

12 SCOB [2019] HCD

HIGH COURT DIVISION

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.1676 of 2018

Begum Khaleda Zia

--- Appellant

-Vs-

The State and another

---- Respondents

With

Criminal Appeal No.2215 of 2018

Quzi Salimul Haque @ Qazi Kamal

---- Appellant

-Vs-

The State and another

---- Respondents

With

Criminal Appeal No.2292 of 2018

Sharfuddin Ahmed

---- Appellant

-Vs-

The State and another

--- Respondents

With

Criminal Revision No.741 of 2018

Durnity Daman Commission

--- Petitioner

-Vs-

Begum Khaleda Zia alias Khaleda Zia and another

---- Opposite parties

Mr. Rafiqul Haq, Advocate with
Mr. Khandker Mahbub Hossain, Advocate,
Mr. Moudud Ahmed, Advocate,
Mr. Muhammad Jamiruddin Sircar, Advocate,
Mr. Hasan Arif, Advocate,
Mr. Abdur Razzaque Khan, Advocate,
Mr. A.J. Mohammad Ali, Advocate,
Mr. Zainul Abedin, Advocate,
Mr. Aminul Haq, Advocate,
Mr. Mir Md. Nasir Uddin, Advocate,
Mr. A.M. Mahbub Uddin, Advocate,
Mr. Nitai Roy Chowdhury, Advocate,
Mr. Md. Badruddoza, Advocate,
Mr. Md. Ruhul Quddus, Advocate,
Mr. A.H.M. Mushfiqur Rahman,
Advocate,

Mr. Muhammad Nawshad Zamir,
Advocate,
Mr. Md. Aminul Islam, Advocate,
Mr. Raghbir Rouf Chowdhury, Advocate,
Mr. Kayser Kamal, Advocate,
Mr. Md. Jamila Akhter Elahi, Advocate,
Mr. Md. Zakir Hossain Bhuiyan, Advocate,
Mr. A.H.M. Kamruzzaman, Advocate,
Ms. Syeda Asifa Ashrafi Papiya, Advocate,
Ms. Shamima Sultana, Advocate,
Mr. Md. Sagir Hossain Leon, Advocate,
Mr. Mir Md. Helal Uddin, Advocate,
Mr. M. Mahbubur Rahman Khan,
Advocate,
Mr. Md. Jahirul Islam Sumon, Advocate,
Mr. M. Masud Rana, Advocate,
Ms. Jamila Mamtaz, Advocate,
Mr. Md. Anisur Rahman Raihan,
Advocate and
Mr. H.M. Shanjid Siddique, Advocate.

--- **For the Appellant**

(In Criminal Appeal No.1676 of 2018)
Mr. Shah Monjurul Hoque, Advocate, and
Mr. Palash Chandra Roy, Advocate

---- **For the Convict-Appellant**

(In Criminal Appeal No.2215 of 2018)
Mr. Ahsanullah, Advocate

---- **For the Appellant**

(In Criminal Appeal No.2292 of 2018)
Mr. Mahbubey Alam, Attorney General
with

Mr. Farhad Ahmed, DAG,
Mr. Md. Basir Ahmed, DAG,
Mr. Biswajit Debnath, DAG,
Ms. Nusrat Jahan, DAG,
Mr. Md. Nurul Islam Matubber, AAG, and
Mr. Md. Yousuf Mahmud Morshed, AAG

-- **For the Respondent No.1-State**

(In Criminal Appeal No.1676 of 2018, Criminal
Appeal No.2215 of 2018
and Criminal Appeal No.2292 of 2018)
Mr. Md. Khurshid Alam Khan, Advocate, with
Mr. Mosharraf Hossain Kazal, Advocate,

Mr. Md. Abdur Salam, Advocate and
Ms. Fowjia Akhter, Advocate

**--- For Respondent No.2-Anti-
Corruption Commission.**

(In Criminal Appeal No.1676 of 2018, Criminal
Appeal No.2215 of 2018
and Criminal Appeal No.2292 of 2018)

And

--- For the Petitioner

(In Criminal Revision No.741 of 2018)
Mr. Abdur Razzaque Khan, Advocate with
Mr. A.J. Mohammad Ali, Advocate,
Mr. Muhammad Nawshad Zamir, Advocate,

Mr. Kayser Kamal, Advocate and
Mr. A.H.M. Kamruzzaman, Advocate.

---- For the Opposite Party No.1

(In Criminal Revision No.741 of 2018)
Heard on 12.07.2018, 15.07.2018,
16.07.2018, 17.07.2018, 18.07.2018,
22.07.2018, 23.07.2018, 24.07.2018,
25.07.2018, 29.07.2018, 30.07.2018,
08.08.2018, 09.08.2018, 13.08.2018,
04.10.2018, 08.10.2018, 14.10.2018,
15.10.2018, 16.10.2018, 29.10.2018 &
Judgment on 30.10.2018

Present:

Mr. Justice M. Enayetur Rahim

And

Mr. Justice Md. Mostafizur Rahman

**Section 5 (2) of Prevention of Corruption Act,1947, Section 409/109 of the panel Code,
Corruption, Prime Ministers orphanage Fund, Misappropriation, Criminal design;**

**Facilitating misappropriation of the fund which was meant to be used for welfare of
orphans, particularly when Begum Zia, the Prime Minister, had entrustment and
dominion over it indisputably shocks the human conscience and such act reflects a
mindset derogatory to humankind. Obviously Begum Zia had liability and obligation to
look after whether the Trust so formed was in actual existence. But she did not do it.
Thus Begum Zia was a conscious part of a designed plan to the criminal acts
constituting the offence of Criminal breach of Trust as defined in section 405 of Penal
Code. ... (Para 175)**

**Merely for the reason of political identity of a person prosecuted for an offence
punishable under the penal law it cannot be said that she has been brought to justice on
political victimization. ... (Para 214)**

**We do not find any legal justification and cogent ground to award lesser punishment to
the principal offender Begum Zia than the other convicts who were the abators,
considering her political and social status. ... (Para 219)**

**We consider it appropriate that justice would be met if the maximum sentence
prescribed in section 409 of the Penal Code is awarded to Begum Zia so that the persons
enjoying the highest position in any organ or any public office of the State thinks twice
to go ahead with such criminal design in coming days. ... (Para 222)**

JUDGMENT

M. Enayetur Rahim, J:

1. These 3(three) Appeals and the Rule have arisen out of the same judgment and order dated 08.02.2018 passed by the learned Special Judge, Court no.5, Dhaka in Special Case no.17 of 2017 and those have been heard together and are being disposed of by this single judgment.

2. The present convict appellants along with three others, who are absconding, were put on trial before the Metropolitan Senior Special Judge, Dhaka in Special Case no. 177 of 2009 arising out of Ramna Police Station Case No.08(7)2008 corresponding to ACC G.R. no.102 of 2008. Eventually, the case was transferred to the Special Judge, Court no.3, Dhaka and then again to the Special Judge, Court no.5, Dhaka wherein it was registered as Special Case no.17 of 2017.

3. Convict Begum Khaleda Zia (**hereinafter referred to as Begum Zia**) was charged under section 409 of the Penal Code and section 5(2) of the Prevention of Corruption Act, 1947 and other convicts were charged under sections 409/109 of the Penal code and section 5(2) of the Prevention of Corruption Act, 1947 along with section 109 of the Penal Code. The charges were read over to the present appellants and they pleaded not guilty and claimed to be tried.

4. Prosecution version as unfolded during trial and which formed the foundation of the prosecution case essentially as follows:

While Begum Zia performed the functions as the Prime Minister of the country from 1991 to 1996 a current account being no.5416 was opened with the Sonali Bank, Ramna Corporate Branch, Dhaka in the name of “cÖavbgš¿xi GwZg Znwej (hereinafter referred to as **PM’s Orphanage Fund**)”. As per instruction of Prime Minister Begum Zia her secretary convict Kamaluddin Siddique (**hereinafter referred to as Kamal Siddique**) opened the said account on 02.06.1991. On 09.06.1991 she received US \$12,55,000 equivalent to Bangladeshi TK.4,44,81,216/- as donation vide Demand Draft (**hereinafter referred to as DD**) no.153367970 issued from United Saudi Commercial Bank and same was deposited in the said account but those were not distributed among the orphans till 05.09.1993. Begum Zia formed Zia Orphanage Trust (**hereinafter referred to as the Trust**) along with her two sons namely convict Tareque Rahman and Arafat Rahman and sister’s son of her husband, convict Mominur Rahman. Accordingly, a deed of Trust was executed and registered on 05.09.1993 showing address of the said Trust at 6, Shaheed Moinul Road, Dhaka Cantonment, Dhaka. On 13.11.1993, a cheque for Tk.2,33,33,500/- was issued from the said account of PM’s Orphanage Fund in favour of the said Trust and the said cheque was deposited in the account of the Trust being STD account no.7 with the Sonali Bank, Gulshan New North Circle Branch. On 04.02.1993 a sum of Tk.4,00,000/- was withdrawn from the said account and 2.79 acres of land was purchased at a consideration of Tk. 2,77,000/- in the name of the Trust and rest of the money was kept in the said STD account. On 12.04.2006, the said money stood Tk.3,37,09,757.32/- with interest. Thereafter, a sum of Tk.3,30,000/- was withdrawn from the account by issuing 6(six) cheques on 12.04.2006, 15.06.2006 and 04.07.2006 and those cheques were deposited in a FDR account with the Prime Bank, Gulshan Branch. On 12.04.2006 Tk.50,00,000/- was encashed and made FDR in the name of convict Kazi Salimul Haque alias Kazi Kamal (**hereinafter referred to as Salimul Haque**). On 16.07.2006 said FDR was encashed and a new FDR was opened for a sum of Tk.50,68,450/- in the name of the Trust. Two other FDRs being FDR no.4103-3117 dated 09.07.2006 for Tk.80,00,000/- and FDR no.4103-26669 dated 27.06.2006 for Tk.1,00,000/- were opened in the name of the Trust. Another FDR account was opened for Tk.1,00,00,000/- in the name of Salimul Haque. Thereafter, Tk.1,00,00,000/- of the Trust and Tk.1,00,00,000/- which was kept in the name of Salimul Haque had been transferred to the Prime Bank, New Eskaton Branch in the joint account of Salimul Haque and Sayed Ahmad @ Sayeed Ahmed on 16.11.2006

being FDR account no.4102-2619/73193 for a sum of Tk.1,03,19,365/- and in the name of one Giasuddin Ahmed in FDR no.4102-4435/73491 on 07.02.2007 for a sum of Tk.1,06,38,686/-. Thereafter, the money kept in the name of Salimul Haque and Sayed Ahmed had been again transferred to FDR no.4102-5511/73489 dated 07.02.2007 in the name of Giasuddin. Thereafter, Giasuddin withdrawing Tk.2,10,71,643.80/- by 6(six) payment orders deposited the same on 28.03.2007 in account no.1101-3134 of convict Sharfuddin Ahmed (**hereinafter referred to as Sharfuddin**). Eventually, Sharfuddin withdrew Tk.2,10,71,643.80 from his said account on various occasions. In this process Begum Zia in collusion with other accused persons misappropriated and/or aided other accused persons to misappropriate the said money using the name of the Trust.

5. In order to prove the charges the prosecution in all examined 32 witnesses, out of whom PW-1 (as informant) and PW-31 (as investigating officer) is the same person, who were duly cross-examined by the defence. The prosecution also adduced documentary and material evidences which were duly marked as exhibits and material exhibits respectively.

6. On behalf of Begum Zia no defence witness was examined. However, 3(three) and 1(one) defence witnesses were examined on behalf of Sharfuddin and Salimul Haque respectively.

7. Defence Case:

The defence case of Begum Zia reveals from the trend of cross-examination of the prosecution witnesses as well as the written statement submitted by her at the time of examination under section 342 of the Code of Criminal Procedure, in short, is that she had no knowledge about the PM's Orphanage Fund and also had no involvement with the opening of the Bank account being no.5416 in the name of PM's Orphanage Fund as well as withdrawal of money from the said account. Late Mustafizur Rahman, the then Foreign Minister brought the said money from the Amir of Kuwait as donation for charity and he (Mustafizur Rahman) knew about the said fund. She is innocent and this case has been initiated against her for political victimisation.

8. The defence case of Salimul Haque in short was that he kept the alleged money of the Trust in his account on good faith and eventually he returned the money to Tareque Rahman.

9. The defence case of Sharfuddin, in short, was that the alleged misappropriated money was transferred to his account for purchasing land in favour of the Trust. And by receiving the said money they did not commit any offence as alleged. Eventually, Sharfuddin returned the entire money to the account of the Trust pursuant to the court's decree.

10. After closing the evidence the present appellants, who were present in the dock, were duly examined under section 342 of the Code of Criminal Procedure and all the appellants having claimed their innocence submitted separate written statements.

11. On conclusion of the trial the learned Special Judge found the present appellants guilty along with three other absconding accused under sections 409/109 of the Penal Code and section 5(2) of the Prevention of the Corruption Act, 1947 read with section 109 of the Penal Code, but sentenced the convicts only under sections 409/109 of the Penal Code. Begum Zia was sentenced to suffer rigorous imprisonment for a period of 5(five) years and the other convicts were sentenced to suffer rigorous imprisonment for a period of 10(ten) years. All the convicts were also fined to pay Tk.2,10,71,645.80/- in equal share.

12. Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence Begum Zia, Salimul Haque and Sharfuddin have filed Criminal Appeal no.1676 of 2018, Criminal Appeal mo.2215 of 2018 and Criminal Appeal No.2292 of 2018 respectively before this Court.

13. Being aggrieved by the inadequate sentence awarded to Begum Zia the Anti-Corruption Commission (**hereinafter referred to as the Commission**) by preferring a revisional application has obtained the present Rule.

14. Submissions on behalf of the Convict Begum Zia:

Mr. Abdur Razzak Khan and Mr. A.J. Mohammad Ali, learned Advocates for convict-appellant Begum Zia, with the assistance of a good number of learned lawyers have submitted as under:

- i) The Prime Minister will not come within the ambit of ‘**Public Servant**’ as defined in section 21 of the Penal Code as well as in section 2(b) of the Criminal Law Amendment Act,1958 and as such the trial of Begum Zia before the Special Court constituted under the Criminal Law Amendment Act, 1958 is illegal and without jurisdiction and section 409 of the Penal Code or section 5(2) of the Prevention of Corruption Act,1947 will not attract to Begum Zia;
- ii) the prosecution has failed to bring an iota of evidence that the PM’s Orphanage Fund was a public fund and the said fund was entrusted with Begum Zia as a Prime Minister or she had dominion or control over the same and thus, conviction under sections 409/109 of the Penal Code or 5(2) of the Prevention of Corruption Act,1947 is *prima facie* illegal and bad in law;
- iii) the prosecution with a malafide intention did not ascertain the source of money of the alleged PM’s Orphanage Fund and if the investigation was done properly then it would have been proved that the money was sent by the Amir of Kuwait for the Trust and in this regard the learned Special Judge most illegally and arbitrarily discarded the notarized certificate issued by the Embassy of Kuwait in Dhaka filed before the court for judicial notice under section 57(6) of the Evidence Act wherein it was mentioned that the alleged money was given to the Trust by the Amir of Kuwait;
- iv) admittedly in the opening form of PM’s Orphanage Fund, A/C no.5416, and in the withdrawal cheques the signatures of Prime Minister Begum Zia were not available and thus, she had no involvement with the process of opening of the said account as well as disbursement of the money from the same and as such question of dominion or control over the alleged money and misappropriation of the same does not arise at all;
- v) material exhibit-III and III(A) i.e. the alleged additional ‘nothi’ (records) regarding the PM’s Orphanage Fund are concocted and fabricated one and some overwritings and manipulation are apperent on the face of it, despite the learned Special Judge most erroneously relied on those documents in finding the guilt of Begum Zia;
- vi) admittedly it transpires from material exhibit-III and III(A) that there is no signature or any initial of any officer of PM’s office to show who prepared the said documents or dealt with the ‘nothi’ and thus, those have got no evidentiary value;
- vii) Begum Zia had no involvement or connection with the Trust, which was a private trust and if any misappropriation of the Trust fund was committed by the trustees and others for which Begum Zia can not be liable and remedy lies under the Trust Act,1984;
- viii) PW-9, PW-10, PW-11, PW-14, PW-20 and PW-21 were managed and tainted witnesses and the learned Special Judge relying on their evidence in finding the guilt of Begum Zia committed serious illegality and arrived at a wrong decision;

- ix) the inquiry and investigation being incomplete regarding the source of fund has led to a wrongful presumptions on the part of the court below regarding the nature of the fund; the fund was sourced for establishing philanthropic organizations in the name of former President late Ziaur Rahman is a crucial element of this case and as such investigation and inquiry on this point is a necessity to ascertain this point as the depositions of the PW-26 and PW-31 falls short of a complete story; failing which the appellant will not get justice.

15. Submissions on behalf of Convict Salimul Haque:

Mr. Shah Monjurul Haque, learned Advocate, for convict Salimul Haque has submitted as under:

- i) The element of dishonest intention under section 409 being of paramount importance to decide the guilt, required careful consideration both objectively and subjectively. The convict-appellant after receiving 5(five) cheques with no name of the account holder on those and then being authorized to open FDRs and thereafter returning all of them to Tareque Rahman had no reason to believe that the convict-appellant did the same with dishonest intention;
- ii) the learned Special Judge failed to consider that it was not possible for Salimul Haque to know that the alleged cheques belonging to the Trust or of Tareque Rahman or the money in those cheques were misappropriated money taking place some 13 years back and without knowing that the convict appellant could not aid the misappropriation of the money standing in those cheques;
- iii) Salimul Haque did not receive five cheques or was not entrusted with those cheques in his capacity as a member of Parliament or Chairman or Director of the Prime Bank Ltd., rather he received those cheques from Tareque Rahman only as an acquaintance following an oral request and then handedover those cheques to the manager of the Prime Bank Ltd, Gulshan Branch with an honest intention in the presence of the Managing Director of the Bank; nevertheless, the learned Special Judge without considering the later capacity in which those five cheques were actually received by the convict-appellant, erroneously came to a finding that the convict-appellant, by receiving those five cheques in the former capacity, was entrusted with those cheques as a public servant and thus section 409 of the Penal Code and section 5(2) of the Prevention of Corruption Act,1947 came into play in his respect and thus, came to an erroneous decision in finding guilty to Salimul Haque;
- iv) the money of PM's Orphanage Fund was transferred to the Trust in the year 1993 and at the said particular time of alleged transfer of fund, Salimul Haque did not have any involvement at all and as such question of abetment as defined in section 109 of the Penal Code does not arise at all and thus, the learned Special Judge improperly and illegally convicted the appellant by failing to appreciate that the convict-appellant had no connection with any of the subsequent transactions after he had returned all the FDRs to Tareque Rahman in July, 2006;
- v) the learned Special Judge failed to consider that DW-1, Sharfuddin himself stated that he opened FDR being no.41022619/73193 dated 16.11.2006 in the name of Salimul Haque and his son, Sayed Ahmed and thus, the finding of the learned Special Judge that Salimul Haque himself by using his influence as Chairman of the Prime Bank Ltd. got the aforesaid FDR opened in his name and Sayed Ahmed is erroneous and perverse and thus, Salimul Haque deserves acquittal.

16. Submissions on behalf of Convict Sahrfuldin Ahmed:

Mr. Ahsan Ullah, learned Advocate, appearing for the convict Sharfuddin has submitted as under:

- i) the prosecution has no specific case, who committed the offence of ‘criminal breach of trust’, when the offence was committed, who abetted in commission of such offence and who, when and how instigated in commission of the offence and the prosecution failed to prove the ingredients of sections 409/109 of the Penal Code against Sharfuddin beyond reasonable doubt;
- ii) the convict-appellant is not a merchant or agent and he not being a merchant or agent can be tried for commission of offence under section 409 of the Penal Code;
- iii) the learned Special Judge did not at all consider the evidence adduced on behalf of Sharfuddin, in particular the judgment and decree passed in Money Suit no.01 of 2012 by the learned Joint District Judge, 3rd Court, Dhaka and the bank statement of the Trust being maintained with the Uttara Bank, Gulshan Branch and erroneously held that there is no account of the Trust in the Uttara Bank and the money taken as advance for purchasing land in the name of the Trust has been returned by the appellant to the Trust in pursuence to the judgment and decree passed in Money Suit no.01 of 2012;
- iv) Sharfuddin at best can be charged under section 411 of the Penal Code for receiving or retaining the alleged misappropriated money.

17. Submissions on behalf of Respondent no.1-the State:

Mr. Mahbubey Alam, learned Attorney General, having supported the impugned judgment and order of conviction has submitted as under:

- i) In finding guilty to the convict persons the learned Special Judge in assessing and evaluating the evidence on record, both oral and documentary, did not commit any error or illegality;
- ii) in order to sustain a conviction under section 409 of the Penal Code the prosecution is required to prove that (a) the accused, a public servant was entrusted with property of which he was duty bound to account for, and (b) the accused had misappropriated the property and in this particular case the prosecution has proved by adducing unimpeachable evidence that Begum Zia being the Prime Minister at the relevant time entrusted with the PM’s Orphanage Fund and she had dominion and control over the same and she dishonestly used and disposed of that property in violation of the direction in which trust had to be discharged i.e. she did not distribute the funds among the orphans, rather forming a paper Trust in her husband’s name through two sons and one nephew transferred a portion of money from the said fund which ultimately transferred to the account of other convicts and thus offence of ‘Criminal breach of trust’ has been committed by Begum Zia and all the convicts consciously aided each other in commission of such offence;
- iii) where the entrustment is proved against an accused it is for him/her to discharge the burden that the entrustment has been carried out as accepted and the obligation has been discharged and in this particular case entrustment of Begum Zia with the property has been proved but she failed to discharge her burden that she carried out or discharged her obligation and thus, the learned Special Judge rightly and lawfully found guilty to Begum Zia and other accused who played active role in different stages in committing the offence of misappropriation;
- iv) the actual manner of misappropriation is not required to be proved by the prosecution; once entrustment is proved, it was for the accused to explain how the property entrusted to him/her was dealt with and in this particular case Begum Zia has failed to discharge her obligations.

18. Learned Attorney General to substantiate his submissions referred to the cases of **Mustafikhar Vs. State of Maharashtra, reported in (2007),1 SCC, page-23, State Vs. H.P.V Karnavir, reported in Cr. LJ, 2006, page 2917 and Mir Nagvi Askari Vs. Central Bureau of Investigation, reported in (2009)15 SCC, page 643.**

19. Submissions on behalf of Respondent No.2, Anti-Corruption Commission:

Mr. Md. Khorshed Alam Khan, learned Advocate, appearing for the Respondent no.2-Commission, refuting the submissions made by the learned Advocates for the respective appellants has submitted as under:

- i) the issue- 'whether Begum Zia being the Prime Minister of the country at the relevant time was a 'public servant' has already been decided earlier by the High Court Division in Criminal Miscellaneous Case no.21979 of 2009 [Reported in 64 DLR(HC), page-1], which has also been affirmed by the Appellate Division in Criminal Petition for Leave To Appeal no.134 of 2012. In the said case it has been held that as a public servant, the appellant (Begum Zia) was entrusted with the orphanage fund and if she is found to have helped others to use any amount given from the fund in violation of prescribed mode in which trust is to be discharged, offence under sections 409/109 of the Penal Code may also come up for consideration;
- ii) PM's Orphanage Fund being account no.5416 was opened with the Sonali Bank, Corporate Branch, Ramna, Dhaka by Kamal Siddique, secretary of the Prime Minister, as per the instruction of Prime Minister Begum Zia sometimes ahead of deposit of money through a DD sent from United Saudi Commercial Bank and thus, there is no scope to accept the submission of the learned advocates for appellant Begum Zia that the said account and fund was a Private fund, not a public fund;
- iii) PW-9,10,11 and 14 in their respective depositions categorically and consistently stated about the existence of PM's Orphanage Fund and material exhibit III and III(A) supported their testimonies;
- iv) investigating agency had tried it's best to find out the source or sender of the alleged DD but due to non-operation of United Saudi Commercial Bank since 1995, which merged with the SAMBA FINANCIAL GROUP, the source could not be traced out and for this reason only the prosecution case can not be brushed aside, when other strong and corroborative evidences are available in the record;
- v) prosecution has been able to prove that Begum Zia as the Prime Minister was entrusted with the PM's Orphanage Fund and she had dominion and control over the same and she dishonestly disposed of a portion of the fund transferring the same to the so called Zia Orphanage Trust by forming it with her two sons and nephew and the said trustees ultimately transferred the money to Salimul Haque and Sharfuddin who had no connection with the said Trust and thereby money was misappropriated;
- vi) offence of '**criminal breach of trust**' as well as '**Criminal misconduct**' have been well proved against Begum Zia and the offence of 'abetment' has also been well proved against the other convicts.

20. Mr. Khurshed Alam Khan in support of the Rule has submitted that the learned Special Judge has committed serious error in awarding lesser sentence to Begum Zia who is the principal offender than the abators considering social and police status of her. He has submitted that social and political status of an accused cannot be an extenuating factor for awarding lesser punishment. Begum Zia deserves highest punishment as provided in law as

she committed the offence in exercise of the highest office of the state taking recourse of fraudulent acts.

21. Before considering the submissions of the learned Advocates for the respective parties it is necessary to peruse and discuss the evidence adduced by the respective parties.

22. Evidence adduced by the prosecution-

Harunur Rashid being the informant at first examined as PW-1, who in his deposition reiterated the prosecution story and proved the first information report and his signatures thereon, exhibit-1, 1/1, 1/2 and 1/3 respectively. He also proved the sanction letter, issued by the Commission for lodging the first information report, exhibit-2.

