

Bench:
Mr. Justice Md. Ruhul Quddus
and
Mr. Justice Bhishmadev Chakraborty

Criminal Appeal No. 5310 of 2008

Md. Hafiz Ibrahim
... Convict-appellant

-Versus-

The State and another
... Respondents

Mr. Rafiqul Huq, Senior Advocate with Mr. Nitai
Roy Chowdhury, Mr. A K M Fakhrul Islam, Mr.
Sabbir Hamza Chowdhury and Mr. Mithun Roy
Chowdhury, Advocates
... for the Appellant

Mr. Mahbubey Alam, Attorney General with Mr.
Moniruzzaman (Rubel), Deputy Attorney General;
Mr. Abul Kalam Azad Khan, Ms. Syeda Sabina
Ahmed, and Ms. Marufa Akhter, Assistant
Attorney Generals
... for the State

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

Judgment on 06.02.2018

Md. Ruhul Quddus, J:

This criminal appeal under section 10 of the Criminal Law Amendment Act (Act XL of 1958) is directed against judgment and order dated 19.06.2008 passed by the Special Judge, Court No.4, Dhaka in Special Case No.23 of 2007 arising out of Gulshan Police Station Case No.35 dated 08.05.2007 corresponding to GR No.36 of 2007 convicting the appellant under section 26 (2) and 27 (1) of the Durneeti Daman Commission Ain (Act V of 2004) and sentencing him under section 26 (2) thereof to suffer rigorous imprisonment for 3 (three) years with a fine of Taka 50 (fifty) lac in default to suffer rigorous imprisonment for another 6 (six) months and further sentencing him under section 27 (1) to suffer rigorous imprisonment for 10 (ten) years with a fine of another 50 (fifty) lac in default to suffer rigorous imprisonment for 1 (one) year more and also confiscating the properties as mentioned in the ordering part thereof. By the same judgment, the learned Judge also convicted and sentenced co-accused Mafruza Sultana, wife of the appellant.

The Anti-Corruption Commission (ACC) issued a notice dated 18.02.2007 under the signature of its Secretary asking the accused-appellant to furnish statement of his wealth and that of

his family members within 72 hours from receipt thereof. In response thereto he furnished an statement of wealth to ACC on 25.02.2007 showing his property movable and immovable worth Taka 6,80,28,442/=. After completion of preliminary inquiry, the Inquiring Officer Md. Ibrahim, an Assistant Director of ACC lodged a first information report (FIR) with Gulshan Police Station, Dhaka on 08.05.2007 under sections 26 (2) and 27(1) of the Act V of 2004 read with sections 109 of the Penal Code, 5(2) of the Prevention of Corruption Act (Act II of 1947), and rule 15 Gha (5) of the Anti-Corruption Commission Rules, 2007 (Rules, 2007) against the appellant and his wife Mafruza Sultana bringing allegation of furnishing false information, concealment of wealth in the statement and holding properties worth Taka 21,91,42,880/= in total, which were disproportionate to their known sources of income. Out of the said amount property worth Taka 10,03,43,269/= [6,76,94,771/= (movable) + 3,26,52,498/= (immovable)] was fallen on the part of accused Hafiz Ibrahim. The material particulars of the allegations against each accused were specifically described against chart A, B, C and D of the FIR.

The Investigating Officer (IO) Syed Tahsinul Huque, another Assistant Director of ACC was assigned with

investigation of the case. Accordingly, he investigated the case and submitted a charge sheet on 02.10.2007 against the two FIR named accused including the appellant under sections 26 (2) and 27 (1) of the Act V of 2004, 109 of the Penal Code, 5(2) of the Act II of 1947, and rule 15 Gha (5) of the Rules, 2007. It was prima-facie found in the charge sheet that the accused were holding disproportionate property worth Taka 20,19,85,559/= in total out of which property worth Taka 10,30,58,217 [7,53,73,712/= (movable) + 2,76,84,505/= (immovable)] was fallen on the shoulder of accused Hafiz Ibrahim. Description of as many as twenty-three (23) items of immovable and thirty-three (33) items of movable properties were also given in the charge sheet in support of the allegation.

The case being ready for trial was sent to the Senior Metropolitan Special Judge, Dhaka, who took cognizance of offence against the accused by order dated 08.10.2007 and transferred the case to the Special Judge, Court No.4, Dhaka for trial. On transfer, the case was renumbered and the Special Judge, Court No.4 by order dated 22.11.2007 framed charge against them under sections 26 (2) and 27 (1) of the Act V of 2004 and proceeded with trial. The charge was read over to the appellant, to which he pleaded not guilty and claimed justice.

PW 1 Md. Ibrahim, the informant stated that by a letter containing Memo No. DuDaK/52/2007 (exhibit-1) he was assigned with the initial inquiry. In conducting the inquiry he perused the wealth statement furnished by accused Hafiz Ibrahim. During 2001-2006 he was a Member of Parliament, while he acquired properties worth Taka 3,26,52,498/- and his wife Mafruza Sultana acquired that of Taka 3,63,23,140/-. Their total properties came to Taka 6,89,75,738/-, out of which the properties worth Taka 3,57,22,265/- was shown less. The appellant Hafiz Ibrahim was owning Taka 6,76,94,771/- and his wife Mafruza Sultana was owning Taka 8,24,72,471/- against different bank accounts. The total amount of movable property against both of them thus stood Taka 15,01,67,242/-. PW1 further stated that the accused persons whitened black money amounting to Taka 11,82,50,000/- (4,30,00,000+7,52,50,000) under SRO No. 200/Ain/05. In last three years they paid income tax of Taka 18,40,094/- in total. According to the inquiry, they possessed total property worth Taka 33,92,32,974/- both legal and illegal. He proved some documents including the *ejahar*, notice served upon the accused and wealth statement furnished by him as exhibits 3, 4 and 5 respectively.

In cross-examination PW1 stated that the then Secretary of ACC served the notice under section 26 of the Act V of 2004, but no notice was served upon accused No. 2 (Mafruza Sultana). In course of inquiry he had perused the tax file of the accused persons and collected information therefrom. He, however, could not reply from which year they started paying income tax, but stated that in the year 1989 accused Hafiz Ibrahim opened his income tax file showing wealth of Taka 2,51,60,600/-. In the tax year 2003-2004 he had more money in his tax file. He (PW 1) denied the defence suggestion that the chart of immovable property as shown and described in the FIR was baseless and asserted that according to assessment made by the Engineers, he mentioned it therein. He further stated that it was not known to him at what points of time the savings, current and FDR accounts as mentioned in chart B were opened. He could not say whether the car as mentioned against item No. 26 was also mentioned in the income tax return of 2006-2007 or not. He denied the suggestion that the value assessed against items No. 14 and 15 was baseless and that the property shown against items No. 14 and 16 were actually one property and also could not say whether that property was mentioned in the tax return of 2005-2006. He further disclosed

his ignorance whether a college was established on the property mentioned against items No. 3-10. He denied the defence suggestion that the property mentioned against item No. 19 did not belong to Hafiz Ibrahim and disclosed his ignorance about payment of duly assessed income tax on the properties mentioned against items No.17-23. Lastly he stated that the accused in his wealth statement showed his property worth Taka 6,80,28,442/-. In response to a query made by the Court, PW 1 stated that the money as mentioned in his wealth statement was his legal money and there was no case against him initiated by the National Board of Revenue (NBR). On recall, PW1 could not say whether any depreciation was taken into consideration in assessment of the buildings.

PW 2 Md. Shohrab Hossain, a Sub-Inspector of Police who was posted at Gulshan police station at the material time stated that he had received the *ejahar* on 08.05.2007 at about 21.45 hours and recorded case. Hafiz Ibrahim and his wife Mafruza were made accused there. He proved the FIR form and his signatures there as exhibits-6, 6/1 and 6/2 respectively. In cross-examination he stated that the informant did not give him any materials or seizure lists except the *ejahar*.

PW 3 Jahanara Parveen, the then Director of ACC stated that she received the wealth statement furnished by Hafiz Ibrahim. She proved the wealth statement and his signature there as exhibits-5 and 5/1 respectively.

PW 4 Safayet Ullah, caretaker to the house of the appellant stated that five police personnel came to their house in search of the accused on 19.02.2007. Since he was not available, another employee of the house named Salauddin received a notice, wherein he (PW 4) put his signature as a witness.

PW 5 Sekender Hayat Rezvi, the then Upazila Nirbahi Officer (UNO) of Borhanuddin Upazila stated that on 12.03.2007 at about 11.45 am Taka 1,76,000/- was recovered from Kurralia House to which he was made a seizure list witness. He proved the seizure list and his signature there as exhibits-7 and 7/1 respectively and also proved the bundles of currency notes as material exhibits I-III.

In cross-examination he stated that office of an NGO named SAWLA was housed in the said building. Under telephonic instruction of the Deputy Commissioner he went to Kurralia House. They got the house under lock and key. The local UP Chairman was having the key, by which they opened

the house. He further stated that the money was found in an Almirah, but no gold was there.

PW 6 Md. Salauddin stated that at the material time he was employed to the house of the Member of Parliament (meaning the appellant). He received a notice putting his signature there on 19.02.2007. The messenger of the notice told him to hand it over to his Madam (meaning accused 2 Mafruza Sultana). He proved the said notice and his signature there.

PW 7 Sharif Md. Sajwar Hossain stated that at the material time he was posted to Borhanuddin Police Station as a Sub-Inspector. Under instruction of Task Force he raided Kurralia House at about 11.00 am on 12.03.2007 and recovered Taka 1,76,000/- from an Almirah. He seized the money under a seizure list.

PW 8 Abduz Zaher, Principal Officer of National Bank Ltd, Dilkhusha Branch stated that on telephonic instruction its Branch Manager Maskur Ahmed sent necessary papers and documents including some debit vouchers, FDR account opening forms, credit voucher of Hafiz Ibrahim, his wife Mafruza and Alauddin to the Office of ACC under Memo Nos. 1986 and 1971 both dated 14.6.2007. The ACC personnel seized those documents on 17.06.2007 and gave it back in his

jimma. He proves the seizure list, jimmanama and his signatures there as exhibits 8, 9, 8/1 and 9/1 respectively and further proved the seized documents as material exhibits IV-VIII/8. He then gave detail description of those documents and stated that the FDR accounts were in the names of Alauddin and Sultana jointly.

PW 9 Jashim Uddin, a Junior Officer of National Bank Ltd, Dilkhusha Branch stated that he had supplied some papers and documents to ACC personnel on 17.06.2007, which they seized under a seizure list and took his signature. The FDR accounts holders were Alauddin and Sultana.

PW 10 Sayeda Sajed, General Manager (Branch), HSBC Bank, Dhanmandi stated that on 10.06.2007 she supplied some documents to the IO at the office of ACC, which he seized under a seizure list. She then gave detail description of the seized documents and proved the same as material exhibits VIII-VIII/5. In cross-examination she stated that up to 18.06.2007 the balance amount against SB Account No. 005-056841-001 was Taka 3,60,443.75 with interest.

PW 11 Ehteshamul Hoque, Customer Service Manager of the same branch of HSBC Bank deposed in support of seizure of the documents as stated by PW 10. PW 12

Shamnunur Rahman, Customer Service Officer of the same branch of HSBC Bank was tendered and the defence declined to cross-examine him.

PW13 Md. Nurul Islam, First Assistant Vice-President of Jamuna Bank Ltd, Dilkhusha Branch stated that according to a requisition of ACC, he along with one of his officers went to its office and furnished some documents relating to SB Account No. 0006-0310002621 dated 09.05.2002, which the IO seized under a seizure list and gave back in his jimma. He then gave detail description of the documents and proved the jimmanama and his signature there and also proved the seized documents as material exhibits IX–IX/2. In cross-examination he stated that balance in the said account was Taka 12,93,906/- including interest as on 18.06.2007.

PW 14 A K M Zahiruddin Iqbal Chowdhury, an Executive Officer at Jamuna Bank Ltd, Dilkhusha Branch stated that he accompanied the First Assistant Vice-President (meaning PW 13), when the documents as stated by him were seized by the IO on 18.06.2007.

