

Present:

Mr. Justice M. Enayetur Rahim

-And-

Mr. Justice Md. Mostafizur Rahman

Writ Petition No.5035 of 2020

Abdus Salam

----- Petitioner

-Versus-

Government of Bangladesh and others.

----- Respondents

With

Writ Petition No.6283 of 2020

T. Mashfu Bobby

----- Petitioner

-Versus-

Bangladesh and others

----- Respondents

Mr. A.F. Hasan Ariff, Advocate with

Mr. Shahdeen Malik, Advocate

---- For the Petitioner

(in writ petition No.5035 of 2020)

Mr. Md. Shajahan, Advocate with

Mr. Mohammad Mehadi Hasan, Advocate

----- For the Petitioner

(in writ petition No.6283 of 2020)

Mr. A.M. Amin Uddin, Attorney General with

Mr. Md. Sarwar Hossain Bappi, DAG

---For the Respondent No.1

(in both writ petitions)

Mr. Md. Khurshid Alam Khan, Advocate

----for the Respondent No.4(ACC)

(in both writ petitions)

**Heard on 10.11.2020, 17.11.2020 &
Judgment on 08.12.2020**

M. Enayetur Rahim, J:

In writ petition No.5035 of 2020, the Rule Nisi was issued calling upon the respondents to show cause as to why the (i) Rule 12 of এস. আর. ও নং-২৬৫-আইন/২০০৭ dated 26.11.2007 inserting inter alia new rule 24(1), thereby replacing rule 24 of the Anti-Corruption Rules 2007 dated 29.03.2007 and the new rule 24(1) of the amended Rules being repugnant to and inconsistent with Articles 31, 32 and 33 of the Constitution of the People's Republic of Bangladesh (Impugned Annexure-B)

and the proceeding of Special Case No.03 of 2020 corresponding to A.C.C.G.R. No.27 of 2017 arising out of Ramna Model Police Station Case No.22 dated 13.04.2017 under section 26(2) and 27(1) of the Anti-Corruption Commission Act,2004, now pending in the Court of learned Special Judge, Court No.10, as being initiated by the same person (respondent No.6) as informant and investigation officer in violation of Fundamental Rights as enshrined in Articles, 31, 32 and 33 of the Constitution should not be declared to be without lawful authority and is of no legal effect and/or pass such order or further order or orders as to this Court may seem fit and proper.

On the similar facts and issue when writ petition No.6283 of 2020 was moved before this Bench, this Bench without issuing any Rule passed an order to the effect that above writ petition will be heard together with the writ petition No.5035 of 2020.

Accordingly, both the writ petitions have been heard together and are being disposed of by this single judgment.

In writ petition No.5035 of 2020, the petitioner has been facing trial in the court of Special Judge, Court No.10, Dhaka in Special Case No.03 of 2020 arising out of Metro Special Case No.171 of 2019, Duduk G.R. No.27 of 2017 Corresponding to Ramna Model Police Station Case No.22 dated 13.04.2017 to answer the charges under sections 26(2) and 27(1) of the Anti

Corruption Commission Act,2004. (hereinafter referred to as the Act of 2004)

On 13.04.2017 Respondent No.6 Md. Shamsul Alam, Deputy Director (inquiry and investigation-1) of the Anti Corruption Commission (hereinafter referred to as the Commission) as informant lodged a First Information Report with Ramna Model Police Station, Dhaka implicating the petitioner alleging, inter alia, that the petitioner had failed to submit the statement of his wealth he acquired as sought by the Commission within the specified time as mentioned by the Commission and thereby the petitioner Committed offence within the mischief of section 26(2) of the Act of 2004. Said FIR was registered as Ramna Model Police Station Case No.22 dated 13.04.2017 under section 26 of the Anti Corruption Commission Act,2004. After initiation of FIR eventually, said respondent No.6 himself conducted the investigation and submitted charge sheet against the petitioner under section 26 and 27(1) of the Act of 2004 with due approval of the Commission, recommending prosecution.

The case being ready for trial the case record was transmitted to the Metropolitan Senior Special Judge, Dhaka for trial and eventually the case record was transferred to the Special Judge, Court No.10, Dhaka and the case was registered as Special Case No.36 of 2020.

The writ petitioner in relation to writ petition No.6283 of 2020 has been facing trial in the court of

Special Judge, Court No.4, Dhaka to answer charges under section 13 of Money Laundering Protirodh Ain, 2002 along with sections 4(2)(3) of the Money Laundering Protirodh Ain, 2012.

