IN THE SUPREME COURT OF BANGLADESH
Appellate Division

PRESENT

Mr. Justice Surendra Kumar Sinha, Chief Justice

Mr. Justice Md. Abdul Wahhab Miah

Madam Justice Nazmun Ara Sultana

Mr. Justice Syed Mahmud Hossain

Mr. Justice Muhammad Imman Ali

Mr. Justice Hasan Foez Siddique

Mr. Justice Mirza Hussain Haider

Mr. Justice Md. Nizamul Huq

CONTEMPT PETITION NO. 09 OF 2016

The State ... Petitioner

= Versus=

Advocate Md. Qamrul Islam, M.P. Minister, Ministry of Food and another ... Respondents

For the Petitioner :Mr. Mahbubey Alam, Attorney General

For Respondent No.1 :Mr. Abdul Baset Majumder, Senior Advocate (with Mr. Syed Mamun Mahbub, Advocate with Dr. Bashir Ahmed, Advocate with Dr. Momtaz Uddin Ahmed Mahadi, Advocate), instructed by Mrs. Shirin Afroz, Advocate-on-Record

For Respondent No. 2 :Mr. Rafique-ul-Huq, Senior Advocate instructed by, Mr. Chowdhury Md.Zahangir, Advocate-on-Record

Date of hearing :The 8th, 15th and 20thof March, 2016

Date of judgement :The 27th of March, 2016

J U D G E M E N T

Surendra Kumar Sinha, C.J : I have gone through the judgement proposed to be delivered by my brother, Muhammad Imman Ali, J. and the separate opinion given by Hasan Foez Siddique, J. I agree with the reasoning and findings given by Muhammad Imman Ali, J.

J.

Md. Abdul Wahhab Miah, J: I have gone through the judgement proposed to be delivered by my brother, Muhammad Imman Ali, J. and the dissenting view given by Hasan Foez Siddique, J. I agree with the reasoning and the findings given by my learned brother Muhammad Imman Ali, J.

J.

Nazmun Ara Sultana, J: I have gone through the judgement proposed to be delivered by my brother, Muhammad Imman Ali, J. and the separate opinion given by Hasan Foez Siddique, J. I agree with the reasoning and findings given by my learned brother Muhammad Imman Ali,J.

J.

Syed Mahmud Hossain, J: I have gone through the judgement proposed to be delivered by my brother, Muhammad Imman Ali, J. and the separate opinion given by my brother Hasan Foez Siddique, J. I agree with the reasoning and findings given by my brother Hasan Foez Siddique, J.

J.

MUHAMMAD IMMAN ALI, J:-

On 6th March, 2016 the electronic and print media, including the Daily Jugantor, which is one of the popular national dailies of Bangladesh, published details of statements/comments/remarks made by, amongst others, two sitting Ministers of the Government of Bangladesh. These comments *prima facie* appeared derogatory and highly

contemptuous, and hence this Court issued the following notice on 8th March, 2016:

“Let a notice issue calling upon Advocate Md. Qamrul Islam, M.P., Minister, Ministry of Food, Government of the People’s Republic of Bangladesh and Mr. A.K.M. Mozammel Huq, M.P., Minister, Ministry of Liberation War Affairs, Government of the People’s Republic of Bangladesh to show cause on or before 14th March, 2016 as to why they shall not be proceeded against for their derogatory and highly contemptuous statements made on 5th March, 2016, at a roundtable discussion held at BILIA Auditorium, Dhanmondi, Dhaka, which were broadcast and published in different electronic and print media, against the Chief Justice of Bangladesh and the Supreme Court in relation to a judgement to be pronounced in a criminal appeal on 8th March, 2016. The statements and the comments are flagrant interference with the administration of Justice, questioning the independence of the judiciary. Such statements and comments have undermined the dignity, prestige and authority and impartiality of the Supreme Court of Bangladesh and the office of the Chief Justice in the estimation of the public at large.

You are hereby directed to appear in person on 15th March, 2016 at 9:00 A.M. before this Court.

The offending portion of the statements published in an issue of the Daily Jugantor, one of the national dailies dated 6th March, 2016, is enclosed herewith.”

On the date fixed for their appearance, contemnor-respondent No.2, A.K.M. Mozammel Huq (hereinafter referred to

as respondent No. 2) appeared in person along with his learned Counsel, whereas contemnor-respondent No.1, Advocate Md. Qamrul Islam (hereinafter referred to as respondent No. 1) filed an application through his learned Counsel praying for an adjournment. On such prayer, the matter was adjourned to 20th March, 2016 with a direction that the contemnors shall appear in person on that date at 9:00 A.M. before this Court.

On 20th March, 2016 both the contemnors appeared in person along with their learned Counsel. Their respective affidavits were placed before the Court. It is noted that both the contemnors admitted having made the statements-the subject matter of the contempt proceedings. They both explained the reasons for making such statements and their sentiments being Muktijoddhas. They expressed their regrets and prayed for acceptance of their apology. Some deliberation took place and, thereafter on the prayer of the learned Counsel for respondent No. 1 the matter was adjourned to 27th March, 2016 with a direction that the contemnors shall appear in person on that date at 9:00 A.M. before this Court.

The matter was heard again on 27th of March, 2016 when both the contemnors were present in Court and their respective Counsel placed the affidavits on behalf of the respondents expressing unconditional apology. After due consideration and deliberation, the Court disposed of the matter upon passing the following order:

“For the reasons to be stated later on, we make this short order. We have perused the applications filed by the contemnors offering unconditional apology with a prayer for exonerating them from the charge of contempt of this Court.

We are unable to accept the unconditional apology offered by the contemnors taking into consideration that the contemnors are sitting Cabinet Ministers holding constitutional posts. They are oath bound to preserve and protect the Constitution. The impugned statements/comments/remarks made by them apparently show that they made those comments intentionally with the object of maligning and undermining the office of the Chief Justice and the highest Court of the country. Their statements are so derogatory and contemptuous that if they are let off any person will be emboldened to make similar statements/remarks/comments interfering with the administration of justice and also undermining the authority of this Court in the estimation of the people in general. The prayer for unconditional apology is, therefore, refused. The contemnors are found guilty of gross contempt of this Court.

Since the contemnors have tendered unconditional apology at the earliest opportunity, we are taking a lenient view in awarding the sentence. The contemnors are sentenced to pay fine of Tk.50,000/- (fifty thousand only) each within seven days from date and donate the same to the Islamia Eye Hospital (Dhaka City), Farmgate, Dhaka and the National Liver Foundation of Bangladesh, 150 Green Road, Panthapath, Dhaka-1215, in default to suffer simple imprisonment for seven days.”

Comments/remarks/statements made by the contemnors:

The facts leading up to the issuance of the show cause notice against the respondents herein are as follows: Mir Kashem Ali, who was alleged to have committed crimes during the war of liberation, had been tried and convicted by the

International Crimes Tribunal, hereinafter referred to as "the ICT", and sentenced to death. He preferred appeal before this Division of the Supreme Court. After a lengthy hearing of the criminal appeal, 8th of March, 2016 was fixed for pronouncement of judgement. It was reported in the Daily Jugantor on 6th March, 2016 that on the previous day two Cabinet Ministers, namely Advocate Md. Qamrul Islam, Minister, Ministry of Food and Advocate A.K.M. Mozammel Huq, Minister, Ministry of Liberation War Affairs had made certain comments at a Roundtable meeting organised by the *Ghatok Dalal Nirmul Committee* held at the BILIA Auditorium in Dhanmondi. Details of their speeches were published in many of the national dailies, both in English and in Bangla. A copy of the Daily Jugantor, one of the national dailies dated 6th March, 2016, was enclosed with the notice issued and served upon the respondents. It is reported that respondent No. 1 uttered that since the Chief Justice has said that the International Crimes Tribunal is being used politically, then the case of Mir Kashem Ali should be tried by a new Bench leaving out the Chief Justice. Since the Chief Justice has made comments about the case in open Court, the appeal should be heard again without the Chief Justice because whatever decision he gives, it will be questionable. He also said that the Chief Justice wanted to put the prosecution – investigation team in the dock along with the accused and that the prosecution/Government is doing politics with this case. Such statement in open Court led him to guess that the decision would go against the Muktijoddhas. Since the Chief Justice had made such statements, there is no way that the accused will be sentenced to death and that he will either

acquit the accused, or reduce the sentence or send the case on remand for fresh trial. In the same meeting respondent No. 2 said that if the death sentence is upheld then it will be said that the Government created pressure and if, on the other hand, the decision is otherwise, whether it will be acceptable, and this dilemma has been created by the Chief Justice.

We are to consider whether such utterances by the two respondents has scandalised the Court thus constituting contempt, in this case, of this Division of the Supreme Court of Bangladesh and whether such utterances in public by two sitting Ministers of the Government has violated any provisions of the Constitution in view of their oath of office.