23. In cross-examination PW-1 stated that in connection with the present case he conducted inquiry and the Commission gave sanction on 27.04.2008 for such inquiry. Prior to his inquiry PW-32 conducted an inquiry and on 11.06.2008 PW-32 submitted a report. He was appointed as the inquiry officer after submission of the said report and he submitted his report on 25.06.2008. He had no knowledge whether report submitted by PW-32 was accepted or rejected. During inquiry he recorded the statements of PW-19 and PW-21. At the time of lodging the first information report on 03.07.2006 Begum Zia was in jail hazat in connection with another case. Previous inquiry officer, PW-32 recorded the statement of Begum Zia during his inquiry. The previous inquiry officer also recorded the statement of Tareque Rahman and Arafat Rahman. During investigation he recorded the statements of Begum Zia and Tareque Rahman but he did not submit the same before the court. He submitted the charge sheet on 05.08.2009 i.e. after the Government led by Bangladesh Awami League came into power. He did not record any statement of the Ambassador of Kuwait in Bangladesh or the Ambassador of Bangladesh in Kuwait at the relevant time. US \$12,55,000 came from United Saudi Commercial Bank in Riyadh vide DD no.153369970 dated 09.06.2011. He did not seize the said DD from Sonali Bank Limited, Ramna Branch but he verified the same. In order to know the identity of the 'drawer' of the said DD Bangladesh Embassy in Riyadh was contacted by the Commission through Ministry of Foreign Affairs but they could not ascertain the identity of the 'drawer'. In the said DD the name of the payee was mentioned as Prime Minister's Orphanage Fund, Current A/C no.5416, Sonali Bank, Ramna Branch, Dhaka and the amount was mentioned as One Million Two Hundred Fifty Five Thousands. In the account opening form of A/C no.5416 Begum Zia had no signature but as per her instructions the concerned officer Kamal Siddique signed on the same. The said account was opened on 02.06.1991 and at the relevant time there was no rule (Nitimala) to operate the said orphanage fund. The Prime Minister's office runs as per the organogram. At the relevant time additional secretary Kamal Siddique was in-charge of the secretary of Prime Minister's office and he has been implicated in the case as *prima facie* materials have been found against him in commission of the offence. He could not seize any file or cheque having signature of Begum Zia with regard to the disbursement from the PM's Orphanage Fund. When the money was brought through DD at that time the Trust was not established. He had no knowledge whether the then Foreign Minister Mustafizur Rahman collected and brought the said money and he established Zia Memorial Trust at Bagerhat spending Tk.2,33,33,500/- from the said fund. He also conducted inquiry about the fund of the said Trust. During his inquiry he did not interrogate the cabinet secretary, secretary, additional secretary, joint secretary, director general of the Prime Minister's Office but he interrogated the additional secretary Kamal Siddique as he was working as the secretary in the Prime Minister's Office and found his involvement in commission of the offence. According to the Trust deed Begum Zia was not the settlor or the trustee or the member of

Trustee board. He examined the orphanage fund and relief fund's record of the Prime Minister's Office. He did not ask any officer of the Sonali Bank, Ramna Corporate Branch regarding the source or sender of the DD US \$12,55,000 which was deposited in the said bank. In his inquiry report he did not mention about the letter which was sent to the Bangladesh Ambassador in Saudi Arab through Foreign Ministry for knowing the source of the DD. Tareque Rahman and Mominur Rahman informed him during their respective interrogation that the said US dollar was sent by the Amir of Kuwait for raising fund for the Trust in the name of former President late Ziaur Rahman. He did not make any contact with the Kuwait Embassy in Bangladesh for verifying the statement of Tareque Rahman. He did not contact with the Bangladesh Embassy in Saudi Arab for knowing the source of the said DD because he had no opportunity to contact with them. Mominur Rahman also informed him that half of the said amount was allotted for the Trust and the half of the said amount was allotted for Bagherhat Zia Memorial Orphanage Trust for establishing an orphanage in Bagherhat. During interrogation Begum Zia informed him that she could not able to remember about the foreign donation which allotted for the Zia Orphanage Trust and Zia Memorial Orphanage Trust and the then Foreign Minister Mustafizur Rahman knew regarding formation of the Trust and foreign donation. PW-1 denied the defence suggestions that Begum Zia did not open the orphanage fund account no.5416 with the Sonali Bank. Ramna Corporate Branch and his statement regarding the DD for the amount of US \$12,55,000 sent from the United Saudi Commercial Bank was false, and that Begum Zia did not formulate any regulation regarding the uses of orphanage fund or without following the rules and regulation formed the Trust with a dishonest intention in order to misappropriate the fund, and that money was not used for the welfare and benefit of the orphans, and that Begum Zia was not involved with the fund allotment, account opening and withdrawal of money from the PM's Orphanage Fund and that amount of the Trust fund was never misappropriated and the said amount was kept in the bank, and that the Trust fund was formed legally and properly with the donation of the Amir of Kuwait, and that the alleged US dollar was came from Riyadh, Saudi Arab was false. PW-1 did not make any inquiry in Bangladesh Bank regarding transfer of the said US \$12,55,000 to the Sonali Bank, Ramna Corporate Branch. Tareque Rahman was interrogated by previous inquiry officer at the jail gate with the permission of the court. During inquiry he did not interrogate Tareque Rahman and perused the records of previous inquiry officer. The Trust was a private Trust and according to Article-14 of the Trust deed, a Board of Trustee was formed and Tareque Rahman, Arafat Rahman and Mominur Rahman were the member of Trustee Board and according to Article-3(III) of deed of Trust, FDR was included with the investment fund. The Trust deed provided the power for opening FDR in the name of the Trust. During investigation, he saw the deed of Trust, Balam books, thumb impressions and various documents relating to the Trust. At the time of formation of the Trust and registration of the Trust deed Begum Zia and her two sons Tareque Rahman and Arafat Rahman were living together at 6, Shaheed Moinul Road, Dhaka Cantonment, Dhaka and at the relevant time that house was being used as the official residence of Prime Minister Begum Zia. PW-1 denied the defence suggestions that the Trust office was not at 6, Shaheed Moinul Road though he knew the said information, and no illegality was done in transferring the money from the Sonali Bank to the Prime Bank by the trustees, and that no bank officer did raised any question as to the said transfer, and that the Trustee board member Tarek Rahman, Mominur Rahman transferred in total Tk. 3,30,00,000/- on 12.04.2006, 15.06.2006 and 04.07.2006 to the Prime Bank, Gulshan Branch for opening FDR with bonafide intention, and that according to Trust deed, the amount of the Trust was transferred legally from one bank to another bank, and that opening of FDRs in the name of Salimul Haque, Sayed Ahmed @ Sayed Ahmed, Giasuddin Ahmed and Sharfuddin and encashment of the FDRs were legal, and that according to the Trust law and trust deed

their activities were legal, and that in order to get maximum benefit the said Trust funds had transferred to the different accounts, and that no misappropriation of money was occurred, and that the activities of the Trust were done by following the decisions of Trust deed, and that after the death of former President Ziaur Rahman the Amir of Kuwait sent funds for the Trust, and that the Trust being a private Trust the Government has no power to control the Trust, and that the case was filed against the accused persons with malafide motive.

24. PW-2 S.M. Gaffarul Alam deposed that on 03.07.2008 while he was on duty as a Sub-Inspection of Police in Ramna Police Station he received a First Information Report (**hereinafter referred to as FIR**) from the informant, PW-1 and pursuant to the instruction of the officer-in-charge he filled up the FIR form and registered the case being Ramna Police Station Case no.8 dated 03.07.2008 under sections 409/109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947 against the accused persons named in the FIR. He proved the FIR form, exhibit-1(Ka) and his two signatures thereon, exhibit-1(Ka)/1 and 1(Ka)/2.

25. In cross-examination PW-2 stated that he had no personal knowledge about the contents of the FIR. After receiving the FIR he and the officer-in-charge read the same and lodged the case. The informant himself came to the police station with the FIR which was computer composed. There was no forwarding letter of the Commission regarding the lodgment of the FIR. In 2008 there was no elected Government but the Care Taker Government was in power. He could not remember whether Begum Zia was in custody at the time of lodging the FIR. He further stated that according to the FIR, the time of occurrence was between 28.11.1993 and 28.03.2007 but the time of occurrence was not mentioned in FIR form. In the FIR nothing was mentioned regarding the delay of lodging the same. In the FIR the place of occurrence was mentioned at Prime Bank Ltd. Eskaton Branch, Dhaka. The place of occurrence was 1.5 kilometer far away from the Ramna Police Station. Before lodging the FIR he examined the same.

26. PW-3 Safiuddin Mia deposed that on 15.07.2008 at about 11.20 while he was working in the Sonali Bank Ltd. of the New North Circle Branch, Gulshan as an officer PW-31 came to their branch and seized the following documents relating to the Trust:

- i) account opening form of STD account no.7 dated 09.10.1993;
- ii) photostat copy of the deed of the Trust and receipts altogether 17 pages;
- iii) signature card of the STD account no.7 and an attested photo of Tareque Rahman, deposit slip for Tk.2,33,33,500.00/- of the said account, Cheque no.8431103 dated 10.11.1993 of the Sonali Bank, Ramna Branch, Dhaka altogether 2 pages;
- iv) cheque no.4882407 dated 12.04.2006 of the STD account no.07 where Tk.50,00,000.00/- was written as cash transfer, cheque no.4882402 dated 15.06.2006 for the amount of Tk.1,00,00,000.00/-, cheque no.4882406 dated 15.07.2006 for Tk 1,00,00,000/-, in the name of the Trust as cash transfer, cheque no.4882404 dated 04.07.2006 for Tk.50,00,000.00/- in the name of the Trust, cheque no.4882403 dated 05.07.2006 for Tk.30,00,000.00/- in the name of the Trust and 5 cheques and 4 money withdrawal notices;
- v) manual bank details between 1993 and 30.12.2002 of the Trust STD account no.7 and prepared computer statement between 01.01.2003 and 30.12.2007 wherein at serial no.4 the details of 5 cheques were given.

27. PW-3 proved the seizure list, exhibit-3 and his signature thereon, exhibit-3/1. He also proved the above seized documents produced before the court as material exhibit-I series.

28. In cross-examination PW-3 stated that according to the account opening form, the Trust account was opened on 09.10.1993. According to the Trust resolution Tareque Rahman, Arafat Rahman and Mominur Rahman were maintaining the account of the Trust and the account could able to operate by Tareque Rahman and another one. The 'Deed of Trust' was submitted to the Bank while the account was opened. At the time of opening the account Tk.2,33,33,500/- was not deposited, but same was deposited in the said account on 15.11.1993 through clearing cheque of the Sonali Bank, Ramna Branch. The said money was deposited in the Trust account and money was withdrawn from the said account. The transaction of the Trust was done lawfully and it was a private Trust. On 12.04.2006 the account holder presented cheque no.4882407 for withdrawing the amount of Tk.50,00,000/-. The account holder also on 15.06.2006 presented cheque no.4882402 for Tk.1,00,00,000/- in the name of the Trust and the said cheques amount were transferred from the Sonali Bank to the Prime Bank and the said cheques did not handover to anyone. Cheque no.4882406 dated 15.06.2006 for Tk.1,00,00,000/- was transferred by cash with the permission of the account holder. Tk.1,00,00,000/- was withdrawn vide cheque no.4882406 from the Trust account and the said money was used for issuing a DD in the name of the Sonali Bank Ltd., local Office, Dhaka. Documentary evidence of DD number, the name of beneficiary of the DD, Bank account details, the amount of money, the name of the applicant of DD or the receipt of the DD or any other documents were not available before him. Cheque no.4882403 dated 05.07.2006 and cheque no.4882404 dated 04.07.2006 for Tk.30,00,000/- and Tk.50,00,000/- respectively were in the name of the Trust. The said 2(two) cheques were issued for transferring the said money from one account to another account. The account holder could not be identified seeing the said 5(five) cheques.

29. PW-4 Md. Abul Khair deposed that on 15.07.2008 while he was working in the Sonali Bank Ltd. New North Circle Branch, Gulshan-2, Dhaka as an officer PW-31 came to their branch and requested to the bank manager for presenting the case related documents. The bank manager presented the required documents. PW-31 seized the required documents and prepared a seizure list, exhibit-3, in presence of him. He proved his signature thereon, exhibit-3/2.

30. In cross-examination PW-4 stated that he had no personal knowledge or idea about the seized documents. As a banker he understood which documents were seized and statement of accounts of the Trust were seized among other documents. On 15.11.1993 an amount of Tk.2,33,33,500/- was deposited in the Trust STD current account no.7. On 04.12.1993 Tk. 4,00,000/- was withdrawn through cheque no.4882401, on 27.12.1993 Tk. 1,07,060/- was deposited with interest and the excise duty Taka 200.00 and on 31.12.1993 the remaining balance was at Tk.2,30,40,360/-. Between 1993 and 29.12.2005 the principal and interest were deposited in the said account and on 29.12.2005 the balance stood at Tk.3,37,03,757.32/-. After withdrawal of money, on 06.07.2006 the remaining balance was at Tk.7,09,757.32/-. Between 13.04.2006 and 06.07.2006 money was withdrawn and transferred through various cheques following the bank rules and regulation. On 30.12.2007 the said account's balance was at Tk.11,59,437.18/-. He could not remember the interest rate of Sonali Bank FDR between 13.04.2006 and 06.07.2006. He had no idea whether money was transferred for the best profit between 13.04.2006 and 06.07.06 through 05 cheques. He denied the defence suggestion that he hide many true informations.

31. PW-5 Md. Harun-Ur-Rashid deposed that on 15.07.2008 while he was working in Sonali Bank Ltd. New North Circle Branch, Gulshan, Dhaka as the manager PW-31 came to their branch. PW-31 submitted a demand letter for seizing required documents. On the basis of PW-31's demand letter he presented the demanded documents in presence of the two bank officials namely Abul Khair (PW-4) and Shafiuddin Mia (PW-3). PW-31 seized the required documents and prepared a seizure list, exhibit-3 and took his signature on the same, exhibit-3/3.

32. In cross-examination PW-5 stated that he was not working in the said branch at the time of opening STD account no.7 and he joined there as the manager at the end of 2007 and on 15.07.2008 PW-31 came to him. He saw the said documents at the time of presentation but he did not see the said documents before. The written demand letter was not with him. He denied the defence suggestions that no written demand letter was provided to him and for that he could not able to submit the said demand letter. Before presentation of the said documents to PW-31 on 15.07.2008 those were kept in his custody. After his joining in the New North Branch before or after the date 15.07.2008 nobody complained to him about the STD account no.7. He saw the opening form of the said account and he had no idea whether any irregularities were happened at the time of opening of the account. The deed of the Trust was enclosed at the time of opening the account. The STD account no.7 was operated by following the resolutions of the Trust. He could not remember the STD account's interest rate in the year of 1993 and between April 2006 and June 2006. He denied the defence suggestions that between 1993 and 2006 the STD account's interest rate was 5% which he knew and he intentionally hide the said information. On 15.07.2008 he was a senior principal officer and also the manager of the branch. The seized cheques were transferred and cleared by following the prevailing bank rules. He had no knowledge whether interest rate was 12.25% in the Prime Bank. He denied the defence suggestions that in 2006 the interest rate of the Sonali Bank was low and the Trust funds were transferred to the Prime Bank which he knew and he suppressed the said information intentionally and deposed falsely. He further stated that he signed on the seizure list. The names of the account holder were mentioned in the seized cheques. STD 7 was written in the seized cheques but no identification mark was thereon.

33. PW-6 Md. Iqbal deposed that on 15.07.2008 at about 3.30 pm while he was working in the Prime Bank Ltd., New Eskaton Branch as a first assistant vice president PW-31 came to the room of the branch manager and in presence of him he seized some documents as presented by the manager and he also signed on the seizure list. The seized documents were as follows:

- i) official letter regarding encashment of Taka 1(one) crore of Salimul Haque's FDR no.58462/41032276 dated 15.06.2006 of the Prime Bank, Gulshan Branch;
- ii) encashment office copy regarding the Trust FDR no.50001/41032669 dated 27.06.2006 of the Prime Bank, Gulshan Branch;
- iii) original copy (1 page) of the FDR no.41032267 dated 15.06.2006, advice no.1007 dated 07.02.2007 by which Tk.1,06,38,686/- was transferred from the Prime Bank, Gulshan Branch to Prime Bank, Eskaton Branch;
- iv) original advice copy (1 page) of the FDR no.41032669 dated 27.06.2006 for Tk.1,00,00,000/- of the Trust, advice no.1091 dated 16.11.2006 by which Tk.1,03,19,365.00/- was transferred including interest from the Prime Bank, Gulshan Branch to Prime Bank, Eskaton Branch;

- v) FDR no.41025535 dated 02.07.2007 of the Prime Bank Ltd. Eskaton Branch for Tk.1,06,38,686/- in the name of Giasuddin Ahmed along with opening form of the FDR (3 pages) and FDR KYC form;
- vi) FDR no.41122619 dated 16.11.2006 of the Prime Bank, New Eskaton Branch in the name of Kazi Salimul Haque (Q.S. Haq) and Sayed Ahmed for Tk.1,03,19,365/- along with FDR opening form, the original copy of the FDR and KYC form (3 pages);
- vii) FDR no.41025535 dated 07.02.2007 and FDR no.41122619 dated 16.11.2006; FDR no.41025535 was encashed and another FDR account no.41025511 for Tk.1,04,032,957.80/- was opened on 07.02.2007 in the name of Giasuddin Ahmed (original FDR 1 page); FDR no.41025535 and FDR no.41025511 were encashed on the request of Giasuddin Ahmed by 6 payment orders bearing numbers:659348-659353, the total amount of Tk.2,10,71,643.80/- was deposited in the account no.11013134 of Sharfuddin; the order was written in the opposite pages of the above payment orders;
- viii) account opening form of Sharfuddin's account no.11013134 dated 15.03.2009 with the Prime Bank New Eskaton Branch along with one copy photo, KYC form-1 and a copy (2 pages) of the account statement of Sharfuddin between 15.03.2007 and 30.06.2007 where the last balance was at Tk.19.155.80/-.

34. PW-6 proved the seizure list dated 15.07.200, Exhibit-4 and his signature thereon, exhibit-4/1. The said seized documents were given to the bank manager Md. Afzal Hossain (PW-8) for keeping the documents to his own custody and he also signed on the 'jimmanama' dated 15.07.2008, exhibit-5. He identified his signature thereon, exhibit-5/1.

35. In cross-examination PW-6 stated that in the seizure list it was not mentioned that the documents were seized in order to follow the Court's order. The accounts transactions were done following the banks rules and regulations. The seized documents were submitted in the court. In the seizure list at serial no.5, KYC Form, the customer name was mentioned as Giasuddin Ahmed, S/O Late Mr. Sahabuddin Ahmed and Late Mrs. Balatunnassa, Address: 712, Tongi Diversion Road Boro Mogbazar. At serial no.8 the name of Sharfuddin Ahmed, S/o Late Mr. Sahabuddin Ahmed and late Mrs. Balatunnassa, Address: 712, Tongi Diversion Road Bora Moghbazar, Ramna, Dhaka was mentioned and at serial no.6, KYC form, the customer name was mentioned as Sayeed Ahmed, S/o: Mr. Sarfuddin Ahmed and Mrs. Shamina Ahmed, Address: 712, Tongi Diversion Road, Boro Mogbazar, Shantinagor, Ramna, Dhaka. The said three persons maintained accounts with their bank. In June 2006 the Prime Bank's FDR amount interest rate was 12.25%. FDR interest rate used to mention at the time of issuing FDR. He had no knowledge whether the seized documents were transferred from the Trust STD account no.7, Sonali Bank, Gulshan New North Circle Branch. PW-6 denied the defence suggestions that the Trust funds were transferred from the Sonali Bank, Gulshan New North Branch which he knew and he hide the said facts and made false diposition.

36. PW-7 Md. Masud Bin Karim deposed that on 15.07.2008 at about 3.30 pm while he was working in the Prime Bank Ltd., New Eskaton as a principal officer, the branch manager Md. Afzal Hossain (PW-8) called him in his chamber. He went to the chamber of branch manager and he was given a seizure list for reading and he read the same and he saw the seized documents and signed on the same. He proved the seizure list, exhibit-4 and his signature thereon, exhibit-4/2. The seized alamsats were given to the bank manager (PW-8)

for keeping in his own custody and a 'jimmanama' was prepared wherein he also signed. He proved the said 'jimmanama', exhibit-5, and his signature thereon, exhibit-5/2.

37. The present appellants declined to cross-examine PW-7.

38. PW-8 Md. Afzal Hossain deposed that on 15.07.2008 at about 3.00 pm while he was working in the Prime Bank Ltd. New Easkaton Branch as a vice president and manager PW-31 came to his office. PW-8 presented case related documents as required by PW-31 who prepared a seizure list in presence of the bank officer Md. Iqbal (PW-6) and Md. Masud Bin Karim (PW-7). PW-31 seized the said documents, details of which were mentioned in the seizure list. He received a copy of seizure list and signed on it. PW-8 proved the seizure list and his signature thereon, exhibit-4 and exhibit-4/3. The said seized alamat were given 'jimma' to him and he signed on the 'jimmanama'. He proved the 'jimmanama', exhibit-5 and his signature thereon, exhibit-5/3. His custody documents had already been produced before the Court. PW-8 also proved the seized documents produced before the court as material exhibit-II series. On 28.07.2008 PW-8 made statement before the investigating officer and on the same day he made statement under section 164 of Code of Criminal Procedure before the concerned Magistrate. He proved the said statement and his 4(four) signatures thereon as exhibit-6 and 6/1-4.

39. In cross-examination PW-8 stated that he saw the original copies of the FDRs. He could not say whether the amount was transferred from the Sonali Bank, New North Circle Branch STD account no.7 vide cheque no.4882404 dated 15.06.2006 to FDR account no.58462 dated 15.06.2006. If any cash cheque is marked with transfer seal then the cheque will be a negotiable instrument. The cash cheque with transfer seal cannot be encashed like as a normal cheque and the same can only be transferred to a specific account. He denied the defence suggestions that he knew that the cheque no.4882406 of the STD account no.7 of the Sonali Bank, New North Circle Branch, was transferred to FDR account no.58462 in the name of Salimul Haque on 15.06.2006 and he intentionally hide the relevant informations. On 15.06.2006 the interest rate of the FDR no.58462 was 12.25% and accused Tareque Rahman's signature was not available in any documents which were seized in his presence. The letter of FDR encashment and encasement were done following the bank's rules and regulations. PW-31 came to his office with a demand letter of the Commission. There was no court's order for giving the bank's documents but the documents were given due to the emergency situation. The FDR was encashed and transferred to Salimul Haque's account and the Trust account and Salimul Haque did not receive any money personally and the money was transferred with interest. The documents of Sharfuddin and his brother Giasuddin Ahmed and son Sayed Ahmed were in the bank's custody and the above documents were seized and the 3 FDR accounts were in the name of above 3 persons and the money was withdrawn from Sharfuddin's FDR through various cheques. The FDR purchase or FDR encashment were done following the bank's rules and regulations. PW-8 gave written statement with signature to PW-31 and he made similar statement before the Magistrate. Sharfuddin did lien his 2 FDRs but did not take any loan. The said 2 FDRs were sent to the Prime Bank, Gulshan Branch because no money was sanctioned for the said 2 FDRs. The amount of 2 FDRs were Tk.1,06,38,686/- and Tk.1,03,19,365/- and the said FDRs were transferred to the Prime Bank, New Eskaton Branch and then 2 new FDRs were opened, one in the name of Salimul Haque and Sayed Ahmed and another in the name of Giasuddin Ahmed. After encashment of said 2 FDRs the money was deposited in the account of Sharfuddin. The bank account of Sharfuddin was seized. The said money was deposited in Sharfuddin's account through payment orders. PW-8 denied the defence suggestions that his written statements was sent to

the Magistrate and the Magistrate recorded his statement from the said written documents, and due to the emergency situation he was afraid of and compelled to make statement before the Magistrate.

40. PW-9 Md. Majed Ali deposed that on 16.07.2007 while he was working in the Prime Minister's Office in donation section as an accountant PW-31 came to their office. PW-31 demanded the required documents and he presented all the required documents in presence of the administrative officer Md. Alfashani (PW-10) and Md. Mokhleshur Rahman (PW-11). PW-31 seized the said documents and prepared a seizure list in presence of him, PW-10 and PW-11. The seized documents were as follows:

- i) The record of the PM's Orphanage funds being no.02.39.19.01.13.14.93-প্রমকা/সচিব/এতিমতহকিল/২৪/৯৩, wherein the following informations and documents were available:
 - a) in page no.1 informations regarding various funds of Prime Minister;
 - b) in page no.2 informations regarding the amount of Tk.4,59,98,048.00/- deposited in FDR account no.984112 with the Sonali Bank in the name of Prime Minister's fund;
 - c) in page no.3 informations regarding credit voucher dated 17.06.1991 for Tk.4,44,81,216/- of Foreign Exchange Department of Sonali Bank, Dhaka;
 - d) in page no.4 photostat copy of DD no.153367970 dated 09.06.1991 for US \$12,55,000.00 issued by the United Saudi Commercial Bank deposited in PM's Orphanage Fund being account no.5416 with the Sonali Bank, Ramna Branch;
 - e) in page no.5 detail informations regarding PM's Orphanage Funds;
 - f) in page no.6 details of account no.5416 of the PM's ORPHAN FUND;
 - g) in page no.7 the account informations between 03.01.1993 and 03.10.1993;
 - h) in page no.8 bank statement dated 27.01.1993 of the PM's Orphanage Fund being account no.5416 with the Sonali Bank, Ramna Branch;
 - i) in page no.9 informations regarding deposit of US \$12,55,000.00 equivalent to TK.4,44,81,216.00/- in the said account and deposit slip regarding DD no.01774014-153367970 of United Saudi Commercial Bank dated 09.06.1991;
 - j) in page no.10 the donation informations about Bogura orphanage and Bagherhat orphanage;
 - k) in page no.11 the deposit slip dated 14 November 1993 of Tk.4,66,76,289.00/- in account no.5416 with the Sonali Bank, Ramna Branch;
 - l) in page no.12 informations regarding the PM's Orphanage Fund account no.5416 with the Sonali Bank; and
 - m) in page no.13 and 14 Photostat copy of the Credit voucher and DD of the United Saudi Commercial Bank dated 09.06.1991.

