

Khan, Deputy Director, Durnity Daman Commission (the Commission) lodged an F.I.R. with Gulshan Police Station against the petitioners under section 4 of the Money Laundering Protirodh Ain, 2009 and section 4 of Money Laundering Protirodh Ain, 2012 alleging that they had laundered 3,95,62,541.65/-USD and 1,36,45,538.37/- HKD, thereby, committed offence under the aforesaid provisions of law. After holding investigation, the Investigating Officer submitted final report. The case was registered as Metropolitan Special Case No.80 of 2016 in the Court of Metropolitan Senior Special Judge, Dhaka. On 29.03.2016, the Metropolitan Senior Special Judge, Dhaka fixed 05.04.2016 for consideration of the said police report. On 05.04.2016, the Special Judge discharged the petitioners from the case upon accepting the said final report. Thereafter, on 29.05.2016, the Commission filed an application in the Court of Metropolitan Senior Special Judge under section 173(3B) of the Code of Criminal Procedure read with sections 19 and 20 of the Durnity Daman Commission Ain, 2004 for holding further investigation of the case. On 31.05.2016, the Commission also filed a 'naraji' petition against the final report submitted by the

Investigating Officer. The Special Judge examined one Md. Zahangir Alam on behalf of the Commission. On 02.06.2016, the Metropolitan Senior Special Judge, Dhaka rejected the naraji petition as well as the application for holding further investigation filed by the Commission holding that after discharging the accused petitioners from the case upon accepting the final report, the said Court has become functus officio, so the 'naraji' petition was not entertainable.

The Commission then filed an application under section 10(1)(A) of the Criminal Law Amendment Act, 1958 in the High Court Division against the order dated 02.06.2016 and obtained Rule.

The High Court Division by its judgment and order dated 09.11.2016 finally disposed of the said Rule upon setting aside the order dated 05.04.2016 passed by the learned Metropolitan Senior Special Judge observing that the Anti Corruption Commission is at liberty to hold further investigation and in that regard no formal order is needed from the Court as per provision of section 173(7B) of the Code of Criminal Procedure. It also passed an order of

freezing the wealth, in question, till 31.03.2017.

Against the said order, the petitioners have filed this Criminal Petition for Leave to Appeal.

Mr. Rokanuddin Mahmud, learned Senior Counsel appearing for the petitioners, submits that the Commission challenged the legality and propriety of the order dated 02.06.2016 passed by the Special Judge rejecting the prayer for further investigation but the High Court Division set aside the order dated 05.04.2016 inasmuch as the said order was not challenged. He further submits that the petitioners got final report which was duly approved by the Commission and the Special Public Prosecutor did not raise any objection against the report when the same was taken up for consideration. Thus, the Special Judge, accepting the final report, discharged the petitioners. In such view of the matter, there is no error in the order of rejection of the application for further investigation.

Mr. Khurshed Alam Khan, learned Counsel appearing for the Anti Corruption, submits that section 173(3B) of the Code of Criminal Procedure authorizes the investigation agencies to hold

further investigation even without any sanction of the Court and that the order of discharge is not an order of acquittal so there is no bar for holding further investigation, the High Court Division upon correct appreciation of the law observed that no formal order is needed for the investigating agencies to hold further investigation over the matter.

The provision of further investigation is comprehended under section 173 (3B) of the Code of Criminal Procedure is something which is the exclusive prerogative of the investigation agencies. The provision does not, in specific terms, mention about any power of the Court to order further investigation. Section 156 of the Code of Criminal Procedure uses the expression 'investigation' only and not 'further investigation'. No doubt, where there is already an investigation culminating in a police report, the court can trigger into motion the power of the police to conduct further investigation under section 173(3B) of the Code of Criminal Procedure. The said provision does not provide any specific provision that in order to hold further investigation by the police, it is necessary to take permission of the Court.

In the case of Abdur Rahman Vs. State reported in 29 DLR(SC) 256, it was observed,

"In the instant case the police took up investigation of the case, the offence alleged being a cognizable one. But the complainant himself as well as the witnesses were not available as they were, according to the police report, either hiding them or crossed over to India. Hence the police did not consider it expedient to keep the investigation in the case pending and submitted a final report whereupon the Magistrate discharged the accused who was in custody. However, after the lapse of sometime the police submitted an application to the Magistrate for starting reinvestigation of the case on the ground that evidence was available and it was forthcoming, whereupon the Magistrate allowed the prayer, vide order dated 09.04.1973. After investigation the police submitted the charge sheet upon which the Magistrate took cognizance of the offence and the appellant was thereafter apprehended. We think that in

doing so, neither the police nor the Magistrate acted without jurisdiction."

In the Case of Dr.H.B.M. Iqbal Vs. the State reported 12 MLR (AD) 30 this Division observed that there is no legal bar on further investigation and submission of supplementary charge sheet upon collection of additional evidence after submission of charge sheet or police report under Section 173(1) of the Code of Criminal Procedure.

The discharge of the accused on the basis of the final report does not amount to acquittal and so there is no bar of holding further investigation even after acceptance of police report when fresh material comes to light against accused persons. The investigating agency can not keep quiet. The words, 'nothing in this section shall be deemed to preclude further investigation' used in section 173(3B) clearly emphasize that nothing in Section 173 shall be construed to preclude further investigation by the investigating agency in respect of an offence after a report under section 173(1) of the Code. The Court can order for further investigation even after acceptance of final report stating non-availability of the materials. Since the

order of discharge neither amounts to an acquittal nor to a final order, the accused can be proceeded against for the same offence on the basis of supplementary report submitted on holding further investigation or on the basis of naraji petition filed by the informant/complainant. It is no longer res integra that the Court, if exigent to do so, to espouse the cause of justice, can trigger further investigation even after a final report is submitted under section 173(3B) of the Code.

In view of the aforesaid proposition of law, we are of the view that the investigation of crime is carried out dehors the mandate contained in the Code of Criminal Procedure containing sections 154-173 of the Code and that the further investigation is a statutory right of the investigating agency under section 173(3B). The High Court Division rightly allowed the investigating agency of holding further investigation even after submission of the police report and after acceptance of the same.

Considering the facts, circumstances and law related thereto, we do not find any wrong in the decision of the High Court Division which calls for any interference by this Division.

Thus, the leave petition is dismissed.

C.J.

J.

J.

J.

The 8th March, 2018.

M.N.S./words-1438/