Salient features of the Constitution relevant to the case in hand:

The Constitution is the supreme law of the land and any law inconsistent with it shall to the extent of the inconsistency be void [Art.7]. Ours is a democratic Republic [Art.11]. The citizens of this country are governed by the rule of law [Art.27] and enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law [Art.31]. The Constitution has entrusted and empowered the Supreme Court to protect and uphold the rule of law, which is the *sine qua non* of any democratic society, and has granted power of judicial review of actions of any person or authority, including any person performing any function in connection with the affairs of the Republic…. [for] the enforcement of any of the fundamental rights [Art.102]. More

specifically, the Supreme Court has been given the authority by the Constitution to declare law. The law declared by the Appellate Division is binding on the High Court Division and the law declared by either Division of the Supreme Court is binding on the subordinate judiciary [Art.111].All authorities, executive and judicial, in the Republic shall act in aid of the Supreme Court [112]. It is the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and to protect public property [Art. 21(1)].

For the purpose of the instant case, the most relevant provision of the Constitution is that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power subject to law to make an order for the investigation of or punishment for any contempt of itself [Art.108].

Contempt of Court:

In the recent past there have been several decisions of this Division regarding contempt of court where all the relevant aspects have been dealt with in detail upon discussion of a plethora of citations of cases decided by the superior courts from home and abroad. Reference may be made to decisions of this Division in the case of ***Md. Riaz Uddin Khan, Advocate and another vs Mahmudur Rahman and others*** reported in ***63 DLR (AD) 29*** and in the case of ***The State –Vs- Mr. Swadesh Roy, (author of the article under the caption "সাকার পরিবারের ততপরতা। পালাবার পথ কমে গেছে" in the issue of The Daily Janakantha" and another*** reported in ***12 ADC (2015) 932***. Numerous decisions have been cited from across the globe as well as many citations

from renowned treatise. Hence, lengthy discussion into the juristic aspects of contempt of court is felt superfluous here.

Broadly speaking, contempt of court may be classified into three categories, namely (1) disobedience of court orders and breach of undertakings given to the court, (2) scandalisation of the court and (3) interference with the administration of justice. The first category is termed as civil contempt, whereas the other two categories are contempt of a criminal nature. In the facts and circumstances of the instant case, we are not concerned with the first category since there is no allegation of any breach or non-compliance by the contemnors-respondents of any order issued by this Court. The question to be considered is whether the respondents have made comments/remarks which scandalise the Court or which interfere with the administration of justice. It is also pertinent to pose the question whether such utterances in public, by persons holding high constitutional posts has demonstrated their utter disregard for the rule of law and decisions of the Supreme Court and hence violation of the provisions of the Constitution contrary to the oath of their office to preserve, protect and defend the Constitution.

The Rule of Law

The Constitution gives much importance to the rule of law. The Preamble to the Constitution provides that we the people of Bangladesh pledge that it shall be a fundamental aim of our State to realise through the democratic process a socialist society free from exploitation where there will be rule of law for all citizens. The paramount need for the rule

of law is reiterated in the body of the Constitution. Recognising that the rule of law is the foundation of a democratic society, our Constitution has given due importance to it in several articles, and it has been accepted as one of the basic structures of the Constitution. Every citizen, whatever his rank or status, is subject to the laws of the land and to the jurisdiction of the courts. Without rule of law there would be anarchy.

There is no gainsaying that the judiciary is the guardian of the rule of law. The Supreme Court has been entrusted with the solemn duty of declaring the law and by the same token declaring that any law is *ultra vires* the Constitution. In the case of ***Bangladesh v. Idrisur Rahman, (2010) 15 BLC (AD) 49***at p. 94 it was observed that "The expression of rule of law has a number of different meanings and corollaries. Its primary meaning is that everything must be done in accordance with law, in other words, it speaks of rule of law and not of men and everybody is under the law and nobody is above the law. The other meaning of the rule of law is that Government should be conducted within a framework of recognised rules and principles which restrict discretionary power and our Constitution is the embodiment of the supreme will of the people setting forth the rules and principles. But the most important meaning of rule of law is that the disputes as to the legality of the acts of the Government are to be decided by Judges who are independent of the executive". Hence, it can be concluded that everyone, how high so ever she or he may be, must abide by the law of the land. The law of the land includes all that is law as defined and accepted as law by the Constitution. Every citizen has surrendered to the provisions

of the Constitution which is the manifestation of the will of the people. There are a multitude of rights given by the Constitution to the citizen, but those are subject to restrictions imposed by law. However, the Constitution has provided for the citizen an independent judiciary which will establish the rule of law. It was held in the case of ***Md Idrisur Rahman*** cited above as follows:

> "The judiciary is a cornerstone of our Constitution, playing a vital role in upholding the rule of law". Per M.A. Matin, J. at p. 88.

Mahmudul Islam has in his book "Constitutional Law of Bangladesh" third edition, at paragraph 1.28A noted, "For guardianship of the Constitution and for the establishment of rule of law independence of judiciary is necessary." In this regard reference may be made to articles 94(4) and 116A.

Independence of the judiciary

The Supreme Court, which has been given the power of judicial review, is the guardian of the Constitution. In order to be effective in its capacity as guardian and for the establishment of rule of law, independence of the judiciary is imperative.

It was held in the case of ***Secretary, Ministry of Finance vs. Md. Masdar Hossain, 52 DLR(AD)82*** "The independence of the judiciary as affirmed and declared by Article 94(4) and 116A, is one of the basic pillars of the Constitution and cannot be demolished, whittled down, curtailed or diminished in any manner whatsoever, except under the existing provision of the Constitution."

The Judges must act true to their oath of office, which they swear or affirm on taking office: “That I will preserve, protect and defend the Constitution and the laws of Bangladesh: And that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.”It is indeed a solemn oath and an arduous burden, which has to be borne in spite of the various vulnerabilities of the judges. The judges do not have a voice to air their grievances or to protest any vengeful attacks, verbal or otherwise. They do, however, express their views in their judgements; in particular, they are mandated by the Constitution to say what is or is not the law. Consequently what the Supreme Court declares in its judgement is law, until a judgement of the High Court Division is reversed or altered by the Appellate Division, or in the case of a judgement of the Appellate Division, until it is altered upon review or subsequently overruled by this Division upon a revisit to the earlier decision.

Definition of law:

"Law" means every law pronounced as such by the Constitution of Bangladesh. The Constitution itself is declared by article 7(2) to be the supreme law of the Republic, and any other law inconsistent with the Constitution is void. Further, 'law' is defined in article 152(1) of the Constitution as follows:

> "law" means any Act, ordinance, order, rule, regulation, by-law, notification or other legal instrument, and any custom or usage, having the force of law in Bangladesh".

However, it has to be noted that this definition is not exhaustive. Article 152(1) begins in this way: “In this Constitution, except where the subject or context otherwise requires- ….” Hence, there are other laws mentioned elsewhere in the Constitution recognised as ‘law’ by the Constitution.

Ordinances made and promulgated by the President when Parliament is dissolved or not in session also have the like force of law as an Act of Parliament, as provided by article 93(1) of the Constitution. Such law-making power of the President is restricted by the proviso to article 93(1).

The Constitution also gives the Supreme Court of Bangladesh the power to declare what are laws within the territory of Bangladesh. Article 111 provides that the ‘law’ declared by the Appellate Division shall be binding on the High Court Division and the law declared by either Division of the Supreme Court shall be binding on all courts subordinate to it.

Law making power

Parliament has the power to enact any law, and it does so as the mandate of the electorate and for the benefit of the citizens of the country. However, that power of Parliament is circumscribed to the extent that the laws so enacted shall not be inconsistent with the Constitution. Apart from article 7(2), article 26(1) of the Constitution provides that all existing law inconsistent with Part III of the Constitution shall, to the extent of such inconsistency, become void on the commencement of the Constitution. Under article 26(2) any law

to be enacted by Parliament shall not be inconsistent with Part III of the Constitution.

The duty then falls upon the Supreme Court to declare what are valid laws, that is to say, the Supreme Court will declare which of the laws described in the Constitution under article 152(1) or article 93(1) are inconsistent with or, in other words, *ultra vires* the Constitution. This duty of the Supreme Court is unconditional. In addition, the High Court Division has the power of judicial review as provided by article 102 of the Constitution, which essentially provides the duty to see that the laws are implemented and that any person or authority, including any person performing any function in connection with the affairs of the Republic, enforces the fundamental rights conferred upon the citizens by the Constitution. On a broader plain, it is the Courts which ensure proper implementation of the laws enacted by Parliament.

Thus, a specific duty is cast upon the Supreme Court to ensure that laws are consistent with the Constitution. The High Court Division is entrusted to ensure that persons performing any function in connection with the affairs of the Republic are doing so in accordance with the provisions of the relevant laws and the Constitution. The rulings of the Supreme Court are law requiring abidance by all citizens.

Proceedings and decisions of the Courts and freedom of speech of citizens:

Freedom of speech and expression is a fundamental right of every citizen and is guaranteed under article 39(2)(a) of the Constitution, which provides as follows:

> ”(2) Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence-
>
> (a) the right of every citizen to freedom of speech and expression……are guaranteed”.

Thus the freedom of speech and expression in article 39(2)(a) is circumscribed by the limitation expressed in sub-article (2) of article 39.

Hence, it is permissible for a citizen to express his or her views, but that freedom to do so is subject to reasonable restrictions imposed by law, *inter alia,* in relation to contempt of court. As observed by Lord Atkin in ***Andre P.R. Ambard v. Attorney General of Trinidad and Tobago [1936] AC 322***,

> “The path of criticism is a public way: the wrong-headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice.”

