In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Writ Petition No.13488 of 2015

In the matter of:

An application under Article 102(2)(a)(i)(ii) of the Constitution of the People's Republic of Bangladesh.

-And-

In the matter of:

Robin Chowdhury @ Misba Uddin

... Petitioner

-Versus-

Anti-Corruption Commission and others

... Respondents

Mr. A.J. Mohammad Ali, Advocate with
Mr. Abdullah M. Rafiqul Islam, Advocate and
Mr. Raghib Rouf Chowdhury, Advocate

...For the Petitioner

Mr. Mahbubey Alam, Attorney General
(Appeared as per desire of the Court)
Mr. Md. Khurshid Alam Khan, Advocate

...For the Respondent No.1
[Anti-Corruption Commission]

Heard on 06.04.16, 11.05.2016, 18.05.2016, 29.05.2016, 01.06.2016 & Judgment on 21.07.2016.

Present:
Mr. Justice M. Enayetur Rahim
And
Mr. Justice Amir Hossain

M. Enayetur Rahim, J:

On an application under Article 102 of the Constitution of People's Republic of Bangladesh this Rule was issued calling upon the respondents to show cause as to why the initiation and investigation of Kotwali Model Thana, Sylhet, being Case No.23 dated 20.05.2015 under section

4(2) and (3) of the Money Laundering Protirodh Act,2012 should not be declared to have been initiated and continued without lawful authority and is of no legal effect and/ or pass such other or further order or orders as to this Court may seem fit and proper.

The facts leading to filing of the writ petition may be noticed in brief.

On 20th May 2015, the Respondent No.2, a Deputy Director (Special Enquiry and Investigation-1) of Anti-Corruption Commission, lodged a First Information Report (FIR), with Kotwali Model Police Station, Sylhet, being Case No.23, implicating the writ Petitioner and others for committing offence under sections 4(2) and (3) of the Money Laundering Protirodh Ain 2012 (herein after referred as Ain of 2012). In the FIR it is alleged that on 06.06.2012, Home Office of the UK sent a Letter of Request For Legal Assistance in the matter of Robin Choudhury @ Misba Uddin to the Ministry of Home, Government of Bangladesh stating that the writ Petitioner was working as an Office Manager in the FLP Solicitors (a law firm), London, from September 2007 to February 2008. During this period the writ Petitioner made 13 fraudulent applications for mortgage, through which he obtained more than 05(five) million pounds and eventually, he remitted taka 16(sixteen) Crore to Bangladesh through different bank accounts. Apart from this he transferred £20,56,527.00 and Taka 13.31 from a joint account with his wife from Landon to Bangladesh. He

deposited the said money opening 50 accounts in 10 different Banks in Sylhet in the name of his father, wife, uncle and brother in law. He also invested some portion of money in share market and purchased land, flats, furnishers details of which has been mentioned in the FIR. Thus, the writ petitioner has committed an offence under Section 4(2) and (3) of the Money Laundering Protirodh Ain, 2012. It is also alleged that writ petitioner having changed his name in London as Robin Chowdhury obtained driving license and UK passport.

The writ petitioner was arrested in August 2011, by the London Police on the allegation of Fraud and Money Laundering. He was charged under section 1 of the Fraud Act 2006 for fraudulent mortgages and also Money Laundering under Section 372(1) and 334 of the Proceeds of Crime Act, 2002.

On 11.04.2013, the writ petitioner was convicted and sentenced to suffer eight years imprisonment and under section 18 confiscation order was passed against the Petitioner under the Proceeds of Crime Act 2002, whereby the Southwark Crown Court in the UK asked for financial information from the Petitioner, i.e. details of his income, property, motor vehicles, bank accounts etc. On appeal the writ petitioner's sentence was reduced to six years and four months, which he is serving. However, at present the writ petitioner is released on license. Section 18 order is essentially start of a confiscation proceeding, which is part of the Petitioner's conviction.

After receiving the section 18 Order, the petitioner provided all his financial information accordingly to the Crown Prosecution Service (CPS) and the concerned Court. The Proceeds of Crime Act 2002, is essentially akin to the Money Laundering Protirodh Ain of Bangladesh, as it creates the offence of money laundering and also laid down provisions of recovering/confiscation of proceeds of a crime, making it very much parallel to the Money Laundering Protirodh Ain of Bangladesh.

