

Present

Mr. Justice Md. Mostafizur Rahman
And
Mr. Justice Md. Sagir Hossain

Criminal Appeal No. 4045 of 2007

Mr. Wadud Bhuiyan

..... **Convict-Appellant.**

Versus

The State Respondent.

Mr. S.M. Shahjahan, Senior Advocate with

Mr. Kayser Kamal, Advocate with

Mr. Shafiqul Islam, Advocate

..... For the Convict-Appellant.

Mr. Sheikh Zulfikar Alam Shimul, DAG with

Mr. Rezbaul Kabir, AAG

Mr. Quamruddin, AAG

Mr. Md. Sabbir Hossain, AAG and

Mr. Abdullahil Maruf Fahim, AAG

----- For the Respondent.

Mr. Md. Ashif Hasan, Senior Advocate.

.....For the ACC.

Heard on 24.07.2025, 31.07.2025, and
07.08.2025, Judgment on: 10.08.2025

Md. Sagir Hossain, J.

This Criminal Appeal is filed at the instance of the convict-appellant against the judgment and order of conviction and sentence dated 22.07.2007 passed by the learned Divisional Special Judge, Chattogram in Special Case No.13 of 2007 arising out of Khagrasori Sadar Police

Station Case No.11(3)2007, corresponding to G.R No.141 of 2007 convicted the appellant under Section 26(2) of Anti-Corruption Commission Act, 2004 and sentenced him to suffer rigorous imprisonment for 3(three) years and convicted the appellant under section 27 of the Said Act and sentenced him to suffer rigorous imprisonment for 10(ten) years and also to pay a fine of Tk.10,000/-(ten thousand) in default to suffer rigorous imprisonment for 3(three) months more and also convicted the appellant under section 5(2) of the Prevention of Corruption Act, 1947 and sentenced him to suffer rigorous imprisonment for 7(seven) years and also forfeited his property of Tk.6,36,29,354.00 (six crore thirty six lacs twenty nine thousand three hundred fifty four) in favour of the state, all the sentences will run concurrently.

One Md. Nurul Alam, Assistant Director, Anti-Corruption Commission, Head Office, Dhaka as informant lodged an FIR on 21.03.2007 with Khagrasori Sadar Police Station, Khagrasori and the Officer-in-Charge, Khagrasori Sadar Police Station recorded the same as Khagrasori Sadar Police Station Case No. 11(3)2007 under sections 26/27 of the Anti-Corruption Commission Act, 2004 read with Rule 15(Gha)(5) of the Emergency Powers Rules, 2007 against the convict-appellant.

The Prosecution case in short is that during inquiry the Anti- corruption commission, Head Office, Dhaka found that the accused has violated sections 26/27 of the Anti-Corruption Commission Act, 2004 and section 15(Gha)(5) of Emergency Powers Rules, 2007, acquiring Tk.6,15,24,452 beyond his known sources of income and by making false declarations in various sections of the asset statements submitted wealth statements to the Anti-Corruption Commission regarding his properties and his sources of acquisition.

After investigation, the Anti-Corruption Commission submitted charge sheet being No. 63 dated 05.06.2007 against the Convict-Appellant under Sections 26 and 27 of the Anti-Corruption Commission Act, 2004 and section 5 (2) of Prevention of Corruption Act, 1947 read with Rule 15 (Gha) (5) of the Emergency Power Rules, 2007.

Thereafter, completing all legal formalities, the case record was transferred to the Learned Divisional Special Judge, Chattogram and renumbered the same as Special Case No.13 of 2007 for trial and disposal.

Thereafter, on 18.06.2007 the learned Divisional Special Judge, Chattogram framed charges against the Appellant under Rule 15 Gha (5) of Emergency Powers

Rules-2007 read with Section 26 (2) and 27 of the Anti-Corruption Commission Act-2004 and Section 5 (2) of the Prevention of Corruption Act, 1947 who pleaded not guilty and prayed for trial.

The prosecution examined 62(sixty-two) witnesses to prove their case and the defense examined none.

