

**20 SCOB [2025] AD****APPELLATE DIVISION****Present:****Mr. Justice Md. Ashfaquul Islam****Mr. Justice Md. Rezaul Haque****Mr. Justice S. M. Emdadul Hoque**

CRIMINAL PETITION FOR LEAVE TO APPEAL NO. 345 OF 2025  
 WITH  
 CRIMINAL PETITION FOR LEAVE TO APPEAL NO. 569 OF 2025  
 WITH  
 CRIMINAL PETITION FOR LEAVE TO APPEAL NO. 677 OF 2025

(From the judgment and order dated 27.11.2024 passed by the High Court Division in Criminal Appeal No. 12374 of 2018 heard analogously with Criminal Appeal No. 12401 of 2018)

**The State**

**The Anti-Corruption Commission,  
 represented by the Chairman**

**-Versus-**

**Begum Khaleda Zia and another  
 Md. Ziaul Islam (Munna) and another**

For the Petitioner  
 (In cr.p. No. 345 of 2025)

For the Petitioner  
 (In cr.p. Nos. 569 and 677 of 2025)

For the Respondents  
 (In cr.p. No. 345 of 2025)

For the Respondents  
 (In cr.p. Nos. 569 and 677 of 2025)

Date of Hearing

Date of Judgment

**.... Petitioner****(In Cr.P. No. 345 of 2025)****....Petitioner****In Cr.P. Nos. 569 and 677 of 2025****.... Respondents****In Cr.P. No. 677 of 2025**

: Mr. Aneek R. Haque, Additional Attorney-General with Mr. Johirul Islam Sumon, Deputy Attorney-General and Ms. Fatima Akter, Assistant Attorney-General, instructed by Mr. Md. Helal Amin, Advocate-on-Record.

: Mr. Ashif Hasan, Senior Advocate, Instructed by Mr. Satya Ranjon Mondall, Advocate-on-Record.

: Mr. A.M. Mahbubuddin, Senior Advocate with Mr. Ruhul Quddus, Senior Advocate, Mr. Bodruddoza, Senior Advocate and Mr. Aminul Islam, Advocate instructed by Mr. Satya Ranjon Mondall, Advocate-on-Record.

: Not represented

: 03-03-2025

: 03-03-2025

**Editors Note:**

**The respondent, during her tenure from 2001-2006 as Prime Minister of Bangladesh had formed a trust, namely "Shaheed Ziaur Rahman Charitable Trust". The allegation against the respondent was that no money was spent from the trust account for any charitable purpose, rather she in the disguise of the trust had spent money for purchasing 42 Kathas land in Kakrail in the name of "Shaheed Ziaur Rahman Charitable Trust". After trial, the respondent was convicted by the trial court under section 5(2) of the Prevention of Corruption Act, 1947 and the property which was bought in the name of Shaheed Ziaur Rahman Charitable Trust was confiscated in favour of the state.**

**Key Words:**

Documentary evidence; Oral evidence; Section-5(2) of the Prevention of Corruption Act, 1947; Section-109 of the penal Code, 1860;

**It is well settled that the contents of documentary evidence should ordinarily get preference over oral evidence unless the alleged document is the product of forgery or false personation. The trial court failed to appreciate the documentary evidence juxtaposing the oral evidence of the Investigating Officer for which it reached erroneous conclusion that Metro Makers and Developers Ltd. did not make payment in the account of the said Trust though there was reasonable doubt that Metro Makers and Developers Ltd. might have made payment in the account of the said Trust having regard to the account statement of the said company and oral testimony of the Investigating Officer that he did not record after interrogation the statements of the persons concerned with the clearing cheques dated 16.01.2005. ... (Para 29)**

**JUDGMENT****Md. Rezaul Haque, J:**

1. The delay of 18 days and 23 days in filing Criminal Petition for leave to Appeal Nos. 569 of 2025 and 677 of 2025 respectively is condoned.

2. Criminal Petition for leave to Appeal Nos. 345 of 2025, 569 of 2025 and 677 of 2025 have been directed against the judgment and order dated 27.11.2024 passed by the High Court Division in Criminal Appeal No. 12374 of 2018 heard analogously with Criminal Appeal No. 12401 of 2018 allowing the appeals.

3. These Criminal Petitions for Leave to Appeal have been heard together and disposed of by this common judgment and order since common questions of facts and law are involved.

