at the rate of Tk. 16,00,000/- per bigha for a total amount of value stood at Tk.3,38,80,000/-. A deed of lease was executed on 15.10.2006 following Rule 5.7.12 of the National Housing Rules, 1993 and thereby fixing the rate of the land. In 2001, the accused leased out the self-same land at the rate of Tk.20,00,000/- per bigha. The ACC collected the chart of the rate of the land from Mirpur Sub-registrar office and found the rate of the same land as Tk. 2,70,187/- per decimal and the value of the land accordingly stands at Tk.(2,70,187 X 700)=18,91,30,900/- but they

leased out the land only at Tk.3,38,80,000/-. By this way, the accused persons embezzled Tk.15,52,50,900/-. The accused did not follow the National Housing Rules. The accused in collaboration with each other sent D.O letter to the then Hon'ble Prime Minister. Subsequently, the lease and scheme of Jhilmil Bohumukhi Co-operative Shamity was cancelled without any reason. The accused persons approved and leased out the same to gain unlawful benefits. On the basis of the said information, the Anti-Corruption Commission initiated Shahbag Police Station Case No.11 dated 06.03.2014 under sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of the Corruption Act,1947 against the accused of the case. Hence, the FIR.

After initiation of the FIR, on 11.02.2015, the Anti-Corruption Commission after holding

investigation having found prima-facie case submitted charge-sheet against the accused-petitioner and others under sections 409/109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947.

The investigation officer after obtaining sanction from the Commission submitted charge-sheet along with sanction before the Court of learned Metropolitan Magistrate, Dhaka, on 16.02.2015.

After submission of the Charge-sheet, the case record was transmitted to the Court of learned Special Judge, Court No. 4, Dhaka and the case was registered as Special Case No.22 of 2015.

It is stated in the supplementary affidavit dated 07.12.2016 that the rate of land in question at Mirpur residential area was Tk.16,00,000/- per bigha as

per Notification under Memo No.শাখা-৬/১/এম-৪৫/৮৪/৩৪ dated 11.01.1993 which runs as follows:

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
পূর্ত মন্ত্রণালয়
শাখা-৬

স্মারক নং-শাখা-৬/১/এম-৪৫/৮৪/৩৪ তারিখ : ১১/০১/১৯৯৩ ইং

প্রজ্ঞাপন

পূর্ত মন্ত্রনালয়ের আওতাধীন শিল্প ও আবাসিক এলাকা সমূহের ভূমির মূল্য পুন: নির্ধারণের ব্যাপারে ‘‘মূল্য পর্যালোচনা কমিটির’’ ২০/১২/১৯৯২ ইং তারিখে অনুষ্ঠিত সভার সিদ্ধান্ত মোতাবেক সরকার সদয় হইয়া নিম্ন লিখিত জমির মূল্য পুন: নির্ধারন করিলেন:-

ক্রমিক নং	শিল্প ও আবাসিক এলাকা সমূহ	বর্তমান প্রচলিত বিঘাপ্রতি মূল্য	বিঘাপ্রতি পুন: নির্ধারিত মূল্য
১।	মতিঝিল, পিলখানা, নবাবপুর ও ফুলবাড়িয়া এলাকা, ঢাকা।	টা: ২০০.০০ লক্ষ	টা: ২০০.০০ লক্ষ
২।	ধানমন্ডি আবাসিক এলাকা, ঢাকা।	টা: ৬০.০০ লক্ষ	টা: ৮০.০০ লক্ষ
৩।	কাকরাইল, ইস্কাটন, গ্রীনরোড, এলিফ্যান্ট রোড, সেগুনবাগিচা (মূল সড়কের ১০০ ফুটের মধ্যে হইলে)	টা: ১০০.০০ লক্ষ	টা: ১০০.০০ লক্ষ
৪।	কাকরারাইল, ইস্কাটন, গ্রীনরোড, এলিফ্যান্ট রোড, সেগুনবাগিচা (মূল সড়ক হইতে ১০০ ফুট ভিতরে জায়গা)	টা: ৮০.০০ লক্ষ	টা: ৮০.০০ লক্ষ
৫।	কাওরান বাজার, ঢাকা।	টা: ২০০.০০ লক্ষ	টা: ২০০.০০ লক্ষ
৬।	ফকিরাপুল, আরামবাগ, মগবাজার (মূল সড়ক এর ১০০ ফুটের মধ্যে হইলে)	টা: ১০০.০০ লক্ষ	টা: ১০০.০০ লক্ষ
৭।	ফকিরাপুল, আরামবাগ, মগবাজার (মূল সড়ক এর ১০০ ফুট ভিতরের জায়গা)	টা: ৬০.০০ লক্ষ	টা: ৬০.০০ লক্ষ
৮।	হাজারীবাগ টেনারী এলাকা	টা: ২০.০০ লক্ষ	টা: ২০.০০ লক্ষ
৯।	আজিমপুর এলাকা, ঢাকা	টা: ৫০.০০ লক্ষ	টা: ৬০.০০ লক্ষ
১০।	তেজগাঁও শিল্প এলাকা, ঢাকা।	টা: ১৬.০০ লক্ষ	টা: ২০.০০ লক্ষ। ৩০.০০ লক্ষ (১৯৯৮ সন)
১১।	শেরে বাংলা নগর, ঢাকা।	টা: ৫০.০০ লক্ষ	টা: ৬০.০০ লক্ষ
১২।	**ক) মিরপুর আবাসিক এলাকা, ঢাকা।**	**টা: ১৬.০০ লক্ষ**	**টা: ১৬.০০ লক্ষ**

	খ) মিরপুর শিল্প এলাকা, ঢাকা।	**টা: ১৬.০০ লক্ষ**	**টা: ১৬.০০ লক্ষ**
১৩।	**ক) মোহাম্মদপুর আবাসিক এলাকা, ঢাকা** **খ) মোহাম্মদপুর শিল্প এলাকা, ঢাকা।**	**টা: ৩০.০০ লক্ষ** **টা: ২০.০০ লক্ষ**	**টা: ৪০.০০ লক্ষ** **টা: ২০.০০ লক্ষ**
১৪।	মোহাম্মদপুর আবাসিক এলাকা (মূল সড়কের ১০০ ফুট ভিতরে)	টা: ২০.০০ লক্ষ	টাখ ৩০.০০ লক্ষ
১৫।	লালমাটিয়া এলাকা (আবাসিক)	টা: ৪০.০০ লক্ষ	টা: ৫০.০০ লক্ষ
১৬।	খিলগাঁও পুনর্বাসন এলাকা (উক্ত এলাকার অতিরিক্ত জমি/--------/পুনর্বাসন ব্যতীত অনাবাদী)।	টা: ৩৬.০০ লক্ষ	টা: --------
১৭।	রাজারবাগ পুনর্বাসন এলাকা ব্যতীত অন্য জমি	ধার্য্যকৃত ছিল না	টা: ৪০.০০ লক্ষ
১৮।	------ (ক) পাকা রোডের ১০ ফুটের মধ্যে (খ) অন্যান্য		টা: ৪০.০০ লক্ষ টা: ১৬.০০ লক্ষ

২। পুনরাদেশ না দেওয়া পর্যন্ত পূর্ত মন্ত্রনালয়ের আওতাধীন উল্লেখিত এলাকার কর্তৃপক্ষ কর্তৃক নির্ধারিত হারে স্ট্যাম্পে ডিউটি প্রদান করিতে হইবে। বরাদ্দকৃত জমি দান, হস্তান্তর কালে হস্তান্তর কারীকে অবশ্যই দান হস্তান্তরিত জমির গিফট, ট্যাক্স এবং হস্তান্তর ফি নন রিফান্ডেবল হারের অনুপাতে প্রদান করিতে হইবে। অন্যথায় দান হস্তান্তর গ্রহণযোগ্য হইবে না।

৩। এই আদেশ ১লা জানুয়ারী ১৯৯৩ ইং তারিখ হইতে কার্যকরী হইবে।

স্বা:/অস্পষ্ট
সীল
১১/১/১৯৯৩ ইং

It is stated in the application that the accused-petitioner and others followed Rule 5.7.12 of the National Housing Rules, 1993 and also followed the area rate of the land as per Notification No. শাখা-৬/১/এম-৪৫/৮৪/৩৪ dated 11/01/1993, approved and leased out the same to the Dhaka Journalist Co-operative Samity; the accused-petitioner has no

connection with the alleged occurrence and there are no ingredients of the offences as alleged against him in the prosecution materials.

The Rule 5.7.12 of the National Housing Rules, 1993 reads as follows :

"৫.৭.১২ সমাজের নিম্ন, মধ্যম এবং উচ্চ আয়ভুক্ত সকল শ্রেণীর মানুষের গৃহনির্মাণ ব্যবস্থা নিশ্চিত করার উদ্দেশ্যে বেসরকারী গৃহ নির্মাণ সংস্থা এবং সমবায় সমিতিগুলোর কর্মকান্ডকে উৎসাহিত করতে হবে। তাদেরকে বাজার দরে বিভিন্ন সুবিধাজনক স্থানে/শহরের কেন্দ্র স্থলে সরকারী জমি বরাদ্দ করতে হবে যাতে তারা আগ্রহী ক্রেতাদের চাহিদা মেটাতে সক্ষম হয়।"

During pendency of the case, the accused-petitioner submitted an application under Section 241A of the Code of Criminal Procedure for discharging him from the case stating, inter-alia, that he is not FIR named accused; the accused-petitioner has no involvement with the alleged offences; the

allegations do not come under Sections 409/109 of the penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 against the accused-petitioner and others as the accused persons followed Rule 5.7.12 of the National Housing Rule, 1993 and also followed the area rate of the land as per Notification No.শাখা-৬/১/এম-৪৫/৮৪/৩৪ dated 11.01.1993 and for this reason, charge cannot be framed against him.