41. At serial no.4(2) of the said seizure list, the statements of PM's Orphanage Fund account no.5416 was there. In page no.1 the detail informations of credit/debit regarding the PM's Orphanage Fund being account no.5416 with the Sonali Bank was mentioned. In page nos.2-4 the deposit slips of the PM's Orphanage Fund being account no.5416 of Sonali Bank were available. In page no.5 withdrawal of two cheques amount informations being cheque nos.8431102 and 8431103 by which Tk.2,33,33,500/- and Tk.2.33.33.500/- were withdrawn on 15.11.1993 were written.

42. Serial no.4(3) of the seizure list was an unauthenticated 200 pages register regarding the PM's Orphanage current account no.5416 wherein page nos.1-9 were written. In page no.9, it was written that the cheque nos.8431102 and 8431103 dated 13.11.1993 for each Tk.2,33,33,500/- donated for establishing Bagura orphanage and Bagherhat orphanage.

43. Serial no.4(4) of the seizure list was an unauthenticated register for the PM's Orphanage fund FDR account no.984112.

44. PW-9 proved the said seizure list and his signature thereon as exhibit no.7 and exhibit-7/1. He also proved the seized alamats presented before the Court as material exhibits III series.

45. PW-9 further deposed that PW-31 on 22.07.2008 also came to their office and requested to show required documents and he presented to him the Prime Minister's relief and welfare related records and at that time the administrative officer Md. Al Fasani (PW-10) and Md. Mokhleshur Rahman (PW-11) were also present there. PW-31 seized the documents and prepared a seizure list wherein he put his signature. He proved the said seizure list, exhibit-8 and his signature thereon 8/1. The seized alamats dated 22.07.2008 were mentioned in the column 4 of the seizure list-

- i) serial no.4(1) a original record of the Prime Minister's Relief and Welfare Fund for the assessment year 1993-94 including 195 pages along with 7 note sheets;
- ii) serial no.4(2) a original record of the Prime Minister's Optional Fund for assessment year 1993-94 where Prime Minister signed the documents including 165 pages along with 5 note sheets;
- iii) serial no.4(3) 5 pages photostat copy wherein Nitimala (policy) had been prescribed including the said 2(two) funds.

46. In cross-examination PW-9 stated that in 1986 he was appointed in the Prime Minister's Office as a cashier and he worked in the said post till 1991. Between 1991 and 2007 Berek Bhuiyan (PW-21) worked in the account section as an accountant. Before 16.07.2007 PW-31 went to the Prime Minister's Office but he could not remember the date. PW-9 did not overwrite the record being no.02.39.19.01.13.14 .93 and he could not able to say who did it. The last line of the said record was cÖgKv/mwPe/GwZg Znwej/24/93 and the digit '24' was overwritten. The said file was issued by the Prime Minister's Office. The record opening index was in the secretarial office and the record number was given thereon. He did not know whether there was any discussion between secretary, additional secretary and director regarding the said overwriting. Altogether 20 officers had been working in the Prime Minister's Office. In the Prime Minister's Office there were peon books or movement register. There is no endorsement copy on material exhibit-III who received the file. There were no detail descriptions in the exhibit III series record who attached the documents. When he dealt with the said material exhibit series file he did not put any signature thereon and he could not able to say who done the accounting of the said file and attached a copy of United Saudi Commercial Bank's DD to the material exhibit-III. He did not know how the documents of the Sonali Bank were attached to the record. PW-9 did not give any page number in the material exhibit-III series. In Prime Minister's Office he did not see any orphanage fund file accept the material exhibit-III. Audit was completed regarding Prime Minister's Orphanage Fund but he did not present the file during audit. He did not know whether the material exhibit III record was false and fabricated one and who wrote the account details. He did not attach Sonali Bank related documents along with other documents to the material exhibit III(A) file. The record number of material exhibit III(A) was not in their office. He did not write in the material exhibit III(A) file and his signature was not on there and there was no proof whether he had dealt with the said records and there was no note or signature of his any senior officer. PW-9 had no knowledge who attached the documents to the material exhibit III(A) and he did not attach any document thereto. In their

office no investigation was done regarding the documents of material exhibit III(A) file. In the pages 1-9 of material exhibit III(B) register statement was not written by him and it was written by the previous accountant Mostafa Kamal (PW-19) and Barek Bhuiyan (PW-21) and they maintained the said register. No official/employee signed on the material exhibit III(B). In page nos.1401-1404 of the material exhibit III(C) the statements were not written by him and no one signed from the Prime Minister's Office. The record number 02.39.19.1.04.05.93-94 was regarding the relief and welfare fund but not about the orphanage fund and the said record was signed by the secretary and the Prime Minister also signed thereon. PW-9 denied the defence suggestions that the orphanage fund related case against Begum Zia was false and fabricated. PW-9 could not able to say whether any person went to the Prime Minister's Office to find out the records. Between 1991 and 2007 internal and external audit were completed but no objection was raised and he did not also raise any objection.

47. PW-10 Md. Al-Fashani deposed that on 16.07.2007 while he was working in the office of Chief Advisor of Care Taker Government as an administrative officer PW-31 came to their office. On the basis of Majed Ali's (PW-9) presentation PW-31 seized some records and documents relating to the case and he prepared a seizure list in presence of him and PW-11. He proved the said seizure list, exhibit-7 and his signature thereon, exhibit-7/2. On 22.07.2008 PW-31 again came to their office and according to his demand PW-9 presented some documents and records. The said documents and records were also seized in presence of him and PW-11 and a seizure list was prepared by PW-31. He proved the said seizure list, exhibit-8 and his signature thereon, exhibit-8/2.

48. In cross-examination PW-10 stated that in October 1995 he was appointed in the account's section of Prime Minister's Office as an office assistant and in July 2008 he was promoted to the post of administrative officer. Between 1991 and 2007 he worked as an office assistant. In 1991 Abdul Barek Bhuiyan worked as an accountant. It was not mentioned from which section record being no.02.039.19.1.13.14.93 came and when or who received the said record; he did not receive the same. He did not overwrite on the register book or he had no knowledge who did it. He did not know whether PW-31 went to the Prime Minister's Office before 16.07.2008 and he was not interrogated prior to the said date. In Prime Minister's Office there were records of relief and welfare fund and optional fund. He did not deal with any file regarding the orphanage fund. He denied the denfece suggestions that Prime Minister's Office sent letter to the Commission informing that there was no file regarding orphanage fund. The seized records were presented by PW-9 and he signed on the seizure list. He also denied the defence suggestion that PW-9 prepared the said records and registers in his own way.

49. PW-11 Md. Mokhlesur Rahman deposed that on 16.07.2007 PW-31 came to the office of the Chief Advisor while he was working in the said office as an administrative officer. On the demand of PW-31 accountant Majad Ali (PW-9) presented Prime Minister's Orphanage Fund related documents and records. PW-31 prepared a seizure list, exhibit-7 in presence of him and Al-Fashani (PW-10) and took their signatures. He proved his signature on the said seizure list, exhibit-7/3. On 22.07.2008 PW-31 again came to their office and seized Prime Minister's Relief and Welfare related documents in presence of PW-9 and PW-10 and prepared a seizure list, exhibit-8 and took their signatures. He also proved his signature thereon, exhibit-8/3.

50. In cross-examination PW-11 stated that in 1997 he was appointed in administrative section of the Prime Minister's Office as an office assistant and he did not work in the

accounts department. PW-9 Majed Ali presented the seized records and registers. He denied the defence suggestions that the seized records and registers, exhibit-7 and 8 were created in order to follow the Commission's desire.

51. PW-12 Monjur Hossain deposed that on 22.07.2008 at about 10.00 am PW-31 came to the Sonali Bank, Ramna Corporate Branch while he was working as an assistant general manager in the said branch and PW-31 requested for presenting the documents of opening form, signature card etc. relating to PM's Orphanage Fund being account No.5416/14 and accordingly he presented the related documents of the said account by following the order of DGM. PW-31 seized the said documents and a seizure list was prepared in presence of him and witnesses Rezaul Karim, SPO and Mohiuddin Ahmed, PO (PW-13). The seized documents were mentioned at serial no.4 of the seizure list. Serial no.4(1) and 4(2) of the seizure list were the opening form of account no.5416/14 in the name of the PM's Orphanage Fund and the signature card where Kamal Siddique, additional secretary (acting), Prime Minister's Office put his signatures on 02.06.1991. PW-12 proved the seizure list and his signature thereon, exhibit-9 and exhibit-9/1. The seized alamat were given to PW-31 and he received a copy of the seizure list.

52. In cross-examination PW-12 stated that he was working in the Ramna Corporate Branch when the documents were seized. He did not work with any officers who prepared account opening form and signature card of orphanage fund account. He had no personal knowledge who filled up or signed on the said account opening form and signature card. Before 22.07.2008 the Commission sent requisition to their bank. PW-12 in his cross-examination further stated that he had no knowledge whether money was sent in the said account by the Amir of Kuwait. He denied the defence suggestions that account no.5416/14 was the account of Zia orphanage fund, and that forged documents were created in the name of PM's Orphanage Fund.

53. PW-13 Mohiuddin Ahmed deposed that on 22.07.2007 at about 10.00 am while he was working in the Sonali Bank Ltd. Ramna Corporate Branch as a principle officer PW-31 came to the room of DGM of their branch and in order to comply the instruction of DGM, the opening form of the PM's Orphanage Fund, signature card etc. were presented in presence of him, senior principal officer Rezaul Karim and AGM Monjur Hossain (PW-12). PW-31 seized the said documents and prepared a seizure list, exhibit-9 and took his signature thereon. He proved his signature, exhibit-9/2.

54. In his cross-examination PW-13 stated that in November 2006 he was appointed in Ramna Corporate Branch of the Sonali Bank Ltd. as a principle officer. He had no personal knowledge regarding the seized documents. He did not provide any documents of remittance regarding the account no. 5416/14. Deputy General Manager presented the said documents. The name of Begum Zia was not mentioned in the seized documents. The balance remittance and the deposited amount of account no.5416/14 were not mentioned in the seized documents. PW-13 denied the defence suggestions that the said account was in the name of Zia Orphanage Trust, not in the name of Prime Minister's Orphanage Fund, and that on behalf of the government of the state of Kuwait, the Amir of Kuwait made a donation to the Zia Orphanage Trust, and that the bank authority withheld the remittance documents in order to follow the illegal order of the Commission, and that the seized documents were fabricated one.

55. PW-14 Sayed Jaghlul Pasha deposed that between 2nd half of the year 1992 and 1st half of the year 1994 he worked in the Prime Minister's Office as the private secretary of the Prime Minister's secretary. At the relevant time Kamal Siddique had been working as the secretary of the Prime Minister. The Prime Minister's funds were controlled by Kamal Siddique. At the time of opening the PM's Orphanage Fund he was not in the said office. He came to know regarding PM's Orphanage Fund when he was updating the other Prime Minister's funds records in the year 1993. The said orphanage fund was deposited in a FDR account with the permission of the Prime Minister. The secretary of the Prime Minister ordered to withdraw the said FDR amount with the permission of the Prime Minister and allocated the said amount for the Zia Orphanage Trust and the Zia Memorial Trust. Kamal Siddique signed on two cheques, each of Tk.2,33,00,000/- for the said Trusts. Office opened an additional record with the permission of Kamal Siddique for collecting the documents. Kamal Siddique kept the important records of PM's Orphanage Fund in his own custody. The main record of the PM's Orphanage Fund was signed and approved by the Prime Minister. The investigation officer showed the records to him. The material exhibit-III series and III(A) series were related to the PM's Orphanage Fund. He had idea about the original records and additional record of the Prime Minister's Orphanage Fund. He made statement before the investigating officer and also before the Magistrate under section 164 of the Code of Criminal Procedure. He proved the said statement and his signature thereon as exhibit 10 and 10/3.

56. In cross-examination PW-14 stated that in August 1992 he was appointed in the Prime Minister's Office as the personal secretary to Prime Minister's secretary and worked till 30.06.1994. After that he did not work in Prime Minister's Office. He made statement before PW-31 in 2008 while he was working in the Privatization Commission as a director. He also made statement before the Magistrate. He did not know whether internal audit was done in the Prime Minister's Office. During his working period an audit was completed in Prime Minister's Office. He saw the record of the relief and welfare Fund in the Prime Minister Office between 1993 and 1994. On 27.09.1993 the first note was written in the said record no.02.39.9.1.4.5.93-94, part-1. The said record was signed by him, Prime Minister's secretary and Prime Minister. The said record was used for keeping the summary of the government and private different applications which were presented before the Prime Minister for the permission. On 19.11.1991 Prime Minister's secretary presented summary before the Prime Minister regarding welfare fund and the said summary was approved on 28.11.1991. PW-14 denied the defence suggestions that there was separate fund like PM's Orphanage Fund and the Relief and Welfare fund included the orphanage fund, and that the claim of PM's Orphanage Fund was false one, and that the statement which he was given regarding PM's Orphanage Fund were concocted, and that the amount of Tk.4,66,00,000/- in the name of Zia Orphanage Trust and Zia Memorial Trust were allotted and approved by the Prime Minister was false, and that the Commission had shown him the false and fabricated register and documents.

57. PW-15 Md. Mofizul Islam deposed that in between 2003 and 2007 he worked in the Sonali Bank Gulshan, New North Circle Branch as the branch manager. The account of Zia Orphanage Trust STD-7 was opened in said branch. From STD-7 account Tk.30,00,000/- through cheque no.4882403 dated 05.07.2006, Tk.50,00,000/- through cheque no.4882404 dated 04.07.2006 and Tk.1,00,00,000/- through cheque no.4882402 dated 15.06.2008 were withdrawn. The said 3 cheques were jointly signed by Tareque Rahman and Mominur Rahman and the said amounts were transferred from the Sonali Bank Ltd. Gulshan New North Circle Branch to the Prime Bank Ltd. Gulshan Branch through clearing house. (However, money of Cheque no.4882406 dated 15.06.2006 for Tk.1,00,00,000/- and Cheque

no.4882407 dated 12.04.2006 for Tk.50,000/- was given on the basis of joint signatures of the said two persons) and due to insufficient fund the Sonali Bank, local office provided the said amount through the demand draft. The said cheque's money Tk.1,00,00,000/- and Tk.50,000/- was encashed from the Prime Bank, local office. They gave the money in one day notice. Cheque no.4882407 dated 12.04.2006 for Tk.50,00,000/-, material exhibit-I(G) and the signature of PW-15 was thereon, exhibit-I(G)/1; Cheque no.482402 dated 15.06.2006 for Tk.1,00,00,000/-, material exhibit-I(H) signed by principal officer Sohrab Hossain, exhibit-I(H)/1. Cheque no.4882403 dated 05.07.2006 for Tk.30,00,000/-, material exhibit-I(N), cheque no.4882406 dated 15.06.2006 for Tk.1,00,00,000/-, material exhibit-I(J) and cheque no.4882404 dated 4.7.2006 for Tk.50,00,000/-, material exhibit-I(L) were also signed by the principle officer Sohrab Hossain, exhibits-I(H)/1, I(N)/1, I(J)/1 and I(L)/1. PW-15 permitted Sohrab Hossain through note of withdrawal for signing the said cheques. The said amounts were paid by following the Bank's rules and regulations.

58. In cross-examination PW-15 stated that the 3 cheques, material exhibit-I(H), I(N), I(C) were issued in the name of Zia orphanage fund. In two cheques, material exhibit-I(G) and I(J), there were transferred seal and the said cheques were cash cheque and said cheques were transformed as negotiable instrument due to transfer seal. The cash cheque with transfer seal could not be encashed it would only used to transfer the bank amount to the specific bank.

59. PW-16 Md. Golam Faruk deposed that on 05.08.2008 while he was working at Gabtoli, Bogura sub-registry office as sub-registrar PW-31 came to his office and presented a request letter and accordingly he presented all the records as per his request. PW-31 seized the said documents and prepared a seizure list, exhibit-11. The discreptions of seized records were mentioned at serial no.5 of the seizure list, Balam Book nos.122, 116, 115, 121 and 117, material exhibit no.IV series wherein details of 18 deeds infavour of the Trust had been narrated. Register book being no.4 of the Gabtoli Sub-registry office, material exhibit-V, wherein page nos.34-38 thumb impressions and signatures were taken from the vendors of the respective deeds.

60. PW-16 proved the said seizure list exhibit-11 and his signature thereon as exhibit-11/1. The seized records were given to his custody and he received a copy of 'jimmanama' from PW-31. PW-16 also proved the said 'jimmanama', exhibit-12 and his signature thereon, exhibit-12/1.

61. In cross-examination PW-16 stated that he submitted the finger print book before the court and provided the certified copies of said deeds. The said deeds were in the name of the Trust.

62. PW-17 Md. Mehmud Hossain deposed that between 2003 and February 2007 he worked in the Prime Bank Ltd. Gulshan Branch as the branch manager. On 28.07.2008 PW-31 called him for interrogation and he went to the head office of the Commission. PW-31 interrogated him and he made his statement before him. Between 13.04.2006 and 05.07.2006, 5 cheques of STD-7 account with Sonali Bank, New North Circle, Gulshan Branch were given to their branch for opening an FDR, which were jointly signed by Tareque Rahman and another. He received the said 5 cheques in presence of M. Sahjanan Bhuiya, managing director of the Prime Bank Ltd. through Salimul Haque. Salimul Haque who was the director and chairman of the Prime Bank. Among the said 5 cheques, 1 cheque was for Tk.50,00,000/-, 2 cheques were for Tk.2,00,00,000/-, each Tk.1,00,00,000/-, 1 cheque was for

Tk.50,00,000/- and 1 cheque was for Tk.30,00,000/- in total amounting to Tk.3,30,00,000/-. By receiving direction from Salimul Haque the cheque amounting to Tk.50,00,000/- was given on 13.04.2006 for encashment and the cheque amounting to Tk.1,00,00,000/- was given on 15.06.2006 for encasement and another 3 cheques were given to the Trust. The said 2 cheques were given to the branch officer Masud Parvez for withdrawal. On 13.04.2006 and on 15.06.2006 two FDRs for Tk.50,000/- and Tk.1,00,000/- respectively were issued in the name of Salimul Haque. Thereafter another 3 cheques in respect of Tk.1,00,00,000/-, Tk.50,00,000/- and Tk.30,00,000/- were collected through clearing house for opening FDRs on 15.06.2006, 04.07.2006 and 05.07.2006 respectively and Salimul Haque ordered for opening FDR account and on 27.06.2006 FDR no.41032669 for Tk.1,00,00,000/- and on 09.07.2006 FDR no.41033117 for Tk.80,00,000/- were issued in the name of the Trust. The said FDRs were transferred to Salimul Haque. FDR no.41029462 for the amount of Tk.50,68,450/- (including interest) was used for opening another new FDR being no.41033338 on 16.07.2006 in the name of the Trust in compliance of the order of Salimul Haque. PW-17 requested to the bank managing director for necessary documents of the Trust and eventually, he received the said documents. On 01.11.2006 the Prime Bank, Eskaton branch wrote a letter which was received by the Prime Bank, Gulshan branch on 05.11.2006 and FDR for Tk.1,00,00,000/- was liened in the name of Salimul Haque. The lien was marked jointly by the manager operation Amzad Hossain and Farid Ahmed of the Prime Bank, Gulshan Branch and for making the lien they failed to communicate with Salimul Haque over phone. Thereafter, the Prime Bank, Eskaton Branch cancelled the said lien mark. Eventually, on 16.11.2006 a written order was passed by the Prime Bank, Eskaton Branch on the basis of the Trust resolution that Zia Orphanage Trust's FDR for Tk.1,00,00,000/- was required to be encashed and ordered to deposit the said amount to the Prime Bank, Eskaton Branch in the name of Salimul Haque. Accordingly they transferred the fund of said FDR for Taka 1,00,00,000/- through credit advice to Prime Bank, Eskatan Branch for encashment. PW-17 also made statement under section 164 of the Code of Criminal Procedure before the Magistrate. He proved his said statement, exhibit-13 and his six signatures thereon, exhibit-13/1-6.

63. In cross-examination PW-17 stated that there were 2 cash cheques and 3 account payee cheques of the STD account no.7, Sonali Bank and the said cheques were cleared from the said STD account no.7, Cheque no.4882407 dated 12.04.2006 for Tk.50,00,000/- and cheque no.4882406 dated 15.06.2006 for Tk.1,00,00,000/- were presented in their bank but there were no endorsement seal of their bank. The said three cheques were collected by Prime Bank, Gulshan Branch, Dhaka. The beneficiary of the five cheques never complained that they did not receive the money and the said five FDRs were transferred to the Prime Bank, Eskaton Branch with the permission of the beneficiary and the branch manager. He was interrogated by the investigating officer and he made his statement before the Magistrate. Cheque no.4882407 dated 12.04.2006 was issued from the STD account no.7 with the Sonali Bank, Gulshan New North Circle Branch and there was a transfer seal on cheque no.44888822406 dated 15.06.2006. According to the material exhibit-II series, the FDR interest was 12.25%. FDR no.41029262 for Tk.50,000/- dated 13.04.2006 and FDR no.41032276 for Tk.1,00,00,000/- were in the name of Salimul Haque.

64. PW-18 Md. Abdul Jalil deposed that on 05.08.2008 while he was working in Gabtoli, Bogura as a Mohorar in the Sub-registry office PW-31 came to their office and seized 18 deeds and prepared a seizure list and took his signature. He proved the seizure list, exhibit-11, and his signature thereon, exhibit-11/2. The seized deeds were given in the custody of the

sub-registrar Md. Golam Faruk (PW-6) and he signed on the 'jimmanama' as a witness. He also proved the 'jimmanama', exhibit-12 and his signature thereon, exhibit-12/2.

65. In cross-examination PW-18 stated that he was not present when the deeds were registered and he had no knowledge about the registration of the same.

66. PW-19 Md. Mostofa Kamal Mozumder deposed that in 2008 while he was working as the upazila nirbahi officer (UNO) in Fatikchhari, Chittagong, PW-31 sent him a notice to appear before the Commission. Thereafter he came to the Head office of the Commission on 17.06.2008. During interrogation he informed to PW-31 that on 23 May 1990 he joined as an accountant in the President's Secretariat and he worked in the President's Secretariat till May 1992. He was declared as a surplus staff in the President's Secretariat and thereafter he worked in the Prime Minister's Office as an accountant from June 1992 to 31 January 1993. During his working period in the Prime Minister's Office he worked as an accountant in the Prime Minister's relief and rehabilitation fund, voluntary fund, reserve fund and orphanage fund and he was controlled and advised by the private secretary (PW-14) of the Prime Minister's secretary Kamal Siddique. PW-14 the private secretary of the Prime Minister's secretary preserved all the Prime Minister's various important fund records, cheque books, counter foil of cheques, counter foil of FDRs and he performed his work by taking advice from PW-14. PW-14 supplied him the orphanage fund related documents and bank statement for entry in the cash register. PW-19 after completing entry informed about the said entry to PW-14. PW-19's own hand writing was in the orphanage fund cash register and some portion was written by another accountant who joined after him. His hand writings were in the register's page nos. 1,2,3,9. In page no.9 of the register it was written in the column of debit as Zia Memorial Trust donation for establishing orphanage fund, House no.41, Raod No.37, Gulshan, Dhaka Cheque No.4831102, dated 13.11.1993, the amount of Tk.2,33,33,500/-. Record no.02.39.19.01.13.14.93 was the additional record of the PM's Orphanage Fund and in the said record he wrote about the bank statement and informations of other documents. In page no.9 at serial no.3 informations were written as Zia Orphanage Trust, 6 Shaheed Moinul Road, Dhaka, Cheque no.8431103 dated 13.11.1993, the amount of Tk.2,33,33,500/-, purpose for establishing Orphanage fund. It was also written in deposit receipt no.984112 for Tk.4,66,76,298/- of the PM's Orphanage fund. He handed over the said register to the next accountant Abdul Bareq Bhuiyan (PW-21) when he left the Prime Minister's Office.

67. In cross-examination PW-19 stated that the Commission did not demand the audit report and he did not provide any report to the Commission. He kept the account details and the PM's Orphanage Fund. PW-14 also kept the said account details. Thereafter Abdul Barek Bhuiyan (PW-21) kept the account details of the said orphanage fund. In material exhibit-III series and III(A) series there were no note sheet and he did not see any note sheet there. He was aware about the Prime Minister's Relief and Welfare Fund. He did internal and external audit regularly while he was working in the Prime Minister's office. His hand writings were available in material exhibits III(B) and III(C). PW-14 called him from his new service place after 9/10 months of leaving his job from Prime Minister's office for updating the records. He denied the defence suggestions that there was no PM's Orphanage Fund register and files in the Prime Minister's office, and that there was no existence of the PM's Orphanage Fund and additional record. He did not know whether the Amir of Kuwait sent directly foreign remittance to the Sonali Bank in the name of Zia Orphanage Trust. But he knew a remittance came to the PM's Orphanage Fund.

68. PW-20 Tohidur Rahman Khan deposed that in May 2008 while he was working as a director in the Chief Advisor Office PW-31 sent him a letter requesting to supply the records of the PM's Orphanage Fund and he replied to the said letter in June 2008. Thereafter on 14.08.2008 PW-31 came to their office and he made his statement before him. The Commission asked for the original records of the PM's Orphanage Fund but the Chief advisor office could not able to supply the required informations because the original record could not traced out. Between 1991 and 1996 another additional record was made in compliance of the order of the private secretary of the Prime Minister's secretary and he informed PW-31 regarding the said additional record. In 1991 the account no.5416 was opened with the Sonali Bank, Ramna Corporate Branch regarding PM's Orphanage Fund. The register of the PM's Orphanage Fund and additional records were handed over to PW-31. PW-20 proved material exhibit-III series.