4. The prosecution case in the aforesaid Criminal Petitions for Leave to Appeal, in brief, is that Begum Khaleda Zia, during her tenure from 2001-2006 as Prime Minister of Bangladesh had formed a trust, namely "Shaheed Ziaur Rahman Charitable Trust" vide a registered trust deed being No. IV-33, dated 26.10.2004. She opened a Savings Account being No. 34076165 with Sonali Bank, Prime Minister's Office on 09.09.2005 in the name of the Said Trust.

5. During the period from 13.01.2005 to 19.01.2005 various sums of money amounting to Tk. 6,18,89,529/- (Taka Six crore Eighteen lac Eighty-Nine thousand Five hundred Twenty-

Nine) were withdrawn from different accounts of the Bangladesh Nationalist Party and the same were deposited in the account of the said trust.

6. No money was spent from the trust account for any charitable purpose, rather Begum Khaleda Zia, the then Prime Minister, in the disguise of the trust had spent money for purchasing 42 Kathas land in Kakrail in the name of “Shaheed Ziaur Rahman Charitable Trust”, wherein she paid, in addition to the value of the land, extra Tk. 1,24,93,000/- (Taka One crore Twenty-Four lac Ninety-Three thousand) to vendor Suraiya Khan as to which no satisfactory explanation has been given which established that she (the then Prime Minister) had misappropriated the same dishonestly.

7. Apart from the money deposited from various accounts of Bangladesh Nationalist Party, other funds had been deposited in the account of the said trust amounting to Tk. 1,35,00,000 + 55,50,000 = 1,90,50,000/- (Taka One crore Ninety lac Fifty thousand) did not have a valid source for which it is apparent that Begum Khaleda Zia (who has been shown as serial No. 1 as an accused), in collusion with other accused persons, committed offence under section 5(2) of the Prevention of Corruption Act, 1947 read with section 109 of the Penal Code, 1860.

8. The case was investigated by the informant Harun-or-Rashid, Deputy Director, the Anti-Corruption Commission, who submitted charge sheet against the accused No. 1 & 3 along with two others under section 5(2) of the Prevention of Corruption Act, 1947 read with section 109 of the Penal Code, 1860.

9. Thereafter, the case record was transmitted to the learned Metropolitan Senior Special Judge, Dhaka, who took cognizance against the accused and transferred the case to Special Judge, Court No.3, Dhaka for trial wherein the case was renumbered as Special Case No. 18 of 2017. The learned Special Judge framed charge against the accused persons under section 5(2) of the Prevention of Corruption Act, 1947 read with section 109 of the Penal Code, 1860 and the charge so framed was read over and explained to the accused persons who were present to which they pleaded not guilty of the offence and claimed to be tried. Charge could not be read over and explained to absconding accused Abul Haris Chowdhury.

10. The case was transferred to learned Special Judge, Court No.5, Dhaka for trial as per the order dated 17/05/2017 of the High Court Division passed in Criminal Miscellaneous Case No. 19967/2017.

11. During trial, prosecution examined as many as 33 (thirty-three) witnesses but the defence examined none. Upon conclusion of the examination of the prosecution witnesses, the accused Nos. 1 & 3 were examined under section 342 of the Code of Criminal Procedure in which they submitted written statements describing their innocence.

12. Defence case, as it transpires from the statement submitted by Begum Khaleda Zia (shown as accused No. 1) under section 342 of the Code of Criminal Procedure and the trend of cross-examination of the prosecution witnesses, is that, Shaheed Ziaur Rahman Charitable Trust is a private trust established in the memory of Begum Khaleda Zia's beloved husband, Shaheed President Ziaur Rahman and Begum Khaleda Zia was the first Managing Trustee of the said trust in her personal capacity, and her role as trustee had nothing to do with her official position as the Prime Minister of Bangladesh, or her official position did not have any direct or indirect influence in the affairs of the trust. The money deposited in the trust account

represents donations and contributions made by workers, activists and supporters of BNP across the country and all money deposited in the trust fund came from valid sources.

13. The learned Special Judge, after conclusion of the trial, vide judgment and order dated 29.10.2018, convicted Begum Khaleda Zia i.e. the respondent No. 1 in Cr.PLA No. 345 of 2025 under section 5(2) of the Prevention of Corruption Act, 1947 and sentenced her to suffer rigorous imprisonment for a period of seven years and to pay a fine of Tk. 10,00,000/- (Taka Ten lac), in default, to suffer simple imprisonment for a period of six months more. The property which was bought in the name of Shaheed Ziaur Rahman Charitable trust was confiscated in favour of the State.

