

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)

Present:

Mr. Justice Md. Nazrul Islam Talukder

And

Mr. Justice K.M. Hafizul Alam

Criminal Miscellaneous Case No.33602 of 2018.

Abdul Momin Majumder

..... Accused-petitioner.

-Versus-

The State and another

..... Opposite-parties.

Mr. Md. Mahmud Hassan Talukder, Advocate,

..... For the Accused-petitioner.

Mr. A.K.M. Amin Uddin, D.A.G with

Ms. Helena Begum (China), A.A.G.

..... For the State

Mr. Syed Mamun Mahbub, Advocate,

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

Heard on: 07.05.2019 and Judgment on: 07.5.2019.

Md. Nazrul Islam Talukder, J:

On an application under Section 561A of the Code of Criminal Procedure, this Rule, at the instance of the accused-petitioner, was issued calling upon the opposite-parties to show cause as to why the impugned

proceeding of Kotwali Model Police Station Case No.79 dated 18.5.2017 corresponding to D.A.B G.R No.02 of 2017 under Sections 26(2)/27(1) of the Anti-Corruption Commission Act, 2004 along with Section 109 of the Penal Code, now pending in the Court of learned Senior Judicial Magistrate, Cognizance Court No.01, Comilla, should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution case, in short, is that on 18.05.2017, one Sadhan Chandra Sutra Dar, Deputy Assistant Director, Anti-Corruption Commission, combined District Office, Chittagong-1, lodged an FIR against 2 persons including the accused-petitioner under Sections 26(2)/27(1) of the Anti-Corruption Commission Act, 2004 along with section 109 of the Penal Code with the Kotwali (Comilla) Model Police

Station alleging, inter-alia, that at the time of inquiry of the subject matter of Comilla E/R. No. 06/2012, combined District office of the Anti-Corruption Commission, by dint of memorandum of the Anti-Corruption Commission, Head Office, Dhaka being Memo No.দুদক/১৬/২০১১/কুমিল্লা/অনু: ও তদন- ২/২০২৩১ and on the basis of Memo No.1733, dated 19.09.2012, the Anti-Corruption Commission combined District office, Comilla under a specific form (Form No.0001344) issued notice upon Mrs. Selina Zaman, wife of the accused-petitioner for submission of return as to the statement of acquired immoveable and moveable property. On 08.10.2012, Mrs. Selina Zaman submitted return to the concerned office. In pursuance of Memo No.দুদক/১৬/২০১১/ কুমিল্লা/অনু:ও তদন- ২/৩৩৫০৬ dated 05.12.2012, Anti-Corruption Commission, Head Office, Dhaka after scruting it came to know that in some extent, there was inconsistency

between the value of acquired immovable and movable property and known source of income and eventually Mrs. Selina Zaman concealed information about her income source and did not exhibit or show the information as to additional value of Tk.40,23,858/- (forty lac twenty three thousand eight hundred fifty eight taka) only and in such way, she committed the offence under Sections 26(2) and 27(1) of the Anti-Corruption Commission Act,2004 and it has been presumed that Mrs. Selina Zaman acquired the undisclosed property valued at Tk.40,23,858/- only with the assistance and co-operation of the accused-petitioner. Hence the F.I.R.

After lodging the police station case at Kotwali Model Police Station, Comilla, the petitioner was arrested in Chittagong on 19.05.2017 in connection with the instant case.

Thereafter, on 20.06.2017, the petitioner was enlarged on bail by an order passed by the learned District and Sessions Judge, Comilla as well as Senior Special Judge, Comilla.

The investigation of the case is underway.

Being aggrieved by the impugned Kotwali Model Police Station Case No.79 dated 18.05.2017, the accused-petitioner approached this court with an application under section 561A of the Code of Criminal Procedure and obtained this Rule along with an order of stay of all further proceedings of the case.