It may be stated quite categorically that any critique of any judgement of any Court is permissible so long as it is

within the bounds of objective criticism based on and supported by reasoning founded upon existing laws or decisions of the superior courts. However, personal attacks on individual judges or imputation of improper motives of judges acting in the course of their duty is not tolerated anywhere in the world. Scurrilous remarks about judges and scandalisation of the Court are everywhere dealt with under the law contempt of court. Fair criticism of judgements and decisions based upon objective critical analysis of the law and other decisions from home and abroad cannot be subject of contempt of court proceedings. However, criticising the integrity of individual judges cuts at the root of the justice delivery system, especially if the allegations are unfounded.

Scandalisation of the court

Mahmudul Islam in his treatise *Constitutional Law of Bangladesh* [Third edition paragraph 5.225] has noted that, “Insinuations and comments derogatory to the dignity of the court which are calculated to undermine the confidence of the people in the integrity of the Judges constitute contempt.” He goes on to say that for the protection of organised society and maintainers of the rule of law there is necessity of independent and fearless judiciary in which the public will have full confidence as dispenser of justice. Making objectionable remarks against judicial officers may constitute contempt of court. However, it must be noted that criticism of a judgement, that is, the decision itself cannot constitute contempt of court. Similarly, criticism of a judge in his individual capacity, *per se*, does not constitute contempt of court, unless such criticism goes to the root of the judiciary

as an institution. It would certainly be contempt of court if the language used brings the court into disrespect, or impinges upon its dignity and majesty and challenges the efficiency or competence of the judge to dispense justice. It would be contempt of court if the comments published tend to interfere with the administration of justice, especially if the comments relate to a matter which is *sub judice*. About the power of the Court to punish for contempt of Court, Mahmudul Islam suggests that, “This power has been granted not for the protection of the individual judges from imputations, but for the protection of the public themselves from the mischief they will incur if the authority of the Supreme Court is impaired.”

In the case of ***Moazzem Hossain, Deputy Attorney General vs. The State, 1983 3 BLD (AD) 251***, it was observed,

> "’Contempt’ may be constituted by any conduct that brings authority of the Court into disrespect or disregard or undermines its dignity and prestige. Scandalizing the Court is a worst kind of contempt. Making imputations touching the impartiality and integrity of a Judge or making sarcastic remarks about his judicial competence is also a contempt. Conduct or action causing obstruction or interfering with the course of justice is a contempt. To prejudice the general public against a party to an action before it is heard is another form of contempt.”

Scandalising the court is not necessarily intended to attack any particular Judge. But it entails publication which, although it does not relate to any specific judge, is a scurrilous attack on the judiciary as a whole, which is

calculated to undermine the authority of the courts and public confidence in the administration of justice.

The primary rationale for this form of contempt law is the maintenance of public confidence in the administration of justice. In the early case of ***Reg. v. Almon, 1765 Wilm. 243,*** Wilmot J. stated:

> "[the arraignment of the justice of the Judges] excites in the minds of the people a general dissatisfaction with all judicial determinations and indisposes their minds to obey them; and whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice, and, in my opinion, calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the Judges, as private individuals, but because they are the channels by which the King's Justice is conveyed to the people."

In a similar fashion, the Judges of the Supreme Court convey to the people what the law is and whether any Act of Parliament is *ultra vires* the Constitution, or action of any public authority or person performing any function in connection with the affairs of the Republic is contrary to law or violates any fundamental rights of a citizen.

Status of the Supreme Court and its power regarding contempt:

The Supreme Court is one of the pillars of the State machinery and afforded the dignity and respect by everyone, even the high and mighty: and rightly so. Daily thousands of litigants throng before the Courts in search of justice. They

believe in and respect the justice delivery system. Without such reverence the judgements delivered would be ineffective and the rule of law would be rendered nugatory. Citizens of the country look to the judiciary for adjudication of their legal disputes with their neighbours as well as for enforcement of their rights enshrined in the Constitution and other laws of the land. However, if the judiciary is to perform its duties and functions effectively, to live up to the expectations of the citizens of the country and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the Courts have to be respected and protected by all and at all costs. The Judges are the final arbiter between litigants and between the public and powerful authorities and organisations. The general public always have and always will repose their faith in the justice delivery system so long as the independence and integrity of the judges is seen to be intact. For the judiciary to command the respect of the people, it is necessary that the authority of the Courts and the Judges is not undermined in any way.

In a judgement of the Supreme Court of Zimbabwe ***In Re: Patrick Anthony Chinamasa***, *S.C. 113/2000, 6 November 2000, p. 24,* Gubbay CJ stated as follows:

> “Unlike other public figures, judges have no proper forum in which to reply to criticisms. They cannot debate the issue in public without jeopardizing their impartiality. This is why protection should be given to judges when it is not given to other important members of society such as politicians, administrators and public servants.”

The power of the Supreme Court in the matter of exposition of the law is thus unparalleled. In addition to the powers described above, the Appellate Division has the mandate to express opinion on any question of law of public importance referred to it by the President under article 106 of the Constitution. The Supreme Court has also been given the power to make rules for regulating its own practice and procedure [Art.107].

In aid of all its powers given under the Constitution, in order to ensure the authoritative status of the Supreme Court, the Constitution provides in article 112 that all authorities, executive and judicial, in the Republic shall act in aid of the Supreme Court.

It is generally accepted that for the sake of maintaining proper order and to ensure compliance of the directions given in judgements, the courts have an inherent power to punish any person or authority for contempt. The Supreme Court has been given specific power by the Constitution to punish for its contempt. Article 108 of the Constitution provides as follows:

“108. The Supreme Court shall be a court of record and shall have all the powers of such a court including the power subject to law to make an order for the investigation of or punishment for any contempt of itself.”

It was observed in the case of ***Sir Edward Snelson, K.B.E., Secretary to the Govt. of Pakistan, Ministry of Law vs. The Judges of the High Court of West Pakistan, Lahore, 16 DLR(SC) 535, at p.552, per Cornelius, CJ-***

> “The power of committal for contempt is given to such superior Courts in order that they may swiftly and summarily perform one of their most important duties which is to protect themselves against wilful disregard or disobedience of their authority by visiting with prompt punishment and conduct which tends to bring their authority and the administration of Justice into scorn or disregard. It is evident that a Court of justice which has no power to vindicate its dignity or which having the power fails to perform the duty of vindicating its dignity would swiftly lose all hold upon the public respect and in consequence the maintenance of law and order through the agency of the Courts of justice would be rendered impossible. The dignity and authority of the Courts has a link with the supremacy and majesty of the law. Any conduct which is calculated to diminish that dignity or authority is a criminal contempt which a Court is under duty to punish. The Courts of justice are the creation of a sovereign authority, but their mainstay rests in the public confidence, and anything which is calculated to withdraw the public confidence from them has the character of a libel to be visited by action in contempt.”

In the same case, ***per*** **Hamoodur Rahman, J.** at p.593.

> “I, for my part, have always taken the view that the power to commit for contempt given to the Courts of record is a power which should be used sparingly and only in extreme cases, not so much for upholding the dignity of the Judges who preside over such Courts of justice but

rather to preserve the dignity and respect due to the Court itself. But this does not, in my view, mean that the species of contempt known as scandalising the Courts is now obsolete or that unless there is some kind of actual obstruction to, or interference with, the course of justice or the due administration thereof, there cannot be any contempt. Any doubt that there may have been cast on this question has been set at rest by the decision of the Queens Bench Division of England in the case of The Queen v. Gray (1900) 2 QBD 36 which was cited with approval by the Privy Council in Ambard v. Attorney-General for Trinidad and Tobago (1936) AC 322. Thus utterances made or writings published, which have the tendency of bringing the Court or a Judge of the Court into contempt or to lower its authority, is a contempt of Court and should not be tolerated, for, it is essential to the proper administration of justice itself that unwarranted attacks should not be made with impunity upon persons presiding over such Courts in respect of their public or official acts.

From what I have said above it will be observed that I am inclined to accede to the proposition that criticisms of conducts of Judges, which cannot possibly have the tendency to obstruct or interfere with the administration of justice, are not contempts of Courts, even though they may be libellous attacks on Judges. Thus an attack on a Judge for conduct not connected with his judicial functions will not come within the mischief of a contempt of Court [vide In the matter of Special Reference from the Bahama Islands 1893 AC 138]. But I

cannot stretch this to attacks on Judges in their public capacity, for, to my mind, such an attack would inevitably also be calculated to lower the authority of the Courts over which the Judges so maligned happen to be presiding and thus tend to interfere with the due course of justice and the proper administration thereof."

In the same case **Fazle-Akber, J** quoting from ***King v. Almon*** *cited above,* concluded that "all the authorities, therefore, tend to show that to taint the source of justice is a contempt of the highest order." **B.Z. Kaikaus, J.** At p.582, identified the contempt in that case as one scandalising the Court and observed as follows:

"In the present case we are concerned with the third kind of contempt. It is committed if there is imputed to the Judges any unfitness, whether on account of incompetence, lack of integrity or otherwise. The essence of this kind of contempt is that it lowers the dignity of the Court. That which lowers the dignity of Court is an obstruction to the normal course of justice. The Judges cannot perform their duty properly if they are exposed to libellous attacks. It is necessary as stated by Wilmot J. "to keep a blaze of glory around them and to deter people from attempting to render them contemptible in the eyes of the public." At the same time, it is essential that the confidence of the public in the Courts be maintained.

