

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 5464 of 2019

Harunur Rashid Chowdhury

...Appellant

-Versus-

Durnity Daman Commission and another

...Respondents

Mr. Md. Nusrat Alam Chisty, Advocate with

Mr. A.K. Khan (Uzzal), Advocate

...For the convict-appellant

Mr. Shaheen Ahmed, Advocate

...For the respondent No. 1

Mr. S.M. Golam Mostofa Tara, D.A.G with

Mr. A. Monnan (Manna), A.A.G

...For the State

Heard on 14.11.2023, 16.11.2023, 19.11.2023,
22.11.2023 and 28.11.2023**Judgment delivered on 04.12.2023**

This appeal under Section 10 of the Criminal Law Amendment Act, 1958 (Act No. XL of 1958) is directed against the impugned judgment and order dated 14.05.2019 passed by Special Judge, Noakhali in Special Case No. 6 of 2014 arising out of Laxmipur Police Station Case No. 34 dated 12.09.2012, G.R. No. 740 of 2012 convicting the appellant under Section 26(2) of the Anti-Corruption Commission Act, 2004 and sentencing him thereunder to suffer rigorous imprisonment for 1(one) year and also convicting him under Section 27(1) of the said Act and sentencing him thereunder to suffer rigorous imprisonment for 3(three) years and fine of Tk. 93,69,637 (ninety-three lakh sixty-nine thousand six hundred and thirty-seven), in default, to suffer rigorous imprisonment for 1(one) year which will run consecutively.

The prosecution case, in a nutshell, is that the Anti-Corruption Commission, Combined District Office, Noakhali during the enquiry of the E/R No. 10 of 2011 vide memo No. দুদক/ সজেকা/ নোয়াখালী/১০৪ dated 15.02.2012 requested the Chief Engineer of the Directorate of Public Works to submit a report as regards the 14 shops situated at Jokshin Bazaar, flat No. 6/C, Motaleb Tower-2, 8/2, Paribagh, Dhaka and the

furniture and the electronics goods of the said flat owned by the accused Harunur Rashid Chowdhury, Manager, Meghna Filling Station, Meghna Petroleum Company Limited, Paribagh, Shahbagh, Dhaka. After that, the Directorate of Public Works vide memo dated 13.03.2012 instructed the concerned department for the appointment of the engineer. On 05.04.2012, a team of engineers was appointed by the Public Works Department, Laxmipur to give a detailed report and accordingly, the team of engineers visited the said shops and flat on 05.04.2012 and submitted the report on 25.04.2012. In the said report, it has been mentioned that the accused Harunur Rashid Chowdhury spent Tk. 41,87,241 for the construction of the said 14 shops but in the statement of assets, the total construction cost of the said shops was mentioned Tk. 7,51,500 and he concealed total Tk. 34,35,741 concerning the construction of the said shops. The accused constructed a duplex house spending Tk. 94,33,896 but in the statement of his assets, the total construction cost of the duplex house at Ovirkhil Mouza was shown Tk. 35,00,000 and he concealed Tk. 59,33,896. On perusal of the reports submitted by the Dhaka Stock Exchange dated 03.04.2012, it was found that the accused purchased shares of Tk. 2,45,000 which was not mentioned in the statement of his assets. Thus the accused concealed total Tk. 96,14,367 in his statement of assets submitted under Section 26(2) of the Anti-Corruption Commission Act, 2004 and thereby committed offence under Section 26(2) and 27(1) of the said Act.

P.W. 8 Md. Nurul Huda, Deputy Assistant Director, Anti-Corruption Commission took up the investigation of the case. During the investigation, he seized the documents and perused the reports. After completing the investigation, the Investigating Officer submitted charge sheet against the accused under Section 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004 on 28.05.2013 against the accused Harunur Rashid Chowdhury. After that, the case record was transmitted to the Senior Special Judge, Laxmipur who transferred the case to the Special Judge, Noakhali for trial.

During the trial, the charge was framed against the accused under Sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004.

Since the accused was absconding, the charge framed against the accused could not be read over and explained to him. During the trial, the prosecution examined 8(eight) witnesses to prove the charge against the accused. After examination of the prosecution witnesses, he was examined under Section 342 of the Code of Criminal Procedure, 1898 and he declined to examine any D.W. After concluding the trial, the trial Court by impugned judgment and order convicted the accused and sentenced him as stated above against which the accused filed the instant appeal.

