

**20 SCOB [2025] HCD****HIGH COURT DIVISION  
(CRIMINAL REVISIONAL JURISDICTION)****Present:****Mr. Justice Md. Nazrul Islam Talukder  
And  
Mr. Justice Kazi Ebadoth Hossain****Criminal Revision No.76 of 2023****Md. Afzalur Rahman  
..... Accused-petitioner.****-Versus-****The state and another  
..... Opposite-parties.**Mr. Md. Abdul Qaium, Advocate,  
... For the Accused-petitioners.Mr. A K M Amin Uddin, D.A.G with  
Mr. Md. Asaduzzaman, A.A.G withMrs. Afifa Begum Swapna, A.A.G and  
Mr. Sarwar Akhtar Masud, A.A.G,  
.... For the State-opposite party.Mr. Md. Omar Farook, Advocate,  
... For the Anti-Corruption Commission.Mr. Md. Alamgir Mostafizur Rahman,  
Advocate with  
Mrs. Aynunnahar Siddiqua, Advocate  
.....For the Opposite-party No.03.

Date of Hearing: 05-05-2024, 12-05-2024, 19-05-2024, 26-05-2024, 09-06-2024 &amp; 30-06-2024

Date of Judgment: 30-06-2024.

**Editors' Note:**

**The brief facts of this case suggests that following an inquiry, the Anti-Corruption Commission lodged an FIR alleging that certain government officials, in collusion with contractors, abused their official positions, resulting in incomplete work and financial loss to the public. Investigation led to submission of a charge sheet against selected accused, with sanction for prosecution accorded and cognizance taken by the Special Judge. The petitioner, among the accused, surrendered and was granted bail, which was upheld after transfer of the case for trial to the Divisional Special Judge. Prior to framing of charges, the accused-petitioner sought further investigation under Section 5(6) of the Criminal Law Amendment Act, 1958, which was rejected. Aggrieved, the petitioner approached this Court under Section 439 CrPC and related provisions, resulting in issuance of the present Rule. One of the core legal points that the court addressed in this case was whether an accused, notwithstanding the general rule against seeking further investigation in criminal cases, may invoke the relevant provisions of the Prevention of Corruption Act, 1947 and the Criminal Law Amendment Act, 1958, to request further investigation in appropriate circumstances.**

**Key Words:**

Further investigation; Suo Moto order; Section 5(2) of the Prevention of Corruption Act, 1947; Section 10(1A) of the Criminal Law Amendment Act, 1958; sections Section 435 & 439 of the Code of Criminal Procedure.

**Section 5(6) of the Criminal Law Amendment Act, 1958—Who can file an application for further investigation?**

**“[Unlike ordinary criminal trial, in a proceeding under the Anti-Corruption Commission Act, 2004, any party can file application for urther investigation under Section 5(6) of the Criminal Law Amendment Act, 1958 since it is an special law.”**

... (Para 34)

**Special Judge’s Suo Moto power for an order for further investigation:**

**“Any Special Judge can even Suo Moto order for further investigation if it comes to his knowledge that the investigation was conducted in the manner which is unfair and perfunctory and intentionally designed to mislead the Court. The Court shall not play in the hand of the investigating Officer but the learned Special Judge failed to act as per Section 5(6) of the Criminal Law Amendment Act, 1958.”**

... (Para 36)

**Further investigation at the instance of the accused-petitioner—whether tenable under Section 5(2) of the Prevention of Corruption Act, 1947:**

**“If for the sake of argument we hold that the further investigation cannot be allowed on the basis of an application of the accused-petitioner but it is now well settled that High Court Division in exercising its revisional power and authority may also suo motu call for the record of the Courts sub-ordinate to it and set aside any order passed by such courts in a legal proceeding which has caused miscarriage of justice and order further investigation if required for the ends of justice.”**

... (Para 53)