In order that the words may constitute contempt it is not necessary that they should in fact interfere with the course of justice. All that is needed is that they should have a tendency to do so. It will be impossible to show in any particular case that the contempt did have

> the effect of obstructing the course of justice. On the other hand, the presumption would be to the contrary, for Judges are presumed not to be affected by any publications constituting contempt. But if this argument were allowed to hold there may never be any committal for contempt. In a case where a Judge or Court was scandalized, because of the mere existence of a tendency to obstruct the course of justice the jurisdiction to commit in contempt would be invoked."

In the case of ***Supreme Court Bar Association v. Union of India and another, (1984) 4 SCC 409*** *it* was observed as follows:

> "The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law….. [This] jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of Justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of Justice….. [It] is exercised in a summary manner in aid of the administration of Justice,

> the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of Justice."

In a Full Bench decision, **In re K.L. Gauba, Barrister-at-Law, Lahore** it was observed that, "Any attempt to justify the libel is, in law, a fresh contempt" [AIR 1942 Lah 105] This was reiterated by Cornelius CJ in Sir Edward Snelson's case as follows:

> "As I have observed earlier, in an ordinary case of libel, it is a complete defence that the defamatory imputation is true, but it is otherwise in a case of contempt by scandalizing a Judge or a Court. Any attempt to justify the libel upon a Judge or a Court is in itself a fresh contempt."

It has long been accepted and oft quoted that the extraordinary power of punishment for contempt has been given to the courts in order to "keep a blaze of glory around them and to deter people from attempting to render them contemptible in the eyes of the public". No one should consider himself so high and mighty that he can utter such words as give offence to any Court in such a way that the Court feels lowered in the estimation of the people. Such action of any person would be a matter of great regret.

In the case of ***Riaz Uddin Khan, Advocate v. Mahmudur Rahman and others, 63 DLR(AD) (2011) 29***, SK Sinha J, as his Lordship was then, referred to the decision of the Indian Supreme Court as follows:

“Reference may be made to another decision of the Supreme Court in ***MB Sanghi (MB Sanghi vs. High Court of Punjab and Haryana, AIR 1991 SC),*** in which AM Ahmadi, J while agreeing with the views with SC Agrawal, J added that the tendency of maligning the reputation of Judicial Officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the judge into submission, it is all the more painful. When there is a deliberate attempt to scandalise which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the concerned judge but also to be fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly employed with a view to taming a judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the concerned judge but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the Presiding Judicial Officers with impunity. Learned Judge concluded his speech with the following words:

It is high time it is realised that the much cherished judicial independence has to be protected not only from

the executive or the legislature but also from those who are an integral part of the system."

In the Australian case of ***Gallagher v. Durack, [1983] 152 CLR 238***, a trade union leader had been found in contempt for making the following statement about an earlier acquittal for contempt:

> "I'm very happy to [sic] the rank and file of the union who has shown such fine support for the officials of the union… by their actions in demonstrating in walking off jobs…. I believe that has been the main reason for the court changing its mind."

The High Court of Australia rejected his appeal on the basis that his statement had the tendency to undermine confidence in the administration of justice:

> "The statement by the applicant that he believed that the actions of the rank and file of the Federation had been the main reason for the court changing its mind can only mean that he believed that the court was largely influenced in reaching its decision by the action of the members of the union in demonstrating as they had done. In other words, the applicant was insinuating that the Federal Court had bowed to outside pressure in reaching its decision…. What was imputed was a grave breach of duty by the court. The imputation was of course unwarranted."

The Australian court observed that an attack against the vital institution threatens to undermine the rule of law because the respect for the rule of law and compliance with

the orders of the courts depends on the confidence of the public on the administration of justice, the Courts and the justice delivery system as a whole. The law of contempt serves the overriding public interest in protecting the administration of justice. The protection of the Courts from the onslaught of individual denigration ensures the continuance of the rule of law which is fundamental for the existence of democracy and for the protection of human rights and rights of the citizens.

Effect of apology by contemnors:

Whether or not apology of contemnors is accepted and if so, what sanction if any is to be imposed depends on the facts and circumstances of each case. Apologies are mere empty words if the contemnors in fact justify their action in some way. We have noted that during the course of deliberations on 20th March the Court observed that usually if apology is offered then it is normally in one or two sentences. When the contemnors say sorry and then proceed to justify why they said what they had said, then the apology is a mere device to get a lesser punishment or no punishment at all. This Court has a duty to protect itself and the judicial institution from any person who will utter damaging remarks and then proffer empty apologies when taken to task for their admitted acts of destruction and desecration of the sanctity of the judiciary, which is otherwise held in high esteem by the general public.

In the case of S.P. Gupta vs. President of India and Ors. AIR1982SC149, it was observed as follows:

“In securing and promoting the resolution of disputes in a legal forum in accordance with established legal procedure, the administration of justice ensures a peaceful and orderly progress by a people through constitutional methods towards the realisation of their aspirations. And if it is to rule their minds and hearts, the administration of justice must enjoy their confidence. Public confidence in the administration of justice is imperative to its effectiveness, because ultimately the ready acceptance of a judicial verdict alone gives relevance to the judicial system. While the administration of justice draws its legal sanction from the Constitution, its credibility rests in the faith of the people. Indispensable to that faith is the independence of the judiciary. An independent and impartial judiciary supplies the reason for the judicial institution, it also gives character and content to the constitutional milieu.

It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. An independent judiciary is of vital importance to any free society. Judicial independence was not achieved overnight. Since we have inherited this concept from the British, it would not be out of place to mention the struggle strong-willed judges like Sir Edward Coke, Chief Justice of the Common Pleas, and many others had to put up with the Crown as well as the Parliament at considerable personal risk. And when a member of the profession like

the appellant who should know better so lightly trifles with the much endeared concept of judicial independence to secure small gains it only betrays a lack of respect for the martyrs of judicial independence and for the institution itself. Their sacrifice would go waste if we are not jealous to protect the fair name of the judiciary from unwarranted attacks on its independence. And here is a member of the profession who has repeated his performance presumable because he was let off lightly on the first occasion. Soft-justice is not the answer-not that the High Court has been harsh with him-what I mean is he cannot be let off on an apology which is far from sincere. His apology was hollow, there was no remorse-no regret-it was only a device to escape the rigour of the law. What he said in his affidavit was that he had not uttered the words attributed to him by the learned Judge; in other words the learned judge was lying-adding insult to injury-and yet if the court finds him guilty (he contested the matter tooth and nail) his unqualified apology may be accepted. This is no apology, it is merely a device to escape. The High Court rightly did not accept it. That is what this Court had done in a similar situation in ***L.D. Jaikwal v. State of U.P., 1984 CriLJ 993.*** This Court described it as a ‘paper’ apology and refused to accept it in the following words:

> “We do not think that merely because the appellant has tendered his apology we should set aside the sentence and allow him to go unpunished. Otherwise, all that a person wanting to intimidate a Judge by making the grossest imputations against him has to

do, is to go ahead and scandalize him, and later on tender a formal empty apology which costs him practically nothing. If such an apology were to be accepted, as a rule, and not as an exception, we would in fact be virtually issuing a 'licence' to scandalize courts and commit contempt of court with impunity. It will be rather difficult to persuade members of the Bar, who care for their self-respect, to join the judiciary if they are expected to pay such a price for it. And no sitting judge will feel free to decide any matter as per the dictates of his conscience on account of fear of being scandalized and persecuted by an advocate who does not mind making reckless allegations if the Judge goes against his wishes. If this situation were to be countenanced, advocates who can cow down the Judges, and make them fall in line with their wishes, by threats of character assassination and persecution, will be preferred by the litigants to the advocates who are mindful of professional ethics and believe in maintaining the decorum of courts."

As **M. Hidayatullah, C.J.** observed in **E.M. Sankaran Namboodripad Vs.T. Narayanan Nambiar,** (1970)2 SCC325,

"The good faith of the judges is the firm bed-rock on which any system of administration securely rests and attempt to shake the people's confidence in the courts is to strike at the very root of our system of democracy."

His Lordship went on to say,

> “The law punishes not only acts which do in fact interfere with the courts and administration of justice but also those which have that tendency, that is to say, are likely to produce a particular result….[The] likely effect of his words must be seen and they have clearly the effect of lowering the prestige of judges and courts in the eyes of the people.”

In the instant case the contemnor-respondents are highly placed Ministers of the Government. What they say in public is listened to by the masses. They are respected by the public at large for the positions they hold. They represent the people in Parliament and the general public look up to them. Anything they say is bound to have an effect on the minds of the public at large. When Ministers make utterances denigrating the Chief Justice and question the impartiality of the justice delivery system, which they do by doubting the impartiality of the Chief Justice, then the whole judiciary is brought to disrepute.

