

Present:

Mr. Justice Borhanuddin

And

Mr. Justice K.M. Kamrul Kader

**Criminal Miscellaneous Case No. 29511 of 2010**

Md. Mosarraf Hossain

... Accused-Petitioner

-Versus-

The State & another .... Opposite parties

Mr. Md. Bodruddoza, Advocate

... For the accused-Petitioner

Mr. Md. Salim, D.A.G with

Mr. Md. Aminur Rahman Chowdhury, AAG

... For the State

Heard on 25.02.14, 09.4.2014 and

**Judgment on : 24.4.2014**

**K.M. Kamrul Kader, J:**

This rule was issued calling upon the opposite parties to show cause as to why the proceedings in Special Case No. 04 of 2009 under sections 26(2) and 27(1) of the Anti Corruption Commission Act, 2004 arising out of Jamalpur Police Station Case No. 19 dated 12.11.2008, under sections 26(2) and 27(1) of the Anti Corruption Commission Act, 2004, now pending in the Court of Senior Special Judge, Jamalpur, should not be quashed.

Short facts, relevant for the purpose of disposal of this Rule, are that opposite party No. 2 as informant lodged an ejahar with Jamalpur Sadar Police Station stating interalia that the accused Mosharraf Hossain was asked to submit his wealth statement in person within 72 hours to the Anti Corruption Commission (herein after called as 'ACC')

but he submitted his wealth statement through his wife. As such, ACC did not accept it as the same was not filed by the accused in person. Thereafter, wife of the accused filed writ petition being No. 4015 of 2007 before this Division and pursuant to an order passed by this Division in the aforesaid Writ Petition, ACC received the same. Upon examination of his wealth statement, ACC found concealment of property worth Taka 13,23,251/- only, which is beyond his known source of income. The informant ACC after initial investigation found that accused concealed an amount of Taka 13,23,251/- in his wealth statement, as such, committed offence under sections 26(2) and 27(1) of the Anti Corruption Commission Act, 2004 and lodged the Ejahar and the same was registered as Jamalpur Police Station case No. 19 dated 12.11.2008 under sections 26(2) and 27(1) of the Anti Corruption Commission Act, 2004 (herein after called as 'ACC Act').

One Mohammad Mahmud Hasan, Deputy Commissioner of ACC, Combined District Office- Tangail was appointed as Investigating Officer to investigate the case and after conclusion of investigation, he submitted a Charge-Sheet being No. 284 dated 07.09.2009 under sections 26(2) and 27(1) of the ACC Act, 2004 against the accused-petitioner.

The accused petitioner surrendered before this Division by filing Criminal Miscellaneous case No. 27734 of 2009 and prayed for anticipatory bail and on 07.12.2009 this Division after hearing the

parties, directed the accused petitioner to surrender before the trial court and accordingly, he surrendered before the trial court on 03.02.2010 and obtained bail.

Thereafter the case was transferred in the court of Senior Special Judge, Jamalpur, for trial and the same is registered as Special Case No. 04 of 2009. The petitioner filed an application under Section 265 C of the Code of Criminal Procedure for discharging him from the allegations levelled against him and learned Special Judge after hearing the parties rejected the application and framed charge against him under sections 26(2) and 27(1) of the ACC Act, 2004 vide order dated 22.06.2010 and next date fixed on 31.10.2010 for examination of the PWs.

Having aggrieved by and dissatisfied with the impugned proceeding of Special Case No. 04 of 2009, the accused-petitioner preferred the instant application under Section 561-A of the Code of Criminal Procedure before this Division and obtained Rule and an order of stay.