Upon hearing the parties and the application for discharge, the learned Special Judge, by an order dated 20.10.2016, rejected the application and framed charge against the accused-petitioner and others under sections 409/109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947.

Being aggrieved by the order of framing charge, the accused-petitioner approached this Court with an application under section 10(1A) of the Criminal Law Amendment Act, 1958 and obtained this Rule along with an order of stay of the impugned proceeding.

At the very outset, Mr. Md. Zainul Abedin, the learned Advocate along with Mr. Md. Sagir Hossain and Mr. Md. Jahirul Islam (Sumon), the learned Advocates appearing on behalf of the accused-petitioner, submits that the Anti-Corruption Commission Act, 2004 being a special law contains a provision of preliminary enquiry prior to lodging the FIR but in the instant case, the complicity of the accused-petitioner was not found during the enquiry as a result of which the name of the accused-petitioner was not mentioned in the FIR but he has been

implicated in this case in the charge-sheet subsequently for which the impugned order of framing charge is liable to be set aside.

He next submits that the name of the accused-petitioner has not been mentioned in the FIR but he has been falsely implicated in the charge-sheet only because of the reason that the accused-petitioner is a political person.

He then submits that the investigating officer during investigation recorded statements of as many as 10 witnesses under Section 161 of the Code of Criminal Procedure, but none of the witnesses implicated the accused-petitioner with the alleged offence brought against him under Sections 409/109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947 and as such, the

impugned order of framing charge is liable to be set aside.

He then points out that at the time of enacting the Anti-Corruption Commission Act, 2004, the legislature had intention that no person should be harassed with a mala fide criminal proceeding and that is why the provision of preliminary enquiry has been kept in the Ain before lodging the FIR and since at the enquiry, the complicity of the accused-petitioner has not been found, the subsequent implication of the accused-petitioner in the charge-sheet is illegal and beyond the scope of law and for this reason, the impugned order of framing charge requires to be interfered with by this court.

He candidly submits that 2 (two) FIR named co-accused Md. Matiur Rahman (FIR named accused No.3) and Md. Munsur Alam (FIR accused No.4) were

discharged from the case by the learned trial judge and the present accused-petitioner having had better footing than that of the co-accused, the order of framing charge against him is liable to be set aside.

He categorically submits that the alleged occurrence took place from 2002 to 2006 and during that period, the accused-petitioner was the Hon'ble Minister of Housing and Public Works and admittedly, he had no involvement in the alleged occurrence since the Deputy Minister of the said Ministry was in charge of the said project and the rate of the land at Mirpur residential area at Mirpur Mouja, was TK.16 crore per bigha as per notification No. শাখা-৬/১/এম-৪৫/৮৪/৩৪ dated 11.01.1993 and as such, the accused-petitioner did not commit any offence and for these reasons, the impugned order of framing charge against the accused-petitioner should be set aside.

He further submits that the allegation brought against the accused-petitioner does not come within the purview of the Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 and on this landscape, there is no reason to frame charge against the accused-petitioner.

He then submits that at the relevant time, the accused-petitioner being Minister of the then Ministry granted and approved lease in favour of the Dhaka journalist co-operative samity following the rate of the land mentioned in the notification dated 11.01.1993 issued by the Ministry of Housing and Public Works and considering this aspect of the case, the impugned order is liable to be set aside.

He lastly submits that the Ministry of Housing and Public Works granted and approved the lease of land in favour of different organizations on the similar

terms and conditions that have been set out in the lease deed given in favour of the Dhaka Journalist Co-operative Samity so the lease in question is not the exception to other lease matters that were considered by the Ministry of Housing and Public Works at the contemporary period and considering the aforesaid aspect of the case, the charge should not be framed against the accused-petitioner and as such, the impugned order of framing charge should be set aside.

The learned Advocate for the accused-petitioner, in support of his submissions, has referred to a number of legal decisions taken in the cases of **Shamsul Haque Chowdhury vs the State, reported in 39 DLR(HC) (1987)393, Alauddin and others vs the State, reported in 1984 BLD(HC)75, Ruhul Amin Kha vs State, reported in 56 DLR(HC)(2004)632, Khandkar Md. Moniruzzaman vs the State,**

reported 14 BLD(HC)(1994)308, The State vs Khondker Md. Moniruzzaman, reported in 17 BLD(AD)(1997)54, Debobrota Baiddya @Debu vs the State, reported in 58 DLR (HC)(2006)71.

In the case of **Shamsul Hque Chowdhury vs the State, reported in 39 DLR(HC) (1987)393,** it was held that "In order to convict an accused under section 409 of the Penal Code, it is essential that three ingredients of the said section must be proved before convicting an accused. Firstly, the entrustment in question or dominion over the property must be proved by the prosecution; secondly, the person having dominion over or entrustment over the property must dishonestly misappropriate the same for his personal gain or for the gain of somebody else; thirdly, the direction, rule or regulation prescribing the mode in which such trust should be discharged need also to

be violated. Here in the instant case, although the prosecution has proved the first ingredient, namely, entrustment, the second and third ingredients have not been proved or established at all. That the accused dishonestly misappropriated the money for his own gain or for the gain of somebody else has not been proved at all. Thirdly, the prosecution also totally failed in proving that the postal peon in instant case has violated the provision of Postal Manual in any manner. In the absence of fulfilment of the three ingredients of section 409 of Penal Code, the order of conviction and sentence as passed by the learned Special Judge appears to be not sustainable in law. The ingredients of Section 467 Penal Code or for that matter, that of section 5(2) of Act II/1947 have not been proved in any manner."

In the case of **Alauddin and others vs the State, reported in 1984 BLD(HC)75,** it was decided that "Breach of trust by a public servant- When a public servant may be charged with such an offence- Mere irregularity in purchasing articles will not attract the some- To bring home such charge the prosecution must prove not only entrustment of or dominion over property but also that the accused either dishonestly misappropriated, converted, used or disposed of that property himself or that he willfully suffered some other person to do so."

In the case of **Ruhul Amin Kha vs the State, reported 56 DLR(HC)(2004)6**32, it was laid down that "A witness once narrating the occurrence without implicating the appellant with the offence in any manner cannot be permitted to depose for the second

time with a view to implicating the accused and play double standard.".....

"The Tribunal without considering the facts and circumstances and materials on record and applying its judicial mind to the provisions of Section 265C and 265D of the Code of Criminal Procedure framed charge mechanically. The impugned order framing charges against the accused is thus liable to be set aside."

In the case of **Khandkar Md. Moniruzzaman vs the State, reported in 14BLD(HC)(1994)308**, it was decided that "An FIR may not contain the details of the occurrence in all cases. Omission to mention some materials facts in the FIR does not render it false."......

"Under Section 265C Cr. P. C, it is the duty of the Court of Sessions upon consideration of the

materials on record and after hearing the parties, to discharge those accused persons against whom it appears to the Court that there is no ground for proceeding so that frivolous cases and cases of no evidence do not occupy the time of the Court and innocent persons are subjected to the rigours and expenses of a full-scale trial."

In the case of **State vs Khondker Md. Moniruzzaman, reported in 17BLD(AD)(1997)54**, it was laid down that "In the statements of witnesses recorded under Section 161 of the Code, none of the witnesses stated that the accused-respondent was in any way connected with the occurrence and he committed any act of abetment. Under such circumstances, the High Court Division was justified in holding that there was no sufficient ground for proceeding against the accused on the charge of

abetment for murder and rightly discharged the accused."

In the case of **Debobrota Baiddya @Debu vs the State, reported in 58 DLR (HC)(2006)71**, it was decided that "The provisions of Section 265C and 265D are mandatory. A duty is cast upon the court to scrutinise the record and the document submitted there before discharging or framing a charge in a case as the case may be. Just because name of a particular person is mentioned in the FIR or charge-sheet is not sufficient to frame charge against him or frame charge mechanically so that innocent person may not be harassed on false and vexatious allegations."