In the recent case of **The State –versus- Swadesh Roy** (the judgement is yet unreported) the short order is reported in **12 ADC (2015) 932,** it was observed that,

> **“**Scandalisation, to express shortly, includes an attack upon any Judge in his public capacity for, such attack would be calculated to malign the Judge and to lower the authority of the Court over which the Judge performs his judicial function. At the same time, it also amounts to interference with course of justice and the proper

administration thereof. Criticism of Judges of the highest Court in respect of acts done in their administrative capacity, which contain improper imputation, amounts to contempt. If the Chief Justice is criticized for acts done in his administrative capacity this also amounts to contempt. The criticism should be fair and not made with oblique motive or with the object of maligning the justice delivery system and lowering the majesty of the law and dignity of the Court in the estimation of the public."

In the said case it was observed by this Division as follows, per Surendra Kumar Sinha, CJ:

"In view of our constitutional scheme, non-compliance with the Supreme Court's order would not only dislodge the cornerstone maintaining the equilibrium and equanimity in the State's governance, there would be a breakdown of constitutional functioning of the State."

It was further observed,

"For the judiciary to perform its duties, functions effectively and be true to the spirit with which it is sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs. The only weapon of protecting itself from the onslaught to the institution is the long hand of contempt of Court left in the armoury of judicial repository which, when needed, can reach any neck howsoever high or far away it may be." His Lordship went on to observe, "The maintenance of the dignity of courts is one of the

> pertinent principles of rules of law in a democratic set-up and any criticism of the judicial institution couched in the language that apparently appears to be mere criticism but ultimately results in undermining the dignity of the Court cannot be permitted when found having crossed the limit."

It was observed that the [contempt] jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. Interference with the administration of justice, which may have the tendency to pervert the course of justice, has been termed as a serious type of contempt.

It was observed:

> "contempt may be constituted by any conduct that brings authority of the Court into disrespect or disregard or undermines its dignity and prestige. Scandalising the Court is the worst kind of contempt. Making imputations touching the impartiality and integrity of a judge or making sarcastic remarks about his judicial competence is also contempt. Conduct or action causing obstruction or interfering with the course of justice is contempt."

That judgment, as well as others delivered by the Appellate Division, undoubtedly falls to be classified as law of the land, which calls for abidance by all citizens as provided by article 21(1) of the Constitution. *A fortiori*, it applies more to Cabinet Ministers who speak to the populace with authority and in whom the citizens place particular trust as their leaders.

Sequence of events in the proceedings of the instant case:

Let us look at the sequence of events in the proceedings of the instant case which will shed light on the quality of the apology contained in the papers supplied by the respondents in juxtaposition with the utterances made by them.

On the date first fixed for appearance of the contemnors, on 15 March 2016 respondent No. 1 filed an affidavit seeking an adjournment due to his previously fixed official duties abroad to attend the FAO Regional Conference. In the same affidavit he expressed his unconditional apology and deep regret and remorse for the statements and comments made by him. In respect of respondent No. 2, we find two affidavits, both of which were sworn on 14 March 2016 and each of them contained the contents of his affidavit in Bangla sworn before a Notary Public. In both the affidavits placed before the Court the contemnor tendered his "unconditional apology in acknowledgement of his inadvertent failure to remain vigilant for not making any statement regarding a matter pending for judgement before this Hon'ble Court." It is noted, however, that in one affidavit he prayed for exoneration from the proceedings and in the other he prayed for dispensing with his personal appearance.

During the course of hearing on 20th March, 2016 the contemnors each placed before the Court their affidavits admitting their guilt and praying for acceptance of their unconditional apology. In the course of deliberations, Mr Rafiq-ul-Huq, learned Counsel appearing for respondent No.2 was asked to place the oath of allegiance which was sworn by

the Ministers when taking oath of office. The Hon’ble Chief Justice posed the question as to what should be the outcome if the Ministers breach their oath of office to protect the Constitution. He also pointed out that the admission of guilt by any member of the public is not the same as that of the respondents who have taken oath under the Constitution. Mr Rafiq-ul-Huq submitted that since his client admitted his guilt and apologised unconditionally, it is up to the court, which may impose a minor penalty.

We may state at this juncture that in a case of the type which is before us, it is not the function of this Court invariably to dictate the consequence of the findings with regard to matters raised and deliberated during the course of hearing. As we have noted above, the Hon’ble Chief Justice posed the question in open Court as to whether the contemnors had acted in breach of their oath of office and what would be the outcome if the oath of office was breached. This matter was thus brought to the notice of all concerned, though no formal written notice was issued upon the contemnors regarding the violation of their oath of office, and what would be the consequence thereof. The oath of office was placed before the Court. Thus the issue was deliberated in open Court and we cannot totally ignore any issue that was deliberated and what transpired during the course of hearing. As such, we are bound to come to a finding on the issue. The learned Counsel for the respondent made his submissions on the issue and admitted the guilt of the respondents with regard to the utterances made by them. Those utterances indicate their intention to divert the course of justice and to obtain a judgement of their desire, which is blatant

interference with the administration of justice and is in contravention of the rule of law, which in turn is violative of the Constitution. We have come to a clear finding that the respondents before us have acted in violation of law which is a violation of the Constitution and they are consequently in breach of their oath of office to preserve, protect and defend the Constitution. What will be the consequence of breach of their oath of office is not for this Court to decide.

With regard to the apology of the respondents, Md. Abdul Wahhab Miah, J. pointed out that apology should be brief, as is the tradition of this Court. He observed that the respondents had given lengthy explanations. The matter was adjourned to 27th of March, 2016.

During the course of hearing on 27th March, 2016, learned Counsel for the respondents placed two further affidavits before the Court. Respondent No.1 again expressed regret and remorse for his utterances and placing himself at the mercy of the Court prayed for acceptance of his apology and for exoneration from civil and criminal liability. Respondent No.2 in his affidavit also begged unconditional and unequivocal apology for his utterances and prayed to exempt (sic.) him from the contempt proceeding. At the request of the Court, the learned Attorney General placed before us the statements of the two contemnors as published in the Daily Janakantha on 7th March, 2016, the relevant portions of which are reproduced below:

"S¡j¡u¡a-¢hHe¢f Hhw তাদের লবিস্টরা যে সুরে কথা বলছে, প্রধান বিচারপতিও ঠিক একই সুরে কথা বলছেন বলে মন্তব্য করেছেন খাদ্যমন্ত্রী এ্যাডভোকেট কামরুল ইসলাম। রবিবার রাজধানীর বঙ্গবন্ধু এভিনিউতে

আওয়ামী লীগের কেন্দ্রীয় কার্যালয়ে ঢাকা মহানগর আওয়ামী লীগ আয়োজিত বর্ধিত সভায় তিনি এ কথা বলেন। এদিকে রবিবার বিকেলে রাজধানীর ঢাকা রপোর্টার্স ইউনিটিতে (‹XBICE) fbL HL pi¡u haj¡e BCej¿£ J সাবেক এই আইe প্রতিমন্ত্রী বলেন, বিএনপির ভাষা এবং আমাদের এ্যাটর্নি জেনারেলের ভাষাও একই, তিনি আর রিজভী একই সুরে কথা বলছেন।

এদিকে দুই মন্ত্রীর বক্তব্যের বিষয়ে আইনমন্ত্রী এ্যাডভোকেট আনিসুল হক বলেছেন, এটা হয়ত ব্যক্তিগতভাবে কেউ মন্তব্য করেছেন। ব্যক্তিগতভাবে যে কেউ তার মতপ্রকাশ করতে পারেন। তবে তিনি নিজে এ বিষয়ে কোন মন্তব্য করতে রাজি হননি।

lবিবার বিকেলে বঙ্গমাতা শেখ ফজিলাতুন্নেছা মুজিব পরিষদ আয়োজিত আলোচনা সভায় খাদ্যমন্ত্রী কামরুল ইসলাম বলেন, বিচারপতিরা প্রকাশ্য আদালতে বলেন-fËp‹LEVll¡ l¡Se‹ত করছেন।তখন ১৬ কোটি মানুষের একজন হিসাবে, একজন মুক্তিযোদ্ধা হিসাবে আমি কি রি-এ্যাকশন দিতে পারব না? তিনি বলেন, আমি তো প্রধান বিচারপতির বিরুদ্ধে কথা বলছিনা। রায় ঘোষণার আগে আমাকে যেভাবে সংক্ষুব্ধ করেছেন রি-Hé¡Lne ®cu¡l স্বাধীনতা কি আমার নেই? এখানে সংবিধানকে লঙ্ঘন করা, আc¡ma Ahj¡ee¡ Ll¡-Hph Lb¡ hm¡l ®a¡ ®L¡e AbC qu e¡z মীর কাশেম আলীর আপীলের শুনানিতে প্রসিকিEশনের কাজে প্রধান বিচারপতির অসন্তোষ প্রকাশের পর শনিবার ঘাতক দালাল নির্মূল কমিটির এক গোলটেবিল বৈঠকে প্রধান বিচারপতি এস কে সিনহাকে বাদ দিয়ে নতুন বেঞ্চ গঠন করে মীর কাশেমের আপীলের পুনঃশুনানির দাবি করেন মন্ত্রী কামরুল ইসলাম। ওই আপীল শুনানিতে এ্যাটর্নি জেনারেল মাহবুবে আলমকেও বাদ রাখতে বলেছিলেন তিনি। নির্মূল কমিটির ওই গোলটেবিলে মুক্তিযুদ্ধ বিষয়ক মন্ত্রী আ ক ম মোজাম্মেল হকও বলেছিলেন প্রধান বিচারপতিকে সরে দাঁড়াতে। পরে রবিবার দুই মন্ত্রীর বক্তব্যকে অসাংবিধানিক ও আদালত অবমাননার শামিল বলে মন্তব্য করেন এ্যাটর্নি জেনারেল।

