

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

Present:  
Mr. Justice A.H.M. Shamsuddin Choudhury  
And  
Mr. Justice Farid Ahmed

**CRIMINAL MISCELLANEOUS NO. 42595 OF 2012.**

**IN THE MATTER OF :**

**Syeda Sajeda Chowdhury**

... Petitioner

-Versus-

The State

.... Respondents

**Mr. M. Amirul Islam, Adv.**

... For the Petitioner

Mr. Amit Talukder, D. A. G.

... For the State.

Mr. Khurshed Alam Khan, Adv.

... For the Anti Corruption Commission.

**Heard and Judgment on: 28<sup>th</sup> November, 2012.**

**A.H. M. Shamsuddin Choudhury, J:**

The Rule under adjudication, issued on 17.10.2012 was in following terms:

“Let a Rule be issued calling upon the opposite party to show cause as to why the proceedings of Ramna Police Station Case No. 22 dated 10.07.2008 corresponding to G. R. No. 359/2008 under section 26(2) and 27(1) of the Anti Corruption

Commission Act, 2004 read with Rule 15 of the Emergency Powers Rules 2007, now pending in the Court of Chief Metropolitan Magistrate, Dhaka should not be quashed and/or pass such other or further order or orders as to this court may seem fit and proper.”

Averments figured by the petitioner, in his application invoking Section 561A of the Code of Criminal Procedure, seeking quashment of the aforementioned proceeding are briefly, scripted below;

The petitioner is a former Minister for Environment and Forest and is a presidium member of Bangladesh Awami League.

On 15<sup>th</sup> November 2007, the Anti Corruption Commission (henceforth referred to as “the ACC”) issued a notice under Section 26(1) of the Anti Corruption Commission Act 2004 (“the ACC Act”) asking the petitioner to submit the statement of assets in her name, her husband’s name or in the name of her dependants, within 7 working days from the date of the receipt of the said notice. The notice further stated that if the statement of assets is not submitted within the stipulated time, she will be prosecuted under Section 26(2) of the ACC Act. The contents of

the notice from the ACC dated 15.11.07 are reproduced hereunder, verbatim-

দুর্নীতি দমন কমিশন

প্রধান কার্যালয়

১, সেগুন বাগিচা, ঢাকা।

যেহেতু প্রাপ্ত তথ্যের ভিত্তিতে অনুসন্ধান করে দুর্নীতি দমন কমিশনের স্থির বিশ্বাস জন্মেছে যে, আপনি সৈয়দা সাজেদা চৌধুরী, সাবেক মন্ত্রী, স্বামী-জনাব গোলাম আকবর চৌধুরী, বর্তমান ঠিকানাঃ বাড়ী নং ৪, ফ্ল্যাট নং-ডি-২, রোড নং-১৩৭, গুলশান-১, ঢাকা আপনার জ্ঞাত আয়ের বহির্ভূত স্বনামে/বেনামে বিপুল পরিমাণ সম্পদ/সম্পত্তির মালিক হয়েছেন।

সেহেতু, দুর্নীতি দমন কমিশন আইন, ২০০৪ (২০০৪ সনের ৫নং আইন) এর ধারা ২৬ এর উপ-ধারা (১) দ্বারা অর্পিত ক্ষমতাবলে আপনি সাজেদা চৌধুরী, সাবেক মন্ত্রী আপনার নিজের, স্বামী, আপনার উপর নির্ভরশীল ব্যক্তিবর্গের স্বনামে/বেনামে বা আপনার পক্ষে অন্য নামে অর্জিত যাবতীয় স্থাবর/অস্থাবর সম্পদ/সম্পত্তি, দায়-দেনা, আয়ের উৎস ও উহা অর্জনের বিস্তারিত বিবরণী অত্র আদেশ প্রাপ্তির ০৭(সাত) কার্যদিবসের মধ্যে এতদসঙ্গে প্রেরিত কমিশনের ছকে দুর্নীতি দমন কমিশনের সচিব বরাবরে দাখিল করতে আদিষ্ট হয়ে নির্দেশ দেয়া যাচ্ছে। নির্ধারিত সময়ের মধ্যে সম্পদ বিবরণী দাখিল করতে ব্যর্থ হলে অথবা মিথ্যা বিবরণী দাখিল করলে উপরোক্ত আইনের ধারা ২৬ এর উপ-ধারা (২) মোতাবেক আপনার বিরুদ্ধে ব্যবস্থা গ্রহণ করা হবে।

