

18 SCOB [2023] HCD 54**HIGH COURT DIVISION**

(CRIMINAL REVISIONAL JURISDICTION)

Criminal Revision No. 4588 of 2022**Sultana Fahmida****Vs.****The State and another**

Mr. Md. Syed Ahmed, Senior Advocate
and Mr. Mostafizur Rahman Khan,
Advocate with Mr. Partha Sharathi Ray,
Advocate

....For the accused-petitioner.

Mr. A K M Amin Uddin, D.A.G with Ms.
Anna Khanam Koli, A.A.G Mr. Md.
Shaifour Rahman Siddique, A.A.G

.....For the State-opposite party.

Mr. Md. Ashif Hasan, Advocate,

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

Mr. Md. Munsurul Hoque Chowdhury,
Senior Advocate with
Mr. Mohammad Shafiqul Islam Ripon,
Advocate

..... For the Opposite-party No. 03.

Mr. Farhad Ahmed, Advocate

.....For the Opposite-party No. 04.

Mr. Pankaj Kumar Kundu, Advocate with
Mr. Abu Saleh Ahmadul Hasan, Advocate

....For the Opposite-party Nos. 5-7.

Mr. Md. Khurshid Alam Khan, Senior
AdvocateAmicus Curiae.

Heard and judgment on: 14.03.2023

Present:**Mr. Justice Md. Nazrul Islam Talukder****And****Mr. Justice Khizir Hayat****Editors' Note:**

An FIR was lodged against the accused-persons for withdrawing an amount of Tk. 26,58,98,126/ from Dhaka Bank Limited, Dhanmondi Branch against 17 export bills misusing and abusing power and authority. Charge sheet was submitted against the accused-petitioner and others. Thereafter, the case record was transmitted to the learned Special Judge, Court No. 8, Dhaka for holding trial and the learned trial Judge framed charge against the accused-petitioners and others rejecting the application for discharge filed by the accused-petitioner. Being aggrieved, the accused-petitioner filed this Criminal Revision. The High Court Division issued Rule as to why the order passed by the trial Court should not be set aside. Further, it issued a *Suo Muto* Rule calling upon the opposite-parties to show cause as to why the order dated 25.11.2021 passed by the trial Court discharging one accused shall not be set aside. In course of hearing the High Court Division found that though names of some other persons other than the accused have been disclosed in prosecution materials, they have not been made accused in the instant case which resulted in making the investigation perfunctory in nature. Therefore, the High Court Division considering facts and circumstances of the case disposed of both the Rule and *Suo Motu* Rule with a direction upon the Anti-Corruption Commission to hold further investigation setting aside the orders accepting charge sheet and framing charge against the accused.

Key Words:

Money Laundering; Sections 409/420/109 of the Penal Code; Sections 4(2) and 4 (3) of the Money Laundering Protirodh Ain, 2012; Section 5(2) of the Prevention of Corruption Act, 1947

It is now well settled that a criminal case having criminal liability cannot be avoided due to departmental proceeding against the accused. (Para 39)

Exercise of revisional jurisdiction of High Court Division to ensure justice under Section 439 of CrPC:

On an application by a party or which otherwise comes to its knowledge, High Court Division is legally competent to exercise its revisional jurisdiction under Section 439 of the Code of Criminal Procedure to examine the facts and circumstances of the case and the judgment and the order if there is any error which may not ensure justice to the litigant public in not following the correct principles of law and fact in assessing the material and evidence in proper perspective and in that case, High Court Division may, in its discretion, exercise any of the powers conferred on a court of appeal by Sections 423, 426, 427 and 428 or on a court by Section 338. (Para- 52)

Failure of Prosecution to implicate responsible Persons within the Chain of Occurrence:

Under the circumstances, it is worthwhile to mention that the prosecution case cannot continue on a defective foundation of a case since the necessary and responsible persons who are involved in the alleged offences within the chain of occurrence are not implicated in this case making them accused. (Para-54)

JUDGMENT

Md. Nazrul Islam Talukder, J:

1. On an application under Section 10(1A) of the Criminal Law Amendment Act, 1958, this Rule, at the instance of the accused-petitioner, was issued calling upon the opposite-parties to show cause as to why the order dated 28.09.2022 passed by the learned Special Judge, Court No. 08, Dhaka in Special Case No. 07 of 2022 (Metropolitan Special Sessions Case No. 55 of 2021) arising out of Dhanmondi Police Station Case No. 14 dated 23.12.2018 corresponding to Dudok G.R. No. 99 of 2018 rejecting the application under Section 241A of the Code of Criminal Procedure and thereby framing charge against the accused-petitioner under Sections 4(2) and 4 (3) of the Money Laundering Protirodh Ain, 2012 read with Sections 409/420/109 of the Penal Code along with Section 5(2) of the Prevention of Corruption Act, 1947, now pending in the Court of learned Special Judge, Court No. 8, Dhaka, should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper and as to why a direction shall not be given upon the opposite-parties to implicate the persons who are involved in the commission of offences as have been disclosed in the prosecution materials.

2. Further, a Suo Muto Rule was also issued calling upon the opposite-parties to show cause as to why the order dated 25.11.2021 passed by the learned Metropolitan Special Judge, Court No. 8, Dhaka discharging the accused Md. Aminul Islam (Banker), son of ATM Shariful Islam, shall not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

3. It may be noted that at the time of issuance of the Rule, all further proceeding of Special Case No. 07 of 2022 (Metropolitan Special Sessions Case No. 55 of 2021) arising out of Dhanmondi Police Station Case No. 14 dated 23.12.2018 corresponding to Dudok G.R.

No. 99 of 2018 rejecting the application under Section 241A of the Code of Criminal Procedure and thereby framing charge against the accused-petitioner under Sections 4(2) and 4 (3) of the Money Laundering Protirodh Ain, 2012 read with Sections 409/420/109 of the Penal Code along with Section 5(2) of the Prevention of Corruption Act, 1947, now pending in the Court of learned Special Judge, Court No. 8, Dhaka, was stayed for the time being.

4. Apart from the above, this court, by an order dated 02.03.2023, directed the investigating officer to explain as to why he submitted final report against accused Md. Aminul Islam and why he did not implicate opposite-party Nos.4-7 in the case and why he failed to explain all the facts and circumstances to the Commission at the time of giving sanction under Section 32 of the Anti-Corruption Commission Act, 2004 and to explain and produce the photocopies of EXP's form, 26 export bills and sanction letter before this court by way of affidavit on or before 12.03.2023 positively and without fail and to appear before this Court on 12.03.2023 at 10.30 AM positively and without fail, failing which necessary action will be taken against him and he will be brought before this court in accordance with law.