The Respondent No.1 Anti-Corruption Commission of Bangladesh started inquiry into the matter vide দুদক/বিঃঅনুঃও তদন্ত-১/মানিলন্ডারিং/৬১-২০১৩/৩১৮৩৬ and then, they also opened another enquiry through their Integrated District Office in Sylhet, vide Memo No. DUDOK/Special Enquiry and Investigation-1/Money Launders Prevention/80-2014/35611 dated 04.12.2014.

The Respondent No.1 obtained an order on 02.01.2014 from the Respondent No.4, Senior Metropolitan Special Judge, Dhaka in Permission Petition No.01 of 2014 freezing the Bank accounts of the petitioner and his wife.

After completing the enquiry the Anti Corruption Commission has initiated the present case lodging the FIR against the writ petitioner and 04(four) others.

Respondent No.1, Anti-Corruption Commission, contested the Rule by filing affidavit in opposition. It is contended by the Respondent No.1 that the writ petitioner has challenged the

criminal proceeding and investigation invoking the writ jurisdiction under Article 102 of the constitution which does not fall within the perview of Article 102 of the Constitution; moreover, the petitioner being a fugitive from justice have no locus standi to file any application/petition before any court of law including this Court. The investigating officer having obtained permission from commission by the Memo No. দুদক/বিঃ অনুঃ ও তদন্ত-১/মানিলন্ডারিং/৬১-২০১৩/৩১৮৩৬ properly investigating the case in accordance with law and also the Integrated District Office in Sylhet vide Memo No.DUDOK/Special Enquiry and Investigation-1/Money Launders Prevention/80-2014/35611 dated 04.12.2014 enquired into the case and found prima facie case under section 4(2) and (3) of the Ain of 2012 against the writ petitioner along with 04(four) others and thereafter, the commission lodged the FIR. And as such, question of harassment does not arise at all and as such the Rule is liable to be discharged with cost.

Mr. A.J. Mohammad Ali, the learned Advocate appearing for the writ petitioner submits that offence of money laundering is a transnational crime and the petitioner had already faced prosecution under the proceeds of Crime Act 2002 in UK for committing offence of money laundering and for the same offence the writ petitioner cannot be prosecuted again in Bangladesh under the Ain of 2012, as the essence of the alleged offence under the Act of 2012 and the allegations made in

the FIR are same or substantially similar to the offence with which the writ petitioner has already been prosecuted in the UK and awaiting for the outcome of the sentence and as such the action of the Respondents goes against the very principle of law and of natural justice.

Mr. Ali then submits that the principle of 'double jeopardy' is enshrined in Bangladesh's legal system as a fundamental right in Article 35(2) of the Constitution of the People's Republic of Bangladesh, which provides that, no person shall be prosecuted and punished for the same offence more than once; thus, the actions of the Respondents have violated the fundamental rights as guaranteed under the Constitution and are illegal, malafide and violates the principle of natural justice.

Mr. Ali further submits that ingredients of the alleged offence under section 4(2) and (3) of the Money Laundering Protirodh Ain,2012, is as same as the offence with which the petitioner had already been prosecuted and convicted in the UK. Any subsequent proceeding including the impugned proceeding and investigation is a fresh proceeding is prohibited under Article 35(2) of the Constitution and as such the petitioner cannot be tried for the second time and hence the initiation of the present proceeding is liable to be declared as unlawful and is of no legal effect.

He referring to section 403(1) of the Code of Criminal Procedure 1898, also submits that

initiation of the present case is also barred by the said provision of law.

Mr. Ali referring to clause 7 of Article 14 of the **'International Convenant on Civil and Political Rights'**(herein after referred as **ICCPR**) finally submits that Bangladesh is one of the signatory states of the said covenant and the Government of Bangladesh, being a signatory to the Covenant, is bound by the Article 14(7) of the Covenant where it provides that no one Shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country. And as such, the action of the Respondents are in clear violation of the said Covenant and is liable to be declared illegal and without lawful authority.

Mr. Md. Khurshid Alam Khan, the learned Advocate appearing for the Respondent No.1 submits that after lodging of the FIR the petitioner is a fugitive and thus, he has no locus standi to file the writ petition through attorney or authorized person. He also submits that it is well settled by the Appellate Division that a criminal proceeding or investigation process cannot be challenged invoking Article 102 of the constitution. He further submits that the writ petitioner committed offence of money laundering in UK and accordingly he was convicted and sentenced. The writ petitioner having brought a huge amount of money from London to Bangladesh illegally again

deposited the same in the different bank accounts in Sylhet, Bangladesh in his name as well as in the names of his wife and other relatives and also invested some portion of money in share-market and by purchasing land-flats. Thus, the writ petitioner has committed separate and distinct offence of money laundering as defined in Ain of 2012 and it has no nexus with the offence of money laundering committed in London. Thus, the question of double jeopardy does not arise at all.

