

Present:
Mr. Justice Md. Nazrul Islam Talukder
And
Mr. Justice K.M. Hafizul Alam

Criminal Revision No. 2215 of 2017

Md. Shahadat Islam and another
.....*Accused-petitioners*
-Versus-

The Anti-Corruption Commission and another
.....*Opposite-parties*

Mr. Md. Tahid Uddin Shipon, Advocate
..... *For the Petitioner*

Mrs. Rona Naharin, D.A.G with
Mr. A.K.M. Amin Uddin, D.A.G and
Mrs. Helena Begum (Chaina), A.A.G
..... *For the State-opposite-party*

Mr. A.K.M. Fazlul Hoque, Advocate
..... *For the Anti-Corruption Commission*

Heard on 27.06.2018 and 04.07.2018
Judgment on 11.07.2018

Md. Nazrul Islam Talukder, J.

On an application under section 10(1A) of the Criminal Law Amendment Act, 1958, this Rule, at the instance of the accused-petitioners, was issued calling upon the opposite-parties to show cause as to why the impugned order dated 14.06.2017 passed by the

learned Divisional Special Judge, Dhaka in Special Case No.25 of 2015 under sections 409/408/468/467/471/420/109 of the Penal Code along with section 5(2) of the Prevention of Corruption Act, 1947, under section 13 of the Money Laundering Act, 2002, under section 4(2) of the Money Laundering Act, 2009 and under sections 4(2)(3) of the Money Laundering Act, 2012 rejecting the application under sections 222(2), 234 as well as sections 239(c) and 239(d) of the Code of Criminal Procedure filed by the accused-petitioners praying for not to proceed with the trial of the case jointly with the accused Nos.2,5-10 on the basis of one charge in the same proceeding, should not be set aside, and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts, relevant for the purpose of the disposal of this Rule, in short, are that one Md. Eftekher Hossain being Senior Vice President and Head of Human

Research Division of Prime Bank Limited lodged a First Information Report (in brief the FIR) with the Motijheel Police Station being Motijheel Police Station Case No. 73 dated 29.03.2012 stating, *inter alia*, that accused Kamrul Ahmed Ferdous during the tenure of his job in the Prime Bank, Islami Banking Branch, Dilkusha, Dhaka from 14.01.2002 to 28.03.2012 was performing his function in the said branch and after his promotion, he was working as Manager and was also working as in-charge officer of investment processing, risk assessment, preparation of investment proposal, disbursement, monitoring, IT management of the retail credit division with retail investment. As per the working procedure, he was supplied with User ID and password to enter into the IT System of the Bank for performing his job along with the job of manual and documentary process. After a sudden supervision of an Investigation team of

the Head Office, it was found that he without any permission of the Head Office entered into the IT System of the Bank using his password and created fake loan with some fake customers and some current customers and disbursed the loan money into his own account and his other interest-related accounts and then in connivance with other accused persons misappropriated Tk. 48,78,00,000/-.

The investigation officer of the Anti-Corruption Commission (in brief the ACC) after holding investigation having found *prima-facie* case submitted charge-sheet being no. 158 dated 24.07.2014 against the accused-petitioner and 28 others under sections 409/408/468/467/471/420/109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947, under section 13 of the Money Laundering Protirodh Ain, 2002, section 4(2) of the Money Laundering Protirodh Ain, 2009 and under sections

4(2)(3) of the Money Laundering Protirodh Ain, 2012. In the charge-sheet, amount of misappropriation of money was increased into Tk. 92,63,31,139/-.

After submission of the charge-sheet, the case record was sent to the learned Metropolitan Senior Special Judge for trial. The learned Senior Special Judge having received the case record took cognizance of offence on 30.10.2014 against the accused-petitioners and other 28 accused-persons.

Thereafter, on 27.08.2015, the learned Metropolitan Senior Special Judge, Dhaka after hearing the parties and considering the application under section 265(c) discharged 2 accused and framed charge against the accused-petitioners along with 28 accused-persons under sections 409/408/468/467/471/420/109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947, under section 13 of the Money Laundering

Protirodh Ain, 2002, under section 4(2) of the Money Laundering Protirodh Ain, 2009 and under sections 4(2)(3) of the Money Laundering Protirodh Ain, 2012.