P.W. 1 Abdus Satter Sarker is the Deputy Director, Anti-Corruption Commission, Head Office, Dhaka. He stated that the FIR was lodged on 12.09.2012 and at that time, he was discharging his duty as Assistant Inspector, Combined Office, Noakhali. The Anti-Corruption Commission, Combined District Office, Noakhali found a written complaint against the accused Harun-Or-Rashid Chowdhury and made entry as ER No. 10 of 2011. During the inquiry of the said allegation, the Anti-Corruption Commission, Combined Office, Noakhali vide memo No. 104 dated 15.02.2012 requested the Chief Engineer, Directorate of the Public Works Department to make an enquiry regarding the construction cost of 14 shops at Laxmipur, a duplex house situated at Laxmipur, a Filling Station at Jokshin Bazaar and the flat No. 6/C, Motaleb Tower-2, 8/2, Paribagh, Dhaka owned by the accused Harun-Or-Rashid Chowdhury. The Public Works Department vide memo dated 13.03.2012 instructed to appoint the engineer. At the order of the Executive Engineer, Laxmipur, the appointed engineers after inspection submitted a report on 25.04.2012. As per the report of the engineer, the total construction cost of the 14 shops is Tk. 41,87,241, the total construction cost of a duplex house is Tk. 94,33,896. In the statement of assets submitted in 2012, the accused mentioned that the total construction cost of the 14 shops is Tk. 7,51,500 and the total construction cost of the duplex house is 35,00,000. The accused concealed Tk. 34,35,741 in the shops and Tk. 59,33,896 in the duplex house. The accused also purchased a total share of Tk. 2,45,000 which was not mentioned in the statement of assets. Thus the accused concealed total Tk. 96,14,367 in his statement of assets submitted under

Section 26(2) of the Anti-Corruption Commission Act, 2004 and thereby committed the offence under Section 26(2) and 27(1) of the said Act. After getting the sanction, the FIR was lodged. P.W. 1 proved the FIR as exhibit 1 and his signatures on the FIR as exhibits 1/1 and 1/2. On recall by the defence, he stated that at the time of lodging the FIR on 12.09.2012, he was the Inspector, Anti-Corruption Commission, Noakhali. The time of occurrence has been mentioned in the FIR from 1994 to 19 March 2012 and there is an allegation in the FIR against the accused as regards concealment of assets of 19 years. The FIR was lodged on 12.09.2012. He affirmed that he did not ascertain whether the accused paid the income tax correctly from 1994 until lodging the FIR. He obtained the approval on 02.09.2012 for lodging the FIR. He also affirmed that the purchase cost of the bricks, sand, cement and rod were not mentioned in the report. He is neither the Inquiry Officer nor the Investigating Officer. He did not seize any document of the accused. He denied the suggestion that in connivance with the officers of the Anti-Corruption Commission who were the enemy of the accused, lodged the FIR.

P.W. 2 Jalal Uddin Ahammad is the Deputy Director, Anti-Corruption Commission, Dhaka. He stated that from June 2010 to September 2011, he was posted as Assistant Director of the Anti-Corruption Commission, Combined Office, Noakhali. At that time, the Anti-Corruption Commission, Chattogram vide memo No. 162 dated 31.07.2011 appointed him as enquiry officer to make enquiry as regards the assets of Md. Harun-Or-Rashid Chowdhury. After enquiry, he submitted a report on 08.09.2011 stating that the accused acquired assets beyond his known source of income. On re-call, he stated that which assets are beyond the known source of income has not been mentioned in his statement. The wife of the accused and his two sons are assesseees of the income tax department.

P.W. 3 Md. Zahid Hossain is the Deputy Director of the Anti-Corruption Commission, Dhaka. He stated that from January 2010 to March 2012 he was posted at Anti-Corruption Commission, Combined Office, Noakhali as Assistant Director. He was appointed as an enquiry

officer to enquire about the statement of assets submitted in January, 2012 by accused Harun Or Rashid. During the enquiry, he issued letters to appoint the engineer to assess the value of the assets of the accused and after getting the report of the engineers, he submitted a report on 24.06.2012. He proved the enquiry report as exhibit 2. On re-call by the accused, he stated that Ayesha, wife of the accused and Afshir Al Mahmud and Mashfir Al Mahmud, sons of the accused, are assesseees of the income tax department. He denied the suggestion that no correct report was submitted.