(শিরীন পারভীন)

উপ-পরিচালক (অনুঃ ও তদস্ৰু-২)

The petitioner sought to challenge the aforementioned notice vide Writ Petition No. 10337 of 2007. By an order dated 2<sup>nd</sup> December 2007 their Lordships were pleased to issue a Rule Nisi coupled with a stay on the operation of the said notice of the ACC.

The ACC filed Civil Petition for Leave to Appeal No. 183 of 2007 before the Hon'ble Appellate Division against the order of the Hon'ble High Court Division in Writ Petition No. 10337 of 2007 dated 2<sup>nd</sup> December 2007 with a prayer to stay the operation of the said order. Besides granting the prayer for stay, the Hon'ble Chamber Judge directed the ACC to accept the statement of assets of the petitioner.

The petitioner submitted the statement of her assets through her attorney Adv. M. Moniruzzaman Khandakar to the ACC on 11<sup>th</sup> February 2008. The contents of the statement of assets of the Petitioner dated 11.02.08 are reproduced hereunder as verbatim-

বিষয়ঃ সৈয়দা সাজেদা চৌধুরীর সম্পদ বিবরণী গ্রহণ প্রসঙ্গে।

জনাব,

আমি নিঃ স্বাক্ষরকারী সৈয়দা সাজেদা চৌধুরী, প্রাক্তন মন্ত্রীর প্রতিনিধি হিসাবে  
তাহাঁর সম্পদ বিবরণী বিগত ২২-০১-২০০৮ ইং তারিখে আপনার অফিসে জমা

দিয়েছিলাম। আপনি সম্পদ বিবরণী গ্রহন করেন নাই। মাননীয় সুপ্রিম কোর্ট (এপিলেট ডিভিশন) এই সম্পদ বিবরণী গ্রহন করার জন্য ইহার ৩১/১/২০০৮ইং তারিখের আদেশে নির্দেশ দিয়েছেন।

অগের দাখিলকৃত সম্পদ বিবরণী আপনার অফিসে জমা আছে। এক্ষুনে ইহার একটি কপি তারিখ সহ পুনরায় দাখিল করিলাম। অনুগ্রহপূর্বক সম্পদ বিবরণীটি গ্রহন করে বাধিত করবেন।

নিবেদক

(এম. মনিরুজ্জামান খন্দকার)

এডভোকেট

সৈয়দা সাজেদা চৌধুরীর পক্ষে।

The petitioner was surprised to learn that a case was lodged with Ramna Police Station being Ramna Police Station Case No. 22 dated 10.07.08 on the basis of F.I.R. lodged by one Md. Mozahar Ali Sarder, Assistant Director, Anti Corruption Commission, under Sections 26(2) & 27(1) of the ACC Act and Rule 15 of the Emergency Power Rules 2007. It has been alleged in the F.I.R, inter alia, that the petitioner gained a total of Tk. 13,75,223 out of her known source of income and she, intending to keep the said amount in her possession, provided false and baseless information to the ACC and thereby committed offence under Sections 26(2) & 27(1) of the ACC Act and Rule 15 of the Emergency Power Rules 2007.

It was alleged in the aforementioned FIR that the statement of wealth of the petitioner revealed that she spent Tk. 300,000 for the construction of a house in her village home, i.e. Village-Chandrapara, Sub-District-Nagar Kanda, District-Faridpur, and that after investigation the ACC found out that actually Tk. 12,01,287 was spent for the said construction, and hence the petitioner concealed Tk. 9,01,287 in her wealth statement.

The ACC failed to discover through its investigation that the aforementioned house was built jointly with other co-owners of the land on which the said house was built. Furthermore, the said amount was shown in the Income Tax Return of the petitioner for the fiscal year 2000-2001.