14. The learned Special Judge also convicted the accused No.3 Md. Ziaul Islam (Munna) under section 5(2) of the Prevention of Corruption Act, 1947 read with section 109 of the Penal Code, 1860 and sentenced him to suffer rigorous imprisonment for a period of seven years and to pay a fine of Tk. 10,00,000/- (Taka Ten lac), in default, to suffer simple imprisonment for a period of six months more.

15. The learned Judge also convicted accused No.2-Abul Haris Chowdhury and accused No.4- Monirul Islam Khan under section 5(2) of the Prevention of Corruption Act, 1947 read with section 109 of the Penal Code, 1860 and sentenced each of them to suffer rigorous imprisonment for a period of seven years and to pay a fine of Tk. 10,00,000/- (Taka Ten lac) each, in default, to suffer simple imprisonment for a period of six months more.

16. Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence of the learned Special Judge, Begum Khaleda Zia filed Criminal Appeal No. 12374 of 2018 and accused No. 3 filed Criminal Appeal No. 12401 of 2018 before the High Court Division. The High Court Division, after hearing, vide judgment and order dated 27.11.2024 passed in Criminal Appeal No. 12374 of 2018 heard analogously with Criminal Appeal No. 12401 of 2018 allowed the appeals setting aside the judgment and order of the learned Special Judge and thereby, acquitted the accused persons, namely, Begum Khaleda Zia, accused No. 3 and others from the charge leveled against them.

17. Being aggrieved by and dissatisfied with the judgment and order passed by the High Court Division, the State and the Anti-Corruption Commission (hereinafter referred to as 'the Commission') being petitioners filed these Criminal Petitions for Leave to Appeal.

18. Mr. Aneek R. Haque, learned Additional Attorney-General along with Mr. Johirul Islam Sumon, learned Deputy Attorney-General and Ms. Fatima Akter, learned Assistant Attorney-General, appearing for the petitioner-State in Criminal Petition for Leave to Appeal No. 345 of 2025, made submissions stating that the judgment and order passed by the High Court Division suffers from legal infirmity inasmuch as the prosecution was able to prove the prosecution case beyond all reasonable doubt since there is evidence on record for convicting the accused persons. He has further submitted that the High Court Division committed errors of law acquitting the respondent No. 1 inasmuch as the witnesses corroborated with each other in respect of the offence committed by the respondent No. 1 but the respondent No. 1 could not establish her innocence by cross-examining the PWS. He has also submitted that the informant has supported the FIR story in toto, as such, the judgment and order of acquittal has no basis at all, and accordingly, leave may be granted to address the errors of law committed by the high Court Division and thereby, set aside the judgment and order of conviction and sentence passed by the High Court Division on merit.

19. Mr. Ashif Hasan, learned Senior Advocate, appearing for the petitioner-Commission in Criminal Petition for Leave to Appeal Nos. 569 of 2025 and 677 of 2025, has adopted the same argument advanced by Mr. Aneek R. Haque, learned Additional Attorney-General. He has added though the learned judge of the trial Court has rightly passed the judgment and order of conviction, yet the High Court Division failed to appreciate that the prosecution has been able to prove the case beyond all reasonable doubt and as such, the impugned Judgment and order passed by High Court Division may kindly be set aside.

20. *Per contra*, Mr. A.M. Mahbubuddin, learned Senior Advocate along with Mr. Ruhul Quddus, learned Senior Advocate, Mr. Bodruddoza, learned Senior Advocate and Mr. Aminul Islam, learned Advocate, appearing on behalf of the respondents of Criminal Petition for Leave to Appeal No. 345 of 2025 have strongly opposed the instant leave petition supporting the judgment and order of acquittal dated 27.11.2024 passed by the High Court Division in Criminal Appeal No. 12374 of 2018 heard analogously with Criminal Appeal No. 12401 of 2018.

21. No one appears on behalf of the respondents in Criminal Petition for Leave to Appeal Nos. 569 of 2025 and 677 of 2025 to oppose the leave petition.

