In the Supreme Court of Bangladesh

High Court Division

(Criminal Appellate Jurisdiction)

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 2251 of 2021

Md. Abdul Jalil
…..Appellant

-Vs-
The State and another
…For the respondent
Mr. Md. Abdur Rouf, Advocate
... For the appellant
Mr. A.K.M. Alamgir Parvez Bhuiyan, Advocate
…for the respondent No.2 ACC
Mr. Md. Anichur Rahman Khan, DAG with
Mr. Sultan Mahmood Banna, AAG with
Mr. Mir Moniruzzaman, AAG
….for the State

Heard on 18.05.2025, 23.06.2025, 25.06.2025, 30.06.2025, 02.07.2025, 07.07.2025 and 08.07.2025.

Judgment delivered on 10.07.2025

The appellant Md. Abdul Jalil was convicted by the Special Judge, Court No. 5, Dhaka by judgment and order dated 25.02.2021 passed in Special Case No. 01 of 2020 under sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004 and he was sentenced to suffer rigorous imprisonment for 03(three) years under section 26(2) of the said Act and rigorous imprisonment for 03 (three) years and fine of Tk. 23,73,232.20 under section 27(1) of the said Act, which will run concurrently.

The prosecution's case, in short, is that the accused Md. Abdul Jalil was a Sub-Inspector of Police. The Bureau of Anti-Corruption vide memo No. 168/ 2001(TA; FO;4120209 dated 12.08.2002, following the instruction contained in memo dated 27.07.2002 issued by the Office of the Prime Minister, directed the accused Md. Abdul Jalil to submit a statement of his assets and dependents. He submitted a statement of his assets and dependents on 25.09.2002. During the inquiry, P.W. 1 informant Khandaker Akheruzzaman found that the accused concealed his movable and immovable property worth Tk. 23,73,233.20 in his statement of assets, and he acquired total assets worth Tk. 27,70,832 beyond his known source of income. Thereafter, P.W. 1 submitted a report to the Anti-Corruption Commission and obtained sanction on 18.10.2017, and accordingly, he lodged the FIR on 05.11.2017 against the accused.

P.W. 1 Khandaker Akheruzzaman was appointed as the investigating officer of the case. During the investigation, he visited the place of occurrence, prepared the sketch map and index, and recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. After completing the investigation, he found the prima facie truth of the allegation made against the accused and submitted the memo of evidence to the Anti-Corruption Commission and obtained sanction under section 32 of the Anti-Corruption Commission Act, 2004. Thereafter, he submitted charge sheet on 28.11.2018 against the accused Md. Abdul Jalil under sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004. The Metropolitan Senior Special Judge, Dhaka took cognizance of the offence against the accused. Thereafter, the case was sent to the Special Judge, Court No. 5, Dhaka, for trial.

During trial, charge was framed against the accused under sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004, which was read over and explained to the accused, and he pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 4 witnesses to prove the charge against the accused, and the defence cross-examined the prosecution witnesses. After that, the accused was examined under section 342 of the Code of Criminal Procedure, 1898, and the defence declined to adduce evidence.