5. The prosecution case, in short, is that one Md. Iqbal Hossain, Assistant Director, Anti-Corruption Commission, Head Office, Dhaka being informant lodged a First Information Report (FIR) with Dhanmondi Model Police Station, DMP, Dhaka against the accused-petitioner and others alleging, inter-alia, that the inquiry officer pursuant to office Memo No.00.01.0000.403.01011.18 issued by the Anti-Corruption Commission carried out inquiry into the allegations and found the FIR named accused-persons involved in the commission of corruption and money laundering. During inquiry, it is found that the FIR named accused persons in collusion with each other created fake and forged documents in respect of 26 export bills, submitted the same before the Dhaka Bank Limited, Dhanmondi Branch and withdrew an amount of Tk. 26,58,98,126.00/- against 17 export bills misusing and abusing their power and authority committing criminal breach of trust. Out of the aforesaid amount, the accused-persons returned an amount of Tk. 5,61,10,708.50/- against 03 (three) export bills in the bank but the remaining amount of Tk. 21,24,91,417.50/- against the 14 (fourteen) export bills were misappropriated by way of transferring, exchanging, concealing and suspicious transactions. By this way, the accused persons in collaboration with each other committed the offences under Sections 409/109 of the Penal Code, 1860 read with Sections 4(2) and 4(3) of the Money Laundering Protirodh Ain, 2012 along with Section 5(2) of the Prevention of Corruption Act, 1947. Hence the F.I.R.

6. It is stated in the application that the accused-petitioner voluntarily surrendered before the learned Special Judge, Court No. 8, Dhaka on 11.08.2022 and obtained bail. After obtaining bail, the accused-petitioner is regularly appearing before the learned court below without abusing or misusing the privilege of bail.

7. After lodging the FIR, the investigating officer started investigation into the case and after completion of investigation, submitted charge sheet No.06 dated 25.01.2021 under Sections 4(2) and 4(3) of the Money Laundering Protirodh Ain, 2012 read with Sections 409/420/109 of the Penal Code, 1860 along with Section 5(2) of the Prevention of Corruption Act, 1947 against the accused-petitioner and others.

8. Thereafter, the case record was transmitted to the learned Special Judge, Court No.8, Dhaka for holding trial and disposal and the case was renumbered as Metropolitan Special Case No.04 of 2022 and subsequently the case was also renumbered as Special Case No.07 of

2022 for quick disposal of the case and the learned trial judge fixed the next date on 28.09.2022 for charge framing.

9. It is stated in the application that on 28.09.2022, the accused-petitioner filed an application under Section 241A of the Code of Criminal Procedure before the learned Special Judge, Court No.8, Dhaka for discharging her from the case and after hearing, the learned judge of the court below was pleased to reject the same and charges were framed against the accused-petitioner and others under Sections 4(2) and 4(3) of the Money Laundering Protirodh Ain, 2012 read with Sections 409/420/109 of the Penal Code, 1860 along with Section 5(2) of the Prevention of Corruption Act, 1947 in a highly mechanical way. The learned trial judge while framing charges did not consider the prosecution materials at all. The charges were framed without any specification of time, place and manner of the alleged offences as required under Sections 221 and 222 of the Code of Criminal Procedure 1898 and the same were inherently defective rendering the entire proceeding initiated against the accused-petitioner unfair and untransparent.

10. Being aggrieved by the impugned order dated 28.09.2022 passed by the learned Special Judge, Court No. 08, Dhaka in Special Case No. 07 of 2022 (Metropolitan Special Sessions Case No. 55 of 2021) arising out of Dhanmondi Police Station Case No. 14 dated 23.12.2018 corresponding to Dudok G.R. No. 99 of 2018 rejecting the application under Section 241A of the Code of Criminal Procedure and thereby framing charge against the accused-petitioner under Sections 4(2) and 4 (3) of the Money Laundering Protirodh Ain, 2012 read with Sections 409/420/109 of the Penal Code along with Section 5(2) of the Prevention of Corruption Act, 1947, now pending in the Court of learned Special Judge, Court No. 8, Dhaka, the accused-petitioner filed this Criminal Revision before this court and obtained the Rule along with an order of stay of the impugned proceeding.

11. At the very outset, Mr. Md. Syed Ahmed, the learned Senior Advocate appearing for the accused-petitioner, submits that the learned Special Judge, Court No.08, Dhaka has committed illegality in framing charge against the accused-petitioner since the prosecution materials do not disclose any offence against her and for this reason, the impugned order of framing charge is liable to be set aside.

12. Mr. Mustafizur Rahman Khan, the learned Advocate appearing for the accused-petitioner, submits that it appears from the EXP forms dated 21.08.2017, 27.08.2017, 14.09.2017, 17.09.2017 and 16.10.2017 that the Branch Manager, Rashed Imam issued those EXP forms and as per provisions of Foreign Exchange Regulation Act, 1947, the person, in case of any irregularities caused by such person who issued the EXP, is actually liable for recovery of the proceeds of export bills; though Rashed Imam is the mastermind of the alleged incident of the case but it appears from the FIR and charge sheet that the said Rashed Imam is not an accused for such offence; the investigating officer as well as the informant found the truth in support of the allegation against Rashed Imam but implicated the innocent accused-petitioner instead of Rashed Imam in the instant case without any fault and/or liability of her; moreover, the learned trial judge being failed to appreciate the same most illegally, arbitrarily and in a highly mechanical way framed charge against the accused-petitioner by the impugned order dated 28.09.2022 and as such, the impugned order is liable to be set-aside for the ends of justice.

13. He next submits that the accused-petitioner had no power to approve any export bills but she had only power to process the purchase of export bills; the Branch Manager by

abusing his power and authority sent the request to purchase export bills to CPC Trade Operation and thus the accused-petitioner along with her assistant/s processed for purchase of 06 bills out of 17 bills inasmuch as 05 bills were processed for purchase by Asaduzzaman, 02 bills were processed for purchase by Khandoker Mahbubul Kabir and 04 bills were also processed for purchase by the Suraiya Yeasmin; though they did the same job, the accused-petitioner has been implicated in this case for commission of alleged offences but the other 03(three) persons are not implicated in this case for commission of self-same offence which creates serious doubt about the instant case and shows that the informant implicated the accused-petitioner in the instant case with a view to harassing and humiliating her in the society at the instance of some interested persons; moreover, the learned trial judge being failed to appreciate the same most illegally, arbitrarily and in a highly mechanical way framed charge against the accused-petitioner by the impugned order dated 28.09.2022 and as such, the impugned order is liable to be set aside for the ends of justice.

14. He further submits that the accused-petitioner was terminated from her service vide termination letter dated 18.08.2018 and accordingly paid the termination benefits; it also appears from the letter dated 27.11.2018 that the Bank discharged the accused-petitioner from all dues and liabilities after paying all benefits and if the accused-petitioner is involved in any misappropriation, the bank would not discharge her from the liabilities; therefore, there are no ingredients of the offences under Sections 409/109 of the penal Code, 1860 against the accused-petitioner in the instant case but the learned trial judge without considering the same most illegally, arbitrarily and in a highly mechanical way framed charge against the accused-petitioner vide impugned order dated 28.09.2022 which is not sustainable and maintainable in the eye of law and as such, the impugned order is liable to be set aside for the ends of justice.

15. He candidly submits that it appears from the FIR that the alleged occurrence took place from 01.07.2017 to 31.12.2017 but the informant lodged the instant FIR against the accused-petitioner and others on 23.12.2018 i.e. after 01 years later from the date of occurrence without giving proper explanation for causing delay which creates serious doubt about the prosecution case and therefore, the involvement or participation of the accused-petitioner is very questionable but the learned trial judge without considering the same most illegally, arbitrarily and in a highly mechanical way framed charge against the accused-petitioner vide impugned order dated 28.09.2022 which is not sustainable and maintainable in the eye of law and as such, the impugned order is liable to be set aside for the ends of justice.