At the very outset, Mr. Md. Mahmud Hassan Talukder, the learned Advocate appearing on behalf of the accused-petitioner, submits that it is now settled principle of law reported in 66 DLR (AD)236, 15 BLC (HCD)107, Para 97, 62 DLR(AD)290 that the assessment of valuation made by the Income Tax Department has legal validity which should not be

questioned by another independent government department unless the Income Tax Department reviews its own assessment and such contention is very much applicable in favour of the petitioner, because the petitioner submitted tax upon his acquired wealth after proper assessment and in such a situation, it is manifestly impossible to commit such offence by the petitioner as such the proceeding of the instant case is liable to be quashed.

He next submits that Article 35(2) of the Bangladesh Constitution reads that- “No person shall be prosecuted and punished for the same offence more than once” but it appears from the record and statements that the petitioner was earlier discharged from the self-same allegations after proper inquiry and investigation done by the proper authority of Anti-Corruption Commission (ACC) and by hiding the previous facts and circumstances, the instant case has

been initiated against the petitioner and as such, the continuation of the proceeding of the instant case is liable to be quashed.

He candidly submits that Section 20A of the Anti-Corruption Commission Act, 2004 reads that “20-A. Time Limit for investigation (1) Notwithstanding anything contained in any other law, the Investigation Officer shall conclude the investigation of any offence mentioned in this Act and schedule within the period not exceeding 120 working days from the date of being delegated power under Section 20.

(2) Whatever remains in sub-section (1), if the investigation could not be completed within the specified time as mentioned in sub-section (1) on any reasonable ground, the investigating officer may file a petition for extension of the time limit and in that case, the Commission may extend the time not exceeding sixty working days more.

(3) If the investigation officer is failed to complete the investigation within the time limit as stated in sub-section (1) or as the case may be, in sub-section (2)-

(a) the power shall have to delegate freshly to any other officer as per the provision of Section 20 for the completion of the investigation aforesaid within ninety working days; and

(b) on the charge of inefficiency against the concerned officer, if require, for the Commission, police or concerned organization the departmental proceedings is to be taken as per applicable law or rules and regulations.

(c) Inserted by Act, 60 of 2013 but to date after lodging FIR dated 18.05.2017, the investigation was not concluded which causes irreparable loss and unnecessary harassment of the petitioner, because, the petitioner is the Govt. officer and hence the proceeding

of the instant case is liable to be quashed for ends of justice.

He additionally submits that it appears from the FIR story that the petitioner had no involvement with alleged offence, because it has been stated at the last para of the FIR in such way: অনুসন্ধানকালে প্রাপ্ত তথ্যাদিতে দেখা যায়, আসামী মিসেস সেলিনা জামানের নামে আয়কর নথি থাকলেও তিনি প্রকৃতপক্ষে কোন বৈধ উপার্জন করেন না। তার স্বামী কাস্টমসের সহকারী রাজস্ব কর্মকর্তা আবদুল মমিন মজুমদার অবৈধ উপার্জনের দ্বারা আসামী সেলিনা জামানকে অসাধু উপায়ে এই সম্পাদাদি অর্জনে সহায়তা করেছেন মর্মে যুক্তিযুক্তভাবে অনুমিত হয়;

so, the F.I.R story did not disclose any offence against the petitioner and in such a situation according to the settled principles of law [reported in 28 DLR(AD) (1976)38, 17 BLD(AD)44], the instant case does not run against the petitioner and as such the continuation of the proceedings of the instant case is an

abuse of the process of the law and court and is liable to be quashed.

He vigorously submits that there are no ingredients of the offences under sections 26(2)/27(1) of the Anti-Corruption Commission Act, 2004 and section 109 of the Penal Code in the instant case and hence the proceeding is nothing but abuse of the process of the court and as such, the proceeding of the case is liable to be quashed.

On the other hand, Mr. Syed Mamun Mahbub, the learned Advocate appearing for the Anti-Corruption Commission, submits that the ACC sent notice two times to the accused-petitioner but both the times, he was discharged from the allegation; when he submitted his wealth statement, he suppressed that how his wife earned such a huge asset without doing anything which has actually revealed in the enquiry of the ACC; and according to the prima facie materials and information,

the ACC rightly lodged the FIR implicating the accused-petitioner though he was earlier escaped from earlier enquiry since the accused-petitioner bought and transferred all the assets in the name of his wife and his wife suppressed the actual wealth statement when she submitted the statement of wealth before the ACC, though she does not have any income source and as such, the Rule is liable to be discharged.