In this particular case, the prosecution has already examined 17 witnesses (till 06.02.2019) and they were duly cross examined by the defense. At the fag end of the trial the petitioner has come up with the above writ petition before this court. In this case one Md. Khairul Huda, Assistant Director, Anti-Corruption Commission as informant lodged an FIR implicating the petitioner and another with the same police station for allegely committing offence under section 13 of the Money Laundering Protirodh Ain,2002 and the said informant himself being entrusted conducted investigation submitted charge sheet against the writ petitioner and another under section 13, of the Money Laundering Protirodh Ain, 2002 and section 4(2) and 4(3) of the Money Laundering Protirodh Ain, 2012 and eventually the writ petitioner was put on trial before the Special Judge, Court No.4, Dhaka.

Mr. A.F. Hasan Ariff and Mr. Shahdeen Malik, learned Advocates have appeared for the petitioner in writ petition No.5035 of 2020 and have submitted as follows:

- I. the trial of a criminal case must be fair and this principle of fairness is embedded in all the stages of a criminal proceeding starting with lodgment of a case and

includes fairness at the stage of investigation also and unfair, bias and one sided investigation is inconsistent with the rights guaranteed under Articles 31,32&33 of the Constitutions and the provisions of rule 24(1) of the Anti Corruption Commission Rules,2007 (hereinafter referred to as Rules, 2007) by authorizing the same persons to be informant and investigator is contrary to the principal of fairness, neutrality and unbiased adjudication is thus inconsistent with the fundamental rights as guaranteed in the Constitution;

II. the informant who was the inquiry officer being investigation officer of the same case he could not but be biased against the petitioner and his investigation therefore is vitiated by bias and the impugned rule 24(1) being a colourable piece of legislation is inconsistent with the fundamental rights guaranteed in the Constitution;

III. the impugned rule 24(1) violates the principle of '*Nemo debet esse judx in cause proproia sua*' that means no persons can be a judge in his own case;

IV. in the Act of 2004 the words 'Inquiry (অনুসন্ধান)' and 'Investigation (তদন্ত)' are different and distinguishable and law

indicates two separate activities and procedure as such rule 24(1) of the Anti Corruption Commission Rule as promulgated in November, 2007 by providing for carrying out of inquiry and investigation by same official is liable to be struck down;

V. the amended rule 24(1) as promulgated on 26 November 2007 has amalgamated the separate functions of inquiry and investigation into one by providing for the carrying out of these two separate functions by one and the same official of the Commission and as such the impugned Rule of the delegated legislation, has travelled beyond the intent and ambit of the Act of the Parliament i.e. the Act of 2004;

VI. by providing for the carrying out of inquiry and investigation by the same official in Rule 24(1) in the one hand, and by further providing that these two separate functions of inquiry and investigation can be carried out by separate or different officials in Rule 24(2), the amended Rule has opened up an avenue for arbitrary 'pick and choose' by the Commission, which is without lawful authority and as such void and is of no legal effect and Rule is liable to be struck down.

Mr. Md. Shajahan, learned Advocate appearing for the petitioner in writ petition No.6283 of 2020 having adopted the above submissions has further submitted that:

- i. the Commission in its rule 24 framed through SRO No.32-Ain/2007 had separated the informant and investigating officer from one another and thereafter vide SRO-265-Ain/2007 dated 26.11.2007 replaced rule 24(1) empowering the Commission that informant and investigating officer shall be same person and in the sub (2) of rule 24 of the Rules,2007 stipulated that informant and investigating officer may be different person, if Commission desires; however, the Commissioner never set out any criteria or basis of which cases informant and investigating officer are same or separate person as such this provision is arbitrary, malafide and discriminatory and the Commissioner at the same time can blow hot and cold which is violation of principle of 'Natural Justice' and also cannot stand both same time;
- ii. the alleged amendment of rule 24 of the Rules, 2007 is also violative towards the Code of Criminal Procedure 1908; because, Code of Criminal Procedure is the main procedural law of criminal justice system

and as per section 173, read with sections 163 and 170 of the Code of Criminal Procedure, where investigating officer is liberty either submit charge sheet or if no evidence found, submit final report and release from the allegation. But the person, who brought allegation against the accused and if he investigates the said matter it would not be said impartial investigation as the said person cannot go back his own statement and rule 24(1) of the Rules, 2007 is contradictory with spirit of Section 169 and 173 of the Code of Criminal Procedure of the criminal investigation system;

iii. the Commissioner never set out any criteria or basis of which cases informant and investigating officer will be the same official or separate official of the commission and thus it is complete arbitrarily, malafide and discriminatory as well violative of Article 27 and 31 of the Constitution of Peoples Republic of Bangladesh and as such the sub rule (1) of rule 24 of Rules,2007 is liable to be declared to have passed without lawful authority and is no legal effect and thus, investigation of the case as well as the trial has been vitiated.