PW15 Md. Badrul Alam, Sub-Divisional Engineer of PWD, Barisal stated that the IO had seized some documents (in photocopies) from him under a seizure list on 08.08.2007. He

proved the seizure list and his signature there as exhibits-14 and 14/1 respectively and also the seized documents as material exhibits X-X/ka. He further stated that he was a Member of the Committee constituted for assessment of a five and half storied building. Construction cost of the building including the households was Taka 1,56,49,375/-.

In cross-examination he stated that the house in question was constructed sometime after 2004 and they made the assessment according to the schedule of 2006. He further stated that the building did not belong to accused Hafiz Ibrahim.

PW 16 Md. Masud Parvez, Sub-Assistant Engineer of PWD, Gaurnadi, Barisal stated that the IO seized some documents from him on 08.08.2007 under a seizure list and took his signature there. He then deposed in support of assessment of the building in similar line of PW 15.

PW 17 Md. Mujibar Rahman, Senior Executive Officer, Dutch Bangla Bank Ltd, Simrail Branch, Narayanganj stated that he had furnished the IO documents relating to some FDR and joint accounts maintained by the accused on 19.06.2007. The IO seized those documents under a seizure list and gave it back in his jimma. He gave detail description of the documents and proved his signature on the jimmanama and also proved the

seized documents as material exhibits XI-XI/15. In cross-examination he stated that there was no money against the inquired FDR account on 08.05.2007, though it was opened with Taka one crore.

PW 18 Kazi Ashikuzzaman, an Assistant Officer of the same Branch of Dutch Bangla Bank stated that he had accompanied PW17 at the time of seizure of the documents as stated by him.

PW 19 Md. Waliur Rahman, Senior Principal Officer, Exim Bank Ltd, Motijheel Branch stated that he had furnished some documents to the IO at the office of ACC on 19.06.2007 on receiving a prior notice. The IO seized those documents under a seizure list and gave back in his jimma. He proved the seizure list, jimmanama and his signature there as exhibits-17, 18 and 18/1 respectively. Then he gave detail description of the seized documents and proved the same as material exhibits XII-XII/4. In cross-examination he stated that balance against the account was Taka 11,72,520.06 including interest on 08.05.2007.

PW 20 Md. Mobassher Hasan, an Officer of Exim Bank, Motijheel Branch who accompanied PW19 at the time of

seizure of the documents as stated by him deposed in support of the seizure.

PW 21 Md. Abdul Karim, a Constable of ACC at the very beginning of his evidence was tendered. In brief cross-examination made by the defence he stated that the IO was an officer higher to him.

PW 22 Gazi Md. Amir Hossain, Assistant Manager of Rupali Bank, Dilkhusha Branch stated that he had furnished some documents to the IO at the office of ACC on 19.06.2007, which he seized under a seizure list and gave back in his jimma. The documents were related to an account of the accused. He then gave description of the seized documents and proved the jimmanama and his signature there as exhibits-20 and 20/1 respectively and also proved the seized documents as material exhibits VIII-VIII/2. In cross-examination he stated that there was Taka 10,65,062.32 including interest in the said account on 08.05.2007.

PW 23 M A Rab, Principal Officer of Rupali Bank, Local Branch stated in similar line of PW 22 as he had accompanied him at the time of seizure of the documents. PW 24 Hasan Ahmed, another officer of Rupali Bank was tendered and the defence declined to cross-examine him.

PW 25 Md. Shoeb Mahmud, an Officer of Dutch Bangla Bank Ltd, Mohakhali Branch stated that he had furnished some documents in respect of four FDR accounts maintained by accused Mafruza Sultana to the IO on 20.06.2007. The IO seized the documents under a seizure list and gave back his jimma. He gave detail description of the documents and proved the jimnana and his signature there as exhibits-22 and 22/1 respectively and further proved the seized documents as material exhibits XIV-XIV/7.

PW 26 Ekhlash Uddin Ahmed, Manager of Rupali Bank, Gulshan Branch stated that under requisition of the IO, he had furnished him some documents relating to bank accounts maintained by the accused on 21.06.2007. The IO seized the documents under a seizure list and gave it back his jimma. He proved the seizure list, jimmanama and his signatures there as exhibits 23, 24, 23/1 and 24/1 respectively and further proved the seized documents as materials exhibits XV-XV/4.

PW 27 Chhobi Rani Das, another Officer of Rupali Bank, Gulshan Branch who accompanied PW 26 at the time of seizure of the above mentioned documents deposed in support of the seizure.

PW 28 Fahmida Sarmin, Central Manager, Standard Bank, Gulshan Branch stated that she had furnished some documents relating to account No. 9001 and FDR account Nos. 79001-3 maintained by accused Hafiz Ibrahim to the IO on 19.06.2007. He seized the documents under a seizure list and gave it back in her jimma. She proved the seizure list, jimmanama and her signatures there as exhibits-25, 26, 25/1 and 26/1 respectively and also proved the seized documents as material exhibits XVI-XVI/33.

PW 29 Md. Riazuddin, an Officer of Dhaka Bank who was posted at Bangshal Branch at the material time stated that he along with one of his colleagues went to ACC office on 20.06.2007 and handed over some documents relating to an account maintained by accused Hafiz Ibrahim to the IO. He seized the documents under a seizure list, took his signature and gave it back in his jimma. He proved the seizure list, jimmanama and his signatures there as exhibits-27, 28, 27/1 and 28/1 respectively and also proved the seized documents as material exhibits XVII-XVII/1.

PW 30 Zobayed M Ashraf, another Officer of the same branch of Dhaka Bank, who accompanied PW 29 at the time of

seizure of the above mentioned documents deposed in support of the seizure.

PW 31 Md. Akter Hossain, Senior Principal Officer of National Bank, Mohakhali Branch stated that under requisition of the IO he had furnished him some documents relating to a joint account maintained by the accused on 20.06.2007. He seized the documents under a seizure list taking his (PW 31's) signature there and gave it back in his jimma. He proved the seizure list, jimmanama and his signatures there as exhibits- 29, 30, 29/1 and 30/1 respectively and also proved the seized documents as material exhibits XVIII-XVIII/3.

In cross-examination he stated that the joint account was opened on 03.10.2012 without mentioning specific share of the account holders.

PW 32 Faruk Ahmed, another Officer of the same branch of National Bank who accompanied PW 31 at the time of seizure of the documents deposed in support of the seizure in brief.

PW 33 Sanjida Ahmed, Assistant Officer of Dutch Bangla Bank Ltd, Mohakhali Branch stated that she accompanied Mr. Shoeb Mahmud (PW 25) at the time of

seizure of the documents as stated in his evidence. She deposed in support of the seizure in brief.

PW 34 Ali Ahmed Dewan, Executive Vice-President of Dutch Bangla Bank who was posted at Gulshan Branch at the material time stated that he had furnished some documents relating to an account maintained by accused Mafruza Sultana to the IO on 20.06.2007. He seized the documents under a seizure list taking his signature there and gave it back in his jimma. He proved the seizure list, jimmanama and his signatures there as exhibits-32, 33, 32/1 and 33/1 respectively and also proved the seized documents as material exhibits: XIX-XIX/8. In cross-examination he stated that the accused Hafiz Ibrahim had no connection with the seized documents.

PW 35 Md. Shamsuzzaman, Senior Executive Officer of Dutch Bangla Bank who was posted at Gulshan Branch at the material time stated that he had accompanied Ali Ahmed Dewan (PW 34) at the time of seizure of the above mentioned documents.

PW 36 Mohammad Zakir Hossain, an Assistant Vice-President of Premier Bank, Mohakhali Branch stated that under requisition of the IO he had furnished him some documents relating to an account maintained by accused Mafruza Sultana

on 21.06.2007. He seized the documents under a seizure list and gave it back in his jimma. He proved the jimmanama and his signature there as exhibits-34 and 34/1 respectively and also proved the seized documents as material exhibits XX-XX/8. In cross-examination he stated that accused Hafiz Ibrahim had no connection with the seized documents.

PW 37 Md. Morshed Alam, Executive Officer of Premier Bank, Mohakhali Branch who accompanied Md. Zakir Hossain (PW 36) at the time of seizure of the above mentioned documents, briefly deposed in support of the seizure.

PW 38 Mr. Nizam Uddin Khan, Second Officer, Krishi Bank, Borhanuddin Branch at Bhola stated that he had furnished some documents relating to a saving account maintained by accused Hafiz Ibrahim to the IO on 24.06.2007. He seized the documents under a seizure list taking his signature there and gave it back in his jimma. He proved the seizure list, jimmanama and his signatures there as exhibits-36, 36/1 and 36 Ka/1 respectively and also proved the seized documents as material exhibits XXI-XXI/3.

In cross-examination he stated that there was no signature and seal, even name of the seizing officer on the seizure list. The jimmanama was made on the same paper,

wherein it was not mentioned from whom the documents were taken in such jimma.

PW 39 Md. Delwar Hossain, an Assistant Sub-Inspector of ACC briefly deposed in support of the seizure of the documents as stated in the evidence of Md. Nizam Uddin (PW 38).

PW 40 Parimal Chakrabortty, a Deed Writer of Sadar Sub-Registrar Office at Cox's Bazar stated that he had supplied certified copy of a lease deed being No. 253 dated 26.01.2004 to the IO. He did it under instruction of the Sub-Registrar. The IO seized the certified copy under a seizure list taking his signature there. He proved the seizure list and his signature as exhibits-37 and 37/1 respectively.

In cross-examination he stated that according to the lease deed consideration money against the transferred land was Taka 30,68,935.25. He further stated that the certified copy was given on blank paper without any stamp and court fees.

PW 41 AK Monir Uddin Ahmead, Principal Officer of Sonali Bank, Daulatkhan Branch at Bhola stated that under instruction of the IO he had supplied him some documents relating to an FDR account maintained by accused Hafiz Ibrahim on 25.06.2007. The IO seized the documents under a

seizure list taking his signature there and gave it back in his jimma. He proved the seizure list, jimmanama and his signatures there as exhibits 38, 39, 38/1 and 39/1 respectively and also proved the seized documents as material exhibits XXII-XXII/8.

PW 42 Md. Azizul Haque, Senior Officer and Manager of Sonali Bank, Daulatkhan Branch at Bhola stated that under a requisition of the IO he had furnished him some documents relating to an FDR account maintained by accused Hafiz Ibrahim on 25.06.2007. The IO seized the documents under a seizure list taking his signature there and gave it back in his jimma. He proved the seizure list, jimmanama and his signatures there as exhibits 40, 41, 40/1 and 41/1 respectively. He also proved the seized documents as material exhibits XXIII-XXIII/3.

In cross-examination he stated that the account was maintained jointly in the names of accused Hafiz Ibrahim and one Abdul Mannan, but without mentioning specific share against each of the account holder. If specific share was not mentioned, it would be treated to be 50% against each account holder.

PW 43 Md. Manowar Hossain, an Officer of First Security Bank stated that at the material time he was posted to Gulshan Branch. Under requisition of the IO he had furnished him some documents relating to a saving account maintained by accused Mafruza Sultana on 24.06.2007. The IO seized the documents under a seizure list, took his signature there and gave it back in his jimma. He proved the seizure list, jimmanama and his signatures there as exhibits 42, 43, 42/1 and 43/1 respectively and also proved the seized documents as material exhibits XXIV-XXIV/10.

PW 44 Md. Ziaur Rahman, another Officer of the First Security Bank, Gulshan Branch who accompanied PW43 at the time of seizure of the documents as stated in his evidence deposited in brief in support of the seizure.

PW 45 Md. Abul Kalam Azad, Senior Principal Officer of Rupali Bank, Bus Stand Branch in Barisal stated that under requisition of the IO he had furnished him some documents relating to a savings account of Mafruza Sultana on 25.06.2007. The IO seized the documents under a seizure list, took his signature there and gave it back in his jimma. He proved the seizure list, jimmanama and his signatures there as exhibits 44, 45, 44/1 and 45/1 respectively and also proved the seized

documents as material exhibits XXV-XXV/2. On recall he stated that the IO had also seized some documents relating to an FDR account maintained by accused Mafruza Sultana taking his signature on a seizure list. He proved his signature. He further stated that up till 25.06.2007 Taka 62,830/- was deposited against the FDR account and Taka 2,48,427/- was deposited against the savings account. His colleague A Khaleque Khan also supplied the IO some documents relating to a current account maintained by accused Hafiz Ibrahim, which was also seized under another seizure list taking his signature there. He proved the said seizure list and his signature as exhibits-81 and 81/2 respectively.