At the end of examination of the prosecution witnesses, the convict-appellant was examined under section 342 of the Code of Criminal procedure and he pleaded not guilty.

Admittedly the alleged offence took place from 2001-2006. The FIR was lodged after imposition of the Emergency Rule on 11 January 2007.

The defence case it transpires from the submissions of the learned Advocate for the appellant is that he has falsely been implicated in the case for oppression and harassment by using judicial process which is an abuse of the process of law and that the appellant is innocent and he did not commit the alleged offence. The instant proceedings of Special Case No.13 of 2007 is without jurisdiction. The proceedings being held during Emergency Rules having no validity in the eye of law and charges having been framed under an Ordinance. further

defence case is that, the trial under the Emergency Power Rules, 2007 read with 3Ka of the Emergency Ordinance 2007 can take place in relation to the events which had taken place while the Emergency is in forced, but admittedly the events alleged in the instant case took place between 2001-2006 before the imposition of Emergency Rules-2007 which is not sustainable in the eye of law.

The Learned Divisional Special Judge, Court, Chattogram after consideration of the facts and circumstances of the case and evidence on records found the convict-appellant guilty under Section 26(2) of Anti-Corruption Commission Act, 2004 and sentenced him to suffer rigorous imprisonment for 3(three) years and under section 27 of the Said Act and sentenced him to suffer rigorous imprisonment for 10(ten) years and also to pay a fine of Tk.10,000/- (ten thousand) in default to suffer rigorous imprisonment for 3(three) months and also convicted the appellant under section 5(2) of the Prevention of Corruption Act, 1947 and sentenced him to suffer rigorous imprisonment for 7(seven) years and also forfeited the moveable and immovable property of the convict- appellant of Tk.6,36,29,354.00 (six crore thirty six lacs twenty nine thousand three hundred fifty four) in

favour of the state, all the sentences will run concurrently judgment and order was passed on 22.07.2007.

The convict-appellant being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 22.07.2007 preferred the above appeal before this court.

In the face of arguments advanced by the learned Advocates for the contending parties, we have meticulously examined the FIR, charge sheet and other materials on record in order to come to a proper decision in this appeal.

Mr. S.M. Shahjahan, learned Senior Advocate with Mr. Kayser Kamal, learned Advocate appearing on behalf of the convict-appellant, at the outset submits that there was no commission from 07.02.2007 to 24.02.2007 and admittedly, the impugned notice being Memo No. দুদক/৭০-২০০৭(অনু-২)৬৮১ তারিখ ১৮/০২/২০০৭ ইং। under sections 18 and 26(1) of the Anti-Corruption Act, 2004 and 15(Gha) (1) and (2) of the Emergency Power Rules-2007 was issued when the Commission was not in existence and as such, the very issuance of the notice is illegal and without jurisdiction. He further submits that the very initiation of the proceedings is illegal and without jurisdiction as it is

based on the Memo No.দূদক/৭০-২০০৭(অনু-২)৬৮১ তারিখ ১৮/০২/২০০৭
ইং।

He also submits that it is not at all necessary to go into the detailed facts of the case as the Hon'ble Appellate Division in the case of Anti-Corruption Commission Vs. Dr. Mohiuddin Khan Alamgir, reported in 62 DLR (AD)290, held:

“The notice dated 18.02.2007, issued by the Secretary to the Commission, was without any lawful authority, as such, void and any proceedings based on the said void notice is a nullity in the eye of law. There is, however, no legal impediment for the commission to issue fresh notice under section 26 of the Act, if so advised, but not in those cases where the accused has already been acquitted on merit of the case as is in this case.

He further submits that in the present case, initially notice was issued by the Secretary to the commission which was without any lawful authority. Accordingly, he submits that the learned Divisional Special Judge, Chattogram was manifestly wrong in convicting the appellant and as such the impugned Judgment and order of conviction and sentence is liable to be set-aside.

