Present:
Mr. Justice Md. Nazrul Islam Talukder
And
Mr. Justice K.M. Hafizul Alam

Criminal Miscellaneous Case No. 20352 of 2009

Barrister Md. Aminul Hoque

.....Accused- petitioner.

-Versus-

The State and another

..... Opposite-parties.

Mr. Anik R. Hoque, Advocate with

Mr. S.M. Anamul Hoque, Advocate,

..... For the Accused-petitioner.

Mr. A.K.M. Amin Uddin, D.A.G with

Ms. Helena Begum (China), A.A.G.

……. For the State-opposite party No. 1.

Mr. Md. Khurshid Alam Khan, Advocate,

.....For the Anti-Corruption Commission.

Heard on:15.01.2019, 24.01.2019, 31.01.2019, 06.02.2019 and 13.02.2019 and 25.02.2019 and Judgment on:25.02.2019.

Md. Nazrul Islam Talukder, J:

On an application under Section 561A of the Code of Criminal Procedure, this Rule, at the instance of the accused-petitioner, was issued calling upon the opposite-parties to show cause as to why the proceeding of Special Case No.10 of 2008 arising out of Metropolitan Special Case No.154 of 2008

corresponding to A.C.C G.R. Case No.22 of 2008 arising out of Shahbag Police Station Case No.53 dated 26.02.2008 under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947, now pending in the Court of learned Metropolitan Senior Special Judge, Dhaka, should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

It is stated in the application that the petitioner is a law abiding citizen of Bangladesh. He is a Senior Advocate of this Hon'ble court. He was born in the year 1943. He comes of a very renowned Muslim family of Rajshahi District. The petitioner earned his MA in Islamic History from Rajshahi University. Thereafter, he went to UK to pursue his studies in law. In the year 1974 he was called to the Bar from the

Hon'ble society of Lincoln's Inn. Thereafter he returned to Bangladesh and joined the Bangladesh bar. During his illustrious career in the bar, he conducted many cases which are reported in various law reports. The petitioner as a conscious citizen was involved in politics since his student life. During his college life, he was a member of Student Union. As a supporter of NAP (Bhashani) he took active part in the movement against Ayub Khan. During the liberation war in 1971, he was one of the main organizers in England to raise fund for the freedom fighters and create public opinion for an independent Bangladesh. He joined Bangladesh Nationalist Party (hereinafter referred to as BNP) since its inception and later became a member of the Executive Committee of BNP. He was also elected member of the Supreme Court Bar Association two times. Apart from his professional and political life, he is also involved in many social, cultural and charitable

activities. He is a life member of Red Crescent Society, BIRDEM and Bangla Academy. He is a notable philanthropist and he is the founder Secretary of Godagari Public Club and Library. He is the President of the Governing Body of many schools and colleges, including Godagari College, Anwara-Fahim-Ziauddin Girls' School which is the first Girls' School in the Rajshahi District. He is also the President of Mother Teresa Foundation, a volunteer movement initiated by St. Teresa. On the invitation of various US President, he attended the Annual National Prayer Breakfast many times, including the 2009 event. The petitioner contested the parliamentary election for the 5th national Parliament held on 27th February, 1991 from the seat Rajshahi-1, comprising of Godagari and Tanore Upazila. He was a candidate for the BNP and was elected with a huge popular support. In the year 1992 he was made State Minister of the Law, Justice

and Parliamentary Affairs. During the tenure of that Parliament, the petitioner also held two other portfolios as State Minister. He was also elected as a Parliament Member in the 6th and 7th parliamentary election. The petitioner was re-elected in his constituency in the 8th Parliamentary election held on 1st October 2001. Thereafter, he was appointed as Minister of Post and Telecommunications. During his tenure the whole telecom sector became the most vibrant and developed sector of the country. His dynamic and visionary leadership in this regard made Bangladesh 10th in the list of rapidly growing countries in the telecom sector. During his tenure in the ministry the highest amounts of foreign investments were made and the service of the state owned BTTB became the most efficient. He introduced the cheapest call rates in the country and it was during his period the tariff to call abroad became

the lowest. Due to his contribution Bangladesh got connected with the information super highway by connecting with the submarine cable network. It was due to his tireless work nearly all over Bangladesh Digital telephone network was set up. The petitioner as a politician has earned a dignified position in the esteem of the rightful thinking members of the society. As a bold and courageous parliamentarian he never shunned away from speaking the truth both in and outside the Parliament. As a result of his constructive criticism, he has earned respect from many but at the same time incurred a few enmities that have turned out his political rivals. The said political rivals are always active in causing harm to the petitioner. The petitioner as a politician has no weakness. He all through his political career has maintained a clean and simple life style. His political views and activities are transparent and obvious to the people of the country. He had

nothing to earn from politics. Neither has he had anything to lose in serving people of the country. The petitioner has nothing to hide. The petitioner was always and still is outspoken against anything prejudicial to the interest of the people of this country. The petitioner served the people of this country while he was in politics. The petitioner contributed through his ideology in building infrastructures of the country since early 80's. But there was never any allegation of corruption or nepotism against him. He belongs to an affluent family and flourished himself by virtue of his own skill, labour and merit. Politics is not the profession of the petitioner. He is engaged in politics for the betterment and welfare of the people. He believes in honesty, courage, truth but fears in political persecution, political rivalry and political harassment. His political rivals, in order to discredit him in the eyes of the public and to ensure that he is banished

from the political scene of the country, cooked up a plan and executed the same. It is stated that under the changed political scenario in the year 2007 the then Caretaker Government started mockery of political reform drive. In the name of so-called political reform drive the then Caretaker government started filing false, frivolous and malicious cases against all renowned politicians to wipe them out from the political scene of the country. The then Caretaker Government in utter disregard for Rule of Law started arresting the politicians without any investigation, and later filed cases by detaining and torturing the politicians. In the meantime, the President of Republic under the auspices of the armed forces declared State of Emergency under Article 141A of the Constitution on 11.01.2007. Being empowered under the Emergency Power Rules, 2007, Joint Forces started arresting many people indiscriminately and maligning

them for ulterior purposes. They hatched an unholy idea of “minus two” with the view to eliminating the present Prime Minister Sheikh Hasina and the former Prime Minister Begum Khaleda Zia from politics of the Country. At the same time the then Caretaker Government started issuing orders of detention upon hundreds of high profile businessmen, professionals and also politicians. In such situation the petitioner left the country to avoid harassment and evil design of the vested quarters. Some people from the vested quarters belonging to the then government warned the petitioner that he would be subjected to detention and arrest unless he leaves the country. The petitioner being compelled under persistent threat of a particular quarter of the then Caretaker Government left the country just to avoid arrest and physical torture. It is known to all that many senior politicians of high stature were subjected to physical torture. The vested