It was further alleged in the FIR that the petitioner deposited an amount of Tk. 47,20,040 to RAJUK for Plot No. 2, Road-28, Banani, Dhaka, and that in her wealth statement she showed to have deposited 42,46,095 to RAJUK for the said plot, and have concealed Tk. 4,73,945 thereby.

The said FIR, which is devoid of any verification, failed to notice that the allegedly concealed an amount of Tk. 4,73,945, due to oversight, was not show on account of purchase of land but it was shown in the statement of assets and liabilities in the Income

Tax Return of the petitioner for the fiscal year 2000-2001 as 'Cash in Hand'. The said amount of Tk. 4,73,945 was spent from Tk. 5,90,000 cash in hand and as a result there is no material change or variation in the overall wealth of the petitioner.

By an order dated 11<sup>th</sup> July 2008, the Metropolitan Magistrate fixed 12<sup>th</sup> August 2008 for the submission of the investigation report in conexion with Ramna Police Station Case No. 22 dated 10.07.08.

The petitioner on knowing about the said F.I.R., filed Criminal Miscellaneous Case No. 11660 of 2008 before the Hon'ble High Court Division and on 20<sup>th</sup> July 2008 was enlarged on pre-arrest bail on Ramna Police Station Case No. 22 dated 10.07.08 till acceptance of the police report by the learned Chief Metropolitan Magistrate, Dhaka.

On 9<sup>th</sup> November 2008, the petitioner was advised to file Writ Petition No. 8549 of 2008 challenging the proceedings of Ramna Police Station Case No. 22 dated 10.07.08 corresponding to G.R. No. 359/2008. By an order dated 18<sup>th</sup> November 2008, the Hon'ble High Court Division stayed all proceedings of the aforementioned case against the petitioner: the stay have been extended up till now. However, there are case laws suggesting that

when there is alternative remedy available, Writ jurisdiction of the Court should not be invoked, and hence the petitioner is about to seek non-prosecution of Writ Petition No. 8549 of 2008 by preferring the instant application for quashment before this Hon'ble court. The petitioner accordingly undertakes to withdraw the Writ Petition for non-prosecution, once the Rule is issued.

Section 20 of the ACC Act provides for power of investigation by the ACC. Section 20(2) provides that the Commission may, by notification in the official Gazette, empower any of its subordinate officers to investigate the offences that may be investigated by the Commission. Yet no such notification has been published in the official Gazette empowering Mozahar Ali Sarder to investigate into the offence alleged to have been committed by the petitioner.

The ACC clearly acted in breach of Rule 7(1)-(5) of the Anti Corruption Commission Rules 2007 ("the ACC Rules") in relation to the enquiry in the wealth of the petitioner.

Rule 7(1) of the ACC Rules provides that the officer in charge of the inquiry shall complete the inquiry within 15 working days and submit report hereon. However, no inquiry report was submitted to the ACC within the time stipulated in Rule 7(1).



Rule 7(2) of the ACC Rules further provides that if the inquiry report cannot be submitted within 15 working days in accordance with Rule 7(1) for any reasonable cause, the Director in charge of the inquiry may, upon an application made before the expiry of the period as stipulated in Rule 7(1), extend the time for completion of inquiry up to another 15 working days. The ACC kept the inquiry on against the petitioner without any such extension of inquiry period as provided in Rule 7(2).

Rule 7(4) of the ACC Rules provides that if the inquiry is not completed as required under sub-rules (1) and (2), the Commissioner in charge may, if he thinks appropriate, entrust another officer to complete the inquiry as required under the ACC Rules, i.e. Rule 7(1). Thus, if the original officer fails to complete an inquiry within the period stipulated under Rule 7(1) and (2), the new officer, if any appointed under Rule 7(4), will get only 15 more working days to complete the inquiry, i.e. a maximum of 45 working days will be allowed to complete any inquiry by the ACC. However, it should be noted that the petitioner submitted the statement of wealth to the ACC on 11<sup>th</sup> February 2008 and the ACC, after inquiry, lodged Ramna Police Station Case No. 22 on

10<sup>th</sup> July 2008, i.e. 5 months after the petitioner submitted the wealth statement.