69. In cross-examination PW-20 stated that on 14.08.2008 he made statement before PW-31. In May 2008 before recording the said statement PW-32 came to him who asked for some files of the Prime Minister's office for his perusal. But they could not provide the said required files to PW-32 as the original record was not found at that time. During his working period he could not traced out the said original record. In January, 2009 he was transferred from the Prime Minister's Office. He had no involvement with the additional record but same was ultimately traced out.

70. PW-21 Abdul Barek Bhuiyan deposed that in 2003 he retired from the Prime Minister's Office as an accountant. Between 1993 and 1994 he dealt with the relief fund, optional fund, secret fund and orphanage fund of the Prime Minister's Office. Mostafa Kamal Mojumder (PW-19) had worked as an accountant prior to him and at the time of his transfer he (PW-19) handed over additional records and 2 registers to him (PW-21). PW-21's hand writings were available on the additional records and registers. He having seen the material exhibit-III series further deposed that the cover pages of material exhibit-III and material exhibit-III(A) were written by him. Material exhibit-III(B) and III(C) registers were written by Mostafa Kamal Mojumder (PW-19). In 1994 he was transferred from the said office and he handed over the additional records and registers to Majed Ali (PW-9).

71. In cross-examination PW-21 stated that he was appointed in the Prime Minister's Office as an accountant and retired in the year 2003. Before his appointment Mostafa Kamal Majumder (PW-19) worked in that post. After his retirement Majed Ali (PW-9) was appointed in his post. During his working period he never saw the original records of orphanage fund.

72. PW-22 Md. Sohrab Uddin deposed that in 2006 he worked in the Sonali Bank Ltd. New North Circle Branch as a principle office and he was responsible for 'transfer the clearing cheque pass' section. On 15.06.2006 he passed cheque no.4882402 for Tk.1,00,00,000/- of STD account no.7 of the Trust and his signature was thereon, material exhibit-I(H)/2. The said cheque was presented from the Prime Bank Ltd. Gulshan Branch through clearing house. On 15.06.2006 cheque no.4882406 for Tk.1,00,00,000/- of STD account no.7 was presented before the bank as cash cheque and due to insufficient fund Sonali bank issued a demand draft invavour of the local office and the said DD was encashed and the said cheque was passed by him and his signature was thereon, exhibit-I(J)/2. On 04.07.2006 he passed cheque no.2882404 for Tk.50,00,000/- of STD account no.7 and the said cheque was signed by him, material exhibit-I(L)/2. Cheque no.4882403 dated 05.07.2006 for Tk.30,00,000/- was presented from the Prime Bank Ltd. Gulshan Branch and

he passed the said cheque and his signature was thereon, material exhibit-I(N)/2, the above cheques were jointly signed by Tareque Rahman and Mominur Rahman.

73. In cross-examination PW-22 stated that while he was working in the Sonali Bank, Gulshan New North Circle Branch he did clearing and transfer related activities by following the bank's rules and regulations. The 3 cheques, material exhibited-I(H), I(N), I(L), were clearing cheque and said 3 cheques were in the name of the Trust. The cheque material exhibit-I(G) was passed by the manager and his signature was also thereon. The cheque material exhibit-I(J) was a cash cheque and his signature was on the said cheque. PW-22 denied the defence suggestions that FDR nos.41032276 and 41029462 were in the name of Salimul Haque which came from the Prime Bank, and that the said 5(five) cheques, material exhibit-I(G), I(H), I(J), I(L), I(N), were transferred from the Sonali Bank to the Prime Bank for the best interest which he knew. He did not know whether the Prime Bank's FDR interest rate was 12.25% between April, 2006 and June, 2006. The said 05 cheques were cleared and transferred by following the bank's rules and regulation.

74. PW-23 Shah Rezwana Hayat deposed that in 2008 he was working as the upazilla nirbahi officer, Gabtoli, Bogura and on 21.07.2008 the Commission sent a letter vide memo no.11983 by mentioning some Dagh numbers of Gabtoli and Darail Mouja and requested for submitting a report regarding the possession and position of the said land since 1993. He proved the said memo dated 21.07.2008, exhibit-14. After receiving the said letter he ordered to upazila land assistant officer Jahangir Alam (PW-27) and surveyer Momin (PW-28) for inquiry into the said matter and to submit a report. After receiving their report he sent a letter being memo no.1281 to the Commission on 31.07.2008 attaching the photostat copy of the report. In the said report it was mentioned that between 1993 and 1994 the said lands were vacant and thereafter one Shobhan took possession of the same and former Parliament Member Helauzzaman Talukder and former Mayor of Pourashava Morshed Liton used to look after the said land. The record of right remained in the name of the previous owners. There was no structure on the said land. PW-23 proved the said 3 pages report, exhibit-15 and his signature thereon, exhibit-15/1.

75. PW-24 Md. Amjad Hossain deposed that he worked in the Prime Bank Ltd. Gulshan Branch as an assistant vice president from October 2003 to November 2007 and during his working period Prime Bank Ltd. Eskaton Branch sent him a letter requesting for lien of 2 FDRs being FDR no.41032276 for Tk.1,00,00,000/-, material exhibit-VI, and FDR No.41032669 for Tk.1,00,00,000/-, material exhibit-VII. After receiving the said letter he discussed the matter with his branch manager Mehbub Hossain and requested for his direction. Mehbub Hossain after consulting with the manager of Prime Bank Ltd. Eskaton Branch, instructed him to do for lien of the said 2 FDRs. After receiving the instruction he signed jointly with the general banking incharge Molla Farid Ahmed in the said 2 FDRs and confirmed the its lien and informed the matter to Prime Bank, Eskaton Branch. On the request of Prime Bank Ltd. Eskaton Branch the said 2 FDRs were encashed and transferred.

76. In cross-examination PW-24 stated that the said FDRs were liened by following the rules and regulations and the said lien FDRs were to be encashed at any time. No loan was taken from the said two FDRs. He made a written statement to PW-31, exhibit-16. In his cross-examination he also stated that he did not present the FDRs lien letter but he saw the said letter which was with the record. The material exhibit-II(A), letter regarding encashment of FDR cancelling lien, was a Photostat copy and his signature was not thereon and there was no written order. The material exhibit-VI was FDR no.41032276 for Tk.1 crore. On

15.06.2006 the said FDR was deposited in the name of Salimul Haque and the interest rate was 12.25%. The material exhibit-VII was FDR no.41032669 dated 27.06.2006 for Tk.1 crore was deposited in the name of the Trust and the interest rate was 12.25%. There were no written instructions from Tareque Rahman to their Bank regarding lien, cancellation of lien and advice. Material exhibit-VIII was a Photostat copy and it was not authenticated by any bank officer. PW-24 denied the defence suggestion that he hide the original copy of the material exhibit-VIII and provided a Photostat copy to the Commission. In his statement made before PW-31 he did not mention that the said FDRs transactions were done following Tareque Rahman's order. The bank account operation was reflected in the lajer book of the said branch. Account opening form, signature card and documents of transactions were kept with the account file. During his working period PW-31 never came to Prime Bank Ltd. Gulshan Branch. The said bank could provide the bank statement upon the court's order. External and internal audit were done in their all branches in every year.

77. PW-25 Molla Farid Ahmed deposed that he worked in the Prime Bank Ltd., Gulshan Branch from the year 1999 to the 1st part of the year 2008. On 01.11.2006 a letter being memo no. cÖvBg/GbBwe/wmAvi/2006 issued by the Prime Bank, Eskaton Branch was sent to his branch requesting to do lien of 2 FDRs. After receiving the said letter they discussed with the branch head and on the basis of his order FDR no.41032276 dated 15.06.2006 for Tk.1,00,00,000/- and FDR no.41032669 dated 27.06.2006 for Tk.1,00,00,000/- were marked lien and the matter was informed to the Eskaton Branch. He signed thereon, material exhibit nos-VI/2 and VII/3. Thereafter, lien of the said 2 FDRs was cancelled and money was transferred to the Prime Bank Ltd. Eskaton Branch through advice. He proved the encashed advice no.1007 for FDR No.41032276, material exhibit-IX, and his signature thereon, material exhibit-IX/1. He made written statement before PW-31, exhibit-17 and he proved his signature thereon, exhibit-17/1 (with objection).

78. In cross-examination PW-25 stated that the said two lien FDRs were signed by the manager and he did not submit any advice regarding the said two FDRs before the Court. The material exhibit-IX was a Photostat copy. There is no signature of Tareque Rahman on the material exhibit-VI, VIII and IX.

79. PW-26 Khondokar Abdus Sattar deposed that in the year 2009 while he was working in the Foreign Ministry of Bangladesh as the director general PW-31 on 16.06.2008 sent a letter being memo no.9191 to the secretary of the Ministry of Foreign Affairs. In the said letter it was mentioned that in 1991 a DD issued by the United Saudia Commercial Bank for US \$12,55,000 was deposited in the PM's Orphanage Fund being account no.5416 maintained with the Sonali Bank Ltd. Ramna Corporate Branch and it was asked to provide information about the source of the said DD. He sent the said letter along with the Commission's letter to the Bangladesh Embassy in Saudi Arab and requested for necessary inquiry and to send a report. The said letter was signed by him and he also sent another copy of the said letter to the Commission and the said copy was signed by him, exhibit-19. He identified his signature on the said letter, exhibit-19/1. After receiving their letter the senior minister and deputy chief of commission of the Bangladesh Embassy in Saudi Arab sent a letter vide memo no.weBAvi(ivR: wewea)/1/5/98-08 dated 02.07.2008. In that letter it was mentioned that after receiving the letter they inquired into the matter and came to know that United Saudi Commercial Bank was no longer in operation and in 1995 the said bank was merged with the SAMBA FINANCIAL GROUP. So, it was uncertain to collect information as sought for and requested them for providing the Photostat copy of the DD and advised to make inquiry about the said documents in the concerned branch of the bank. The said letter of

Bangladesh Embassy in Saudi Arab was marked as exhibit-20. After receiving the said letter he forwarded the same to the Commission. The Commission sent them another letter being memo no.11267 dated 14.07.2008 and requested to know the information about the sender and purpose of sending funds, exhibit-21. After receiving the said letter they sent a letter being memo no.GgGdG/WweøDG/‡KGmG/701/08 to the Bangladesh Embassy in Saudi Arab on 15.07.2008, exhibit-22. Thereafter the Commission sent them a reminder letter being memo no.14024 dated 13.08.2008, exhibit-23 and requested to provide required information. On the basis of the said letter, he sent a letter vide memo no. GgGdG/WweøDG/‡KGmG/701/08 dated 13.08.2008, exhibit-24 to the Bangladesh Embassy in Saudi Arab. After receiving the said letter the Bangladesh Embassy in Saudi Arab sent an e-mail letter, exhibit-25, informing that they had communicated with SAMBA FINANCIAL GROUP intending to know the name of the sender who remitted the money and the purpose for remit. The Deputy Chief of Mission personally went to the Head Office of SAMBA FINANCIAL GROUP and discussed with its Relationship Manager Mr. Tala Al-Otaibi regarding this issue and Mr. Tala informed that the matter was now under inquiry and he assured to supply the necessary information as early as possible. The said e-mail being memo no. GgGdG/WweøDG/‡KGmG/701/08 dated 18 August 2008 was marked as exhibit-26. Thereafter, on 6 September 2008 Bangladesh Embassy, Riyadh sent a letter being memo no. weBAvi(ivR: wewea)-01/05/98-08 dated 06.09.2008, exhibit-27 to him and informed that Mr. Tala through e-mail informed that it would take more time to provide the information regarding the DD as the same was an old one and Mr. Tala gave assurance that they would notify them if they get any information. After receiving the said letter Bangladesh Embassy in Riyadh informed the said fact to the Commission vide letter dated 9 September, 2008, exhibit-28 and assistant secretary Mohammad Sakib Sadakat signed thereon which PW-26 knew and identified, exhibit-28/1.

80. In cross-examination PW-26 stated that PW-31 did not mention in the letter dated 16.06.2008, exhibit-18, whether the Amir of Kuwait sent US \$12,55,000 for the Trust. He had no knowledge whether the Amir of Kuwait sent US \$12,55,000 for the Trust. The alleged DD was deposited in the Sonali Bank, Ramna Corporate Branch which was mentioned in exhibit-18. The Foreign Ministry did not send any letter to the United Saudi Commercial Bank or Saudia Central Bank. In exhibit-18 it was mentioned that the money was for PM's Orphanage Fund and the said money was misappropriated. The Foreign Ministry collected information from the Bangladesh Embassy in Riyadh. An officer of Bangladesh Embassy sent a letter to him for information as emergency basis. In exhibit-25 it was mentioned that they had been trying to collect informations in their own way. PW-26 denied the defence suggestions that the Bangladesh Embassy in Kuwait informed Foreign Ministry that the Amir of Kuwait sent the alleged amount for the Trust. He had no personal knowledge whether the said DD was sent by the Amir of Kuwait.

81. PW-27 Md. Zahangir Alam deposed that on 29.07.2008 he was working in the Lathigonj Union land Office, Gabtoli Bogura as sub-assistant officer of land. On that day as per the order of upazila nirbahi officer (PW-23) he along with upazila surveyer Abdul Momin Mondal (PW-28) went to village Darial under Police Station Gabtoli, Bogra for inspection of the land, detail account of which was described in exhibit-15. During their inspection local people also present there. From the local people they came to know that the said land was vacant between 1993 and 1994. In 1995 Md. Abdus Sattar took 'pattan' of the land from the former Parliament Member Helaluzzaman lalu at a consideration of Tk.5000/- for a period of 1(one) year. Between 1996 and 2002 Md. Abdus Satter also got pattan from the pouroshabha chairman Md. Morshed Milton at a consideration of Tk.1,00,000/- for a period of 7 years.

Between 2003 and 2008 Abdus Sobhan (Bulu) got 'pattan' from Morshed Milton at a consideration of Tk.1,05,000/- for a period of 5 years and the said land was in possession of Abdus Sobhan Bulu. The said persons informed to them that they paid the lease money to Helaluzaman Talukdar and Morshed Milton. Record of right was in the name of the previous owners. There was no structure on the land and those were using for agriculture purpose. They also came to know from the 'pattan' receivers that the income and expenditure from the said land were controlled/supervised by Helaluzzaman and Morshed Milton. They inspected the said lands on 29.07.2008 and they submitted their report to the upozila nirbahi officer, Gabtoli, Bogura. The upozila nirbahi officer forwarded the said report to the Commission. He proved the said report exhibit-15(Ka) and his signature thereon, exhibit-15(Ka)/1.

82. In cross-examination PW-27 stated that before going to the above land he did not serve any notice to union parishad chairman, member, land owners and the neighbours. He asked the local people and collected informations but did not mention any name in the report. They came to know that the Trust was the owner of the land and they did not find any structure thereon. He did not ask anything to Helaluzzaman Talukder and Murshed Milton. PW-27 denied the defense suggestions that they prepared the report without going to the place in question and sent it to the Commission.

83. PW-28 Md. Abdul Momin Mondal surveyer, upazila land office diposed in the line of PW-27. He proved his signature on the report, exhibit-15(Ka)/2.

84. In cross-examination PW-28 stated that he did not mention any name of the interrogated persons or how he collected informations. He did not interrogate the leasees Abdus Sattar, Abdus Shobhan Bulu or Morshed Milton or Helaluzzaman. He did not mention the land maps, plot and Khatian numbers in the report. He denied the defence suggestions that they did not visit the said place and did not mention the related information in their report, and that the report exhibit-15(Ka) was a concocted one.

85. PW-29 Md. Omar Kabir deposed that on 15.07.2008 while he was working as the vice president in the Prime Bank, Gulshan Branch, an officer of the Commission seized some documents and the seized documents were given custody to the branch executive vice president. PW-29 proved the seizure list dated 15.07.2008, exhibit-29 by which the banks documents relating to i)FDR no.41033117 dated 09.07.2006 for Tk.80,00,000/-, ii)FDR no.41033338 dated 16.07.2006 for Tk.50,68,450/-, FDR opening forms, KYC forms FDR statements, iii)FDR receipt no.41032669 dated 27.06.2006 for Tk.1,00,00,000/-, advice voucher and FDR oepening form, iv)FDR no.41032276 dated 15.06.2006 for Tk. 1,00,00,000/- in the name of the Trust, opening form, KYC form, transfer voucher, statements etc. and v) extract of the resolution of the Trust dated 28.03.2006 were seized. He also proved 'jimmanama' dated 15.07.2008, exhibit-30. The then executive vice president Md. Mojammal Hossain was given 'jimma' of the documents and he also signed on it. PW-28 identified the signature of Mojammal Hossain, exhibit-30/1. The said documents were marked as material exhibit-X series.

86. In cross-examination PW-29 stated that the said documents were in the custody of the Prime Bank Limited, Gulshan Branch and he received the Court's summon as a witness and collected documents from the said branch and produced before the court. He further stated that PW-28 did not submit the original FDR no.41033117 and he did not see the said FDR and the same was in the name of the Trust and according to the report the balance of the said FDR was Tk.98,18,096/- till 09.07.2008. He had no knowledge whether the FDR

no.41033338 dated 16.09.2006 for Tk.50,68,450/- was opened with interest after encashment of the above FDR and the FDR no.41029462 dated 13.04.2006 and the FDR no.41033338 dated 16.07.2006 were opened for the best interest. He did not know whether the FDR no.41032669 dated 27.06.2006 for Tk.1 crore was attached to the material exhibit-I(H) and material exhibit-VII and the FDR no.41032276 dated 15.06.2006 for Tk.1 crore was attached to the material exhibit-I(J). He had no personal knowledge about the material exhibit-X series. Begum Zia did not sign on the documents which were seized *vides* seizure list exhibit-29. 11 (eleven) counter foils and 2 payment orders were submitted before the court, material exhibit-B series and material exhibit-A series respectively. All the said payment orders were issued by the Prime Bank in between 11.02.2013 and 28.08.2016.

87. PW-30 Md. Sirajul Islam deposed that while he was working as a senior officer of the Prime Bank, Gulshan Branch on 15.07.2008 at about 1.00pm PW-31 came to their branch and seized the required documents as produced by manager Mozammel Hossain in presence of him and Syeda Nazma Parvin, senior assistant vice president of the said branch. Details of the seized documents were mentioned at serial nos.4(1)-4(5) of the seizure list. He proved the seizure list dated 15.07.2008, exhibit-29 and his signature, exhibit-29/1 and signature of Sayeda Nazma Parveen, exhibit-29/2. The seized banking documents were given 'jimma' to Mojammal Hossain and the 'jimmanama' was signed by him and Sayeda Nazma Parvin. He also proved the 'jimmanama' dated 15.07.2008, exhibit-30 and his signature exhibit-30/2 and signature of Sayeda Nazma Parvin, exhibit-30/3. The seized documents were as under:

- i) FDR no.41033117 dated 09.07.2006 for Tk.80,00,000/- of the Prime Bank Ltd. Gulshan Branch along with original FDR opening form, KYC form, resolution copy dated 28.03.2006 and 2 pages account details of FDR of the Trust;
- ii) FDR no.41033338 dated 16.07.2006 for Tk.50,68,450/-, KYC Form, Resolution copy dated 28.03.2006 the 2 pages FDR account details of the Trust, letter dated 16.07.2006 written by Kazi Salimul Haque for encashment of the FDR and to open a new FDR;
- iii) letter being memo no.cÖvBg/GbBwe/wmAvi/ 2006/744 dated 16.11.2006 issued by Prime Bank, New Eskaton Branch, FDR opening form, advice voucher copy and details of the FDR no.41032669 dated 27.06.2006 for Tk.1,00,00,000/-;
- iv) account details of the FDR no.41032276 dated 15.06.2006 for Tk.1,00,00,000/- of the Prime Bank Ltd. Gulshan Branch in the name of Salimul Haque;
- v) extract of the Zia Orphanage Trust resolution dated 28.03.2006.

88. In cross-examination PW-30 stated that he did not prepare the seized documents and he had no signature on those documents.

89. PW-31 Harunur Rashid as investigating officer deposed that he was entrusted with the investigation on 09.07.2008 by the Commission, exhibit-31. During his investigation on 10.07.2008 he sent a letter being memo no.11178 to the executive vice president, Prime Bank Ltd. Gulshan Branch, Dhaka requesting to provide required documents of the case. PW-31 requested for the following informations:

- i) latest transaction information such as voucher, lajer, cash book etc. of the account no.41033338;
- ii) transferable documents which transferred from the STD account no.7, Sonali Bank, Gulshan New North Branch to the Prime Bank Ltd. Gulshan Branch;
- iii) statement record details of the said account;

- iv) records of Salimul Haque's FDR account no.41032276 dated 15.06.2006, the Trust FDR account no.41033117 dated 16.07.2006 and FDR account no.41032669 dated 27.07.2006.

90. On 10.07.2008 PW-31 sent a letter being memo no.11177 to the executive vice president of the Prime Bank Ltd. Easkaton Branch, Dhaka requesting for the case related records, exhibit-33.

91. PW-31 also sent the following letters to various authorities/Banks and institutions for collecting evidence with regard to subject matter of the investigation:

- i) on 10.07.2008 a letter being memo no.11178, exhibit-34 to the manager of the Sonali Bank Ltd. Gulshan New North Circle Branch, Dhaka;
- ii) on 10.07.2008 a letter being memo no.11176, exhibit-35 to the deputy secretary of the Chief Advisor Office, Old Airport, Tejgaon, Dhaka;
- iii) on 13.07.2008 a request letter being memo no.11239, exhibit-36 to the Sub-registrar, Gulshan, Dhaka;
- iv) on 13.07.2008 a letter being memo no.11238, exhibit-37 to the settlor of the Trust at the address 6, Shaheed Moinul Road, Dhaka cantonment;
- v) on 13.07.2008 a letter being memo no.11237, exhibit-38 to the Sub-Registrar, Gabtoli, Bogura;
- vi) on 14.07.2008 a letter being memo no.11267 to the director (East Asia), Ministry of Foreign affairs, Dhaka, exhibit-21.

92. On 15.07.2008 PW-31 seized some records for the Sonali Bank Ltd. Gulshan New North Circle Branch, Dhaka vide exhibit-3. He proved his signature thereon, exhibit-3/4. Descriptions of said seizure list documents were at serial nos.4(1) to 4(5) which were marked as material exhibits. On 15.07.2008 at about 1.00 pm PW-31 seized some documents vide exhibit-29 from two witnesses namely Md. Sirajul Islam (PW-30) and Sayeda Nazma Parvin, senior assistant vice president of the Prime Bank Ltd. Gulshan Branch as presented by Md. Mozammel Hossain, executive vice president, Head of Branch. Details of seized documents records were described at serial nos.4(1)-4(5) of the seizure list. PW-31 proved his signature on it, exhibit-29/3. The seized materials were given 'jimma' to Mojammel Hossain, exhibit-30. PW-31 proved his signature, exhibit-30/4. The said documents were produced before the court and marked as material exhibit-X series. On 15.07.2008 PW-31 seized some documents relating to the case in presence of two witnesses as presented by Md. Afzal Hossain, vice president of the Prime Bank Ltd. New Eskaton Branch (PW-8). Details of the seized documents were described at serial nos.4(1)-4(8) of the seizure list, exhibit no.4. He proved his signature thereon, exhibit-4/4 and another signature on the 1st page of the seizure list, exhibit-4/5. The seized documents were given 'jimma' to PW-8 and he received the 'jimmanama', exhibit-5 and his signature was on the said 'jimmanama', exhibit-5/4. The documents were submitted before the court, material exhibit-II series. On 16.07.2008 PW-31 seized case related records from the office of the Chief Advisor in presence of PW-10 and PW-11 as presented by Md. Majed Ali (PW-9). The descriptions of the seized materials were mentioned at serial no.4(1) of the seizure list, exhibit-7. PW-31 proved his signature on it, exhibit-7/4. PW-31 kept the said seized alams in his own custody, material exhibit-III series. During investigation PW-31 interrogated Begum Zia and Tareque Rahman in jail gate with the permission of the Court. On 21.07.2008 a request letter being memo no.11984, exhibit-42 was sent to the manager of Sonali Bank, Ramna Corporate Branch, Dhaka. During investigation on 22.07.2008 PW-31 went to the said branch and he seized the records in connection with the case and prepared a seizure list, exhibit-9 in presence of Md. Rezaul