quarter compelled the petitioner to leave the country bearing an unholy and mala fide scheme in mind for the purpose of securing easy convictions in various cases in absentia of the petitioner. The whole process of the conviction was not only in-transparent, unfair and against the rule of law but also in clear violation of law. The fundamental human rights were degraded at such an extreme level that even various international forums raised outcry against the brutality of the unfair activities. The military men remaining present in the court dictated the trial and result. The convictions made during the said black period are a conspicuous scar on the judicial system of Bangladesh. In line of the aforesaid situation, on 26.02.2008 one Mr. Md. Shamsul Alam, Assistant Director of Anti-Corruption Commission (Anu-O-Tadanta-I), Head Office, Dhaka being informant initiated this frivolous case against the accused-petitioner.

The prosecution case as alleged in the FIR, in short, is that an international tender was invited by Coal Mining Company Limited (BCMCL), a subsidiary of Petrobangla, for coal mining of the Boropukuria where three firms tendered their respective bids; that a committee of seven members headed by Dr. Anwarul Azim was constituted for evaluating the bids and the said committee evaluated Shandong Ludi Geo Mineral Co. Ltd as successful bidder and there is no objection from any quarter in respect of the evaluation of the bid; that pursuant to the evaluation of the said committee, on 24.04.2004, a contract was executed between the BCMCL and Shandong Ludi Geo Mineral Co. Ltd. with the approval of the then Prime Minister of the country for Tk.335,08,05,382,18; that the said Company instead of submitting bank guarantee and performance guarantee as per requirements of the said contract refused to

carry on the contract without enhancement of contract price; that in such situation BCMCL vide its board resolution dated 12.08.2004 cancelled the said contract dated 24.04.2004 executed with the said Company and BCMCL vide its letter dated 16.08.2004 asked CMC Consortium as to whether it will complete the said contract as per terms and conditions of the contract dated 24.04.2004 of the said company; that no offer was given to the second lowest bidder because in the meantime its bid bond has expired; that the said CMC Consortium informed that it is unable to carry out the job as per terms and prices of the said contract dated 24.04.2004 earlier executed with Shandong Ludi and proposed to negotiate the terms and prices; that in such situation BCMCL requested the Ministry of Energy and Mineral Resources for its decision as to re-tender; that allegedly the said Ministry without any cogent reason in disregard of BCMCL did not initiate re-

tender on the ground of dearth of sufficient time; that allegedly in disregard of recommendation of Chairman of Petro Bangla namely Mr. S.R. Osman for re-tender, a committee of the Ministry of Energy headed by State Minister A.K.M Mosharraf Hossain vide its meeting dated 20.12.2004 recommended to execute a contract with CMC Consortium; that allegedly CMC Consortium quoted its price at an excess amount to the tune of Tk.158,71,26,343.22 crore than that of the earlier company and thus the Government suffered a loss of Tk.158,71,26,343.22 crore in granting the contract to CMC Consortium; that allegedly the petitioner was a member of the Government Purchase Committee and as such everything of the Ministry is supposed to be done within the knowledge of the petitioner and therefore the petitioner along with the other accused allegedly caused a loss of Tk.158,71,26,343.22 crore by way of awarding the

contract to CMC Consortium in disregard of recommendation of Petro Bangla for re-tender with the view to benefiting themselves or someone else and thus committed offences under Sections 409/406/ 109/419 and 420 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act,1947. Hence the F.I.R.

After initiation of the F.I.R, on 03.03.2008, the Anti-Corruption Commission appointed one Mr. Mohammad Monirul Hoque, Deputy Director as Investigating Officer (I.O) of the said case, who after holding investigation submitted final report on 01.06.2008.

Anyway, the Anti-Corruption Commission without accepting the final report appointed one Mr. Md. Abul Kashem Fakir as the 2nd investigating officer who after further investigation into the

allegations submitted the investigation report along with the memo of evidence before the Commission. Upon approval by the Commission, the investigating officer submitted the charge-sheet No.409 dated 05.10.2008 together with sanction before the Court of Chief Metropolitan Magistrate on 06.10.2008. In the said charge-sheet, it is alleged that an international tender was invited by Coal Mining Company Limited (BCMCL) for coal mining of the Boropukuria where three firms tendered their respective bids: that a committee of seven members headed by Dr. Anwarul Azim was constituted for evaluating the bids and the said committee evaluated Shandong Ludi Geo Mineral Co. Ltd as successful bidder and there is no objection from any quarter in respect of the evaluation of the bid; that pursuant to the evaluation of the said committee, on 24.04.2004, a contract was executed between the BCMCL and Shandong Ludi Geo Mineral

Co. Ltd. with approval of the then Prime Minister of the country for Tk.335,08,05,382,18; that the said Company instead of submitting bank guarantee and performance guarantee pursuant to the said contract dated 24.04.2004 refused to carry on the contract without enhancement of contract price: that in such situation BCMCL, vide its board resolution dated 12.08.2004 cancelled the said contract letter dated 15.08.2004 and asked CMC Consortium as to where it will complete the said contract as per terms and conditions of the contract dated 24.04.2004 of the said company; that no offer was given to the second lowest bidder because in the meantime its bid bond expired; that the said CMC Consortium informed that it is unable to carry out the job as per terms and prices of the said contract dated 24.04.2004 earlier executed with Shandong Ludi Geo Mineral Co. Ltd; thereafter, BCML proposed to the Ministry of Energy and

Mineral Resources for its decision as to re-tender; that allegedly the said Ministry without any cogent reason in disregard of BCMCL did not initiate re-tender on the ground of dearth of sufficient time; that allegedly in disregard of recommendation of Chairman of Petro Bangla namely Mr. S.R. Osmani for re-tender, a committee of the Ministry of Energy vide its meeting dated 20.12.2004 recommended to execute a contract with CMC Consortium; it is stated that CMC Consortium quoted its price at an excess amount to the tune of Tk.158,71,26,343.22 crore than that of the earlier company and thus the government suffered a loss of Tk.158,71,26,343.22 crore in granting the contract to CMC Consortium; that allegedly the petitioner was a member of the Cabinet Committee on Public Purchase and as such all these were supposed to be done within the knowledge of the petitioner and therefore the petitioner along with other accused

allegedly caused a loss of Tk.158,71,26,343.22 crore by way of awarding the contract to CMC Consortium in disregard of recommendation of Petro Bangla for re-tender with a view to benefiting themselves or someone else and thus committed offences under Sections 409/406/109/410 and 420 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947. Hence the charge-sheet.