P.W. 4 A.S.M. Sanaulla is the Deputy Divisional Engineer, Public Works Department-3, Dhaka. He stated that in 2012, he was posted at the Public Works Department, Laxmipur as Deputy Sub-Assistant Engineer. The Assistant Director Md. Nahid Hossain, Anti-Corruption Commission, Noakhali on 15.02.2012 requested him to assess the assets. The Executive Engineer, Laxmipur appointed him, Sub-Divisional Engineer Md. Yeasin Mia, Laxmipur and Md. Arab Ali, Sub-Assistant Engineer vide memo dated 23.03.2012. On 02.04.2012, they physically visited the sites and submitted the report on 05.04.2012. He proved the enquiry report dated 05.04.2012 as exhibit 3 and his signatures as exhibits 3/1-3/4. On re-call he stated that in the report, he did not mention how many rooms, kitchen and bathrooms are there in the house and he also did not ascertain the value of the rod, sand and cement used for the construction of the house.

P.W. 5 Md. Yeasin Mia is the Sub-Divisional Engineer, Electricity Division, Public Works Department, Laxmipur. He stated that on 20.03.2012, he along with Sanaullah and Arab Ali and along with the Officers of the Anti-Corruption Commission, Noakhali visited the sites. During the inspection, he did not find any electronic goods in the house for which he did not submit any report.

P.W. 6 Md. Arab Ali is the Deputy Assistant Engineer of the Public Works Department, Sunamganj. He stated that from 2010-2012, he was posted at Public Works Department, Laxmipur. Following the instruction of the Executive Engineer, Laxmipur contained in a memo dated 20.03.2012 he along with 2(two) other engineers visited the sites on

02.04.2012 and measured the disputed duplex house, 14 shops and filing station and submitted a report on 05.04.2012. He proved his signatures on the report as exhibit 3/5-3/8. At the time of inspection, accused Harunur Rashid was present and he signed in serial No. 6 of the attendance sheet. He identified the signature of accused Harunur Rashid on the attendance sheet dated 02.04.2012. He proved the attendance sheet as exhibit 4 and his signatures as exhibit 4/1 and 4/2. During cross-examination, he stated that he along with others submitted the report. He denied the suggestion that no illegal money was spent on the construction of the house and the shops.

P.W. 7 Md. Nur Uddin Bhuiyan is the Sub-Assistant Engineer, Public Works Department, Mirpur, Dhaka. He stated that the Superintendent (Establishment) vide memo dated 13.03.2012 as per instruction of the Executive Engineer and oral instruction of the Sub-Assistant Engineer Md. Robiul Islam, visited the flat No. 6/C, Motaleb Tower-2, 8/2, Paribagh, Dhaka and prepared a list of inventory on 09.04.2012 and 11.04.2012. He handed over a list of the value of the furniture of that flat to the Sub-Assistant Engineer. He proved the valuation report as exhibit 5 and his signature dated 11.04.2012 and 09.04.2012 as exhibits 5/1 and 5/2. At the time of valuation, the accused was present and he signed in serial No. 1. During cross-examination, he affirmed that he specifically mentioned the value of the furniture in his report. He denied the suggestion that he mentioned the presumptive value of the furniture.

P.W. 8 Md. Nurul Huda is the Investigating Officer. He stated that from 2012-2013, he was posted as Deputy Assistant Director of the Anti-Corruption Commission, Combined Office, Noakhali. On 22.01.2012, he was appointed as Investigating Officer and after that, he perused the documents. He collected the documents on 24.02.2013 as regards the ownership of assets of accused Harun-Or-Rashid and seized documents. He proved the seizure list as exhibit 6. The accused was discharging his duty as Manager, Meghna Filling Station, Meghna Petroleum Corporation, Dhaka. At the time of investigation, he retired from service. A notice was