PW 46 M A Khaleque, Manager of Rupali Bank Mohajan Patty Branch at Bhola stated that the IO had seized some documents relating to an account maintained by accused Mafruza Sultana under a seizure list taking his signature there. He was present at the time of seizure of the documents as stated in the evidence of PW 45 Md. Abul Kalam Azad. He further stated that transaction against the current account was stopped since 19.09.2001. At that time, balance amount against the account was Taka 38,760/- only. PW 47 Md. Safir Uddin, Assistant Manager of Rupali Bank, Sadar Road Branch, Barisal

was tendered and the defence declined to cross-examine him. However, on recall he stated that he was present at the time of seizure of documents as stated in the evidence of PW 45 Md. Abul Kalam Azad.

PW 48 Md. Shah Alam, Manager of Rupali Bank, Kutuba Branch at Bhola stated that on requisition of the IO, he had furnished him some documents relating to a savings account of the accused. The IO seized the documents under a seizure list taking his signature there and gave it back in his jimma. He proved the seizure list, jimmanama and his signatures as exhibits-48, 49, 48/1 and 49/1 respectively and also proved the seized documents as materials exhibits XXVII-XXVII/8.

In cross-examination he stated that the above mentioned savings account was a joint account and no specific share of the account holders was mentioned there. Account No. 1433 was maintained by an NGO named SAWLA and Taka 30,51,552/- was deposited there.

PW 49 Md. Abul Bashir Chowdhury, Head Assistant of Bhola Sub-Registry Office stated that under instruction of higher authority he had supplied certified copies of eighteen documents to the IO on 27.06.2007. The IO seized the certified

copies under a seizure list taking his signature there. He proved the seizure list and his signature as exhibits-50 and 50/1 respectively and also proved the certified copies seized on 27.06.2007 as material exhibits XXVIII-XXVIII/17. Subsequently he had supplied deed No. 3753 dated 25.10.1994, which the IO seized under another seizure list taking his signature on 09.08.2007. He proved the said seizure list and his signature as exhibits-51 and 51/1 respectively and also proved the deed as material exhibit-XXIX. He further stated that Mrs. Shahina Yasmin, wife of Giash Uddin Al-Mamun was the lessee in that deed. He then gave description of the seized documents.

PW 50 Harun-ar-Rashid, a peon to Charfashion Sub-Registry Office stated that at the material time he was posted at Lalmohan. He went to the office of ACC on 27.06.2007 accompanying PW 49 Abul Basar Chowdhury and was present there at the time of seizure of the 18 certified copies. He was also made a seizure list witness.

PW 51 Anisur Rahman, Head Assistant of District Sub-Registry Office in Barisal stated that he had furnished certified copies of five deeds (as mentioned in his deposition) to the IO. He seized the said deeds under a seizure list and took his

signature there. He proved the seizure list and his signature as exhibits-52 and 52/1 respectively and also proved the seized documents as material exhibits XXX-XXX/4.

In cross-examination he stated that those documents were not written on stamp or curtis paper and no revenue stamp was attached thereon. In all the five documents accused Mafruza Sultana was the lessee.

PW 52 Md. Faruk Hossain, an MLSS of Sadar Sub-Registry Office in Barisal stated that he was present at the time of seizure of the deeds as stated in the evidence of PW 51 Anisur Rahman.

PW 53 Md. Shah Alam Mridha, Sub-Registrar of Mohammadpur Sub-Registry Office, Dhaka stated that under instruction of the IO he had supplied him certified copy of deed No. 9454 dated 05.12.2005 on 08.07.2007. Accused Hafiz Ibrahim was shown lessee in the said deed. The IO seized the deed under a seizure list and took his signature there. He proved the seizure list and his signature as exhibits-53 and 53/1 respectively and also proved the seized deed as material exhibit-XXXI.

In cross-examination he stated that it was a lease deed, where the lessor was Mahbubul Islam, Senior Assistant

Secretary, PWD representing the Hon'ble President of Bangladesh and accused Hafiz Ibrahim on behalf of a daily news paper named Dainik Khabor Patra was the leasee.

PW 54 Mahbubur Rahman Khan, an Office Assistant of Mohammadpur Sub-Registry Office stated that he was present at the time of seizure of the lease deed as stated in the evidence of PW 53 Md. Shah Alam Mridha. PW 55 Dev Kumar Sarker, a deed writer of Mohammadpur Sub-Registry Office was tendered and the defence declined to cross-examine him.

PW 56 Md. Faruk, an Office Assistant to Keranigonj Sub-Registry Office stated that at the material time he was posted at Gulshan. The Sub-Registrar had supplied certified copies of six documents to the IO in his presence on 08.07.2007. The IO seized the documents under a seizure list and took his signature there. He proved the seizure list and his signature as exhibits-54 and 54/1 respectively. The IO also seized the volume kept in the Sub-Registry Office and gave it back in his jimma. As the signature of Sub-Registrar Yakub was familiar to him, he proved his signature on the jimmanama as exhibit 54/2 and also proved the seized certified copies and volume as material exhibits XXXII-XXXII/5 and the letter of

authorization given by the Sub-Registrar in his favour as exhibit-55.

PW 57 Md. Sirajul Islam, another seizure list witness and a deed writer of Gulshan Sub-Registry Office deposed in support of the seizure as stated in the evidence of PW 56 Md. Faruk.

In cross-examination he stated that documents were handwritten and on plain paper. There were no court fees or revenue stamp attached.

PW 58 Nuruddin Zahangir stated that at the material time he was posted at the Income Tax Office, Salary Circle, Shegunbagicha. Under requisition of the IO he had supplied him documents relating to the income tax of accused Mafruza Sultana on 16.07.2007. The IO seized the documents under a seizure list and took his signature there and also gave it back in his jimma. The seizure was done in presence of Golam Martuja (PW 59) and Delwar Hossain. He proved the seizure list, jimmanama and his signatures as exhibits-56, 57, 56/1 and 57/1 respectively and also proved the seized documents as material exhibits XXXIII-XXXIII/3.

PW 59 S M Golam Martuja, an Upper Division Clerk, who was posted to the same office deposed in support of the

seizure of the documents as stated in the evidence of PW 58 Nuruddin Zahangir.

PW 60 Shafiul Azam, an Assistant Commissioner of Tax Circle-8, Zone-1 stated that under requisition of the IO he had supplied him documents relating to income tax of accused Hafiz Ibrahim on 31.07.2007, which the IO seized under a seizure list taking his signature there and gave it back in his jimma. The seizure was done in presence of Younus Mian and Delwar Hossain, two employees of his office. He proved the seizure list, jimmanama and his signatures as exhibits-58, 59, 58/1 and 59/1 respectively and also proved the seized documents as material exhibits XXXIV-XXXIV/1.

In cross-examination he stated that the accused had been paying income tax from the tax year 1989-90 and he owned properties worth Taka 2,51,67,800/- on 30.06.1990. He then gave the year wise description of his properties, cash money and company share as shown in his tax returns submitted in different tax years. He further stated that in the return filed for the year ended on 30.06.1996 his investment against share was shown Taka 2,44,36,000/-. In his tax return submitted for the year ended on 30.06.2004 he had mentioned some immovable properties including a three storied building (174 square meter

each floor) at Borhanuddin Upazila and another three storied building (118.5 square meter each floor) constructed on 4 ¼ decimals of land at Daulatkhan Upazila. PW 60 then stated that in the tax return submitted for the year ended on 30.06.2006 he (Hafiz Ibrahim) had mentioned his total net properties worth Taka 6,80,09,442/- and also affirmed that he had paid tax of Taka 30,00,000/- (thirty lac) for whitening Taka 4,00,00,000/= (four crore), but could not say whether the said four crore was in bank or cash in hand.

PW 61 Raziul Hasan, Manager of Customer Service, BRAC Bank, Motijheel Branch stated that according to a requisition of the IO he had supplied him some documents relating to some saving accounts maintained by accused Hafiz Ibrahim on 08.08.2007. The IO seized the documents and took his signature on the seizure list. He proved the said seizure list and his signature as exhibits-60 and 60/1 respectively and also proved the seized documents as material exhibits XXXV series.

In cross-examination he stated that an FDR being No. 1505300314903001 was opened on 06.02.2007 with Taka 50,00,000/-. The bank used to pay the tax accrued on the interest. However, the amount after adding interest therewith was raised to Taka 67,14,142/- on 08.08.2007.

PW 62 Sayem Kabir, another Officer of the same branch of BRAC Bank stated that he was present at the time of seizure of the documents as stated in the evidence of PW 61 Raziul Hasan. PW 63 ARM Akram Hossain, an Officer of BRAC Bank was tendered and the defense declined to cross-examine him.

PW 64 ASM Wazed Hossain stated that he was an Inspector to BRTA, Dhaka Circle at the material time. On a requisition of the IO, he had supplied him documents relating to some motor vehicles owned by the accused on 12.08.2007. The IO seized those documents under a seizure list, took his signature there and gave it back in his jimma. He proved the seizure list, jimmanama and his signatures as exhibits-62, 63, 62/1 and 63/1 respectively and also proved the seized documents as material exhibits XXXVI-XXXVI/5.

In cross-examination he stated that the vehicle having registration number: Dhaka Metro Gha 11-5372 was owned by accused Hafiz Ibrahim. This vehicle was registered on 13.06.2007. Registration of another vehicle, namely, Dhaka Metro-Gha-11-8210 was in the name of accused Mafruza Sultana. Subsequently a general diary was recorded with Gulshan police station stating that the blue book of that vehicle

was lost, where the name of *Dainik Khabar Patra* was mentioned as its owner.

PW 65 Md. Munir Hossain, an Office Assistant to BRTA stated that he was present at the time of seizure of the documents as stated in the evidence of PW 64 ASM Wazed Hossain.

PW 66 Abul Kashem, Sub-Divisional Engineer of PWD at Bhola stated that under instruction of higher authority he had submitted measurement reports against five houses to the IO on 10.07.2007. The IO seized the reports under a seizure list taking his signature there. He proved the seizure list and his signature as exhibits-64 and 64/1 respectively and also proved the seized reports as material exhibits XXXVII-XXXVII/5. He then gave description of the five houses.

In cross-examination he stated that during his tenure of service of 34 years he did not prepare any more measurement report. The report was not stamped with any round seal or that of any other officer. Those were prepared under instruction of the Special Task Force, Dhaka. He further stated that some of the local people informed them that the building at Daulatkhan (item No.2 of the list of immovable properties given in the charge sheet) was built in 1995-96. At the time of preparation

of the relevant report, no inmate was present at its 3rd floor, but on 4th floor a tower of Grameen Phone was installed. According to 11th edition of the schedule of 2006 assessment of construction cost of this house was done. In the same breath he stated that actually according to 8th edition, the cost was assessed. He further stated that in preparation of assessment report, depreciation of value was not reduced. Generally in construction by a private individual, construction cost would reduce by 18%. Then he stated about difference of cost of construction materials under different schedules. He denied the defence suggestion that despite construction of a boundary wall was completed in 2004 he being afraid of Task Force assessed the cost according to the schedule of 2006. In respect of another three storied building at Borhanuddin, he stated that according to the schedule of 2006 he assessed the cost of the said house. If the house was built within 03.10.2006, it would be assessed under the schedule of 2006, 11th edition and if the house was built in 2004-05, its assessment would be made according to the 10th edition. He denied the defence suggestion that under the pressure of Task Force he had furnished a baseless report.

PW 67 Md. Sirajum Muneer, Sub-Assistant Engineer of PWD at Bhola stated that under instruction of the Executive

Engineer Meer Wakil Ahmed he along with three other officers took the measurement of a two storied building (Kurralia House) at Borhanuddin, Sonali Bank Building at Daulatkhan Bazar, a Semi-pucca Building (Shyawla) and boundary wall at Borhanuddin, Krishi Bank Building at Manika Bazar and a two storied building and prepared an assessment report. At that time they were accompanied by the informant as well as the members of Task Force. However, after preparation of the report they submitted it to the Executive Engineer. The IO seized the said report on 10.07.2007 and took his signature on the seizure list. He proved his signature as exhibit-64/2. Then he gave description of the construction cost of the five buildings under his report.