In course of hearing of the Rule Mr. Khan has informed the court that the Commission after completing the investigation of the case in the meantime submitted charge sheet against the writ petitioner and 04(four) others, which fact was not denied by the learned Advocate for the writ petitioner.

As per desire of the court Mr. Mahbubey Alam, the learned Attorney, has participated in hearing. He submits that since in the Ain of 2012 the provision of 'International Double Jeopardy' has not been incorporated, and as such this principle cannot be applicable as a matter of right or automatically. Thus, the plea of the writ petitioner for interfering with the criminal proceeding relying on the said covenant that is clause 7 of Article 14 of **ICCPR** is misconceived and not tenable in the eye of law. He further submits that annexure-J series, the copy of the case summary, statement of information from Crown Prosecution Service (CPS), were not attested or

authenticated as per provision of section 86 of the Evidence Act and as such those documents have no evidentiary value and thus, there is no scope to consider the same in deciding the present issue.

In this particular case the moot question is whether the initiation and continuation of the impugned criminal proceeding is barred by the principle of 'international double jeopardy' in view of Article 14(7) of **ICCPR** adopted by United Nations Assembly, where Bangladesh is one of the signatories.

We would like to address the above issue in two ways. **Firstly**, whether Article 14(7) of the **ICCPR** or any other provisions of the same prohibits successive prosecution for the same course of conduct in which an accused was prosecuted and convicted in another sovereign country under its own law; and **secondly**, whether the principle of 'international double jeopardy' doctrine will be applicable in this particular case.

Mr. Ali, the learned Advocate for the writ petitioner, has extraneously argued that since writ petitioner once faced trial and convicted by a competent court of England for committing the offence of money laundering, he cannot be prosecuted further for the same laundered money in Bangladesh under the Ain of 2012.

Article 14(7) of **'International Covenant of Civil and Political Rights[ICCPR]'** provides that

no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with law and penal procedure of each country.

This provision is almost similar to Article 35(2) of our constitution. So, Bangladesh has incorporated the provision of article 14(7) of **ICCPR** in its constitution. And as such, there is no room to say that Bangladesh being a signatory country of the said covenant ignored or deviated from the **ICCPR**.

In this particular case, it transpires that the writ petitioner is being prosecuted has not been tried and convicted 'in accordance with the penal law and penal procedure' of Bangladesh. The **ICCPR** does not prohibit successive prosecution of an individual in exercise of power given in law of Bangladesh as his earlier prosecution and conviction was not under our own penal law and penal procedure. He was prosecuted and convicted for act or conduct occurred beyond the territory of Bangladesh and under law of another sovereign country.

Bangladesh as a sovereign entity has the power independently to determine what act shall constitute offences and to punish such offences, by enacting laws. And thus, the court of law of Bangladesh, a sovereign entity, exercises these powers given in its own law and not that of any other state or country. Prerogatives of

sovereignty of Bangladesh are the power to enforce its own law.

Admittedly, the accused was prosecuted, tried and convicted in UK under its own law and it was done under the distinct source of power and consequently there can be successive prosecution in Bangladesh for the same course of conduct which does not violate the prohibition on the doctrine of double jeopardy as guaranteed in Article 35(2) of our Constitution. For the words 'same offence' indisputably refers to act and omission punishable under laws enacted by our sovereign parliament and it does not refer to that punishable under law of any other foreign country. The principle reflected in Article 35(2) of our constitution is further confirmed in section 26 of the General Clauses Act of 1897 and in section 403 of the Code of Criminal Procedure of 1898.

Bangladesh a sovereign entity shall determine what act or omission committed within its territory constitutes an offense in exercise of power under its own law, not that of the other. Therefore, no violation of the prohibition on double jeopardy results from successive prosecutions under the relevant penal law of Bangladesh, because by one act the accused has committed two offences—one is beyond the territory of Bangladesh which was punishable under law of UK a distinct sovereign entity and now is being prosecuted for the same act constituting offence punishable under law of our own.