**JUDGMENT****Md. Nazrul Islam Talukder, J:**

1. On an application under Section 439 of the Code of Criminal Procedure along with Section 10(1A) of the Criminal Law Amendment Act, 1958 read with Section 435 of the Code of Criminal Procedure challenging the impugned order dated 29.11.2022 passed by the learned Divisional Special Judge, Sylhet rejecting the application for further investigation in Special Case No.05 of 2022 under Sections 409/166/511/109 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947, now pending in the court of learned Divisional Special Judge, Syleht, should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. The fact of the prosecution case, in short, is that one Md. Faruque Ahmed, Assistant Director, Anti-Corruption Commission, Dhaka, after holding inquiry, lodged an FIR with Sunamganj Sadar Model Police Station alleging, inter alia, that 15 Government officers in connivance with 46 contractors for their personal gains intentionally, by abusing their powers and positions and in breach of fundamental terms of contract, did not complete the work awarded in favour of the contractors causing financial loss of farmers and public at large; the officers despite the breach on the part of contractors allowed them to carry over when they did not complete the work timely; the officers responsible did not take steps for blacklisting the contractors. Thereafter, an F.I.R was lodged being registered as Sunamganj Model Police

Station Case No.02 dated 02.07.2017 under Sections 166/109/409/511/109 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947.

3. After initiation of the case, the Anti-Corruption Commission appointed the Investigating Officer for investigation of the case. The Investigating Officer after investigation submitted charge sheet against 33 accused including the petitioner and discharged 34 other accused from the allegations. The Anti-Corruption Commission vide Memo No.00.01.0000.501.02.024.17-7523 dated 03.03.2019 accorded its Sanction for submitting the charge sheet against the 33 accused.

4. The learned Special Judge, Sunamganj vide Order dated 11.01.2021 accepted the said charge sheet and took cognizance of the offences under Sections 409/166/511/109 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947.

5. During pendency of the case, the accused-petitioner surrendered before the learned Special Judge, Court Sunamganj and prayed for enlarging him on bail. The learned Special Judge, Sunamganj was pleased to enlarge him on bail.

6. Thereafter, the Special Case No.05 of 2022 was transferred to the learned Divisional Special Judge, Sylhet for holding trial of the case. The learned Divisional Special Judge, after receiving the Special Case No.05 of 2022 vide order dated 16.08.2022 upheld the order of bail granted earlier by the learned Special Judge, Sunamganj and continued the bail of the accused-petitioner fixing date on 29.09.2022 for hearing of the charge framing.

7. Before charge hearing, the accused-petitioner filed an application under Section 5(6) of the Criminal Law Amendment Act, 1958 for holding further investigation into the allegations.

8. Upon hearing the parties, the learned Divisional Special Judge, Sylhet vide Order dated 29.11.2022 rejected the said application filed by the petitioner on the ground that there is no scope to consider such application filed by an accused.

9. Being aggrieved by the impugned order rejecting the application for further investigation, the accused-petitioner approached this court with an application under Section 439 of the Code of Criminal Procedure along with Section 10(1A) of the Criminal Law Amendment Act, 1958 read with Section 435 of the Code of Criminal Procedure and obtained this Rule.

10. At the very outset, Mr. Abdul Qaium, the learned Advocate for the accused-petitioner, submits that though in our criminal justice system, the prayer for further investigation by the accused is not encouraged, however, the laws relating to Anti-Corruption Commission are special laws, which do not debar the accused from filing the application for further investigation in appropriate circumstances because in view of Section 7 of the Prevention of Corruption Act, 1947, an accused shall be a competent witness and it is an acceptable norm of the criminal jurisprudence that an witness can file application for further investigation, hence the order of learned Special Judge rejecting the said application of the petitioner is liable to be set aside.

11. He next submits that the case in hand involves complex technical issues and the investigation requires involvement of experts in view of Section 23 of the Anti-Corruption

Commission Ain, 2004 for conducting a fair, impartial and proper investigation which is pre-requisite of a fair trial; however, the investigating officer intentionally did not engage any experts of the relevant field and conducted investigation designing the same to fit his purpose in order to charge some ones and release some ones of the accused of his choice which cannot be allowed by the learned Special Judge, who is empowered and entrusted with supervisory authority to scrutinize the said investigation and do what is required for ensuring the fair and impartial investigation and under such circumstances, the impugned order passed by the learned Divisional Special Judge is liable to be set aside.

12. He candidly submits that in view of the Rule 15 of the Anti-Corruption Commission Rules, 2007 it was incumbent upon the Commission to give sanction for the charge sheet upon analyzing the fact; however, the Commission having been misled by the IO obliviously given sanction to the said report which is full of distortion and manipulation and the same cannot be sustained in the eye of law and hence, the impugned order passed by the learned Divisional Special Judge is liable to be set aside.