16. He categorically submits that even if all the materials gathered and/or collected by the prosecution are believed in their entirety and taken to be true, those do not disclose or constitute any offence under Sections 4(2) and 4(3) of the Money Laundering Protirodh Ain, 2012 read with Sections 409/420/109 of the Penal Code, 1860 along with Section 5(2) of the Prevention of Corruption Act, 1947 against the accused-petitioner and as such, the accused-petitioner is liable to be discharged from the case for securing the ends of justice making the Rule absolute.

17. He lastly submits that as per the guidelines of Bangladesh Bank, every commercial bank has required to issue EXP form when the foreign remittance or L/C is being received for export of the goods; the Branch Manager issued the EXP form to the exporter by misusing his power and authority without following and making compliance with the Bangladesh Bank guidelines; the branch manager misusing his power and authority issued the EXP in favour of exporter; during the investigation, the investigating officer did not find any involvement/fault of the Branch Manager though he was authorized dealer to issue the EXP and he put his

signature on the certificate of authorised dealer but it is evident from record and evidence/materials that the branch manager is the mastermind of the occurrence but he has not been implicated in this case for the reasons best known to the informant and the investigating officer and the present accused-petitioner has been implicated in this case for no fault of the accused-petitioner and as such, the Rule may be made absolute discharging the accused-petitioner from the case.

18. On the other hand, Mr. Md. Ashif Hasan, the learned Advocate appearing on behalf of the Anti-Corruption Commission and the Investigating Officer, submits that during investigation into the allegations, the Investigating Officer did not find involvement of opposite-party No.03, Md. Aminul Islam (banker) in the instant case and for this reason, he was not sent up in the charge-sheet and recommended to discharge him from the case as a result of which the learned Metropolitan Special Judge, Court No. 8, Dhaka, by an order dated 25.11.2021, discharged the accused Md. Aminul Islam (Banker) son of ATM Shariful Islam from the case and as such, the Suo Motu Rule issued against the opposite-party No.03, is liable to be discharged for ends of justice.

19. He next submits that the allegations as alleged was duly investigated by the Anti-Corruption Commission and upon a threadbare investigation, it was found that the accused-petitioner solely approved the alleged export bills and she did not forward the same to Md. Aminul Islam (discharged accused from the present case) for his approval and that it was also found that the discharged accused Md. Aminul Islam did not put any signature on any export bills and Anti-Corruption Commission did not find any evidence/materials against accused Md. Aminul Islam and for this reason, the Anti-Corruption Commission submitted final report against him and accordingly, he was discharged from the case and as such, the Suo Motu Rule issued against the opposite-party No.03, is liable to be discharged for ends of justice.

20. He lastly submits that the Commission and the Investigating Officer recommended to discharge the accused-opposite party No. 3 from the case and did not implicate the opposite party Nos. 4 to 7 and others in the instant case since their involvement in the instant case was not found and considering this aspect of the case, the Rule and the Suo Muto Rule are liable to be discharged.

21. On the other hand, Mr. Md. Munsurul Hoque Chowdhury, the learned Senior Advocate with Mr. Mohammad Shafikul Islam Ripon, the learned Advocate appearing on behalf of the opposite-party No. 03, submits that while the opposite-party No. 3 was in the service, an F.I.R was lodged by the Durnity Daman Commission at Dhanmondi Police Station against 7 (seven) accused-persons including the opposite party No. 3 under Sections 409/109 of the Penal Code read with Sections 4(2)/4(3) of the Money Laundering Protirodh Ain,2012 and Section 5(2) of the Prevention of Corruption Act, 1947 on the allegation that by abusing power and authority, the F.I.R. named accused committed breach of trust by creating 26 fake and forged export bills and submitted the same through Dhaka Bank, Dhanmondi Branch to the Central Processing Centre, Head Office of the said Dhaka Bank Ltd. and withdrew Tk. 265898126.00 against 17 export bills and out of the same, returned the value of the 3 export bills only and misappropriated Tk. 212491417.50 in respect of 14 export bills.

22. He then submits that during investigation, the investigating officer has categorically found that no complicity in respect of the opposite party No.3 has at all been found from the prosecution materials and accordingly the opposite party No.3 was not sent up in the charge-

sheet and in the charge-sheet, it is stated as “সিপিসিতে কর্মরত ইনচার্জ অব ট্রেড অপারেশন জনাব মোঃ আমিনুল ইসলামের নিকট বিলগুলি শাখা হতে আসেনি এবং তিনি বিলগুলি যাচাই করেননি এবং কোন বিলে স্বাক্ষর করেননি, এই ক্ষেত্রে তাহাকে না জানিয়ে সুলতানা ফাহমিদা বিলগুলি পারচেজ অনুমোদন করে তিনি ফাহমিদার কাজ সরাসরি তদারকির দায়িত্বে নিয়োজিত ছিলেন যা করা হলে অনিয়মতান্ত্রিকভাবে বিল পারচেজ করা হতো না। এজাহারনামীয় আসামী জনাব মোঃ আমিনুল ইসলাম, ইনচার্জ সিপিসি ট্রেড অপারেশন, ঢাকা ব্যাংক লিঃ এর বিরুদ্ধে আত্মসাতের সাথে জড়িত থাকার অভিযোগ প্রমানিত হয়নি। এই ক্ষেত্রে তাহার বিরুদ্ধে কর্তব্যে অবহেলা সহ তদারকিতে ব্যর্থ প্রমানিত হওয়ায় তাহাকে বিভাগীয়ভাবে ঢাকা ব্যাংক কর্তৃপক্ষ কর্তৃক চাকুরী থেকে অব্যাহতি প্রদান করেছেন। যেহেতু তাহার বিরুদ্ধে অর্থ আত্মসাতে সহযোগীতার অভিযোগ প্রমানিত হয়নি তাই তাহাকে অত্র মামলা থেকে অব্যাহতি দানের সুপারিশ করে তদন্ত প্রতিবেদন (সাক্ষ্য -স্মারক) দাখিল করা হয়”।

23. He next submits that after submission of charge-sheet by the Durnity Daman Commission (DUDAK), the learned Metropolitan Senior Special Judge, Dhaka on 25.11.2021 by order No. 4 accepted the investigation report, took cognizance of the offence against the charge-sheeted accused and discharged the accused-opposite party No. 3 by thorough examination of the F.I.R, charge-sheet and other relevant papers and documents and accordingly the opposite party No. 3 got discharged from the case and was finally released from the case.

24. He lastly submits that Durnity Daman Commission itself is the informant of the case and the investigation of the case was also conducted by the competent officers of the Durnity Daman Commission (DUDAK), who after thorough instigation opined that no involvement of the opposite party No. 3 has been found in the unholy transactions and recommended for discharge of the opposite party No.3 and the same was made concurrent by DUDAK itself as shown from the letter dated 23.12.2018 signed by Secretary of Durnity Daman Commission.