After framing of charge, the learned Metropolitan Senior Special Judge transferred the said case record to the learned Divisional Special Judge, Dhaka for trial.

Thereafter, the accused-petitioners on 14.06.2014 filed an application praying for not to proceed with the trial jointly with the accused nos.2, 5-10 on the basis of one charge in the same proceeding in violation of sections 222(2), 234 as well as sections 239 (c) and 239(d) of the Code of Criminal Procedure, 1898 (in brief the CrPc) stating, *inter alia* that the framing one charge covering all the accused for all the offences is not maintainable.

Thereafter, the learned Division Special Judge upon hearing the parties rejected the said application on 14.06.2017.

The petitioners being aggrieved by and dissatisfied with the impugned order dated 14.06.2017 preferred this Criminal Revision under section 10(1A) of the Criminal Law Amendment Act, 1958 before the High Court Division and obtained the instant Rule on 23.08.2017 with an ad-interim order of stay of the proceeding of Special Case No. 25 of 2015.

Mr. Md. Tahid Uddin Shipon, the learned Advocate appearing on behalf of the accused-petitioners, submits that the alleged offences as alleged in the FIR, charge-sheet as well as the order of framing charge were not been committed within 1(one) year in one transaction as such all the accused cannot be tried jointly on the basis of one charge in the same proceeding in violation of provisions under

sections 222(2) and 234(1) of the Cr.P.C; therefore, the order of framing charge by the learned Divisional Special Judge cannot sustain in the eye of law.

Mr. Shipon next submits that since the alleged offences as per averments made in the FIR and Charge-sheet were committed by different persons on several occasions as such they cannot be tried jointly on the basis of one charge in the proceeding as per provisions of section 239 of the Cr.P.C, hence the impugned order of framing charge is unlawful and the same is liable to be set aside.

On the other hand, Mr. A.K.M. Fazlul Hoque, the learned Advocate appearing on behalf of the ACC has submitted Counter-Affidavit denying all the allegations made in the application and categorically submits that the application filed by the accused-petitioners under sections 222(2), and 234 as well as 239 (b) and (c) of the CrPC are not applicable in a

proceeding initiated under the Durnity Daman Commission Ain, 2004, being regulated by the Criminal Law Amendment Act,1958.

He next submits that as per section 6(1B) of the Criminal Law Amendment Act, 1958, any number of offences of the same kind committed by a person in one transaction or more than one over a period of one year or more, may be tried in one trial and the abettors as like the petitioners of the said offences also may be tried with him; therefore, the learned Divisional Special Judge, Dhaka did not commit any wrong in rejecting the said application and hence the Rule may kindly be discharged.

He further submits that section 6(1B) of the Criminal Law Amendment Act, 1958 is the Special Law which will prevail over the CrPC so the sections mentioned in the application shall have no manner of application in the instant case as such the learned

Divisional Special Judge rightly rejected the application. Mr. Hoque, in support of his submissions, refers the case of **State-Vs. Md. Ibrahim Ali** reported in **66 DLR (AD) (2014) 33** and the case of **Habibur Rahman Mollah Vs. State** reported in **61 DLR (AD)(2009) 1**.

He next submits that as per FIR and the charge-sheet, the accused Kamrul Ahmed Ferdous is the principal accused who unlawfully manipulating investment processing and the IT management system of the Bank issued a fake loan and disbursed the same to the accounts of other charge-sheet named accused and since Kamrul Ahmed Ferdous is the principal accused and all other accused abetted him in the commission of offence as to the illegal transaction of the fake loan, therefore, all the accused should be tried in one charge as per section 6(1B) of the Criminal Law Amendment Act, 1958.

He lastly submits that in the FIR and charge-sheet, a *prima-facie* case has been disclosed against the accused-petitioners and others and they committed offence in connivance with each other as such as per provision of section 6(1B) of the Criminal Law Amendment Act, 1958, all the accused should be tried in one charge.

We have gone through the revisional application filed by the accused-petitioners along with the prosecution material annexed therewith. We have also considered the submissions of the learned Advocates for the accused-petitioners Mr. Md. Tahid Uddin Shipon, Mr. A.K.M. Fazlul Hoque for the ACC and Mr. A.K.M. Amin Uddin, the learned Deputy Attorney General for the State and also examined the relevant provisions of laws regarding the framing of charge in a proceeding initiated under the Anti-Corruption Commission Act, 2004.