Karim, SPO and Mohiduddin Ahmed (PW-13) as presented by Monjur Hossian (PW-12). He proved his signature thereon, exhibit-9/3. He kept the seized alamats in his own custody. The seized alamats were produced before the Court and marked as material exhibit-XI series. On 22.07.2008 at about 12.30 hours on presentation of Md. Majed Ali (PW-9) PW-31 seized some records in connection with the case from the office of the Chief Advisor and he prepared a seizure list, exhibit-8 in presence of Md. Alfasani, administrative officer (PW-10) and Md. Mokhlesur Rahman (PW-11). The descriptions of the seized records were mentioned at serial nos.4(1),4(2),4(3) of the seizure list. PW-31 proved his signature, exhibit-8/4. The seized materials were produced before the court and marked as material exhibit-XII series. PW-31 on 24.07.2008 interrogated FIR named accused Sharfuddin and he also recorded statements of the witnesses as per provision of section 161 of the Code of Criminal Procedure. He had also taken steps for recording statements of witnesses before the Magistrate as per provision of section 164 of the Code Criminal Procedure. On 05.08.2008 PW-31 went to Gabtoli Sub-registry office and he seized the records in connection with the case as presented by Md. Golam Faruk, Sub-registrar, Gabtoli, Bogura (PW-16) and prepared a seizure list, exhibit-11 in presence of two witnesses, Md. Mizanur Rahman, office assistant and Md. Jalil, a mohrar of Sub-registry office, Gabtolil. Descriptions of the seized records were mentioned at serial nos.5(1) to 5(2) of the seizure list. He proved his signature on the seizure list, exhibit-11/3. The said seized alamats were given 'jimma' to Md. Golam Faruk. On 13.08.2008 PW-31 sent a letter being memo no.14023 dated 13.08.2008 to the manager of Sonali Bank, Ramna Corporate Branch for providing information regarding the PM's Orphanage Fund current account no.5416 and same was replied by the concerned officer of the Bank, exhibit-48. On 14.08.2008 PW-31 visited the place 6, Saheed Moinul Road, Dhaka Cantonment, Dhaka and recorded some informations, exhibit-49. During investigation PW-31 sent a letter being memo no.14028 dated 13.08.2008, exhibit-23 to the director general of the East Asia of the Ministry of Foreign Affairs, Dhaka to request the Ambassador of Bangladesh in Riyadh for collecting the information with regard to the source of alleged DD. Md. Sakib Sadakat, assistant secretary of the East Asia sent the said letter to the Bangladesh Ambassador in Riyadh on 13.08.2008 and a copy of the letter was given to PW-31, exhibit-24. The exhibit-25 was attached to exhibit-24. PW-31 received the Photostat copy of the letters, exhibit-26, exhibit-27 and exhibit-28. During investigation PW-31 examined the seized records of the case and statements of witnesses as well as statements of accused persons. In the year 1991 the former Prime Minister Begum Zia opened a bank account being account no.5416 with the Sonali Bank Ltd. Ramna corporate branch, Dhaka in the name of PM's Orphanage Fund. Kamal Siddique was in charge for maintaining the said account. On 09.06.1991 the amount of Tk.4,44,81,216/- equivalent to US \$12,55,000 was deposited in the said account which came from United Saudi Commercial Bank vide DD no.153367970. Between 09.06.1991 and 05.09.1993 no money was utilized from the said fund for any orphan in the country and eventually, Begum Zia formed the Trust through her two sons Tareque Rahman and Arafat Rahman and nephew Mominur Rahman in order to misappropriate the said fund. The address of the Trust was the Prime Minister's own residence 6, Shaheed Moinul Road, Dhaka Cantonment. Begum Zia appointed her son Tareque Rahman as the settlor of the said Trust. On 13.11.1993 an amount of Tk.2,33,33,500/- was transferred to the Trust account, STD account no.7 with the Sonali Bank Ltd. Gulshan New North Circle Road Branch through cheque no.8431103 from the PM's Orphanage Fund. On 15.11.1993 an amount of Tk.2,33,33,500/- was deposited in the STD account no.7. On 04.12.1993 an amount of Tk.4,00,000/- was withdrawn from the said STD account no.7 through cheque no.48882401 and an amount of Tk.2,77,000/- was spent for purchasing 2.79 acres land in Darail Mouja under Gabtoli Police Station, Bogura in the name of the Trust. Between 1993 and 2006 the money was not spent for the orphans and no

structure or establishment was built on the said purchased land and the said money was kept in STD account no.7. On 12.04.2006 the amount was increased to Tk.3,37,09,757.32/- with interest. Thereafter between 12.04.2006 and 04.07.2006 Tareque Rahman and Mominur Rahman, settlor and trustee of the Trust respectively in order to misappropriate the money transferred the same through 5 cheques opening new FDR account with the Prime Bank, Gulshan Branch with the aid of Salimul Haque. On 12.04.2006 the cheque amount for Tk.50,00,000/- was withdrawn and Salimul Haque opened a FDR in his own name being account no.41028462. On 16.07.2006 the said FDR was encashed and another FDR account was opened being account no.41033338 in the name of the Trust. On 09.07.2016 an FDR being no.41033117 for Tk.80,00,000/- was opened in the name of the Trust and FDR no.41032669 for Tk.1,00,00,000/- was also opened on 27.06.2006 in the name of the Trust and the remaining amount of Tk.1,00,00,000/- was used for opening another personal FDR account being no.41032276 in the name of Salimul Haque. On 28.03.2006 the Trustee board of the Trust took a decision giving power to M.S. Rahman for dealing the above two FDRs (Tk.50,00,000/- and Tk.80,00,000/-) of the Trust and accused Salimul Haque was given power for monitoring another two FDRs account, the amount of Tk.1,00,00,000/- and Tk.1,00,00,000/- (personal account of Salimul Haque). The two FDRs amounting to Tk.50,00,000/- and Tk.80,00,000/-, were running in the name of the Trust with the Prime Bank Ltd. Gulshan Branch. On the basis of Salimul Haque's verbal order the Trust FDR for Tk.1,00,00,000/- and Salimul Hoque's FDR for 1,00,00,000/- including interest were transferred from the Prime Bank Ltd. Gulshan Branch to the Prime Bank Ltd. New Eskaton Branch through inter banking credit advices and on 16.11.2006 an FDR being no.41022619 for Tk.1,03,19,365/- was opened jointly in the name of Salimul Haque and Sayed Ahmed. On 07.02.2007 another FDR being no.41025535 for Tk.1,06,38,686/- was opened in the name of Giasuddin Ahmed. Out of the said 2 FDRs, the FDR no.410022619 which was opened on 16.11.2006 jointly in the name of Salimul Haque and Sayed Ahmed was encashed on 07.02.2007 and thereafter another FDR being no.41025511 for Tk.1,04,32,957.80/- was opened in the name of Giasuddin Ahmed. 2 FDRs in the name of Giasuddin were encashed and withdrawn on 15.02.2007 and an amount of Tk.2,10,71,643.80/- was deposited on 28.03.2007 to Sharifuddin's account being no.110131 with the Prime Bank Ltd. New Eskaton Branch through six payment orders and the said amount was credited in the said account. Thereafter, Sharfuddin withdrew Tk.2,10,71,643.80 from his said account on various occasions and completed the process of misappropriation. In this fraudulent process the accused persons named in the charge sheet misappropriated the PM's Orphanage Fund. Accordingly PW-31 submitted charge sheet against the accused persons. The FIR named accused Giasuddin Ahmed and Sayed Ahmed were not charge sheeted because their involvement in commission of the offence had not been found. Salimul Haque and Sharfuddin used those names for their own interest and to facilitate the commission of the offence.

93. In cross-examination PW-31 stated that in his inquiry report in every page he had signed but there was no signature in every page of 1st inquiry report submitted by Noor Ahmed (PW-32). In the first inquiry report it was mentioned that the Trust was registered as a private Trust so the members of said Trust would not be treated as public servant, and that the Prime Minister's Office could not avail to provide the documents of record no.02.39.19.1.13.94.93 and thus, he (PW-32) could not ascertain whether the rules and regulations were followed for allotment of the funds, and that in 1993 the amount of Tk.2,33,33,500/- was donated for the said Trust from the PM's Orphanage Fund, and that the Amir of Kuwait sent the said amount in the name of former President late Ziaur Rahman for establishment of the said welfare Trust. PW-32 in his inquiry report did not recommend for

prosecution of Begum Zia. The amount of Tk.2,33,33,500/- was given to Zia Memorial Trust in Bagerhat which was established by Mustafizur Rahman and on the same day Tk.2,33,33,500/- was given to the Trust. Mustafizur Rahman was the settlor of Bagerhat Zia Memorial Trust and his wife, son Riajur Rahman were the trustees of said Trust and Mustafizur Rahman was not interrogated as he was dead. He interrogated Mustafizur Rahman's wife and son but did not record their statements. He interrogated Begum Zia and Tareque Rahman during his investigation and recorded their statements but he did not submit the same before the court. On 16.06.2008 he sent a letter to the secretary, Ministry of Foreign Affairs for knowing the source of the alleged fund and they came to know that United Saudi Commercial Bank was not in operation. He did not mention in the letter, exhibit-21 that he required information whether the Amir of Kuwait donated the said fund. He sent a letter to the director of the Ministry of Foreign Affairs, East Asia, as an emergency basis for knowing the information, exhibit-23. Sonali Bank Ltd. had its own foreign exchange department and gave information to the Bangladesh Bank regarding the remittance or foreign exchange. There was no statement from Mustafizur Rahman's family regarding the source of the said funds and he did not interrogate them. On 14.08.2008 he interrogated Touhidur Rahman Khan, director of Chief Advisor's Office, but the original record of the PM's Orphanage fund could not trace out though he found cash register, counter foil of cheques etc. On 21.07.2008 he sent a letter, exhibit-42 to the manager of the Sonali Bank Ltd., Ramna Corporate branch, but he did not give any reply and on 22.07.2008 he went to the said bank and seized some documents. He denied the defence suggestion that the documents or Photostat copies of PM's Orphanage Fund which he collected were created and fabricated. He received sanction for submitting the charge sheet on 10.09.2008. In the seized record, material exhibit-III series, there was overwriting and nobody could not able to give him the information who did the said overwriting. The informations and documents regarding US \$12,55,000 for the PM's Orphanage Fund and the current account no.5416 of Sonali Bank, Ramna Corporate Branch were available to the material exhibit-III and exhibit-III(A) series records. Informations regarding the Prime Minister's relief and welfare fund were also available to material exhibit-XIII(A) series and according to the said record applications were presented properly in every year and the record shows that the Prime Minister approved those applications. Prime Minister's relief funds, welfare funds and optional funds were not the issue of this case. PW-31 denied the defence suggestion that material exhibit-III series and exhibit-III(A) series were created one. In material exhibit-III(B) and III(C) it was not mentioned who wrote on those and there was no signature thereon. In the said seized documents there was no signature of Begum Zia. Tareque Rahman informed him that the Amir of Kuwait donated the said fund for raising Zia orphanage fund and the said fund was managed by the former foreign minister Mustafizur Rahman. During investigation he could not able to interrogate PW-32 and Mominur Rahman. The amount of US \$12,55,000 came from overseas on 09.06.1991 in account no.5416 and during investigation on 22.07.2008 he seized account opening form and signature card of account no.5416. He denied the defence suggestion that said documents were fabricated one. During investigation he found that the said DD came from United Saudi Commercial Bank. But he could not able to find out who sent the DD. He requested to the Ministry of Foreign Affairs for collecting the name and information of the 'drawer' of the DD. The Bangladesh Embassy in Saudi Arabia could not able to provide the information about the said DD. He denied defence suggestion that the main record was not traced out because there was no record in the name of PM's Orphanage Fund. On 28.07.2008 he called Syed Jaglul Pasha (PW-14) in the Head Office of the Commission and he recorded his statement. PW-14 worked in the Prime Minister's Office between 1992 and 1994. On 17.06.2008 he met Md. Mostafa Kamal Mojumder (PW-19) who made statement under section 161 of the Code of Criminal Procedure. PW-20 Towhidur Rahman informed him that

they could not trace out the original record of the PM's Orphanage Fund. PW-20 sent two letters to him from the Prime Minister's Office informing about the whereabouts of the original record of the PM's Orphanage fund, but he did not submit the said two letters. PW-21 Abdul Barek Bhuiyan in his statement stated that he never saw the original records of the PM's Orphanage Fund. PW-31 denied the defence suggestions that during the inquiry and investigation he got the evidence that the Amir of Kuwait sent the money through the alleged DD and intentionally he did not inform it to the Ministry of Foreign Affairs, and that the family members of Mustafizur Rahman informed him that the alleged DD was sent from the Amir of Kuwait but he did not take any step to find out any evidence to that effect. Prime Minister's Office did not give any allegation to the Commission regarding the PM's Orphanage Fund. After opening STD account no.7 dated 15.11.1993 by Tareque Rahman the amount of Tk.2,33,33,500/- was deposited in the said account through clearing and on 04.12.1993 Tk.4,00,000/- was withdrawn from the STD account no.7 and the said money was used for purchasing 2.79 acres of land in Darail Mouza, under Gabtoli Police Station, Bogura at a consideration of Tk.2,77,000/-. He denied the defence suggestion that the value of the said land was more than Tk.2,77,000/-. He seized the bank statements between the date of 15.07.2008 and 15.07.2008. The said money was withdrawn in the name of the Trust and transaction was done through the bank. Between 13.04.2006 and 06.07.2006 Tk.3,30,00,000/- was transferred and cleared from the STD account no.7 through 5 instruments. On 30.12.2006 Tk.4,63,143.24 was deposited in the STD account no.7 as interest. The extract was seized from the Prime Bank Limited, Gulshan Branch, material exhibit-X-D, wherein it was mentioned that the Prime Bank, Gulshan Branch authorized to open the said FDR and one M.S. Rahman was given power to operate two FDRs account of the Trust for Tk.50,00,000/- and Tk.80,00,000/-. The said Tk.50,00,000/- and Tk.80,00,000/- were used for opening the FDRs in the name of the Trust. It was mentioned in extract resolution dated 15.10.2006 that the Prime Bank, Gulshan Branch authorized to encash FDR No.0050301/410302669 for Tk.1(one) crore, in the name of the Trust and after such encashment a new FDR was opened in the name of Salimul Haq. According to the resolution date 15.10.2006 FDR No.0073194/41022619 for Tk.1(one) crore was opened on 16.11.2006 in the name of Salimul Haque and Sayed Ahmed. PW-31 denied the defence suggestions that accused Tareque Rahman informed him that Tk.4,00,000/- was withdrawn from the Trust fund and the same was spent for purchasing 2.79 acres of land in Bogra, and that Tareque Rahman also informed him that the said land had been using for the orphans. STD account no.7 with Sonali Bank, Gulshan, New North Circle Branch was in the name of the Trust. According to Paragraph 37 of page no.15 of the Trust deed, the Board of trustee may delegate such of its power and functions as it may deem proper to any persons, committees, sub-committees or any other body(ies) with a view to efficient and proper management of any projects of the Trust and also to facilitate and ensure the aims and objects of the Trust. He denied the defence suggestions that the Trust was operating properly, and that according to the resolution dated 28.03.2006 and 15.10.2006 the Trust was operated by the persons who were involved with the Trust and that money was donated by the Amir of Kuwait and the PM's Orphanage fund was not a Government fund.

94. PW-31 on 04.06.2008 sent a notice to Sharfuddin to appear before the commission and accordingly he came to the head office of the Commission on 24.07.2008 and he interrogated him and recorded his statement. During investigation PW-31 came to know that Giasuddin Ahmed is his brother. Sharfuddin submitted money receipt dated 16.04.2007 where he mentioned that down payments were made by him for purchasing the G-002 and G-003 shops at Gulshan. According to the money receipt for Tk.3(three) crore was given by payment order and the payment order numbers were 071090, 0719091, 0719099, 0719100,

0719136, 0719135 and all the payments were made to the City Twin Tower, a developer company. PW-31 submitted the documents which he received during the interrogation of Sharfuddin. PW-31 denied the defence suggestions that Sharfuddin received two FDRs amounting to Tk.2 crore from the Trust in order to sale his land at Ashulia in favour of the Trust, and that an agreement was signed between the Trust and him, and that eventually, he returned the advance money to the Trust pursuant to the Court's decree.

95. During inquiry PW-31 collected Photostat copies of 5 cheques of the STD account no.7 from the bank and found how the said cheques money was delt but he did not find out who signed on the said 5 cheques. During enquiry he seized the Zia Orphanage Trust deed and according to the deed of Trust, the Trust Board can manage or operate the said Trust fund. During inquiry he did not send any notice to Salimul Haque for taking his statement. He denied the defence suggestions that the Trust Fund was not misappropriated by Salimul Haque and he has been falsely implicated in the case. PW-31 denied the suggestions that the money was not enjoyed by accused Salimul Haque and did not commit any offence and that he did not investigate the case properly and submitted a perfunctory report.

96. PW-32 Md. Noor Ahmed deposed that in 2008 while he was working in the Commission as an assistant director he was appointed as the inquiry officer for inquiring the allegation regarding the misappropriation of PM's Orphanage Fund. On 29.04.2008 he started inquiry. During inquiry he collected photostat copies of the documents from the concerned banks and he interrogated the concerned persons and recorded their statements. Thereafter PW-31 was appointed as the inquiry officer and he handedover the inquiry related documents to him.

97. In cross-examination PW-32 stated that on 28.04.2008 he started inquiry and he followed the Anti-Corruption Commission Regulation 2007 (Rule-7). In his inquiry report he mentioned that the Trust was a private Trust. During inquiry he interrogated Tareque Rahman, Arafat Rahman, Mominur Rahman and Begum Zia and recorded their statements. During inquiry he did not seize any document and he never went to Bagerhat or did not ask the trustees of Zia Memorial Trust or any other. Tareque Rahman mentioned in his statement that the Amir of Kuwait sent a fund in the name of Ziaur Rahman for establishing Trust. During his inquiry he did not communicate with Bangladesh Embassy in Kuwait directly or with the foreign ministry. He submitted the inquiry report to the Head Office of the Commission. He had no knowledge about the inquiry report submitted by PW-31. During his inquiry he did not examine the Prime Minister's Office Rules of Business. He did not communicate with the former foreign minister Mustafizur Rahman for interrogation. He denied the defence suggestions that commission having failed to fulfill it's desire appointed PW-31 again for further inquiry, and that the allegations which he made against Tareque Rahman in his inquiry report were baseless. PW-32 mentioned in his report that on 15.02.2007 Giasuddin Ahmed encashed the FDRs and issued 6 payment orders in his name which he found from the record of the Prime Bank, New Eskaton Branch. He also mentioned that Giasuddin requested to deposit the money through payment orders to his brother Sharfuddin Ahmed's current account no.11013134. On 28.03.2007 the said 6 payment orders amounting to Tk.2,10,71,683.80/- was deposited in the said account. He denied the defence suggestions that Sharfuddin received his notice and informed him that he was received Tk.2,10,71,683.80/- for the purpose of selling his land to the Trust, and he did not make any allegation against Sharfuddin for misappropriation of said money, and that persuent to a compromise decree passed in Money Suit no.01 of 2012 by the learned Joint District Judge, Court No.3, Dhaka he returned Taka 2,25,00,000/- to the Trust fund maintained with Uttara

Bank Ltd, Gulshan Branch through 13 payment orders in between 11.02.2013 and 13.08.2013.

98. Evidence adduced by the Defence:

Accused Sharfuddin examined himself as DW-1. In his examination-in-chief he stated that he was involved in the business of vehicles, CNG filling stations and also land and housing. On 16.11.2006 he entered into a 'memorandum of agreement' with the Trust for selling 74½ decimals of land under Mouza Ashulia at a consideration of Tk.2 crore and 25 lac. One Enamul Haque being the representative of the Trust was the second party of the agreement. He received two FDRs, each of Tk.1 crore and on the following day the said FDRs were encashed and he opened two separate FDRs in the name of Salimul Haque and Sayed Ahmed (son of the DW-1). Eventually, he encashed the said FDRs and opened a new FDR in the name of his elder brother Giasuddin. Thereafter, he encashed the said FDR and through 6 payment orders along with his other funds he made payment to United Twin Towers Development for purchasing two shops. After 2007 due to the prevailing situation of the country he could not able to transfer the land in favour of the Trust. However, in 2012 he received a notice from the Court of Joint District Judge, Court No.3, Dhaka in connection with Money Suit No.1 of 2012 filed on behalf of the Trust. Eventually, the said suit was decreed on 12.02.2013 on compromise as they filed a 'solenama' in the court to that effect. According to the terms of the 'solenama' he returned Tk.2,10,71,600/- through 13 payment orders in the account of the Trust at Uttara Bank, Gulshan Branch. He submitted the memorandum of agreement dated 16.11.2006, the plaint and decree of Money Suit no.1 of 2012 before the court and the copy of the payment orders, exhibit-Ka and Kha series, respectively. He further deposed that he did not do any illegal transaction with the Trust.

99. In-cross examination DW-1 stated that he knew about the Trust. He, Salimul Haque and Giasuddin were not involved with the Trust. He opened FDR in the name of Giasuddin. He denied the suggestions put by the prosecution that he talked with Begum Zia, Kamal Siddique, Tareque Rahman and Arafat Rahman regarding the sale of the land. He had no knowledge whether FDR for Tk.1 crore, the Trust money, was opened in the name of Giasuddin. Another FDR for Tk.1 crore was in the joint name of Salimul Haque and Sayed Ahmed. None of the accused contacted him for purchasing the land in favour of the Trust. The address of the Trust was 6, Shaheed Moinul Road, Dhaka. The consideration of proposed land for sale was Tk.2,10,71,000/-. No stamp paper was used for executing the memorandum of agreement, exhibit-Ka and he did not submit any document whether Enamul Haque was given authority to execute the said document as the representative of the Trust. He denied the suggestions of the prosecution that exhibit-Ka was a created document. He received money from the Trust which was in two FDRs, one FDR was in the name of Trust and another was in the name of Salimul Haque. None of the accused signed on the FDR on behalf of the Trust. He encashed the said FDR in the Prime Bank, New Eskaton Branch, Dhaka. Sayed Ahmed is his son and he had no connection with the Trust. A FDR was opened jointly in the name of Salimul Haque, his one of the friends and his son Sayed Ahmed. He denied the prosecution suggestion that he illegally received the money of the Trust. Exhibit-Ka was not submitted before the concerned Court (Joint District Judge, Court No.3, Dhaka).

100. DW-2 Md. Shajahan Siraj, a tax consultant of accused Sharfuddin, deposed that the TIN number of accused Sharfuddin was 147-105-9943. He filed the certified copy of income tax return of Sharfuddin for the year 2006-2007, exhibit-Gha series. In the said return the statement of 6 FDRs were mentioned and one of the FDR was in the name of Salimul Haque

and Sayed Ahemd. He further deposed that he acted as per instructions of Sharfuddin. One FDR was in the name of QS Haque and Sayed Ahmed. QS Haque is not Sharfuddin but interest was deposited in the account of Sharfuddin. He did not file any documents regarding the ownerships of the land situated at Ashulia and how Sharfuddin became the owner of the said land. He had no knowledge of source of money of the FDR in the name of QS Haque and Sayed Ahmed. In the certificate issued by the Prime Bank, Eskaton Branch it was mentioned that 'Mr. QS Haque and Mr. Sayed Ahmed, 712 Boro Mogbazar, Shantinagar, Ramna, Dhaka Bangladesh have been maintaining the following FDR account with us and they received interest and paid tax'. In the said certificate it was also stated that 'the full proceedings of the above FDR including interest transferred to account No.11013134 favoring Sharfuddin Ahmed as on 28.03.2007'. In the said certificate the relationship between QS Haque and Sayed Ahmed was not mentioned. He had no knowledge how the interest of the said FDR was transferred to the account of Sharfuddin. He was the tax consultant of the accused since 2010-2011 and he did not prepare the income tax return for the year of 2006-2007. In the return for the year of 2006-2007 the descriptions of the land at Ashulia in the name of Sharfuddin had not been mentioned. He admitted that he worked as Chief Financial Officer (CFO) and ITP of GQ ball pen at a remuneration of Tk.70,000/- per month. Salimul Haque was one of the share holders of said GQ ball pen and he was an employee under him and Salimul Haque was present before the Court. He did not file any document regarding the 'advance against property sale Ashulia less advance refund drawing the period' in the return form for the year of 2013-2014. He had no knowledge whether on 16.11.2006 Sharfuddin executed any agreement for selling land and how Tk.2,10,71,643.80/- was deposited in account no.11013134, Prime Bank New Eskaton Branch and whether Sharfuddin misappropriated the said money. In the return form for the year 2013-2014 it was not mentioned that Sharfuddin returned Tk.2 crore and 25 lac through 13 payment orders to the Trust. In the return form nothing was mentioned about 74½ decimals of land of Ashulia mouza. He denied the defence suggestion that he made false statements before the court in order to save his employer Salimul Haque and Sharfuddin.

101. DW-3 Taherul Islam Touhid an advocate practicing in Dhaka District Court deposed that he was one of the lawyers of Money Suit no.1 of 2012 filed on behalf of the Trust. On behalf of the Trust Enamul Haque impleading Sharfuddin filed the said suit for realization of money. A memorandam of agreement was executed between the Trust and Sharfuddin for purchasing 74½ decimals of land in favour of the Trust at a consideration of Tk.3 crore and 25 lac. On the date of execution of the agreement two payment orders were given to Sharfuddin. The said suit was decreed on compromise on 12.02.2013 and the terms of the compromise was that Sharfuddin would pay Tk.2 crore and 25 lac to the Trust in eight installments. DW-3 as an advocate signed on the 'solenama' and on behalf of the Trust Enamul Haque and defendant Sharfuddin deposed before the Court.

102. In cross-examination DW-3 stated that he was the lawyer for the Trust and Mr. A.M. Mahbub Uddin was also a lawyer for the Trust. Mahbub Uddin did not sign on the 'solenama'. The defendant's lawyer D. Dulal Mridha did not also sign on the 'solenama'. He had no knowledge whether Begum Zia and the trustees transferred the Trust fund to various persons. Since the proposed land for sale was not given registration, the suit was filed. The agreement was unregistered one and the same was not file in the Money Suit. He had no knowledge whether Begum Zia in order to misappropriate the said money transferred the same from Trust fund to various persons. He could not say who gave letter of authorization to conduct the money suit on behalf of the Trust. Sharfuddin got money through FDRs. In the plaint address of Enamul Haque was mentioned as 6, Moinul Road and his present and

permanent address were not mentioned. In the plaint it was not written that the Board of Trustee authorized Enamul Haque to file the suit. He refused to say anything with regard to the PM's Orphanage Fund and money transferred from the said fund to Trust fund on 13.11.1993. He had no knowledge about the purchase of land at Bogra in the name of the Trust and encashment of two FDRs in the name of Giasuddin and thereafter the money was transferred to Sharfuddin's account by 6 payment orders. In the plaint it was not mentioned from whom Enamul Haque received the money to pay the same to Sharfuddin. In the 'memorandum of agreement' no trustee was signed as a witness and none of the trustee authenticated the said agreement. Advocate Sanaullah Mia signed on the agreement as a witness but he did not use his professional designation. He denied the defence suggestions that he being a leader of Bangladesh Nationalist Party(BNP) made false statement to save the accused persons.

103. DW-4 Shajahan Kabir assistant secretary of FCA Prime Bank Ltd. Dhaka deposed that on behalf of the Company on 15.06.2016 a certificate was issued mentioning that Kazi Salimul Haque was the Chairman of the Company in between 1 June, 2005 and 31 May, 2006. He proved the said certificate as exhibit-chha. Online Banking service is available in their bank.

