

**Present:**  
**Mr. Justice Md. Nazrul Islam Talukder**  
**And**  
**Mr. Justice A.K.M. Zahirul Huq**  
**Criminal Revision No.1734 of 2019**

**IN THE MATTER OF:**

Md. Abdul Momin

**Complainant-petitioner.**

-Versus-

The State and others

**.....Opposite-parties.**

Mr. A.F.M. Mesbahuddin, Senior Advocate with  
Mr. A.K.M. Nurul Alam, Advocate

**..... For the Complainant-petitioner.**

Mr. A.K.M. Amin Uddin, D.A.G with,  
Ms. Anna Khanom Koli, A.A.G  
Mr. Md. Shaifour Rahman Siddique, A.A.G

**..... For the State-opposite parties.**

Mr. Shafique Ahmed, Senior Advocate with  
Mr. Mahbub Shafique, Advocate with  
Mr. Jamal Hossain, Advocate

**.....For the Opposite Nos. 2 to 5.**

Mr. Md. Khurshid Alam Khan, Advocate with  
Mr. A.K.M. Alamgir Parvez Bhuiyan, Advocate

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

**Heard and Judgment on: 01.12.2021.**

**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 complainant-petitioner, was issued

calling upon the opposite-parties to show cause as to why the order dated 21.05.2019 passed by the learned Senior Special Judge, Noakhali in Petition Case No. 01 of 2018 under Sections 406/409/420/506(2)/109 of the Penal Code rejecting the naraji petition, should not be set aside 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 the petitioner is the proprietor of M/S Gulshan Trading. He opened a Bank account being account No. 4136-200156000 with the AB Bank Ltd., Chowmuhani Branch in the year 2000 and availed loan facilities of Tk. 4,00,000/- (Four Lacs) from the said bank by putting mortgage of properties and invested the same in

his Rod and Cement Business. While the petitioner's businesses were running in good position, his deposited money was also increased in the Bank. At that time, Manager of AB Bank proposed to avail of more loan facilities of Tk. 35-40 lac from of the Bank and invest the same to the petitioner's business so that the petitioner may be more benefited. Then the Manager asked the petitioner to deposit some blank cheques to the Manager. Accordingly, the petitioner believed the Manager and initially issued 9 (Nine) signed cheques on 27.11.2006. Thereafter the officers of the Bank provoked the petitioner to deposit more blank cheques in writing the word "আপনাদের" over the cheques and ultimately they were able to collect further 87 signed

cheques in different dates and the word “আপনাদের” was written over those cheques which is mentioned in the schedule of the complaint petition. The petitioner has no knowledge about the banking system and the consequence of writing “আপনাদের” in the cheques as such while the manager proposed the petitioner to issue cheques in writing the word “আপনাদের”, then the petitioner wrote such writing on the cheques and deposited the same to the Manager. Ultimately the Manager in connivance with the other accused officers transferred different amount of money in different dates from the account of the petitioner to different accounts of customers maintained in the Bank and they withdrew Tk. 3,18,02,400/- by using those 96 signed cheques of

the petitioner and misappropriated the same by abusing their power. The petitioner paid up entire loan amount along with interest amounting to Tk. 38,87,000/- through pay order on 25.10.2010 and the Bank issued “no objection certificate” in favour of the petitioner to the effect that the petitioner has no liability with the Bank and he paid entire loan liability. Thereafter, the petitioner requested the concerned Bank Manager and other officers concerned to return the petitioner’s blank cheques and statements of account but they did not do that. More so, they threatened the petitioner to kill by the hooligans, if he further claims blank cheques and statement of accounts and money. The petitioner became afraid and understood that the accused persons

fraudulently misappropriated his money. Then the petitioner filed representation before the Managing Director of Banking Regulation and policy Department of Bangladesh Bank on 06.03.2011, Managing Director, AB Bank Ltd. Dilkusha Commercial Area, Dhaka on 23.09.2009, Deputy Director, Durnite Daman Commission, District Officer, Noakhali on 04.11.2012 and Commissioner (Inquiry), in charge, Chairman, Durnite Daman Commission, Head Office on 19.12.2016 but no response or action from anywhere was taken by them. Then the petitioner filed the instant petition case describing the reason of delay of filing the case before the Senior Special Judge, Noakhali. Hence the petition of complaint.