22. We have heard the submissions of the learned Advocates appearing for the respective parties and perused the impugned judgment and order of the High Court Division along with other connected papers on record. Since both the parties are present before the court and they have delivered elaborate submissions, we are going to dispose of the Criminal Petitions for Leave to Appeals summarily on merit without granting any leave.

23. The prosecution case rests primarily upon the allegations that Metro Makers and Developers Ltd. did not make any donation or payment in favour of Shaheed Ziaur Rahman Charitable Trust; the deposit in the account of Shaheed Ziaur Rahman Charitable Trust was in fact made by Mr. Monirul Islam, Private Secretary to the then Mayor of Dhaka City Corporation using the name of Metro Makers and Developers Ltd; said Monirul Islam stated that money was given to him by Mr. Abul Haris Chowdhury, Political Secretary to the then Prime Minister for depositing the same in the account of the said Trust; Tk. 55,50,000 (Taka Fifty-Five lac Fifty thousand) was deposited on different dates in the said trust including Tk. 27,00,000/- (Taka Twenty-Seven lac) which was deposited on 18.01.2005 by Md. Ziaul Islam, Private Secretary to the then Political Secretary to the Prime Minister who deposited the same in the account of the said Trust as per direction of Mr. Abul Haris Chowdhury; Begum Khaleda Zia by using her official position as the Prime Minister collected the aforesaid funds from various unlawful sources and she paid excess Tk. 1,24,93,000/= (Taka One crore Twenty-Four lac Ninety-three thousand) to the vendor Suraiya Khan, aunt of Mr. Tarique Rahman's Wife, regarding which there is no satisfactory explanation by the prosecution which failed to establish that the then Prime Minister Begum Khaleda Zia had misappropriated the same in the guise of making additional payment to the vendor.

24. Upon perusal of the record, it appears that Tk. 6,18,89,529 (Taka Six crore Eighteen lac Eighty-Nine thousand Five hundred Twenty-Nine) was deposited in the account of the Shaheed Ziaur Rahman Charitable Trust which was received from the party fund of Bangladesh Nationalist Party in respect of which there is no dispute.

25. Defence firmly asserts that Metro Makers and Developers Ltd. donated Tk. 1,35,00,000/- (Taka One crore Thirty-Five lac) to the said Trust by five payment Orders. Accused Md. Ziaul Islam received Tk. 55,50,000/- (Taka Fifty-Five lac Fifty thousand) from the workers, activists and supporters of BNP across the country and thereafter, he deposited the same in the account of the said Trust on behalf of them.

26. It transpires from the oral evidence on record that the authority of Metro Makers and Developers Ltd. denied the payment or donation to or in favour of Shaheed Ziaur Rahman Charitable Trust. If for arguments sake, it is taken for granted that Metro Makers and Developers Ltd. did not donate Tk. 1,35,00,000/- (Taka One crore Thirty-Five lac) in favour of the said Trust, the question of collecting fund from Metro Makers and Developers Ltd. by using the official position of Begum Khaleda Zia, the then Prime Minister, does not arise at all. However, the documentary and oral evidence on record shows that the Metro Makers and Developers Ltd. might have donated the aforesaid fund which has rightly been pointed out by the High Court Division. It transpires from the evidence on record, particularly from the deposition of Pw-21, Md. Zakaria Khan, DGM, Finance and Accounts, Metro Makers and Developers that Kazi Rashiduzzaman, AGM, Metro Makers and Developers Ltd, was the applicant of the alleged five pay orders in favour of the Shaheed Ziaur Rahman Charitable Trust through which Tk. 1,35,00,000/- (Taka One crore Thirty-Five lac) was deposited in the account of the said Trust. Pw-22, Ziauddin Sawlat Gani, Manager, Shahjalal Islami Bank Limited who had issued the said 5(five) payment orders deposed during cross-examination, “বর্ণিত ৫ টি পে-অর্ডারে আমার স্বাক্ষর আছে। ৫টি পে-অর্ডারে স্বাক্ষর করার সময় প্রত্যেকটির সংশ্লিষ্ট অ্যাপ্লিকেশন ফরম দেখে পে-অর্ডারগুলি স্বাক্ষর করেছি। পে-অর্ডার অ্যাপ্লিকেশন ফরম গুলিতে অ্যাপ্লিকেন্ট হিসাবে রশিদুজ্জামানের স্বাক্ষর আছে।”