On the other hand, Mr. Md. Khurshid Alam Khan, the learned Advocate for the Anti-Corruption Commission has submitted counter affidavit denying the statements and grounds taken by the accused-

petitioner and annexing a paper containing the price of one decimal of land as Tk. 2,70,187/- at Senpara, Porbota, Mirpur in the year of 2005, which was also submitted before the Special Judge, Court No. 4 in Special Case No. 22 of 2015 in connection with Memo No. 28650 dated 23.10.2013. The aforesaid chart of the value of land runs as follows:

দ:নং-৩০২ তাং ২১/৪/১৯ ২৫/৪/১৯ ২৫/৪/১৯ ২৫/৪/১৯

মোকাম: বিশেষ জজ আদালত নং-৪, ঢাকা

বিশেষ মামলা নং-২২/১৫

সাব-রেজিস্ট্রি অফিসের ২০০৫ সনের রেজিস্ট্রিকৃত দলিলের মৌজাওয়ারী

শতাংশ হিসাবে বাজার মূল্য তালিকা সহ ২০০৬ ইং সনের জন্য প্রযোজ্যঃ

বিবরণ	হাউজিং	ভিটি	চালা	নালা/বোর	ডোবা/পুকুর
আগুন্দা		১,২৭,১১১	৫১,১৯৩	২৯,৮৭৩	অস্পষ্ট
আনন্দনগর		১,৫০,০০০	৫০,৬৪১	৪৭,৭১৬	অস্পষ্ট
খোজার বাগ		১,৫৬,৫৬৫	৭৯,৯৪৮	৫৩,১৩২	অস্পষ্ট
গড়ান চটবাড়ী		১,৬০,৯৬০	৭৪,৯৬৩	৪১,২৭৩	৩৭,১৮০
চাকলী	১,৮৮,১৪৮	১,৫২,৮৫৭	৬৩,০০০	২৭,০০০	২৫,০০০
ছোট দিয়া বাড়ী		১,৩৫,০০০	৬৫,০০০	৩৯,৩৬৮	৩৮,৫০০
ছোট সায়েক		অস্পষ্ট	৫০,০০০	৪১,০৫১	অস্পষ্ট
জহুরাবাদ		২,৬৩,০৯৩	৮৫,০০০	৬৩,৩১৪	৩২,০০০
দুয়ারীপাড়া	২,১১,০৭০	১,৫৮,৭৩০	১,৩৫,০০০	৫৭,৩৮৬	৪৫,০০০
দ্বিগুন		১,৪৮,৬৫৬	৭৭,০৮০	৩৯,৬৮৭	৩৫,০০০
নবাবের বাগ		১,৩০,৩৬৬	৬৫,০০০	৪৬,৭৫০	৪৫,০০০
নন্দের বাগ		১,২০,০০০	৭০,০০০	৫৭,২৩৫	৫৬,০০০
পাতরুন	১,৫০,০০০	৮০,০০০	৫০,০০০	৩১,০০০	২৮,০০০
পূর্বকান্দর		১,৫৮,০০০	৮৫,৭৭৪	৮১,০৬৬	অস্পষ্ট
পশ্চিম কান্দর		১,০৭,৮৫	৯০,০০০	অস্পষ্ট	অস্পষ্ট
পাইকপাড়া	২,৫০,৪৩১	২,৮৫,৫২০	১,৭০,৫২৬	৯১,২৩০	অস্পষ্ট

বড় সায়েক		২,৫৩,৯৭৪	১,০০,০০০	৭০,৬৩০	১৫,০০০
বসুপাড়া		১,৯৬,০৭৮	অস্পষ্ট	৭৮,৭৭৩	অস্পষ্ট
বিশিল	২,৬৮,৮৭৪	অস্পষ্ট	অস্পষ্ট	অস্পষ্ট	অস্পষ্ট
মিরপুর		১,৭৭,০৯৭	১,৫০,০০৩	অস্পষ্ট	অস্পষ্ট
মরুল		১,০০,০০০	অস্পষ্ট	৩৩,৫০০	অস্পষ্ট
শেখের কালশী	২,৩২,১৯৩	১,৬০,০০০	৭০,০০০	৩৭,৫০০	৩০,০০০
সেনপাড়া পব্বর্তা	২,৭০,১৮৭	২,৪৬,০৭০	১,৫৪,৫৯৮	১,০১,১৬৩	৯৪,৭২০
হরিরামপুর		২,০০,০০০	১,২০,৩০০	৬১,১৫৩	৫৮,০০০

-ঃ জেলা পরিষদ ও ইউনিয়ন পরিষদের আওতাভুক্তঃ-

বিবরণ	হাউজিং	ভিটি	চালা	নালা/বোর	ডোবা/পুকুর
আশুলিয়া		৬০,০০০	৫০,০০০	২৪,০৮৮	২২,০০০
কামারপাড়া		১,০৮,২৪২	৮৩,৪৯২	৪৬,২৫০	৩২,৩৬১
গ্রাম ভাটুলিয়া		১২,০০০	৫৫,০০০	২৪,২০০	২৩,৯০০
চডালভোগ		৫২,০০০	৪৫,০০০	১৭,৫৯৫	১৮,০০০
দিয়া বাড়ী		অস্পষ্ট	৬২,০০০	৩৭,২০০	৩৫,০০০
ধউর		১,২০,০০০	৬৩,১৪৭	৩৯,৮৮৩	৬৫,০০০
নলভোগ		৬৪,০৮৫	৪৩,৫৫৫	৩৬,০৪৪	৩৩,৬৫০
বাউনিয়া	১,৮৮,১৬৮	৯৭,৯৬০	অস্পষ্ট	৩১,০০০	৩০,০০০
বাইলজুরা		অস্পষ্ট	অস্পষ্ট	অস্পষ্ট	অস্পষ্ট
ভাটুলিয়া		৯৯,৮৫০	৬০,০০০	৪১,৯২৫	৩৬,০০০
রাজাবাড়ী		১,৪২,০৬১	৭২,২৯০	৩৭,৫০০	৩০,০০০
রানাভোলা		১,০১,০৯৩	৭০,৩৯৭	৪৫,৫২৮	৪১,৬৭৭

বাজার মূল্য নির্ধারন কমিটি কর্তৃক অনুমোদিত

স্বাক্ষর সীল অপাঠ্য স্বাক্ষর সীল অপাঠ্য স্বাক্ষর সীল অপাঠ্য
০৬/১১/০৫

Anyway, Mr. Md. Khurshid Alam Khan, the learned Advocate appearing on behalf of the Anti-Corruption Commission, vehemently opposes the Rule and categorically submits that a prima facie case has been made out against the accused-petitioner in the prosecution materials particularly in the charge-sheet submitted on the basis of verbal and documentary

materials and the learned trial judge following the charge-sheet rightly framed charge against the accused-petitioner and others under sections 409/109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947 and as such, there is no reason at all to interfere with the order of framing charge by this Court at this stage.

He next submits that question of misappropriation of money or the question of mala fide intention or the question about abetment as per Sections 107/109 of the Penal Code are highly disputed questions of fact which can be decided only on taking evidence from the witnesses of the respective parties during trial of this case and as such, the learned trial judge rightly framed charge since a prima facie has been disclosed against the accused-petitioner in the charge-sheet submitted by the Anti-

Corruption Commission and considering this scenario, the impugned order should not be set aside.

He next submits that the rate of the land as well as allegation brought against the accused-petitioner are bundle of facts which can only be decided on taking evidence before the trial Court and that this Court invoking jurisdiction under section 10(1A) of the Criminal Law Amendment Act, 1958 cannot decide bundle of facts involved in this case and for these reasons, the Rule should be discharged.

He then submits that ingredients of Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 have been made out in the prosecution materials and as such, the learned trial judge rightly framed charge against the accused-petitioner and for this reason, the order of

framing charge should not be set aside for ends of justice.

Mr. Md. Khursid Alam Khan, the learned Advocate for the ACC with reference to “annexure-X” to the counter-affidavit, submits that at the relevant time of occurrence, the rate of the land in question at Mirpur residential area was Tk.2,70,187/- per decimal and in that view of the matter, the total value of 7 acres of land stands at (Tk.2,70,187/- X 700= Tk.18,91,30,900/-) but the accused-petitioner being in a charge of the concerned Ministry abusing the official power and misusing the authority granted lease at the rate of Tk.16 lac per bigha for which the total value of the same stood at Tk.3,38,80,000/- as a result of which loss of Tk.15,52,50,900/- occurred in the government fund; since this picture of the rate has been disclosed in the FIR after thorough investigation

by the Anti-Corruption Commission and this issue being contradictory to the rate of the land in question by the accused-petitioner has become a disputed question of fact which cannot be decided before this Court and this fact can only be decided before the trial Court on taking evidence and as such, the learned trial judge following the charge sheet rightly framed charge and for this reason, the Rule should be discharged.

Mr. Md. Khurshid Alam Khan, the learned Advocate for the Anti-Corruption Commission, in support of his submissions, has referred to a number of legal decisions taken in the cases of **Mr. Moudud Ahmed vs the State, reported in 16 BLD(AD)(1996)27, Taher Hossain Rushdi vs the State, reported in 7 BLC (AD) (2002)45, Shariful Islam vs Billal Hossain and another, reported in 45 DLR(HC)(1993)722, Pulin Behari Banic and others**

vs the State, reported in 1987 BLD(HC)123, Nazrul Islam Khan vs the State, reported in 50 DLR(HC) (1998)103, Forhad Hossain (Md) and others vs the State, reported in 50DLR(HC)(1998)337.

In the case of **Mr. Moudud Ahmed vs the State, reported in 16 BLD (AD) (1996)27,** it was held that "In framing charge the trial court will only see if on the basis of materials collected by the prosecution a prima facie case to go for the trial has been made out against the accused. The existence of a prima facie case to go for trial justifies the framing of charges.

In the case of **Taher Hossain Rushdi vs the State, reported in 7 BLC (AD) (2002)45,** it was laid down that "The High Court Division has found that the learned judge was of the opinion that the accused

petitioner committed the offence as there was sufficient materials to frame charge against the accused-petitioners including the petitioner. The High Court Division on detailed discussion of the materials on record rightly arrived at the view that there was no infirmity in the order of the learned Special Judge rejecting the petition filed under section 265C of the Code of Criminal Procedure and framing charge under different sections of the Penal Code read with section 5(1) of the Act II of 1947.