104. In cross-examination DW-4 stated that he deposed before the Court to prove the issuance of certificate, exhibit-Chha.

105. In the light of the above evidence, let us now consider the rival submissions advanced by the learned Advocates for the respective parties.

106. Whether Convict Begum Zia being the Prime Minister of the Republic was a public servant at the relevant time-

The learned Advocates for convict Begum Zia have strenuously argued that the office of the Prime Minister being the head of executive branch of the Republic is a constitutional office and not removable from the office otherwise than in accordance with the modes prescribed by the constitution and thus Prime Minister does not come within the definition and preview of 'Public servant' as defined in section 21 of the Penal Code and section 2(b) of the Criminal Law Amendment Act,1958 or 'public officer' as defined in Article 152 of the constitution of the Peoples Republic of Bangladesh and as such trial of Begum Zia as a public servant before the Special Court constituted under Criminal Law Amendment Act, 1958 is illegal and without jurisdiction. The learned Advocates have further submitted that clause 'Twelfth' was added in section 21 of the Penal Code by Ordinance No.X of 1982 during martial law regime where in every person in the service or pay of the Government or remunerated by the Government by fees or commissions for the performance of any public duty has been defined as 'public servant'. However, said inserted clause 'Twelfth' has no existence after the judgment passed by this Court in the case of Siddique Ahmed Vs Bangladesh which is popularly known as 7th amendment case.

107. We have carefully examined the above submissions of the learned Advocates for Begum Zia.

108. Having regard to the fact that pursuant to judgment passed by the Appellate Division in Civil Appeal No.48 of 2011,[Siddique Ahmed Vs Bangladesh, reported in 65 DLR (AD), page-8] section 3 of the Constitution (Seventh Amendment) Act, 1986 including

adding paragraph 19 in the fourth schedule sought to ratify and confirm various proclamations, proclamation orders, CMLA's orders, Martial Law Regulations order, Ordinances etc. made time to time since 24 March, 1982 till 11 November, 1996 have been declared ultra virus the constitution, void and non-est. And consequently the Ordinances and Rule, sub-rule and order passed under those Ordinances had lost its force automatically. But for the public interest and to avoid legal vacuum a new law, namely '১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত কতিপয় অধ্যাদেশ কার্যকর করন বিশেষ বিধান আইন, ২০১৩ has been promulgated by the parliament and the Ordinances as mentioned in the schedule of the said Ain and the Ordinances by which amendments were made in various laws have been given effect. Section 4 of the above Ain runs as follows:

"৪। ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত (উভয় দিনসহ) সময়ের মধ্যে জারীকৃত-
 (ক) তফসিলভুক্ত অধ্যাদেশসমূহ, এবং
 (খ) অন্যান্য অধ্যাদেশসমূহ দ্বারা প্রচলিত কোন আইন, আদেশ বা অধ্যাদেশ সংশোধন করা হইয়া থাকিলে উক্ত সংশোধনী অধ্যাদেশসমূহ (amending Ordinances),
 এমনভাবে কার্যকর থাকিবে যেন উহা এই আইনের ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত কতিপয় অধ্যাদেশ কার্যকর করা হইলেও যতটুকু উহাদের বিষয়বস্তুর (contents) সহিত সংশ্লিষ্ট শুধুমাত্র ততটুকু গ্রহণ করা হইয়াছে মর্মে গণ্য হইবে এবং উক্ত সময়কালে অবৈধ ও অসাংবিধানিকভাবে রাষ্ট্রক্ষমতায় আসীন সামরিক শাসন আমলের কৃতকর্মের অনুমোদন ও সমর্থন (confirmation and ratification) করা হইয়াছে বলিয়া কোনক্রমেই বিবেচিত হইবে না।" [underlines supplied]

109. It is true that in the schedule of the above law the Ordinance No.X of 1982 has not been listed. However, on careful reading of section 4(Kha) of the above law, it reveals that said section has made applicable in the cases of amending Ordinances. Ordinance No.X of 1982 was promulgated for amending Penal Code i.e. it was an amending Ordinance.

110. In view of the provision of section 4(Kha) of the above Ain the provision of clause 'Twelfth' of section 21 of the Penal Code still exists in the law book, which is evident in Bare Act.

111. It is pertinent to quote clause 'Twelfth' of section 21 of the Penal Code, which runs as follows:

["Twelfth'- every person- (a) in the service or pay of the Government or remunerated by the Government by fees or commissions for the performance of any public duty; (b) in the service or pay of a local authority or of a corporation, body or authority established by or under any law or of a firm or company in which any part of the interest or share capital is held by, or vested in, the Government.]

112. *Explanation 1*-Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

113. *Explanation 2*-Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

114. [*Explanation 3*-The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under any law prescribed as by election.]

115. Article 56(1) of the constitution of the Peoples Republic of Bangladesh speaks that there shall be a Prime Minister, and such other Ministers, Ministers of State and Deputy

Ministers as may be determined by the Prime Minister. Article 56(2) speaks about the appointment of Prime Minister and other Ministers, Ministers of State and Deputy Ministers by the President. Article 56(3) also speaks that President shall appoint as Prime Minister the member of Parliament who appears to him to command the support of the majority of the members of Parliament. That means there is no scope to be a Prime Minister unless he/she is elected as a Member of Parliament.

116. However, as per Article 55 of the constitution Prime Minister is the head of the cabinet for Bangladesh and the executive power of the Republic shall be exercised by or on the authority of the Prime Minister.

117. In the case of **Anti Corruption Commission Vs. Md. Shaheedul Islam along with two other cases, reported in 68 DLR(AD) page-242 our Appellate Division** upon detail discussions has held that:

“we are, therefore, of the view that a member of Parliament holds an office and by virtue of such office he is required or authorized to carry out duties and such duties in the public nature of public duties.

118. In the case of **Nasiruddin Ahmed Pintu VS State, reported in 63 DLR, page-214** High Court Division held that a Member of Parliament (MP) is a public servant within the preview of clause ‘**Twelfth**’ of section 21 of the Penal Code.

119. Besides, the High Court Division in **Criminal Miscellaneous case No.21979 of 2009**, which had arisen upon an application under section 561A of the Code of Criminal Procedure preferred by Begum Zia has observed that:

“as a public servant, the accused petitioner was entrusted with the orphanage fund and if she is found to have helped others to use any amount given from the fund in violation of prescribed mode in which trust is to be discharged, offence under sections 409/109 of the Penal Code may also come up for consideration. [(underline supplied): reference 64 DLR, page-1].”

120. The Appellate Division in **Criminal Petition for Leave to Appeal No.134 of 2012** affirmed the above judgment passed by the High Court Division.

121. In the cases of **Abdul Mansur Ahmed Vs. State, reported in PLD 1961 (Dhaka) 733 = 13 DLR 353 and Sheik Mojibur Rahman Vs. State 15 DLR, Page-549** it has been held that ‘a Minister is a public servant’. In above cases 9th Clause of section 21 was considered and it has also been held that:

‘No person could be a more public person than a Minister in the sense that his duties are with the public and he is the people’s man in the Government of the Country.’

122. In view of the above consideration and discussion, we have no hesitation to hold that the Prime Minister who is also a Member of Parliament being remunerated/paid by the Government for the performance of his/her public duty definitely come within the mischief/ambit of clause ‘**Twelfth**’ of section 21 of the Penal Code as public servant.

123. Thus, the submission of the learned Advocates for Begum Zia that she being the Prime Minister of the Republic at the relevant time was not a public servant and thus, the trial is illegal and without jurisdiction and conviction and sentence under section 409 of the Penal Code is absolutely misconceived, appears to be baseless and has no leg to stand.

124. Whether convict Begum Khaleda Zia had any manner of entrustment, dominion or control over PM's Orphanage Fund being account no.5416 maintained with the Sonali Bank, Ramna Corporate Branch and whether the same was a private fund, not public fund-

To decide the above issue it is necessary to peruse section 405 of the Penal Code wherein 'Criminal breach of Trust' has been defined. **Section 405 of the Penal Code runs as follows:**

405. Criminal breach of trust- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

125. The first element of section 405 of the Penal Code is to be "*in any manner entrusted with property, or dominion over property*". The words 'in any manner' in the context are significant. The expression 'entrusted' in section 405 is used in a wide sense and includes all cases in which property is voluntarily handed over for specific purpose. The entrustment may arise in any manner, whatsoever. That manner may or may not involve fraudulent conduct of the accused. As long as the accused is given possession of property for a specific purpose or to deal with it in a particular manner, the ownership being in some person other than the accused, he can be said to be entrusted with that property to be applied in accordance with the terms of entrustment.

126. Keeping in mind the above proposition let us decide the issue of entrustment and dominion regarding PM's Orphanage Fund with reference to the evidence on record.

127. PW-1 who also examined as PW-31, the informant as well as the investigating officer of the case deposed that while Begum Zia was the Prime Minister of the country between 1991 and 1996 a current account being no.5416 was opened with Sonali Bank, Ramna Corporate Branch in the name of PM's Orphanage Fund and thereafter, on 09.06.1991 a DD amounting to US \$12,55,000 (BDT 4,44,81,216/-) issued by United Saudi Commercial Bank was deposited in the said account. Kamal Siddique being the secretary of Prime Minister had signed on the said account opening form and signature card, material exhibit-XI series. The said documents were seized by PW-31 vide seizure list exhibit-9. PW-12 and PW-13, the concerned bank officials, proved the said seizure list and their respective signatures thereon, exhibit-9/1 and 9/2. PW-12, PW-13 and PW-31 denied the defence suggestions that the holder of the said account was the Trust, not PM's Orphanage Fund, and the Amir of Kuwait donated the money vide the DD deposited in the said account for the Trust. It is true that in the account opening form and signature card there was no signature of Begum Zia. But after perusal and consideration of the attached documents at serial no.6(3) of material exhibit-XII(A) and serial No.6(3) of material exhibit-XII(B) it transpires that two summaries regarding i) "প্রধানমন্ত্রীর ত্রান তহবিল নামকরণ, ব্যবহার ও পরিচালনা" and ii) মাননীয় প্রধানমন্ত্রীর স্বৈচ্ছাধীন তহবিল (discretion fund) পরিচালনা ও ব্যবস্থাপনা প্রসংগে" were placed by Kamal Siddique before Prime Minister Begum Zia and she approved the said summaries on 19.11.1991 and 24.11.1991 respectively and Kamal Siddique being the secretary of Prime Minister was authorized/assigned to deal with PM's relief and welfare fund as well as discretionary funds. This factual aspects validly and legally lead us to presume that Kamal Siddique as the

secretary of Prime Minister Begum Zia with due approval and instruction of the later opened the current account no.5418 in the name of PM's Orphanage Fund, signed on the account opening form, signature card and eventually transferred the money to Zia Orphanage Trust and Zia Memorial Trust by issuing two separate cheques.

128. PW-14, in between 1992 and 1994, worked in Prime Minister's office as the personal secretary of Prime Minister's secretary Kamal Siddique. PW-14 categorically and consistently deposed that Kamal Siddique being the secretary of Prime Minister Begum Zia supervised and dealt with various funds of the Prime Minister's office. In year 1993 PW-14 came to know about the PM's Orphanage Fund while he was updating various funds of Prime Minister's office and he was acquainted with the said fund as well as the original and additional file for the same. PW-14 also identified material exhibit-III series and III(A) series produced before the court, seized from the Prime Minister's office,(at the time of seizing the above documents said office was used as the office of Chief Advisor of the Care Taker Government) vide exhibit-7, which are the documents relating to PM's orphanage fund. In cross-examination PW-14 asserted that during his working period he dealt with the PM's orphanage fund. PW-9 who was working as an accountant in Prime Minister's office at the relevant time produced the documents, material exhibits-III, III(A), III(B) and III(C) i.e. two additional files and two registers before PW-31 as required by him on 16.07.2008. PW-31 seized the said documents and prepared a seizure list, exhibit-7. PW-9 proved the seizure list and his signature thereon, exhibit-7/1 and he also identify material exhibits-III series. PW-9 denied the defence suggestion that material exhibits-III and III(A) were created files. PW-10 and PW-11 also proved the seizure list, exhibit-7 and their respective signatures thereon, exhibit-7/2 and 7/3 respectively. They also deposed that in their presence PW-31 seized the documents on 16.07.2008 as presented by PW-9. PW-19 deposed that between June 1992 and 31 January 1993 he worked in Prime Minister's office as an accountant and under the supervision and instructions of PW-14 he dealt with various funds files of Prime Minister including PM's orphanage fund. PW-14 handed over relevant bank documents of PM's orphanage fund to him in order to make entry in cash register and accordingly he (PW-19) made entry of the same in cash register, material exhibit-III(B). PW-19 categorically testified that the writings of page nos.1, 2, 3 and 9 of the said register were his own handwriting. When he left the Prime Minister's Office he handed over the registers to PW-21, who joined in his post. In cross-examination PW-19 asserted that his writings were also available in material exhibits-III(B) and III(C). He further stated to the effect-"বস্তু প্রদর্শনী ওওও(ঈ) ক্যাশ রেজিস্ট্রারের কভারে মাননীয় প্রধানমন্ত্রীর এতিম তহবিল লেখাগুলি আমি নিজে লিখেছি। । বস্তু প্রদর্শনী ওওও(ই) ক্যাশ রেজিস্ট্রারের ভিতরের কাঠ পেসিলে লেখা এতিম তহবিলে যে টাকা আসিবে উহা তহবিল নম্বর ৫৪১৬ জমা হবে লেখাটি আবদুল বারেক ভূইয়ার হাতের লেখা । বস্তু প্রদর্শনী ওওও(ই) রেজিস্ট্রারের কয়েকটি পৃষ্ঠায় আমার লেখা আছে এবং কয়েকটি পৃষ্ঠায় আবদুল বারেক ভূইয়ার লেখা ।

বস্তু প্রদর্শনী ওওও(ঈ)রেজিস্ট্রারের সব পাতায় আমার নিজের । বস্তু প্রদর্শনী ওওও(ই) রেজিস্ট্রার ও বস্তু প্রদর্শনী ওওও(ঈ) রেজিস্ট্রারে সোনালী ব্যাংকের ১টি হিসাব যা প্রধানমন্ত্রীর এতিম তহবিলের হিসাব নম্বর ৫৪১৬ সংক্রান্ত এবং ওওও(ঈ) খাউজ সংক্রান্ত ।" [underlines supplied]

129. PW-19 in his cross-examination stated that he updated above material exhibit-III after 9/10 months of his leaving from Prime Minister's Office. He was called by PW-14 to do so and accordingly he updated the entry. PW-19 stated to the effect:

" এবং অডিট হওয়ার কারণে আমাকে নিয়ে অডিট ফাইন্ডিংস এর কারণে আপডেট এন্ট্রি দেয়ার জন্য আমাকে ডেকে নিলে আমি এন্ট্রি লিখি । কম্পট্রলার এন্ড অডিটর জেনারেলের টিম অডিট করাকালে আমাকে ডাকেনি তবে অডিট ফাইন্ডিংস এর কারণে কর্তৃপক্ষ আমাকে ডেকে নিয়ে এন্ট্রিগুলি আপডেট করিয়ে নেয় ।"

130. Those assertions of PW-19 appears to be bonafide and genuine. In the Government offices of our country this kind of practices are not unusual and uncommon. Moreso, if we consider the time of updating the files by PW-19 (in the year 1994) and initiation of the present case (in the year 2007) then there is no room to hold that for the purpose of the present case those documents were created as argued by the defence. PW-20, who worked as one of the directors in the office of the then Chief Advisor of the Care Taker Government, deposed that they could not provide the original record/file regarding the PM's orphanage fund to the investigating officer as the same was found missing. However, an additional file regarding the PM's Orphanage fund was opened as per instruction of the Prime Minister's secretary and he informed about the said additional file to PW-31 and eventually, the same was handedover to PW-31, material exhibit-III series. PW-20 identified the said material exhibit-III before the court.

131. In cross-examination PW-20 asserted that 'অতিরিক্ত নথি খোলার বিষয়ে আমি সম্পূর্ণ ছিলাম না তবে খুঁজে পাওয়া গিয়েছে।'

132. PW-21 deposed that in the year 1993-1994 he worked as an accountant in Prime Minister's office and dealt with various funds of the Prime Minister including PM's orphanage fund. Prior to him PW-19 worked in his place and he handed over two additional files and two registers to him at the time of his transfer. The hand writings of PW-21 were available thereon. He wrote on the file cover of material exhibit-III and III(A) series. The hand writing of PW-19 were also available in material exhibit-III(B) and III(C). In 1994 PW-21 handed over those files and registers to PW-9 when he transferred from the said office.

133. It is true that there is an overwriting in the file (Nathi) number of material exhibit-III. But said fact has been mentioned in the seizure list, exhibit-7 by the investigating officer, which shows the bonafide intention of the investigating officer and he (PW-31) did not suppress the said fact.

134. We have carefully examined the said file, material exhibit-III series and the documents attached to the file. In the said file we have found:

- i) a Photostat copy of the DD bearing no.153367970 dated 09.06.1991 amounting to US Dollar one Million Two hundred and Fifty Five thousand only issued by the United Saudi Commercial Bank infavour of PM's Orphanage Fund. Current A/C No.5416 of Sonali Bank, Ramna, Branch, Dhaka, Bangladesh;
- ii) Photostat copy of a credit voucher dated 17.06.1991 in respect of Taka 4,44,81,216/- issued by Sonali Bank, Foreign Exchange Department, Ramna, Dhaka wherein it was mentioned-
"Being the amount of Foreign cheque/DD No.153367970 dated 09.06.1991 for US \$12,55,000 of United Saudi Commercial Bank FVG Prime Minister's Orphanage Fund Received from Prime Minister's Sectt. as donation now purchased @35,44,32";
- (iii) original copy of deposit slips and
- (iv) a original copy of bank statement of current account no.5416 dated 01.01.1993.

135. After encashment of the DD the said money was made FDR and the attached documents to the material exhibit-III(A) are the deposit slips (original copy) and a copy of the statement of accounts till 15.11.1993. Thus, there is no room to hold that those bank documents have been created for the purpose of the present case long after about 17 years. The overwriting on degit '24' only of the cover page file number, material exhibit-III and some mere discrepancies in the handwritings in the register, material exhibit-III(B) no way

create any doubt about the veracity of the prosecution case and the attached documents thereto. Moreso, the transactions made in account no.5416 are undisputed.

136. It was further argued by the learned Advocates for Begum Zia that the alleged DD was sent by the Amir of Kuwait for the Trust in Private chanel/capacity, not for any public fund like PM's Orphanage fund.

137. Having regard to the fact that the PM's Orphanage Fund being current account no.5416 was opened on 02.06.1991 and the alleged DD was deposited in the said account on 09.06.1991 and money was credited in the said account on 17.06.1991. Admittedly at the relevant time there was no existence of the Trust. The Trust deed was registered on 05.09.1993 i.e. about one and half year after opening of the PM's Orphanage Fund. In the DD it was clearly mentioned that it was issued in favour of PM's Orphanage Fund, which was a public fund.

138. Upon consideration of unimpeachable, trustworthy and corroborative evidences of PW-9, PW-10, PW-11, PW-14, PW-19, PW-20 and PW-21 coupled with the material exhibits-III, III(A), III(B) and III(C) we have no other option but to hold that the prosecution has successfully proved that PM's orphanage fund being no.5416 was a public fund and that was controlled and supervised by the office of Prime Minister as per instructions and approval of the Prime Minister Begum Zia through her secretary, Kamal Siddique and thus, entrustment and dominion of Prime Minister Begum Zia over the said fund is also well founded.

139. The case at hand bids a two-pronged question. First; who was the money given to, the PM's Orphanage Fund or the individual who was the Prime Minister at the relevant time? If the answer is that the money was given to the individual, then it leads to a second question:- why was the individual paid into an account titled the "PM's Orphanage Fund"? A question would then arise as to why the individual was soliciting funds for their personal use by using the office they were holding. However, if the answer to the first question is that the money was given to the PM's Orphanage Fund; then the second question would be who empowered the individual with the authority to use the money from the PM's Orphanage Fund for their personal use? It is considered that any money paid into a public office is deemed to be held in trust by the office for the use of the public. This would mean that the fund available under the PM's Orphanage Fund is to be used by the Prime Minister's Office for public use, which in this particular case would be for well being of the orphans. However, under no circumstances the money paid into the PM's Orphanage Fund could ever be used for anyone's personal use.

140. It is pertinent to be mentioned here that Kamal Siddique was a high ranking government official at the relevant time and under no stretch of imagination it can be presumed that Kamal Siddique opened the account in the name of PM's Orphanage Fund and eventually dealt with the fund without any approval and instruction from the Prime Minister Begum Zia. No prudent man can believe such an absurd proposition that Kamal Siddique himself opened the above bank account in his personal initiative and capacity. Another question is why Kamal Siddique opened the account in the name of PM's Orphanage Fund in order to deposit a foreign DD which was donated for the Trust as urged by the learned Advocates for Begum Zia.

141. It is also pertinent to be discussed here that on behalf of Begum Zia an application under section 57(6) of the Evidence Act was filed before the trial court for taking judicial notice to the Noterial Certificate and Photostat copy of a letter dated 11.08.2015 allegedly issued by Embassy of the State of Kuwait. The content of the above certificate runs as follows:

“Embassy of the State of Kwauit, Dhaka.
Date: 11th of August 2015
Mr. Mohammad Ali
Former Attorney General
Bangladesh Nationalist Party (BNP), Dhaka.
Dear Mr. Ali,

142. This is the convey to you the clarification issued by the Government of the State of Kuwait on the donation to Zia Orphanage Trust by his Highness the Amir of the State of Kuwait. As per the clarification, the donation was given to Zia Orphanage Trust and not for any individual or any other purpose. The Embassy would further like to request all concerned not to use this clarification for any political purpose.

Thanking you.
Sincerely Yours,
(Signature)
Embassy of the State of Kuwait“

143. The learned Special Judge having considered the above letter has observed that:

“ইহা বোধগম্য নয় আসামী বেগম খালেদা জিয়ার পক্ষে কুয়েত অ্যাম্বাসি থেকে প্রদত্ত সার্টিফিকেটের ফটোকপি কেন দাখিল করা হলো? উহার মূল কপি কোথায়? একটা ফটোকপি কিভাবে ঔফরপরধষ ঘড়ঃরপব এ দেওয়া যায়? তথাপি উক্ত ফটোকপি প্রমাণের জন্য কুয়েত অ্যাম্বাসি থেকে কোন কর্মকর্তাকে সাফাই সাক্ষী হিসাবে এনে উক্ত সার্টিফিকেট প্রমাণ করার কোন চেষ্টা আসামী বেগম খালেদা জিয়ার পক্ষে করা হয় নি। উক্ত পত্রে পত্র প্রেরকের কোন নাম এবং পদবী ব্যবহার করা হয় নাই। পত্রটিতে কুয়েত অ্যাম্বাসির কোন স্মারক নং উল্লেখ করা হয় নি। ১১/০৮/২০১৫ তারিখে ইস্যুকৃত ঐ সার্টিফিকেট এ বলা হয়েছে যে, জিয়া অরফানেজ ট্রাস্টকে কুয়েত সরকার অনুদান দিয়েছে। ঐ পত্রে ইহা উল্লেখ করা হয় নাই যে, ১২,৫৫,০০০ মার্কিন ডলার জিয়া অরফানেজ ট্রাস্টকে প্রদান করা হয়েছে। উক্ত টাকা অনুদান হিসাবে দেয়া হয়েছে তাও ঐ পত্রে উল্লেখ করা হয় নি। আসামী পক্ষে নিয়োজিত বিজ্ঞ কৌশলীগণের বক্তব্য অনুসারে সাবেক পররাষ্ট্র মন্ত্রী এ. এস. এম. মোস্তাফিজুর রহমান ১২,৫৫,০০০ মার্কিন ডলার অনুদান হিসাবে কুয়েত সরকারের নিকট থেকে প্রাপ্ত হন এবং উহা পরবর্তীতে ড. কামাল উদ্দিন সিদ্দিকী জিয়া মেমোরিয়াল অরফানেজ ট্রাস্ট এবং জিয়া অরফানেজ ট্রাস্টে প্রদান করেন। কিন্তু কুয়েত অ্যাম্বাসি উক্ত পত্র পর্যালোচনায় লক্ষ্য করা হয় যে, ঐ পত্রে ১২,৫৫,০০০ মার্কিন ডলার সাবেক পররাষ্ট্র মন্ত্রী এ.এস.এম. মোস্তাফিজুর রহমান এনেছিলেন এবং উহা সাবেক প্রেসিডেন্ট জিয়াউর রহমানের নামে এতিমখানা খোলার জন্য দেয়া হয়েছে তা উল্লেখ করা হয় নি। ঐ পত্রে শুধুমাত্র জিয়া অরফানেজ ট্রাস্ট এর নাম ব্যবহার করা হয়েছে যা থেকে ধরে নেয়া যায় যে, এই মামলার আসামী বেগম খালেদা জিয়াসহ অন্যান্য আসামীদের বাঁচানোর লক্ষ্যে উক্ত ১১/০৮/২০১৫ তারিখের কুয়েত অ্যাম্বাসি প্রদত্ত পত্রটি সৃজন করা হয়েছে। আসামীপক্ষ থেকে ১৭/১০/২০১৬ তারিখ ইস্যুকৃত ঘড়ঃবতঃরধষ ঈবঃঃরভঃরপধঃব প্রমাণের জন্য সংশ্লিষ্ট নোটারী পাবলিককে আদালতে এনে উক্ত সার্টিফিকেট এবং কুয়েত অ্যাম্বাসির দেয়া সার্টিফিকেটের ফটোকপির সত্যাসত্য প্রমাণ করার চেষ্টা করা হয় নি। ঘড়ঃবতঃরধষ ঈবঃঃরভঃরপধঃব ইস্যুকারী ব্যক্তি এবং কুয়েত অ্যাম্বাসির কোন কর্মকর্তাকে সাফাই সাক্ষী হিসাবে আদালতে উপস্থাপন না করা আসামী পক্ষের দুর্বলতার পরিচয় বহন করে। প্রসঙ্গক্রমে উল্লেখ করা প্রয়োজন যে, ইউনাইটেড সৌদি কর্মশিয়াল ব্যাংকের মাধ্যমে ১২,৫৫,০০০ মার্কিন ডলার প্রধান মন্ত্রীর এতিম তহবিলে ১৯৯১ সালে আসে। তখন জিয়া অরফানেজ ট্রাস্ট গঠিত হয় নাই। উহা গঠিত হয় ২ বছর পর অর্থাৎ ০৫/০৯/১৯৯৩ তারিখে। তাহলে প্রশ্ন এসে যায় জিয়া অরফানেজ ট্রাস্ট গঠনের আগেই কি কুয়েতের আমির ১৯৯১ সনে ঐ ট্রাস্টকে অনুদানের টাকা প্রদান করলো? কুয়েত অ্যাম্বাসির পত্রটি পাঠ করে দেখা যায় যে, উহা সাবেক প্রধান মন্ত্রী বেগম খালেদা জিয়াকে অফফৎবৎং করে লেখা হয় নি। নিয়ম মফিক ঐ পত্রটি পররাষ্ট্র সচিবকে অফফৎবৎং করে লেখার কথা। কিন্তু তা না হয়ে এই মামলায় আসামী বেগম খালেদা জিয়ার আইনজীবী জনাব মোহাম্মদ আলীকে অফফৎবৎং করে উহা লেখা হয়েছে যা বাস্তব সম্মত না। টাকা আসে ১৯৯১ সালে অথচ ১১/০৮/২০১৫ তারিখে ইস্যুকৃত চিঠি দিয়ে উহা ঈষধঃরভঃ করার চেষ্টা করা হয়েছে। ২০১৫ চিঠি আবার ২০১৬ সনের শেষভাগে নোটারাইজড করা হয়েছে। ফলে উক্ত

ঘড়বৎরধষ ঈবৎঃরভরপধঃব এবং উহার সাথে সংযুক্ত কুয়েত অ্যাম্বাসির ১১/০৮/২০১৫ তারিখের পত্রটি অত্র আদালত কর্তৃক এই মামলা নিষ্পত্তির ক্ষেত্রে বিবেচনায় গ্রহন করার কোন কারণ লক্ষ্য করা যায় না। কুয়েত অ্যাম্বাসির উক্ত সার্টিফিকেট আসামীপক্ষ কর্তৃক জাল ও সৃজিত মর্মে এই আদালত মনে করেন।“

144. We have also carefully examined the Photostat copy of the above letter and we have no hesitation to agree with the above observations made by the learned Special Judge. It is further to be noted here that for a prudent man it is very difficult to believe such a defence plea that like the Amir of Kuwait had sent the money through the alleged DD in the account of PM's Orphanage Fund for Zia Orphanage Trust, when it had no existence at all. This kind of defence plea is nothing but an 'old wife's tale (আষাঢ়ে গল্প)'.