নির্মূল কমিটির আলোচনা সভায় কামরুল বলেন, জামায়াত যে অভিযোগ করেছে, বিএনপি যে অভিযোগ করেছে, তাদের আন্তর্জাতিক লবিস্টগ্রুপ যে সুরে কথা বলছে, একই সুরে কথা বলেছেন প্রধান বিচারপতি। প্রকারান্তরে রাষ্ট্রের বিরুদ্ধে, সরকারের বিরুদ্ধে অভিযোগ করলেন তিনি। এই মামলার রায় কী হবে, তা প্রধান বিচারপতির প্রকাশ্যে আদালতে বক্তব্যের মধ্য দিয়ে আমরা অনুধাবন করতে পেরেছি।

পরে রবিবার দুপুরে সাংবাদিকরা প্রতিক্রিয়া জানতে চাইলে এ্যাটর্নি জেনারেল মাহবুবে আলম বলেন, প্রধান বিচারপতিকে নিয়ে এধরনের বক্তব্য অসাংবিধানিক। প্রধান বিচারপতিকে জড়িয়ে মন্ত্রীর ওই বক্তব্যকে "‹h0¡l বিভাগের স্বাধীনতার ওপর হস্তক্ষেপ' হিসেবে মন্তব্য করেছেন বিএনপি চেয়ারপার্সনের উপদেষ্টা খন্দকার মাহবুব হোসেনও। পরে আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল গঠনের সময় আCনপ্রতিমন্ত্রীর দায়িত্বে থাকা কামরুল নিজেকে একটা f r দাবি করে বলেন, আমি কিন্তু আদালত অবমাননাকর কোন কথা বলিনি, সংবিধান লঙ্ঘন করিনি। আমি বলিনি যে

আদালত বায়াসড হয়ে এ কথাগুলো বলেছে। আমরা সবাই রায়ের আগে প্রধান বিচারপতির মন্তব্যগুলোতে উদ্বিগ্ন হয়েছি যে, কী হতে যাচ্ছে? আমি এ মামলার বাদী, ১৬ কোটি মানুষই এ মামলার বাদী।

¢a¢e বলেন, বিচারাধীন বিষয় নিয়ে কোন কথা বলা সমীচীন নয়, এটা আমি স্বীকার করছি। কিন্তু বিচারাধীন বিষয় নিয়ে বিচার চলাকালীন কেউ কোন পক্ষকে এরকমভাবে হার্ট বা কষ্ট দিতে পারেন না। কষ্ট দিয়েছেন বলেই আমার মুখ দিয়ে এ রকম কথা বের হয়েছে। জনমনের সংশয় দূর করার জন্য এই আপীল জানিয়েছি (প্রধ¡e বিচারপতিকে বাদ দিয়ে বেঞ্চ গঠন); আদালত অবমাননার জন্য নয়। তিনি আরো বলেন, যখন দেখি প্রকাশ্য আদালতে প্রসিকিউটরদের একেবারে ধুয়ে ফেলেছে এবং আদালত একপর্যায়ে এমন কথাও বলেছে-fËp¢LEVll¡ মামলার নামে রাজনীতি করছেন।তার মানে রাষ্ট্র বা সরকার রাজনীতি করছে তা বোঝা যাচ্ছে। তখন ¢L B¢j pwr ì qh e¡? E¢àNÆh e¡? Bj¡l ®L¡e ¢l-এ্যাকশন থাকবে না? এMনও প্রত্যাশা করি রায়টা ঠিক হোক। মীর কাশেম আলীকে ছেড়ে দিলে কলিজাটা ফেটেযাবে- বলেন এই মন্ত্রী। বঙ্গমাতা শেখ ফজলাতুন্নেছা মুজিবপরিষদ 'ü¡d£ea¡ দিবস ও যুদ্ধাপরাধীদের বিচার' শীর্ষক এই আলোচনা সভার আয়োজন করে। অনুষ্ঠানে অধ্যাপক ড. আবদুল মান্নান চৌধুরীর সভাপতিত্বে ও সহকারী এ্যাটর্নি জেনারেল এ্যাডভোকেট ইয়াদিয়া জামানের সঞ্চালনায় অন্যদের মধ্যে বক্তব্য রাখেন- জনতা ব্যাংকের পরিচালক hmlij ®fiŸil, h‰j¡a¡ ®nM g¢Sm¡aন্নেছা মুজিব পরিষদের সাধারণ সম্পাদক Bëp p¡m¡j jd¡, h‰hå p¡wú¢aL ®S¡টের সাধারণ সম্পাদক অরুণ সরকার রানা প্রমূখ।

jq¡eNlBj়ামী লীগেরবর্ধিত সভা

কামরুল ইসলাম বলেছেন, আগামী ৮ তারিখ শীর্ষযুদ্ধাপরাধী মীর কাশেম Bm£l আপীলের l¡uzBfe¡l¡ ¢eÔQC জানেন, একাত্তরের ঘাতকদের বিচার আমরা করছি, চারজনের বিচারের রায় কার্যকর হয়েছে। নিজামীর মৃত্যুদন্ড আপীলে বহাল রেখেছে। এই পূর্নাঙ্গ রায় প্রকাশের পর আCনে তার নিজস্ব গতিতে চলবে। kb¡pju L¡kLl হবে।

তিনি বলেন, আগামী ৮ তারিখ তাদের সবচেয়ে ধনাঢ্য ব্যক্তি, যিনি কোটি কোটি টাকা খরচ করেছেন এই বিচারকে প্রশ্নবিদ্ধ করতে, ট্রাইব্যুনালকে প্রশ্নবিদ্ধ করতে। বিচারকে বাধাগ্রস্ত করার জন্য আন্তর্জাতিক লবিস্ট নিয়োগ করেছেন। তার m¢hØV V¢h বিক্যাডম্যান আন্তর্জাতিক বিশ্বে এই বিচারের বিরুদ্ধে কথা বলেছেন।এখন পর্যন্ত তার (কাশেম) অর্থ সক্রিয়। তার দেহটা কারাগারের কনডেম সেলে, কিন্তু তার অর্থ বাইরে p¢œ²u, avfl Hhw osk¿ করছে।

খাদ্যমন্ত্রী বলেন, আমরা অতীতে সকল রায়ের সময় যেভাবে মাঠে ছিলাম, ৮ তারিখ তেমনি মাঠে থাকব। আজকে বিভিন্ন পত্র-পত্রিকায় এ বিচার সম্পর্কে কথা উঠছে। প্রসিকিEশন রাজনীতি করছে- এ কথা উঠছে। অর্থাৎ S¡j¡u¡a-বিএনপি এবং তাদের লবিস্টরা যে সুরে কথা বলছে, সে কথাটা আজকে প্রধান বিচারপতি প্রকাশ্যে বলেছেন। প্রসিকিEশন এবং ইনভেস্টিগেশনকে এক কাতারে দাঁড় করানোর কথাও তিনি (প্রধান বিচারপতি)

বলেছেন। অথচ এই প্রসিকিEeশন ২৩ টি মামলা নিষ্পত্তি করেছেন। ২ জনের মৃত্যুদন্ড হয়েছে এবং সকল মামলা a¡l¡ (haj¡e f¢ËLEশন) সফলভাবে পরিচালনা করছেন।

তিনি বলেন, আমরা এতকিছু বুঝি না, আমরা প্রত্যাশিত রায় চাই। একজন মন্ত্রী হিসেবে নয়, একজন মুক্তিযোদ্ধা হিসেবে, একজন সাধারণ বিচারপ্রার্থী হিসেবে এ মামলারও বিচারপ্রার্থী। বিচারপ্রার্থীরা আজ হতাশ। এ বিচারের রায় কি হবে তাদের মনে একটা সন্দেহ আছে। আমরা প্রত্যাশা করি আমাদের সন্দেহ দূর হবেz Bjl¡ f¤Ë¡¢na l¡u 8 a¡¢lM f¡hz''

It is noted that, according to the report in the Daily Janakantha, in the meeting held on 5th March respondent No. 2 also demanded that the Chief Justice steps aside from the appeal hearing.

The respondents neither denied having made the statements as reported in the newspaper, which were placed before the Court nor sought any adjournment to explain or clarify the contents of the reports which were read out in Court.