25. Mr. Farhad Ahmed, the learned Advocate appearing for the opposite-party No.4, submits that Dhanmondi Model Branch of Dhaka Bank Ltd. is a Non A/D Branch and that for this reason, this opposite-party No.4 was not legally entitled and empowered by law to purchase export bills following the L/C's opened by FIR named accused No.1 and that being the reason, the opposite-party No.4 is not responsible for the alleged offences as mentioned in the prosecution materials and as such, there is no illegality in not implicating the opposite-party No.4 in the instant case.

26. He next submits that though the opposite-party No.4 being authorized dealer put his signature on the certificate of authorized dealer but it is a mere irregularities which cannot hold him liable for the alleged corruption and money laundering and on that landscape, the Anti-Corruption Commission and the investigating officer did not implicate him with the alleged offences.

27. He lastly submits that the opposite party No. 4 was neither implicated in the F.I.R nor in the charge-sheet since the complicity of the opposite party No. 4 was not found by the investigating officer and the Anti-Corruption Commission and that being the reason, the Suo-Moto Rule issued against the opposite party No. 4 is liable to be discharged.

28. Mr. Pankaj Kumar Kundu, the learned Advocate along with Mr. Abu Saleh Ahmadul Hasan, the learned Advocate appearing for the opposite party Nos. 5 to 7, submits that the case was investigated by Anti-Corruption Commission and upon a threadbare investigation and scrutinizing all the relevant papers, Anti-Corruption Commission did not find any allegation against the opposite-party Nos. 5 to 7 and for this reason, the Anti-Corruption Commission did not submit any charge-sheet against the opposite-party Nos. 5 to 7.

29. He next submits that the facts and duties of the present opposite-party Nos. 5 to 7 are that Dhanmondi Model Branch of Dhaka Bank Ltd. is a Non A/D Branch and for this reason, when the accused No.1 submitted some L/C's in this Branch, the L/C's were forwarded to the C.P.C (Central Processing Centre) for certifying EXP Number; that it should be mentioned here that there were two departments out of various departments in C.P.C Trade Operations- one is called RM Unit and another is called Foreign Export Department; at first the L/C's were sent to the C.P.C. RM unit for EXP Number and the C.P.C RM Unit verified the L/C management including the status of the foreign Bank and foreign buyer; after verifying all the documents, C.P.C. RM Unit endorsed/provided the EXP number on the EXP form and sent back the same to the Dhanmondi Model Branch of Dhaka Bank Ltd.; that it is mentionable that the opposite-party Nos. 5-7 were the members of foreign export department of C.P.C. Trade Operations, not RM unit of the C.P.C Trade Operations; it should also be mentioned that two accused namely Md. Mainul Hossain, SAVP and Md. Jumma Khan, Officer were working at C.P.C. RM unit at the time of occurrence; that after getting the EXP number from the C.P.C. RM unit, Dhanmondi Model Branch, Dhaka Bank Ltd. handed over the certified EXP form to the accused No. 1 for completing the export procedure and customs clearance; that after fulfilling all the customs procedure, accused No. 1 submitted the export documents to the Dhanmondi Model Branch, Dhaka Bank Ltd. and according to their duties, after verifying and scrutinizing all the documents, the said branch forwarded the documents to the C.P.C. Trade Operations and foreign export department of C.P.C communicated with the foreign Bank for acceptance of the export document and the concerned foreign Bank gave acceptance through SWIFT; that after getting acceptance, export department of C.P.C. Trade Operations forwarded the same to Dhanmondi Model Branch, Dhaka Bank Ltd.; that Dhanmondi Model Branch, Dhaka Bank Ltd. after fulfilling the formalities sent purchase approval to the C.P.C. Trade Operations and accordingly, after getting the purchase approval from the concerned Branch of the Bank, In-charge of the export department (accused Sultana Fahmida) of C.P.C Trade Operations processed/authorized the bills after being satisfied with the purchase transaction and credited the money to the customer's account; that in this way, purchase of the bills on account of the customer was established; afterwards, the process was continued; it was not the responsibilities of further checking of the purchase approval by the opposite-party Nos. 5-7.

30. He lastly submits that the accused Sultana Fahmida was export team manager of C.P.C. Trade Operations as well as she was in-charge of this section and under her supervision, the aforesaid bills were purchased and when the accused Sultana Fahmida was absent from her duty, the opposite-party Nos. 5 to 7 have just signed those bills in accordance with the approval of accused Sultana Fahmida and on 10.12.2017, the opposite-party No.5 filed an incident report to the higher authority and on the basis of the incident report, Bank stopped the payment of 9 (nine) export bills out of 26 export bills amounting to USD 21,45,000/- equivalent to BDT. 18 crores approximately.

31. Mr. Md. Khurshid Alam Khan, the learned Senior Advocate has been appointed as Amicus Curiae by this court with a view to assisting the court by furnishing information and legal submissions regarding questions of laws and facts.

32. Mr. Khan categorically submits that from the prosecution materials, the involvement of opposite-party No.4 has been divulged since opposite-party No.4 being authorized dealer gave approval for purchasing the export bills against the L/C's and that he also put signature on the certificate of authorized dealer, which makes him liable for non realization or short realization of export proceeds against shipment within the stipulated period and as such, the

Anti-Corruption and the investigating officer have committed illegality in not making him accused in the instant case.

33. He lastly submit that the names of the opposite-parties have been disclosed in the prosecution materials and they are more or less connected with the alleged offence and that the names of some other persons have also been disclosed in the prosecution materials and they have not also been made accused in the instant case which makes the investigation perfunctory in nature and considering all the aspects of the case, a direction may be given to hold further investigation into the allegations and to submit further investigation report as early as possible detailing the pros and cons of the allegations and involvement of the persons alleged.

34. Mr. A K M Amin Uddin, the learned Deputy Attorney-General appearing on behalf of the State, has adopted the submissions of Mr. Md. Khurshid Alam Khan, the learned Senior Advocate who has been appointed as Amicus Curiae by this court and submits that the Rule may be discharged and direction may be given for further investigation.

35. We have gone through the revisional application and heard the learned Advocates for the respective parties and considered their submissions to the best of our wit and wisdom.

36. It appears from the record that one Rashed Imam being Branch Manager issued the EXP FORM dated 21.08.2017, 27.08.2017, 14.09.2017, 17.09.2017 and 16.10.2017. It appears from the affidavit submitted by the Anti-Corruption Commission that Rashed Imam, Branch Manager gave approval for purchasing the export bills against the LC. It is also evident from the record that the said Branch Manager also put his signature on the export permission. As per provisions of the Foreign Exchange Regulation Act, 1947, if there is any irregularities in the EXP's FORMs and if there is no realization of the proceeds against the bills, the said EXP issuing person and/or persons are liable for recovery of the proceeds against the LC value. The duty of the EXP issuing person is that he after receiving the LC, the AD (authorized dealer) shall scrutinize the authenticity of the LC value, the commodity of goods, the shipping date and the expiry date if necessary and any information and the Ad branch shall check the LC issuing Bank through a SWIFT message and the AD branch shall collect credit reports of buyers to the LC issuing Bank and further after verification of all aspects of the LC, the AD branch shall issue the EXP FORM in due course as per Bangladesh Bank Export monitoring Guidelines. In spite of aforesaid allegations, the said Rashed Imam has not been made accused in the instant case for the alleged offence allegedly perpetrated by the said Rashed Imam. A letter under memo: BFIU(Bank Monitoring)-04/2018-1802 dated 21.06.2018 issued by one Deputy Director of Bangladesh Bank denotes that due to irregularities in connection with the violation of the rules of exports, the said Rashed Imam was fined for an amount of Tk.1,00,000/- (one lac) by Bangladesh Bank. A reference to the aforesaid facts and circumstances indicates that Rashed Imam, the Branch Manager of Dhaka Bank, Model Branch, Dhanmondi is involved in the alleged corruption and money laundering but the investigating officer ignoring the aforesaid facts and materials did not implicate him in the instant case.