13. He vigorously submits that legislature on its wisdom has made provision to deal with the circumstances as arisen in the instant case providing in Section 5(6) of the Criminal Law Amendment Act, 1958 that for the purpose of the trial under this Act, a Special Judge, in any case where he deems it necessary, may order an investigation by the Commission; therefore, the learned Special Judge when becomes aware of any perfunctory, mala fide and unfair investigation, he ought to have exercised his jurisdiction under Section 5(6) of the Criminal Law Amendment Act, 1958 ordering for further investigation by the Commission irrespective of any application from any party concerned; however, the learned Special Judge failed to do so and under such circumstances, the impugned order passed by the learned Divisional Special Judge is liable to be set aside.

14. He lastly submits that it is the settled principle of law that Special Judge can *Suo Moto* order for further investigation if it comes his knowledge that the investigation was conducted in the manner which is unfair and perfunctory and intentionally designed to mislead the court giving undue favour to any parties, the court shall not play in the hands of the Investigating Officer, but the learned Special Judge failed to act as per Section 5(6) of the Criminal Law Amendment Act, 1958 and hence, the impugned order passed by the learned Divisional Special Judge is liable to be set aside.

15. Mr. Abdul Qaium, in support of his submissions, he has referred to a legal decision given in the case of Begum Khaleda Zia -Versus- The state reported in 71DLR (AD)(2019)-9 wherein paragraph No.9, it has been decided as follows:-

“Under the Criminal Law Amendment Act, the Special Judge has been given discretionary power to direct or make for an order of investigation. This power can be exercised at the initial stage of the proceedings. The language used there is that a Special Judge may, in any case where he deems it necessary, order an investigation. It is only in cases where he finds any ambiguity in the police reports, he may make an order for further materials from the investigation agency.”

16. He has also referred to another decision given in the case of Sultana Fahmida-Versus-The state reported in 18SCOB (2023) HCD 55 where it has been laid down as under:

“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 principals 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.”

17. On the other hand, Mr. Md. Omar Faruk, the learned Advocate appearing on behalf of the Anti-Corruption Commission, submits that the accused-petitioner has no locus standi in filing the application for further investigation and consequently the instant revisional application is not maintainable and the Rule is liable to be discharged.

18. He next submits that any lacuna in any prosecution material that may come in the case, the defence can point out during trial in evidence in cross examination of witness during trial and the accused would get benefit of every lacuna of prosecution in his favour and thus there is no scope of the accused-petitioner to point out any lacuna in prosecution case before trial.

19. He further submits that no charge has yet been framed in the case and there is every scope of the accused-petitioner to put his case during charge hearing and thus the Rule is liable to be discharged.

20. He vigorously submits that the trial of the case will be started soon after framing charge and there is positive allegations against the charge-sheeted accused of the case and further investigation would prolong and delay the disposal of the case and for this reason, the Rule may be discharged.

21. He lastly submits that the accused-petitioner has raised the disputed questions of facts in his submissions and the disputed questions of facts can only be resolved on evidence through trial and thus the revisional application is not maintainable in the eye of law.

22. Mr. Md. Alamgir Mostafizur Rahman, the learned Advocate with Mrs. Aynunnahar Siddiqua, the learned Advocate for the opposite-party No.03, submits that the applicant went into retirement from his service on 20.06.2019 but he was not able to obtain his retirement benefits, gratuity funds and other facilities because of pendency of the instant case and under such circumstances, the Rule may be disposed of immediately for ends of justice.

23. Mr. A K M Amin Uddin, the learned Deputy Attorney-General appearing for the State, submits that since there are positive and tangible allegations against the accused in the F.I.R but no charge-sheet has been submitted against some of them and as such, there is no bar to holding further investigation into this case.

24. We have gone through the application filed under Section 439 of the Code of Criminal Procedure along with Section 10(1A) of the Criminal Law Amendment Act, 1958 read with Section 435 of the Code of Criminal Procedure along with the prosecution materials annexed therewith. We have also heard the learned Advocates of the respective parties at length and considered their submissions to the best of our wit and wisdom.

25. It appears from the F.I.R that one Md. Faruque Ahmed, Assistant Director, Anti-Corruption Commission, Head Office Dhaka, after holding inquiry, lodged an FIR alleging,

inter alia, that: 15 Government officers working in water development board in connivance with 46 contractors for their personal gains intentionally, by abusing their positions and in breach of fundamental terms of contract, did not complete the work awarded in favour of the contractors causing financial loss of farmers and public at large; the officers despite the breach on the part of contractors allowed them to carry over when they did not complete the work timely; that the officers responsible did not take steps for blacklisting the contractors. By this way, the accused of the case have committed the offences under Sections 5(2) of the Prevention of Corruption Act, 1947 read with Sections 409, 166, 511 and 109 of the Penal Code.