It is to be noted that the territoriality principle is the most common basis of jurisdiction and is widely regarded as a manifestation of state sovereignty. At its simplest, the territoriality principle denotes that a sovereign state has jurisdiction over conduct or act or omission that occurs within its territorial borders. The **'separate sovereigns'** doctrine allows for two states to prosecute for the same offence occurred within jurisdiction of both locations. Thus, literary **ICCPR** does not prohibit successive prosecution of the offence committed by same course of conduct under a distinct law of a sovereign country.

Prosecuting and convicting of a Bangladeshi national for an offence committed beyond territory of Bangladesh creates no bar for his or her successive prosecution for 'same act' in exercise of power given under our own law. The doctrine reflected in Article 35(2) of our constitution does not extend to any offender prosecuted and convicted in a country of distinct sovereignty, under its own statute.

From annexure-J series, copies of case summary and statement of information from Crown Prosecution Service, UK it transpires that though the name of writ petitioner was Misbauddin but he changed his name in UK as Robin Chowdhury; he faced trial in the crown Court, at Southwark, UK in Indictment Trial No.T20117476 and on 24.08.2011 charged was framed against him in total 18 counts

and only count no.15 was related to transfer money from UK to Bangladesh. The other counts of charge were under Fraud Act 2006 and also under Crime Act, 2002 for transferring money from UK to Thailand, Switzerland and Tunisia. The writ petitioner on the following day (25.08.2011) pleaded guilty to 13 counts of charge on the indictment and accordingly he was convicted and sentenced.

In view of the above facts it is crystal clear that the writ petitioner was found guilty on admission on so many counts of charge including laundering money to Bangladesh and accordingly convicted and sentenced. And as such, at this stage it is very difficult to hold that both the offences are same and also there is no scope to declare the proceeding of this case illegal and without lawful authority relying annexure-J series, which are not admissible in evidence in view of the provision of section 86 of the Evidence Act.

Moreover, the money which was brought to Bangladesh by the writ petitioner was eventually possessed, transferred and converted knowing that such property is proceeds of crime. Thus, new and distinct offence of money laundering has committed in Bangladesh by the petitioner and accordingly the present case has been initiated.

In view of above, it cannot be said that the accused is being prosecuted twice for the 'same offence' merely for the reason that he has been

convicted for the same act which constituted and offence punishable under the law of UK. It transpires that the accused allegedly by a single act violated laws of two sovereign states and thereby committed two distinct offences and thus the instant prosecution relating to an offence punishable under our own law even for the same act does not breach the doctrine of 'double jeopardy'.

In the case of Hussain Mohammad Ershad Vs. Bangladesh and others, reported in 21 BLD(AD), page-69, it has been held:

> "True it is that the Universal Human Rights norms, whether given in the Universal Declaration or in the Covenants, are not directly enforceable in national courts. But if their provisions are incorporated into the domestic law, they are enforceable in national courts. The local laws, both constitutional and statutory, are not always in consonance with the norms contained in the international human rights instruments. The national courts should not, I feel, straightway ignore the international obligations, which a country undertakes. If the domestic laws are not clear enough or there is nothing therein the national courts should draw upon the principles incorporated in the international instruments. But in the cases where the domestic laws are clear

> and inconsistent with the international obligations of the state concerned, the national courts will be obliged to respect the national laws, but shall draw the attention of the law makers to such inconsistencies." (Underlines supplied)

In the case of **Saiful Islam Dilder Vs. Government of Bangladesh**, (reported in 50 DLR, page-318) the decision of the Government handing over of Anup Chetia alias Golap Barua, a Indian citizen who was engaged in a movement for right of self determination of Assamees People, to Indian Government was challenged on the plea that extradition of Chetia to India in absence of any extradition treaty would violate the provision of Article 145A of the Constitution of the people's Republic of Bangladesh. The writ petition was rejected *in limine* and the High Division observed that;

> "Now it remains for us to consider the case cited from foreign jurisdiction. At the outset we must say that observations made therein are pious expression to secure international fundamental human right, norms obtaining in different declarations and covenants of different state parties to such instrument and have little binding force on the municipal courts. Such views no doubt

have opened a new horizon of International Human Right law but in international human rights law interpretation adopted by national courts can at best only be persuasive authority. In Ramoz Vs. Diaz, the right of a foreign power to demand the extradition was created by treaty. And in US in absence of statutory or treaty provision no authority exists in the Government to surrender a fugitive criminal to a foreign Government. A careful reading of the judgment will show that the decision rests on Article VI of the treaty of Extradition made between Government of the US and the Government of Cuba. Article VI of the treaty exempts extradition of a fugitive charged with political offence from the treaty. But Extradition Act, 1974 of our country does not provide such exemption. Therefore, the decision which is only of a persuasive value and decided placing reliance upon Article VI of the Extradition Treaty has no manner of application to the facts of the instant case."(Underlines supplied)

In the case of **Bangladesh V. Unamarayen S.A. Panama**, reported in 29 DLR, page-253, question arose whether private foreign companies enjoy immunity from arrest and seizures.