The utterances in the instant case:

It may be mentioned here that during the course of hearing any matter, the judges often pose questions and make queries in open Court in order that the parties get an opportunity to clarify any fact or issue or to elucidate their contentions and submissions. These comments/queries from the Bench do not usually form part of the judgement. Keeping in mind that the matter is *sub judice* before pronouncement of judgement, it is not proper that anyone should comment on or criticise such verbal exchanges inside the Courtroom. As we have noted earlier, there is no wrong in critiquing a judgement once it is finally published. However, it must be borne in mind that deliberations during the course

of any hearing may not be subjected to analysis or criticism since such comments in a *sub judice* matter might be prejudicial and taint the mind of the public before the judgement is pronounced.

An analysis of the statements made by the respondents is called for. A common theme of the statements made by the two respondents is that they did not wish the Chief Justice to continue on the bench hearing the criminal appeal of Mir Kashem Ali. গোলটেবিল বৈঠকে প্রধান বিচারপতি এস কে সিনহাকে বাদ দিয়ে নতুন বেঞ্চ গঠন করে মীর কাশেমের আপীলের পুনঃশুনানির দাবি করেন মন্ত্রী কামরুল ইসলাম। ... মুক্তিযুদ্ধ বিষয়ক মন্ত্রী আ ক ম মোজাম্মেল হকও বলেছিলেন fËie বিচারপতিকে সরে দাঁড়াতে। This is clearly a blatant interference with the administration of justice in a matter which is *sub judice* and was fixed for pronouncement of judgement.

Their statements to the effect that "HC j¡jm¡l l¡u L£ হবে, তা প্রধান বিচারপতির প্রকাশ্যে আদালতে বক্তব্যের মধ্য দিয়ে আমরা অনুধাবন করতে পেরেছি।" clearly indicates their doubts as to the independence and impartiality of the Chief Justice. Respondent No.1 having understood that it was not proper for him to make any comment about a matter which is *sub judice* stated, "তিনি বলেন, বিচারাধীন বিষয় নিয়ে কোন কথা বলা সমীচীন নয়, এটা আমি স্বীকার করছি। কিন্তু বিচারাধীন বিষয় নিয়ে বিচার চলাকালীন কেউ কোন পক্ষকে এরকমভাবে হার্ট বা কষ্ট দিতে পারেন না। কষ্ট দিয়েছেন বলেই আমার মুখ দিয়ে এ রকম কথা বের হয়েছে। জনমনের সংশয় দূর করার জন্য এই আপীল জানিয়েছি (প্রধান বিচারপতিকে বাদ দিয়ে বেঞ্চ গঠন)". Both respondents were emphatic in their desires to see that the death penalty is upheld. This is patently prejudging the outcome of the appeal which was fixed for pronouncement of judgement. "HMনও প্রত্যাশা করি রায়টা ঠিক হোক। মীরকাশেম আলীকে ছেড়ে দিলে কলিজাটা ফেটে যাবে- বলেন এই মন্ত্রী।" This clearly is aimed at arousing the sentiments of the public with the intention of creating a negative impact on their minds. In fact they insinuated that the Honourable Chief Justice was making

comments openly supporting those of the parties opposed to the war of liberation. "খাদ্যমন্ত্রী বলেন, আমরা অতীতে সকল রায়ের সময় যেভাবে মাঠে ছিলাম, ৮ তারিখ তেমনি মাঠে থাকব। আজকে বিভিন্ন পত্র-পত্রিকায় এ বিচার সম্পর্কে কথা উঠছে। প্রসিকিEশন রাজনীতি করছে- H Lb¡ উঠছে। অর্থাৎ জামায়াত-বিএনপি এবং তাদের লবিস্টরা যে সুরে কথা বলছে, সে কথাটা আজকে প্রধান বিচারপতি প্রকাশ্যে বলেছেন।" The respondents openly expressed their doubts about the decision to be delivered by the highest court and were clearly determined to arouse public opinion expressing their demand to obtain a particular outcome, namely upholding of the death sentence of Mir Kashem Ali. "তিনি বলেন, আমরা এত কিছু বুঝি না, Bjl¡ প্রত্যাশিত রায় চাই। একজন মন্ত্রী হিসেবে নয়, একজন মুক্তিযোদ্ধা হিসেবে, একজন সাধারণ বিচারপ্রার্থী হিসেবে এ মামলারও বিচারপ্রার্থী। বিচারপ্রার্থীরা আজ হতাশ। এ বিচারের রায় কি হবে তাদের মনে একটা সন্দেহ আছে। আমরা প্রত্যাশা করি আমাদের সন্দেহ দূর হবে। আমরা প্রত্যাশিত রায় ৮ তারিখ f¡hz" This clearly shows the intention of the respondents to bully the Supreme Court into delivering the judgement according to their demand upholding the death penalty of Mir Kashem Ali. Their justification for the utterances, as apparent from their affidavits, is that they were Muktijodda and were swayed by their emotions and sentiments. However, they, of all people, being sitting Cabinet Ministers should stop to think and realise the consequences of their utterances.It has to be said that their justifications have watered down the quality of their apologies, which cannot be anything other than a perfunctory, face-saving exercise motivated to get a lesser punishment.

Oath of office

In the case of ***Dr. Mohiuddin Farooque, Secretary General, Bangladesh Environmental Lawyers Association (BELA) being dead Ms. Syeda Rizwana Hasan, Director (Program), representing Bangladesh Environmental Lawyers Association(BELA) Vs. Bangladesh and others,2002 22 BLD 534,***

A.B.M. Khairul Haque, J., as his Lordship was then, observed as follows:

> “The oath of office of the Judges of the Supreme Court requires that they will preserve, protect and defend the Constitution and the laws of Bangladesh. These are not mere ornamental empty words. These glorifying words of oath eulogizes the supremacy of judiciary. It is by now well settled that if the Government or its functionaries fails to act and perform its duties cast upon them by the laws of this Republic, the High Court Division of the Supreme Court, shall not remain a silent spectator to the inertness on the part of the Government or its officials, rather, in order to vindicate its oath of office can issue, in its discretion, necessary orders and directions, under Article 102 of the Constitution to carry out the intents and purposes of any law to its letter, in the interest of the people of Bangladesh because all powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of the Constitution.”

Government Ministers before taking up their office have to swear the following oath, which appears in the Third Schedule of the Constitution:

> "2. **The [4][Prime Minister] [5][***] and other Ministers, Ministers of State and Deputy Ministers].**- Oaths (or affirmations) in the following forms shall be administered by the President-

(a) Oath (or affirmation) of office:

"I,....., do solemnly swear (or affirm) that I will faithfully discharge the duties of the office of Prime Minister(or as the case may be) according to law:

That I will bear true faith and allegiance to Bangladesh:

That I will preserve, protect and defend the Constitution:

And that I will do right to all manner of people according to law, without fear of favour, affection or ill-will."''

Our discussion above regarding the utterances of the contemnors has clearly shown their wish to remove the Chief Justice from the Bench hearing the appeal in question. Their further utterance that they must have their expected judgement shows their utter indifference to the authority of the Supreme Court to act independently. It also shows their utter disregard for the rule of law. The Constitution gives the Supreme Court authority to deliver judgements in accordance with law, but the respondents wished to dictate what decision should be announced by the Supreme Court for it to be acceptable to them. The said utterances show an intention to divert the course of justice in a particular way, come what may, which is contrary to the mandate of the Constitution which requires that every citizen should enjoy the protection of the law and be treated in accordance with law. The utterances of the respondents therefore demand that the Supreme Court should decide the appeal other than in accordance with law which is violative of the Constitution. The respondents thus neglected their sworn duty to protect the rule of law enshrined in the Constitution.

We are in no doubt that the respondents have intentionally made the utterances as reported and have indeed

expressly admitted their guilt. They have acted in violation of law and are in breach of their oath of office to preserve, protect and defend the Constitution. In their exuberance, they have undermined the sanctity of the institution of the judiciary by questioning the justice delivery system. The Constitution enjoins all citizens to abide by the law and makes the decisions of the Supreme Court law to be given effect to by all. The respondents have scandalized the Supreme Court in a highly motivated manner in order to influence the judgement of the Court. This is gross criminal contempt and a violation of the provisions of the Constitution. The contemnors deserve no sympathy other that the lenient view taken in awarding sentence which has already been expressed in the short order passed by this Court on 27th March, 2016.

In the light of the above discussion, the matter is disposed of finding the contemnors guilty of gross contempt and awarding the punishment as already mentioned in the short order of this Court.

J.

Hasan Foez Siddique, J:

I have had the privilege of perusing the opinion tendered by my esteemed brother Muhammad Imman Ali, J. The opinion is based on cogent reasons and correct proposition of law. There can, therefore, be no question of disagreement with my learned brother as to the findings of guilt of the contemners and sentence awarded. But I am unable to agree

with the portion that the contemners are in breach of their oath of office to preserve, protect and defend the Constitution.

It is not the issue in the proceeding to adjudicate whether the contemner-respondents have acted in breach of their oath of office or not. No notice was issued in that regard drawing attention to the contemner-respondents, who are sitting ministers of the Cabinet. I am of the view, that our point for consideration is whether by making utterances, published in the newspapers, the contemner- respondents have committed any contempt of this Court or not.

It is relevant here to state a few words regarding contempt of Court.