26. The Investigating Officer (herein after referred to as 'IO') after investigation submitted charge sheet against 33 accused and 34 other accused were 'not sent up' in the charge-sheet despite having similar allegations as well as materials against them.

27. The IO has changed the progress of work which was recorded in FIR based on Bangladesh Water Development Board's (herein after referred to as BWDB) own record prepared before flood washed away incomplete work. In charge sheet submitted by him, he purportedly increased percentage of progress of work just to give undue advantage to some of the contractors who were 'not sent up.'

28. It is apparent from the plain comparison between FIR and the Charge Sheet that the IO intentionally manipulated and distorted evidence and prepared the charge sheet changing evidence on record (as mentioned in FIR) and filed a perfunctory charge sheet which is not reliable at all.

29. The petitioner, on the above backdrop, filed an application to learned Divisional Special Judge, Sylhet for a direction to hold further investigation under Section 5(6) of the Criminal Law Amendment Act, 1958. The learned Divisional Special Judge without applying his judicial mind vide Order dated 29.11.2022 rejected the said application.

30. This Court, after issuing the Rule and hearing all the parties, directed the IO to explain his conduct but he could not explain or satisfy this Court as to the anomalies of the charge sheet and FIR.

31. The contradictory findings and distortion in investigation, as we have found, are that the IO has distorted evidence by manipulating evidence and facts by changing progress of the works. BWDB itself has prepared progress report before flood washed away much of the work but the IO increased the amount of work undertaken by some of the contractor holding a so called survey after flood which is impossible and practically unimaginable. The said contradiction and distortion are given below:

<b>Accused No. as per FIR</b>	<b>Findings recorded in FIR filed after inquiry on the basis of progress report prepared by BWDB</b>	<b>Contradictory findings of the investigating Officer in Charge Sheet</b>
17	In work order No /15-16/119, the progress as per inquiry report is 0%.	The progress as per charge sheet is 86%.
18	In work order No /15-16/135, the progress as per inquiry report is 0%.	The progress as per charge sheet is 27%.
19	In work order No /15-16/67, the progress as per inquiry report is	The progress as per charge sheet is 90%.

	85%.	
22	In work order No /15-16/152, the progress as per inquiry report is 30%. In work order No /15-16/31, the progress as per inquiry report is 85%.	The progress as per charge sheet is 64%.  The progress as per charge sheet is 100%.
24	In work order No /15-16/01, the progress as per inquiry report is 90%. In work order No /15-16/42, the progress as per inquiry report is 80%.	The progress as per charge sheet is 100%.  The progress as per charge sheet is 88%.
27	In work order No /15-16/52, the progress as per inquiry report is 75%.	The progress as per charge sheet is 82%.
28	In work order No /15-16/101, the progress as per inquiry report is 90%.	The progress as per charge sheet is 100%.
29	In work order No /15-16/141, the progress as per inquiry report is 40%. In work order No /15-16/164, the progress as per inquiry report is 90%.	The progress as per charge sheet is 50%.  The progress as per charge sheet is 100%.
30	In work order No /15-16/74, the progress as per inquiry report is 90%.	The progress as per charge sheet is 100%.
31	In work order No /15-16/47, the progress as per inquiry report is 85%.	The progress as per charge sheet is 100%.
35	In work order No /15-16/4, the progress as per inquiry report is 90%.	The progress as per charge sheet is 100%.
36	In work order No /15-16/90, the progress as per inquiry report is 90%.	The progress as per charge sheet is 100%.
45	In work order No /15-16/63, the progress as per inquiry report is 85%. In work order No /15-16/83, the progress as per inquiry report is 80%.	The progress as per charge sheet is 100%.  The progress as per charge sheet is 100%.
49	In work order No /15-16/65, the progress as per inquiry report is 85%.	The progress as per charge sheet is 100%.
60	In work order No /15-16/54, the progress as per inquiry report is 80%.	The progress as per charge sheet is 100%.

32. From the above, it is clearly evident that the IO in order to give advantage to some of the accused distorted the evidence. Hence, trial based on such concocted and distorted evidence will not be fair and transparent.