27. So, it appears from the evidence on record both oral and documentary that Metro Makers and Developers Ltd. is the applicant of the 5 payment orders in question. The High Court Division also, upon appreciating the evidence in the correct perspective, reached the same finding. Pw-32, the Investigating Officer of this case, deposed, “শাহজালাল ইসলামী ব্যাংকের ৫টি পে-অর্ডারের এপ্লিকেশন ফরম-এ টাকার নোটের বর্ণনা দেয়া নাই। বর্ণিত ৫ টি পে-অর্ডার ফরমে ও পে-অর্ডারে শুধুমাত্র মোট টাকার উল্লেখ আছে। বস্তু প্রদর্শনী-III series পে-অর্ডার এপ্লিকেশন ফরম এর প্রতিটিতে ১১৫/- টাকার কমিশন ও ভ্যাট গ্রহণের কথা উল্লেখ আছে। মেট্রো মেকারস্ এন্ড ডেভেলপারস্ লিঃ এর নামীয় ব্যাংক হিসাব বিবরণী বস্তু প্রদর্শনী- XI(C) এর ৫ম পাতায় ১৬/০১/২০০৫ ইং তারিখের এন্ট্রিতে ৫টি পে-অর্ডারের বিপরীতে ৫৭৫/- টাকা ডেবিট করার কথা উল্লেখ আছে। বস্তু প্রদর্শনী XI(C) ব্যাংক হিসাব বিবরণীতে ১৬.০১.২০০৫ খ্রিঃ তারিখে মেট্রোমেকারস্ এন্ড ডেভেলপারস্ লিঃ এর ৪ টি ক্লিয়ারিং চেকের মাধ্যমে এক কোটি টাকার উর্ধ্বে ডেবিটেড করার বিষয় এন্ট্রি করা আছে। ১৬.০১.২০০৫ ইং তারিখের ব্যাংক হিসাব বিবরণীর বস্তু প্রদর্শনী- XI(C) এর এন্ট্রিকৃত ক্লিয়ারিং চেকে ১,২২,০০০/-, ৭৭,০০০/-, ১,৩৯,০০০/-, ১,০০,০০,০০০/- টাকা এন্ট্রি দেয়া আছে। ব্যাংক হিসাব বিবরণী বস্তু প্রদর্শনী- XI(C) তে ১৫/০১/২০০৫ ইং তারিখের এন্ট্রিতে ২ টি ক্লিয়ারিং চেকে ২৫,০০,০০০/- এবং ২৫,০০,০০০/- টাকা এন্ট্রি করা আছে। ১৫.০১.২০০৫ এবং ১৬.০১.২০০৫ ইং তারিখের ক্লিয়ারিং চেকগুলো এসএনডি দ্বারা শুরু হয়েছে তবে চেক নম্বরগুলি ভিন্ন। ক্লিয়ারিং চেকগুলি সম্পর্কে তদন্ত করেছি এবং সংশ্লিষ্ট সাক্ষীকে জিজ্ঞাসাবাদ করে জবানবন্দি রেকর্ড করেছি তবে সাক্ষীর জবানবন্দিতে চেকগুলির বিষয়ে কোনো ব্যাখ্যা লেখা নাই।” Pw-32 further deposed, “১৬.০১.২০০৫ তারিখের যে সব ক্লিয়ারিং চেকমূলে ডেবিট করার বিষয় বলেছি সে সব চেক বিষয়ে সংশ্লিষ্ট ব্যক্তিদের জিজ্ঞাসাবাদ করে তাদের জবানবন্দি রেকর্ড করিনি।”

28. It transpires from the evidence on record that the account statement of the Metro Makers and Developers Ltd. demonstrates that applicable commission and VAT against the issuance of the said five payments orders were charged to the account of the said Company which negates the claim of the said company that it was not the originator of the impugned five payment orders. The High Court Division also rightly pointed out this vital aspect of the evidence which affects the merit of the case substantially. The Investigating Officer deposed at one stage of cross examination that he had investigated about the clearing cheques and

recorded the statements of the persons concerned with the clearing cheques after interrogation but in the later stage of the cross-examination he deposed that he had not recorded the statements of the persons concerned with the clearing cheques after investigation which is contradictory to his previous statement, which creates doubt as to whether he had investigated about the clearing cheques at all. It appears that the Investigating Officer did not investigate the case properly.