Having received the charge-sheet, the case was transferred to the Court of learned Metropolitan Senior Special Judge, Dhaka wherein the said case was registered as Metropolitan Special Case No.154 of 2008. The learned Metropolitan Senior Special Judge, Dhaka vide order dated 06.10.2008 took cognizance of the said case against the accused-petitioner and others under Sections 409/109 of the Penal Code read with

Section 5(2) of the Prevention of Corruption Act, 1947.

Being aggrieved and dissatisfied with the impugned proceeding, the accused-petitioner approached this court with an application under Section 561A of the Code of Criminal Procedure and obtained this Rule along with an order of stay of the proceeding in question.

At the very outset, Mr. Anik R. Huq, the learned Advocate appearing on behalf of the accused-petitioner, submits that the allegations disclosed in the FIR and the charge-sheet are so preposterous that even if those are taken at their face value and accepted in their entirety, the same do not disclose offences under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947and as such, the proceeding of Metropolitan Special Case

No.154 of 2008 corresponding ACC GR Case No.22 of 2008 arising out of Shahbag P.S. Case No.53 dated 26.02.2008 under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947, now pending in the Court of Metropolitan Senior Special Judge, Dhaka is nothing but an abuse of process of the Court and is liable to be quashed.

He next submits that the allegation against the petitioner is that he was a member of the Cabinet Committee on Public Purchase but nowhere in the FIR and the charge-sheet it is alleged that the petitioner obtained any gratification from anybody which attracts the provision of section 161 of the Penal Code or he accepted for himself or for any person any valuable thing without consideration or inadequate consideration or he dishonestly or fraudulently misappropriated or converted any valuable thing

entrusted to him for his own or for the use of any other person or if he by corrupt or illegal means or abusing his office as public servant obtained for himself or any valuable thing or pecuniary advantage and as such, the allegations as set out in the FIR and the charge-sheet do not squarely come within the ambit of Sections 409/109 of the penal Code read with Section 5(1) of the Prevention of Corruption Act, 1947.

He then submits that no approval has been accorded by the Anti Corruption Commission for initiation of the proceeding under Rule 15(2) of the Anti-Corruption Commission Rules, 2007 and no approval for filing of the case has been given in violation of Rule 15(7) of the said Rules, and on that legal scenario, the impugned proceeding is barred by law and the same is liable to be quashed.

He further submits that the Metropolitan Senior Special Judge, Dhaka took cognizance against the accused-petitioner and others under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 without prior sanction of the Anti Corruption Commission in clear violation of Section 32(1) of the Anti-Corruption Commission Act, 2004 read with Rule 13(2) of the Anti-Corruption Commission Rules, 2007 and as such, the entire proceeding is without jurisdiction and framed with illegality and as such, the impugned proceeding may be quashed.

He candidly submits that the Commission submitted the charge-sheet without any jurisdiction since a final report dated 01.06.2008 was submitted by the original investigation officer and there is no sanction of law for appointing new investigation

officer for holding further investigation with a view to obtaining a charge-sheet against the petitioner and the said Commission does not have any jurisdiction whatsoever to accord sanction for submitting charge-sheet under Rule 13(2) of the said Rules without accepting the said final report and as such, submission of the said charge-sheet without accepting the initial final report dated 01.06.2008 is barred by law and as such, the impugned proceeding is liable to be quashed.

He categorically submits that the allegations as disclosed in the FIR and the charges-sheet against the petitioner do not disclose any offence under Sections 409/109 of the penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 since the petitioner did not cause anything to be obtained for himself or for third party, nor the petitioner caused any pecuniary advantage to be accrued on the third party

within the meaning of Section 5(1) of the Prevention of Corruption Act, 1947 and for this reason, the impugned proceeding is liable to be quashed.

He lastly submits that the allegations made in the FIR and the charge-sheet against the petitioner do not disclose any offence under Section 409 of the Penal Code since the property in question was not entrusted with the petitioner and the said property was not under the control of the petitioner, so there is no criminal misappropriation by the petitioner within the meaning of Section 409 read with Section 405 of the Penal Code and that being the reason, the impugned proceeding is liable to be quashed.

During hearing of the Rule, the learned Advocate for the accused-petitioner has taken us through relevant sections and rules of the Anti-

Corruption Commission Act, 2004 and the Anti-Corruption Commission Rules, 2007.

On the other hand, Mr. Md. Khurshid Alam Khan, the learned Advocate appearing on behalf of the Anti-Corruption Commission, submits that the allegations as set out in the FIR and the charge-sheet are that the petitioner in collusion with other accused without floating re-tender awarded the contract to the CMC Consortium, who was the third successful bidder, at an excess contract price on cancellation of the contract dated 24.04.2004 executed with the first successful bidder i.e. Shandong Ludi Geo Mineral Company Ltd. and by this way, the Government incurred a loss of Tk.158,71,26,343.22 crore and thus the petitioner along with the other accused committed offences under Sections 409/109 of the penal Code

read with Section 5(2) of the Prevention of Corruption Act, 1947 and as such, the Rule should be discharged.

He next submits that there are specific allegations against the accused-petitioner with regard to misappropriation of a huge amount of money from the government fund by way of giving tender work to the CMC Consortium without following the Rules and Regulations and without floating re-tender and as such the Rule should be discharged.

He candidly submits that as per section 33 of the Penal Code, the word “act” ‘denotes as well a series of acts as a single act’, and the word “omission” denotes as well a series of omissions as a single omission and that prima facie the prosecution materials disclose offences against the accused-petitioner and as such the impugned proceeding cannot be quashed under the inherent power of this Court

when the FIR, Charge sheet and other prosecution materials on record disclose offences which can only be assessed/evaluated at the time of trial of the case and for this reason, the Rule should be discharged.

He categorically submits that no sanction is required for lodging an ejahar or complaint-petition rather only one sanction is required and to be accorded by the Commission under section 32 of the Anti-Corruption Commission Act, 2004 read with Rule 13(2) of the Anti-Corruption Commission Rules, 2007 before taking cognizance of the offence and issuance of the process which has already been complied and as such question of quashment on such ground does not, at all, arise.