33. Further, the comparison among some of the allegations leveled against some of the accused being sent up and some of them being not sent up are given below:

Accused No.	Allegation in the FIR	Sent up/not sent up
16. Afjalur Rahman	<p>(১) ভবিষ্যতে ব্যক্তিগত লাভবান হওয়ার অসৎ উদ্দেশ্যে ৪ জন ঠিকাদার চুক্তিকৃত ৯ প্যাকেজের কাজ উদ্দেশ্যে প্রণোদিতভাবে শুরু করেনি।</p> <p>(২) অবৈধভাবে আর্থিক লাভবান হওয়ার অসৎ উদ্দেশ্যে সম্পূর্ণ প্যাকেজের কাজ সাব-কন্ট্রাক্ট দেওয়ার বিধান না থাকা সত্ত্বেও কয়েকটি কাজের সম্পূর্ণ প্যাকেজ অসৎ উদ্দেশ্যে সাব-কন্ট্রাক্ট দিয়েছেন।</p> <p>(৩) অবৈধভাবে আর্থিক লাভবান হওয়ার অসৎ উদ্দেশ্যে একটানা ২৮ দিন কাজ না করে breach of Contract করেছেন।</p> <p>(৪) চুক্তির মৌলিক শর্ত ভঙ্গ করা সত্ত্বেও পরস্পর যোগসাজসে আর্থিকভাবে লাভবান হয়ে চুক্তি বহাল তথা টেন্ডার চুক্তি বাতিল, কালো তালিকাভুক্তি ও ক্ষতিপূরণ আদায় করতো, নতুনভাবে টেন্ডার আহ্বান না করার কাজে ক্ষমতার ব্যবহার করেছেন।</p> <p>(৫) ভবিষ্যতে ব্যক্তিগত লাভবান হওয়ার অসৎ উদ্দেশ্যে ৪ জন ঠিকাদার চুক্তিকৃত আরও ৩৩টি প্যাকেজের কাজ উদ্দেশ্যে প্রণোদিতভাবে আংশিক সম্পন্ন করেছেন।</p> <p>(৬) প্রতি বছরে বন্যা আসার সময় ও আশঙ্কা সম্বন্ধে অবহিত থাকা সত্ত্বেও উদ্দেশ্যে প্রণোদিতভাবে নির্ধারিত সময়ের কাজ শেষ না করে ক্ষমতার অপব্যবহার করেছেন।</p> <p>(৭) জনসাধারণ ও কৃষকের আর্থিক ক্ষতিসাধনে অবৈধভাবে সহযোগিতা করেছেন।</p>	Sent up in charge Sheet
17. Khandaker Shahin	Same allegation as above	Not sent up despite allegation was admittedly proved against him.
18. Md. Jillur Rahman	Same allegation as above	Not sent up
19. Sajib Ranjan Das	Same allegation as above	Not sent up
22. Khairul Huda Chapol	<p>(১) ভবিষ্যতে ব্যক্তিগত লাভবান হওয়ার অসৎ উদ্দেশ্যে ৪১ জন ঠিকাদার চুক্তিকৃত ১১৮টি প্যাকেজ এর কাজ আংশিক সম্পন্ন করেছেন।</p> <p>(২) চুক্তির মৌলিক শর্ত ভঙ্গ করে করা সত্ত্বেও সরকারী কর্মকর্তাদের সাথে পরস্পর যোগসাজসে Breach of Contract আর্থিকভাবে লাভবান হয়ে চুক্তি সক্ষম হয়েছেন।</p> <p>(৩) প্রতি বছরে বন্যা আসার সময় ও আশঙ্কা সম্বন্ধে অবহিত থাকা সত্ত্বেও উদ্দেশ্যে প্রণোদিতভাবে নির্ধারিত সময়ের কাজ শেষ না করে ক্ষমতার অপব্যবহার করেছেন।</p> <p>(৪) জনসাধারণ ও কৃষকের আর্থিক ক্ষতিসাধনে অবৈধভাবে সহযোগিতা করেছেন।</p>	Not sent up
37. Niaz Abdul Qaium	Same allegation as above	Sent up in the charge sheet

42. Md. Abdul Qaium	Same allegation as above	Sent up in the charge sheet
43. Md. Atikur Rahman	Same allegation as above	Sent up in the charge sheet
53. Moksud Ahmed	Same allegation as above	Sent up in the charge sheet
57. Sekh Ashraf Uddin	Same allegation as above	Sent up in the charge sheet