In the case of **Shariful Islam vs Billal Hossain and another, reported in 45 DLR(HC) (1993)722,** it was held that "The trial court has a wide power to frame charges and this cannot be interfered with by the Revisional Court by way of giving direction for altering a charge or framing a charge.

In the case of **Pulin Behari Banic and others vs the State, reported in 1987 BLD(HC)123,** it was held that it should be borne in mind that the powers of revisional jurisdiction has to be exercised sparingly and only when grave injustice is likely to be caused or where there has been a clear miscarriage of justice or when impugned order is found to be illegal and perverse. Revisional jurisdiction of the High Court does not create any right in any party but only conserves the power of the High Court to see that justice is done in accordance with recognised rules of criminal jurisprudence. In the instant case the Sessions Judges's observation in respect of allowing a chance to the complainant party to examine Investigation Officer and Medical Officer aims at doing justice to the party. By no stretch of imagination it can be said that

impugned observation of the learned Sessions Judge is manifestly illegal or against legal principle.

In the case of **নজরুল ইসলাম বনাম রাষ্ট্র, reported in 50 DLR(HC) (1998)103,** it was decided that "অভিযোগ গঠন বিষয়ে শুনানীর সময় আসামীর দাখিলী প্রমান তথা দলিল পত্র বিবেচনা করা যায় না এবং তার ভিত্তিতে আসামীর বিরুদ্ধে মামলা বাতিল করা যায় না।".....

"আসামীপক্ষ থেকে মামলা অব্যাহতি দেয়ার জন্য কোন দরখাস্ত দেয়া হোক বা না হোক আসামীর বিরুদ্ধে অভিযোগ গঠন করা হবে কিনা সে সম্পর্কে ২৬৫ সি ও ২৬৫ ডি ধারার বিধান অনুযায়ী দায়রা আদালত তথা যে কোন ট্রাইবুনালের দায়িত্ব হচ্ছে উপরোক্ত বিষয় বিবেচনা করে এবং পক্ষদের বক্তব্য শুনে সঠিক সিদ্ধান্তে উপনীত হওয়া। শুধুমাত্র এজাহারে নাম উল্লেখ থাকলে এবং আসামীর বিরুদ্ধে পুলিশ অভিযোগপত্র দাখিল করলে বা অভিযোগের দরখাস্তে আসামীর নাম উল্লেখ থাকলেই তার বিরুদ্ধে যান্ত্রিকভাবে অভিযোগ গঠন করা সমিচীন নয়।"

In the case of **Forhad Hossain (Md) and others vs the State, reported in 50DLR(HC)(1998)337**, it

was held that "Trial court has a wide power regarding framing of charge. This cannot be interfered with lightly either by the revisional court or the appellate court."....

"To frame a charge or to consider an application of the accused person that the charge brought against him is groundless trial court is not obliged to consider the statements of any witness recorded under Section 164 CrPC."

Mr. A.K.M. Amin Uddin, the learned Deputy Attorney-General appearing for the State, submits that a prima-facie case has been disclosed against the accused-petitioner in the charge-sheet, so there is no illegality in the charge framing order and this reason, the Rule should be discharged.

He next submits that the accused-petitioner was the Minister at the relevant time of occurrence and for

this reason, he cannot deny the responsibility and liability of the occurrence and in that view of the matter, the learned trial judge rightly framed charge.

He lastly submits that the submissions of the learned Advocate for the accused-petitioner are with regard to facts which require to be proved before the trial court on taking evidence from the witnesses of the respective parties and considering this aspect of the case, the Rule should be discharged.

Before coming to a decision in this Rule, we want to discuss about the revisional powers, functions and objects of the High Court Division vested in it by Section 439 read with Section 435 of the Code of Criminal Procedure with reference to some legal decisions taken in a number of cases.

It is pertinent to note that the revisional powers of the High Court Division vested in it by

section 439 read with section 435, do not create any right in the litigant, but only conserve the power of the High Court Division to see that justice is done in accordance with the recognized rules of criminal jurisdiction and that subordinate courts do not exceed their jurisdiction or abuse their powers vested in them by the Code. In hearing and determining cases under section 439 of the Code the High Court Division discharges its statutory function of supervising the administration of justice on the criminal side.

The object of revisional jurisdiction is to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction. And the idea is to correct miscarriage of justice which may arise from various causes, viz.—

(i) misconception of law,

(ii) irregularity of procedure,

(iii) neglect of proper precautions, or

(iv) apparent harsh treatment.

This miscarriage of justice has a two-fold effect, namely—

(a) it has caused injury to the maintenance of law and order; and

(b) it has caused undeserved hardship to individuals. In this context the High Court Division has to consider in revision if substantial justice has been done or not.

The revisional jurisdiction can be exercised only in exceptional cases where the interest of public justice requires interference for the correction of the manifest illegality or the prevention of gross miscarriage of justice. The jurisdiction is not ordinarily invoked or used merely because the trial court has taken a wrong

view of the law or misappropriated the evidence on record. The High Court Division would be justified in interfering—

(1) where the trial court had wrongly shut out evidence;

(2) where the appeal court had wrongly held evidence admitted by the trial court to be inadmissible;

(3) where material evidence has been overlooked by the trial court or the court of appeal;

(4) where the acquittal had been based on a compounding of the offence not permitted by law;

(5) where there is any incorrectness, illegality or impropriety of any finding, sentence or order recorded or passed by the courts below and/or irregularity of any

proceeding pending before the inferior courts.

Reading sections 439 and 435 of the Code together, it is evident that the High Court Division can interfere in all cases of incorrectness, illegality or impropriety of any finding, sentence or order, of the irregularity of any proceeding of the inferior courts by taking such measures or passing such orders as could be passed by an appellate court. The powers of the High Court Division under section 439 are very wide and are not limited to the powers mentioned in sub-section (1) which merely describes some of the reliefs which the High Court may grant in exercising its revisional powers, but it is not exhaustive. At the hearing of an application in revision admitted on the ground of sentence only, a judge is competent to interfere with both

the conviction and sentence. His powers under section 439 cannot be in any way fettered by the provisions of section 435 under which the records have been called for.

By dint of revisional power, the High Court Division may interfere either by calling for the record under section 435 or when the case otherwise comes to its knowledge. The High Court Division may interfere in revision upon information in whatever way received. Revisional jurisdiction can be exercised by the High Court Division by being moved either by the accused/convicted person himself or by any other person or *suo motu* on the basis of its own knowledge derived from any source whatsoever without being moved by any person at all. All that is necessary to bring the High Court's power of revision into operation is such information as

makes the High Court Division think that an order made by a subordinate court is fit for exercise of its powers of revision. Where the record of a case is before the high Court in an appeal which is incompetent, it can be said that the case comes to the knowledge of the High Court Division within the meaning of this section.

Although the court has power under section 439 of the Code to call for cases not only on judicial information but also to deal with a case which otherwise comes to its knowledge. Yet in most circumstances it is a right practice that the judge should be moved in open court.

The High Court Division may exercise its power of revision upon the petition of a private person occupying the position of a complainant

in the case in which revision is sought. When an order of discharge of an accused person has the effect of operating to the detriment of a *third person*, such person has the right to apply in revision.

The High Court Division can exercise its revisional power even when the petitioner has not filed the certified copy of the impugned order. A revision cannot be dismissed on procedural technicalities.

The High Court Division may also exercise its power on its own initiative. The revisional jurisdiction of the High Court Division can be exercised *suo motu* even though the accused dos not desire it.

It may be noted that the High Court Division will not interfere in revision unless it is

satisfied that it is necessary to do so to prevent an otherwise irreparable injustice. The High Court Division will not always interfere even though the order of the court below is wrong in law or merely irregular if no prejudice is shown to have resulted to the accused. But it would not hesitate to disturb a legal order in revision if it were unjust. It is not the practice of the High Court Division to entertain applications in revision where the decision of the trial court involves some point of law. The discretion under sections 439 and 435 ought only to be exercised in order to prevent substantial injustice, or where it involved a point of law of general importance which may govern other cases. The High Court Division will not interfere unless the error in law has led to a failure of justice. It is not the duty of the court to correct mere mistakes in law which have no more

effect than mistakes in grammar or spelling. The power of interference is to be exercised only for the purpose of correcting injustice, not mere illegality. The High Court Division's revisional jurisdiction is normally to be exercised only in exceptional cases, when there is a glaring defect in the procedure or there is a manifest error of point of law and consequential flagrant miscarriage of justice.

In a revisional matter, the High Court Division does not take a technical view and interfere in every case where an order has been made irregularly or even improperly. Where the trial court has given inadequate reasons for passing a particular order, but the order has been rightly made, the High Court Division will not interfere.

The mere fact that the High Court Division sitting as a court of appeal might have come to a different conclusion on facts from what the Special Judge arrived at is not a sufficient ground for an application in revision.

Section 439 of the Code of Criminal Procedure must be read along with and subject to the provision of section 435 of the Code. In respect of special cases under the Criminal Law Amendment Act 1958, the revisional power deals with section 10(1A) of the Criminal Law Amendment Act, 1958. The object is to confer a kind of paternal and supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law irregularity of procedure, neglect of proper precautions and

apparent harshness of treatment. The revisional Jurisdiction of High Court Division is very extensive. The Jurisdiction under Section 10(1A) of the Act which is very wide may be exercised to test the correctness, legality or even the propriety of the finding sentence or order of the subordinate court or for satisfying itself as to the legality of their proceeding.