Mr. Khan has pointed out that as per provisions of sections 17 and 19 of the Anti-Corruption Commission Act, 2004, the prosecution is always at

liberty to cause further investigation to be made if it is required for ends of justice.

He vigorously submits that the accused-petitioner is one of the masterminds of the alleged offences committed in the name of giving tender work to CMC Consortium violating the Rules and Regulations and without floating any re-tender and as such, the Rule should be discharged.

He lastly submits that the accused-petitioner was the member of the Cabinet Committee on Public Purchase headed by the then Prime Minister co-accused Begum Khaleda Zia and the accused-petitioner and others being public servants ignoring the recommendation of Petro Bangla for re-tender awarded the tender work to the CMC Consortium with a view to making unlawful gains by abusing their official power and position, which clearly discloses the

offences under Sections 409/109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947 and as such the Rule should be discharged.

Mr. Khan in support of his submissions has referred to a number of legal decisions taken in the cases of Begum Khaleda Zia vs the State and another reported in 70 DLR (AD) (2018) 99, Anti-Corruption Commission vs Mehedi Hasan and another reported in 67 DLR (AD) (2015) 137, Ali Haider Chowdhury vs the State and another reported in 65 DLR (HC) (2013) 116, Moulana Motiur Rahman Nizami and others vs Anti-Corruption Commission and another reported in 17 BLC (HC) (2012) 1, Abdus Salam Master alias Salam and another vs the State, reported in 36DLR(AD)(1984)58, Monjur Morshed Khan and others vs Durnity Daman Commission and another, reported in 70DLR(AD)(2018)120.

Mr. A.K.M Amin Uddin, the learned Deputy Attorney-General appearing for the State, submits that the allegations that have been brought against the accused-petitioner and others are all disputed questions of facts which cannot be decided under the inherent power of Section 561A of the Code of Criminal Procedure and as such the Rule should be discharged for ends of justice.

We have gone through the application under Section 561A of the Code of Criminal Procedure and perused the prosecution materials annexed thereto. We have also heard the learned Advocates for the accused –petitioner, the learned Advocate for the Anti-Corruption Commission and the learned Deputy Attorney-General for the State at length and considered their submissions to the best of our wit and wisdom.

Before coming to a decision in this Rule, it is pertinent to note that the inherent power under Section 561A of the Code of Criminal Procedure can be invoked at any stage of the proceeding even after conclusion of the trial, if it is necessary to prevent the abuse of process of the court or otherwise to secure the ends of justice. The aforesaid view finds support in decision in the case of Sher Ali (Md) and others Vs The State, reported in 46 DLR (AD) (1994) 67 wherein it was decided as under:-

“the inherent power under Section 561A of the Code of Criminal Procedure can be exercised to quash a proceeding or even a conviction on conclusion of a trial if the court concerned got no jurisdiction to hold the said trial or the facts alleged against the accused do not constitute any criminal offence, or the conviction has been based on ‘no evidence’ or otherwise to secure ends of justice”.

The guidelines and principles for quashing a proceeding were initially formulated and settled in the decision in the case of Abdul Kader Chowdhury Vs The State reported in 28 DLR (AD)(38). Subsequently, the aforesaid views were reiterated in the decision in the case of Ali Akkas Vs Enayet Hossain and others, reported in 17BLD(AD)(1997) 44=2BLC(AD)(1996)16 wherein it was spelt out that to bring a case within the purview of Section 561A of the Code of Criminal Procedure for the purpose of quashing a proceeding, one of the following conditions must be fulfilled:-

(I) Interference even at an initial stage may be justified where the facts are so preposterous that even on admitted facts no case stands against the accused;

(II) Where the institution and continuation of the proceeding amounts to an abuse of the process of the Court;

(III) Where there is a legal bar against the initiation or continuation of the proceeding;

(IV) In a case where the allegations in the FIR or the petition of complaint, even if taken at their face value and accepted in their entirety, do not constitute the offence as alleged and

(V) The allegations against the accused although constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge.

The aforesaid principles were reechoed in the decision in the case of Begum Khaleda Zia Vs. The

State and another, reported in 70 DLR (AD) (2018) 99.

Now, question arises as to whether the principles and guidelines for quashing a proceeding settled by our Appellate Division are applicable in the instant case at hand for quashing the same.

The allegations against the accused-petitioner and others are that an international tender was invited by Coal Mining Company Limited (BCMCL), a subsidiary of Petrobangla, for coal mining of the Boropukuria where three firms tendered their respective bids. A committee of seven members headed by Dr. Anwarul Azim was constituted for evaluating the bids and the said committee evaluated Shandong Ludi Geo Mineral Company Ltd. as successful bidder and there is no objection from any quarter in respect of the evaluation of the bids. Pursuant to the evaluation of the said committee, on

24.04.2004, a contract was executed between the BCMCL and Shandong Ludi Geo Mineral Co. Ltd. with the approval of the then Prime Minister of the country for Tk.335,08,05,382,18. The said Company instead of submitting bank guarantee and performance guarantee as per requirements of the said contract refused to carry on the contract without enhancement of contract price. In such situation BCMCL vide its board resolution dated 12.08.2004 cancelled the said contract dated 24.04.2004 with the said Company and BCMCL vide its letter dated 16.08.2004 asked CMC Consortium as to whether it will complete the said contract as per terms and conditions of the contract dated 24.04.2004 of the said company. No offer was given to the second lowest bidder because in the meantime its bid bond expired. The said CMC Consortium informed that it is unable to carry out the job as per terms and prices of the said contract dated 24.04.2004 earlier executed with Shandong Ludi Geo

Mineral Co. Ltd and proposed to negotiate the terms and prices. In such situation BCMCL requested the Ministry of Energy and Mineral Resources for its decision as to re-tender. It is allegedly that the aforesaid Ministry without any cogent reason in disregard of recommendation of BCMCL did not initiate re-tender on the ground of dearth of sufficient time. It is further alleged that in disregard of recommendation of Chairman of Petro Bangla namely Mr. S.R. Osman for re-tender, a committee of the Ministry of Energy headed by State Minister A.K.M Mosharraf Hossain vide its meeting dated 20.12.2004 recommended to execute a contract with CMC Consortium. It is also alleged that CMC Consortium quoted its price at an excess amount to the tune of Tk.158,71,26,343.22 crore than that of the earlier company and thus the Government suffered a loss of Tk.158,71,343.22 crore in granting the contract to CMC Consortium. At the time of alleged occurrence,

the petitioner was a member of the Cabinet Committee on Public Purchase and as such everything of the Ministry is supposed to be done within the knowledge of the petitioner and therefore the petitioner along with the other accused allegedly caused a loss of Tk.158,71,26,343.22 crore by way of awarding the contract work to CMC Consortium in disregard of recommendation of Petro Bangla for re-tender with a view to benefiting themselves or someone else and thus committed offences under Sections Nos.409/406/109/419 and 420 of the Penal Code and read with Section 5(2) of the Prevention of Corruption Act,1947.