Mr. Md. Bodruddoza, learned Advocate appearing for the accused-petitioner submits that ACC issued a notice upon the accused-petitioner asking him to submit his wealth statement in person within 72 hours. On receipt of the said notice, the petitioner submitted his wealth statement through his wife due to his illness, but the ACC did not accept his wealth statement, as the same was not filed by the accused in person. Thereafter, wife of the petitioner filed Writ Petition No. 4015 of 2007

and after hearing the parties, their Lordships directed the ACC to receive his wealth statement. He next submits that ACC did not give reasonable time to submit his wealth statement and 72 hours cannot be considered as reasonable time to submit wealth statement. It is well settled principle of law that a notice must allow a reasonable time to check-up the details of the assets of a person, if necessary, on examination of his records and after consultation with his lawyers and other concerned persons. The person concerned must be afforded a fair and reasonable opportunity to respond to the notice; otherwise, it is no notice in the eye of law. He further submits that during investigation, the investigating officer did not found any concealment of his wealth Statement. The accused-petitioner in his wealth statement as well as in his Income Tax Return and revised return showed his entire income and properties, the investigation officer also admitted the same in his Charge sheet and as such the petitioner did not commit any offence, which came within the purview of Sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004. He lastly submits that at the time of initiation of the impugned proceedings against the petitioner, the assessment has been completed with no case or allegation and the same has been admitted by the Investigating officer of ACC, there being no iota of evidence to attract offence under sections 26(2) and 27(1) of the ACC act, 2004. In the FIR as well as Charge-Sheet no criminal offence has been disclosed against this accused-petitioner. The Informant inconnivance with army officials, with the

intention to harass and press the accused-petitioner lodged this false and fabricated allegation against the petitioner during the controversial emergency period and the allegations are vague, groundless, frivolous, vexatious, oppressive and preposterous. In this circumstances, lodgment of the instant case against the accused-petitioner is malafide and ex-facie illegal. On its face the allegation as incorporated in the F.I.R. and charge Sheet against the accused petitioner are so preposterous, even if the facts are admitted in their entirety, on their face value, the same do not disclose any criminal offence, so the initiation and continuation of the impugned proceeding against this accused petitioner is an abuse of process of the court. As such, the proceedings of the Special Case No. 04 of 2009 against the petitioner is totally abuse of process of the Court, which is liable to be quashed. The learned advocate for the petitioner placed reliance in the case of *Anti-Corruption Commission Vs. Dr. Mohiuddin Khan Alamgir and others, reported in 62 DLR (AD) (2010)* in support of his contention.

Mr. Khurshed Alam Khan, learned advocate appearing for the Anti-Corruption Commission submits that the accused petitioner concealed his property in his wealth statement for which Anti Corruption Commission filled ejahar against him and there are specific allegations against this accused petitioner. The Investigating Officer after conclusion of investigation, finding prima facie case against the accused petitioner submitted charge sheet under sections 26(2) and 27(1) of the ACC Act,

2004. He further submits that all these are question of facts need to be decided by adducing evidence at the trial court and this court exercising jurisdiction under section 561A of the Code of Criminal Procedure cannot decide on the factual aspect of this case. He lastly submits that there are no illegalities and irregularities in the proceeding and there are ingredients of offence, which attracts concealment of properties in his wealth statement, should not be interfered by this Court at this stage, because the trial of this case has already been started and as such, this Rule is liable to be discharged.

We have gone through the application under section 561A of the Code of Criminal Procedure and the materials annexed thereto.

Under Section 561-A of the Code of Criminal Procedure, the High Court Division has inherent power to make such order, which may be necessary to give effect to any order passed under the Code or this power may be used to prevent abuse of the process of any Court or to secure ends of justice. The instant case does not fall in the first category; rather it involves only the question whether initiation and continuation of criminal proceeding would amount to abuse of process of the Court and quashing of the proceeding is needed to secure ends of justice.

The **First** question is as to whether or not the inherent power under section 561A of the Code of Criminal Procedure can be invoked at any stage of the proceeding even at an initial stage, if it is necessary to prevent abuse of the process of court or otherwise to secure ends of

justice. Learned Advocate for the ACC submits that the instant application under Section 561-A of the Code of Criminal Procedure is not maintainable and there is hardly any scope for quashment of the proceedings, as the trial of the case has already been started. In the instant case, we find that charge was framed against the accused-petitioner, no prosecution witness was examined and next date was fixed for examination of the prosecution witnesses. As such, the decision of our Apex Court cited above is not applicable in this Case. The inherent power of this Court under section 561A of the Code of Criminal Procedure can be invoked at any stage of the proceeding even at an initial stage. We find support of this contention in the case of **Abdul Quader Chowdhury vs. The State, 28 DLR (AD) (1976) 38**. Similar view was taken by our Apex Court in the case of **Ali Akkas Vs. Enayet Hossain and others, 17 BLD (AD) (1997) 44**.