In cross-examination he stated that he was serving for four years. During his short tenure, he did not assess any other building. A Major of the Joint Task Force and 3/4 others were present at the time of assessment. He made the assessment according to the schedule of 2006. At that time no representative of the building owner was present. However, it was reported by the local people that those buildings were constructed recently. He further stated that there was a mark of

fluid on his report, but could not say anything about use of the fluid.

PW 68 Meer Wakil Ahmed, Executive Engineer of PWD stated that at the material time he was posted at Bhola. His subordinate officers assessed Kurralia House and submitted a report on 12.03.2007. He put his signature there.

In cross-examination he stated that he handed over the charge of office at Bhola on the same day i.e. 12.03.2007. He himself did not go for assessment or preparation of the report.

PW 69 Fayez Ahmed, the then UNO of Daulatkhan Upazila stated that on a requisition of ACC, he had employed a surveyor named Mizanur Rahman to prepare an sketch map of a building belonged to accused Hafiz Ibrahim. Accordingly, he (Mizanur Rahman) prepared the sketch map and submitted it to him. He proved the forwarding letter, his signature there, sketch map and khatian of the land as exhibits- 66, 66/1, 67 and 68 respectively.

In cross-examination he stated that the forwarding letter of the report did not contain his signature or seal of any Government office. He denied the defence suggestion that the Surveyor Mizanur Rahman did not prepare any sketch map or that there was cut mark on the plot number of the map.

PW 70 Md. Mizanur Rahman, Surveyer of the Land Office at Daulatkhan deposed in support of preparation of the sketch map under instruction of PW 69 Fayez Ahmed. He also proved his signature on the sketch map. In response to a query made by the Court he stated that he was trained in 2001 by Bangladesh Surveyor Institute at Comilla. He, however, could not reply, centering which point he took measurement of the land.

PW 71 Md. Ezaz Ahmed Zaber, the then UNO of Borhanuddin Upazila stated that he was enjoying earned leave on 10.07.2007. At that time the UNO of Tajimuddin Upazila was in his charge, who had supplied the relevant documents in respect of the immovable property of accused Hafiz Ibrahim.

PW 72 Md. Younus Miah stated that he knew nothing about the case. At that time he was declared hostile by the prosecution and also cross-examined. He denied the suggestion that being influenced by the accused he did not tell the truth.

PW 73 Suvas Chandra Nandi, Sub-Registrar of Bhola Sadar Sub-Registry Office stated that he had supplied certified copy of deed No. 375394 dated 25.10.1994 (material exhibit-XXIX). In cross-examination he stated that Shahina Yasmin

was shown as lessee in the said deed and one Jesmin Akhter as lessor.

PW 74 Abdus Salam Howlader, a member of Bara Manika Union Parisad within Borhanuddin Upazilla stated that a few months back some persons had come from Dhaka and inquired about the ownership of a two storied building situated at Manika Bazar. In reply thereto he told them that it was owned by the appellant Hafiz Ibrahim. The office of Bangladesh Nationalist Party (BNP) was housed at the ground floor of the said building.

In cross-examination he stated that the land was owned by the Government. Jalil Howlader, a witness cited in the charge sheet, constructed the building and accused Hafiz Ibrahim was not its owner.

PW 75 Abdul Jalil Howlader, a local witness and a farmer was declared hostile. In cross-examination by the prosecution he stated that he did not meet any Officer of the ACC. It was not correct to say that he had ever made any statement about the building at Manika Bazar.

PW 76 Sanaton Karmaker, a Surveyor of Monpura Upazilla stated that under instruction of the local UNO he made survey of some land and buildings, namely, (Ka) a piece of

vacant land situated at the north of Kurralia House, (Kha) Kurralia House itself, (Ga) Krishi Bank and BNP Office, (Gha) another piece of vacant land adjacent to Chitramoni Cinema Hall and (Uma) BNP Office at Manika Bazar. He submitted a report mentioning specific area of the land and buildings. He proved the report as exhibit-69, the maps as exhibits-69 Ka and Kha and the conveyance deeds of the land as exhibits 69(Ga)-(Da).

In cross-examination he stated that he had submitted the report to the UNO, who was in charge of the Assistant Commissioner of land. He further stated that during survey, he did not collect any documents, but followed the SA Khatian maintained in their office. He further stated that accused Mafruza Sultana was the owner of Kurralia House. The vacant land described against serial (Ka) was owned by Mafruza Sultana and Shahina Yasmin, that against serial (Ga) by Hafiz Ibrahim and serial (Gha) by Mafruza Sultana. The property described against serial (Uma) was actually a vested property.

PW 77 Md. Ali Asgar, a Surveyor of Borhanuddin Upazila was tendered by the prosecution. In cross-examination by the defence he stated that he was conducting survey for last 14 years. The hand writing on the sketch map was not of him.

He could not tell the date and time, when Mr. Sanaton (PW 76) conducted the Survey. He further stated that in his report no ownership statement was made except that of the land, where the Krishi Bank was situated. The land of Manika Bazar was vested property.

PW 78 Md. Shahajahan, Assistant Vice-President of National Bank, Dilkhusha Branch stated that accused Hafiz Ibrahim was his brother. His (Hafiz Ibrahim's) nick name was Alauddin. The ACC personnel arrested him when he went to the office of ACC for furnishing statement of wealth. He (PW 78) made a contrary statement that Alauddin was his (Hafiz Ibrahim's) brother-in-law, who along with his wife Mahbuba Sultana had opened an account in his branch. Both of them were repatriated in the USA. At one stage of recording his deposition, PW 78 became emotional and as such the Public Prosecutor took adjournment. On the next day of hearing, he was declared hostile and cross-examined by the prosecution. In cross-examination he stated that accused Hafiz Ibrahim was his brother and co-accused Mafruza Sultana sister-in-law. He denied the suggestion that his (Hafiz Ibrahim's) nick name was Alauddin or that of Mafruza Sultana was only Sultana and they had opened the FDR account in his branch.

PW 79 Md. Sukur Ali, the then UNO of Tajimuddin Upazila and in-charge of Borhanuddin Upazila stated that under requisition of the IO he had sent information about land property of Hafiz Ibrahim and Giash Uddin Al-Mamun with a forwarding letter. Before that he made a report through a surveyor. He proved the forwarding letter and his signature there as exhibits-70 and 70/1 respectively. In response to a query made by the Court he stated that he had sent those in photocopies, which were not attested. At that time the AC land was not there and he was in-charge. He could not specifically mention as to which documents were sent by the Settlement Office.

PW 80 Md. Billal Hossain, Sub-Assistant Engineer of PWD at Bhola stated that he had assessed the cost of a newly constructed semi-pucca building beside the Upazila Road at Borhanuddin and submitted a report. On the same day he had assessed the cost of a boundary wall, a two storied building situated at Manika Bazar; a recently constructed three storied building beside the Upazila Road and another recently constructed five storied building at Upazila Sadar Bazar at Daulatkhan and submitted separate reports. He proved the reports as material exhibits 37-37(4) series.

In cross-examination he stated that the PWD at Bhola was divided into two Civil Sub-Divisions, and one EME Sub-Division. Mr. Prasanto Kumer Kundu was the EME at that time. During his tenure at Bhola he did not make any assessment and was also not with them. They made assessment according to the schedule of 2006 and under instruction of ACC and Task Force. He further stated that it was reported by the local people that the building at Manika Bazar was constructed in 2005-06. They did not get any document regarding ownership of the five storied building situated at upazila sadar, but the local people informed them that it was constructed in 2005-06. The 11th Edition of the Schedule of 2006 was issued on 23rd October 2006 and the 10th Edition in 2004. The schedule is revised from time to time because of price hiking.

PW 81 Md. Mosharraf Hossain stated that at the material time he was a Data Entry Operator to the ACC. He was made a seizure list witness to the seizure of documents from National Bank Ltd, Principal Branch at Dilkhusha. Those were related to an account jointly maintained by Alauddin and Sultana, which the IO seized under a seizure list on 17.06.2007. The then Principal Officer Mr. Abu Zehar also furnished some documents relating to another account maintained by accused

Hafiz Ibrahim. The First Assistant Vice-President of Jamuna Bank Mr. Nurul Islam produced some other documents relating to his account on 18.06.2007. Those were also seized under another seizure list. Mr. Syed Mahmud, an Officer of Dutch Bangla Bank, Mohakhali Branch furnished some other documents relating to an account of Mafruza Sultana on 20.06.2007. Ms. Fahmida Sultana produced some documents relating to an account of Hafiz Ibrahim on 19.06.2007, which were seized by the IO. Mr. Zakir Hossain, the Assistant Vice-President of Premier Bank furnished some documents on 21.06.2007. Mr. Nizam Uddin, Second Officer of Bangladesh Krishi Bank, Borhanuddin Branch furnished some documents relating to an account of Hafiz Ibrahim on 24.06.2007. Mr. Parimal Chakrabortty, a clerk of Cox's Bazar Sub-Registry Office furnished some documents relating to land property of Hafiz Ibrahim on 24.06.2007. Mr. Abul Bashir Chowdhury, Head Assistant of Bhola Registry Office furnished certified copy of deed No. 375394 dated 25.10.1994. All the said documents were seized by the IO under separate seizure lists, wherein he (PW 81) was made a seizure list witness.

PW 82 Nikhil Chandra Das, Chief Executive Officer of Bhola Zila Parisad stated that in response to a letter issued by

the IO, he had informed him that NGO SAWLA was situated on the land of Zila Parishad. Subsequently the Zila Parishad evicted the NGO office from its land.

PW 83 Syed Tahsinul Hoque, an Assistant Director of ACC and IO of the case stated that during investigation he seized the documents relating to bank accounts maintained by the accused as described in exhibits 11, 13, 14, 16, 19, 21, 23, 25, 27, 29, 32, 35, 36, 37, 38, 40, 42, 44, 46, 48, 50, 51, 52, 53, 54, 56, 58, 60, 62, 64, 73, 74, 75, 77, 79 and 81 and perused all those documents. He found there that Hafiz Ibrahim had acquired property worth Taka 10,30,58,217/- in total and his wife Mafruza Sultana Taka 9,89,27,342/-. They acquired property worth Taka 20,19,85,559/- in total in collusion with each other. In their statements of wealth furnished to the ACC they gave baseless and false information, which was prima facie proved and as such he submitted memo of evidence in the instant case.

In cross-examination he stated that Hafiz Ibrahim physically appeared before the ACC and submitted his statements of wealth. He also submitted the statement of wealth of his wife. He did not know whether Hafiz Ibrahim was arrested from ACC, while he approached there for submission

of wealth statement. He could not reply to which bank Hafiz Ibrahim was a Director. The profession of his wife was business and she was a Director of Rupali Bank. Her nick name was Rani. He could not reply that the accused Hafiz Ibrahim as an MP received how much remuneration in last five years. He could also not reply whether the Income Tax Department made any complainant against him (Hafiz Ibrahim). He, however, affirmed that the TIN of Hafiz Ibrahim was 045-101-6601 and that of Mafruza Sultana was 005-101-0268. He perused their tax files. According to the tax return for the year ended on 30.06.1990, Hafiz Ibrahim owned Taka 2,51,67,800/- that time. He further stated that according to the SRO-2005 he paid income tax against Taka 11 crore (7+4). He also paid Taka 60,444/- and 71,100/- taxes against two houses at Borhanuddin and Daulatkhan. In the wealth statement furnished by Hafiz Ibrahim there is a description of *Dainik Khabor Patra*. According to the tax file of co-accused Mafruza Sultana, she was the owner of the said news paper. He further stated that the property described against serial No. 17 of the charge sheet (piece of land surrounded by a boundary wall) did not belong to Hafiz Ibrahim. During Investigation, he had recorded statements of 17 witnesses including Galauddin alias Salauddin

(DW 1). He further stated that Hafiz Ibrahim College was recipient of the properties as described against serial Nos. 3-10 and further stated that none of the witnesses told him that those properties were purchased by the means of Hafiz Ibrahim. The property described against item No. 18 belonged to the Government and that against item No. 23 to Shahina Yasmin, wife of Giash Uddin Al-Mamun and admitted that they were not members of a joint family. None of the witnesses stated him that accused Hafiz Ibrahim constructed any building on the land of Shahina Yasmin. The property described against item Nos. 12 and 13 was actually a grave yard for the landless people, though it was shown in the name of Hafiz Ibrahim. The property shown against item No. 20 was registered in favour of Hafiz Ibrahim. He further stated that the movable property described against items No. 17-20 of the charge sheet were of Alauddin and Sultana and on the date of lodging FIR there was no money against those accounts. Hafiz Ibrahim was shown arrested on 30.07.2007, but he (PW 83) could not reply since when he was in custody. The moveable property described against item No. 21 was owned by Hafiz Ibrahim, but his signature put on the documents did not match his other signatures as put on the documents against items No. 16-20.