After filing of the case, it was registered as Petition Case No. 01 of 2018 and after hearing, the learned Senior Special Judge, Noakhali passed an order to send the case to Dudok, Noakhali for holding inquiry and for lodging First Information Report against the accused persons if prima facie allegation is made out against them.

Then the case was transmitted to Dudok, Noakhali. After obtaining sanction/permission from the Durniti Doman Commission, Head Office, vide Sharak No. দুদক/০৪/২০১৩/অনু ও তদন্ত-২/নোয়াখালী/১২৬৮৪ dated 10.04.2018, the allegation was inquired by the inquiry officer Md. Nurul Huda, Sajaka Chattogram 2, Deputy Director, Mohammad Safiulla and Md. Moshiur

Rahman, Assistant Director, Durniti Damon Commission, District Officer, Noakhali respectively. Eventually inquiry officer Md. Moshiur Rahman after inquiry submitted an inquiry report before the Director, Anti-Corruption Commission, Divisional Office, Chattogram. The inquiry officers submitted inquiry reports stating that no misappropriation of money has been taken place in the account of the petitioner and opined that for the laches and negligence of the bank officials, departmental proceedings may be initiated against them.

Being aggrieved by the inquiry reports, the petitioner filed a Naraji petition against that inquiry reports submitted before the Senior Special Judge,



Noakhali on 02.07.2019 with a prayer to allow the Naraji petition and issue warrant of arrest against the accused.

Upon hearing the Naraji Petition and the parties, the learned Senior Special Judge, Noakhali, rejected the Naraji Petition accepting the inquiry report and discharging the accused from the alleged allegations vide order dated 21.05.2019.

Being aggrieved by the impugned order, the petitioner approached this court with an application under Section 10(1A) of the Criminal Law Amendment Act, 1958 and obtained this Rule.

Mr. Md. Khurshid Alam Khan, the learned Advocate appearing on behalf of the Anti-Corruption Commission, has submitted affidavit-in-compliance dated 14.03.2021. Besides, Mr. A.K.M. Alamgir Parvez Bhuiyan, the learned Advocate appearing on behalf of the Anti Corruption Commission has also filed affidavit-in-compliance dated 01.03.2021.

At the very outset, Mr. A.K.M. Nurul Alam, the learned Advocate appearing on behalf of the petitioner, submits that the petition of complaint and the Naraji Petition disclose a prima-facie case against the accused-persons under Sections 406/409/420/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 along with Sections 4(2) and 4(3)

of the Money Laundering Protirodh Ain, 2012 but without considering this aspect of the case, the learned Judge of the court below has committed illegality in rejecting the naraji petition and in not taking cognizance of the offences against the accused-persons.

He next submits that according to the amended Rule 2(ঘঘ), and ১০ (খ)(ঙ), of the Anti-Corruption Commission Rules, 2007, the Anti corruption Commission (DUDOK) has no alternative way without lodging the First Information Report after receiving the complaint case from the Senior Special Judge, Noakhali but the inquiry officer of the Anti-Corruption Commission without lodging the First Information

Report violating the mandatory provision of the Rules submitted a report before the Senior Special Judge, Noakhali stating, inter-alia, that there is no misappropriation of money from the bank account of the petitioner though the learned Senior Special Judge, Noakhali did not call for any report from the Anti-Corruption Commission; on the other hand, the learned Senior Special Judge without considering the legal standpoints illegally rejected the Naraji petition accepting the inquiry report as such the impugned order is liable to be set aside making the Rule absolute.