145. Thus, it is well proved by the prosecution that the then Prime Minister Begum Zia had entrustment, dominion and control over the PM's Orphanage fund being account no.5416.

146. Whether convict Begum Zia committed the offence of 'Criminal breach of trust' as defined in section 405 of the Penal Code and 'Criminal Misconduct' as defined in section 5(1) of the Prevention of Corruption Act, 1947 and whether convict Salimul Haque and Sharfuddin had abated in commission of such offence-

Upon careful examination and scrutiny of the evidence adduced by the prosecution, the following undisputed incriminating facts are unveiled-

- i) PM's Orphanage Fund being current account no.5416 was opened on 02.06.1991 with the Sonali Bank, Ramna Corporate Branch, Dhaka by Kamal Siddique, secretary of Prime Minister Khaleda Zia, exhibit-9 and material exhibit-XI series;
- ii) a DD being no.153367970 dated 09.06.1991 amounting to US \$12,55,000 (BDT 4,44,81,216.00) issued by the United Saudi Commercial Bank was deposited in the said account on 09.06.1991 and thereafter, said amount was made FDR being no.984112 and after two years it stood Taka.4,66,67,000/- and thereafter, said money was again deposited in account no.5416 and not a single farthing was spent for the welfare or benefit of any orphan of the country from the said fund after it's creation;
- iii) the Trust deed was registered on 05.09.1993, material exhibit-IV-30 and an account being no.STD-7 was opened on 09.10.1993 with the Sonali Bank Gulshan, New North Circle Branch, Dhaka in the name of the said Trust;
- iv) Tareque Zia son of Begum Zia was the settlor and her another son Arafat Rahman and nephew Mominur Rahman were the trustees of the said Trust and address of the Trust was mentioned as 6, Moinul Road, Dhaka Cantonment, Dhaka wherein Prime Minister Begum Zia resided at that relevant time;
- v) after forming the said Trust on 13.11.1993 Taka.2,33,33,500/- was transferred from the account of PM's Orphanage Fund to the Trust account being STD account no.7 vide cheque no.8431103 and aforesaid amount was deposited in the said account on 15.11.1993;
- vi) Taka.4,00,000/- was withdrawn from STD account no.7 on 8.12.1993 and out of the said money by spending Taka.2,77,000/- 2.79 acres of agricultural land was purchased in the name of the Trust at mouza Darial, under police station Gabtali, District-Bogura;
- vii) no establishment/structure was made on the said land rather the land was given lease to various persons taking money from them by former Member of Parliament Helaluzzaman Talukder and pourashava mayor Morshed Milton and that the money of STD account no.7 was not utilized for the orphans till 2006; however, the fund stood Tk.3,37,09,757.32 with interest on 12.04.2006;

- viii) in between 12.04.2006 and 04.07.2006 through 5(five) cheques issued by Tareque Zia and Mominur Rahman Taka.3.30.00.000/- was transferred to the Prime Bank, Gulshan Branch in order to open new FDRs with the aid of Salimul Haque who had no connection or involvement with the Trust but he was the chairman/director of the said bank;
- ix) in between 12.04.2006 and 15.02.2007 i.e. within a period of nine and half months Salimul Haque and Sharfuddin made several transactions with the said money opening several FDRs and encashed those FDRs, descriptions of which are as follows:-
- (a) FDR no.41028462 dated 12.04.2006 for Taka.50,00,00,000/- in the name of Kazi Salimul Haque;
 - (b) after encashment of the said FDR another FDR no.41033338 dated 16.07.2006 for Tk.50,68,450/- was opened in the name Kazi Salimul Haque;
 - (c) FDR no.41033117 dated 09.07.2016 for Taka.80,00,000/- in the name of the Trust;
 - (d) FDR no.41032669 dated 27.06.2006 for Taka 1,00,00,000/- in the name of the Trust;
 - (e) FDR no.41032276 dated 16.06.2006 for Taka.1,00,00,000/- (in the name of Salimul Haque)
 - (f) FDR no.41022619 dated 16.11.2006 for Taka.1,03,19,365/- in the name of Salimul Haque and Sayed Ahmed and FDR no.41025535 dated 07.02.2007 for Taka 1,06,38,686 in the name of Giasuddin were opened after encashment of FDR no.41032669 in the name of the Trust and FDR no.41032276, in the name of Salimul Haque.
 - (g) FDR no.41025511 dated 07.02.2007 for Taka.1,04,32,957.80 was opened in the name of Giasuddin Ahmed after encashment of FDR no.41022619 which was in the name of Salimul Haque and Sayed Ahmed,
 - (h) FDR nos.41025535 and 41022619 in the name of Giasuddin were encashed on 15.02.2007 and by 6(six) payment orders in total Taka.2,10,71,643.80 was deposited in the account of Sharfuddin being no.11013134 with the Prime Bank, New Eskatan Branch; and
 - (i) Finally, convict Sharfuddin withdrew the said money from his said account on different occasions. [underlines supplied to give emphasis]

147. From the above undisputed factual scenario it is crystal clear-how a huge amount of money of the PM's Orphanage Fund was disposed of in an illegal and unusual manner, in other words dishonestly and fraudulently.

148. It is pertinent to mention here that DW-1 Sharfuddin in his deposition admitted about the above two FDRs, one in the joint name of Salimul Haque and Sayed Ahmed and another in the name of Giasuddin Ahmed. After encashment of both the FDRs money was deposited in the account of Sharfuddin through 6(six) payment orders. Admittedly, Giasuddin is the elder brother and Sayed Ahmed is the son of Sharfuddin. Said Giasuddin and Sayed Ahmed were not charge sheeted as after investigation it was found that Salimul Haque and Sharfuddin fraudulently used their names for the purpose of opening the FDRs and encashed those. Giasuddin is an American immigrant and he has been residing there long before the alleged occurrence.

149. In view of the above undisputed facts let us decide the very crucial issue whether money of the PM's orphanage fund was misappropriated or not and if it is found proved then question is by whom and who aided or facilitated to do so.

150. In this particular case the key arraignment is that the alleged huge amount of fund deposited and dealt with in the account of PM's Orphanage Fund was aimed to nobility of ensuring welfare of orphans. But the management and use of the said fund was contrary to the terms aim and objects of the entrustment and obligation of Prime Minister Begum Zia, the principal accused who had dominion and control over the fund which tantamount to misappropriation constituting the offence of criminal breach of trust.

151. In section 405 of the Penal Code the words used are “. . . or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied” very significant.

152. Any use of trust wealth/property other than any purpose for which trust is to be discharged would and should amount to ‘**Criminal breach of trust**’.

153. The term misappropriation again deserves its ordinary dictionary meaning. The assumption of any right or exercise thereof will amount to appropriation of the property. In light of the argument above, it is considered that the money of the PM's Orphanage Fund was indeed held in trust for the use of the welfare of the orphans or for charitable purposes. The assumption of any right or exercise thereof of any part of that money, for any purpose other than charity or for public use, is thus misappropriation of such rights.

154. In the instant case it is evident that on 02.06.1991 a bank account being no.5416 was opened with the Sonali Bank, Ramna Corporate Branch, Dhaka in the name of PM's Orphanage Fund. Intention was to secure well-being of orphans by creating ‘Trust’ using the fund. Begum Zia as Prime Minister received foreign fund amounting to Taka 4,44,81,216.00, one week later which was deposited to the account of PM's Orphanage Fund. The account was operated by the Prime Minister's secretary Kamal Siddique, a senior public servant, on behalf of Prime Minister Begum Zia and such entrustment obviously made Begum Zia obligated and responsible to ensure due and proper use of the fund in achieving purpose of creating the ‘Fund’. PM's Secretary as the key official of Prime Minister Begum Zia had role to act in ensuring proper use of the fund. For the ‘Fund’ deposited in the account was for ‘specific purpose’ as the same came to dominion and control of Prime Minister Begum Zia.

155. What happened next? It is evident that the fund so deposited in the account of PM's Orphanage Fund remained inactive for more than 2(two) years. Finally, in November, 1993 two years later two Trusts were created one was Zia Orphanage Trust and another was Zia Memorial Trust. Fifty percent of the fund was then transferred to Zia Orphanage Trust and rest fifty percent fund was allowed to be used by Zia Memorial Trust for the purpose of which it was meant.

156. It is evident too that Zia Orphanage Trust did not exist at all. Forming said Trust was confined to paper showing its office at the residence of Prime Minister Begum Zia. It also transpires that in 1994 only about 3 lacs Taka was spent only from the Trust fund for purchasing land and from the evidence of PWs 27 and 28 it transpires that there is no structure or establishment on the said land and the land was given ‘lease’ to various persons by two persons namely Helaluzzaman Talukder, Ex MP and Morshed Milton, Ex Mayor of Gabtoli Pourashava who were not at all connected with the Trust.

157. The expression ‘**entrustment**’ carries with it the implication that manner of allowing the fund to be used for welfare of orphans by forming the Trust created a fiduciary relationship between Begum Zia and the accused persons of whom the same were formed. Be that as it may, obligation of Begum Zia did not extinguish in keeping vigilance on due use of the fund even after forming the Trust as the said Trust was formed in the name of her late husband and her two sons and one nephew were made settlor and trustees showing its address at her own residence. Facts of the case fairly and legally indicate that dominion of Begum Zia over the fund did not come to an end merely with allowing it to be used by the Trust formed.

158. What about the rest of the ‘Fund’ over which ‘dominion’ or ‘control’ of Prime Minister did not come to cessation? It is evident that in 2006, i.e. long 13 years after creation of so called paper Trust the rest of the fund i.e. almost the entire fund was made deposited as FDRs in the accounts of Salimul Haque, Sayed Ahmed and Giasuddin and finally the fund was transferred to Sharfuddin’s account. We have already noticed that the names of Sayed Ahmed and Giasuddin were used in the alleged transactions by the convicts, though said two persons were not involved with the process in commission of the offence.

159. Why the fund was so transferred to the accounts of Salimul Haque and Sharfuddin, particularly long 13 years after creating so called paper Trust. Salimul Haque and Sharfuddin knowing the fund to be misappropriated fraudulently allowed it to be made deposited in their accounts as FDRs and current account respectively.

160. Main collusion happened between Begum Zia and the other convicts of which the paper Trust was formed. Conscious failure and deliberate inaction of Begum Zia made space in enjoying the fund dishonestly and fraudulently for long 13 years. Non-spending the fund for welfare of orphans in any manner reflects the *mens rea* of Begum Zia, her secretary Kamal Siddique and the accused persons of whom the Trust were formed.

161. Intention was not pious indeed. Instead of using the fund for welfare of orphans for which purpose the same got deposited in PM’s Orphanage Fund, the trusts had kept it with them for years together fraudulently and dishonestly. It leads to conclude that the Trust was not in actual existence and the so called Trust had carried such fraudulent act obviously within the knowledge and indulgence of Begum Zia.

162. Admittedly the Trust was formed of two sons and one near relative of Begum Zia presumably, they did it with culpable suzerainty and on explicit endorsement of Begum Zia. The facts unveiled suggest the conclusion that Begum Zia knowingly and in violation of obligation, allowed the fund to be dealt with dishonestly by the Trust leading to its misappropriation.

163. The fund was handed over to the Trust which was eventually disposed of or used contrary to the terms and object of the fund, although, the Trust was not in actual existence. The same was a mere paper Trust, we have already find it.

164. There are two distinct parts involved in the commission of the offence of criminal breach of trust. The first consists of the creation of an obligation in relation to the property over which dominion or control was acquired by convict Begum Zia. The second is misappropriation or dealing with or dispose of the property dishonestly and contrary to the obligation created.

165. The fact of non-functioning of the Trust and keeping the fund in the account of the said Trust for long 13 years together indisputably lead to infer that act and omission of inaction on the part of Begum Zia, as found patent allowed causing wrongful gain of other constituting the act of the misappropriation of the 'Fund' and such act of Begum Zia had nexus of dishonest intention agreeing with which the accused persons of whom the so called paper Trust was formed and also dealt with the fund fraudulently.

166. Thus the persons who happen to be the sons and near relative of Begum Zia were active part of the criminal enterprise and they deliberately abstained from ensuring due use of the fund which was meant to the welfare of orphans. And this factual aspect leads us to hold that they planned to go with such inaction with dishonest intention on endorsement of Begum Zia.

167. Upon scrutiny of the account statements of the Trust account being STD no.7 which is available in material exhibit-I series, it reveals that after transfer of Taka 2,33,33,500/- from the PM's Orphanage Fund to the said account on 15.11.1993 no one donated/gifted any money to the said Trust account for raising it's fund till 12.04.2006 i.e. when the money of STD account no.7 was transferred to the accounts of Salimul Haque and Sharfuddin, and that no money was spent from the Trust fund for the welfare of the orphans for last 13 years, save and except Taka 4,00,000/- for purchasing land in Bogura. From the evidence of PWs 27 and 28 and exhibit-15, a report of upazila nirbahi office, Gabtoli it also transpires that the purchased land in the name of the Trust was agricultural land and same was given lease to various persons by the then local member of parliament and pourashava mayor who were not related with the Trust, and that the lease money were also not deposited in the Trust account, and that on the land there was no structure of any orphanage.

168. From the above factual scenario we may also be validly and legally inferred that money of the PM's Orphanage Fund was transferred to the so-called Trust account with a criminal design in order to grab the same.

169. It appears that the fund was made deposited as FDRs in the account of Salimul Haque and two other persons namely Giasuddin and Sayed Ahmed, the elder brother and son of Sharfuddin respectively and Sharfuddin in year 2006-2007. Why the trustees and settlor opted to make the fund so shifted after keeping it under their control for long 13 years? And why within a period of nine and half months (12.04.2006-15.02.2007) so many FDRs were opened and then encashed in the haste manner?

170. From this fact, it may be inferred that intention of such act was dishonest indeed. Salimul Haque and Sharfuddin in favour of whom the fund was made deposited were not lawfully entitled to deal with the fund or to use it for welfare of orphans. These two convict had aided and facilitated to execute the planned fraudulent and dishonest intention of the principal accused Begum Zia and the settlor of the Trust Tareque Rahman and the trustees Arafat Rahman and Mominur Rahman. All the accused did it knowing the dishonest intention of using the fund i.e. misappropriation.

171. It transpires that in 2006, at the ending phase of the regime of BNP Government they did it intending to secure wrongful gain by grabbing the fund fraudulently which was the upshot of 'dishonest intention'. Evidence shows that within a short period, 2006-2007, the convicted persons made several transactions opening several FDRs and encashed those. Even, in their fraudulent transactions they used the name of two other persons, namely Sayed

Ahmed and Giasuddin who were not actually involved with the process of alleged transactions.

172. It is not believable that without the knowledge and endorsement of Begum Zia the fund was so transferred in the accounts of other convict persons. For Begum Zia in no way can be exonerated of liability and obligation of such dishonest intention. Besides, Begum Zia was the key person on deliberate failure and endorsement of whom the fund was eventually misappropriated.

173. Begum Zia, trustees and settlor of so called Trust formed in collaboration with each other for reaching dishonest intention eventually took hold of and misappropriated the fund. In absence of any legitimate explanation the act of shifting the fund in the accounts of two other convict persons obviously happened within the knowledge of Begum Zia, the facts suggest it irresistibly. Shifting the fund in such a manner, long 13 years after the so called Trust was formed is a fact that had material nexus with the act of misappropriation of the fund.

174. Purpose of receiving the fund was to use it for welfare of orphans. Begum Zia as the Prime Minister was the principal person who was supposed to ensure prompt and due use of the said fund. But she instead of doing it consciously allowed her secretary, sons and near relative engaging those with the so called Trust to deal with the same in a manner contrary to terms of obligation created to her by virtue of entrustment and dominion over it.

175. Facilitating misappropriation of the fund which was meant to be used for welfare of orphans, particularly when Begum Zia, the Prime Minister, had entrustment and dominion over it indisputably shocks the human conscience and such act reflects a mindset derogatory to humankind. Obviously Begum Zia had liability and obligation to look after whether the Trust so formed was in actual existence. But she did not do it. Thus Begum Zia was a conscious part of a designed plan to the criminal acts constituting the offence of **Criminal breach of Trust** as defined in section 405 of Penal Code.

176. ‘**Criminal Misconduct**’- has been defined in section 5(1) of the Prevention of Corruption Act, 1947, which runs as follows:

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

(a)

(b)

(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 as public servant, obtains [or attempts to obtain] for himself or for other person any valuable thing or pecuniary advantage. [underlines supplied]

177. The wordings of last portion of section 5(1)(c) of the Prevention of Corruption Act, 1947 are “. . . **or allowed any other person to do so**”. These wordings are very significant and its amplitude is much wider. The meaning put on the word ‘**allows**’ would certainly be different from ‘dishonest misappropriation’ by the offender himself. It may be that the word can mean allowing by negligence or without any violation on the part of the offender.

178. In view of the section 5(1)(c) of the Prevention of Corruption Act,1947 if a public servant allows another person to dishonestly or fraudulently misappropriate or otherwise convert for his own use any property so entrusted, then it is an offence. [Reference: **OM Prakash Gupta Vs. State of UP, AIR 1957, SC 458**]

179. In this particular case it is well founded that Begum Zia allowed other convicts to misappropriate the fund so entrusted to her and as such it is also an offence within the mischief of section 5(1)(c) of the Prevention of Corruption Act,1947. In view of the proposition inunciated in the above cited case whether Begum Zia allowed the other convicts to do so by negligence or consciously that is immaterial.

180. Attempt to commit an offence of 'Criminal Misconduct' is also an offence within the mischief of section 5(2) of the Prevention of Corruption Act,1947 and the above provision also provides punishment for such offence.

181. Act or conduct and culpable inaction of Begum Zia and next, activities carries out in dealing with the fund going beyond the terms of entrustment formed 'collective criminality' and reciprocal connivance to which all the accused persons were conscious part, sharing intent to effect misappropriation of the fund or cause wrongful gain of own or of others.

182. Providing aid to commit an offence is one of ingredients to constitute 'abetment'. An act of providing intentional aid to a person in committing an offence refers to abetment. Totality of facts unveiled suggest the conclusion that accused Salimul Haque and Sharfuddin consciously allowed the fund to be made so deposited in their accounts and thereby they aided accomplishment of the fact of misappropriation of the fund. Such culpable act of these two convict formed part of collective criminality. In this way, these two convict along with others participated as abettors so as to facilitate the principal offender towards materializing the criminal and fraudulent design in committing the offence.

183. There has been nothing to show that without being aware about the purpose of the fund, culpable inaction on part of the principal accused having dominion over the same in using it for the welfare of orphans and sham creation of trusts these two convict made them engaged with the criminal mission, by allowing the fund to be deposited as FDR in their accounts.

184. In view of the above, we are unable to accept the submission of the learned Advocates for convict Salimul Haque and Sharfuddin that the said two convict did not abet Begum Zia in commission of the offence in 1993 when money was transferred in the account of the Trust and thus, said two convicts at best can be found guilty under section 411 of the Penal Code instead of sections 409/109 of the Penal Code.

185. Whether the offence which started in the year 1993 and ended in 2007 is a single transaction-

The case at hand has its origin a certain sum of money of the PM's orphanage fund. Some portion of the fund was transferred to a so-called paper trust namely Zia Orphanage Trust in the year 1993. After 13 years the money along with interest was later moved from the Trust account unlawfully, in 2006 without doing any charity in particular for the orphans. The money was later moved in 2006 to the FDR account of Salimul Haque and two others, who then transferred the money again to Sharfuddin's account. Considering all of these separate transactions relates to the same money,

arising out of the same origin point PM's orphanage fund, it can well be argued and indeed considered for these transactions to be rooted in the same origin. Hence, these transactions can be considered to be one single and continuous transaction although they are separated by a number of years.

186. Plea of Alibi:

We have already noticed and discussed about the plea of alibi of convict Begum Zia that PM's Orphanage Fund was not a public fund and that the Amir of Kuwait donoted the money for Zia Orphanage Trust, not for PM's orphanage fund, for charitable purpose, and there was no fund in Prime Minister's office in the name of PM's Orphanage Fund.

187. In the instant case on behalf of Begum Zia save and except an application under section 57(6) of the Evidence Act, which was filed to accept the Noterial Certificate and Photostat copy of a letter dated 11.08.2015 issued by the Embassy of Kuwait in Bangladesh, no steps were taken to prove her alibi. On the above alleged letter issued by the Embassy of Kuwait we have already made our observations.

188. Sharfuiddin by examining 3 witnesses including himself had tried to establish his plea of alibi that he received the alleged money for selling 74½ decimals of land to the Trust and returned the said money in compliance of the Court's decree.