37. Secondly, the opposite-party No.3 Md. Aminul Islam was the in-charge of CPC trade operation and initially he was made accused in the F.I.R but subsequently the investigating officer did not implicate him in the charge-sheet and recommended discharge from the case. Following the same, the learned Special Judge, Court No.08, Dhaka, by an order dated

28.09.2022, discharged him from the case. Now let us see what sorts of allegations are there against him in the prosecution materials. It is categorically stated in the F.I.R as under :

শাহা হতে ডকুমেন্ট সিপিসিতে প্রেরণ করা হলে সিপিসি ইনচার্জ জনাব মো: আমিনুল ইসলাম ভিপি এবং ট্রেড হেড জনাবা সুলতানা ফাহমিদা এভিপি ১৭টি বিল ক্রয়ের অনুমোদন দেন এবং সিপিসি হতে গ্রাহকের হিসেবে টাকা ট্রানজেকশন করেন। জনাব সুলতানা ফাহমিদা নিজে বা সিপিসি ইনচার্জ জনাব মো: আমিনুল ইসলাম কেহই রেকর্ডপত্র সঠিক কিনা তাহা যাচাই করেননি। মিথ্যা ভুয়া ও জাল পণ্য রপ্তানী সংক্রান্ত রেকর্ড এর উপর ভিত্তি করে তারা ১৭টি বিল ক্রয়ের অনুমোদন দেন এবং গ্রাহকের একাউন্টে ২৬,৮৫,৯৮,১২৬.০০ টাকা ট্রান্সফার করেন। যা গ্রাহক/রপ্তানীকারক কর্তৃক নিজে এবং বাহক চেক মূলে বিগত ১৭/০৭/২০১৭ খ্রি. হতে ২৬/১১/২০১৭ খ্রি. তারিখের মধ্যে উত্তোলনপূর্বক আত্মসাৎ করেন।

The investigation officer recommended him for discharge in not sending him in the charge-sheet stating, inter-alia, as follows:-

এজাহারনামীয় আসামী জনাব মো: আমিনুল ইসলাম, ইনচার্জ সিপিসি ট্রেড অপারেশন, ঢাকা ব্যাংক লি: এর বিরুদ্ধে আত্মসাতের সাথে জড়িত থাকার অভিযোগ প্রমাণিত হয়নি। এই ক্ষেত্রে তাহার বিরুদ্ধে কর্তব্যে অবহেলাসহ তদারকিতে ব্যর্থ প্রমাণিত হওয়ায় তাহাকে বিভাগীয়ভাবে ঢাকা ব্যাংক কর্তৃপক্ষ কর্তৃক চাকুরী থেকে অব্যাহতি প্রদান করেছেন। যেহেতু তাহার বিরুদ্ধে আত্মসাতের সহযোগিতার অভিযোগ প্রমাণিত হয়নি তাই তাহাকে অত্র মামলা থেকে অব্যাহতি দানের সুপারিশ করে তদন্ত প্রতিবেদন (সাক্ষ্য-স্মারক) দাখিল করা হয়।

38. Admittedly accused Md. Aminul Islam was the VP and Trade Head of CPC and his duty and responsibilities is to observe the daily activities of the CPC department with regard to the export documents/bills of purchase and checking of banking transactions. Under the circumstances, he cannot escape himself from the liabilities and responsibilities of any incidents in that trade department. It is categorically stated in the charge-sheet that accused Md. Aminul Islam did not discharge his duties due to negligence and for this reason, he was terminated from service by the Dhaka Bank Authority in a departmental proceeding.

39. It is now well settled that a criminal case having criminal liability cannot be avoided due to departmental proceeding against the accused. Moreover, a letter under memo: BFIU(Bank Monitoring)-04/2018-1802 dated 21.06.2018 issued by one Deputy Director of Bangladesh Bank denotes that due to irregularities in connection with the violation of the rules of exports and purchasing bills, the said Aminul Islam was fined for an amount of Tk.1,00,000/- (one lac) by Bangladesh Bank.

40. The Commission and investigating officer should have taken notice of the aforesaid facts and circumstances of the case but both of them overlooked the same and finally, this accused was discharged from the case by the learned Special Judge following the recommendation of the investigating officer.

41. Thirdly, one Syed Sazzad Haider was the Head of Trade Operations. This accused has to monitor and supervise the activities with regard to export documents/bills of purchase and checking of banking transactions. Without the approval and consent of the accused, no proceeding in respect of export documents and bills of purchase took place. For this reason, this person also cannot avoid his duties and responsibilities but the fact remains that this person has neither been made accused in the F.I.R nor in the charge-sheet. Furthermore, a letter under memo: BFIU(Bank Monitoring)-04/2018-1802 dated 21.06.2018 issued by one Deputy Director of Bangladesh Bank denotes that due to irregularities in connection with the violation of the rules of exports and purchasing bills, the said Sayed Sazzad Haider was fined for an amount of Tk.1,00,000/- (one lac) by Bangladesh Bank for the selfsame offence but this person has neither been made accused in the F.I.R nor implicated in the charge-sheet. The Commission and the investigating officer overlooked the same and did not take appropriate legal steps against him in disclosing his name in the prosecution materials for his

alleged roles and activities which amount to commission of offence rather than omission. It may be noted here that whether or not this person had omission or negligence are all disputed question of fact which are required to be thrashed out during trial of the case if any following the investigating report if any. The Commission and the investigating officer has totally ruined the foundation of the case in not implicating this person as accused in the instant case.

42. Now we want to discuss about the roles and activities of accused-petitioner Fahmida Sultana, export in-charge of CPC, who purchased 6 bills against LC, Asaduzzaman who purchased 5 bills, Khondoker Mahbulul Kabir who purchased 2 bills and Suraiya Yeasmin who purchased 4 bills against LC following the approval given by Rashed Imam, Branch Manager, Dhaka Bank Ltd, Dhanmondi Model Branch, Dhaka.