served upon the accused to submit his statement of assets and accordingly, he submitted the statement of his assets on 26.11.2011, He proved the statement of assets as exhibit 7. In exhibit 7, the accused mentioned the total construction cost of 14 shops at Tk. 7,51,500 and the construction cost of his house at Tk. 35,00,000. During the enquiry, the construction cost of the 14 shops and houses was verified by the Engineers of the Public Works Department. The Engineers in the report stated that the total construction cost of 14 shops is Tk. 41,87,241 and the construction cost of the house is Tk. 94,33,896 and concealed total Tk. 93,69,376 in his statement of assets (exhibit 7) which are beyond his known source of income. During cross-examination, he stated that the construction period of the 14 shops and the house was not mentioned in the FIR. During the investigation, the accused submitted a written statement along with the documents submitted regarding the ownership of his assets. In the written statement, it has been mentioned that 14 shops were constructed in the year 1993-1994 and the total construction cost of the 14 shops is Tk. 7,51,500. In the written statement, he also mentioned that the accused spent total Tk. 57,10,000 from the sale proceeds of the house of Cumilla. During the investigation, he did not find any truth about the investment of Tk. 2,45,000. He affirmed that relying on the reports of the Engineer, he submitted the charge sheet.

Learned Advocate Mr. Md. Nusrat Alam Chisty appearing on behalf of the accused Harunur Rashid Chowdhury along with learned Advocate Mr. A.K. Khan (Uzzal) submits that the accused constructed 14 shops at Laxmipur in the year 1993-1994 and in the return submitted to the income tax department, the accused specifically mentioned the total construction cost of the said shops which was also accepted by the income tax department and in the valuation report submitted by the engineers (exhibit 3), nothing has been mentioned specifically about the rate and date of schedule of construction of 14 shops. Therefore, the valuation report regarding 14 shops is not acceptable. He further submits that in the written explanation submitted to the Investigating Officer, the accused mentioned that he spent total Tk. 57,10,000 for construction of the duplex

house and the return submitted by the income tax department was also accepted. The investigating officer without considering the statement of his written statement wrongly relied on the reports submitted by the Engineers and wrongly calculated the total construction cost of the house. He also submits that at the time of valuation, the house was under construction and the construction value was not correctly assessed by the Engineers. Learned Advocate also relied on the decision made in the case of State vs. Faisal Morshed Khan and another reported in 66 DLR (AD) 236 Para 19.

Learned Advocate having filed an application sworn on 15.10.2023 by Afshir Al Mahmud Shishir, son of the accused Harunur Rashid Chowdhury annexed a certificate issued by the Medical Officer, Intensive Care Unit, Comfort Nursing (Pvt) Ltd. Dhaka and a certificate issued from the Ward Councillor Mohammad Asaduzzaman Asad, Ward No. 21, Dhaka South City Corporation stating that during pendency of the appeal, the accused died on 18.07.2023. The said application was not opposed by the respondent.

Learned Advocate Mr. Shaheen Ahmed appearing on behalf of respondent No. 1 submits that as per the report of the engineers (exhibit 3) the accused concealed Tk. 34,35,741 of the construction cost of 14 shops and Tk. 59,33,896 of the construction cost of the duplex house situated at Laxmipur and there is a total concealment of Tk. 9614367. He further submits that no question can be raised as regards the valuation report submitted by the Engineers of the Public Works Department who submitted their report (exhibit 3) following the rates of schedule of the construction published by the Ministry of Public Works Department in 2008 with effect from First June 2008. Therefore, the accused committed an offence under Section 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004. In support of his submission, he also relied on a decision made in the case of State vs. Faisal Morshed Khan and another reported in 66 DLR (AD) 236 Para 19.

I have considered the submission of the learned Advocate Mr. Md. Nusrat Alam Chisty who appeared along with learned Advocate Mr. A.K.

Khan (Uzzal) on behalf of the accused and the learned Advocate Mr. Shaheen Ahmed who appeared on behalf of respondent No. 1, perused the evidence, impugned judgment and order passed by the trial Court and the records.

At this stage, it is relevant here to quote Section 431 of the Code of Criminal Procedure, 1898;

“Every appeal under ²[section 417 or section 417A] shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.”

On a bare reading of Section 431 of the Code of Criminal Procedure, 1898, it reveals that except an appeal from a sentence of fine every appeal under section 417 or section 417A shall finally abate on the death of the accused. During the pendency of the appeal, the sole accused died. Therefore the appeal so far impugned judgment and order of conviction passed by the trial Court against the accused abated and the sentence of fine imposed by the trial Court is required to be disposed of based on the evidence adduced by the prosecution during trial of the case.