He next submits that it is a well settled principle of law that before lodging an FIR by the ACC, an enquiry usually takes place in every case; it appears from the enquiry report that the ACC having found prima facie case and other materials on record lodged the FIR against the accused-petitioner after inquiry of the case as such the continuation of the proceeding not being vexatious or oppressive would not amount to an abuse of the process of the Court; the HCD has literally no scope to entertain an application under Section 561A

of the Code of Criminal Procedure; hence the instant Rule issued earlier has got no merit and/or legal foundation; thus the same is liable to be discharged for ends of justice.

He then submits that the accused-petitioner filed the application under Section 561A of the Code of Criminal Procedure challenging the proceedings of the FIR purely on the basis of some disputed facts; he neither raised any legal question nor submitted any relevant law, hence at this stage, there is no scope to interfere with the proceeding and as such, the Rule may be discharged.

He candidly submits that the case is still under investigation and the application under section 561A of the Code of Criminal Procedure for quashment of proceedings where prima facie case is disclosed and before the stage of hearing under section 241A or 265C

of the Code of Criminal Procedure, the present case being premature is not maintainable.

He extremely submits that the accused-petitioner mentioned in the petition that the accused-petitioner were exempted twice from the enquiry against him when he submitted his wealth statement before ACC and in this case, with malafide intention, ACC implicated the accused-petitioner in FIR for the self-same allegation, but the fact is that earlier the accused-petitioner was discharged from enquiry held against him because he did not disclose the actual facts of wealth in the wealth statement but when ACC started enquiry against the wife of the accused-petitioner, the ACC found that without any source of income, she became the owner of a huge property; moreover she submitted the wealth statement suppressing a huge amount of wealth for which the ACC started enquiry against both of them and found that the accused-

petitioner bought each and every asset in the name of his wife, thus the accused-petitioner was implicated in the case.

He lastly submits that the accused-petitioner challenged the FIR and prayed for quashing the FIR but it will not be lawful if the FIR is quashed because of the cases of Nazrul Islam vs The state, 13 MLR(AD)2008, the ACC vs Md. Bazlur Rashid and another, 3 LNJ AD(2013), 48 DLR(AD)1996 wherein it is discouraged to quash the proceedings of any FIR if it is not out and out proved that there is no prima facie case to initiate the FIR and the same has been filed with malafide intention but in instant case, it is clearly mentioned that the FIR is lodged under different Sections and the date of occurrence is also different, hence the Rule is liable to be quashed for the ends of justice.

Mr. A.K.M. Amin Uddin, the learned Deputy Attorney-General appearing on behalf of the State, has

adopted the submissions made by the learned Advocate for the Anti-Corruption Commission.

We have gone through the application under Section 561A of the Code of Criminal Procedure and perused the prosecution materials annexed thereto and heard the learned Advocate for the accused-petitioner and the learned Advocate for the Anti-Corruption Commission and the learned Deputy Attorney-General appearing on behalf of the State.

It appears from the record that the ACC sent notices two times to the accused-petitioner but both the times, he was discharged from the allegation since he did not submit wealth statement disclosing all the assets. It may be mentioned that the accused-petitioner bought and transferred all the assets in the name of his wife. When the accused-petitioner submitted his wealth statement, he suppressed the fact to the effect that being a housewife, how his wife earned such a huge asset

without doing anything but the same was revealed in the enquiry of the ACC. And according to the prima facie case, the ACC rightly lodged the FIR implicating the accused-petitioner though he was escaped from the enquiry held earlier but the fact remains that the accused-petitioner bought and transferred all the assets in the name of his wife who suppressed the actual wealth statement when she submitted the statement of wealth before ACC. It further appears from the record that it is a well settled principle of law that before filing the FIR by the ACC, an enquiry usually takes place in every case. From the enquiry report, the ACC having found prima facie case and other materials on record, lodged the FIR against the accused-petitioner after enquiry of the case, for such reason, the continuation of the proceeding not being vexatious or oppressive would not amount to an abuse of the process of the Court.