Rule 7(5) of the ACC Rules provides that if the inquiry cannot be completed even after proceeding under Rule 7(4), the matter shall come to the end, but there shall be no bar in lodging fresh complaint against the same offence and holding inquiry under such fresh complaint. The petitioner submitted the statement of wealth to the ACC on 11<sup>th</sup> February 2008 but the ACC, in violation of Rule 7(5), kept the inquiry against the petitioner open for a period of 5 months and lodged Ramna Police Station Case No. 22 dated 10.07.08.

F.I.R. was lodged on 10<sup>th</sup> July 2008 which was 126 working days after the submission of the wealth statement on 11<sup>th</sup> February 2008. However, as far as the petitioner's knowledge of the matter is concerned, no new inquiry officer was appointed in accordance with Rule 7(4) of the ACC Rules. Furthermore, following Rule 7(5), no fresh complaint was lodged with regard to the offence alleged to have been committed by the petitioner since the complaint on whose basis the notice was issued under section 26(1) of the ACC Act on 15<sup>th</sup> November 2007.

The ACC also acted in breach of Rule 10 of the ACC Rules in relation to the investigation of the wealth of the petitioner. Rule 10(1)-(2) is reproduced hereunder as verbatim-

“১০। মামলার তদন্তকার্য সম্পন্ন ও প্রতিবেদন দাখিল।-

(১) তদন্তে দায়িত্বপ্রাপ্ত কর্মকর্তা মামলা তদন্তে নিদেশ প্রাপ্তির তারিখ হইতে অনধিক পয়তালিশ কার্যদিবসের মধ্যে তদন্তকার্য সমাপ্ত করিয়া তফসিলের ফরম ৪ এ বর্ণিত ছক অনুযায়ী তাহার নিয়ন্ত্রণকারী কর্মকর্তার নিকট তদন্ত প্রতিবেদন দাখিল করিবেন।

(২) উপ বিধি (১) এর উল্লেখিত সময়ের মধ্যে যদি যুক্তিসঙ্গত কোন কারণে তদন্ত প্রতিবেদন দাখিল করা সম্ভব না হয়, তাহা হইলে তদন্তকারী কর্মকর্তা উহার কারণ লিপিবদ্ধ করিয়া উক্ত পয়তালিশ কার্যদিবস সমাপ্ত হইবার পূর্বেই তদন্তে দায়িত্ব প্রাপ্ত পরিচালক বরাবর অতিরিক্ত সময় চাহিয়া আবেদন করিতে পারিবেন এবং উক্তরূপ আবেদন যথাযথ বলিয়া প্রতীয়মান হইলে উক্ত পরিচালক অনধিক পনের কার্যদিবস পর্যন্ত সময় উক্ত পয়তালিশ কার্যদিবসের ধারাবাহিকতায় বর্ধিত করিতে পারিবেন।”

Rule 10(1) of the ACC Rules provides that the officer in charge should complete investigation and submit investigation report within 45 working days from the receipt of the order of investigation of the case. Moreover, Rule 10(2) provides that if the investigation report cannot be submitted within 45 working days due to any logical reason, the investigating officer shall, before the expiry of the said 45 working days, apply to the Director in charge

of the investigation report and, if such application appears appropriate, the Director may extend the period of investigation and submission of report by 15 working days in continuation of the original 45 working days. However, the ACC clearly failed to abide by the requirements laid down in Rule 10(1)-(2) while investigating the wealth of the petitioner after she submitted her wealth statement on 11<sup>th</sup> February 2008.

A maximum of 60 days was allowed to the ACC to investigate the matter of the Petitioner under Rule 10(1)-(2). However, the F.I.R. was lodged after 5 months from the day the petitioner submitted her wealth statement to the ACC.

The impugned proceedings are abuse of the process of the Court and are liable to be quashed in as much the investigation officer has not been appointed in accordance with section 20 of the ACC Act.

The impugned proceedings were used as an instrument of harassment and persecution in order to prevent the petitioner, who was a Presidium member of Bangladesh Awami League, from contesting in the ensuing Parliamentary election and hence the proceedings are mala fide both in law and in fact.