The High Court denied such immunity to be accorded to private foreign companies and declined to protect them from arrest and seizures. The court observed, "immunity is available under public international law to persons and properties of classified persons mentioned in the list which is usually filed by foreign missions and international agencies".

Where there is clear domestic legislation on the disputed issue, the court gives effect to the domestic law, not to customary norms of international law. This particular aspect of domestic law vis-à-vis international custom was raised in the case of **Bangladesh and others vs. Sombon Asavhan**, reported in 32 DLR (AD), page-194. Bangladesh Navy captured three Thai fishing trawlers for illegal entrance and fishing in the territorial waters of Bangladesh. The question was whether the trawlers were within the territorial waters or the exclusive economic zone of Bangladesh. Instead of applying existing international law regarding territorial waters, the Appellate Division settled the issue on the basis of Bangladesh Territorial Waters and Maritime Zones Act, 1974, which lays down specific provisions for maritime boundaries for Bangladesh. The Appellate Division has observed:

> "It is well settled that where there is municipal law on an international subject the national court's function is to enforce the municipal law within the plain meaning of the statute".

It further held:

> ". . . . the point touches international law, since three fishing trawlers are involved and they have been captured from a place over which Bangladesh claims sovereignty. We are relieved from entering into long discussion of diverse laws, conventions, rules and practices of international law since there is complete code provided by our municipal law."

Recently, our Appellate Division, in the case of **Abdul Quader Molla Vs. Government of Bangladesh** (Criminal Appeal No.24 of 2013 heard along with Criminal Appeal No.25 of 2013, page-131) has held:

> "Nothing but the provision falling within the above constitutional periphery can be law and provision having force of law within the jurisdiction of Bangladesh. <u>Therefore, even any international obligation or responsibility undertook by the Government cannot have any force of law within the jurisdiction of Bangladesh.</u>
>
> It will appear from the above provisions of the constitution, it is the parliament in general or the president under certain circumstances legislate and not the Government, <u>and the Courts of law do not require to have regard to the acts of the Government including entering into treaties or adopting the</u>

> convention when interpreting the law. Though International Convention, could be recognized upon ratification, it could be applied in our country only when its provisions are incorporated in our Municipal laws and thus for enforcing any international covenants under any convention to which this country is a signatory, the provisions of the convention have to be incorporated in our domestic law. Any international obligations/responsibilities of the republic or any undertaking taken at the international level or any norms/practices, howsoever regularly honoured by the state at international interactions, cannot be applicable in the domestic tribunal of the country unless the same is incorporated in the domestic law by a legislative action."

In the above case Appellate Division has further held:

> "There is no rule of CIL prohibits our domestic tribunal to proceed with the trial as per our domestic legislation, and as such, it can be safely said that rules of public international law allows our domestic tribunal to proceed with the trial as per our Act. In short, the rules of international law whether applicable or not, our domestic tribunal has the jurisdiction to continue with the trial in any manner acting in

derogation of the rules of public international law." (Underlines supplied)

It is true that the issue of **'International Double Jeopardy'** is of increasing concern and importance, and this decision may will have an impact in the development of the law. But, said concept of 'International Double Jeopardy' is not directly enforceable in domestic court unless it is incorporated in domestic law. International law ought to be trans-formed into State law before it could be applied in State territories. In other words, international law must be specially adopted or incorporated within the municipal legal system by way of implementing act of the legislature. Since the principle of 'International Double Jeopardy' has not been incorporated in the Ain of 2012 and as such there is no scope to enforce the said principle within our domestic legal system.

Further, it is well settled that there is no scope for quashing a criminal proceeding under the writ jurisdiction unless the virus of law involved is challenged.

Having considered and discussed as above, we find no merit in the Rule.

Accordingly, the Rule is discharge. However there is no order as to cost.

Amir Hossain, J:

I agree

Md. Kawser