The allegations that have been leveled against the accused-petitioner and others have been found prima-facie true in the further investigation. Accordingly, on 05.10.2008 the investigating officer submitted charge-sheet against the accused-petitioner

and others under sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

Following the charge-sheet, on 06.10.2008, the learned Metropolitan Senior Special took cognizance of the case against the accused-petitioner and others under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

Section 409 of the Penal Code runs as under:

409. Criminal breach of trust by public servant, or by banker, merchant or agent- whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with

imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 5(1) of the Prevention of Corruption Act, 1947 reads as follows:-

5. Criminal Misconduct-(1) A public servant is said to commit the offence of criminal misconduct.

(a) if he accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification other than legal remuneration as a motive or reward such as is mentioned in section 161 of the Penal Code, or

(b) if he accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been or to be likely to be concerned in any proceeding or business

transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do, or

(d) if he by corrupt or illegal means or by otherwise abusing his position his position as public servant, obtains or attempts to obtain for himself or for other person any valuable thing or pecuniary advantage, or

(e) if he or any of his dependents is in possession, for which the public servant cannot reasonably account, of pecuniary resources or of property disproportionate to his known sources of income.

Section 107 of the Penal Code speaks out as follows:-

107. Abetment of a thing-A person abets the doing a thing, who-

First- Instigates any person to do that thing; or,

Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1- A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a

thing to be done, is said to instigate the doing of that thing.

Now we want to take up all the relevant issues raised during hearing of this Rule for discussion and decision.

Firstly, it is argued on behalf of the accused-petitioner that the allegations made in the F.I.R and the charge-sheet are so preposterous that if the allegations are admitted and taken up in its entirety, the same do not disclose any offence against the petitioner under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of the Corruption Act, 1947. From the prosecution materials, it is evident that as per evaluation of the evaluation committee, a contract was executed between BCMCL and Shandong Ludi Geo Mineral Co. Ltd. at a contract price of Tk. 335,08,05,382.18. Subsequently, the said company refused to carry out the contractual work

without enhancement of contact price. Under the aforesaid circumstances, BCML by its board resolution dated 12.08.2004 cancelled the said contract dated 24.04.2004 and requested the Ministry of Energy and Mineral Sources to float re-tender in this matter. But ignoring the decision of BCML, the concerned Ministry by its decision dated 20.12.2004 recommended to execute a contract with CMC Consortium at an excess contract amount to the tune of Tk. 158, 71, 26, 343.22 crore than that of the earlier company and thus the Government suffered a loss of Tk. 158,71,26,343.22 crore in granting and awarding the contract to CMC Consortium. It is an undeniable fact that the accused-petitioner was a member of the Cabinet Committee on Public Purchase and as such, everything of the said ministry is supposed to be done within the knowledge of the accused-petitioner and others. In view of the above, the accused-petitioner cannot avoid and escape the duty and responsibility of

the same. The FIR and the charge-sheet clearly reveals that the work order was issued in favour of CMC Consortium, who was not the lowest but the highest among the three bidders. The Cabinet Committee on Public Purchase headed by the then Prime Minister co-accused Begum Khaleda Zia and the accused-petitioner and others as public servants ignoring the recommendation of Petrobangla for re-tender approved the work order issued in favour of CMC Consortium in order to make unlawful gains by abusing their official power and position which clearly discloses the offences under sections 409/109 of the Penal Code read with section 5(1) (d) of the Prevention of Corruption Act 1947 and as such the impugned proceeding cannot be quashed and the accused-petitioner cannot escape the trial of the case. Anyway, the truth or falsity of the allegations can only be determined and decided by the learned trial judge at the trial taking evidence from the parties of the case.

As per Section 33 of the Penal Code, the word “act” ‘denotes as well a series of acts as a single act and the word “omission” denotes as well a series of omissions as a single omission’. Prima facie there are sufficient prosecution materials on record which indicate about the commission of offences against the accused-petitioner and others. For quashing a proceeding under Section 561A of the Code of Criminal Procedure, the High Court Division has scope only to see whether there are sufficient and positive prosecution materials on record showing that the allegations made in the FIR and the charge-sheet constitute an offence. If there are sufficient tangible evidence on record to proceed with the accused, the proceeding cannot be quashed and in that case, the learned trial judge will resolve the disputes in question and decide the case on the basis of evidence to be adduced by the parties of the case. On perusal of the averments made in the FIR and the charge-sheet, it appears that there are sufficient

prosecution materials on the record which may constitute offences punishable under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947. Moreover, there is a clear and strong *prima-facie* case of dishonest misappropriation of public money/property and/or disposal of public property in violation of law constituting offences punishable under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947. Accordingly, the FIR and the charge-sheet disclose offences against the accused-petitioner punishable under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

It is necessary to spell out that mens rea or criminal intention is the mental act of the accused person/s, which is required to be proved and brought to the surface either by circumstantial or oral evidence

to be adduced by the prosecution during trial of the case. Similarly, abetment is also such an offence which can be inferred from the conduct of the accused and attending circumstances of the case. It may be proved either by oral, or documentary or circumstantial evidence. Moreover, it is evident from the record that the accused-petitioner and others being public servants abusing their power and position misappropriated an amount of Tk. 158,71,26,343.22 and/or contributed a huge role for obtaining pecuniary benefit for some other person/s causing loss of Tk. 158,71,26,343.22 crore of the government which is enough to constitute the *prima-facie* element of mens rea.

Further, it is worthwhile to mention that the extraordinary or inherent powers as given in Section 561A of the Code of Criminal Procedure do not confer any arbitrary power, authority and jurisdiction on the

Court to act or to perform anything by its own way of thinking and procedure save and except the settled principles of law. The disputed questions of facts are the matters of trial and evidence and the same can only be examined, resolved and decided by the learned trial judge taking evidence from the witnesses of the respective parties of the case.