On the other hand, Mr. Md. Khurshid Alam Khan, the learned Advocate appearing on behalf of the Anti-Corruption Commission, submits that no prima-facie

case has been disclosed against the accused-persons in the petition of complaint as well as in the naraji petition, so the learned Senior Special Judge has not committed any illegality in rejecting the naraji petition and discharging the accused-persons from the case.

Mr. Khan, by submitting affidavit-in-compliance, denied all the statements and grounds taken in the application and categorically submits that first Inquiry Officer i.e. Mohammad Nurul Huda, Deputy Assistant Director of the Durnity Daman Commission submitted his inquiry report on 08.01.2014 stating that the allegation has not been proved; thereafter, second Inquiry Officer, i.e. Mohammad Ulah, Deputy Assistant Director of the Durnity Daman Commission submitted

his inquiry report on 03.09.2014 stating that the allegation has not been proved; thereafter, Md. Moshir Rahman, Deputy Director was appointed as Inquiry Officer who submitted report stating that he has collected the relevant documents like cheques, account statement, sanction letter etc and after examining those, he found that Tk. 55,66,80,000/ had been transferred from the complainant's account by nine cheques and Tk. 2,54,855,50,000/- has been transferred to the different accounts of different customers through 86 cheques.

Mr. Khan further submits that the said cheques were signed by the customers which indicates that those moneys were transferred by the consent of the

customers; in this way, Tk. 3,13,65,270.00 was transferred from different accounts of different customers through 162 cheques; from 2006 to 2009, Tk.2,88,02,400.00 was transferred from the customer's account i.e. M/S. Gulshan Trading to the accounts of different customers, from 2006 to 2009, Tk. 3,13,65,270.00/- was deposited in the customer's account i.e. M/S. Gulshan Trading through 162 cheques; it shows that (Tk. 3,13,65,270.00- Tk.2,88,02,400.00), i.e Tk. 25,62,870.00 more was deposited in the customer accounts; asking the concerned people, it is known that in order to hold the customer in a competitive market, additional money was deposited in the account of the petitioner collecting

those from different accounts of different customers and in this way, the bankers deposited money to the customer's account i.e. M/S. Gulshan Trading; thereafter, when the M/S. Gulshan Trading became financially well, then that money was transferred to M/s. Chowmuhoni Traders, Sumon Sawmills and M/S. Khaddow Vandar; overall view is that the excess money was in the account of M/S. Gulshan Trading but there was no misappropriation therefrom; the third inquiry officer agreed with the aforesaid two inquiry officer's report and opined to take department action against the bankers since they gave illegal money facilities to the customer; that inquiry report was submitted before Commission on 30.04.2018; thereafter



that report was submitted before the Court on 14.11.2018 with the approval letter of Commission as such considering the above facts and circumstances of the case, the Rule is liable to be discharged.

Mr. Mahbub Shafique, the learned Advocate along with Mr. Jamal Hossain, the learned Advocate appearing on behalf of the bank officials, submits there is no ingredients of offences under Sections 406/409/420/506/109 of the Penal Code as alleged by the petitioner in the petition of compliant and as such, the Anti-Corruption Commission has rightly and properly submitted final report which was duly accepted by the learned Court below and hence, the Rule is liable to the discharged.

He next submits that the Commission inquired into the allegation for 3 (three) times and found no allegation against the opposite party Nos. 02 to 05 and finally submitted report with its sanction deciding not to proceed with the allegation of the petitioner and as such, the matter has got its finality and since there is no further inquiry agency to inquire into the matter of the Commission, there is no scope to allow the naraji petition filed by the petitioner and to send the same for further inquiry to the Commission or to any other agency and therefore the learned judge of the Court below has rightly rejected the naraji petition filed by the petitioner and hence, the instant Rule is liable to discharged.