43. From the memo of evidence submitted by the investigating officer, it will be deduced how the persons/accused are involved in issuing EXP FORM's, purchasing bills and disbursing the payments to the exporters account. The aforesaid memo of evidence runs as under :

ধানমন্ডি শাখা (নন-এডি) এবং সিপিসি'র নিম্নবর্ণিত কর্মকর্তাদের কতিপয় দাপ্তরিক কাজের সংশ্লিষ্টতা পরিলক্ষিত হয়।

১। **জনাব রাশেদ ইমাম :** জনাব রাশেদ ইমাম ঘটনাকালীন সময়ে ঢাকা ব্যাংক লিঃ, ধানমন্ডি শাখার শাখা ব্যবস্থাপক ছিলেন। তিনি বর্ণিত গ্রাহকের ২৬টি এফডিবিপি মধ্যে ২৩টি এফডিবিপিতে ইএক্সপি ইস্যু করেছেন। কিন্তু ঢাকা ব্যাংক লিঃ ডকুমেন্ট কন্ট্রোল শীট মোতাবেক ঢাকা ব্যাংকের সিপিসিতে অবস্থিত নন এডি টিমের সদস্যগণ ইএক্সপি ফর্মে স্বাক্ষর করার নির্দেশনা ছিল। এই ক্ষেত্রে তিনি ব্যাংকের প্রচলিত কার্য ধারা অনুযায়ী এবং গ্রাহককে জরুরী সেবা প্রদানের লক্ষ্যে নন এডি টিমের প্রধান/সদস্যগণের নিকট থেকে ইএক্সপি নম্বর প্রাপ্ত হয়ে ইএক্সপি ফর্মে লিপিবদ্ধ করেন এবং নিজে স্বাক্ষর করেন। এই ক্ষেত্রে নন এডি টিমের অগোচরে ইএক্সপি ইস্যু করেননি। যেহেতু নন এডি টিমের অনুমোদন সাপেক্ষে শাখা থেকে ইএক্সপি ইস্যু করেছেন এবং নন এডি টিমের পক্ষ থেকে তাকে নিষেধ করা হয়নি। তাই এই বিষয়ে দায়-দায়িত্ব তার উপর বর্তায় না। তদন্তকালে জনাব রাশেদ ইমাম কর্তৃক মহাপরিচালক (মানিলাভারিং) বরাবর গত ২২/০৭/২০২০ তারিখে দাখিলকৃত আবেদন পর্যালোচনা করা হয়। আবেদনে তিনি এবং বিষয়ে ব্যাংকের নিয়মাবলী, তাহার করণীয়, তিনি কি করেছেন এবং কেন করেছেন তাহার ব্যাখ্যা প্রদানসহ তিনি আত্মসাতের সাথে জড়িত নয় এবং নিজেকে নির্দোষ দাবী করেন। তাহার দাখিলকৃত আবেদন, সংযুক্ত রেকর্ডপত্র এবং জন্মকৃত রেকর্ডপত্র পর্যালোচনা দেখা যায়, তিনি ব্যাংকের মুনাফা অর্জনের লক্ষ্যে গ্রাহককে বিশ্বাস করে তাহাকে জরুরী সেবা প্রদানের লক্ষ্যে ব্যাংকের পূর্বের প্রচলিত কার্যক্রম মোতাবেক ইএক্সপি ইস্যু করেছেন। তিনি গ্রাহক কর্তৃক অর্থ আত্মসাতের সুযোগ সৃষ্টির লক্ষ্যে বা তাহাকে আত্মসাতে সহযোগিতা করার লক্ষ্যে শাখা থেকে ইএক্সপি ইস্যু করেননি। এই ক্ষেত্রে তাহার বর্ণিত আত্মসাতের সাথে জড়িত থাকার প্রমাণ পাওয়া যায়নি।

২। **জনাব এ কে এম মনিরুল ইসলাম :** তিনি ঘটনাকালীন সময়ে ঢাকা ব্যাংক লিঃ, ধানমন্ডি মডেল শাখার ম্যানেজার অপারেশন হিসেবে দায়িত্বরত ছিলেন। তার দায়িত্ব ছিল শাখার সকল কার্যক্রম পর্যবেক্ষণ করা। অপরদিকে ম্যানেজার অপারেশন হিসেবে নিয়োজিত কর্মকর্তা শাখার BAMLCO হিসেবে দায়িত্ব পালন করা। তিনি শাখা ব্যবস্থাপকের অনুপস্থিতিতে ২টি এফডিবিপি ইএক্সপি ইস্যু করেছেন। যেহেতু তিনি ম্যানেজারের কাজের ধারাবাহিকতায় এ কাজ করেছেন কাজেই অসৎ উদ্দেশ্যে করেছেন মর্মে প্রতীয়মান হয় না। তবে তার দায়িত্ব গুরুত্ব সহকারে পালন করা হলে হয়তো উক্ত আত্মসাতের ঘটনা রোধ করা যেত। এই ক্ষেত্রে বিভাগীয় তদন্ত কমিটি তাহাকে শৃঙ্খলা ভংগের দায়ে দায়ী করেন এবং চাকুরী থেকে টারমিনেট করার সিদ্ধান্ত গ্রহণ করা হয়।

৩। **জনাব সাদিয়া আফরিন :** তিনি ঘটনাকালীন সময়ে ঢাকা ব্যাংক লিঃ, ধানমন্ডি মডেল শাখায় এক্সপোর্ট/ইমপোর্ট ডেব্লু অভিযোগের দায়িত্ব পালন করেন। সাইমেক্স লেদার প্রোডাক্টস লিঃ এর এমডি কর্তৃক দাখিলকৃত সকল এফডিবিপি গুলিই শাখা ব্যবস্থাপক তাহার বরাবরে এনডোর্স করে কাজ সম্পন্ন করার নির্দেশ ও পরামর্শ দিয়েছেন। তিনি ইতোপূর্বে এ জাতীয় দায়িত্ব পালন করেননি এবং চাকুরীতে নবীন। তিনি কম্পিউটারের Core Banking Software এ কাজ করে শাখা ব্যবস্থাপককে সকল কাজে সহযোগিতা করেছেন। এই ক্ষেত্রে তার অসৎ উদ্দেশ্য ছিল বলে মনে হয় না।

৪। **মোঃ আসাদুজ্জামান, এফডিপি :** তিনি সিপিসি ট্রেড অপারেশন শাখায় ঘটনাকালীন সময়ে সিপিসিতে এক্সপোর্ট টিমের সদস্য ছিলেন। এক্সপোর্ট ম্যানেজার জনাব সুলতানা ফাহমিদা ছুটিতে গেলে পূর্বের ধারাবাহিকতায় এবং এক্সপোর্ট ম্যানেজার সুলতানা ফাহমিদার পদ্ধতি অনুসরণ করে বিভিন্ন তারিখ এ প্রতিষ্ঠানের ০৫টি এফডিবিপি বিল পারচেজ অনুমোদন করেন। এছাড়া এই বিল পারচেজ করার ক্ষেত্রে অনিয়মের বিষয়টি তিনিই প্রথম উদঘাটন করেন এবং সিপিসি ইনচার্জকে অবহিত করেন। তারপর শাখা থেকে রিকোয়েস্টকৃত আরও ০৯টি বিল পারচেজ সম্পন্ন করা হয়নি। এই ক্ষেত্রে তিনি জড়িত থাকলে অবশিষ্ট বিলগুলিও পারচেজ করতে সহযোগিতা করতেন এবং অনিয়মের বিষয়টি সিপিসি ইনচার্জকে অবহিত করতেন না। এই ক্ষেত্রে তার অসৎ উদ্দেশ্য ছিল মর্মে প্রতীয়মান হয় না।