Mr. Md. Khurshid Alam Khan, learned Advocate appearing for the Commission has submitted as follows:

- i. the Commission being an independent statutory body is amply enabled to frame its Rules conferred the authority/power under section 34 of the Act of 2004 or to amend such Rules or any portion thereof from time to time, whenever it is expedient to fit the statutory objects and purposes and laid down in the parent laws to curb the corruption or to prosecute the scheduled offences relating to corruptions keeping the mandate given in the 'preamble' clause of the Act, described as –“দেশে দুর্নীতি এবং দুর্নীতিমূলক কার্য প্রতিরোধের লক্ষ্য” and, in view of the above, the challenging the virus of amended rule 24 of the Rules,2007 is nothing, but an ill attempt to frustrate the criminal trial initiated against the writ petitioners;
- ii. the Rules,2007 and the amendments thereof have been made by the Commission pursuant to the provisions of section 34 of the Act of 2004 and in accordance with the statutory requirement, the Rules got due approval of the Hon'ble President of the Republic accomplishing the statutory mandate that warrants-“এই আইনের উদ্দেশ্য পূরণকল্পে” and, it is palpably clear that in framing the Rules and bringing amendments thereof, the Commission did not

resort to any illegality, irrationality, unreasonableness and procedural impropriety wherein no unconstitutionality occurred in exercising its exclusive jurisdiction, and in view of the above, the challenging the vires of amended rule 24 of the Rules, 2007 is malafide.

Mr. A.M. Amin Uddin, learned Attorney General has appeared for the respondent- Government has submitted as follows:

- i. the provision of rule 24 of the Rules, 2007 as amended by the impugned SRO cannot be said inconsistent with article 26, 27 and 31 of the constitution in the facts of the present case as no fundamental right of the writ petitioners has been infringed;
- ii. the commission having got power has amended its law and in view of that no fundamental rights of the petitioners have been infringed and petitioners have ample opportunity to defend themselves in the trial by cross-examining the prosecution witness and question of prejudice does not arise at all.

Heard the learned Advocates for the respective parties, perused the writ petitions, affidavit in opposition and the annexures thereto as well as the relevant provisions of law and Rules.

Having regard to the fact that the Act of 2004 was enacted in the year 2004 and thereunder Rules has been framed in the year 2007 which was published as Durnity Daman Commission Bidhimala, 2007 (Anti-Corruption Rules, 2007) through SRO No.32-Ain/2007 dated 29.03.2007 wherein rule (bidhi) 24 of Rules, 2007 has stipulated as under:

“২৪। পৃথক কর্মকর্তা দ্বারা অনুসন্ধান ও তদন্তকার্য সম্পন্নকরণ- আইনের তপসিলভুক্ত কোন অপরাধ সংক্রান্ত অভিযোগের অনুসন্ধান এবং তদন্ত পৃথক পৃথক কর্মকর্তার দ্বারা সম্পন্ন করিতে হইবে”.

Eventually, the said rule 24 was substituted by the Commission through SRO No.256-Ain/2007 dated 26.11.2007, which runs as follows:

“২৪। একই কিংবা পৃথক কর্মকর্তা দ্বারা অনুসন্ধান ও তদন্তকার্য সম্পন্ন করন- (১) আইনে তফসিলভুক্ত কোন অপরাধ সংক্রান্ত অভিযোগের অনুসন্ধান এবং তদন্ত একই কর্মকর্তার দ্বারা সম্পন্ন করা যাইবে।

(২) উপবিধি (১) এর বিধান থাকা সত্ত্বেও কমিশন তপসিলভুক্ত কোন অপরাধ সংক্রান্ত অভিযোগের অনুসন্ধান এবং তদন্ত পৃথক পৃথক কর্মকর্তার দ্বারা করাইতে পারিবে।”

The main contention agitated by the learned Advocates for the respective writ petitioner is that the investigation of the present cases had conducted by a person who was the inquiry officer as well as the informant and thus, the investigation must be a bias investigation which vitiated the entire proceeding and the impugned SRO dated 26.11.2007 amending the rule 24 of the Rules, 2007 is malafide, arbitrary and inconsistency with the provision of Constitution.