29. It is well settled that the contents of documentary evidence should ordinarily get preference over oral evidence unless the alleged document is the product of forgery or false personation. The trial court failed to appreciate the documentary evidence juxtaposing the oral evidence of the Investigating Officer for which it reached erroneous conclusion that Metro Makers and Developers Ltd. did not make payment in the account of the said Trust though there was reasonable doubt that Metro Makers and Developers Ltd. might have made payment in the account of the said Trust having regard to the account statement of the said company and oral testimony of the Investigating Officer that he did not record after interrogation the statements of the persons concerned with the clearing cheques dated 16.01.2005. The High Court Division rightly appreciated the documentary evidence in its correct perspective juxtaposing the oral evidence of the prosecution witnesses and thereby, correctly recorded the finding that Metro Makers and the Developers Ltd. might have paid Tk. 1,35,00,000/- (Taka One crore Thirty-Five lac) through 5(five) payment orders in the account of the said Trust. There is no evidence on record that Begum Khaleda Zia, the then Prime Minister, used her Official position to compel Metro Makers and Developers Ltd. to make donation in the account of the Shaheed Ziaur Rahman Charitable Trust.

30. The Investigating Officer, PW-32, deposed during his cross-examination, “বিভিন্ন ব্যাংকে মেট্রো মেকার্স এন্ড ডেভেলপার্স এর নামে ৫ টি হিসাব এবং উক্ত কোম্পানীর এমডি, ডিএমডিদের নামেও পৃথক ব্যাংক একাউন্ট আছে। মেট্রো মেকার্স এন্ড ডেভেলপার্স লিঃ এর নামীয় বা উক্ত কোম্পানীর এমডি, ডিএমডি-এর নামীয় ব্যাংক হিসাব সমূহের চেকবই সমূহের মুড়ি আমি পরীক্ষা করে দেখিনি। ১৬.০১.২০০৫ ইং তারিখের অব্যবহিত পূর্বের ১ মাস এবং অব্যবহিত পরের ১ মাস মেট্রো মেকার্স এন্ড ডেভেলপার্স লিমিটেড কোম্পানি কি পরিমাণ জমি বা কত টাকা মূল্যের জমি কেনা-বেচা করেছিল তা আমি তদন্ত করে দেখিনি। মেট্রো মেকার্স এন্ড ডেভেলপার্স লিঃ এর কোন ল্যান্ড সেলস রেজিস্টার ছিল কিনা তা আমার জানা নাই এবং আমি উক্তরূপ কোন সেলস রেজিস্টার জন্ম করিনি। মেট্রো মেকার্স এন্ড ডেভেলপার্স লিঃ এর অফিসে যেয়ে কোন ল্যান্ড সেলস রেজিস্টার দেখতে চাইনি। মেট্রো মেকার্স এন্ড ডেভেলপার্স লিমিটেড এর ব্যাংক হিসাবসমূহের কাগজপত্র জন্ম করার জন্য বিজ্ঞ সিনিয়র স্পেশাল জজ আদালত, ঢাকায় কোন সময় আবেদন করিনি। এম.ডি.জনাব এ.এফ.এম জাহাঙ্গীর হোসেন সাহেবের ব্যক্তিগত নামেও বিভিন্ন ব্যাংক হিসাব ছিল যা আমি তদন্তে পেয়েছিলাম। আমি জনাব জাহাঙ্গীর হোসেনের ব্যক্তিগত ব্যাংক হিসাব সমূহের কাগজাদি জন্ম করার জন্য বিজ্ঞ সিনিয়র স্পেশাল জজ আদালতে আবেদন করিনি। মেট্রো মেকার্স এন্ড ডেভেলপার্স লিঃ কোম্পানীর অডিট যে সব ফার্ম করেছে ঐ সব ফার্মের সংশ্লিষ্ট কর্মকর্তাকে জিজ্ঞাসাবাদ করিনি।”

31. The High Court Division rightly observed by quoting the aforesaid testimony of the Investigating Officer that the prosecution had failed to prove into or intentionally withheld evidence as to, the source of fund donated by the Metro Makers and Developers Ltd to Shaheed Ziaur Rahman Charitable Trust vide 5(five) payment Orders and the investigation of the Investigating Officer is incomplete and perfunctory.