৫। **সুরাইয়া ইয়াসমিন, এস এ ভিপি :** তিনি ঘটনাকালীন সময়ে ঢাকা ব্যাংক লিঃ সিপিসি ট্রেড অপারেশনের এক্সপোর্ট টিমের সদস্য ছিলেন। এক্সপোর্ট ম্যানেজার জনাব সুলতানা ফাহমিদা ছুটিতে থাকাকালীন সময়ে পূর্বের ধারাবাহিকতায় এবং সুলতানা ফাহমিদার কর্ম পদ্ধতি অনুকরণ করে বিভিন্ন তারিখে ০৪টি বিল ক্রয়ের অনুমোদন সম্পন্ন করেন। এছাড়াও তিনি সুলতানা ফাহমিদাকে ০৪টি বিলে এবং আসাদুজ্জামানকে ০২টি বিলে অনুমোদন কাজে Core Banking Software এর কাজ করেন। এই ক্ষেত্রে তার উক্ত বিষয়ে গভীরে যাওয়ার সুযোগ ছিল না এবং তিনি পূর্বের ধারাবাহিকতায় কাজ করেছেন। কাজেই তার কর্মকাণ্ডে অসৎ উদ্দেশ্য পরিলক্ষিত হয় না।

৬। **খন্দকার মাহবুবুল কবির, এস এ ভি পি :** তিনি ঘটনাকালীন সময়ে ঢাকা ব্যাংক লিঃ এর সিপিসিতে এক্সপোর্ট টিমের সদস্য ছিলেন। এক্সপোর্ট ম্যানেজারের ছুটিকালীন সময়ে পূর্বের ধারাবাহিকতায় এবং সুলতানা ফাহমিদার কর্মপদ্ধতি অনুকরণ করে ঐ গ্রাহকের এবং ঐ শাখার ০২টি এফডিবিপি বিল ক্রয় সম্পন্ন করেন। এই ক্ষেত্রে তার অসৎ উদ্দেশ্য ছিল বলে মনে হয় না।

৭। **শবনম সুলতানা, অফিসার :** তিনি ঘটনাকালীন সময়ে ঢাকা ব্যাংক লিঃ এর সিপিসিতে এক্সপোর্ট টিমের সদস্য ছিলেন। তিনি সুলতানা ফাহমিদাকে ০৪টি বিলে আসাদুজ্জামানকে ০৪টি বিলে এবং সুরাইয়া ইয়াসমিনের ০১টি বিল ক্রয়ের কাজে Core Banking Software এর কাজ করেছেন অর্থাৎ সহযোগিতা করেছেন। তবে তিনি শাখা ব্যবস্থাপকের ডেলিগেশন ইএক্সপি ইস্যু সংক্রান্ত অনিয়মের বিষয়টি দেখার দায়িত্ব তাহার ছিল না। এই ক্ষেত্রে তাহার কর্মকাণ্ডে কোন অসৎ উদ্দেশ্য ছিল বলে মনে হয় না।

৮। **জেরিন জাহান, সিনিয়র অফিসার :** তিনি ঘটনাকালীন সময়ে ঢাকা ব্যাংকের সিপিসি ট্রেড অপারেশন এর এক্সপোর্ট টিমের সদস্য ছিলেন। তিনি ০২টি বিলের ক্রয়কালীন সময়ে as a maker in core banking software এর কাজ করেছেন অর্থাৎ ০২টি বিল ক্রয়ের কাজে সহযোগিতা করেছেন। তবে তাহার কাজেও কোন অসৎ উদ্দেশ্য ছিল বলে মনে হয় না।

উপরোক্ত ০১ থেকে ০৮ এ বর্ণিত কর্মকর্তাগণকে ঢাকা ব্যাংক লিঃ কর্তৃক পরিচালিত বিভাগীয় তদন্তে তদন্তকারী দল কর্তৃক ডিসিপ্লিনারী একশন গ্রহণ এবং সতর্কতা মূলক ওয়ার্নিং করার সুপারিশ করে। সেই মোতাবেক তাদের বিরুদ্ধে লঘুদণ্ড হিসেবে একটি করে বাৎসরিক বেতন বর্ধন স্থগিত ও চাকুরীতে সতর্ক হয়ে কাজ করার জন্য নির্দেশ প্রদান করেন। তবে তারা মামলার আত্মসাতের ঘটনার সাথে সড়িত থাকার প্রমাণ পাওয়া যায়নি বিধায় তাহাদিগকে মামলার আসামীভুক্ত করা হয়নি। ইছা ছাড়া দেখা যায় যে, ব্যাংক কর্মকর্তা/কর্মচারীগণ গ্রাহক ও সিএন্ডএফ এজেন্টদের তৈরী কাগজপত্র যাচাই না করে উহা সঠিক জেনে কাজ করেছেন মর্মে প্রতীয়মান হয়।

44. It is argued on behalf of the opposite-party No.3-7 that the accused-petitioner Sultana Fahmida was in-charge of the export of the CPC and opposite-party No.5-7 were her subordinate officers who have no authority to make any query in connection with any documents and the investigating officer after verifying all the documents did not find any prima-facie case against the opposite-party No.5-7 and accordingly the investigating officer did not implicate them in the present case. Furthermore, it is argued that the opposite parties and others pointed out the irregularities and made precautionary warning of the irregularities to the higher authorities but they could not show any papers and documents by which they intimated the higher authorities about the irregularities. Despite their pointing out to the irregularities, our question is why Asaduzzaman, FVP, Suraiya Yeasmin, SAVP put the signature on the approval of the purchase bills as evident from the memo of evidence submitted by the investigating officer and the prosecution materials and why Sadia Afrin, Senior Officer, AKM Monirul Islam, FVP and Manager Ops and Rashed Imam VP and Manager put signature on the negotiation of Export Documents as contained in Annexure-3 series of the affidavit-in-compliance dated 09.03.2023 filed by the investigating officer.

45. The Commission and the Investigating Officer overlooking and ignoring the aforesaid facts and circumstances did not implicate Sadia Afrin, Senior Officer, AKM Monirul Islam, FVP and Manager Ops and Rashed Imam VP and Manager in this case as an accused. From the memo of evidence, it appears that the Investigating Officer made observations in respect of the offences like a judge, which is not desirable and appreciable by this court.

46. Having considered all the facts and circumstances of the case, the submissions advanced by the learned Advocates for the respective parties and the settled principles of law, we are led to hold the view that there are sufficient ingredients of Sections 4(2) and 4(3)

of the Money Laundering Protirodh Ain, 2012 read with Sections 409, 420, 109 of the Penal Code along with 5(2) of the Prevention of Corruption Act, 1947 against the persons who in collaboration with each other committed criminal breach of trust creating fake and forged documents i.e. 26 exports bills misusing and abusing their power and authority and the same were submitted before the Dhaka Bank Limited, Dhanmondi Branch and withdrew an amount of Tk. 26,58,98,126.00/- against 17 bills. Out of which they returned an amount of Tk. 5,61,10,708.50/- to the Bank against 03 Export bills and the remaining amount of Tk. 21,24,91,417.50/- against 14 bills were misappropriated by way transferring, exchanging, concealing and suspicious transactions. Therefore, the accused persons allegedly committed offences under Sections 409/109 of the Penal Code, 1860 read with Sections 4(2) and 4(3) of the Money Laundering Protirodh Ain, 2012 along with Section 5(2) of the Prevention of Corruption Act, 1947, but the responsible persons have not been made accused either in the F.I.R or in the charge-sheet due to perfunctory investigating into the allegations by the Investigating Officer and acceptance of the same by the Commission overlooking and ignoring the prosecution materials on record.