In view of the submissions as urged by the learned Advocates for the petitioners, the moot

question before us is -whether rule 24(1) of the Rules,2007 as amended on 26.11.2007 authorizing the same person to be informant and investigation is ultra virus to the Constitution and entire proceeding has been vitiated.

Mr. Shahdeen Malik by referring to the case of Megha Sing Vs. State of Haryana, MANU/SC0466/1995=AIR 1995 SC, 23339, State Vs. Rajangam MANU/SC/1085/2009=2010(15)SCC, 369 and Mohan Lal Vs. the State of Punjab MANU/SC/0857/2018=AIR,2018 SC,3853 has submitted that in the above cases the Supreme Court of India has set aside the conviction of the respective accused passed by the trial court on the ground that the informant himself investigated the case and submitted charge sheet against the accused, which caused serious prejudice to the accused and thus, vitiated the trial.

Per Contra, Mr. Khurshed Alam Khan, learned Advocate for the respondent Commission having referred to the case of Md. Nuruzzaman Vs. the State, reported in 14 BLC, page-61, Engineer Abdul Wadud Vs. State and another, reported in 19 BLC, page-468 has submitted that there is no embargo in the matter of holding investigation by the informant of the case as rule 24 has been substituted by the SRO dated 26.10.2007 lawfully.

It cannot be denied in any way that a fair, impartial and unbiased investigation is *sine qua non* for criminal justice system, in other words fair

investigation is the backbone of criminal justice system and it is not only a constitutional right but also a human right.

Having regard to the fact that the Supreme Court of India in the cases of Megha Singh Vs. State of Haryana, Bhagwan Singh Vs. State of Rajasthan, Mohon Lal Vs. State of Punjab as referred to by Mr. Shadeen Malik has set aside the conviction of the respective accused on the ground that the informant himself investigated the case which might have prejudiced the accused.

However, it has come to our notice that very recently (**judgment on 31.08.2020**) the Supreme Court of Indian in the case of Mukesh Singh Vs. the State (Narcotic Branch of Dilhi) MANU/SC/0660/2020=AIR 2020 SC 4794 has revisited the above proposition of law and revised and overruled the above proposition.

In the above case, having doubted the justification of the decision in the case of Mohan Lal Vs. State of Punjab, taking the view that in case the investigation is conducted by the police officer who himself is the complainant, the trial shall vitiated and the accused is entitled to acquittal, initially the matter was referred to a larger Bench consisting of three judges. Eventually, said three judge Bench had referred the case to a larger Bench of five judges to consider the matter.

Accordingly, the Bench consisting of five judges has considered and decided the following issue:

'The question which is referred to the larger Bench is, whether in case the investigation is conducted by the informant/police officer who himself is the complainant, the trial is vitiated and in such a situation, the Accused is entitled to acquittal?'

The Supreme Court of India after elaborate discussions on the proposition settled in Bhagwan Singh, Megha Singh, Rajanganm and Mohon Lal cases has revised and overruled the proposition that the criminal proceedings has vitiated if the complainant/informant and the investigator of the case is same person holding that:

"This stage, reference may be made to illustration (e) to section 114 of the Indian Evidence Act. As per the said provision, in law if an official act has been proved to have been done, it shall be presumed to be regularly done. Credit has to be given to public officers in the absence of any proof to the contrary of their not acting with honesty or within limits of their authority. Therefore, merely because the complainant conducted the investigation that would not be sufficient to cast doubt on the entire prosecution version and to hold that the same makes the prosecution version vulnerable. The matter has to be

left to be decided on a case to case basis without any universal generalization."