He then submits that when the Commission has received the compliant-petition from the court to inquire into the matter, then it has become the subject matter of the Commission and after inquiry the Commission finding no prima-facie allegation into the alleged occurrence has decided to drop the matter and as such, the petitioner has no locus standi to file naraji petition against the report and decision of the Commission inasmuch as Sections 17, 18, 19, 20, 28 and 33 of the Anti-Corruption Commission Act, 2004 and Section 10(2) of the Criminal Law Amendment Act have given exclusive power to the Commission to conduct it's cases and the lawyers of private person or the informant has not been authorized to conduct and

prosecute the criminal cases of the Commission and as such, the instant Rule liable to be discharged.

He candidly submits that the Commission taking its decision informed the court that they would not re-investigate into the case and it is evident from the record that the petitioner has not been authorized by the Commission to file the criminal revisional application before the High Court Division and as such, the Rule issued in a frivolous application is liable to be discharged.

He lastly submits that in order to run the business of the petitioner in the competitive market, the bank authority following the banking Rules deposited additional monies to the account of the petitioner

collecting those monies from the accounts of different customers and after getting well-off, monies were transferred to different accounts of different customers but there was no misappropriation of money from the account of the petitioner and as such, the Rule is liable to be discharged.

Mr. A.K.M. Amin Uddin, the learned Deputy Attorney-General appearing for the State, has adopted the submissions of the learned Advocate for the Anti Corruption Commission.

We have gone through the revisional application, the naraji petition and the inquiry report given by the Anti-Corruption Commission. We have also heard the submissions advanced by the learned Advocates for the

respective parties and considered their submissions to the best of our wit and wisdom.

A reference to the inquiry report submitted by the inquiry officer runs as follows:-

“অনুসন্ধানকালে গ্রাহক মেসার্স ট্রেডিং এর প্রয়োজনে ও ব্যবসায়িক স্বার্থে ব্যাংক কর্তৃক জমা এবং পরবর্তীতে উক্ত অর্থ সমন্বয়ের জন্য গুলশান ট্রেডিং এর চেকে উল্লিখিত অর্থ শাখার অন্যান্য গ্রাহকের হিসাবে স্থানান্তরের ভাউচার পর্যালোচনায় ঘটনার সত্যতা পাওয়া যায়। এ ধরনের লেনদেন ব্যাংকিং নীতিমালা পরিপন্থী হলেও এতে ব্যাংক বা গ্রাহকের কোন ক্ষতি হয়নি বরং গ্রাহকের অসচ্ছলতার সময় গ্রাহক আর্থিক সুবিধা গ্রহন করে ব্যবসা চলমান রাখতে পেরেছে। এক্ষেত্রে অনিয়ম সংঘটিত হলেও আত্মসাৎ সংঘটিত হয়নি মর্মে প্রাথমিকভাবে প্রতীয়মান হয়। লেনদেনে অনিয়মের বিষয় ব্যাংক কর্মকর্তাগণ জিজ্ঞাসাবাদে স্বীকার করেন।” So it is crystal clear that the accused-persons abusing their power transferred the

monies to the different accounts of different customers from the account of the petitioner using the cheques given by him. It is argued on behalf of the opposite party No. 2 to 5 i.e. the bank officials that in order to run the business of the petitioner in the competitive market, the bank authority following the banking Rules deposited additional monies to the account of the petitioner collecting those monies from the accounts of different customers and after getting well-off, monies were transferred to different accounts of different customers but there was no misappropriation of money from the account of the petitioner. As per submission of the learned Advocate for the petitioner, the petitioner has not given any permission or authority to the bank

officials to provide any money in his bank account for the business purposes. Under the circumstances, it stands out from the record that the steps and initiatives taken by the banks officials without the permission of the petitioner and behind the back of him appear to be over-stepped and not acceptable in the eye of law. In doing so, the bank officials over-stepped their authority. So, it is apparent from the record that the bank officials in order to misappropriate the money from the bank account of the petitioner transferred an amount of Tk. 3,18,02,800/- to the bank accounts of different customers which certainly comes within the definition of criminal misconduct and misappropriation of money and money laundering as well.