The propriety or legality of the charge as framed against the accused-petitioner cannot be scrutinised and interfered with under section 10(1A) of the Criminal Law Amendment Act, 1958 as the trial Court is the sole authority to frame charge against any accused having a prima facie case against him and the High Court Division in exercise of its revisional jurisdiction

under section 10(1A) of the Act does not generally go into facts but in certain circumstances this Court for rectification of injustice may also go into facts, if in the determination of any question of facts, onus is wrongly placed upon any party or an incorrect principle has been applied in determining the question of fact or any material piece of evidence has been ignored by the court below. This court having paternal and supervisory jurisdiction can certainly, in the interest of justice, scrutinise and go into facts and examine the propriety of the impugned order of finding in question.

The revisional powers are not limited to the powers mentioned in section 10(1A) of the Criminal Law Amendment Act, 1958 which

merely describes some of the relief's which the High Court Division may grant. But it is not exhaustive. It has all the powers of an appellate Court and more it can enhance sentence. The revisional power though very wide is purely discretionary to be fairly exercised according to the exigencies of each case. It is an extra-ordinary power which must be exercised with due regard to the circumstances of each particular case. A private party who has no right of appeal, can come in revision where the Durnity Daman Commission/Government fails to exercise the right of appeal.

Under section 10(1A) of the Criminal Law Amendment Act, 1958 and under section 439 of the Code of Criminal Procedure the High Court

Division may also suo motu call for the record of the Courts subordinate to it and set aside any order passed by such Courts in any legal proceeding which has caused miscarriage of justice. Even there is no prescribed period of limitation either in the Code of Criminal Procedure or in the Limitation Act, 1908 for filing revision. As a matter of longstanding practice, 60 (sixty) days limitation for preferring criminal revision before High Court Division as provided under Article 155 of the First Schedule of the Limitation Act for appeal is being followed for revision. But in the interest of justice, there is no legal bar to entertain the revisional application even after the period of 60 (sixty) days. Moreover in the absence of any limitation prescribed for

revision under the law, it cannot also be properly said that the application filed beyond 60 (sixty) days is barred by limitation. The revisional Court is to look into the question whether there has been gross negligence on the part of the petitioner or an inordinate delay in moving such revisional application.

Now we want to discuss about the provisions of law with regard to framing charge and discharging accused from the case along with some legal decisions relating to framing charge and discharging the accused from the case.

Sub-section (3) of the Section 6 of the Criminal Law Amendment Act, 1958 provides that the provision of Chapter XX of the Code

Criminal Procedure, 1898, shall apply to trial of cases under the Act, in so far as they are not inconsistent with the provisions of the Act. Chapter XX of the Code of Criminal Procedure deals with the trial of cases by the Magistrates. Section 241A Cr. P.C. deals with discharge and Section 242 Cr. PC. deals with when charge to be framed.

241A of the Code of Criminal Procedure: When accused shall be discharged— When the accused appears or is brought before the Special Judge and if the Special Judge upon consideration of the record of the case and the documents submitted therewith and making such examination, if any, of the accused as the Special Judge thinks necessary and after giving

the prosecution and the accused an opportunity of being heard, considers the charge to be groundless, he shall discharge the accused and record his reasons for so doing.

The procedure prescribed by the section should be strictly followed. An order of discharge can be made only according to the words of the section that no case has been made out. The Special Judge should first take into consideration the prosecution case as given in FIR, charge-sheet, statements of witnesses recorded by the investigating officer of the Durnity Daman Commission and the documents produced and also hear the defence and then apply the law to the criminal acts to find whether there is prima-

facie case and the Special Judge can discharge the accused if no case has been made out.

In the case of Moudud Ahmed Vs. The State reported in 16 BLD (AD) 27, it has been held that in framing charge the trial Court will only see if on the basis of the materials collected by the prosecution a prima facie case to go for the trial has been made out against the accused. The existence of a prima facie case to go for trial justifies the framing of charges.

In the case of **Taher Hossain Rushdi Vs. State, reported in 6BLC282/Sections 241A, 242, 256C, 265D(1) and 439,** it was decided that in the instant case there are detailed allegations against the accused petitioner and his accomplices and during the investigation it is revealed that the

papers produced before the investigating agency were also examined by the handwriting expert and it was found that the documents in question and bills and vouchers were fictitious and hence there is no illegality in framing charges against the petitioners. The view taken by the High Court Division has been affirmed by Appellate Division in the case reported in 7 MLR (AD) 116.

In the case of H.M. Ershad Vs. The State reported in 45 DLR 533, it has been held that Section 241 of the Code of Criminal Procedure casts a duty on the Judge to discharge the accused when there is no ground for proceeding with the case and his order must record reasons therefore. The Court has jurisdiction to pass an order of discharge if it was satisfied that the

charge was groundless for which it was to give reasons but if it framed charge it was not required of the court to record reasons. In interpreting the provisions sections 241 and 242 of the Cr.P.C, the High Court Division held that the Court has jurisdiction to pass an order of discharge if he is satisfied that the charge is groundless and if he finds so, has to give reason but in framing charge it is not required for to record reason showing that there are grounds for framing charge, if it is enough if the Court is of opinion that there is ground the presumption is that the accused has committed the offence. The formation of such opinion is dependant only on the application of judicial mind based on materials collected from the records of the case.

In the case of ***Begum Khaleda Zia Vs. State reported in 21 BLC (AD) 151,*** it has been held that the petitioner was on dock and the contents of charge had been read over to the petitioner who denied the charge and pleaded not guilty. In view of the contents of the order sheet, we are unable to accept the extraneous matter produced before the High Court Division and to observe that the contents of the charge had not been read over to the petitioner.

In the case of ***Begum Khaleda Zia Vs. State*** **reported in 21 BLC (AD) 16** it has been further held that since from the prosecution papers disclosed prima-facie case against the petitioner there was no error in the order framing charge. Relying upon the extraneous matter it is difficult

for the Appellate Division to accept the submission, in view of the facts that the order sheet shows that the petitioner, at the relevant time, was on dock and contents of charge had been read over to her who pleaded not guilty and claimed to be tried.

In the case of ***Begum Khaleda Zia Vs. State and another*** **reported in 19 BLC 398** it has been decided that though there was an application under section 241A of the Code of Criminal Procedure but that was not considered and the learned Judge rejected the same on the ground that the learned advocate for the accused-petitioner did not move the application. In Special Case No. 5 of 2013 there was no application under section 241A of the Code of

Criminal Procedure rather from the order sheet it is found that after framing charge, learned advocate for the accused-petitioner filed an application under section 241A of the Code of Criminal Procedure. It is true that exercise of sections 241A and 242 of the Code of Criminal Procedure are independent of any application, but on perusal of the impugned orders, it cannot be said that the Court below did not comply with the provisions of sections 241A and 242 of the Code of Criminal Procedure. Both sections 241A and 242 of the Code should be read together. This view has been affirmed by the Appellate Division as referred above i.e. 21 BLC (AD) 16 and 21 BLC (AD) 151.

In the case of ***Habibur Rahman Vs. Md. Showkat Ali and others*** reported in **24 BLC (HD) (2019) 906** it has been repeatedly held that there is no scope to discharge the accused at the time of charge hearing accepting the defence version when prima-facie case is disclosed. The disputed question of facts, the defense version of the accused, defense materials and prima-face case only be proved/disproved/discarded at the time of trial by taking evidence.

It has been further held that at the time of charge hearing (under Sections 241A and 242 Cr. P.C.), the Judge is to see whether the allegations in the petition of complaint constitutes prima-facie offence as alleged but the court below without giving the complainant any opportunity

to adduce any evidence to prove the allegations has discharged the accused.

In the case of ***Anti Corruption Commission Vs. The State and another*** reported in **25 BLC (HD) 29** it has been held that the Anti Corruption Commission being prosecuting agency may submit charge-sheet following the allegations made in the FIR if it finds prima-facie case against the accused. But it has no right to resolve any dispute alleged by the accused. The accused has every right and authority to produce his/her defence materials before the court during trial of the case. Moreover, there is no provision of submitting any application before the investigating officer for making reassessment of the allegations, liabilities, expenditures and costs

of construction of house. There is an ample scope for the accused to explain about the allegations and rectify the mistake in calculating assets, even if any, at the time of trial as required under section 27(1) of the Anti-Corruption Commission Act, 2004. Besides the prosecution must also be given opportunity to prove the allegations by adducing evidence before the trial court. Be that as it may, going through the prosecution materials on record, we are of the view that a prima-facie case with regard to offences under sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004 has been disclosed against the accused. The allegations so brought against the accused are highly disputed question of facts which cannot be resolved without taking aid of

the evidence to be adduced by the parties before the trial court. The High Court Division relied upon in the case of Moudud Ahmed Vs. State, reported in 16 BLD (AD) 27=48 DLR (AD) 42; in the case of Taher Hossain Vs. State reported in 7 BLC (AD) 45 and in the case of Nazrul Islam Vs. State reported in 50 DLR 103 it was spelt out that the learned trial judge may frame charge against an accused under section 242 of the Code of Criminal Procedure if there are sufficient prosecution materials on record to frame charge against an accused. It is true that the charge cannot be framed against the accused-person mechanically unless any reasonable and cogent prima-facie case is disclosed against the accused

in the FIR as well as in the charge-sheet and in other prosecution materials.