Mr. Md. Ashif Hasan, the learned Senior Advocate, appearing on behalf of Anti-Corruption Commission, submits that the Anti-Corruption Commission came into effect from 23.03.2004 and it has got legal entity and it has every power to serve notice. He further submits that after proper investigation, investigating officer submitted charge sheet against the appellant. The learned Divisional Special Judge, Chattogram, on consideration of the evidence on record rightly and legally convicted the appellant.

He further submits that the case of Mohiuddin Khan Alamgir Vs. The State, relied on by the petitioner, is different from the present case. He further submits that the Apex Court held that- the superior Court dispose of a Criminal matter, more particularly a Criminal appeal of such a great importance in such a lighthearted manner, without any application of judicial mind, then that will have a demoralizing effect on the subordinate Judiciary in dispensing Criminal Justice in Bangladesh as reported in Mahmudul Islam @ Ratan Vs. The State, 20BLD(AD)249. He further submits that even if, the notice is found to be illegal the conviction under Section 26(2) may be set aside but the conviction under Section 27(1) of Anti-Corruption Commission Act, for possession of assets proved or

presumed as not earned from legal source, remains unaffected inasmuch as section 27(1) is as an independent Section with penal provision and not concerned with section 26(1) of the Anti-Corruption Act and section 5(2) of the prevention of corruption Act, 1947.

Mr. Sheikh Zulfikar Alam Shimul, the learned Deputy Attorney General appearing on behalf of the state, adopted the submissions made by the learned Advocate for the Anti-corruptor Commission, Mr. Md. Ashif Hasan.

Heard the learned Advocate of both sides and perused the record/documents filed by both the parties. It appears from Section 18 of the Anti-Corruption Commission Rules as follows:-

১৮। জ্ঞাত আয়ের উৎস বর্হিভূত স্থাবর-অস্থাবর সম্পত্তি, ইত্যাদি অবরুদ্ধকরণ বা ক্রোচাদেশ। (১) কোন ব্যক্তি তাহার নিজ নামে, বা তাহার পক্ষে অন্য কোন ব্যক্তির নামে, এমন কোন স্থাবর বা অস্থাবর সম্পত্তির দখলে রহিয়াছেন বা মালিকানা অর্জন করিয়াছেন, যাহা অসাধু উপায়ে অর্জিত হইয়াছে এবং তাহার জ্ঞাত আয়ের উৎসের সহিত অসঙ্গতিপূর্ণ বলিয়া মনে করিবার যথেষ্ট কারণ রহিয়াছে এবং নিয়মিত মামলা দায়েরের পূর্বেই তিনি উক্তরূপ সম্পত্তি স্থানান্তর করিতে পারেন বলিয়া কমিশন বা তদকর্তৃক ক্ষমতাপ্রাপ্ত কমিশনার বা অনুসন্ধানকারী বা অদনুকারীর কর্মকর্তার নিকট প্রতীয়মান হইলে সংশ্লিষ্ট কমিশনার বা কর্মকর্তা উক্ত সম্পত্তির এখতিয়ারবীন স্পেশাল জজ আদালতে উক্ত সম্পত্তি অবরুদ্ধকরণ (freezing) বা, ক্ষেত্রমত ক্রোচের (Attachment) নির্দেশ প্রদানে জন্য আবেদন করিতে পারিব

এবং আদালত অনুমতি প্রদান করিলে উক্ত সম্পত্তি অবরুদ্ধ (freez) বা ফ্রীজমতে
ক্রোক (Attach) করা যাইবে।

It appears from the letter, issued by Secretary of
Anti-Corruption Commission stated as follows:

দুর্নীতি দমন কমিশন

প্রধান কার্যালয়, ঢাকা

স্মারক নং- দুদক/৭০-২০০৭(অনু-২) ৬৮১

তারিখ- ১৮/০২/২০০৭ইং

সম্পদের বিবরণী দাখিলের

নোটিশ

আপনি জনাব আব্দুল ওয়াদুদ ভূইয়া, পিতা হাজী সালেহ আহম্মদ সাবেক এমপি এবং
উন্নয়ন বোর্ডের চেয়ারম্যান, সাধারণ সম্পাদক, খাগড়াছড়ি জেলা বিএনপি ঢাকা নিজ নামে
এবং আপনার স্ত্রী, পুত্র, কন্যাসহ পরিবারের অন্যান্য সদস্য বা আপনার পক্ষে অন্য কোন
নামে বৈধ ও জ্ঞাত আয়ের সহিত অসংগতিপূর্ণ সম্পদ অর্জন করেছেন মর্মে প্রাথমিক
অনুসন্ধানে প্রতীয়মান হওয়ায় জরুরী ক্ষমতা বিধিমালা, ২০০৭ এর বিধি ১৫ঘ (১), ১৫ঘ (২)
তৎসহ দুর্নীতি দমন কমিশন আইন, ২০০৪ এর ধারা ১৮ ও ২৬ (১) এর বিধান ও ক্ষমতা বলে
এক্ষণে অত্র নোটিশ প্রাপ্তি/জারীর ৭২ ঘণ্টার মধ্যে ১, সেগুন বাগিচা ঢাকাস্থ দুর্নীতি দমন
কমিশনের প্রধান কার্যালয় অফিস চলাকালীন আপনা কর্তৃক ঐচ্ছিকভাবে ক্ষমতা প্রাপ্ত
প্রতিনিধির মাধ্যমে পরিচালক (বিশেষ মনিটরিং, সিস্টেম অডিট ও টেকনিক্যাল সাপোর্ট)
জাহানারা পারভীন এর নিকট উপস্থিত হয়ে আপনার মালিকানাধীন ও দখলাধীন স্বনামে ও
আপনার মালিকানাধীন ও দখলাধীন স্বনামে ও আপনার স্ত্রী পুত্র কন্যাসহ পরিবারের অন্যান্য
সদস্য বা আপনার পক্ষে অন্য নামে থাকা সকল স্থাবর ও অস্থাবর সম্পত্তির এবং উক্তরূপ
সম্পত্তি অর্জনের উৎস সম্পর্কিত বিবরণ দাখিল করার জন্য নির্দেশ দেয়া যাচ্ছে। ব্যর্থতায়
আপনার সকল স্থাবর, অস্থাবর সম্পত্তি অবরুদ্ধ/ক্রোকাবদ্ধ করাসহ উল্লিখিত আইনসহ দেশে
প্রচলিত আইন অনুযায়ী ঐচ্ছিক কার্যধারা গ্রহণ করা হবে।

স্বাক্ষর/অস্পষ্ট

১৮/২/০৭

মোঃ দেলোয়ার হোসেন

সচিব

প্রাপকঃ

জনাব আব্দুল ওয়াদুদ ভূইয়া

পিতা-হাজী সালেহ আহম্মদ

সাবেক এমপি এবং উন্নয়ন বোর্ডের চেয়ারম্যান

সাধারণ সম্পদক, খাগড়াছড়ি জেলা বি.এন.পি, ঢাকা
(বর্তমানে জেল হাজতে আছেন)।

It also appears from the judgment and order of our Apex Court in Criminal Petition for Leave to Appeal No.398 of 2009, that the Court held, "In the present case, the notice dated 18.02.2007 under Section 26 of the Act, was issued by the Secretary of the Commission but he does not represent the Commission and he is only one of its employees, to carry out the decision of the Commission. But at the relevant time, there were no Commissioners, as such, apparently the notice on 18.02.2007 is issued by the Secretary in his own and which is without any satisfaction and decision from the Commission and as such the notice is the violation of the spirit of Section 26 of the said Act. The concerned authorities on realizing this error, tried to cover it up by inserting Sub-section (2) in Section 18 on 18.04.2007, by Ordinance No. VII of 2007. Sub-section (2) provides for ex-post facto ratification of the acts done by the officers of the Commission during the period from 07.02.2007 to 24.02.2007 without any authorization from the Commission but the question of jurisdiction goes to the root of the matter. If any person acts beyond his authority, to the prejudice of any person, such acts cannot be

ratified or validated by post facto legislation and as such his action remains void.