And

"Therefore, as such, there is no reason to doubt the credibility of the informant and doubt the entire case of the prosecution solely on the ground that the informant has investigated the case. Solely on the basis of some apprehension or the doubts, the entire prosecution version cannot be discarded and the Accused is not to be straightway acquitted unless and until the Accused is able to establish and prove the bias and the prejudice. As held by this Court in the case of Ram Chandra (supra) the question of prejudice or bias has to be established and not inferred. The question of bias will have to be decided on the facts of each case [See vipan Kumar Jain (supra)]. At this stage, it is required to be noted and as observed hereinabove, NDPS Act is a Special Act with the special purpose and with special provisions including section 68 which provides that no officer acting in exercise of powers vested in him under any provision of the NDPS Act or any Rule or order made therunder shall be compelled to say from where he got any information as to the commission of any offence. Therefore,

considering the NDPS Act being a special Act with special procedure to be followed under Chapter V, and as observed hereinabove, there is no specific bar against conducting the investigation by the informant himself and in view of the safeguard provided under the Act itself, namely, Section 58, we are of the opinion that there cannot be any general proposition of law to be laid down that in every case where the informant is the investigator, the trials vitiated and the accused is entitled to acquittal. Similarly, even with respect to offences under the Indian Penal Code, as observed hereinabove, there is no specific bar against the informant/complainant investigating the case. Only in a case where the Accused has been able to establish and prove the bias and/or unfair investigation by the informant-cum-investigator and the case of the prosecution is merely based upon the deposition of the informant-cum-investigator, meaning thereby prosecution does not rely upon other witnesses, more particularly the independent witnesses, in that case, where the complainant himself had conducted the investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on

record. Therefore, as rightly observed by this Court in the case of Bhaskar Ramappa Madar (supra), the matter has to be decided on a case to case basis without any universal generalisation. As rightly held by this court in the case of V. Jayapaul (supra), there is no bar against the informant police officer to investigation the case. As rightly observed, if at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer the question of bias would depend on the facts and circumstances of each case and therefore it is not proper to lay down a broad and unqualified proposition that in every case where the police officer who registered the case by lodging the first information, conducts the investigation that itself had caused prejudice to the Accused and thereby it vitiates the entire prosecution case and the Accused is entitled to acquittal."

The five Judges Bench has concluded and answered the reference as under:

- I. "that the observations of this court in the cases of Bhagwan Singh V. State of Rajasthan MANU/SC/0094/1975: (1976)1 SCC 15; Megha Singh V. State of Haryana MANU/SC/0466/1995:

(1996) 11 SCC 709; and State by Inspector of Police, NIB, Tamil Nadu V. Rajangam MANU/SC/1085/2009:(2010) 15 SCC 369 and the acquittal of the Accused by this Court on the ground that as the informant and the investigator was the same, it has vitiated the trial and the Accused is entitled to acquittal are to be treated to be confined to their own facts. It cannot be said that in the aforesaid decisions, this court laid down any general proposition of law that in each and every case where the informant is the investigator there is a bias caused to the Accused and the entire prosecution case is to be disbelieved and the accused is entitled to acquittal;

II. in a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the Accused is not entitled to acquittal. The matter has to be decided on a

case to case basis. A contrary decision of this court in the case of Mohan Lal v. State of Punjab MANU/SC/0857/2018: (2018) 17 SCC 627 and any other decision taking a contrary view that the informant cannot be good law and they are specifically overruled."

Moreover, it has been held by the Supreme Court of India in the cases of Sunil Kumar Banerjee V. State of West bengal MANU/SC/0456/1980: (1980) 3 SCC 304; State Vs. V. Jayapaul MANU/SC/0256/2004: (2004) 5 SCC 223; S. Jeevanantham V. State MANU/SC/0494/2004: (2004) 5 SCC 230; Bhaskar Ramappa Madar V. State of Karnataka MANU/SC/0495/2009: (2009) 11 SCC 690; Vinod Kumar V. state of Punjab MANU/SC/0068/2015: (2015) 3 SCC 220; and Surender V. State of Haryana MANU/SC/0055/2016: (2016) 4 SCC 617 that the investigating officer and the complainant being the same person, does not vitiate the investigation.

Mr. Shajahan, learned Advocate has tried to impress us that rule 24(1) of Rules,2007 is inconsistent with the provision of Code of Criminal Procedure. In the case of Mukesh Singh, Supreme Court of India has also laid down the ratio as under:

"Now so far as the observations made by this court in para 13 in Mohan lal (supra) that in the nature of reverse burden of proof, the onus will lie on the prosecution to demonstrate on the face of it that the investigation was fair, judicious with no

circumstance that may raise doubt about its veracity, it is to be noted that the presumption under the Act is against the Accused as per sections 35 and 54 of the NDPS Act. Thus, in the cases of reverse burden of proof, the presumption can operate only after the initial burden which exists on the prosecution is satisfied. At this stage, it is required to be noted that the reverse burden does not merely exist in special enactments like the NDPS Act and the Prevention of Corruption Act, but is also a part of the Indian Penal Code section 304B and all such offences under the Penal Code are to be investigated in accordance with the provisions of the Code of Criminal Procedure and consequently the informant can himself investigate the said offences under section 157 Code of Criminal Procedure".