We have gone through the application under Section 10(1A) of the Criminal Law Amendment Act, 1958 and perused the prosecution materials annexed therewith. We have also heard the submissions advanced by the learned Advocates for the respective parties and considered their submissions to the best of our wit and wisdom.

It may be mentioned that the submissions advanced by the learned Advocate for the accused-petitioner mainly rest on 3 (three) propositions. In order to come to a decision on each of the issues, we will take up the issues one after another for discussion and decision.

Firstly, as per submission of the learned Advocate for the accused-petitioner, though the

accused-petitioner was the Minister of the Ministry of Housing and Public Works, he had no involvement in the alleged occurrence because the Deputy Minister of the said Ministry was in charge of the said project and the rate of the land in question at Mirpur residential area at Mirpur mouza was Tk. 16 crore per bigha as per Notification No. শাখা-৬/১/এম-৪৫/৮৪/৩৪ dated 11.01.1993 and as such, the accused-petitioner did not commit any offence and for this reason, the order of framing charge is liable to be set aside.

In reply to the aforesaid submissions, Mr. Khan spells out that the allegations that have been brought against the accused-petitioner are all disputed questions of fact which cannot be resolved without evidence and that the allegations mentioned in the charge-sheet disclose a prima facie case to go for trial and for this reason, the learned trial judge rightly

framed charge and that being the reason, the Rule should be discharged.

Further, Mr. Abedin has categorically asserted that the accused-petitioner and others leased out 7.00 acres of government land at the rate of Tk. 16,00,000/- per bigha at Mirpur residential area from 11.01.1993 to 29.04.2007 as per notification contained in memo No. শাখা-৬/১/এম-৪৫/৮৪/৩৪ dated 11.01.1993.

Per contra, with reference to the Circular No. 28650 dated 23/10/2013, Mr. Khan rebutting the aforesaid contention of the accused-petitioner has showed us that at the relevant time, the value of the land in question was Tk. 2,70,187/- per decimal in Mirpur residential area particularly in 2006.

Keeping the submissions of the learned Advocates for the respective parties in mind, we want

to see whether there is any prima facie case against the accused-petitioner in the prosecution materials.

It is alleged in the FIR that that for personal gains and benefits, the FIR named accused, in collusion with each other, leased out 7(seven) acres of government land to Dhaka Journalist Co-operative Society at the lowest price of Tk.3,38,80,000/- ignoring the market value of Tk.18,91,30,900/- of the same. On an inquiry held by Anti-Corruption Commission in connection with Nothi No. দুদক/অনু ও তদন্ড়-১/অনুঃ১৪৪/ঢাকা ২০১৩ খ্রিঃ, it was revealed that the former State Minister of Housing and Public Works Alamgir Kabir without receiving any application from journalists, literary authors, cultural activists, writers and others sent DO letter dated 16.06.2002 to the then Prime Minister for allocation of land for establishment of their residence. Following the same, the office of

the then Prime Minister directed the Secretary, Ministry of Housing and Public Works to take necessary steps in this regard in accordance with law. During pendency of the matter, one Amirul Islam, a so-called journalist of the Daily Dinkal submitted an application to the State Minister of the Ministry of Housing and Public Works to lease out some land in favour of the journalists at Pallabi, Mirpur. On receiving the application, on 23.12.2002, the State Minister directed the Chairman of National Housing Authority to take urgent steps for leasing out the land in favour of the Journalists. On 22.02.2004, following an application filed by one M.A. Aziz, Secretary of Dhaka Journalist Co-operative Society, the State Minister also directed the Secretary, Ministry of Housing and Public Works for taking steps for leasing out the land in favour of the journalists. Thereafter, on

31.08.2003, the Secretary of the concerned Ministry directed the Chairman of National Housing Authority to lease out 7.99 acres of land in favour of journalists, literary authors, cultural activists and different artists. Subsequently, on a meeting presided over by the Secretary of the concerned Ministry, it was decided to cancel the lease and approved scheme of land for the Jhilmil Bohumukhi Co-operative Society. On 30.08.2008, the accused Md. Azharul Haq, former Deputy Director, Land and Property Management, Office of the National Housing Authority leased out the land in question at the rate of Tk. 16,00,000/- per bigha for a total amount of value stood at Tk.3,38,80,000/-. A deed of lease was executed on 15.10.2006 following Rules 5.7.12 of the National Housing Rules, 1993 and thereby fixing the rate of the land. In 2001, the accused leased out the self-same

land at the rate of Tk.20,00,000/- per bigha. The ACC collected the chart of the rate of the land from Mirpur Sub-registrar office and found the rate of the same land as Tk. 2,70,187/- per decimal and the value of the land accordingly stands at Tk.(2,70,187 X 700)=18,91,30,900/- but they leased out the land only at Tk.3,38,80,000/-. By this way, the accused persons embezzled Tk.15,52,50,900/-. The accused persons did not follow the National Housing Rules. The accused persons in collaboration with each other sent D.O letter to the then Hon'ble Prime Minister. Subsequently, the lease and scheme of Jhilmil Bohumukhi Co-operative Shamity was cancelled without any reason. The accused persons approved and leased out the land in question to gain unlawful benefits. On the basis of the said information, the Anti-Corruption Commission initiated Shahbag Police

Station Case No.11 dated 06.03.2014 under sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of the Corruption Act,1947 against the accused of the case.

The record indicates that after initiation of the FIR, on 11.02.2015, the Anti-Corruption Commission after holding investigation having found prima-facie case submitted charge-sheet against the accused-petitioner and others under sections 409/109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947.

In order to have better understanding with respect to the allegation, we want to quote a relevant portion of allegation disclosed in the F.I.R. A reference to the F.I.R. runs as follows :

"অনুসন্ধানকালে প্রাপ্ত তথ্য ও কাগজপত্রাদি পর্যলোচনায় আরো দেখা যায় যে, গত ১৯৯৩ সনের গৃহায়ন নীতিমালা সংশোধিত ১৯৯৯ এর

অনুচ্ছেদ ৫.৭.১২ এ সমবায় সমিতিকে জমি বাজার মূল্য বরাদ্দ হবে মর্মে উল্লেখ রয়েছে। ইতোপূর্বে গত ২০০১ খ্রিঃ সনে মিরপুর দারুস সালাম এলাকায় যথানিয়মে মন্ত্রণালয়ের অনুমোদন সাপেক্ষে ২,০০,০০,০০০/০০ টাকা বিঘা দরে এবং ওই এলাকায় অন্য স্থানে ২০,০০,০০০/০০ টাকা বিঘা দরে ভূমি বরাদ্দ প্রদান করা হয়েছে। কিন্তু এ ক্ষেত্রে জাতীয় গৃহায়ন নীতিমালার ৫.৭.১২ অনুচ্ছেদে উল্লেখিত বাজার মূল্য অনুসরণ না করে গত ১৯৯৭ খ্রিঃ সনে মিরপুর আবাসিক এলাকার বরাদ্দ মূল্য বিঘা প্রতি ১৬,০০,০০০/০০ টাকা দরে ভূমি বরাদ্দ প্রদান করে। অনুসন্ধানকালে মিরপুর সাব রেজিস্ট্রি অফিস হতে সংশ্লিষ্ট এলাকার ভূমির গত-২০০৬ খ্রিঃ সনের বাজার মূল্য সংগ্রহ করা হয়। এতে দেখা যায় যে, ওই সময় উক্ত জমির বাজার মূল্য প্রতি শতক ২,৭০,১৮৭/০০ টাকা ছিল। সে হিসেবে ৭.০০ একর জমির বাজার মূল্য (২,৭০,১৮৭ x ৭০০) = ১৮,৯১,৩০,৯০০/০০ টাকা। কিন্তু ৭.০০ একর জমি মাত্র ৩,৩৮,৮০,০০০/০০ টাকায় ইজারা প্রদান করা হয়েছে।".....

"জাতীয় গৃহায়ণ কর্তৃপক্ষের অফিসের উপপরিচালক ভূমি ও সম্পত্তি ব্যবস্থাপনা আসামী মোঃ আজহারুল হক ওই অফিসের অফিস সহকারী আসামী মোঃ মতিয়ার রহমান ও ক্যাশিয়ার মোঃ মনসুর আলমদ্বয় গৃহায়ণ

নীতিমালা, ১৯৯৩ সংশোধিত ১৯৯৯ এর অনুচ্ছেদ ৭.৫.১২ অনুযায়ী মূল্য নিরূপন না করে এবং মন্ত্রণালয় হতে জমির ইজারা মূল্য অনুমোদন না করে বাজার মূল্যের চেয়ে ১,৫২,৫০,৯০০/০০ টাকা কম মূল্যে ইজারা প্রদান করে সরকারের আর্থিক ক্ষতিসাধন পূর্বক তা আত্মসাৎ করে দন্ডবিধির-৪০৯/১০৯ ধারা এবং ১৯৪৭ সনের ২ নং দুর্নীতি প্রতিরোধ আইনের ৫(২) ধারায় অপরাধ করেছেন।"

It is evident from the record that the allegations that have been brought against the accused of the FIR are found prima-facie true by the investigating officer during investigation of the case and thereafter, on 11.02.2015, having found prima-facie case the investigating officer submitted charge-sheet under Section 409/109 of the penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 against the FIR named accused including the present accused-petitioner.