It is important to note that the inherent jurisdiction under Section 561A of the Code of Criminal Procedure, though undefined, indefinite and wide, has to be exercised sparingly, carefully and with caution in a rarest of the rare case to do real and substantial justice for which the Court exists. It is now well settled that the allegations that have been brought against the accused-petitioner and others are disputed questions of facts which require to be proved before the trial court on taking evidence from the witnesses of the respective parties. Furthermore, as per contention

of the learned Advocate for the accused-petitioner, the accused-petitioner has been implicated in this case out of political rivalry and political reasons. This is also a matter which can only be considered by the learned trial judge at the time of trial of the case. At this stage, the power and jurisdiction of this court under Section 561A of the Code of Criminal Procedure is limited to ascertaining the truth or otherwise of the allegation. Under the aforesaid facts and circumstances, we are not at one with the learned Advocate for the accused-petitioner that the allegations disclosed in the F.I.R and the charge-sheet are preposterous and the same do not disclose any offences under Sections 409/109 of the Penal Code read with under Section 5(2) of the Prevention of Corruption Act, 1947.

Secondly, it is pointed out by the learned Advocate for the accused-petitioner that the first investigating officer submitted final report but the

Commission without accepting the final report appointed 2nd investigating officer who after further investigation submitted charge-sheet/investigation report but there is no sanction of law for appointing the new investigating officer and the Commission does not have any jurisdiction to accord sanction for submitting charge-sheet under Rule 13(2) of the Anti-Corruption Commission Rules, 2007. In order to address the aforesaid submissions, the provisions of Sections 17, 19 and 20 of the Anti-Corruption Commission Ain, 2004 where the power and the function of the Commission for inquiry and investigation have been clearly spelt out. It is a settled principle of law that the prosecution is always at liberty to cause further investigation to be made if it is required for ends of justice. In the instant case, the first investigating officer without properly recording statements of the witnesses under Section 161 of the Code of Criminal Procedure and without collecting

evidence as per law simply recommends discharge of the accused persons from the case by filing final report. Under the aforesaid circumstances, the Commission had no other alternative but to pass an order for further investigation empowering the 2nd investigating officer to unearth facts behind the big deal involving a huge amount of public money. The Anti-Corruption Commission being a prosecuting agency rightly passed an order of further investigation in a case involving a huge public money as has been empowered by Sections 17, 19 and 20 of the Anti-Corruption Commission Ain, 2004.

For convenience of discussion and better under standing, it is profitable to quote the provisions of Sections 17, 19 and 20 of the Anti-Corruption Commission Act, 2004.

Section 17 of the Anti-Corruption Act, 2004 runs as follows :

১৭। কমিশনের কার্যাবলি। কমিশন নিম্নবর্ণিত সকল বা যে কোন কার্য সম্পাদন করিতে পারিবে, যথা ঃ

(ক) তফসিলে উল্লিখিত অপরাধসমূহের অনুসন্ধান ও তদন্ত পরিচালনা;

(খ) অনুচ্ছেদ (ক) এর অধীন অনুসন্ধান ও তদন্ত পরিচালনার ভিত্তিতে এই আইনের অধীন মামলা দায়ের ও পরিচালনা;

(গ) দুর্নীতি সম্পর্কিত কোন অভিযোগ স্বউদ্যোগে বা ক্ষতিগ্রস্থ ব্যক্তি বা তাহার পক্ষে অন্য কোন ব্যক্তি কর্তৃক দাখিলকৃত আবেদনের ভিত্তিতে অনুসন্ধান;

(ঘ) দুর্নীতি দমন বিষয়ে আইন দ্বারা কমিশনকে অর্পিত যে কোন দায়িত্ব পালন করা;

(ঙ) দুর্নীতি প্রতিরোধের জন্য কোন আইনের অধীন স্বীকৃত ব্যবস্থাদি পর্যালোচনা এবং কার্যকর বাস্তবায়নের জন্য রাষ্ট্রপতির নিকট সুপারিশ পেশ করা;

(চ) দুর্নীতি প্রতিরোধের বিষয়ে গবেষণা পরিকল্পনা তৈরি করা এবং গবেষণালব্ধ ফলাফলের ভিত্তিতে করণীয় সম্পর্কে রাষ্ট্রপতির নিকট সুপারিশ পেশ করা;

(ছ) দুর্নীতি প্রতিরোধের লক্ষ্যে সততা ও নিষ্ঠাবোধ সৃষ্টি করা এবং দুর্নীতির বিরুদ্ধে গণসচেতনতা গড়িয়া তোলার ব্যবস্থা করা;

(জ) কমিশনের কার্যাবলি বা দায়িত্বের মধ্যে পড়ে এমন সকল বিষয়ের উপর সেমিনার, সিম্পোজিয়াম, কর্মশালা ইত্যাদি অনুষ্ঠানের ব্যবস্থা করা;

(ঝ) আর্থ-সামাজিক অবস্থার প্রেক্ষিতে বাংলাদেশে বিদ্যমান বিভিন্ন প্রকার দুর্নীতির উৎস চিহ্নিত করা এবং তদনুসারে প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য রাষ্ট্রপতির নিকট সুপারিশ পেশ করা;

(ঞ) দুর্নীতির অনুসন্ধান, তদন্ত, মামলা দায়ের এবং উক্তরূপ অনুসন্ধান, তদন্ত ও মামলা দায়েরের ক্ষেত্রে কমিশনের অনুমোদন পদ্ধতি নির্ধারণ করা;

এবং

(ট) দুর্নীতি প্রতিরোধের জন্য প্রয়োজনীয় বিবেচিত অন্য যে কোন কার্য সম্পাদন করা।

Section 19 of the Anti-Corruption Commission Act, 2004 contemplates as under:-

১৯। অনুসন্ধান বা তদন্তকার্যে কমিশনের বিশেষ ক্ষমতা। (১) দুর্নীতি সম্পর্কিত কোন অভিযোগের অনুসন্ধান বা তদন্তের ক্ষেত্রে, কমিশনের নিম্নরূপ ক্ষমতা থাকিবে, যথা ঃ

(ক) সাক্ষীর প্রতি নোটিশ জারি ও উপস্থিতি নিশ্চিতকরণ এবং সাক্ষীকে জিজ্ঞাসাবাদ করা;

(খ) কোন দলিল উদঘাটন এবং উপস্থাপন করা;