32. There was no embargo in buying property in the name of Shaheed Ziaur Rahman Charitable Trust as it appears from the testimony of Pw-1, the informant of this case, who deposed, “ট্রাস্টের বর্ণিত উদ্দেশ্য পূরণের জন্য চ্যারিটেবল ট্রাস্টের নামে জমি ক্রয়, দালান কোঠা নির্মাণ বা ক্রয় করা যাবে মর্মেও শর্ত আছে”. So, we donot find any illegality in buying immovable property in the name of Shaheed Ziaur Rahman Charitable Trust. Now, it is to be seen whether Tk. 1,24,93,000/- (Taka One crore Twenty-Four lac Ninety-Three thousand) in excess of consideration of the sale deed was given to the Vendor with bona fide intent to compensate the vendor for the

value of some ancillary materials connected with the property. The Investigating Officer, Pw-32, deposed during his cross-examination, “সুরাইয়া খান ফৌজদারী কার্যবিধির ১৬১ ধারার জবানবন্দিতে ১,২৪,৯৩,০০০/- টাকা অতিরিক্ত গ্রহণের ব্যাখ্যা প্রদান করেছিলেন কিন্তু তা তার কাছে গ্রহণযোগ্য হয় নাই কারণ তিনি বেগম খালেদা জিয়ার বড় পুত্র জনাব তারেক রহমানের আপন চাচী শ্বাশুড়ী। সুরাইয়া খান তার কাছে বলেছিলেন যে, স্থাপনার মধ্যে এ/সি/ ডিস/ ফার্নিচার/ফিটিংস/গাছপালা আছে”। Though Suraiya Khan was enlisted as a witness by the Anti-Corruption Commission, yet, she was not produced before the court and therefore, presumption under section 114 illustration (g) of the Evidence Act, 1872 can reasonably be drawn to the effect that if Suraiya Khan was produced before the court, she would not support the prosecution case. The reason assigned by the Investigating Officer that he did not believe the explanation given by Suraiya Khan for taking extra Tk. 1,24,93,000/- (Taka One crore Twenty-Four lac Ninety-Three thousand) since she was aunt of Mr. Tarique Rahman’s wife does not appear to be a sound one as relationship only cannot be the sole ground to disbelieve the statement of a witness where there may be other justifiable grounds to believe the same. In some cases there may remain some valuable objects in the property sold for the beneficial enjoyment of the property the value of which may not be included in the consideration of the sale deed which may be paid to the vendor later on upon mutual settlement. Having regard to the facts and circumstances of the case coupled with the testimony of the Investigating Officer it appears that the trial court failed to appreciate that Suraiya Khan took extra Tk. 1,24,93,000/- (Taka One crore Twenty-Four lac Ninety-Three thousand) for the value of AC/Dish/Furniture/Fittings/Trees situated within the property which was sold to Shaheed Ziaur Rahman Charitable Trust and thereby, reached erroneous finding that Begum Khaleda Zia had misappropriated the same in collusion with Suraiya Khan. It appears from record that the High Court Division rightly appreciated this point and reached the finding that the prosecution had failed to prove that Begum Khaleda Zia had misappropriated Tk. 1,24,93,000/- (Taka One crore Twenty-Four lac Ninety-Three thousand) in the guise of making extra payment to vendor Suraiya Khan or anyone on behalf of Begum Khaleda Zia had owned the said money.

33. Prosecution firmly asserts that Begum Khaleda Zia in collusion with other accused by using her position as the Prime Minister collected fund from different persons and allowed it to be deposited in the account of Shaheed Ziaur Rahman Charitable Trust in the name of donation. It transpires from the Judgment and order of the trial Court that Begum Khaleda Zia was convicted for the offence described in section 5(1)(d) of the Prevention of Corruption Act, 1947, in short ‘the Act, 1947’, which states that a public servant is said to commit the offence of criminal misconduct 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 any other person any valuable thing or pecuniary advantage. At this juncture, it is worth describing that the word obtain appearing in section 5(1)(d) of the Act, 1947 was interpreted in catena of cases which is much more pertinent to be discussed here for arriving at a correct decision in the case in hand.