The informant raised no allegation against the properties described in serial Nos. 12, 30 and 31. He then stated that the account described against item No.9 was opened on 26.12.2006 and there was Taka 2,00,000/-. The amount of Taka 25,00,000/- as described against item No. 10 was kept in savings account No. 6741 jointly maintained by Hafiz Ibrahim and Nurul Islam. In fact Hafiz Ibrahim was having 50% share of that. The movable property as described against items No. 13 and 16 and it was kept jointly in the names of the two accused. The 50% share belonged to Hafiz Ibrahim thus came to Taka 51,921.50. He did not seize any document in respect of item No. 13. Similarly the money kept against item No. 24 was shown in the name of Hafiz Ibrahim, but actually his share would be 50% thereof. He denied the defence suggestion that the moveable property described against serial Nos.1-31, which belonged to Hafiz Ibrahim is a part of the money whitened under the SRO No.200/Ain/2005. He lastly stated that there was no inconsistency between the tax file and statement of wealth furnished by the accused.

PW 84 Md. Abul Hossain, Vice-President of UCBL, Principal Branch, Motijheel deposed in support of seizure of the documents as described in exhibit-75. PW 85 Md.

Shafiquzzaman Chowdhury was also a seizure list witness to seizure of the documents as described in exhibit-75.

PW 86 Md. Anwar Hossain, Senior Officer, Islami Bank Ltd, Barisal Branch deposed in support of seizure of documents in respect of 5 FDR accounts maintained by Hafiz Ibrahim and one current account by Mafruza Sultana as described in exhibit No. 79. PW 87 Md. Selim Siddique was a seizure list witness to seizure of the said documents.

PW 88 Md. Abdul Monem, First Assistant Vice-President of Dutch Bangla Bank, Foreign Exchange Branch deposed in respect of seizure of documents as described in exhibit-77. The documents were related to some accounts maintained by Hafiz Ibrahim and Mafruza Sultana. PW 89 Md. Rezaul Karim was a seizure list witness to seizure of the said documents.

After closing the prosecution evidence, the appellant was examined under section 342 of the Code of Criminal Procedure, wherein he made a written explanation stating, *inter alia*, that his actual name was Md. Hafiz Ibrahim and he was not ever known by Alauddin. But in the charge sheet it was motivatedly mentioned as his nick name. The statement he had furnished to the ACC was correct and there was no concealment of wealth

or false statement. The property mentioned against serial No. 1 to 11 was in the name of his wife and all those were mentioned in her tax files. She got 19,00,000/- Taka in the year 1990 from her mother repatriated in the USA. She herself was a Business Woman. He himself had cash capital amounting to Taka 2,51,67,800/- in the tax year 1989-90. After 16 years of business, his property stood at Taka 6,80,28,442/-. Similarly the property of his wife stood at Taka 9,50,84,135/- she earned profit of Taka 67,88,640/- in 2006-07. In his own tax return of 1989-90 he showed Taka 2,51,00,000/-. His two residential buildings one at Bhola and another at Daulatkhan were also shown in his tax file under section 19(B) of the Income Tax Ordinance and his jeep worth Taka 45,00,000/- was shown under section 19BBB of the said Ordinance. He also filed an itemwise written explanation along with the statement which is lying on record. He cited five witnesses in his defence. One of them Md. Salauddin Patwary (DW 1) was also cited as a witness in the charge sheet.

However, DW 1 Md. Salauddin Patwary stated that Hafiz Ibrahim purchased from him two pieces of land appertaining to Mouza Kutuba under Borhanuddin police station in 2003 by sale deeds being No. 1687 and 1688. He had sold it because of

his apprehension that this land would be acquired by the Government for the purpose of construction of an auditorium. Since for want of more land the auditorium could not be constructed, he took back his land from Hafiz Ibrahim on repayment of the money, but no reconveyance deed was yet registered, though executed. He then proved those documents as Exhibits-Ka and Kha. He further stated that despite sale of the land, he had not handed over the possession in favour of Hafiz Ibrahim. In reply to a query made by the Court he stated that he had cultivated potato on the land and at that time planted jute there. In cross-examination by the prosecution, he denied the suggestion that he had not taken the consideration money back from Hafiz Ibrahim or that he did no more possess the land.

DW 2 Md. Lokman Howlader stated that he was a destitute of land because of river erosion. He was made Chairman of the Grave Yard Committee. For the purpose of setting up the grave yard, they purchased the land in name of the local MP so that nobody could misappropriate the same. The MP himself contributed Taka 10,000/- for development of the grave yard.

DW 3 Md. Mozammel Hoque, a Contractor of Daulatkhan Upazila stated that he had constructed the three storied building (as shown against item No.15 of the charge sheet) spending Taka 17,47,014.05/-. He had also constructed the Krishi Bank building at Borhanuddin Upazila spending Taka 17,72,760.92.

DW 4 Md. Kamal Uddin Howlader, a Member of Governing Body of Hafiz Ibrahim College stated that earlier there was no college at Lalmohan and Borhanuddin Upazila. They collected money from the local people and established the college. There was necessity of Taka 15,00,000/- more for the purpose of its inclusion in monthly pay order (MOP) of the Government. The then MP Mr. Hafiz Ibrahim contributed Taka 7,75,000/- for that purpose. DW 5 Md. Mostaker Rahman, another Member of the Governing Body deposed in similar line of DW 4. All the above DWs were cross-examined by the prosecution, but did not deviate from their stand.

After conclusion of trial, the learned Special Judge passed the impugned judgment and order of conviction and sentence as stated above, challenging which the appellant preferred this appeal. Earlier another Bench of the High Court

Division heard and allowed this appeal by judgment and order dated 17.10.2011 on the ground of legality of the initial notice, challenging which the Anti-Corruption Commission moved in the Appellate Division with Criminal Petition for Leave to Appeal No.128 of 2012. The Appellate Division heard the criminal petition and sent back the matter to this Bench for disposal afresh on merit on setting aside the judgment of the High Court Division by judgment and order dated 24.08.2015. Subsequently the appellant filed Criminal Review Petition No.77 of 2015 for review of the said judgment of the Appellate Division. The Appellate Division by order dated 24.08.2016 also dismissed the Review Petition.

It further appears from the order sheet of the Court below that co-accused Mafruza Sultana (wife of the appellant) had obtained anticipatory bail from the High Court Division in Criminal Miscellaneous Case No. 6573 of 2007, but after transfer of the case to the Senior Metropolitan Special Judge, she did not appear there. Despite having full knowledge of the case she did not defend herself in trial, has been remaining fugitive from law, and has not yet surrendered and preferred any appeal.

Mr. Fakrul Islam, learned Advocated appearing for the appellant submits that the money in question deposited in different FDR/Savings/Current accounts with different banks in the year 1995-96 cannot be adjudicated under the Act V of 2004 and in that view of the matter, the trial was without jurisdiction. Touching the merit of the case, Mr. Islam submits that the appellant, a businessman engaged in sundry trade (বিবিধ মালের ব্যবসা) opened income tax file in the year 1989-1990 showing property of Taka 2,51,67,800/-. PW 60 Shafiul Azam during cross-examination affirmed that he was engaged in sundry trade and was having the said property in 1990. He had investment of Taka 2,44,36,000/- in share market in 1996. A businessman who owned property worth Taka 2,51, 67,800/- in 1990 and had investment of Taka 2,44,36,000/- in share market in 1996 is not unlikely to own property worth Taka 10/11 crore in 2007.

Mr. Islam then submits that most of the movable properties of the appellant as shown in the charge sheet are covered by the whitened Taka 4 (four) crore. In counting the movable properties, both the Investigating Officer and the trial Judge committed some mistakes. On proper calculation there would be no mentionable difference between his movable

property shown in his income tax return or in the statement of wealth and the property found under his possession. In order to substantiate this ground, Mr. Islam refers to the list of movable properties as given in the charge sheet and submits that the money seized from Kurrulia House (item No. 32) was not his money as the said house belonged to Shahina Yasmin and the appellant was never connected with the NGO housed therein; FDR account No. 012850000000550 maintained with Dutch Bangla Bank, Simrail Branch (item No. 22) was a joint account and the appellant's share therein would be Taka 50,00,000.00 (fifty lac), not 1,00,00,000.00 (one crore). The amount of Taka 1,00,00,000.00 (one crore) shown against Savings Account No.034334531818 maintained with National Bank, Mohakhali Branch (item No.16) was actually wrongly typed. It would be simply Taka 1,00,000.00 (one lac), not 1 (one) crore; Savings Account No. 00505641001 maintained with National Bank, Mohakhali Branch with Taka 3,60,443.75 (item No. 13) was wrongly mentioned. Actually the said account was maintained with HSBC Bank and the correct figure would be Taka 2,39,532/= . The money shown against item No.7 was of *Dainik Khabar Patra*, a news paper owned by co-accused Mafruza Sultana and the amount of Taka 29,00,000/= (twenty-nine lac)

as shown against savings account No.18-1231790-01 maintained with Standard Chartered Bank, Gulshan Branch (item No.1) was wrong, the correct figure would be Taka 25,88,176/=.

Mr. Islam further submits that although a long list of immovable properties was mentioned in the FIR as well as in the charge sheet and shown to be disproportionate to the appellant's known sources of income, learned Trial Judge did not find anything wrong with those properties except the immovable properties mentioned against items No.1, 2, 15, 16, 19 and 23. Of them the land properties against items No.1 and 2 worth Taka 2,93,780/= (1,31,890/ + 1,61,890/) were given back to its original owner Md. Salauddin Patwary (DW 1) and the appellant did no more own those properties. The two buildings, one at Daulatkhan Upazila (item No. 15) was valued at Taka 22,50,000/= and another at Borhanuddin Upazila (item No. 16) was valued at Taka 20,00,000/=. Both the buildings were constructed in 2003-2005 and shown in his income tax return for the year 2005-2006, and the Income Tax Department accepting the valuation finally assessed the tax and issued him certificate to that effect. At this stage there is no scope on the part of another Department of the Government to raise question

about the valuation of those two properties. On this point Mr. Islam refers to the twin cases of State (petitioner in one petition for leave to appeal) and Anti-Corruption Commission (petitioner in another) vs Faisal Morshed Khan and another (respondents in the both), 66 DLR (AD) 236. The land property comprising of 15 kathas at Tejgaon Industrial Area (item No. 19) belonged to co-accused Mafruza Sultana in capacity of the owner of *Dainik Khabar Patra*, a daily news paper and the building named Kurrulia House at Kutuba, Bhola (item No. 23) belonged to Shahina Yasmin. The appellant while examined under section 342 of the Code of Criminal Procedure explained each and every detail of the said properties. The conviction and sentence passed against him on the aforesaid movable and immovable properties are, therefore, not sustainable in law and liable to be set aside.

Mr. Mahbubey Alam, learned Attorney General appearing for the State submits that it is apparent on the face of record that the appellant being a Member of Parliament from the ruling party acquired huge property by corruption and abuse of power in 2001-2006. The SRO No. 200/Ain/2005 dated 07.07.2005 was passed for the purpose of giving protection to

those illegal properties acquired by the ruling party men at that time. Legalization of unearned income under such SRO should not be encouraged.

Learned Attorney General further submits that trial of the present case was held under the Act XL of 1958, Act II of 1947 and Act V of 2004. In such cases, if a prima-facie case of holding undeclared and disproportionate property is made out against an accused, he is to prove that the property is not disproportionate to his legal/known sources of income and rebut the presumption under section 27 (2) of the Act V of 2004. In the present case the accused-appellant hopelessly failed to rebut such presumption. Learned trial Judge discussed all the evidence, correctly arrived at the findings of guilt against him and as such there is no legal ground to interfere with the judgment and order of conviction.