Let us now examine and consider some of the provisions of the Act, 2004 and the Rules, 2007 in the light of the above proposition.

Section 20 and 32 of the Act of 2004 speak as follows respectively:

20.[Power of inquiry or investigation]-(1)

Notwithstanding anything contained in the Code of Criminal Procedure, the offences under this Act and specified in its schedule

shall be [inquired into or investigated] only by the Commission.

(2) The Commission may, by notification in the official Gazette, empower any of its subordinate officer to [inquire into or investigate] the offences mentioned in sub-section (1).

(3) An officer empowered under sub-section (2) shall have the power of an officer-in-charge of a police station in respect of [inquiry or investigation] of an offence.

(4) Notwithstanding the provisions of sub-sections (2) and (3), the Commissioners shall also have the power to [inquire into or investigate] the offences under this Act.

32. Sanction for filing cases, etc.-(1)

Notwithstanding anything contained in the Code of Criminal Procedure or in any other law for the time being in force, no court shall take cognizance of an offence under this Act, without sanction of the Commission in the prescribed manner.

(2) In order to file a case under this Act, the copy of the sanction issued by the Commission and, where applicable, issued by the Government and the Commission shall have to be submitted to the court during the filing of a case.

Rules regarding inquiry and investigation as contemplated in the Rules, 2007 are as follows:

২। (ক) “অনুসন্ধান” অর্থ আইনের তফসিলভুক্ত কোন অপরাধ সংক্রান্ত অভিযোগ প্রাপ্ত বা জ্ঞাত হইবার পর উহা কমিশন কর্তৃক তদন্ত অনুষ্ঠানের জন্য গৃহীত ও লিপিবদ্ধ হইবার পূর্বে উক্ত অভিযোগের প্রাথমিক সত্যতা উদ্ঘাটনের লক্ষ্যে কমিশন বা তৎকর্তৃক ক্ষমতাপ্রাপ্ত কোন ব্যক্তি কর্তৃক পরিচালিত কার্যক্রম;

(ছ) “তদন্ত” অর্থ কোন এজাহার কমিশনে বা কমিশনের কোন জেলা কার্যালয়ে গৃহীত ও তদন্ত রেজিস্টারে অন্তর্ভুক্ত হইবার পর সিনিয়র স্পেশাল জজ আদালতে বিচারার্থে মামলা দায়ের করিবার লক্ষ্যে সাক্ষ্য-প্রমাণাদি সংগ্রহের উদ্দেশ্যে কমিশন বা কমিশন হইতে ক্ষমতাপ্রাপ্ত কোন ব্যক্তি কর্তৃক পরিচালিত কার্যক্রম;

৬। অনুসন্ধানের জন্য অনুমোদন-(১) বিধি ৩ এর উপ-বিধি (৮) ও (৯) এর অধীন সংশ্লিষ্ট কমিশনের নিকট উপস্থাপিত অভিযোগসমূহের বিষয়ে কমিশন সিদ্ধান্ত প্রদান করিবে।

(২) উপ-বিধি (১) এর অধীন কমিশন কর্তৃক যে সকল অভিযোগের বিষয়ে অনুসন্ধানকার্য পরিচালনার জন্য সিদ্ধান্ত গ্রহণ করা হয় সেই সকল অভিযোগ অনুসন্ধানের জন্য কমিশনের নিকট হইতে দায়িত্বপ্রাপ্ত কর্মকর্তার নিকট নির্দেশ আকারে প্রেরণ করিতে হইবে।

১০। অপরাধের তদন্তকার্যক্রম গ্রহণ, সম্পন্ন ও প্রতিবেদন দাখিল।-(১) এই বিধির অধীন-
(খ) কমিশনের নির্দেশপ্রাপ্ত কর্মকর্তা অপরাধ সংঘটনের স্থানীয় অধিক্ষেত্রসম্পন্ন সিনিয়র স্পেশাল জজের এলাকার দায়িত্বপ্রাপ্ত কমিশনের জেলা কার্যালয়ে আইনের তফসিলভুক্ত অপরাধ সংঘটনের তথ্য সংবলিত এজাহার দাখিল করিবেন;