189. The learned Special Judge upon consideration and appreciation of the evidence adduced on behalf of Sharfuiddin has observed as under:

“উপরোক্ত সাক্ষীর বক্তব্য থেকে লক্ষ করা যায় যে, জিয়া অরফানেজ ট্রাস্ট এবং আসামী শরফুদ্দীন আহমেদের মধ্যে আশুলিয়া মৌজার ৭৪.৫ শতক জমি ক্রয়-বিক্রয়ের জন্য ১৬/১১/২০০৬ তারিখে একটি বায়নাপত্র সম্পাদিত হয়। উহা আন-রেজিস্টার্ড বায়নাপত্র ছিল। ২০০৪ সনের পরে বায়নাপত্র রেজিস্ট্রি করা বাধ্যতামূলক হওয়া সত্ত্বেও আইনের বরখেলাপ করে উপরোক্ত বায়নাপত্রটি সম্পাদন করা হয়। সম্পত্তির মূল্য ৩ কোটি ২৫ লক্ষ টাকা নির্ধারণ করা হয়। উহার মধ্যে ২ কোটি ২৫ লক্ষ টাকা মূল্যের ২টি পে-অর্ডার দেয়া হয়। জনৈক এনামুল হক (যিনি ট্রাস্ট দলিলের কোন পক্ষ নন) ঐ টাকা আসামী শরফুদ্দীনকে বায়না বাবদ প্রদান করেন মর্মে সাক্ষীর সাক্ষ্য থেকে দেখা যায়। ঐ টাকা এনামুল হক কিভাবে পেয়েছেন তা স্পষ্ট নয়। তর্কের খাতিরে যদি ধরে নেয়া যায় যে, সত্যিকার অর্থেই জিয়া অরফানেজ ট্রাস্ট ও আসামী শরফুদ্দীনের মধ্যে জমি কেনা বেচার একটা বায়নাপত্র সম্পাদিত হয়েছিল তথাপি ট্রাস্টের পক্ষে উহার ট্রাস্টীদের যথা আসামী তারেক রহমান, আরাফাত রহমান ও মমিনুর রহমান এর উচিত ছিল সম্পত্তির অস্তিত্ব আদৌ আছে কি না উহার খোঁজ করা। ডি.ডব্লিউ-৩ এর সাক্ষ্য থেকে আরো দেখা যায় যে, তিনি জিয়া অরফানেজ ট্রাস্টের পক্ষে টাকা আদায়ের জন্য আসামী শরফুদ্দীন আহমেদের বিরুদ্ধে মানি মামলা দায়ের করেছেন। তিনি চুক্তি সুনির্দিষ্টভাবে বাস্তবায়নের জন্য তথা নালিশী সম্পত্তি বায়না পত্রের ভিত্তিতে দলিল মূলে পাওয়ার জন্য কোন মামলা করেন নাই। আসামী শরফুদ্দীন মানি মালায় জবাব না দিলেও হঠাৎ করেই ১২/০২/২০১৩ তারিখে উক্ত মামলায় সোলেনামা দাখিল করেন। এই সাক্ষী তার সাক্ষ্য উল্লেখ করেছেন যে, তিনি উক্ত মানি মামলার আইনজীবী ছিলেন এবং সোলেনামায় স্বাক্ষর প্রদান করেছেন। তিনি উক্ত মামলার আইনজীবী হিসেবে দাবী করলেও পরক্ষণেই বলেছেন যে, ট্রাস্টের পক্ষে এনামুল হক মামলা পরিচালনা করেন। তাছাড়া বাদী পক্ষে এডভোকেট এ.এম. মাহবুব উদ্দিন আইনজীবী ছিলেন। জেরাতে এই সাক্ষী প্রসিকিউশনপক্ষের দেয়া গুরুত্বপূর্ণ প্রশ্নগুলোর জবাব না দিয়ে এড়িয়ে গেছেন।

নথি পর্যালোচনায় দেখা যায় যে, গত ২৪/০৮/২০১৭ তারিখে প্রসিকিউশনপক্ষে ঢাকার তৃতীয় যুগ্ম জেলা জজ আদালত কর্তৃক নিষ্পত্তিকৃত মানি মোকদ্দমা নং-১/২০১২ এর রেকর্ড তলব করার প্রার্থনা করা হয়। আদালত উহা মঞ্জুর করেন। উক্ত মামলার নথি থেকে লক্ষ করা যায় যে, এই মামলাটি উক্ত সাক্ষী এডভোকেট তাহেরুল ইসলাম তৌহিদ দায়ের করেন নি। উহা এডভোকেট এ.এম. মাহবুব উদ্দিন খোকন দায়ের করেছেন। সাক্ষী তার সাক্ষ্য উল্লেখ করেছেন যে, মানি ১/২০১২ মোকদ্দমায় দাখিলী সোলেনামায় আইনজীবী হিসেবে তিনি বাদীপক্ষে স্বাক্ষর করেন। সোলেনামায় উভয়পক্ষ ও তাদের পক্ষে নিয়োজিত এডভোকেটগণ স্বাক্ষর করেন। তার সাক্ষ্যে তিনি এটাও বলেছেন যে, বিবাদীপক্ষে অর্থাৎ আসামী শরফুদ্দীন আহমেদ এর পক্ষে ডি. দুলাল মুখা এডভোকেট ছিলেন এবং আইনজীবী হিসেবে তিনি মোকদ্দমায় তার পক্ষে

স্বাক্ষর করেন। কিন্তু উক্ত মানি মোকদ্দমায় দাখিলকৃত সোলেনামা পর্যালোচনা করে দেখা যায় যে, উক্ত সোলেনামায় পক্ষগণ স্বাক্ষর করেছেন মর্মে দেখা গেলেও উক্ত সোলেনামায় উভয়পক্ষের বিজ্ঞ কৌশলীদের স্বাক্ষর নাই। বাদীপক্ষে এডভোকেট হিসেবে ডি. ডব্লিউ-৩ স্বাক্ষর করলেও বিবাদী পক্ষে ডি. দুলাল মুধা স্বাক্ষর করেন নাই। কাজেই উক্ত সোলেনামার অস্তিত্বের বিষয়ে ডি. ডব্লিউ-৩ যে সাক্ষ্য প্রদান করেছেন উহা বিশ্বাস করার কোন কারণ নেই। এই সাক্ষী একবার বলেছেন তিনি মানি মামলায় আরজি দাখিল করেছেন আবার অন্য ক্ষেত্রে তিনি শুধুমাত্র সোলেনামা প্রস্তুত করেছেন মর্মে সাক্ষ্য প্রদান করেছেন। জেরাতে সাক্ষী বলেছেন যে, আদালতের মধ্যস্থতায় মানি মামলায় আপোষ হয়। কিন্তু উক্ত মামলার আদেশপত্র ও সোলেনামা পর্যালোচনায় দেখা যায় যে, উহা আদালতের মধ্যস্থতায় সম্পন্ন হয়নি। কেন না আদালতের মধ্যস্থতায় কোন মামলা আপোষ হলে সোলেনামার পক্ষগণ ও তাদের পক্ষে নিযুক্ত এডভোকেটগণের স্বাক্ষর থাকায় পাশাপাশি মধ্যস্থতাকারী হিসেবে আদালতের স্বাক্ষর ও সীল থাকা বাধ্যনীয়। সোলেনামা পর্যালোচনায় দেখা যায় যে, উক্ত দেওয়ানী কার্যবিধির অর্ডার-২৩ রুল-৩ অনুযায়ী দাখিল করা হয়। পরে কে বা কারা উক্ত অর্ডার এবং রুলের উপর ওভাররাইটিং করে সেকশন-৮৯ এ লিখেছেন এবং সেখানে কোন স্বাক্ষর বা অনু-স্বাক্ষর প্রদান করেন নাই। ইহা থেকেও ধরে নেয়া যায় যে, উক্ত সোলেনামা আদালতের মধ্যস্থতায় সম্পন্ন হয়নি এবং উহা আসামীপক্ষ কর্তৃক সৃজিত। ডি. ডব্লিউ-৩ একজন এডভোকেট হওয়া স্বত্বেও অসত্য বয়ানে আদালতে শপথ পূর্বক স্বাক্ষর দিয়ে মিথ্যাকে সত্য রূপান্তরের চেষ্টা করেছেন। তার সার্বিক সাক্ষ্য বিশ্লেষণ করে এই আদালত মনে করেন যে, তিনি নিরপেক্ষ সাক্ষী নয়। তিনি আসামী দ্বারা পক্ষাশ্রিত হয়ে আসামী শরফুদ্দীন আহমেদসহ অন্যান্য আসামীদের এই মামলার দায় থেকে বাঁচানোর বৃথা চেষ্টা করেছেন মাত্র। এই সাক্ষীর সাক্ষ্য থেকে আসামী শরফুদ্দীন আহমেদ কোন বেনিফিট পাবেন না। মানি মামলা-১/২০১২ একটি সৃজিত মামলা মর্মে অত্র আদালত মনে করেন। এবং উহা অত্যন্ত কৌশলের সাথে মামলা বিজ্ঞ এডভোকেট এ.এম.মাহবুব উদ্দিন খোকন আদালতে দাখিল করেছেন। সত্যিকার অর্থে যদি জিয়া অরফানেজ ট্রাস্ট এবং আসামী শরফুদ্দিনের মধ্যে জমি কেনা বেচা কোন বায়না চুক্তি সম্পাদিত হত এবং উক্ত চুক্তি মেয়াদের মধ্যে শরফুদ্দিন আহমেদ যদি বায়না টাকা সহ জমি সাকুল্যে মূল্য গ্রহন করে ক্রেতার অনুকূলে কবলা দাখিল সম্পাদন করে দিতে ব্যর্থ হত তাহলে সে ক্ষেত্রে উক্ত ট্রাস্টের পক্ষে মামলা দায়েরকারী বিজ্ঞ এডভোকেট জনাব এ.এম. মাহবুব উদ্দিন খোকন এর উচিত ছিল Specific Performance of Contract এর মামলা দায়ের করা। কিন্তু তিনি উহা দায়ের না করায় এটাই ধরে নিতে হবে যে, তারা প্রকৃতপক্ষে জমি কেনা বেচার কোন চুক্তি আসামী শরফুদ্দিন আহমেদের সাথে সম্পাদন করেন নাই। মানি স্যুট দায়ের করে এই মামলার বাদী ও আসামী শরফুদ্দিন আহমেদ কৌশলে জিয়া অরফানেজ ট্রাস্টের টাকা তথা রূপান্তরিতভাবে প্রধানমন্ত্রীর এতিম তহবিলের টাকা আত্মসাতের চেষ্টা করেছেন। কাজেই উক্ত মানি মামলাটি একটি নিষ্ফল ও দুর্বিসন্ধিমূলক মামলা মর্মে আদালত বিশ্বাস করেন।

আসামী শরফুদ্দিন আহমেদ আশুলিয়া মৌজা ৭৪.৫ শতক জমির মালিকানা দাবী করলেও সাফাই সাক্ষী প্রদানকালে তিনি বা তার পক্ষে উপস্থিত সাক্ষীর ঐ জমির কোন দলিল আদালতে দাখিল করেন নাই। ফলে ধরে নেয়া যায় যে, তিনি আদৌ ৭৪.৫ শতক জমির মালিক ছিলেন না এবং ঐ জমি বিক্রয়ের জন্য জিয়া অরফানেজ ট্রাস্টের সাথে তার কোন দিন আদৌ কোন বায়না চুক্তি সম্পাদিত হয় নাই। তিনি মানি ১/২০১২ মামলায় মিথ্যা সোলেনামা দাখিল করে সরকারি এতিম তহবিলের অর্থ আত্মসাত করার প্রক্রিয়াটি প্রকৃত প্রস্তাবে মিথ্যা প্রমাণ করার চেষ্টা করলেও ব্যর্থ হয়েছেন।

আশুলিয়া মৌজার ৭৪.৫ শতক জমির কোন কাগজ (ফববফ ড় ড়ঃঃঃঃ) আসামী আদালতে দাখিল না করায় এটাই প্রমানিত হয় যে, তিনি বর্নিত ট্রাস্টের সাথে জমি বিক্রয়ের আদৌ কোন চুক্তি সম্পাদন করেন নাই এবং ঐ কাহিনী সৃজন করে তর্কিত ২,১০,৭১,৬৪৩/৮০ টাকা আত্মসাত করেন। বস্তু প্রদর্শনী 'এ' এবং 'বি' সিরিজে যে ১৩টি পে-অর্ডারের বিষয়ে উল্লেখ করা হয়েছে উহার মুড়ি পর্যালোচনায় দেখা যায় যে, সেখানে জিয়া অরফানেজ ট্রাস্টের নামে লেখা নাই। তাছাড়া পূর্বেই উল্লেখ করা হয়েছে যে, স্বীকৃত মতেই উত্তরা ব্যাংকে জিয়া অরফানেজ ট্রাস্টের কোন হিসাব নেই।" [underlines supplied]

190. We have also examined and scrutinized the evidence of DWs.

191. DW-1, Sharfuddin in his cross examination stated that-“দাখিলা ‘ক’ চিহ্নিত কাগজটি Memorandum of understanding উহাতে এনামুল হক সাহেবকে জিয়া অরফানেজ ট্রাস্টের নামে authority দেয়া হয় মর্মে কোন কাগজপত্র আমি দাখিল করি নাই। - - - - - । আমাকে যারা টাকা দেন তারা ঐ অরফানেজ ট্রাস্টের ট্রাস্টি কিনা তা আমি জানি না। - - - - - । মানি মামলার মাধ্যমে ২ কোটি ২৫ লাখ টাকা ফেরত দেই কিন্তু জানি না যে কার নামে Trust গঠন করা হয়।”

192. DW-2, Tax-advisor of DW-1, in his cross examination stated that-“আমি আসামী শরফুদ্দিন আহমেদের আশুলিয়ার জমির মালিকানা সংক্রান্ত কাগজপত্র আয়কর রিটার্নে ঢুকাই নাই। আসামী শরফুদ্দিন কবে ও কিভাবে আশুলিয়ার জমির মালিক হন ঐ মর্মে কোন কাগজপত্র অংবৎসবহঃ এর সময় আমি দেখি নাই। এবং আজও কোর্টে তা সাথে আনি নাই। - - - - -। ২০০৬-২০০৭ কর বছরের আয়কর রিটার্নে আশুলিয়া মৌজার কোন নাম উল্লেখ নাই। ২০০৭-০৮ কর বর্ষে আয়কর রিটার্নেও আসামীর আশুলিয়ার মৌজায় কোন জমি আছে/ছিল মর্মে লেখা নাই। - - - - -। ১১/২/১৩ থেকে ১৩/৮/১৩ তাং পর্যন্ত ১৩টি পে-অর্ডারের মাধ্যমে বর্ণিত ট্রাস্টের অনুকূলে ২ কোটি ২৫ লাখ টাকা ফেরৎ দেন মর্মে ২০১৩-১৪ কর বছরের আয়কর নথিতে কিছু লেখা নাই। সেখানে ১ কোটি ৩২ লাখ টাকা ফেরতের কথা বর্ণনা করা হয়েছে। আয়কর রিটার্নে আশুলিয়া মৌজার ৭৪.৫ শতক জমি দেখানো নাই।” [underlines supplied]

193. DW-3 who was a lawyer for the Trust in Money Suit in his cross examination stated that-“ unregistered পেপারটি ৭/৮/১৭ তাং এই আদালতে দাখিল করা হয়। এই বায়নাপত্রটি মানি স্যুটে দাখিল করা হয়নি। - - - - -। ট্রাস্টের পক্ষে এনামুল হক সাহেব মামলা পরিচালনা করেন। Authorise letter টি কোর্টে দাখিল নাই। - - - - -। জিয়া অরফানেজ ট্রাস্টের যে এনামুল হকের কথা বলা হয়েছে তার কোন স্থায়ী অস্থায়ী ঠিকানা দেয়া নেই, তবে মানি স্যুটের আরজিতে তার ঠিকানা ৬ মঙ্গল রোড লেখা আছে। মানি মামলার আরজিতে এনামুল হক সাহেবকে যে Authority দেয়া হয় ঐ মর্মে জিয়া অরফানেজ ট্রাস্টের ট্রাষ্টি বোর্ড তাকে Authority দিয়েছে যা Authorise letter মর্মে কোন কথা আরজির কোন পাতায় লেখা নাই বা Annexure হিসাবে আরজির সাথে যুক্ত করি নাই। - - - - -। জিয়া অরফানেজ ট্রাস্টের পক্ষে আশুলিয়া মৌজার ৭৪.৫ শতক জমি ক্রয়ের জন্য বায়নাপত্র মূলে জমির মালিককে দেয়া টাকা ফেরৎ নেয়ার জন্য ট্রাস্টের পক্ষে জনাব তারেক রহমান ঝংঃঃঃঃঃ হিসেবে এনামুল হককে মামলা করার জন্য Authorit দেয় কিনা তা মানি মামলার আরজিতে উল্লেখ করা হয়নি। - - - - -। দাখিলা Memorandum of Agreement এ জিয়া অরফানেজ ট্রাস্টের কোন Trustee সাক্ষী হিসেবে স্বাক্ষর দেন নাই। তেমনিভাবে কোন Trustee উহা সত্যায়িতও করেন নাই।” [underlines supplied]

194. In view of the above assertions made by the DWs we have no hesitation to hold that the alleged compromise decree obtained in Money Suit No.1 of 2012 is afterthought and collusive one and the convicts in order to save them from criminal liability did such fraudulent act. Admittedly, charge sheet was submitted against the convicts on 05.08.2009. After about 4 years of submission of charge sheet the alleged Money Suit was filed and the convicts very hurriedly managed to get a so called compromise decree from the Court. If we consider this factual aspect coupled with the prosecution evidence and other circumstances then the *mens rea*, dishonest and fraudulent intention of the accused persons in commission of the offence of misappropriation are crystal clear.

195. In the case of **G.R Farland, AIR 1961, AP-3** it has been held that in a case of misappropriation of property entrusted with an accused, if the accused gives an explanation, which is found to be false the setting up the false defence would impute to him a fraudulent and dishonest intention.

196. This view has also been reiterated in the case of **Krishna Kumar Vs. Union of India, AIR 1959(SC) 1390**.

197. In the case of **Mustafikhar Vs. State of Maharastra reported in (2007)1 SCC, page-623** it has been held that:

“It is not necessary or possible in every case to prove as to in what precise manner the accused had dealt with or appropriated the goods. In a case of criminal breach of trust, the failure to account for the money, proved to have been received by the accused or giving a false account of its use is generally considered to be a strong circumstance against the accused. Although onus lies on the prosecution to prove the charge against the accused, yet where the entrustment is proved or admitted it would be difficult for

the prosecution to prove the actual mode and manner of misappropriation and in such a case the prosecution would have to rely largely on the trust or falsity of the explanation given by the accused. In the instant case, there is no dispute about the entrustment.”

198. Section 103 and Section 106 of the Evidence Act one as follows:

103. Burden of proof as to particular fact- the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

199. 106. Burden of proving fact especially within knowledge- when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

200. Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused.

201. In **Shambu Nath Mehra vs. State of Ajmer, AIR 1956 SC 404: 1956 SCR 199:** the following legal principle has been enunciated:

“This lays down the general rule that in a criminal case the burden of proof is on the prosecution and section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are ‘especially’ within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word ‘especially’ stresses that. It means facts that are pre-eminently or exceptionally within his knowledge.” [Under lines supplied]

202. In the case of **State of WB Vs. Mir Mohammad Omar**, reported in AIR 2000 SC, page-2988, it has been held that:

“The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which drive the court to draw a different inference.”

And

“The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilized doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage the offenders in serious offences would be the major beneficiaries, and the society would be the casualty.” (Underlines supplied)

203. In the case of **State of H.P Vs. Karanvir**, reported in 2006 cri. L.J, page-2917 it has been held that:

“The actual manner of misappropriation, it is well settled, is not required to be proved by the prosecution. Once entrustment is proved, it was for the accused to prove as to how the property entrusted to him was dealt with in view of Section 405 of the IPC. If

the respondent had failed to produce any material for this purpose, the prosecution should not suffer therefor". [Underlines supplied]

204. In view of the above settled propositions in absence of any valid and legal explanation whatsoever we have no scope to accept the plea of alibi as taken by the convicts. Moreso, we have already observed that the prosecution has been able to prove it's case against the convicts beyond doubt.

205. Whether further investigation for collecting evidence to ascertain the source of the DD deposited in PM's Orphanage Fund is at all necessary at this stage-

The learned Advocates for Begum Zia repeatedly urged for further investigation of the case to ascertain the identity of the sender of the alleged DD deposited in the account of the PM's Orphanage Fund. It was suggested by the defence that said money was sent by the Amir of Kuwait for Zia Orphanage Trust, not PM's Orphanage Fund.

206. It is evident from the evidence of PW-26 and PW-31 that the investigating agency tried it's best to know the identity of the sender of the DD; but the investigating agency could not identify it because the DD issuing Bank United Saudi Commercial Bank was no longer in operation and in 1995 the said bank was merged with the SAMBA FINANCIAL GROUP. The authority of said Group was contacted by the investigating agency through Bangladesh Embassy in Riyad and Relationship Manager of the Group Mr. Tala Al-Otaibi, informed the Bangladesh Embassy through E-mail, exhibit-26 that it would take more time to provide information regarding the DD as the same was an old one and they would provide information if they could collect information as sought for.

207. It is our considered view that in this particular case identity of the sender of the alleged DD is not at all an incriminating issue. It is to be the prime consideration that a foreign donation was received by the Prime Minister's Office through the alleged DD for the PM's Orphanage Fund, which was created for the well being of the orphans of the country and thereafter the said DD was deposited in the account of PM's Orphanage Fund being account no.5416, over which Prime Minister Begum Zia had entrustment and dominion as we have already held. For the sake of argument, if we accept the contention of the learned Advocates for Begum Zia that the DD was sent by the Amir of Kuwait then question arises as to 'what benefit Begum Zia will get' from it. We are of the view that it will not in any way help Begum Zia.

208. It can not be possible for any one to change the nature and object of the PM's Orphanage Fund, which was a public fund. There is no scope to treat the PM's Orphanage Fund as the Fund of Zia Orphanage Trust as argued by the learned Advocates for Begum Zia and on that issue we have already made our observations. On the DD itself it was clearly mentioned that same was issued in favour of PM's Orphanage Fund, A/C no.5416 Sonali Bank, Ramna Corporate Branch, Dhaka. Moreover, the witnesses, in particular PW-1, PW-26 and PW-31 were throughly cross examined by the deffence on the said issue and thus, the question of being Begum Zia prejudiced does not arise at all.

209. Thus, we are unable to accept the fruitless as well as misconceived submission of the learned Advocates for Begum Zia.

210. Moreover, there is no provision in any relevant laws or Code of Criminal Procedure wherby an accused can sought further investigation. It is well settled that there is no scope to pass any order for further investigation at the instance of a charge sheeted accused or a convict during pendency of an appeal in order to collect more evidence. Thus, the attempt of

Begum Zia for further investigation into the case at this stage is beyond the scope of law and deserves no consideration.

211. Whether the present case against Begum Zia is a politically motive case-

It has been attempted, on part of Begum Zia to label the case as politically motivated and thereby moved to exonerate her. But from the facts unfolded in evidence it transpires that the prosecution was initiated not on any political ground and Begum Zia has been brought to justice for specific arraignment constituting an offence punishable under the Penal Law. Thus she does not deserve any exception or immunity by virtue of being in the political opposition. Begum Zia has been prosecuted and tried in compliance with established lawful procedure governing investigations and trial.

212. We further reiterate that no one is above the law and even a person having potential political identity is not immuned from being prosecuted and tried if he or she is arraigned to have committed an offence.

213. Political affiliation of an accused does not deserve to be considered, as blanket immunity in arriving at decision as to his or her guilt and culpability. Facts and circumstances unveiled in evidence tendered by the prosecution led the trial court in arriving at decision, not the political identity of the accused. It has also been depicted that during trial Begum Zia got all defence rights permitted by law and prosecutorial procedures.

214. Thus, merely for the reason of political identity of a person prosecuted for an offence punishable under the penal law it cannot be said that she has been brought to justice on political victimization. In the case in hand, it is rather evident that in exercise of political position and identity togher with the office of the head of the government Begum Zia is found to have had committed a penal offence which is found to have been proved beyond reasonable doubt. It would be a dangerous precedent indeed for the future if any such mere political identity is taken into account in the process of lawful adjudication of a criminal arraignment.

Conclusion and decisions:

215. The learned Special Judge found guilty to all the appellants under sections 409/109 of the Penal Code as well as section 5(2) of the Prevention of Corruption Act, 1947 read with section 109 of the Penal Code. However, the leanred Special Judge having considered the provision of section 26 of the General Clauses Act coupled with the principle of law enunciated in the cases of ATM Nazimullah Chowdhury VS. The State, reported in 65 DLR, page 500 and Kazi Ahmed Bazlul Karim Vs. The State, reported in 11 BLC, page 60, awarded sentence to the convicts only under sections 409/109 of the Penal Code.

216. We have already hold that Begum Zia had entrustment and dominion over the PM's Orphanage Fund, a public fund and a huge amount of money of the said fund was disposed of, used and misappropriated dishonesly by Begum Zia with the active aid of other convicts. In the instant case Begum Zia is the principal offender and other convicts actively aided and facilitated to commit such offence.

217. Thus, it is our considered view that it is not proper to convict the principal offender Begum Zia under sections 409/109 of the Penal Code. Rather, Begum Zia being the principal offender is guilty of committing offence under section 409 of the Penal Code as well as section 5(2) of the Prevention of Corruption Act, 1947. And Begum Zia is to be sentenced only under section 409 of the Penal Code in view of the provision of section 26 of the General Clauses Act.

218. Conviction and sentence of other convict appellants under sections 409/109 of the Penal Code deserves no consideration.

219. In awarding sentence to Begum Zia the learned Special Judge has considered her age, social and political status and quantum of misappropriated money. We do not find any legal justification and cogent ground to award lesser punishment to the principal offender Begum Zia than the other convicts who were the abators, considering her political and social status.

220. It was the obligation of the principal accused Begum Zia to secure due and proper use of the fund obtained, for the welfare of orphans. But in exercise of the highest office of the government she rather allowed her sons, relative and party men in misdealing the fund with fraudulent intention by creating fake Trust. She being at the helm of power at the relevant time rather abused the chair of the premier of a country. It was a ruthless blow to the sanctity of state machineries as well. It derogated the image of the country to the global community. Abusing the highest chair of the government, Begum Zia was not expected to remain mute for years together in securing due and proper use of the fund over which she had entrustment. Deliberate and culpable inaction on her part appeared as the key part of the criminal design which was intended to deprive the orphans. All these cumulatively aggravated the nature and pattern of the offence for which she has been found guilty.

221. Today, corruption which includes financial crime also in our country not only poses a grave danger to the concept of good governance, it also threatens the very foundation of the democracy, social justice and the Rule of Law. It is beyond controversy that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values of our constitution. Thus, the duty of the court is to work in such a manner to strengthen the fight against corruption. Therefore, there is no scope to take a lenient view in awarding punishment to an accused against whom charge has been proved considering his/her social and/or political position.

222. Taking the above facts into account we consider it appropriate that justice would be met if the maximum sentence prescribed in section 409 of the Penal Code is awarded to Begum Zia so that the persons enjoying the highest position in any organ or any public office of the State thinks twice to go ahead with such criminal design in coming days.

223. Section 409 of the Penal Code prescribed punishment with imprisonment for life or with imprisonment for a term which may extend to ten years with fine. In the instant case since the learned Special Judge awarded sentence to the other convicts for 10 years rigorous imprisonment with fine, we are of view that it would be legal, proper and just to award the same sentence to Begum Zia.

224. In the result, the Appeals fail and are dismissed. The Rule is made absolute.

225. Conviction and sentence of convict Kazi Salimul Haque alias Kazi Kamal and Sharfuddin Ahmed as awarded by the learned Special Judge is hereby maintained.

226. Begum Khaleda Zia is convicted under section 409 of the Penal Code and section 5(2) of the Prevention of Corruption Act, 1947 and she is sentenced only under section 409 of the Penal Code to suffer rigorous imprisonment for a period of 10(ten) years and also to pay fine as imposed by the learned Special Judge.

227. Send down the lower court records with a copy of this judgment and order at once to the court concerned for informations and necessary steps.