34. It may be noted here that unlike ordinary criminal trial, in a proceeding under the Anti-Corruption Commission Act, 2004, any party can file application for further investigation under Section 5(6) of the Criminal Law Amendment Act, 1958 since it is a special law. In this regard, our Appellate Division in the case of Begum Khaleida Zia vs State reported in 71 DLR(AD) (2019) 9 held as follows:

“Under the Criminal Law Amendment Act, the Special Judge has been given discretionary power to direct or make for an order of investigation. This power can be exercised at the initial stage of the proceedings. The language used there is that a Special Judge may, in any case where he deems it necessary, order an investigation. It is only in cases where he finds any ambiguity in the police reports, he may make an order for further materials from the investigation agency.”

35. Special Judge when become aware of any perfunctory investigation, he may, exercising his jurisdiction under Section 5(6) of the Criminal Law Amendment Act, order for further investigation for holding fair and impartial trial. Section 5(6) of the Criminal Law Amendment Act, 1958 is quoted below:

“For the purpose of trial under this Act, a Special Judge may, in any case where he deems it necessary, order an investigation by the Commission.”

36. Any Special Judge can even Suo Moto order for further investigation if it comes to his knowledge that the investigation was conducted in the manner which is unfair and perfunctory and intentionally designed to mislead the Court. The Court shall not play in the hand of the investigating Officer but the learned Special Judge failed to act as per Section 5(6) of the Criminal Law Amendment Act, 1958.

37. If it comes to the knowledge of the High Court Division that an Investigation has not been conducted properly and/or the same is perfunctory and mala fide, the High Court Division can always order for further investigation for securing ends of justice (Ref: **18 BLC 36**). In the case of Sultana Fahmida vs State and another reported in **18 SCOB(2023)HCD 54**, the High Court Division having found inconsistencies and discrepancies has cancelled charge sheet submitted by the IO and directed ACC to hold further investigation.

38. In the present case, it is apparent that IO has submitted a perfunctory investigation report by distorting and manipulating evidence to give undue advantage to some of the accused. This Court vide Order dated 11.07.2023 issued show cause against the concerned IO. He accordingly appeared before this Court to explain his conduct but could not explain or satisfy this Court as to the anomalies of the charge sheet. Such investigation would seriously undermine transparency and fairness of the trial. Fair investigation is a sine quo non of a fair

trial. It is the right of the accused as well as the prosecution to have fair investigation followed by fair trial as has been guaranteed under the Constitution.

39. It is evident from the FIR and the charge sheet that the investigation has not been conducted fairly and impartially rather the same has been tainted and vitiated by fraud and distortion. Neither the ACC nor the learned Special Judge corrected such serious issue. Hence, this Court by setting aside the charge sheet submitted by the IO, may direct ACC to hold further investigation by a different IO for securing ends of justice in the way it was done in the case of Sultana Fahmida vs State (**18 SCOB(2023)HCD 54**).

40. 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.

41. 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.

42. In the case of Begum Khaleda Zia vs State and another reported in 71 DLR(AD) (2019) 9, it has been held that what is provided under Section 173(3B) of the Crpc is that “the investigation officer has been given discretionary power to file a supplementary police report at any time before conclusion of the trial. If he finds further materials against the accused or any other accused persons, he may make such investigation without the intervention of the court. Under the Criminal Law Amendment Act, the Special Judge has been given discretionary power to direct or make for an order of investigation. This power can be exercised at the initial stage of the proceedings. The language used there is that a Special Judge may, in any case where he deems it necessary, order an investigation. It is only in cases where he finds any ambiguity in the police reports, he may make an order for further materials from the investigation agency.”

43. In the case of Abu Talukder vs Secretary, Ministry of Home Affairs, Government of Bangladesh and others reported in 49 DLR(AD) (1997) 56, it has been observed in paragraph No.5 that “it may be stated at the very outset that a co-accused has got no right to apply for further investigation of a case by the Criminal Investigation Department after submission of charge-sheet against him in a case. Further, it is primarily for the Government to decide which case will be investigated by the CID. This is purely an executive action and the Government is free to take any decision for securing proper investigation and for the ends of justice in a case.”

44. In the case of Mojibur Rahman vs State reported in 18 BLC(2013)36, it has been laid down therein that “the investigation conducted by the IO was incomplete and further investigation should be directed for securing the ends of justice. The quashment of the proceeding is not called for, since there are allegations of creation of false documents. However, the cognizance order and the charge framing order should be set aside for enabling further investigation.”