The **Second** question is as to whether or not allegations made in the F.I.R and Charge Sheet attracts the provisions of Sections 26(2) and 27(1) of the ACC Act, 2004. In the instant case, allegations are that ACC issued a notice upon the accused-petitioner asking him to submit his wealth statement in person within 72 hours. On receipt of the said notice, the petitioner submitted his wealth statement through his wife due to his illness, but the ACC did not accept his wealth statement, as the same was not filed by the accused in person. Thereafter, wife of the petitioner filed Writ Petition No. 4015 of 2007 and after hearing the parties their

Lordships directed the ACC to receive his wealth statement. Upon examination of his wealth statement, ACC found concealment of property worth Taka 13,23,251/- only, which is beyond his known source income. The informant ACC after initial investigation found that accused concealed an amount of Taka 13,23,251/- in his wealth statement, as such, he committed offence under sections 26(2) and 27(1) of the Anti Corruption Commission Act, 2004.

We have perused the charge-sheet and found that investigating officer did not find any concealment of wealth in the statement. Accused Petitioner cannot submit proper statement of his wealth to the Anti-Corruption Commission due to his illness. We have also noticed that the investigating Officer found that there is no concealment in his wealth statement and he did not found any property disproportionate to his known source of income. The informant who is also investigating officer of the case, in his charge sheet stated that there is no evidence that the accused procured any assets, movable or immovable, beyond his known source of income through illegal means.

Relevant Portion of the charge sheet is reproduced hereunder as verbatim :-

“যাচাইকালে প্রাপ্ত সম্পদ বিবরণীর ১ নং ক্রমিকে দোতলা বাড়ীর নির্মাণ ব্যয় ৭,৫৩,১২২/- টাকা ও টিনসেড ঘরের মূল্য দেখানো হইয়াছে ২৫,৫০০/- টাকা অর্থাৎ তাহার ঘোষিত ব্যয় (৭,৫৩,১২২/- +২৫,৫০০/-)=৭,৭৮,৬২২/-টাকা। তবে গণপূর্ত বিভাগ, জামালপুরের প্রতিবেদন অনুযায়ী পাওয়া যায়

২১,০১,৮৭৩/-টাকা। ইহাতে তাহার ঘোষণা অনুযায়ী সম্পদ বিবরণীতে মোট (২১,০১,৮৭৩-৭,৭৮,৬২২/-)=১৩,২৩,২৫১/- টাকার অতিরিক্ত সম্পদ পাওয়া যায়, যাহা তাহার জ্ঞাত আয় বহির্ভূত ও সম্পদ বিবরণীতে মিথ্যা তথ্য প্রদান করিয়াছেন হেতু তাহার বিরুদ্ধে দূনীতি দমন কমিশন আইন, ২০০৪ এর ২৬(২) ও ২৭(১) ধারায় জামালপুর থানায় মামলা নং-১৯, তারিখ ১২/১১/২০০৮ ইং রজু হয়। মামলা হইবার পরবর্তীতে জনাব মোঃ মোশারফ হোসেন মাননীয় চেয়ারম্যান দূনীতি দমন কমিশন, প্রধান কার্যালয়, ঢাকা বরাবরে আবেদন পেশ করেন যে, তিনি অসুস্থ থাকায় তাহার পক্ষে তাহার স্ত্রী মিসেস তাসলিমা আকতার মহামায়া হাইকোর্ট রীট পিটিশন নং- ৪০১৫/২০০৭ ইং এর ৭/৫/২০০৭ ইং এর নির্দেশ মোতাবেক স্থাবর/অস্থাবর সম্পত্তির একটি খসড়া/সাময়িক প্রতিবেদন দাখিল করেন। পরবর্তীতে দাখিলকৃত স্থাবর/অস্থাবর সম্পত্তির বিবরণীতে কিছু গড়মিল প্রতিফলিত হয়। তাহার অসুস্থতার কারণে তাহার উক্ত বিল্ডিং-এ ও দো' তলার কাজ নির্মাণাধীন থাকায় এস্সটেনশন ৫৯০ বর্গফুট এবং টিনসেডের ১৫৭০+২২৩ বর্গফুট এবং বাউন্ডারী ওয়াল রহিয়াছে। যাহার মূল্য ১৩,২৩,২৫১/- টাকা দাখিলকৃত সম্পদের বিবরণীতে ভুলবশত: অনিচ্ছাকৃতভাবে উল্লেখ করেন নাই। উক্ত সম্পত্তির ২০০৭-২০০৮ ইং সনের সম্পদ বিবরণীতে প্রদর্শন করা হইয়াছে।”