(চ) কমিশন যে কোন সূত্রে প্রাপ্ত তথ্যের ভিত্তিতে যদি এই মর্মে সন্তুষ্ট হয় যে, আইনের তফসিলভুক্ত কোন অপরাধ সংঘটিত হইয়াছে বলিয়া বিশ্বাস করিবার মত যথেষ্ট কারণ রহিয়াছে তাহা হইলে সরাসরি এজাহার দায়েরের জন্য উহার সংশ্লিষ্ট কোন কর্মকর্তাকে নির্দেশ প্রাদন করিতে পারিবে।

৩। এই বিধির অধীনে-(ক) তদন্তকারী কর্মকর্তার নিয়ন্ত্রনকারী কর্মকর্তা সংশ্লিষ্ট তদন্ত কার্যক্রমের তদারককারী কর্মকর্তা হইবেন;

(খ) তদন্তকারী কর্মকর্তা দায়িত্ব প্রাপ্তির পর তদারককারী কর্মকর্তা অনতিবিলম্বে তাহার সহিত আলোচনা করিয়া প্রাথমিক দিক-নির্দেশনা প্রদান করিবেন;

(গ) তদন্তকারী কর্মকর্তা যথাযথভাবে দায়িত্ব পালন করিতেছেন কিনা তদারককারী কর্মকর্তা তাহা সার্বক্ষণিক তদারকি করিবেন এবং সময়ে সময়ে কেস-ডকেট পর্যালোচনা ও

বিশ্লেষণপূর্বক তদন্ত কার্যক্রমের গতি-প্রকৃতি পর্যবেক্ষন করিবেন ও লিখিতভাবে তাহাকে প্রয়োজনীয় দিক-নির্দেশনা প্রদান করিবেন।

১৩। আদালতে অভিযোগনামা (charge sheet) দায়েরে কমিশনের অনুমোদন আবশ্যিক-(১) আইনের তফসিলভুক্ত কোন অপরাধের অভিযোগ তদন্তের পর কোন ব্যক্তির বিরুদ্ধে প্রমাণিত হইলে, বিচার সুপারিশ করিয়া [সিনিয়র স্পেশাল জজ আদালতে] মামলা দায়ের করিবার ক্ষেত্রে কমিশন বা কমিশনের নিকট হইতে ক্ষমতাপ্রাপ্ত কমিশনারের অনুমোদন গ্রহণ আবশ্যিক হইবে।

(২) উপ-বিধি (১) এর অধীন কমিশন বা ক্ষেত্রমত, কমিশনার কর্তৃক প্রদত্ত অনুমোদনের প্রমাণ স্বরূপ অনুমোদনপত্রের একটি কপি আদালতে দাখিল করা না হইলে আদালত অপরাধ বিচারকার্য আমলে গ্রহণ করিবে না।

১৫। মামলা দায়েরের অনুমোদন পদ্ধতি।-(১) তদন্ত প্রতিবেদন (সাক্ষ্য-স্মারক) পরীক্ষা-নিরীক্ষান্তে মামলায় চার্জশীট বা চূড়ান্ত প্রতিবেদন, ক্ষেত্রমত যাহা প্রযোজ্য, দাখিলের অনুমোদনের এখতিয়ার কমিশন বা কমিশনের নিকট হইতে ক্ষমতাপ্রাপ্ত কমিশনারের উপর অর্পিত থাকিবে। [Underlines supplied]

On meticulous examination of the above provisions of the Act of 2004 and Rules, 2007 it will be rather crystal clear that in fact the power of 'inquiry' and 'investigation' has been vested absolutely upon the Commission. An officer of the Commission cannot be an inquiry or investigation officer on his own initiative or sweet will. It is the Commission who may delegate or assign its power to its subordinate officer by a gazette notification to inquire or to investigate into the case [section 20(1), 20(2) and rule 2(ka), 2(chha) and 15]. Rule 10(3) stipules that the controlling officer of the investigating officer will be the supervising officer (তদারকি কর্মকর্তা), who will supervise, monitor and guide the investigating officer in the process of investigation. As such, it is very

difficult to draw an inference straightway that if the informant is assigned also as the investigating officer he must be an interested person and the report submitted by him shall be biased and partial one. Moreover, **rule 10(5) speaks that** before submitting the charge sheet or final report (memo of evidence) as the case may be before the concerned court the investigating officer should have placed it before the Commission together with the case docket for its approval. And **section 32 of the Act of 2004 and rule 13(2) have provided that** no court should take cognizance of an offence against an accused, without the sanction of the Commission, unless and until the Commission approves the charge sheet. In the process of taking decision in submitting investigation report before the court concerned the investigating officer has nothing to do. Entrusting the same official to act as informant and investigator as well does not readily leave space of causing bias.