(গ) সাক্ষ্য গ্রহণ;

(ঘ) কোন আদালত বা অফিস হইতে পাবলিক রেকর্ড বা উহার অনুলিপি তলব করা;

(ঙ) সাক্ষীর জিজ্ঞাসাবাদ এবং দলিল পরীক্ষা করার জন্য নোটিশ জারি করা; এবং

(চ) এই আইনের উদ্দেশ্য পূরণকল্পে, নির্ধারিত অন্য যে কোন বিষয়।

(২) কমিশন, যে কোন ব্যক্তিকে অনুসন্ধান বা তদন্ত সংশ্লিষ্ট বিসয়ে কোন তথ্য সরবরাহ করিবার জন্য নির্দেশ দিতে পারিবে এবং অনুরূপভাবে নির্দেশিত ব্যক্তি তাহার হেফাজতে রক্ষিত উক্ত তথ্য সরবরাহ করিতে বাধ্য থাকিবেন।

(৩) কোন কমিশনার বা কমিশন হইতে বৈধ ক্ষমতাপ্রাপ্ত কোন কর্মকর্তাকে উপ-ধারা (১) এর অধীন ক্ষমতা প্রয়োগে কোন ব্যক্তি বাধা প্রদান করিলে বা উক্ত উপ-ধারার অধীন প্রদত্ত কোন নির্দেশ ইচ্ছাকৃতভাবে কোন ব্যক্তি অমান্য করিলে উহা দন্ডনীয় অপরাধ হইবে এবং উক্ত অপরাধের জন্য সংশ্লিষ্ট ব্যক্তি অনূর্ধ্ব ৩ (তিন) বৎসর পর্যন্ত যে কোন মেয়াদের কারাদন্ডে বা অর্থদন্ডে বা উভয় প্রকার দন্ডে দন্ডনীয় হইবেন।

Section 20 of the Anti-Corruption Commission Act, 2004 reads as under:-

২০। অনুসন্ধান বা তদন্তের ক্ষমতা। (১) ফৌজদারি কার্যবিধিতে যাহা কিছুই থাকুক না কেন, এই আইনের অধীন ও উহার তফসিলে বর্ণিত অপরাধসমূহ কেবলমাত্র কমিশন কর্তৃক অনুসন্ধানযোগ্য বা তদন্তযোগ্য হইবে।

(২) উপ-ধারা (১) এ উল্লিখিত অপরাধসমূহ অনুসন্ধান বা তদন্তের জন্য কমিশন, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, উহার অধঃস্তন কোন কর্মকর্তাকে ক্ষমতা প্রদান করিতে পারিবে।

(৩) উপ-ধারা (২) এর অধীন ক্ষমতাপ্রাপ্ত কর্মকর্তার, অপরাধ অনুসন্ধান বা তদন্তের বিষয়ে, থানার ভারপ্রাপ্ত একজন কর্মকর্তার ক্ষমতা থাকিবে।

(৪) উপ-ধারা (২) ও (৩) এর বিধান সত্ত্বেও, কমিশনারগণেরও এই আইনের অধীন অপরাধ অনুসন্ধান বা তদন্তের ক্ষমতা থাকিবে।

From the aforesaid provisions of law of the Anti-Corruption Commission Act, 2004, it is crystal clear that the Commission reserves the power to make investigation including the further investigation if it is satisfied that the investigation initially done failed to take appropriate steps in collecting documents and recording the evidence having direct bearing upon the alleged offences and further investigation is needed for ascertaining truth or falsehood whatsoever of the offence. It may be noted that the provision laid down in section 19(1)(Cha) is a residuary power given by the legislature to the Commission in order to achieve the purposes and objects of the enactment which are

evident from the preamble of the Anti-Corruption Commission Act, 2004. In the matter of investigation and further investigation, we should make one thing clear that before according sanction under Section 32 of the Anti-Corruption Commission Act, 2004, the aforesaid matters remain absolutely within the domain of the Anti-Corruption Commission and the same are the internal affairs and administrative action of the Commission. Furthermore, all the administrative acts including the process of sanction are all administrative actions which are not subject to judicial scrutiny.

It should be noted that the power of further investigation has also been given in the Code of Criminal Procedure which can be exercised under Section 173 of the said the Code. In the cases where police submits defective report as contemplated under Section 173 of the Code of Criminal Procedure they have got unfettered power and right to further

investigate the case to bring the offenders to book who are involved in the commission of the offence and in suitable cases the police can obtain order from competent Magistrate or authority to further investigate the case for the purpose of collecting evidence. When naraji petition is filed against the final report submitted by the police, the Magistrate may take cognizance after examination of the complainant or may follow the procedure under Section 202 of the Code of Criminal Procedure. Considering such analogy, the Commission has every right and authority to hold further investigation if the initial investigation report is found defective and not acceptable in the eye of law.

It appears from the preamble of the Anti-Corruption Commission Act, 2004 that an independent Anti-Corruption Commission has been created and established for the purpose of prevention of corruption

and other corrupt practices in the country and for conducting inquiry and investigation of corruption and other specific offences and for matters incidental thereto. In order to fulfill the purposes and objects of the Anti-Corruption Commission Act, 2004, the Commission is competent to take any action incidental or ancillary to investigation including the further investigation in respect of the offences specified in the schedule of the Anti-Corruption Commission Act, 2004 if the initial report is found to be biased or otherwise incomplete or defective. Moreover, Section 17(ক)(গ) of the Anti-Corruption Commission Act, 2004 has also empowered the Commission to perform any function to achieve the purposes and objectives of the law relating to the prevention of corruption which necessarily includes further investigation within the residuary power given by Section 19(1)(Cha) of the Anti-Corruption Commission Act, 2004. The power and scope of further investigation has also been settled

in the case of Abdus Salam Master alias Salam Vs. State reported in 36 DLR (AD) 58. Similar view has also been expressed in the decision taken in the case of Monjur Morshed Khan and others vs Durnity Daman Commission and another reported in 70DLR(AD)(2018)120 wherein it was held that “the investigation of crime is carried out dehors the mandate contained in the court containing Sections 154-173 of the Code and that the further investigation is a statutory right of the investigating agency under Section 173(3B)”. It is further held in that decision that “since the order of discharge neither amounts to an acquittal nor to a final order, the accused can be proceeded against for the same offence on the basis of supplementary report submitted on holding further investigation or on the basis of naraji petition filed by the informant/complainant. It is no longer res integra that the court, if exigent to do so, to espouse the cause

of justice, can trigger further investigation even after a final report is submitted".