*The investigating officer also found that:-*

“ তাহার উক্ত বছরে সংশোধিত কর রিটার্নের মাধ্যমে প্রদর্শন করিয়াছেন এবং আয়ের উৎসের বর্ণনা করিয়াছেন। আয়ের উৎসে অংশ পরীক্ষাকালে উহার সত্যতা পাওয়া যায়। ইহা ছাড়া সংশোধিত কর রিটার্ন দাখিলের বিধান রহিয়াছে। এই সব কারণে তদন্তকালে ১৩, ২৩,২৫১/-টাকার সম্পত্তি বৈধ বলিয়া বিবেচনা করা হয়।”

We find that during investigation, the investigating officer did not found any concealment in his wealth Statement. The accused-petitioner in his wealth statement as well as in his Income Tax Return and revised return showed his entire income and properties, the investigation officer admitted the same in his Charge sheet.

The **final** question is as to whether or not ACC afforded reasonable time to submit his wealth statement. It is apparent from FIR that ACC issued a notice upon the accused-petitioner asking him to submit his wealth statement in person within 72 hours, according to the provision of Section 15 (Gha) (2) of Emergency Powers Rules, 2007, However, allegations against the petitioner was not made under sub-section 5 of section 15 (Gha) of the aforesaid Rules rather allegation was made and charge was framed against him under section 26(2) and 27(1) of the ACC Act, 2004. To bring home charge under sections 26(2) and 27(1) of the ACC Act, 2004, ACC must follow the procedure as laid down in Section 17 of the Anti-Corruption Commission Rules, 2007. The ACC acted in breach of Rule 17 of the ACC Rules in relation to the sending notice to the accused petitioner. We also find that 72 hours cannot be considered as reasonable time to submit wealth statement as there are provision of punishment if the Notice receiver failed to submit it or file inaccurate statement. We find support of this contention in the case of *Anti-Corruption Commission Vs. Dr. Mohiuddin Khan Alamgir and others, reported in 62 DLR (AD) (2010)*, wherein our Apex Court held

*“Besides, the notice dated 18-2-2007 was not a notice required by law, the notice directed the respondent No. 1, a detenu, to submit return of his assets within a period of 72 hours, is itself a worst example of arbitrary action on the part of the*

*concerned authority. A notice must allow a reasonable time to check-up the details of the assets of a person, if necessary, on examination of his records and after consultation with his lawyers and other concerned persons. Section 26 certainly does not envisage a notice upon a person who is in detention and he is not expected to give any details of his assets within the time specified. The person concerned must be afforded a fair and reasonable opportunity to respond to the notice, otherwise, it is no notice in the eye of law. A notice issued under section 26 of the Act to a detenu, away from his hearth and home, cannot be said to be a fair and bonafide exercise of power.”*

Under such circumstances, we are of the view that the allegations have been made against the accused petitioners are preposterous and no offence under sections 26(2) and 27(1) of the ACC act, 2004 has been disclosed in the instant proceeding. We find that the ACC has deliberately and meticulously hyperboles the materials and facts as contained in the F.I.R. and charge sheet in order to prosecute the accused petitioner for harassments.

Under the facts and circumstances of the case and the observation made above, we find substance in the submissions made by the learned advocate for the petitioner.

**Accordingly, the rule is made Absolute.**

The proceedings of Special Case No. 04 of 2009, under Sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004 arising out of Jamalpur Police Station Case No. 19 dated 12.11.2008 under Sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004, is hereby quashed.

The order of stay granted earlier at the time of issuance of this rule, is hereby vacated.

Communicate a copy of this Judgment and order to the Court concern, at once.

**Borhanuddin, J:**

I agree.