In view of the above, we have no hesitation to hold that there is no reason whatsoever to doubt the credibility of the informant and the investigation report solely on the ground that the informant himself has investigated the case. Merely on the basis of some unfounded apprehension or the doubts, the entire prosecution version could not be discarded and the accused is not to be straightly discharged or acquitted unless and until the accused is able to establish and prove the bias and the prejudice.

The question of bias or prejudice requires to be established and it cannot be inferred. It would have to be decided on the facts of each case. There could not be any general proposition of law to be laid down that in every case where the informant was the investigator, the trial is vitiated and the accused is entitled to acquittal. The matter has to be decided on a case to case basis without any universal generalisation.

The view thus may be justifiably deduced that merely in the absence of an explicit prohibition in the code or statute barring investigation by the complainant/informant himself, his authority could not be questioned.

Fairness of investigation would always be a question of fact which may be patently unfolded in trial. If the informant himself conducted the investigation such investigation report could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. It is pertinent to be noted that whether the investigation conducted by the concerned informant was fair investigation or not is always to be decided at the time of trial. The concerned informant/investigator will be cited as a witness and he is always subject to cross-examination. The prosecution is not solely bases upon the deposition of the informant/informant-cum-investigator but there may be some independent witnesses and/or even the other police or official

witnesses. The question of failure of justice should be left to the discretion and vigilance of the Courts. As such the formulation of a general Rule that the informant being the investigator the investigation and the trial is vitiated will not be a correct proposition.

In the charge sheet (case relating to writ petition No.5035 of 2020) name of other five persons have been cited as the witnesses other than the Respondent No.6, the informant and the investigator. The said five cited witnesses even are not related with the Commission or the informant-cum-investigator. The petitioner shall have ample opportunity to examine all the witness cited charge sheet including the Respondent No.6 if they are produced before the court for examination at the time of trial.

In other case, writ petition No.6283 of 2020 the prosecution has already examined 17 witnesses, who have been duly cross-examined by the defence. Both the petitioners still shall have the opportunity to agitate the issue of biasness of the informant-investigator, if any in the light of the evidence adduced by the respective party before the trial Court. At this stage the question of prejudice does not arisen at all.

The Commission, a statutory body under the powers conferred formulates its Rules. Merely for the reason that the same official had acted as informant and investigation officer as well it cannot be readily

apprehend that the charge sheet recommending prosecution of the accused suffers from injustice and prejudice and the trial based on such charge sheet is contrary to the notion of fair trial. Accused is not entitled to acquittal merely because informant is investigator. If it is found that the informant officer himself investigated into the arraignment of the scheduled offence of corruption the accused shall have due right to question fairness of investigation in course of trial, by cross-examining him. Thus, question of unfairness of the trial as has been agitated on part of the writ petitioners does not seem to have merit.

It is to be noted that a case initiated on allegation of any scheduled offence of corruption chiefly rests upon documentary evidence on initial appraisal of which FIR is lodged to set the law on motion and accordingly the task of investigation goes on and eventually report recommending prosecution is submitted. In such case, even if the informant and the investigation officer is the same person or official of the Commission there can be no space of recommending concocted arraignment, going beyond the documentary evidence collected. Thus, it may be justifiably deduced that mere fact that the informant and the investigating officer is the same official of the Commission does not readily taint the fairness of trial started on the basis of such investigation report and also there lies no room to apprehend that

trail of the case shall be prejudiced. Accused must get opportunity to diminish the fairness of investigation in trial by cross-examining the Investigation Officer and other witnesses as well.

Having discussed and considered as above we have no hesitation to hold that the arguments advanced by the writ petitioners are misconceived one and not tenable in the eye of law.

And, in view of the above, there is no scope to declare the Criminal Proceedings illegal and without jurisdiction initiated against the respective petitioner.

We find no merit in both the writ petitions.

However, it is our considered view that intending to avoid any controversy in regard to the investigation process it will be just and proper to conduct the investigation of a case applying the provision of sub rule (2) of Rule 24 of the Anti-Corruption Commission Rules, 2007.

With the above observation, the Rule issued in writ petition 5035 of 2020 is discharged and the writ petition No.6283 of 2020 is rejected summarily.

There is no order as to cost.

Md. Mostafizur Rahman, J:

I agree.