A relevant portion of the charge-sheet with regard to allegation against the accused-petitioner reads as follows :

"তদন্তকালে সাব-রেজিস্ট্রার, মিরপুর সাবরেজিস্ট্রি অফিস থেকে স্মারক নং-১০২৬, তারিখ-২৩/১০/৯৩ মূলে প্রাপ্ত ওই সময়ের এলাকার ভূমির বাজার মূল্য সংগ্রহ করে দেখা যায় যে, মিরপুর হাউজিংয়ের প্রতি শতকের মূল্য ছিল ২,৭০,১৮৭/০০ টাকা। সে হিসেবে ৭ একর ভূমির বাজার মূল্য দাড়ায় ৭০০ x ২৭০০১৮৭ = ১৮,৯১,৩০,৯০০/০০ টাকা। কিন্তু জাতীয় গৃহায়ণ কর্তৃপক্ষের অফিস থেকে মাত্র ৩,৩৮,৮০,০০০/০০ টাকায় বরাদ্দ প্রদান করে ফলে অবশিষ্ট (১৮,৯১,৩০,৯০০-৩,৩৮,৮০,০০০) = ১৫,৫২,৫০,৯০০/০০ টাকা সরকারের আর্থিক ক্ষতিসাধন হয়।

তদন্তকালে সংগৃহীত রেকর্ডপত্র ও সংশ্লিষ্টদের বক্তব্য হতে জানা যায় যে, স্ব স্ব অপরাধের বিবরণ নিম্নে দেয়া হলো ঃ-

(১) জনাব মির্জা আব্বাস ঃ-

জাতীয় গৃহায়ণ আইন-২০০০ এর ২০(২) ধারা অনুযায়ী গৃহায়ণ কর্তৃপক্ষের আওতাধীন জমি বরাদ্দের বিষয়টি গৃহায়ণ কর্তৃপক্ষের

এখতিয়ারধীন হওয়া স্বত্ত্বেও সাবেক গৃহায়ণ ও গণপূর্ত মন্ত্রী মির্জা আব্বাস গত-২৭/০৭/০৬ খ্রিঃ তারিখ ঢাকা সাংবাদিক সমবায় সমিতিকে ৬টি শর্ত সাপেক্ষে ৭.০০ একর জমি বরাদ্দ প্রদান করার বিষয় অনুমোদন করেন। বাস্তবে সাংবাদিক, সাংস্কৃতিক কর্মী, শিল্পী ও সাহিত্যিক দের কোন সংগঠন না থাকা সত্ত্বেও মাননীয় প্রধানমন্ত্রীর দপ্তর হতে তাদের অনুকূলে জমি বরাদ্দের Blank অনুমোদন নেয়া হয়। পরবর্তীতে ঝিলমিল বহুমূখী সমবায় সমিতির অনুকুলের অনুমোদিত নক্সা কোন কারণ ছাড়াই বাতিল করে সাংবাদিক সমবায় সমিতির অনুকুলে By law পরিবর্তন করে সাংবাদিক, সাংস্কৃতিক কর্মী, শিল্পী ও সাহিত্যিকের পরিবর্তে ঢাকা সাংবাদিক সমিতিকে জমির মূল্য নির্ধারণ নিশ্চিত না করে ৭.০০ একর জমি বরাদ্দ প্রদানের বিষয় অনুমোদন করে সরকারের আর্থিক ক্ষতি সাধন করেছেন।”

Following the charge-sheet, on 20.10.2016, the learned Special judge framed charge against the accused-petitioner and others under sections 409/109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947.

Admittedly, at the relevant time of the occurrence, the accused-petitioner was the Minister of the Ministry of Housing and Public works. So we have no hesitation to hold the view that the accused-petitioner was a public servant at the time of alleged occurrence.

The allegations that have been found against the accused-petitioner in the charge-sheet are that the accused-petitioner being Minister of the Ministry of Housing and Public Works approved the lease in respect of 7.00 acres of land in favour of Dhaka Journalist Co-operative Samity incorporating six terms and conditions; without having any lawful organization of the journalists, the land in question was leased out and allotted in favour of the journalists taking blank approval from the office of the then Prime Minister; the concerned Ministry of the

accused-petitioner cancelled the approved scheme, sketch map and lease of the Jhilmil Bohumukhi Co-operative Society previously given to them without assigning any reason; without following due process of law and without making inter-ministerial and departmental co-ordination over the matter in question, the accused persons in collaboration with each other altered and amended the by-laws and thereby approved and leased out 7.00 acres of land in favour Dhaka Journalist Co-operative Samity in a lesser price ignoring the market price resulting in causing a huge loss of Tk. 1,52,50,900/- to the State.

It is an undeniable fact that the accused-petitioner was the then Minister of the Ministry of Housing and Public Works and as such, everything of the said Ministry is supposed to be done within the knowledge of the accused-petitioner. In other words,

the accused-petitioner being the then Minister of the Ministry of Housing and Public Works cannot avoid the duty and responsibility saying that he is not involved with the alleged offences since Deputy Minister of the said Ministry was in charge of the said project and he only approved the lease as an usual official practice and procedure. It is our sincere presumption that the matter of approval and leasing out of any government property to anybody else cannot be dealt with loosely and without proper care. Because breach of a duty of care may cause serious and enormous damage and irreparable loss to the government property and the government treasury. Furthermore, the important document with regard to government properties and/or important issues cannot be signed by the public servants and responsible persons shutting their eyes. And the public servants

and/or any responsible persons cannot play their roles at the whims and fancies.

The property in question is a government property and certainly the property was in the supervision, control and possession of the public servants who at the abetment of private person committed the offence of misappropriation of money leasing out the landed property in lesser value instead of market value. In this context, our considered view is that any government property, in possession of the public servant, should be deemed to be in the possession of the government and it is the duty of the public servant including all the citizen of the country to observe the Constitution and the laws, to maintain discipline, to perform public duties, to protect public property and to strive at all the times to serve the people as per law and the mandate of the Constitution.

The public servants would be guilty of misconduct if they fall within the categories mentioned in Section 5(1)(a) to (e) of the Prevention Corruption Act, 1947 punishable under Section 5(2) of the said Act.

It is profitable to note that criminal misconduct has been defined in section 5(1) of the Prevention of Corruption Act, 1947. To constitute an offence under this law, the ingredients are that the offenders must be public servants and they used corrupt or illegal means or otherwise abused their official position as public servants and they obtained for themselves or for any other person/s any valuable thing or pecuniary advantage. Criminal misconducts are of 5 categories mentioned in section 5(1) (a) to (e) and all these categories of misconducts have been made punishable under section 5(2) of the Prevention of Corruption Act, 1947. The public servants are said to be guilty of

misconduct/s if they fall within the categories mentioned in section 5(1) of the Prevention of Corruption Act, 1947 punishable under section 5(2) of the Prevention Corruption Act, 1947.

The proposition of law with regard to criminal breach of trust by the public servant or by banker, merchant or agent along with punishment for the same offence has been described in Section 409 of the Penal Code which runs as follows:

409. Criminal breach of trust by public servant, or by banker, merchant or agent, Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with

imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Apart from the aforesaid law, if any person abets any public servant to commit any schedule offence of the ACC Act, 2004 and in consequence of the said abetment, a public servant commits the said schedule offence of the ACC Act, 2004, he or she would be punished for the selfsame penal offences that are committed by the public servants.

Section 107 of the Penal Code runs as follows:

107. Abetment of a thing- A person abets the doing of a thing, who-

Firstly-Instigates any person to do that thing; or,

Secondly-Engages with one or more other persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of

that conspiracy, and in order to the doing of that thing; or,

Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1- A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation-2 Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Section 109 of the Penal Code reads as under:

109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment- Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation- An act or offence is said to be committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Accordingly, we are of the view that in law, there is no bar to hold trial or convict a person who abets the public servants to commit the schedule offences of the ACC Act, 2004 under the selfsame penal offences which are allegedly committed by the

public servants, without a distinct and separate charge against the abettor/s.

Additionally, in view of the submission and counter submission and the materials on record, we are also of the opinion that the value of the land in question at the relevant time as per submissions and documents submitted by the respective parties appears to be highly contentious issue which can only be decided on taking evidence from the witnesses of the respective parties for which trial is very much necessary to decide the same framing appropriate charge against the accused-petitioner and others.

Aside from above, under the aforesaid facts and circumstances of the case and the allegations disclosed against the accused-petitioner in the charge-sheet, our school of thought is that a *prima-facie* case to go for trial has been disclosed against the accused-petitioner.

Accordingly, we are not at one with the learned Advocate for the accused-petitioner that no prima-facie case has been disclosed against the accused-petitioner in the prosecution materials. Thus the submission of the learned Advocate for the accused-petitioner on the first issue falls flat.

Now we want to take up the second issue for discussion and decision. As per argument of the learned for the accused-petitioner, the investigating officer recorded statements of as many as ten witnesses under Section 161 of the Code of Criminal Procedure but none of them implicated the accused-petitioner with the alleged offences, so the charge framed against the accused-petitioner is groundless and this court considering that aspect of the case may interfere with the order of framing charge against the accused-petitioner.