47. It may be noted that since a huge amount of public amounting to Tk. 21,24,91,417.50/- has been misappropriated by way of suspicious transfer, exchange and transactions, the said amount should be and must be realized from the persons by adopting appropriate measures in accordance with law, failing which it will have serious and gigantic impact on our economy which may certainly frustrate the development work of our country.

48. It is worthwhile to mention that the father of the nation Bangabandhu Sheikh Mujibur Rahman in one of his speeches had clearly told to the effect that “কোন অফিস-আদালতে দুর্নীতি হলে এবং আপনাদের নিকট কেউ চাইলে সঙ্গে সঙ্গে তিন পয়সার একটি পোস্ট কার্ডে লিখে আমাকে জানাবেন। আমি দুর্নীতিবাজদের বিরুদ্ধে কঠোর ব্যবস্থা গ্রহণ করব যাতে দুর্নীতি চিরদিনের জন্য বন্ধ হয়ে যায়।”

49. So, it is a clear message from the father of the nation Bangabandhu Sheikh Mujibur Rahman that we all should have firm determination to prevent all sorts of corruptions and money launderings prevalent in the society and we should have taken necessary steps and measures to prevent corruption and money laundering which have adverse impact on the economy of the country.

50. Further, on 30th September, 2019, our Hon'ble Prime Minister Sheikh Hasina in her meticulous speech in New York on the occasion of her 73rd birthday programe arranged by the New York inhabitants clearly told that “দুর্নীতিবাজ ও অসৎ ব্যক্তিদের বিরুদ্ধে তার সরকারের চলমান কঠোর পদক্ষেপ অব্যাহত থাকবে। দুর্নীতিবাজ ও অসৎ ব্যক্তি আমার দলের হলেও ছাড় নেই। কার আয় কত, কীভাবে জীবনযাপন করে-সেটা খুঁজে বের করতে হবে। দেশের উন্নয়নে যে পরিমাণ অর্থ খরচ হচ্ছে তা সঠিকভাবে ব্যয় হলে দেশ অনেক দূর এগিয়ে যেত। দুর্নীতিবাজদের বিরুদ্ধে কড়া হুশিয়ারি উচ্চারণ করে তিনি সুস্পষ্টভাবে বলেন, আমরা সন্ত্রাস, জঙ্গিবাদ, দুর্নীতি এবং মাদকের বিরুদ্ধে কঠোর পদক্ষেপ নিয়েছি।

51. In a view exchange meeting with the officers of the Ministry of Public Administration at the Secretariat, the Hon'ble Prime Minister Sheikh Hasina told that সরকারী কর্মচারীদের বেতন-ভাতাসহ যেসব সুবিধা প্রয়োজন, তা সরকার মেটাচ্ছে। তাহলে কেন দুর্নীতি হবে, সে প্রশ্ন করেন তিনি। সরকারী কর্মচারীদের উদ্দেশে তিনি বলেন, মন মানসিকতার পরিবর্তন করতে হবে এবং মাঠপর্যায়ের কর্মচারীদের সুনির্দিষ্ট নির্দেশনা দিতে হবে। যেটা প্রয়োজন সেটা তো আমরা মেটাচ্ছি। তাহলে দুর্নীতি কেন হবে?

52. Now it is pertinent to note that on an application by a party or which otherwise comes to its knowledge, High Court Division is legally competent to exercise its revisional jurisdiction under Section 439 of the Code of Criminal Procedure to examine the facts and circumstances of the case and the judgment and the order if there is any error which may not ensure justice to the litigant public in not following the correct principles of law and fact in assessing the material and evidence in proper perspective and in that case, High Court Division may, in its discretion, exercise any of the powers conferred on a court of appeal by Sections 423, 426, 427 and 428 or on a court by Section 338.

53. Our considered view is that the Commission and the Investigating Officer have totally failed to bring the responsible persons to book who are involved in misappropriating a large amount of money ignoring and overlooking the prosecution materials on record. It has also come to our notice that the prosecution could not seize all the materials on which the prosecution case may rely.

54. Under the circumstances, it is worthwhile to mention that the prosecution case cannot continue on a defective foundation of a case since the necessary and responsible persons who are involved in the alleged offences within the chain of occurrence are not implicated in this case making them accused.

55. Having considered all the facts and circumstances of the case, the Rule and Suo Motu Rule are disposed of with a direction upon the Anti-Corruption Commission/Investigating Officer to hold further inquiry into the allegation and to submit the further investigation report before the concerned court below within the timeframe given by this court.

56. In consequence thereof, the order dated 28.09.2022 passed by the learned Special Judge, Court No. 08, Dhaka in Special Case No. 07 of 2022 (Metropolitan Special Sessions Case No. 55 of 2021) arising out of Dhanmondi Police Station Case No. 14 dated 23.12.2018 corresponding to Dudok G.R. No. 99 of 2018 rejecting the application under Section 241A of the Code of Criminal Procedure and thereby framing charge against the accused-petitioner under Sections 4(2) and 4 (3) of the Money Laundering Protirodh Ain, 2012 read with Sections 409/420/109 of the Penal Code along with Section 5(2) of the Prevention of Corruption Act, 1947, now pending in the Court of learned Special Judge, Court No. 8, Dhaka, is set aside.

57. Further, the order accepting the charge-sheet and taking cognizance against some of the accused is also set aside.

58. The Anti-Corruption Commission/Investigating Officer is directed to hold further investigation into the allegation by appointing a fresh investigating officer and conclude the further investigation within 6(six) months from date of receipt of this judgment and order and submit further investigation report before the concerned court below within the timeframe given above.

59. The Anti-Corruption Commission is directed not to allow the earlier investigating officer to hold further investigation into the allegation of this case and Commission is further directed to appoint new investigating officer not below the rank of Deputy Director to hold further investigation into the allegation as alleged in the prosecution materials.

60. The Bangladesh Bank, BFIU and Dhaka Bank Ltd. are directed to provide all sorts of cooperation and assistance to the Anti-Corruption Commission by supplying necessary papers and documents for proper further investigation if required and asked for.

61. The order of stay granted at the time of issuance of the Rule is, hereby, recalled and vacated.

62. The accused and the suspected persons in the prosecution materials are directed not to leave the country without the permission of the learned judge of the concerned court below and the Anti-Corruption Commission is also directed to take positive steps in this regard in accordance with law if required.

63. The Anti-Corruption Commission is directed to submit affidavit-in-compliance before this court by way of affidavit through Registrar, Bangladesh Supreme Court, High Court Division, Dhaka after submitting further investigation report.

64. Communicate this judgment and order to the learned judge of the concerned court below, the Chairman, Anti-Corruption Commission, Governor of Bangladesh Bank and Head of BFIU, Bangladesh Bank, Dhaka, at once.