None of the respondents filed any affidavit in opposition.

As the Rule matured to hearing, Mr. M. Amirul Islam the learned senior Counsel proffered that the impugned proceeding is liable to be quashed for multifarious reasons. According to him the same should not be allowed to proceed.

According to him provisions scripted in Rule 7 of the Anti Corruption Rules (ACC Rules) are not merely directory, they are mandatory, and hence, since the investigation process could not be concluded within the period stipulated in Rule 7, the proceeding is destined to face a natural death. He relied on the same concept as to Rule 10 as well.

In addition, he argued that as the First Information Report (FIR) discloses no offence known to our law, the proceeding can not be allowed to continue.

This submission **emburdens** us to explore the true import of Rule 7, as well as to dissect the FIR in its entirety.

Rule 7 reads as follows:-

৭। অনুসন্ধানকার্যের সময়সীমা।-

(১) অনুসন্ধানের জন্য দায়িত্বপ্রাপ্ত কর্মকর্তা অভিযোগ অনুসন্ধানের নির্দেশ প্রাপ্তির তারিখ হইতে অনধিক পনের কার্য দিবসের মধ্যে অনুসন্ধানকার্য সমাপ্ত করিয়া তফসিলের ফরম-২ এ বর্ণিত ছক অনুযায়ী তাহার নিয়ন্ত্রনকারী কর্মকর্তার নিকট দাখিল করিবেন।

(২) উপ-বিধি (১) এ উল্লিখিত সময়ের মধ্যে যদি যুক্তিসঙ্গত কোন কারণে অনুসন্ধান প্রতিবেদন দাখিল করা সম্ভব না হয়, তাহা হইলে উহার কারণ লিপিবদ্ধ করিয়া উক্ত পনের কার্য দিবস সমাপ্ত হইবার পূর্বেই অনুসন্ধানের দায়িত্বপ্রাপ্ত পরিচালক বরাবর অতিরিক্ত সময় চাহিয়া আবেদন করিতে পারিবেন এবং উক্তরূপ আবেদন যথাযথ বলিয়া প্রতীয়মান হইবে উক্ত পরিচালক অনধিক পনের কার্যদিবস পর্যন্ত সময় বর্ধিত করিতে পারিবেন।

(৩) এই বিধির অধীনে অনুসন্ধানের জন্য দায়িত্বপ্রাপ্ত কর্মকর্তা যথাযথভাবে দায়িত্ব পালন করিতেছেন কিনা তাহা তদারকির জন্য অনুসন্ধানকারী কর্মকর্তা নিয়োগের সাথে সাথে উপ-পরিচালক পদমর্যাদার নিচে নহেন এমন একজন তদারককারী কর্মকর্তাও নিয়োগ করিতে হইবে।

(৪) উপ বিধি (১) ও (২) এর অধীনে অনুসন্ধানকার্য সমাপ্ত না হইবে বিষয়টি সংশ্লিষ্ট কমিশনারের বরাবরে উপস্থাপন করিতে হইবে এবং কমিশনার যথাযথ মনে করিলে অপর একজন অনুসন্ধানকারী কর্মকর্তাকে অনুসন্ধানের জন্য দায়িত্ব প্রদান করিতে পারিবেন এবং এইরূপে দায়িত্বপ্রাপ্ত কর্মকর্তা এই বিধির বিধান অনুসারে অনুসন্ধানকার্য সমাপ্ত করিবেন।

(৫) উপ বিধি (৪) এর বিধান প্রতিপালিত হইবার পরও অনুসন্ধানকার্য সমাপ্ত করা সম্ভব না হইলে উহা সমাপ্ত হইবে, তবে একই অপরাধের বিষয়ে নতুন অভিযোগ দায়ের বা উহার অধীন অনুসন্ধানকার্য পরিচালনায় কোন বাধা থাকিবে না।

Clearly, Rule 7 dictates in positive term that investigation is to be completed within fifteen days from the date on which the

Investigating Officer receives instruction to commence investigation.