45. In the case of Durnity Daman Commission vs Monjur Morshed Khan and others reported in 69 DLR (2017)380, it has been decided that “on a plain reading of the report under Section 173 of the Code of Criminal Procedure it appears to us that the said report was prepared in a perfunctory manner. The learned Special Judge accepted the said report mechanically without applying its judicial mind. He was not precluded to send the case for further investigation despite the sanction of the Commission.”

46. In the case of Dhanaj Sing vs State of Punjab, reported in (2004)3 SCC, page 654, it has been held that “in the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

47. In the case of Sathi Prashad vs State of Uttar Pradesh, reported in (1972)3 SCC, page 63 it has also been held that “It is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored.”

48. In the case of State of Karnataka vs Kyarappa Reddy, reported in (1999)8 SCC, page 714, it has been held that “It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The Court must have predominance and pre-eminence in criminal trials over the action taken by the investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officers suspicious role in the case.”

49. In the case of Dayal Sing vs State of uttarachal, reported in (2012)8 SCC page 263 it has been held that “During the course of the trial, the learned presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subverted. For truly attaining this object of a ‘fair trial’, the Court should leave no stone unturned to do justice and protect the interest of the society as well.”

50. In the case of Sultana Fahmida vs State and another reported in **18 SCOB (2023) HCD 54**, the High Court Division decided that If it comes to the knowledge of the High Court Division that an Investigation has not been conducted properly and/or the same is perfunctory and mala fide, the High Court Division can always order for further investigation for securing ends of justice.

51. In view of the above propositions of laws coupled with the fact and circumstances of the present case, our consolidated opinion is that Special Judge, on Suo Moto or on application of any of the parties, can order further investigation if it comes his knowledge that the investigation was conducted in the manner which is unfair and perfunctory and intentionally designed to mislead the court giving undue favour to any of the parties and the court shall not play in the hands of the Investigating Officer, who designedly made a perfunctory investigation and misled the Commission and the Court as well. The Court should act objectively with proper perspective following the provisions of law.

52. It is pertinent to note that a court has a duty to scrutinize the report under Section 173 of the Code of Criminal Procedure and it cannot pass any order mechanically on it. Before passing any order, the Court is to be satisfied that whether any prima-facie offence has been disclosed or not in the said report and whether there is any defect or illegality with the same. On perusal of the impugned order dated 29.11.2022, we do not find that any such endeavor was made by the learned Divisional Special Judge, before accepting investigation report and rejecting the application for further investigation.

53. If for the sake of argument we hold that the further investigation cannot be allowed on the basis of an application of the accused-petitioner but it is now well settled that High Court Division in exercising its revisional power and authority may also suo motu call for the record of the Courts sub-ordinate to it and set aside any order passed by such courts in a legal proceeding which has caused miscarriage of justice and order further investigation if required for the ends of justice.

54. Considering the facts and circumstances of the case, the submissions advanced by the learned Advocates for the respective parties and the propositions if laws cited and discussed above, the Rule is disposed of setting aside the impugned order and directing to hold further investigation into the allegations, by the Anti-Corruption Commission.

55. In consequence thereof, the impugned order dated 29.11.2022 passed by the learned Divisional Special Judge, Sylhet rejecting the application for further investigation in Special Case No.05 of 2022 under Section 109 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947, now pending in the court of learned Divisional Special Judge, Sylhet, is set aside.

56. Further, the order dated 11.01.2021 accepting charge-sheet, taking cognizance and discharging the 'not sent up' accused in the charge-sheet is also set aside.

57. The Anti-Corruption Commission is directed to hold further investigation into the allegations by appointing new investigating officer not below the rank of Deputy Director and conclude the further investigation within 6(six) months from the date of receipt of this judgment and order and submit further investigation report before the concerned court below positively and without fail within the timeframe given above by this court.

58. The Anti-Corruption Commission is directed not to allow the earlier investigating officer to hold further investigation into the allegations of the case.

59. The learned Divisional Special Judge, Sylhet is directed to proceed with the case in accordance with law after receiving further investigation report.

60. The investigating officer who has submitted perfunctory investigation report is cautioned not to repeat this sort of practice in future.

61. Communicate this judgment and order to the learned Divisional Special Judge, Sylhet and the Chairman, Anti-Corruption Commission, at once.