It appears from the record that the allegations have been brought against the accused-petitioner are under sections 26(2)/27(1) of the ACC Act, 2004. The investigation of the case is under way. The allegations that have been brought against the accused-petitioner are highly disputed and complicated questions of fact which cannot be decided by this court invoking its jurisdiction under section 561A of the Code of Criminal Procedure rather those may be decided by the learned trial judge on taking evidence from the witnesses of the respective parties.

Section 26 of the Anti-Corruption Commission Act, 2004 contemplates that when the Commission ,on any information and after inquiry, is satisfied that any person or any other person on his behalf is in possession or has acquired any property disproportionate to his legal source of income, the Commission may , by order in writing, direct that

person to furnish statement of his assets and liabilities including any other information specified in that order in the manner prescribed by the Commission

On the other hand, Section 27 is an independent provision and for initiation of a proceeding against any person under the said provision, no notice is required to be served. If the prosecution can establish that any person has acquired or amassed wealth which is beyond his known source of income, he may be prosecuted and convicted under Section 27(1) of the Anti-Corruption Commission Act, 2004. The accused is under the obligation to clear his position and account for in respect of the possession of the property allegedly disproportionate to his known sources of income to the satisfaction of the court.

Since there are *prima-facie* materials against the accused-petitioner attracting ingredients of both the offences and he is under legal obligation to clear his

position and account for in respect of possession of properties allegedly disproportionate to his known sources of income to the satisfaction of the Court at the time of trial having onus to rebut presumption of guilt under Section 27(2) of the Anti-Corruption Commission Act, 2004.

Following the decision taken in the case of State vs Faisal Morshed Khan reported in 66DLR(AD)(2014)-236, the contention of the learned Advocate for the accused-petitioner is that the since the assessment of the valuation of the properties was done by the Income Tax Department and following the same, the accused submitted the return of the tax paying taxes required thereunder, the case lodged against the accused disputing the value and construction costs of the properties in question by the Engineers of Public Works Department, Chattogram is not maintainable against the accused .

It is argued on behalf of the accused-petitioner that the accused paid income tax upon assessment of income derived from the properties and the same was accepted by the income tax department and for this reason, the present case filed against the accused disputing the value of properties, liabilities and expenditures and costs of construction is not maintainable and sustainable in the eye of law. Before coming to a decision in this matter, we feel it convenient to know about the purpose and object of the Income Tax Ordinance, 1984 and the Anti-Corruption Commission Act, 2004. The purpose and object of the Income Tax Ordinance, 1984 is to realize income-tax in respect of the total income of the income year or income years as the case may be of every person.

If any person makes a false statement in any return or in any other document in order to evade income tax, he will be guilty of an offence under Section 165 of the Income Tax Ordinance Act, 1984 and if any person makes any concealment of income and deliberately furnishes inaccurate particular of his income, he will be liable for an offence under Section 166 of the Income Tax Ordinance Act, 1984. The purpose and object of enactment of the Anti-Corruption Commission Act, 2004 is to prevent the corruption and the corrupt practices in the country and to conduct enquiry and investigation of cases of corruption and certain other offences and matters ancillary thereto. Section 26 of the Anti-Corruption Commission Act, 2004 provides for the provision for issuance of notice in order to ascertain the property/wealth of a person to determine as to

whether possession of those properties was disproportionate to his known sources of income. Section 27 of the Anti-Corruption Commission Act, 2004 contemplates that if any person obtains/acquires property which is disproportionate to his known sources of income, he will be liable for an offence under Section 27(1) of the Anti-Corruption Commission Act, 2004.