Sub-Rule 3 the said Rule allows some flexibility in the sense that the investigation officer is thereby allowed an additional period of 15 days, in the event he can assign cogent reason for his failure to conclude the process within the period stipulated by Sub-Rule 1.

Sub-Rule 4 reflects the ACC's insistence as to the conclusion of the investigation process without delay, because as per this Sub-Rule, the Investigation Officer is required to the matter up with the concerned Commissioner, if he fails to bring the investigation process to an end even within the extended 15 days period as per sub-Rule 2, and it will to open to the commissioner concerned to deploy another investigation officer to conclude the investigation.

In the event of the eventual failure, i.e. if the investigation Officer fails to conclude the process within 15+15 days, as per Sub-Rules 1+2, and if no replacement Investigation Officer is deployed as contemplated by Rule 4, then, the investigation process shall abate, as that is what sub-Rule 5 surmons. The later part of Sub-Rule 5 further covenants that abatement of the

investigation process by virtue of the said Sub-Rule, shall, however, be without pre-judice to initiate a fresh investigation process de-novo.

Mr. Khurshed Alam Khan, for the ACC tried to impress us with the contention that the provisions as scripted in Rule 7(5) are not mandatory, but have been placed there for the guidance of the Investigation Officers.

There is little doubt that all the surmons in a legislation or secondary legislation are not necessarily mandatory: some are only directory, failure to comply with which are not to be treated to be fatal.

Whether a particular command, expressed in a primary or secondary legislation, conveys mandatory direction or not, is a question of construction. In resolving the dichotomy, we are required to detect the intention of the author/authors of the instrument. If it be a primary legislation, we try to unveil the intention of the legislators, while we would make endeavour to trace the intention of the framers of the sub-ordinate legislation, if the instrument is a secondary legislation.

Common Law Judges of outstanding caliber and wisdom evolved several cannons of interpretation, which should be



resorted to in discovering the presumed intention of the authors of legislative instruments. One of such canons dictate that if the legislation (or the secondary legislation as the case be) prescribes consequences of the failure to abide by the provisions contained therein, then the instrument shall be presumed to be mandatory, while the same shall be deemed directory only, if the instrument is silent on consequence.

Now, Sub-Rule 5 reads:

(৫) উপ বিধি (৪) এর বিধান প্রতিপালিত হইবার পরও অনুসন্ধানকার্য সমাপ্ত করা সম্ভব না হইলে উহা সমাপ্ত হইবে, তবে একই অপরাধের বিষয়ে নতুন অভিযোগ দায়ের বা উহার অধীন অনুসন্ধানকার্য পরিচালনায় কোন বাধা থাকিবে না।

So, consequence of the Investigation Officer's failure has quite conspicuously been laid down in sub-Rule 5, by saying that the investigation process, in such an event, shall halt. Not only that, the same sub-Rule further stipulates that cessation of investigation process by operation of the first part of sub-Rule 5, shall not act as a stumbling block to initiate fresh investigation.

It is not only that the consequence of failure has been explicitly laid down, the general tenor of all the Sub-Rules of Rule 7 is whence such the anxiety of the formers of the Rule is visible

as to the expeditions conclusion of the investigation. No doubt, this desire makes sense.

So far as Rule 10 is concerned, we can, however, not be in agreement with the petitioners contention, because, in our introspection, for the reasons stated above, commands made through Rule 10 are directory only. That, however, will not stand against the petitioner as we are in consensus with Mr. Islam as to the mandatory nature of the provisions in Rule 7(5).

As such, we find no reason to accede to Mr. Khan's submission on Rule 7(5). This court arrived at the same construction of Rule 7(5) in the case of Bahauddin Nasim-V-Secretary, Ministry of Home Affairs, Government of the Peoples Republic of Bangladesh, Bangladesh Secretariat, Ramna Dhaka and others, unreported, Writ Petition No.7245 of 2008.

The petitioner's claim that the investigation officer failed to bring the investigation to an end and thereby fell foul of Rule 7(5), has not be refuted by the respondents. Indeed the documents in the file squarely support the petitioner's claim.