Mr. Khurshid Alam Khan, learned Advocate appearing for the ACC echoes the submission of the Attorney General on presumption of guilt under section 27 (2) of the Act V of 2004 and submits that the appellant did not even take the opportunity to rebut the presumption against him by examining himself as a defence witness. His statements under section 342 of the Code or evidence of a third person would not automatically absolve

him from the charge. Admittedly he had whitened Taka 4 (four) crore under SRO No. 200/Ain/2005, which itself proves his offence of holding disproportionate property. The said SRO was issued for collateral purpose and against the principle of article 20 (2) of the Constitution. According to the charge sheet, his property comes to Taka 10,30,58,217/= after exclusion of the whitened money. Even if for the sake of argument it is held that the whitened money was not excluded from his total property as mentioned in the charge sheet, still there would be a gap of nearly Taka 47,00,000/-. The remaining property is also disproportionate to his legal/known sources of income.

Mr. Khan further submits that the appellant in his wealth statement did not mention 35 decimals of land at Mouza Kutuba under Borhanuddin Upazila, which he had purchased by way of two registered sale deeds being No.1687 dated 10.05.2003 and 1688 dated 20.05.2003 (material exhibits-XXVIII/1-2). If these two sale deeds are read with the unregistered deeds of reconveyance (exhibits-Ka and Kha) and the evidence of DW 1, it would be clear that the reconveyance deeds were created only for the purpose of taking defence by the appellant and he examined DW 1 to support the false defence case. In such a position, offence under section 26 (2) of

the Act V of 2004 by concealing wealth on the part of the appellant has been proved beyond doubt.

Mr. Khan then proceeds with the submission that some of the accounts though were in joint names, there is nothing in banking law that 50% money of such account would automatically fall in the share of one party. When the allegation of holding the entire money is directed against the appellant, he is to rebut the allegation by proving that he was holding only 50% share thereof.

Mr. Khan lastly submits that the appellant from the very inception of the inquiry showed his sources of income from business, property acquired by way of inheritance, remuneration of MP and Directorship of Rupali Bank, but did not give any break up. In such a position presumption will be drawn against him. The acceptance of income tax return by the Income Tax Department does not automatically legalise the unearned income, if any, shown there. The case reported in 66 DLR (AD) 236 relates to valuation of a particular property, not the sources of income. The appeal is, therefore, liable to be dismissed.

In turn of reply Mr. Islam submits that the power to make delegated legislation is derived from article 65 (1) of the

Constitution. A delegated legislation when notified in Bangladesh Gazette is also a law under article 152 of the Constitution. The SRO No. 200/Ain/2005 was issued and gazetted by the Government under section 44(4)(b) of the Income Tax Ordinance, 1984. The presumption of constitutionality of the SRO thus remains unimpeded so long it is not declared unconstitutional and it is now a part of the Income Tax Ordinance, under which the Government invited individuals to pay tax for undeclared income earned from other sources. Taking legal advantage thereof, the appellant on payment of tax had declared income of Taka 4 (four) crore, which was not declared earlier and the Government already collected tax under the authority of the said SRO. Now the income declared thereunder cannot be a subject matter of further scrutiny by the ACC. The appellant's movable and immovable property worth Taka 6,80,09,442/= was declared earlier and the Income Tax Department had already collected tax thereon. In both the cases, another department of the Government would be barred from raising question of its sources. Once tax is collected under the authority of law, no department can deny the fact and legality of the property for which tax is already collected.

Mr. Islam lastly submits that the prosecution could not prove otherwise what DW 1 Salauddin Patwary deposed before the trial court about the land property described against items No. 1 and 2. He (DW 1) has been paying rent for the land and the record of right has never been mutated in favour of the appellant. Exhibits-Ka and Kha are admissible in evidence and are supported by the oral evidence of DW 1, probative value of such evidence should not be ignored.

We have considered the submissions of the learned Advocates of all the parties and carefully examined the evidence and other materials on record. It was alleged in the FIR that the two accused were in possession of property worth Taka 21,91,42,880/=, which was disproportionate to their known/legal sources of income. On investigation the amount was bit reduced to Taka 20,19,85,559/=, out of which accused Hafiz Ibrahim (appellant herein) was holding property of Taka 10,30,58,217/=. In the wealth statement (exhibit-5 proved by PW 1) he declared his property of Taka 6,80,28,442/=. In addition, he had whitened Taka 4,00,00,000/= (four crore) under SRO No. 200/Ain/2005. He owned property worth Taka 2,51,67,800/= in 1990 and had invested Taka 2,44,36,000/- in share market in 1996. In the tax return submitted for the yaer

ended on 30.06.2006 he mentioned his total property to be of Taka 6,80,09,442/= and more or less this amount was mentioned in his wealth statement furnished to the ACC on 25.02.2007 (exhibits-5 and 5/1). On the same day he was arrested. A prior notice (exhibit-4) was served upon him on 19.02.2007 through his employee Md. Salauddin (PW 6), wherein he was given only 7 (seven) days time to submit the wealth statement. The appellant, however, within the given time had prepared his wealth statement and that of his wife and submitted it to the ACC with the particulars as he thought fit. The FIR was lodged on 08.05.2007, he was shown arrested on 01.08.2007 and charge sheet was submitted on 02.10.2007. Ultimately he was convicted and sentenced on 19.06.2008. Thereafter, he preferred the instant appeal and was released on bail from this Division on 17.12.2008 after serving out net imprisonment for 1 (one) year, 4 (four) months and 16 (sixteen) days.

The appellant mentioned his property worth Taka 6,80,09,442/= in his tax return for 2005-2006. Besides, he had whitened Taka 4 (four) crore, which was not declared earlier but earned from other sources, by paying income tax of Taka 30,00,000/= (thirty lac) on 26.06.2006 under SRO No.

200/Ain/2005 through a pay order of National Bank, Dilkhusha Branch (material exhibit-XXXIV/1). PW 60 in his cross-examination also affirmed the above statement. This Taka 4 (four) crore was mentioned separately in the tax return (in Form No.IT-10BB) submitted for the year ended on 30.06.2006 i.e before initiation of the inquiry as well as lodging the FIR. After adding the whitened 4 (four) crore, his movable and immovable property came to Taka 10,80,09,442/= (Taka 6,80,09,442/= + 4,00,00,000/=) in total. In his wealth statement the appellant mentioned his property worth Taka 6,80,28,422/= and the ACC charged him for holding property worth Taka 10,30,58,217/=. We have examined all the accounts given in the FIR, charge sheet and the judgment and order of conviction, but have not found that the Informant or Investigating Officer or the learned trial Judge in calculating the total sum has excluded the whitened 4 (four) crore. It is, therefore, not correct to say that the whitened Taka 4 (four) crore was excluded in summing up his total property. It, however, appears that the ACC did not treat the said 4 (four) crore as legal money.

Learned Advocate for the petitioner has argued that most of the accounts as mentioned in the list movable properties were opened before the Act V of 2004 came in force and as

such the trial Judge had no jurisdiction to try the case under sections 26 and 27 thereof, so far it was related to those accounts. Let us go through the said provisions of law, which run as follows:

“২৬। সহায় সম্পত্তির ঘোষণা।-(১) কমিশন কোন তথ্যের ভিত্তিতে এবং উহার বিবেচনায় প্রয়োজনীয় তদন্ত পরিচালনার পর যদি এই মর্মে সন্তুষ্ট হয় যে, কোন ব্যক্তি, বা তাহার পক্ষে অন্য কোন ব্যক্তি, বৈধ উৎসের সহিত অসঙ্গতিপূর্ণ সম্পত্তির দখলে রহিয়াছেন বা মালিকানা অর্জন করিয়াছেন, তাহা হইলে কমিশন, লিখিত আদেশ দ্বারা, উক্ত ব্যক্তিকে কমিশন কর্তৃক নির্ধারিত পদ্ধতিতে দায়-দায়িত্বের বিবরণ দাখিলসহ উক্ত আদেশে নির্ধারিত অন্য যে কোন তথ্য দাখিলের নির্দেশ দিতে পারিবে।

(২) যদি কোন ব্যক্তি-

(ক) উপ-ধারা (১) এ উলিখিত আদেশ প্রাপ্তির পর তদনুযায়ী লিখিত বিবৃতি বা তথ্য প্রদানে ব্যর্থ হন বা এমন কোন লিখিত বিবৃতি বা তথ্য প্রদান করেন যাহা ভিত্তিহীন বা মিথ্যা বলিয়া মনে করিবার যথার্থ কারণ থাকে, অথবা

(খ) কোন বই, হিসাব, রেকর্ড, ঘোষণা পত্র, রিটার্ন বা উপ-ধারা (১) এর অধীন কোন দলিল পত্র দাখিল করেন বা এমন কোন বিবৃতি প্রদান করেন যাহা ভিত্তিহীন বা মিথ্যা বলিয়া মনে করিবার যথার্থ কারণ থাকে,

তাহা হইলে উক্ত ব্যক্তি ৩ (তিন) বৎসর পর্যন্ত কারাদন্ড বা অর্থদন্ড বা উভয়বিধ দন্ডে দণ্ডনীয় হইবেন।

২৭। জ্ঞাত আয়ের উৎস বহির্ভূত সম্পত্তির দখল।-(১) কোন ব্যক্তি তাহার নিজ নামে বা তাহার পক্ষে অন্য কোন ব্যক্তির নামে, এমন কোন স্থাবর বা অস্থাবর সম্পত্তির দখলে রহিয়াছেন বা মালিকানা অর্জন করিয়াছেন, যাহা অসাধু উপায়ে অর্জিত হইয়াছে এবং তাহার জ্ঞাত আয়ের উৎসের সহিত অসঙ্গতিপূর্ণ বলিয়া মনে করিবার যথেষ্ট কারণ রহিয়াছে এবং তিনি উক্তরূপ সম্পত্তি দখল সম্পর্কে আদালতের নিকট বিচারে সন্দেহজনক ব্যাখ্যা প্রদান

করিতে ব্যর্থ হইলে উক্ত ব্যক্তি অনূর্ধ্ব ১০ (দশ) বৎসর এবং অনূন্য ৩ (তিন) বৎসর পর্যন্ত
যে কোন মেয়াদে কারাদণ্ডে দণ্ডনীয় হইবেন এবং তদুপরি অর্থ দণ্ডেও দণ্ডনীয় হইবেন; এবং
উক্তরূপ সম্পত্তিসমূহ বাজেয়াপ্ত যোগ্য হইবে।

(২) উপ-ধারা (১) এ উল্লেখিত কোন অপরাধের বিচার চলাকালীন যদি প্রমাণিত হয় যে,
অভিযুক্ত ব্যক্তি নিজ নামে, বা তাহার পক্ষে অপর কোন ব্যক্তির নামে, তাহার জ্ঞাত আয়ের
উৎসের সহিত অসঙ্গতিপূর্ণ স্থাবর বা অস্থাবর সম্পত্তির মালিকানা অর্জন করিয়াছেন বা
অনুরূপ সম্পত্তির মালিকানা অর্জন করিয়াছেন বা অনুরূপ সম্পত্তির দখলে রহিয়াছেন, তাহা
হইলে আদালত অনুমান করিবে (shall presume) যে, অভিযুক্ত ব্যক্তি উক্ত অপরাধে
দোষী, যদি অভিযুক্ত ব্যক্তি আদালতে উক্ত অনুমান খণ্ডন (rebut) করিতে না পারেন; এবং
কেবল উক্তরূপ অনুমানের উপর ভিত্তি করিয়া প্রদত্ত কোন দণ্ড অবৈধ হইবে না।”

The ACC under the authority conferred on it by section 26 of the Act V of 2004, after holding inquiry on the basis of any information, can ask any person to furnish information in the manner as prescribed, if it is satisfied that such person holds or has acquired property disproportionate to his legal sources of income. If such person fails to respond thereto, or furnishes any baseless or false information or documents, he would be punished with a term of imprisonment, which can be extended up to 3 (three) years, or with fine or with the both. Section 27 says that if any person in his own name or in the name of other holds movable/immovable property which is acquired by illegal means, or disproportionate to his known sources of income and if such person fails to give satisfactory explanation of such

property, he would be sentenced to imprisonment for 3-10 years with fine and confiscation of the property. It further says that in case of possession over disproportionate property, the Court shall presume the accused to be guilty unless such presumption is rebutted by him.