Besides, Section 26 of the Anti-Corruption Act, 2004 envisages that before issuance of the notice, the Commissioner (s) must be satisfied with the allegation. It is their satisfaction and of nobody else's. But by subsection (2) of Section 18, the Commissioners can only ratify the 'satisfaction' of the Secretary which is certainly not stipulated in section 26 of the said Act. As such, the notice dated 18.02.2007, issued by the Secretary in favour of the appellant was not issued on behalf of the Commission as envisaged under Section 26 of the said Act, and is without jurisdiction and void ab initio."

In the present case, the Memo No. দুদক/৭০-২০০৭ (অনু-২)৬৮১ তারিখ- ১৮/০২/২০০৭ ইং was issued by the Secretary, Anti-Corruption Commission, and there was no existence of the Commission in the eye of law and as such the proceedings of Special Case No. 13 of 2007 is void.

The proceedings relates on law point, it is not at all necessary to go into the detailed facts of the case. We find that, admittedly, there was no commission from 07.02.2007 to 24.02.2007 when the notice of Memo No. দুদক/৭০-২০০৭ (অনু-২)৬৮১ তারিখ- ১৮/০২/২০০৭ইং signed by the Secretary Anti-Corruption Commission. Therefore, the

proceedings of Special Case No.13 of 2007 against the appellant on an invalid notice, consequently, the Judgment and order of conviction and sentence delivered on 22.07.2007 in Special Case No. 13 of 2007 is void.

In this connection, we may profitably refer to the decision in the case of Anti-corruption Commission Vs. Dr. Mohiuddin Khan Alamgir reported in 62DLR (AD) 270 wherein Hon'ble Appellate Division held that:

"We are of the opinion that the notice dated 18.02.2007, issued by Secretary to the Commission, was without any lawful authority, as such, void and any proceeding base on the said void notice is a nullity in the eye of law."

"There is, however, no legal impediment for the Commission to issue fresh notice under section 26 of the Act, if so advised, but not in those cases where the accused has already been acquitted on merit of the case, as is in this case."

The findings of Hon'ble Appellate Division is binding upon the High Court Division and as such, we have also no other alternative to hold the view given by the Hon'ble Appellate Division in the above mentioned case and as such, we also hold that the notices dated 18.02.2007 is

issued by the secretary, Anti-Corruption Commission is of no value and thus proceeding under the said notices is void and the proceeding is a nullity in the eye of law.

Considering the facts and circumstances of the case and the materials on record, the propositions of the law cited and discussed above, and foregoing discussions, observations and reasons, we are led to hold the view that the prosecution case is a nullity in the eye of law against the Convict- appellant and we find merit in the appeal.

Accordingly, this Criminal Appeal is allowed. The judgment and order of conviction and sentence dated 22.07.2007 passed by the learned Divisional Special Judge, Chattogram in Special Case No.13 of 2007 arising out of Khagratori Sadar Police Station Case No.11(3)2007, corresponding to G.R No.141 of 2007 convicted the appellant under Section 26(2) of Anti-Corruption Commission Act, 2004 and sentenced him to suffer rigorous imprisonment for 3(three) years and also convicted the appellant under section 27 of the Said Act and sentenced him to suffer rigorous imprisonment for 10(ten) years and also to pay a fine of Tk.10,000/-(ten thousand) in default to suffer rigorous imprisonment for 3(three) months more and also convicted the appellant under section 5(2) of the Prevention of Corruption Act,

1947 and sentenced him to suffer rigorous imprisonment for 7(seven) years and forfeited his property of Tk.6,36,29,354.00 (six crore thirty six lacs twenty nine thousand three hundred fifty four) is hereby set aside and therefore the appellant is acquitted from the charge leveled framed against him.

Let the appellant be discharged from his respective bail bond.

Communicate a copy of the judgment and order to the Court concerned at once.

Send down the Lower Court's Record at once.

(Md. Sagir Hossain,J)

Md. Mostafizur Rahman, J:

I agree

(Md. Mostafizur Rahman,J)