The definition of criminal misconducts has been defined in Section 5 of the Prevention of Corruption Commission, 1947 which runs as follows:-

Section 5 (1):-

(a) if he accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification other than legal remuneration) as a motive or reward such as is mentioned in Section 161 of the Penal Code, or

(b) if he accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from

any person whom he knows to have been, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do, or

(d) if he by corrupt or illegal means or by otherwise abusing his position as public servant,

obtains or attempts to obtain for himself or for other person any valuable thing or pecuniary advantage, or

(e) .....

(2) .....

(3) .....

(4) The provisions of this section shall be in addition to and not in derogation of any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might apart from this section, be instituted against him.

According to Section 5(1)(c)(d) and (2) and Section 405 of the penal Code “An act of dishonestly

or fraudulently misappropriating any property entrusted to public servant constitutes an offence of criminal misconduct under clause (c) of Sub-section (I) thereof.

It may also be mentioned that Sub-section (4) of Section 5 lays down that “that provisions of this section shall be in addition to, and not in derogation of, any other law for the time being force and nothing contained herein shall exempt any public servant from any proceedings which might, apart from this section, be instituted against him.”

In the instant case, according to the inquiry report of Anti-Corruption Commission (Dudok), accused persons were entrusted and had dominion over the alleged cheques and they abusing their power and

authority dishonestly transferred the money to the accounts of different persons from the account of the petitioner using 96 alleged cheques for their own interest or giving pecuniary advantage to other persons using the cheques in violation of the Banking Rules and in this way, the accused persons prima-facie misappropriated Tk. 3,18,02,800/.

It is now well-settled that after commission of offences, if the money in question is returned and/or given, the accused shall not be absolved from the crimes and other transgressions.

Furthermore, there is no bar to filing any revisional application before the High Court Division by the complainant being aggrieved by the impugned

order if the Anti-Corruption Commission did not take any step against the impugned order with a view to coming to a higher forum for redresses.

It appears from the inquiry report that the inquiry officer Md. Moshiur Rahman, Assistant Director, Durnite Daman Commission found prima facie allegations against the accused persons but without lodging any First Information Report, he illegally recommended discharge of the accused-persons from the case and unlawfully opined that for laches and negligence, departmental proceeding may be initiated against the bank officials, which is not permitted by law.

It appears from the record that a prima-facie case in respect of the offences under Sections 406/409/420/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act and 4(2) and 4(3) of the Money Laundering Protirodh Ain, 2012, are available in the petition of complaint and in the naraji petition as has been disclosed therein.

Having considered all the facts and circumstances of the case, the submissions advanced by the learned Advocates for the respective parties and the proposition of law cited and discussed above, we find merit in this Rule.

Accordingly, the Rule is made absolute.

In consequences thereof, the impugned order dated 21.05.2019 passed by the learned Senior Special Judge, Noakhali in Petition Case No. 01 of 2018 under Sections 406/409/420/506/109 of the Penal Code rejecting the naraji petition is set aside

The learned Senior Special Judge, Noakhali shall be at liberty to take cognizance of the offences against the against the accused persons under Sections 406/409/420/506/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 along with Sections 4(2) and 4(3) of the Money Laundering Protirodh Ain, 2012.



The learned judge of the court below/trial judge is directed to treat the instant judgment and order as sanction and accordingly no sanction is required under section 32 of the Anti-Corruption Commission Act, 2004 from the Anti Corruption Commission for taking cognizance and proceeding with the case.

The accused-opposite party Nos.2-5 are directed to surrender before the learned Senior Special Judge, Noakhali within 10(ten) days from the date of receipt of this judgment and order by the learned Senior Special Judge, Noakhali.

The learned Trial Judge is directed to proceed with the case in accordance with the law and conclude

the trial as early as possible preferably within 1 (one) year from the date of receipt of this judgment and order.

Communicate this judgment and order to the learned judge of the concerned court below at once.

**A.K.M. Zahirul Huq, J:**

I agree.