It clearly appears that an offence under section 26 of the Act would be committed, when any person on receipt of a notice thereunder fails to respond to it or furnishes any baseless or false information or documents. Similarly an offence under section 27 of the Act would be committed when any person holds property acquired by illegal means, or which is disproportionate to his known sources of income. In the present case the offence was allegedly committed in the event of furnishing statement with concealment of wealth and when disproportionate or illegally acquired property was allegedly found under possession of the appellant on completion of inquiry at some point of time after furnishing the wealth statement on 25.02.2007. In both the cases, the offence was committed after the Act V of 2004 came in force. We do not find any force in the submission of Mr. Islam that the trial Judge had no jurisdiction to try the case.

Learned Advocate for the ACC has argued that the appellant was to prove that he owned 50% share of the accounts as referred to in the submission of his learned Advocate. In the banking laws, or in any circular/circular letters or in any other practice direction of Bangladesh Bank we do not find as to how a dispute on share between the share holders of a joint account would be dissolved. But it is an established banking practice that it would be equal if there is no instrument mentioning specific share of each share holder. The prosecution did/could not produce any instrument showing particular share of the appellant and the learned Advocate for ACC also fails to show any law in support of his submission. The rule of prudence also does not support the view that in case of a joint account, one's share can be extended up to 100%. It is evident from items No. 10, 16 and 24 of the list of confiscated movable properties as given in the ordering part of the judgment that the learned trial Judge calculated the appellant's money holding his share 50% in those items. Most likely the joint account against item No.22 was unnoticed.

Learned trial Judge found the appellant guilty because of holding immovable properties mentioned against items No.1, 2,

15, 16, 19 and 23 and movable properties against items No.1-16 and 21-32 (as mentioned in the charge sheet) treating those to be disproportionate to his known sources of income and also for making false statement about the said properties on the grounds: (i) the defence case of giving back the properties described against items No.1 and 2 by executing the reconveyance deeds (exhibits-Ka and Kha) was not believable and the said deeds were created for the purpose of defence; (ii) according to the assessment report prepared by the engineers (exhibits-XXXVII-XXXVII/5), the immovable properties described against items No.15 and 16 were worth Taka 54,06,738/= and 44,09,068/=, but the accused declared it Taka 22,50,000/= and 20,00,000/= respectively. He thus concealed Taka 31,56,738/= in respect of item No.15 and Taka 24,09,068/= in respect of item No.16 in his wealth statement. The difference money was beyond his known sources of income; (iii) the property described against item No.19 was registered in the name of accused Hafiz Ibrahim and he did not mention it in his wealth statement. The defence case that this property belonged to co-accused Mafruza Sultana was not believable; (iv) although the property described against item No.23 was registered in the name of Shahina Yasmin, accused

Hafiz Ibrahim constructed a two storied building thereon by his own money; (v) in his statement under section 342 of the Code the accused stated that his movable properties were covered by the money whitened under SRO No. 200/Ain/2005, but the said SRO was issued for the purpose of collecting revenue not for allowing a corrupt person to go scot-free; and (vi) the accused mentioned his sources of income from business, property acquired by inheritance, remuneration of MP and directorship of Rupali Bank, but did not give any break-up. Similarly he mentioned that his wife co-accused Mafruza Sultana was engaged with business, but did not make it clear what type of business she was engaged with and also did not give any detail description of her earning.

Let us discuss whether the trial Judge was factually and legally correct in arriving at his finding and decisions.

It appears from the tax return of the appellant submitted for the year ended on 30.06.2006 that he had declared in Form No. IT-10BB Taka 1,48,10,942/= (one crore forty-eight lac ten thousand nine hundred forty-two) as his business capital, Taka 3,43,75,000/= (three crore forty-three lac seventy-five thousand) as cash in bank and hand and also declared separately

Taka 4,00,00,000/= (four crore) as income from other sources, which was not declared earlier, but subsequently whitened by paying tax under the SRO. He made a statement in the said tax return that Taka 56,25,000/= was spent therefrom for purchasing land. After deducting the same, his total cash money comes to Taka 6,87,50,000/= (six crore eighty-seven lac fifty thousand) $(4,00,00,000/= + 3,43,75,000/= - 56,25,000/=)$. According to the tax return, this amount of cash money in bank and hand appears to be legal. The total amount of confiscated money according to the schedule of the judgment is Taka 4,92,46,806/72, which is comfortably covered by the total declared amount of the appellant as mentioned above.

To be more particular, the evidence of PW 58 and the income tax file of Mafruza Sultana (material exhibit-XXXIII series) show that *Dainik Khabar Patra* and its movable/immovable properties were owned by her. Material exhibit-XLI/56 proved by PW 88 shows that the account against item No.7 was operated by *Dainik Khabar Patra*.

It is evident from material exhibit-VIII series proved by PW 10 that the balance against SB Account No. 005-056841-001 (item No.13) maintained with HSBC Bank was Taka

2,39,532.46 without interest. We do not find any evidence showing savings accounts No. 005-056841-001 and 0343345311828 to be maintained with National Bank Ltd, Mohakhali Branch. It appears that the Investigating Officer wrongly described the said two items No.13 and 16 and the same mistakes occurred in the judgment.

PW 17 Md. Mujibur Rahman, Senior Executive Officer of Dutch Bangla Bank Ltd, Simrail Branch himself stated that the FDR account mentioned against item No.22 was a joint account and he proved the application for opening the joint FDR account as material exhibit-XI, which also shows that the said account was a joint one.

The evidence of PWs 5 and 7 read with exhibit-7 show that the money described against item No.32 of the list of movable properties was recovered from Kurralia House (item No.23 of the list immovable properties), where an NGO named SAWLA was housed. The building was locked and the local UP Chairman was having the key, by which it was opened. The Investigating Officer Syed Tahsinul Huq (PW 83) in cross-examination stated that the immovable property described against item No. 23 belonged to Shahina Yasmin and during investigation none of the witnesses stated that the appellant

made construction on her land. It also does not appear that any of the prosecution witnesses deposed to that effect. The money having not been recovered from the possession of the appellant or his connection with the said NGO having not been established, he cannot be made liable for holding this money. Learned Attorney General and learned Advocate for the ACC could not successfully controvert the submission of Mr. Islam on this point. We thus find substance in his submission regarding calculation and ownership of the movable properties. The appellant cannot be held liable for holding the above mentioned movable properties and it does also not appear to be disproportionate to his known sources of income.

Learned Attorney General and learned Advocate for the ACC vigorously oppose the contention that because of whitening money under the SRO, the appellant cannot be liable for holding undeclared property and to be prosecuted under the Act V of 2004.

In order to appreciate their submissions on the effect and validity of the SRO, let us have a look on it and make a discussion in view of the relevant provisions of law. The SRO runs as follows:

“বাংলাদেশ গেজেট, অতিরিক্ত সংখ্যা, কর্তৃপক্ষ কর্তৃক প্রকাশিত

বৃহস্পতিবার, জুলাই ৭, ২০০৫

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার, অর্থ মন্ত্রণালয়, অভ্যন্তরীণ সম্পদ বিভাগ
(আয়কর)

প্রজ্ঞাপন, তারিখ, ২২ আষাঢ় ১৪১২/৬ জুলাই ২০০৫

এস,আর. ও নং-২০০/আইন/২০০৫।-Income Tax Ordinance, 1984

(XXXVI of 1984) এর section 44 এর sub-section (4) এর clause (b) তে

প্রদত্ত ক্ষমতাবলে সরকার, কোন ব্যক্তির (person) ইতোপূর্বে ঘোষণা করা হয় নাই এইরূপ

“অন্যান্য সূত্র হইতে প্রাপ্ত আয়” ঘোষণা করার পর উক্ত আয়ের উপর আরোপযোগ্য করের

হার হ্রাস করিয়া ঘোষিত আয়ের ৭.৫% হারের অতিরিক্ত আয়কর হইতে উক্ত ব্যক্তিকে

(person) নিম্নবর্ণিত শর্তে অব্যাহতি প্রদান করিল, যথাঃ-

(ক) কোন ব্যক্তি (person) ০১-০৭-২০০৫ইং তারিখ হইতে ৩০-০৬-২০০৬ইং

তারিখের মধ্যে “অন্যান্য সূত্র হইতে প্রাপ্ত আয়” সম্পর্কে সংশ্লিষ্ট ডেপুটি কমিশনার

অব ট্যাক্সেস এর নিকট এই প্রজ্ঞাপনে বর্ণিত ছকে ঘোষণা প্রদান করিলে এইরূপে

ঘোষিত আয় সম্পর্কে কোন প্রশ্ন উপস্থাপন করা যাইবে না;

(খ) উক্ত ঘোষণাপত্র দাখিলের তারিখে বা তৎপূর্বে এইরূপে ঘোষিত আয়ের উপর

হ্রাসকৃত হারে (৭.৫% হারে) আয়কর পরিশোধ করিতে হইবে;

(গ) ঘোষণা প্রদানকারী করদাতার সংশ্লিষ্ট কর বৎসরের অব্যবহিত পূর্ববর্তী বৎসরে

“অন্যান্য সূত্র হইতে প্রাপ্ত আয়” খাতে নির্দিষ্ট উৎসে যে আয় তাঁহার রিটার্নে অন্ড

ভুক্ত করা হইয়াছে এবং যাহার উপর স্বাভাবিক হারে কর আরোপ করা হইয়াছে উক্ত

প্রকারের আয় এইরূপ ঘোষিত আয়ের অন্ডভুক্ত হইবে না;

(ঘ) করদাতার “মোট আয়” (total income) নির্ণয়ের ক্ষেত্রে এই প্রজ্ঞাপনের

অধীন ঘোষিত আয় অন্যান্য স্বাভাবিক আয়ের সাথে একীভূত করা যাইবে না;

(৬) উক্ত Ordinance এর আওতায় 93 ধারায় গৃহিত কার্যক্রমের ক্ষেত্রে এই প্রজ্ঞাপনের সুবিধা প্রযোজ্য হইবে না।

ছক

“অন্যান্য সূত্র হইতে প্রাপ্ত আয়” এর ঘোষণাপত্র

- (১) করদাতার নাম ও ঠিকানা :
-
- (২) টি.আই.এন. (যদি থাকে) :
- (৩) সার্কেলের নাম..... কর অঞ্চলের নাম.....
- (৪) ঘোষিত আয়ের পরিমাণ :(অংকে).....
-(কথায়)
- (৫) পরিশোধিত করের
- (ক) পরিমাণ :.....
- (খ) চালান নং/পে অর্ডার নং :..... তারিখ :.....
- তারিখ :..... করদাতার নাম ও স্বাক্ষর

রাষ্ট্রপতির আদেশক্রমে
এ এস জহির মোহাম্মদ
অতিরিক্ত সচিব (পদাধিকার বলে)।”

(emphasis supplied)

It appears that under the above quoted SRO any person could have declared his income “from other sources” which was not declared earlier and if he paid 7.5% tax thereon within 01.07.2005-30.06.2006, no question would be raised on such income. A prescribed form of declaration was also appended thereto, wherefrom it does not appear that the undeclared

income would be earned within any particular period or remain in any particular form. It means that the “income from other sources” could be earned at any point of time and kept in whatever form. It could be cash in hand or bank or in form of any other movable or immovable property.

There are so many businessmen and professionals who legally earn a lot of money, but do not show it in their tax files just to evade tax. Such evasion, if detected, he/she may be liable to be prosecuted under the penal provisions of the Income Tax Ordinance, 1984, but it does not constitute any offence of corruption or that under section 27 of the Act V of 2004. However, if any pure and simple public servant holds unearned income, which is acquired by criminal misconduct or any other illegal means and taking advantage of such SRO whitens such income, the ACC can certainly prosecute him bringing charge with all material particulars so that the presumption of holding property disproportionate to his known sources of income under section 27 (2) of the Act V of 2004 read with section 7 of the Act XL of 1958 can be taken.