34. In the case of Ram Krishan and Others Vs. The State of Delhi, reported in AIR 1956 SC 476, it was observed,

*“The word ‘obtains’, on which much stress was laid does not eliminate the idea of acceptance of what is given or offered to be given, though it connotes also an element of effort on the part of the receiver.”*

35. In the case of C.K. Damodaran Nair Vs. Govt. of India, reported in AIR 1997 SC 551, it was held,

*“The position will, however, be different so far as an offence under section 5(1)(d) read with section 5(2) of the Act is concerned. For such an offence prosecution has to prove that the accused ‘obtained’ the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under section 4(1) of the Act as it is available only in respect of offences under section 5(1)(a) and (b) and not under section 5(1)(c), (d) or (e) of the Act. ‘Obtain’ means to secure or gain (something) as the result of request or effort (Shorter Oxford Dictionary). In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under section 5(1)(d) of the Act unlike an offence under section 161 I.P.C, which, as noticed above, can be established by proof of either ‘acceptance’---- or ‘obtainment’.”*

36. The aforesaid interpretation of the word obtain incorporated in section 5(1)(d) of the Act, 1947 was also followed in the case of Subash Parbat Sonvane Vs. State of Gujarat, reported in AIR 2003 SC 2169 and in the case of R. Balakrishna Pillai Vs. State of Kerala, reported in 2003 (9SCC) 700.

37. From the judicial pronouncements described hereinbefore, it appears that in order to prove criminal misconduct under section 5(1)(d) of the Act, 1947 the prosecution has to prove primarily the demand or request on the part of the accused for any valuable thing or pecuniary advantage either for himself or for other person and the burden of proof of the same lies on the prosecution as the statutory presumption against the accused incorporated in section 4 of the Act, 1947 does not extend to the offence described in section 5(1)(d) of the Act, 1947.

38. In this case, it appears that not a single prosecution witness deposed that Begum Khaleda Zia had demanded or had attempted to demand directly or indirectly from any institution or person any donation or pecuniary advantage for Shaheed Ziaur Rahman Charitable Trust. There is no evidence on record that she, by using her official position, bought property in the name of the said Trust at a reduced price compared with market price compelling the vendor to agree to the same. It appears from the testimonies of the prosecution witnesses particularly from the testimonies of Pw-1 (Informant), Pw-18 (General Manager Sonali Bank and seizure list witness) and Pw-23 (ex Sonali Bank Officer and seizure list witness) that Begum Khaleda Zia did not use her official designation in the Trust deed or Account Opening Form, cheques or other papers connected with this case. The prime consideration, in the instant case, should have been to ascertain whether there had been any misuse of official position in collection of donation for Shaheed Ziaur Rahman Charitable Trust by Begum Khaleda Zia, which is not established by the evidence on record.

39. Upon perusal of record, it also transpires that there is no bar in the deed of Trust to receive donation from any person or class of persons and it also does not fix the limit as to what extent donation can be received. The informant of the case, Pw-1, deposed during cross-examination, “এই চ্যারিটেবল ট্রাস্টে কার কাছ থেকে অনুদান গ্রহণ করা যাবে কিংবা কার কাছ থেকে অনুদান গ্রহণ করা যাবে না সে মর্মে কোনো বাধা নিষেধ নাই। কে কত টাকা অনুদান দিবে কিংবা ট্রাস্ট কার কাছ থেকে কত টাকা অনুদান গ্রহণ করবে সে রূপ কোন সীমা রেখা বা বিধি নিষেধ ট্রাস্ট ডিডে নেই। ট্রাস্ট ডিডের শর্ত অনুযায়ী ট্রাস্টের জন্য অনুদান গ্রহণের সীমা নির্ধারণ করা নেই।” So, it is clear from the above statement that any person can make donation to charitable trust (in the name of late President Ziaur Rahman). In some cases people make donations to charitable trust without disclosing their identity.

40. It has already been pointed out in the foregoing discussion that Anti-Corruption Commission failed to prove by evidence adduced either oral or documentary that Begum Khaleda Zia obtained donation or any other pecuniary advantage(s) for Shaheed Ziaur Rahman Charitable Trust by abusing her official position. Consequently, the principal offence as aforesaid being not proved, the allegation that accused Md. Ziaul Islam Munna or other accused abetted Begum Khaleda Zia in committing the principal offence stands not proved in the facts and circumstances of the case.

41. In view of the facts, circumstances and proposition of law discussed hereinabove, we are of the view that the High Court Division allowed the appeal upon proper appreciation of the facts and circumstances of the case in their correct perspective which does not call for any interference by this Division. Accordingly, Criminal Petition for Leave to Appeal Nos. 345 of 2025, 569 of 2025 and 677 of 2025 are dismissed summarily.