In view of the above, we have no hesitation to hold the view that there is no bar to holding further investigation into the allegation/s by the Anti-Corruption Commission with and without any order from the court of any Judicial Magistrate/Special Judge as the case may be if the Commission is satisfied to the effect that the earlier investigation initially done by the first investigation officer failed to take proper and appropriate steps in collecting the materials and documents and recording the evidence having direct bearing upon the alleged offence/s and further investigation is needed for ascertaining the truth or falsehood of the offences resorting to Section 19(1)(Cha) which is a residuary power given by the legislature to the Commission in order to achieve the

purpose and object of the Anti-Corruption Commission Act, 2004.

Thirdly, it is pointed out by the learned Advocate for the accused-petitioner that the Metropolitan Senior Special Judge, Dhaka took cognizance against the accused-petitioner and others under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 without prior sanction of the Anti Corruption Commission in clear violation of Section 32(1) of the Anti-Corruption Commission Act, 2004 read with Rule 13(2) of the Anti-Corruption Commission Rules, 2007.

In order to come to a decision on this issue, the provision of Section 32 of the Anti-Corruption Commission Act, 2004 and Rule 13(2) of the Anti-Corruption Commission Rules 2007, may be quoted for the convenience of discussion and decision.

Section 32 of the Anti-Corruption Commission Act, 2004 runs as under:-

৩২। মামলা দায়েরের ক্ষেত্রে অনুমোদন, ইত্যাদি। (১) ফৌজদারী কার্যবিধি বা আপাততঃ বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, নির্ধারিত পদ্ধতিতে কমিশনের অনুমোদন (Sanction) ব্যতিরেকে কোন আদালত এই আইনের অধীন কোন অপরাধ বিচারার্থ আমলে (Cognigance) গ্রহণ করিবে না।

(২) এই আইনের অধীন মামলা দায়েরের ক্ষেত্রে কমিশন এবং প্রযোজ্য ক্ষেত্রে, সরকার ও কমিশন কর্তৃক প্রদত্ত অনুমোদনপত্রের কপি মামলা দায়েরের সময় আদালতে দাখিল করিতে হইবে।

Rule 13(2) of the Anti-Corruption Commission Rules, 2007 reads as under:-

১৩। আদালতে অভিযোগনামা (Charge Sheet) দায়েরে কমিশনের অনুমোদন আবশ্যক। (১) আইনের তফসিলভুক্ত কোন অপরাধের অভিযোগ তদন্তের পর কোন ব্যক্তির বিরুদ্ধে প্রমাণিত হইলে, বিচার সুপারিশ করিয়া সিনিয়র স্পেশাল জজ আদালতে মামলা দায়ের করিবার ক্ষেত্রে কমিশন বা কমিশনের নিকট হইতে ক্ষমতাপ্রাপ্ত কমিশনারের অনুমোদন গ্রহণ আবশ্যক হইবে।

(২) উপ-বিধি (১) এর অধীন কমিশন বা ক্ষেত্রমত, কমিশনার কর্তৃক প্রদত্ত অনুমোদনের প্রমাণ স্বরূপ অনুমোদনপত্রের একটি কপি আদালতে দাখিল করা না হইলে আদালত অপরাধ বিচারকার্য আমলে গ্রহণ করিবে না।

In view of the aforesaid Section and Rule, it may be mentioned that no prior sanction of the Commission is necessary under Section 32 for the purpose of lodging FIR but the sanction is only necessary to be obtained before submission of the investigation report to the court concerned for the purpose of taking cognizance. The sanction is an administrative action of the Commission and if there be any variation in obtaining the same that may be mere irregularity not illegality and such irregularity if any in obtaining/giving sanction can be cured under Section 537 of the Code of Criminal Procedure. There is no scope to challenge the effectiveness of the sanction which has been accorded in Form No. 3 under Rule 15(7) of the Anti-Corruption Commission Rules, 2007

prescribed by the legislature. It appears from the record that the charge-sheet has been submitted along with a copy of sanction before the court mandatorily required under Section 32(2) of the Anti-Corruption Commission Act, 2004 read with Rule 13(2) of the Anti-Corruption Commission Rules, 2007. The recital of the sanction order clearly shows that sanctioning authority was satisfied on scrutinizing the record produced in respect of the allegation brought against the accused-petitioner to accord sanction for prosecution. If the sanction in question is not accorded as per prescribed Form-3 mandatorily required by the Rule 15(7) of the Anti-Corruption Commission Rules, 2007, then it can be apparently said that the same has been given mechanically but no such case has been made out in the instant Rule by the accused-petitioner.

In the decision taken in the case of Anti-Corruption Commission Vs. Dr. Mohiuddin Khan

Alamgir reported in 62 DLR(AD) 290, it was held that no sanction is required for lodging an ejahar or complaint-petition rather only one sanction is required and to be accorded by the Commission under Section 32 of the Anti-Corruption Commission Act, 2004 read with Rules 13(2) and 15(7) of the Anti-Corruption Commission Rules, 2007 before taking cognizance of the offence and issuance of the process which has already been complied with. As such question of quashing of the impugned proceeding on such ground does not arise at all.

Apart from the above, the matter of Commission's satisfaction in giving sanction has been decided in the case of Habibur Rahman Mollah Vs. State reported in 61 DLR 1 which was also affirmed by the Appellate Division reported in 62 DLR (AD) 233 where it has been clearly observed that under the Anti-Corruption Commission Rules, 2007 where Form

No.3 has been prescribed to accord sanction the question of assigning any reason to show Commission's satisfaction is not required.

Having considered all the facts and circumstances of the case, the prosecution materials annexed therewith, the submissions advanced by learned Advocates for the respective parties, the settled propositions of law and the foregoing discussions and reasons, we are not inclined to quash the impugned proceeding initiated against the accused-petitioner and accordingly, we do not find any merit in this Rule.

In consequence thereof, the Rule issued at the instance of the accused petitioner is discharged.

The order of stay granted earlier at the time of issuance of the Rule by this Court is, hereby, recalled and vacated.

The learned judge of the trial Court is directed to conclude the trial of the case as early as possible preferably within 6 (six) months from the date of receipt of this judgment and order.

Communicate the judgment and order to the learned judge of the concerned trial Court forthwith.

K.M. Hafizul Alam, J:

I agree.