“Throughout the English history contempt has been the vehicle for deciding a variety of dramatic and significant social problems. When Hal was the Prince of Wales (later to become Henry V of England) one of his servants was arrested for committing a felony. Upon his servant’s arraignment at the King’s Bench, the prince appeared in a rage and demanded that his man be let free. Chief Justice Gascoigne delicately but firmly ruled that the laws of the realm must be met, and that if the prince wished his servant to be pardoned he should secure this from the King, his father. The prince tried physically to take the servant away, whereupon Gascoigne ordered him again to behave. When the prince raged (and some say he even struck Gascoigne) the judge reminded the prince that he kept the peace of the King to whom even Hal owed allegiance and suggested that Hal set a good example. When Hal did not heed this advice, he was sentenced

for contempt, and committed to the King’s Bench prison until the King’s pleasure could be known. People speculated whether this would be the end of Gascoigne’s career. It developed that the king was pleased and rejoiced that he had both a judge who dared to minister justice to his son and a son who obeyed him (if reluctantly)” (Lives of Chief Justices of England by Campbell 125).

History tells us how a State is protected by its Courts and an independent judiciary is the cardinal pillar of the ordered progress of a stable Government. A high sense of civic conscience among the people should be infused by exercising such summary powers so as to generate a spontaneous regard for an implicit obedience to its Law Courts. It further tells us that if there is an over-enthusiastic executive, which attempts to belittle the importance of the Court and its judgments and orders, and to lower down its prestige and confidence before the public; these summary powers are all the more necessary, and the dignity, decency and decorum of the Courts of justice are to be preserved in the very interest of the people and for the safety of the public. These powers are the legal brakes to sudden outbursts either by the litigants, the press or the executive. They are necessary to modulate their conducts so as to give all reverence to the temple of justice.

‘Rule of Law’ is the basic rule of governance of any civilized democratic policy. Our constitutional scheme is based upon the concept of “Rule of Law” which we have adopted and given to ourselves. Everyone, whether individually or collectively is unquestionably under the supremacy of law.

Whoever the person may be, however high he or she is, no-one is above the law notwithstanding how powerful and how rich he or she may be. Even the Supreme Court is subordinate to the law and not above the law. For achieving the establishment of the rule of law, the Constitution has assigned the special task to the judiciary in the country. It is only through the Courts that the rule of law unfolds its contents and establishes its concept. For the judiciary to perform its duties and functions effectively and true to the spirit with which it is sacredly entrusted, the dignity and authority of the Courts have to be respected and protected at all costs. The only weapon of protecting itself from onslaught to the institution is the long hand of contempt of court left in the armoury of judicial repository which, when needed, can reach any neck howsoever or far away it may be. Judiciary is central pillar of democracy.

When contempt is committed in the face of the Supreme Court to scandalise or humiliate the Court and the Judge, instant action may be necessary. If the courts do not deal with such contempt with strong hand, that may result in scandalising the institution thereby lowering its dignity in the eyes of the public. The courts exist for the people. The courts charished the faith reposed in them by people. To prevent erosion of that faith, contempt committed in the face of the court needs a strict treatment.

E.M.S. Namboodripad, the then Chief Minister of Kerala, at a press conference held by him at Trivandrum, on November 9, 1967 stated inter alia, “Marx and Engels considered the judiciary as an instrument of oppression and even today when

the State set up has not undergone any change it continues to be so ------- the Judges are guided by and dominated by class hatred, class interests and class prejudices and where the evidence is balanced between a well dressed pol-bellied rich man and a poor ill dressed and illiterate person, the Judge instinctively favours the former."

While upholding the order of conviction and sentence of Namboodripad awarded by Kerala High Court in a proceeding of contempt of Court Supreme Court of India held "It is clear that it is an attack, upon Judges which is calculated to raise in the minds of the people a general dissatisfaction with, and distruct of all judicial decisions. It weakens the authority of law and law courts". (1970 (2) SCC 375=AIR 1970 SC 245).

In a democracy there is no need for judges to vindicate their authority to display pomp and majesty. Their authority comes not from fear of contempt but from the public confidence, and this in terms depends on their own conduct, integrity, impartiality and learning.

Its object is not to project the dignity of the court, but to project the administration of justice "Justice is not a cloistered virtue" said Lord Atkin. "It must suffer the scrutiny and outspoken comments of ordinary men."

It must be remembered that the maintenance of dignity of Courts is one of the cardinal principles of rule of law in a democratic set up and any criticism of the judicial institution couched in language that apparently appears to be

mere criticism but ultimately results in undermining the dignity of the Courts cannot be permitted.

“The power to punish for contempt is a rare species of judicial power which by very nature calls for exercise with great care and caution. Such power ought to be exercised only where silence is no longer an option” (Bal Krishna Giri V. State of U.P. (2014) 7 SCC 280).

In R Vs. Commr of Police (1968) 2 QB 150 Lord Denning observed, “Let may say at once that we will never use this jurisdiction to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far from important at stake. It is no less than freedom of speech itself---- All that we ask is that those who criticize us should remember that, from the nature of our duties, we cannot reply to their criticism. We cannot enter into public controversy we must rely on our conduct itself to be its own vindication”.

Once a British Newspaper ran a banner headline calling the majority Judges of the House of Lords who decided the Spycarcher Case (Attorney General Vs. Guardian Newspaper, 1987 3 AII ER.316) “YOU FOOLS”. Fali Nariman, who was present in England at that time, asked Lord Templeman, who was one of the majority, “why the Judge did not take contempt action.” Lord Templeman smiled, and said that Judges in England took no notice of personal insults. Although he did not regard himself as a fool, other were entitled to their opinion.

Lord Denning in his “Family Story” has recorded what Lord Shawcross about one of his judgments: “Denning is an Ass”. The Times (of London) published this. In spite of it, Lord Denning declined to take contempt action since he took the view that he would disprove it not by contempt proceedings but by means of his performance. Of course, he is regarded as the best Judge of the Commonwealth.

Justice Krishna Ayer In re S Mulgaokar (1978 (3) SCC 338=AIR 1978 SC 727 while giving the broad guidelines in taking punitive action in the matter of contempt of court observed:

“------- If the Courts the attack on the Judge or Judges scurrilous, offensive intimatory, or malicious beyond condonable limits, the strong arms of law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the rule of law by fouling its source and steam.”

To illustrate, in Duda’s Case (AIR 1988 SC 1208), a Union Cabinet Minister said that the Supreme Court Sympathized with zaminders and bank magnates. He further said “FERA” violators, bride burners, and a whole horde of reactionaries have found their haven in the Supreme court and that Supreme Court Judges have ‘unconcealed sympathy for the haves’.

No action was taken against him.

Supreme Court of India while proceeding with against Prashant Bhushan in contempt case, former Law Minister Shanti Bhuson father of Prashant Bhushan told the Supreme court that

he and his son would prefer to go to Jail instead of tendering an apology for pointing to corruption in the Judiciary. Bhusan told this to the court after he and his son were asked if they were willing to offer an apology. He became a party to the contempt case by filing an affidavit saying that of 16 Chief Justices' of India, eight were "definitely corrupt", six were "definitely honest" and for two of the " a definite opinion cannot be expressed". The contempt proceedings were initiated after Prashanta Bhushan in an interview to Tehelka leveled allegation of corruption against the sitting Judges of the Apex Court. Prashanta Bhushan in his interview had alleged that Justice S.H. Kapadia (became Chief Justice of India) who had the shares in Sterlite company decided a mining lease case in favour of the Company.

It is only through the Courts that rule of law unfolds its contours and establishes its concept. For the judiciary to carry out its obligations effectively and true to the spirit with which it is sacredly entrusted the task, constitutional Courts have been given the power to punish for contempt, but greater the power; higher the responsibility.

I shall conclude with the following words of Lord Denning in his " What Next in The Law", "It is the right of everyman, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest…… we cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication."

“The Bench is sacred seat and divinity is incompatible with arrogance, pride and Vanity”. Frankfurter of the U.S. Supreme Court observed,

“Therefore, Judge must be kept mindful of their limitations and of their ultimate public responsibility by a vigorous stream of criticism expressed with candor however blunt.”

Every holder of a Public office by virtue of which he acts on behalf of the State or Public body is ultimately accountable to the people in whom sovereignty vest. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. The duty of all organs of the state is that the public trust and confidence in the judiciary may not go in vain.

Keeping in mind the above matters we have convicted and sentenced the contemners to set an example and to give caution to all that it has became fashion to criticise the Judges for no fault of them. But the observation as to breach of oath of office is not in consonance with the notice issued upon the contemners. As such I cannot agree with that observation.

J.

Mirza Hussain Haider, J: I have gone through the judgement proposed to be delivered by my brother, Muhammad Imman Ali, J. and the separate opinion given by my brother Hasan Foez Siddique, J. I agree with the reasoning and findings given by my learned brother Muhammad Imman Ali,J.

J.

Md. Nizamul Huq, J: I have gone through the judgement proposed to be delivered by my brother, Muhammad Imman Ali, J. and the separate opinion given by my brother Hasan Foez Siddique, J. I agree with the reasoning and findings given by my brother Hasan Foez Siddique,J.

J.

The short order shall form part of this judgement.

C. J.

J.

J.

J.

J.

J.

J.

J.

B.S./B.R./* Words-14,178*