On perusal of the records, it appears that the Department of Public Works published a schedule of rates of the construction cost in 2008 with effect from First June 2008 and the engineers relying on the said schedule of rates submitted the report (exhibit 3) as regards the valuation of 14 shops and a duplex house constructed at Laxmipur. In the written explanation submitted to the Investigating Officer, the accused mentioned that the said 14 shops were constructed in the year 1993-1994. In the valuation report, it has been also mentioned that the period of the construction of said 14 shops is 1994. However, the Engineers submitted the report on 05.04.2012 (exhibit 3) regarding the construction cost of the said shops relying on the rates of a schedule published in 2008 with effect from First June 2008. Admittedly, 14 shops were constructed in 1994. The value of the construction materials is raised every year. Therefore the valuation of the Engineers (exhibit 3) submitted on 05.04.2012 relying on

the rates of construction costs in 2008 for construction of the 14 shops in 1994 cannot be accepted.

On perusal of the valuation report (exhibit 3), it reveals that at the time of inspection, the disputed duplex house was under construction in 2012 and the report (exhibit 3) was submitted based on the schedule of rates published in 2008 with effect from First June 2008. Therefore, I am of the view that no question can be raised as regards the valuation made by the engineers as regards the duplex house at Laxmipur. In the report (exhibit 3), it has been mentioned that the total construction cost of the duplex house is Tk. 94,33,896 and in the statement of assets (exhibit 7), the total construction cost of the duplex house was mentioned at Tk. 35,00,000. As per the said report, the accused concealed total Tk. 59,33,896. By cross-examining P.W. 8, the defence affirmed that the accused by selling his house of Cumilla and the retirement benefits spent total Tk. 57,10,000 for the construction of the duplex house. No explanation has been given by the accused as to why he mentioned the total construction cost of Tk. 35,00,000 for the construction of the duplex house.

The learned Advocates of both parties heavily relied on the decision made in the case of State vs. Faisal Morshed Khan and another reported in 66 DLR (AD) 236 Para 19 wherein it has been held that

“Having considered the impugned judgment and also para-7 of Dr Mohiuddin Khan Alamgir (ibid), we are of the opinion that the assessment made by the PWD officials would be of no avail when the assessment of valuation came up for consideration before the Income Tax Department which indisputably passed an order on the assessment of valuation. 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. There cannot be a conflicting exercise of power between the two independent

departments of the Government. If the assessment of valuation made by the Income Tax Department is allowed to be questioned then the very sanctity of such assessment will be at stake and this may cause overlapping exercise of jurisdiction between the two independent departments of the Government. The officials of the Income Tax Department exercise their power under a statute.”

On perusal of the report (exhibit 3) it further reveals that there is no assessment of the income tax department in respect of the construction cost of the duplex house. Therefore, I am of the view that the valuation report of the engineers (exhibit 3) so far relates to the duplex house constructed at Laxmipur cannot be called in question. The valuation report dated 05.04.2012 was submitted by the engineers relying on the rates of a schedule published in 2008 with effect from First June 2008 by the Public Works Department but 14(fourteen) shops were admittedly constructed in 1994. Nothing stated in the report (exhibit 3) as regards the rate of construction cost in 1994. Therefore, the valuation report submitted by the Engineers of the Public Works Department relating to 14 shops constructed in 1994 cannot be accepted. I am of the view that the accused spent Tk. 94,33,896 for the construction of the duplex house at Laxmipur. In the statement of assets submitted by the accused (exhibit 7), the accused mentioned that total construction cost of the duplex house is Tk. 35,00,000 and thereby he concealed Tk. 59,33,896 as the construction cost of the duplex house situated at Laxmipur and thereby he committed an offence under Section 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004.

Because of the above facts and circumstances of the case, evidence, findings, observation, reasoning and proposition, I am of the view that ends of justice would be served if the sentence of fine is modified as under;

The appeal so far it relates to imprisonment is abated. The accused is sentenced to pay a fine of Tk. 59,33,896. which is recoverable following the law.

In the result, the appeal is disposed of with modification of sentence of fine.

Send down the lower Court's records at once.