The ACC has not challenged the constitutional/legal validity of the SRO. When the Government under the authority

of section 44, sub-section (4), clause (b) of the Income Tax Ordinance issued and gazetted the SRO giving assurance that no question would be raised in case of one's declaration of income under the SRO as a public policy, the Government or ACC being a department of the Government should not proceed against the maker of such declaration like other ordinary cases under sections 26 and 27 of the Act V of 2004 unless the SRO is declared void. The presumption of guilt under section 27 (2) of the Act shall not operate against such person for holding disproportionate property, if it is covered by his tax file or any special declaration likewise the SRO. It is to be borne in mind that according to article 35 (4) of the Constitution no person can be a witness against himself. On the same principle, if an inculpatory confession of an accused under section 164 of the Code of Criminal Procedure is recorded on false hope or allurements, that cannot be a basis of conviction against him. Similarly when the Government under a public policy gives a scope to any person to declare income from other sources, which was not declared earlier, that cannot be the basis of prosecution against him on the plea that the said public policy was only for collection of revenue. The Government cannot entrap a citizen by a law to disclose evidence against him in the

name of revenue collection and then prosecute him taking advantage of such disclosure. It is against the scheme of criminal justice system.

In the instant case, it has come out from the prosecution evidence (PW 60 and the evidence proved by him) that the appellant being a businessman was holding property worth Taka 2,51,67,800/= in 1990, he had invested Taka 2,44,36,000/= in share market in 1996. In his tax return submitted for the year ended on 30.06.2006 he mentioned his total property worth Taka 6,80,09,442/= and in addition to that he had also whitened Taka 4,00,00,000/= (four crore). Such a person was not unlikely to hold total property of Taka 10/11 crore in 2007. Because of whitening the money, no presumption of corruption would be automatically taken against him without any material particulars.

The appellant mentioned in his wealth statement amongst other, capital of Taka 1,48,10,942/=: 4 $\frac{1}{4}$ decimals of land with a building constructed thereon worth Taka 22,50,000/= at Daulatkhan Upazila (item No.15), 4 decimals of land with a building worth Taka 20,00,000/= at Borhanuddin Upazila (item No.16), and Taka 3,12,04,000/= in total as cash in hand

and bank against different accounts under a common head. His total property was shown worth Taka 6,80,28,442/= . It is to be considered that in this case, notice under section 26 of the Act was issued on 18.02.2007 before the Rules, 2007 came in force. The Rules, 2007 was published on 29.03.2005 with all prescribed forms including that of notice and wealth statement. So, there was no form prescribed for submission of wealth statement at the time of initiation of the inquiry in the instant case. As a result the appellant submitted his wealth statement under common head without any breakup and in the form as he thought fit. The ACC accepted the said statement and did not ask him further to explain anything or to file any supplementary statement or documents in support thereof. Even in course of trial, his attention was not drawn to the common heads, or he was not asked to give a breakup of his income from different sources. When the notice was not accompanied by any particular form of making wealth statement and no form was prescribed under law, the appellant cannot be held liable for not detailing his statement.

The above mentioned two properties (items No.15 and 16) were, however, shown in tax return of the appellant submitted for the year 2005-2006 (material exhibit-XXXIV

proved by PW 60) showing the same value as shown in the wealth statement. The appellant's tax file was transferred from the Office of Deputy Commissioner of Taxes, Circle-14 by order dated 18.03.2007 where it was noted that no tax was payable by the appellant. So, it can be presumed that his earlier tax returns were assessed finally. Final assessment of his last tax return is further evident from the order sheet of Tax Circle 8, where the tax file was transferred (material exhibit-XXXIV/1 proved by PW 60). It does not appear that the Income Tax Department has reviewed the assessment. In such a position, the ACC is not supposed to raise any question on valuation of the said two properties. In the twin cases of State, Anticorruption Commission vs Faisal Morshed and another, 66 DLR (AD) 236 Syed Mahmud Hossain, J (as his lordship then was) speaking for the Court observed:

“... we are of the opinion that the assessment made by the PWD officials would be of no avail when the assessment of valuation came up for consideration before the Income Tax Department which indisputably passed an order on the assessment of valuation. The assessment of valuation made by the Income Tax Department has legal validity which should not be questioned by another

independent government department unless the Income Tax Department reviews its own assessment. There cannot be a conflicting exercise of power between the two independent departments of the Government. If the assessment of valuation made by the Income Tax Department is allowed to be questioned then the very sanctity of such assessment will be at stake and this may cause overlapping exercise of jurisdiction between the two independent departments of the Government. The officials of the Income Tax Department exercise their power under a statute.” (emphasis supplied)

In view of the discussion made above and the ratio laid down by our Appellate Division in the above cited case, the conviction of the appellant on account of the two properties (items No.15 and 16) appears to have been passed illegally.

It is argued by Mr. Islam that the appellant was a mere name lender and allowed his name to be published as publisher of *Dainik Khabar Patra*. The immovable property mentioned against item No.19 was leased out to *Dainik Khabar Patra*, 22, Topkhana Road, Dhaka represented by its Publisher. The appellant in the capacity of Publisher, *Dainik Khabar Patra* put

his signature on the lease deed. Being an individual he does not own that property. As he was a Member of Parliament from the ruling party, it was easier to deal with the transaction in the context of our social reality. It has already been discussed that co-accused Mafruza Sultana owned the said news paper as well as its immovable properties. In her wealth statement, movable and immovable properties of *Dainik Khabar Patra* under a common head without specifying any particular property was shown against its serial No.1. In her income tax return submitted for the year 2006-2007 (material exhibit-XXXIII series proved by PW 58), this immovable property was mentioned as a property of *Khabar Patra* and she was shown to be its owner. The tax return was supported by so many documents including an audit report prepared by a Chartered Accountants Firm named Fazlul Hoque & Co. The Income Tax Department received the tax return and assessed it finally. She was a major, income earner, tax payer and maintained her own income tax file. She did not come up to deny her ownership over the property. The appellant also asserted that this property belonged to his wife. The prosecution itself examined PW 58, who proved seizure of all documents related to her income tax including the particular tax return (exhibits 56, 57, 56/1, 57/1

and material exhibits-XXXIII series). The language of the covenant does not show that it was registered in the name of Hafiz Ibrahim in individual/private capacity. In fact nowhere in the deed his name was mentioned to be the lessee. There is no piece of evidence to show that the consideration money for purchasing the land against item No.19 was paid by the appellant. In such a position we are of the view that notion of ownership over this property was successfully rebutted, and liability of holding the same should not be shifted on the appellant only because of putting signature on the lease deed in the capacity of Publisher of the news paper. The trial Judge appears to be wrong in convicting the appellant on account of the said immovable property (item No.19).

Another piece of land (item No.23) was registered in the name of Shahina Yasmin, wife of Giasuddin Al-Mamun, younger brother of the appellant. It was alleged that the appellant constructed a two storied building there. The said Shahina Yasmin was made neither an accused nor a witness in the present case. None of the prosecution witnesses stated any material particulars as to how, when and where the appellant paid money for making construction there or procured the land in *benami*. PW 49 in course of deposition proved the registered

sale deed being No.3753 dated 25.10.1994 (material exhibit-XXIX), which shows that the vendor Mst. Jesmin Akter Joly sold 6 decimals of land to Shahina Yasmin, wife of Gias Uddin Al-Mamun for a consideration of Taka 30,000/= (thirty thousand). Since there is a registered document in the name of Shahina Yasmin, presumption of ownership would be taken in her favour and such presumption having not been rebutted by any legal and credible evidence, the appellant cannot be held liable for holding this property. The trial Judge was wrong in convicting the accused-appellant on account of this immovable property (item No 23).

It is quite interesting to observe that despite declaration of item No.19 as a property of co-accused Mafruza Sultana in an official document like her income tax return, learned trial Judge held it to be a property of the appellant as he put his signature on the lease deed in the capacity of Publisher, *Dainik Khabar Patra*. But in the same judgment learned Judge held the appellant liable for holding item No.23, another immovable property which was registered in another's name.

On conviction regarding two pieces of land at Mouza Kutuba under Borhanuddin Upazila (items No.1 and 2), the

defence case is that those were returned to its original owner and did no more belong to the appellant. Although two reconveyance deeds (exhibits-Ka and Kha proved by DW 1) were executed for documentation of return of the land, it could not be registered because of time constraint on the part of the appellant.

Let us examine the issue. PW 49 exhibited so many documents including two registered sale deeds (material exhibits-XXVIII/1 and XXVIII/2), first one of which is deed No.1687 dated 10.05.2003. By this sale deed its vendor Mir Mofazzal Hossain alias Zinna sold 13 decimals of land to the appellant for a consideration of Taka 1,30,000/= (one lac thirty thousand). The latter is deed No.1688 dated 20.05.2003, by which its vendor Md. Salauddin Patwary (DW 1) sold 22 decimals of land to the appellant for a consideration of Taka 1,50,000/- (one lac fifty thousand). The defence claimed these two immovable properties to have been returned to its original owner and also claimed two reconveyance deeds (exhibits-Ka and Kha) to have been executed for that purpose. Of them exhibit-Ka is an unregistered sale deed written on stamp papers of Taka 250/= transferring 22 decimals of land to DW 1. On the first page of the said deed, the excutant Hafiz Ibrahim put two

signatures by writing his full name in Bengali, one with the punctuation ‘ঐ’ on the letter ‘হ’ and another with ‘ফ’. The second page of the deed contains his signature with ‘ঐ’, third page with ‘ফ’, fourth page with ‘ঐ’ while the fifth and sixth pages with ‘ফ’. The latter (exhibit-Kha) is a simple *Bainanama* for selling 13 decimals of land to the same person (DW 1). Both the two pages of the *Bainanama* contain signatures of the executant Hafiz Ibrahim with the punctuation ‘ফ’. The recital parts of both the deeds are like an ordinary sale deed executed for dire want of money, not for reconveyance. It is really incredible that a person like the appellant would put his signature on different pages with different spelling of his own name, and he would sale the land for necessity of money. Besides, his signatures previously put on different documents, which are available on record, do not match the signatures put on exhibits-Ka and Kha. Regarding return of the land, DW 1 deposed that he himself had sold both the lands to the appellant and took it back as the proposed auditorium could not be constructed due to want of more land. Whereas the material exhibit-XXVIII/1 shows that 13 decimals of land under the said deed was sold by Mir Mofazzal Hossain alias Zinna, not by

DW 1 Salauddin Patwary. His (DW 1's) evidence was also contrary to the recital part of exhibit-Ka. The said deed was allegedly executed in 2003 for transferring 22 decimals of land for a consideration of Taka 1,50,000/= on stamp papers of Taka 250/= only. According to section 3 of the Stamp Act, 1899 read with its section 2 (10) and entry 23 of schedule 1 which was in force at the material time, this stamp duty was quite insufficient. We brought all these anomalies in notice of learned Advocate for the appellant, but he failed to explain it. Under the circumstances, it is held that these two defence evidences (exhibits-Ka and Kha) actually were created for the purpose of the case, and the land under these two deeds were still owned by the appellant, which he had concealed in his wealth statement.

Consideration money against these two pieces of land is Taka 2,70,000/= (two lac seventy thousand) only. Such an small amount does not make any mentionable difference with the total property of the appellants which worth Taka 10,80,09,442/= nor does it appear to be disproportionate to his known sources of income. These two properties or its value of Taka 2,70,000/= is also covered by his total property. So, we do not find any justification in convicting the appellant under

section 27 (1) of the Act V of 2004. Nevertheless, the appellant committed offence under section 26 (2) of the Act V of 2004 by not mentioning these two properties (items No.1 and 2) in his wealth statement presumably on a notion of illegality. Learned trial Judge rightly passed the conviction against him on that count. However, considering the gravity of offence relating to this part of the case, we are inclined to reduce the sentence.

Accordingly, the appeal is allowed in part. The impugned judgment and order dated 19.06.2008 passed by the Special Judge, Court No.4, Dhaka in Special Case No.23 of 2007 so far it relates to the appellant's conviction and sentence under section 27 (1) of the Act V of 2004 is set aside, and his conviction under section 26 (2) thereof is maintained, but the sentence of imprisonment for 3 (three) years awarded on him thereunder is reduced to imprisonment for the period already served out. The fine of Taka 50 (fifty) lac imposed upon the appellant is also maintained with the same default clause. The appellant's share in the confiscated property shall be released on payment of the fine or serving out the sentence of 6 (six) months as mentioned in the default clause. Since the co-convict Mafruz Sultana is in full knowledge of the proceedings and

has not challenged the impugned judgment and order by preferring any appeal till today, the authority concerned is at liberty to proceed with implementation of the judgment and order by taking over the confiscated properties so far it falls under her share.

Send down the lower Court's record.

Bishmadev Chakraborty, J:

I agree.