Opposing the aforesaid submission, Mr. Khan points out that the investigating officer submitted charge-sheet against the accused-petitioner and others on the basis of 161 statements and other prosecution materials wherein the involvement of the accused-petitioner has been found; so non-mentioning of the name of the accused-petitioner cannot absolve him of the case and the allegations; it is apparent from the prosecution materials that the accused-petitioner being Minister of the concerned Ministry approved the lease granted in favour of the Dhaka Journalist Co-operative Society.

It is worthwhile to mention that non-mentioning of name of the petitioner in the 161 statements cannot exclude him from all possibilities of implication in the case. It may be mentioned that the investigating officer recording statements from the witnesses and collecting

prosecution materials submitted charge-sheet against the accused-petitioner and others. It is alleged in the charge-sheet that the accused-petitioner being Minister of the Ministry of Housing and Public Works approved the lease in respect of 7.00 acres of land in favour of Dhaka Journalist Co-operative Somity incorporating six terms and conditions; without having any lawful organization of the journalist, the land in question was allotted in favour of the journalists taking blank approval from the office of the then Prime Minister; the concerned Ministry of the accused-petitioner cancelled the approved scheme, sketch map and lease of the Jhilmil Bohumukhi Co-operative Society without assigning any reason; the accused persons in collaboration with each other altered and amended the by-laws and thereby leased out 7.00 acres of land in favour Dhaka Journalist Co-

operative Samity in a lesser price ignoring the market price and approved the same resulting in causing a huge loss of Tk. 1,52,50,900/- to the State. Sections 107 and 109 of the Penal Code contemplate that an abetment may be said to be committed by a person who, by his engagement or act or illegal omission, instigates any person to do a thing. The record shows that the name of the accused-petitioner has been divulged in the prosecution materials collected by the investigating officer. Moreover, the involvement of the accused-petitioner has been disclosed in the 161 statements of the witnesses namely FM Abdul Monayem and Md. Benzamin Haider and the name of the concerned Ministry of Housing and Public Works has also been appeared in the 161 statements of the witnesses.

In addition to these, it is important to note that the name and allegation may not be figured out in the inquiry report and in the FIR but the name of the accused along with allegation may be inserted in the charge-sheet if *prima-facie* allegation is found in the other credible prosecution materials apart from 161 statements during investigation of the case. There is no specific law in the ACC Act, 2004 to the effect that if the allegation against a person/accused is not found or traced out at the time of inquiry and in the FIR, that person/accused cannot be implicated in the case subsequently in the charge-sheet. Our considered view is that there is no bar to proceed with the case against the person/accused if the involvement of the person/accused along with credible materials is found subsequently, that is, at the time of investigation. Furthermore, if the allegation against a person/accused

is found in other credible materials, there is no bar to implicate that person/accused in the case though the name of that person/accused together with allegation is not disclosed in the 161 statements. The 161 statement given by witness FM Abdul Monayem, Joint Secretary, Special Officer-in-Charge, Ministry of Public Administration, reads as under:-

"মাননীয় মন্ত্রী মহোদয় জনাব মির্জা আব্বাস কিছু নির্দেশনা সহ গত ৩০/১০/২০০৫ খ্রিঃ তারিখ বিষয়টি অনুমোদন করলে যথা নিয়মে স্মারক নং ৬৫৩ তারিখ ২১/১১/২০০৫ জারী করা হয়।"

The 161 statement given by witness Md. Benzamin Haider, Former Senior Assistant Secretary, the Ministry of Housing and Public Works runs as follow:-

"..... সে মোতাবেক নথি উপস্থাপন করা হলে আমরা জাগৃক কে বিধি মোতাবেক ব্যবস্থা নেয়ার বিষয় অনুমোদনের জন্য সুপারিশ প্রদান করলে মন্ত্রী জনাব মির্জা আব্বাস উক্ত প্রস্তাবের সঙ্গে দ্বিমত পোষন করে

প্রস্তাবিত জায়গায় ১০ তলা বিশিষ্ট ফ্ল্যাট বাড়ী নির্মানের ব্যবস্থা নিতে নির্দেশ প্রদান করেন। মন্ত্রী মহোদয়ের নির্দেশ মোতাবেক জাগৃক চেয়ারম্যানের অনুকূলে স্মারক নং ৬৫৩ তাং ২১/১১/২০০৫ মূলে পত্র প্রেরন করা হয়। জাগৃক ১০ তলা বিশিষ্ট ফ্ল্যাট নির্মানের নক্সা প্রেরন করলে সাংবাদিক সমিতি উহা আপত্তি প্রদান করে ৬ তলা বিশিষ্ট ভবনের নক্সা প্রস্তাব দেয়। পরবর্তী উর্দ্ধতন কর্তৃপক্ষের পরামর্শ মোতাবেক নোট অনুচ্ছেদ ও ২৯ এ ৬টি প্রস্তাব সহ নথি উপস্থাপন করা হয়। মন্ত্রী মহোদয় ২৭/০৭/২০০৬ খ্রিঃ তারিখ প্রস্তাব অনুমোদন করলে সে মোতাবেক স্মারক নং ৩৬৬, তারিখ ০৯/০৮/২০০৬ মূলে চেয়ারম্যান জাগৃক বরাবর পত্র প্রেরন করি।"

Now question arises as to whether the accused-petitioner is a beneficiary of the alleged illegal transaction which was allegedly done in connivance with other accused named in the FIR and the charge-sheet, whether the accused-petitioner has an engagement in the alleged illegal transaction, whether being a Minister of the concerned Ministry, he has any engagement or act or illegal omission or instigation to

any person to do a thing, and whether the accused-petitioner has been implicated in this case for political reason, are highly disputed questions of fact. The prosecution needs not always prove the misappropriation by direct evidence. The circumstances showing the factum of misappropriation may also be proved by the oral, documentary and circumstantial evidence. In order to prove the offence of criminal breach of trust, there must be entrustment of property under the control and possession of the public servants and allegation of misappropriation thereof. In the absence of either of the two ingredients, the offence is not complete.

From the prosecution materials, a prima-facie allegation of misappropriation and abetment thereof with regard to leasing out of the government land has been disclosed against the accused-petitioner and

others in the prosecution materials. Under the circumstances, the prosecution should not be debarred from proving the allegation of misappropriation and abetment by evidence which may be oral, documentary and circumstantial in nature. In view of the above, we are not satisfied with the second submission of the learned Advocate for the accused-petitioner as those have no legs to stand.

Now we want to take up the third issue for discussion and decision. The learned Advocate for the accused-petitioner has persuaded us to convince that at the time of enacting the Anti-Corruption Commission Act, 2004, the legislature had intention to the effect that no person should be harassed with unnecessary and mala fide cases and for this reason, the legislature has incorporated a provision of preliminary inquiry in the law before lodging the FIR and in the instant case

at hand, the complicity of the accused-petitioner was not found at the time of inquiry and for this reason, the name of the accused-petitioner has not been disclosed in the FIR and subsequently he has been implicated in this case in the charge-sheet with mala fide intention, which is not permitted in law.

Controverting the aforesaid submission, Mr. Khan illustrates that there is no law to the effect that all the allegations in details must be disclosed in the FIR rather the name and complicity of a person/accused may be found in other prosecution materials during investigation of the case and as such, it cannot be said that charge cannot be framed against the accused-petitioner as his name and allegation were not found during inquiry and he has been implicated in this case in the charge-sheet subsequently and on this

count, the impugned order of framing against the accused-petitioner cannot be turned down.

We have categorically observed while deciding the second issue that the allegations may not be found at the time of inquiry and in the FIR but there is no bar to implicate the accused in the case subsequently in the charge-sheet if credible information and materials are divulged against him during investigation of the case. Under this circumstances, we do not find any considerable force of the submission of the learned Advocate for the accused-petitioner made on the third issue. Accordingly, these submissions made by the learned Advocate for the accused-petitioner do not deserve appreciation for consideration.

Considering the facts and circumstances of the case and the allegations brought against the accused-petitioner and others in the prosecution materials, we

are of the view that the prosecution has been able to disclose a prima facie case to go for trial against the accused-petitioner and others and the allegations that have been brought against the accused-petitioner and others are highly disputed questions of fact which can only be resolved on taking evidence from the witnesses of the respective parties before the trial court. In order to hold the trial of the case, the learned trial judge rightly framed charge against the accused-petitioner and others under Sections 409/109 of the penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

The legal decisions referred to by the learned Advocate for the accused-petitioner are not squarely applicable to the present case. Furthermore, some of the decisions have been arisen out of the judgment and

order of conviction and sentence. The present case at hand is a under trial case.

Having considered all the facts and circumstances of the case, the materials on record, the propositions of law cited and discussed above, and forgoing discussions, observations and reasons, we are led to hold the view that there is no incorrectness, illegality or impropriety in the order of framing charge against the accused-petitioner and others under Sections 409/109 read with Section 5(2) of the Prevention of Corruption Act, 1947. Accordingly, we do not find any merit in this Rule.

Consequently, the Rule is discharged.

In consequence thereof, the order of stay granted at the time issuance the Rule stands vacated.

The learned judge of the trial court is directed to proceed with the case in accordance with law and to

conclude the trial of the case as early as possible preferably within 6 (six) months from the date of receipt of this judgment and order.

Let a copy of this judgment and order be communicated to the learned judge of the concerned court below at once.

K.M. Hafizul Alam, J:

I agree.