On perusal of the records, it appears that the main question in this case as raised by the learned Advocate for the accused-petitioners is that allegedly, the accused-petitioner no.1, in collaboration with accused nos. 2-30, committed different transactions in different times so the offences committed by the accused are not the same offence; therefore, as per provision of section 234 of the Cr.P.C read with section 239 (b) and (c), all the accused cannot be tried in one charge; hence the instant proceeding is not maintainable and on the basis of the same, the trial cannot be proceeded in accordance with the law.

It appears from section 234(1) of the Cr.P.C that when a person is accused of more offences than one of the same kind committed within the space of 12 months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with and tried at one trial for, any number

of them not exceeding three and as per section 239 (c), it has been stated that persons accused of more than one offence of the same kind, within the meaning of section 234 committed by them jointly within the period of 12 months but the instant proceeding has been started against the accused-petitioners and others under the provisions of the Anti-Corruption Commission Act, 2004 and the trial of the same are governed by the provisions of the Criminal Law Amendment Act, 1958. It is to be mentioned here that the Anti-Corruption Commission Act, 2004 and the Criminal Law Amendment Act, 1958 are Special Laws, and those shall prevail over the general law, like the Code of Criminal Procedure, 1898. More particularly section 6(1B) of Criminal Law Amendment Act, 1958 is applicable in case of trial of the offences under the schedule of the ACC Act, 2004 which runs as follows:

"A person accused of more offences than one punishable under this act may be tried at one trial for all".

It appears from the FIR that one Mr. Kamrul Ahmed is the principal accused and other accused abetted him. Accused no.1 in collaboration with all the abettors created/opened fake accounts, created/sanctioned loan and disbursed the said money to the account holders of the bank and thereby misappropriated tk. 48,78,00,000 so the accused-petitioner no. 1, in collaboration with other accused, misappropriated the money by committing the same kind of offence though it was committed in different times and by different persons being involved in this case. Therefore, as per provision of section 6(1B), of the Criminal Law Amendment Act, 1958, there is no bar to proceed with the instant case against the petitioners. In the case of **State Vs. Md. Ibrahim Ali,**

reported in **66 DLR (AD)(2014) 33**, the Appellate Division clearly observed that-

"20. the provisions of section 222(2) read with section 234 require that if there are more than one offences committed over a period of more than 12 months, then offences may not be charged in one charge, whereas section 6(1B) provides that any number of offences punishable under the Criminal Law Amendment Act irrespective of the period over which offence was committed, may be tried at one trial. Clearly, therefore, the provision in the Criminal Law Amendment Act is not consistent with the provision of the Code of Criminal Procedure thereby ousting the applicability of the provisions of Code in proceedings before the Court of Special Judge. Hence, all the offences committed over any length of period of time could be tried in a one trial upon framing one charge."

The same view has been taken in the case of **Habibur Rahman Mollah Vs. The State**, reported in **61 DLR(AD)(2009) 1** wherein it has been held that-

"26. The period of one year is available in section 234 of the Code of Criminal Procedure but it is absent in section 6(1B) of the Criminal Law Amendment Act, 1958 and thereby in view of the provision laid down in section 6(1) of the Criminal Law Amendment Act, 1958 section 6(1B) excludes the application of section 234 which relates to the period of the commission of the alleged offence."

In the light of above decisions discussed above, we are of the view that there is no application of sections 234 and 239(b)(c) of the Code of Criminal Procedure, in a proceeding initiated under the provisions of Durnity Daman Commission Ain, 2004, accordingly, the

submission advanced by the learned Advocate for the petitioners falls flat.

Considering the facts and circumstances of the case and the settled principles of law as stated in the aforesaid decisions, we do not find any considerable force in the submissions of the learned Advocate for the accused-petitioners.

Accordingly, the Rule is discharged.

The order of stay of the proceeding granted at the time of issuance of the Rule stands vacated.

The learned Divisional Special Judge, Dhaka is hereby directed to proceed with the case in accordance with the law and to dispose of the same preferably within 6(six) month from date of receipt of a copy of this judgment and order.

Let a copy of this judgment and order be communicated to the learned Judge of the concerned Court below at once.

K.M. Hafizul Alam, J.

I agree.