The result is, *cadit questio*: the investigation process came to an automatic end by operation of Rule 7(5) when the

investigation Officer failed to conclude the same in accordance with the time span Rule 7 laid down.

It stands clear that it was within the competence of the ACC either to appoint a new investigation Officer as per Sub-Rule 4 or to initiate an investigation process de-novo in accordance with the later part of Rule 7(5). But the ACC did not follow either prescription.

If the impugned proceeding is allowed to continue, that will be tantamount to allow an abortive investigation process to proceed in futility. Such a move will, then, surely be abusive of the process of the court and would indeed, constitute fertile exercise in as much as the originally initiated moribund investigation process can not be resurrected, though de-novo process could be, but was not, initiated.

Although in view of our above finding there is no need to proceed further, we are, nevertheless inclined, for the interest of totality, to address the residual aspect of Mr. Islam's submission.

According to him, the FIR discloses no offence whatsoever. As an FIR is the genesis of a criminal prosecution, around which any possible trial would revolve, fall or stand, it is a well settled

principle of criminal Jurisprudence that no trial should be allowed to proceed if the FIR itself declares no crime.

Following a decision by the Privy Council in the case of Khawja Nazir Ahmed-v-Emperor 1945 D L R, PC 18, there have been plentitude of decisions on this point including the cases of Abdul Quader-V-State 28 DLR (AD) 39, Nasiruddin-V-Mamtazuddin Ahmed, 36 DLR AD 14. That goes hands in glove with rationality, because the FIR story can not be reframed- the case must proceed on that story.

In the instant case the FIR allegation is that the petitioner suppressed fact as to her wealth. In elaborating this, the informant claimed that the petitioner spent Tk. 1201287.00 in erecting a threshold in her village property, yet in her wealth statement she quoted the speared amount as Tk. 300000.00 only.

Mr. Islam, to substantiate his contention, took us through a couple of documents that emanated from the Office of the Assistant Commissioner, Land, which shows that the property in the petitioner's village is a shared realty, inherited along with other co-sharers, submitted that these documents clearly show that the petitioner's contribution in erecting a structure on the property was proportionate to her share of ownership in the land, a proven

fact that the ACC refrained from taking account of, whether deliberately or negligently or recklessly.

We have scanned the documents Mr. Islam drew our attention to. Veracity of these instruments have not been challenged.

They do unambiguously depict that the petitioner owns only part of the inherited property and, hence, the ACC's finding based on the computation of the total amount spent in erecting the structure, is visibly and patently flawed.

Having analysed the FIR in juxtaposition with the tax return the petitioner submitted, with meticulous precision, we have discovered that the allegation that the petitioner also under stated the amount she paid to RAJUK, is also a flimsy one.

So, the proceeding is bound to end in fiasco also because the FIR failed to disclose any offence.

The nature of the FIR also gives us enough food for the thought that this is a tailor made FIR which may have been complied to suit the purpose of certain interested quarter as Mr. Islam submitted, at a time when the country was ruled by a controversial care-taker regime.

To sum up, in view of what have been figured above, we are bound to be swayed to the invariable conclusion that the impugned proceeding can not be allowed to proceed. Wherefor this is an appropriate case where we should engage our inherent power as preserved by Section 561/A of the Code of Criminal Procedure. By doing so we do, hereby, quashed the proceeding in question.

The Rule is, resultantly, made absolute without an order on cost.

The impugned proceedings namely that of Ramna Police Station Case No. 22 dated 10.07.2008 corresponding to G. R. Case No. 359 of 2008 under section 26(2) and 27(1) of the Anti Corruption Commission Act, 2004 read with Rule 15 of the Emergency Power Rules 2007 is hereby quashed.

Finally, we noted that although a Writ Petition, registered as Writ Petition No. 7245 of 2008 was previously filed challenging the impugned proceeding, the same was withdrawn prior to moving the instant petition before this Bench, invoking our inherent power as preserved by Section 561A of the Code of

Criminal Procedure, reckoning that invoking criminal jurisdiction would be more apposite. Since the said Writ Petition was withdrawn before the instant petition was filed, no legal complication arises.

Farid Ahmed, J:

I agree.