From the aforesaid comparative study in between the two laws in terms of purpose and object as well as nature of offence and punishment, we are of the view that the purpose and object as well as the nature of offence and punishment under the Income Tax Ordinance 1984, are quite distinct and separate from those of the Anti-Corruption Commission Act, 2004. Similar view has been expressed in the case of *Mirza Abbas Uddin Ahmed Vs the State and another*

in Criminal Revision No. 3497 of 2018. Similar view has also been taken in the case of Zamir Ahmed-Versus- Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Law and others reported in 21BLC(HC)(2016) 200, wherein it has been laid down as follows :-

“The IT Ordinance is purely a law relating to realization of income tax and to prevent the evasion of tax which is completely distinct and separate offence under a different statute.”

Under the circumstances, we are of the view that acceptance of income tax return by the Income Tax Department does not create any legal bar to bring allegations against the accused under the Anti-Corruption Commission Act, 2004 as the accused-petitioner shall get scope to rebut presumption as to correctness of the allegations before the court under

Section 27(2) of the Anti-Corruption Commission Act, 2004.

Taking the essence of the corruption into consideration, it may be said that nowadays, corruption has engulfed our society to a great extent.

To remove or to combat the corruption is a great challenge in our country. Corruption has many forms and the perpetrators, in the meantime, have developed many skills for commission of corruption. Corruption is abuse of entrusted power for private or personal gain. It undermines the economic development of the country and the State security as well. It takes place at the highest levels as well as at the lower levels of the society. Normally grand corruption takes place at the highest levels of the society while the petty corruption takes place at the lower levels of the society. So in order to uproot the corruption from the society,

concerted efforts and mutual assistance and cooperation among the stakeholders are greatly needed. Tax evasion and tax avoidance is also a great problem in our country. Many individual tax payers and corporations are deliberately evading or avoiding taxes to pay as a result of which many development programmes and activities are being hampered. Because of tax evasion and tax avoidance, the government's revenue generation is insufficient in our country. So for accelerating the economic development, we should take necessary steps and measures to stop tax evasion and tax avoidance. Tax payment is a civic duty and an obligatory contribution of citizens of a State imposed by the government. Tax is the major financial source of revenue that is used to meet public expenditure and development. It is a matter of great concern that many tax payers in our

country do not report their exact assets and taxable income and evade taxes against their actual income resorting to underhand dealings with the people of Income Tax Department. Against this backdrop, as per submissions of the learned Advocate for the Anti-Corruption Commission, the assessment report on the valuation of the properties and construction costs of houses if any given or accepted by the Income Tax Department is not always encouraging and persuasive and if there are two reports by two departments of the government—one by the Tax Department at the instance of the accused and the other by the Public Works Department at the instance of the Anti-Corruption Commission, then both the reports become disputed question of fact if there are contradictions between them and in that case, heavy duty falls upon the shoulder of the court to decide which report is

correct, reasonable and acceptable in the light of evidence and materials on record; once it is established by the Court that so and so report is correct, reasonable and acceptable, then that report shall have binding effect on both the departments and the unfair advantage of doing corruption shall also be slowed down to a bare minimum and to that effect, the laws with regard to prevention of corruption may be interpreted by this court in way which would best serve the purpose and object of the Anti-Corruption Commission Act, 2004. The purpose and object of the Anti- Corruption Commission Act, 2004 is to prevent corruption and corrupt practices in the country. It cannot be gainsaid that the tentacles of corruption have been spreading over the different public offices in Bangladesh which intercept and impede the smooth and orderly functions of the public offices leading to a

negative effect on economic growth and development. Anyway, we have found considerable force in the submissions of the learned Advocate for the Anti-Corruption Commission.

Under the aforesaid facts and circumstances and the submissions made by the learned Advocates for the respective parties, we do not find any merit in this Rule.

Accordingly, the Rule is discharged.

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

The Investigating Officer is directed to submit investigation report within 4(four) months from the date of receipt of this judgment and order if not submitted in the meantime.

The learned judge of the trial Court/court below is directed to proceed with the case in accordance with the law.

The learned judge of the Court below/trial court is also directed to conclude the trial of the case if any as early as possible preferably within 12(twelve) months from date of receipt of this judgment and order.

Communicate this judgment and order to the learned judge of the Court below/trial court at once.

K.M. Hafizul Alam, J:

I agree.