P.W. 1 Khandaker Akheruzzaman is the informant as well as the investigating officer of the case. He stated that on the basis of the office memo dated 25.02.2016, he was entrusted with the inquiry into the allegation of acquiring property disproportionate to the known source of income of the accused Md. Abdul Jalil, who was the Sub-Inspector of Sutrapur Police Station, Dhaka. He scrutinized the statement of his assets dated 25.09.2002. He proved the statement of assets along with the sketch map total 5 pages, as Exhibit 1. During verification of the statement of assets, he assessed the value of the 5th storied building through the engineer of the PWD. He proved the said report as exhibit 2. On the same day, the furniture department of PWD prepared a separate report regarding the furniture used by the accused. He proved the report as Exhibit 3. He visited the place of occurrence, recorded the statement of witnesses. He found that the accused concealed the assets worth Tk. 23,73,232 and acquired assets worth Tk. 27,70,839 beyond his known source of income. He submitted a report to the higher authority for filing a case under section 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004. The Anti-Corruption Commission had approved on 18.12.2010 to lodge the FIR. He proved the approval as Exhibit 4. On 12.08.2002, a notice was served upon the accused with prior approval of the Office of the Prime Minister dated 27.07.2002 to submit the statement of his assets, his wife, and children. He submitted the statement of assets on 25.09.2002. In the statement of assets, he declared that he constructed a 5^{th}-storied building at a cost of Tk. 36,39,000, but he did not declare the value of the immovable property (furniture) in his statement. He inherited 1/6 share of 20.5 bighas of land of No. 7 Rajapur Mouza, under Bhanga Thana, Faridpur. He purchased 85 decimals of land of Kamalpur Mouza under Kotwali Thana, Faridpur, at a price of Tk. 50,000. In the statement of assets, he declared the total assets of Tk. 36,89,000. During the inquiry, it was found that the accused purchased 3 Kathas of land from Bosoti Property at Mirpur in his name and in the name of his wife vide 2 separate deeds dated 24.03.1992 at a price of Tk. 1,50,000 and constructed 5^{th} storied building thereon at a cost of Tk. 36,39,000 in the year 1999-2000. A team of the Engineers of PWD, having measured the said house on 22.08.2016, constructed in 1999-2000, submitted a report stating that the total construction costs of the 5^{th}-storied building were Tk. 58,99,052 as per the schedule of PWD. 19% of the said amount, total Tk. 11,20,820 was deducted, and the total construction costs of the house were assessed at Tk. 47,78,232.20. Furthermore, he concealed that he purchased 3 Kathas of land valued at Tk. 1,50,000 from the Bosoti Properties Ltd. He concealed total assets of Tk. 12,89,232.20 in his statement of assets. In the statement of assets, the accused stated that he earned total Tk. 31,85,400. During the inquiry, he found the total valid income of the accused at Tk. 20,07,400. He concealed total assets of Tk. 23,73,232 and acquired total assets of Tk. 27,70,832 beyond his known source of income. He lodged the FIR. He proved the FIR as exhibit-5 and his signature on the FIR as exhibit-5/1. During cross-examination, he stated that he got the approval on 25.02.2016 for the inquiry and submitted the report on 31.10.2016. In the statement of assets, the accused declared that he obtained Tk. 5,04,000 as rent from the tinshed, but he stated in the FIR that the accused received Tk. 50,400 as rent and Tk. 4,53,600 was shown less. In 1999-2000, the building was constructed up to the 3rd floor. He admitted that during that period, he did not construct the 4th floor or that the accused showed the construction cost of the 4th and 5th floor in the return of income tax year 2015-2016, which has been mentioned in the charge sheet.

P.W. 2 Kaisar Ibne Shaiek is the Executive Engineer, Public Works Department, Sub-Division-3, Mirpur, Dhaka. He stated that from 14.01.2015 to 10.12.2017, he discharged his duty in the office of the PWD as Divisional Engineer. On 22.08.2016, he, along with Sub-Assistant Engineer Md. Selim measured the 5th-storied building of the accused constructed at 17/5, Basati Property, Barabag, Mirpur-2. At that time, Assistant Director Khandaker Akheruzzaman of the Anti-Corruption Commission, the owner of the house Md. Abdul Jalil and other engineers of PWD were present there, and except the owner of the house, all others signed the measurement sheet. He submitted a report regarding the assessment of the house. He proved the report as Exhibit 5 and his signature on the report as exhibit-5/1, the valuation certificate as exhibit-6 and his signature as exhibit-6/1, value assessment statement as exhibit-7 and his signature as exhibit-7/1. During cross-examination, he stated that he could not remember the total square feet of the building constructed up to the 5th floor. Immediately after measurement, he assesses the value. He measured 22.08.2016 from 10.30 am to 11-2.30 pm. At the time of measurement, the accused was not present, but in the report, it has been stated that the owner of the house/accused was present. He is not aware of the fact that the 4th and 5th floor of the house was constructed in 2015-2016. He affirmed that the 3rd floor was constructed in 1999-2000. He could not remember whether the 4th floor was constructed at that time. He denied the suggestion that the assessment of the house is not correct, or he deposed falsely.

P.W. 3 Md. Selim Hossain is the Sub-Assistant Engineer, PWD 2, Dhaka. He stated that from 10.12.2015 to 22.11.2016, he discharged his duty as Sub-Divisional Engineer of PWD 3. At that time, he, along with Sub-Divisional Engineer Md. Kaiser Ibne Saiek on 28.02.2016 measured the 6th-storied building constructed at 17/5, Basati Property, Barabag, Mirpur-2. At that time, Assistant Director Akheruzzaman of the Anti-Corruption Commission, the accused Abdul Jalil, and other engineers of the PWD were present there, and they signed the measurement sheet. The owner of the house did not sign. Subsequently, they submitted a report. He proved his signature on the report as exhibit-5, he proved his signature on the valuation certificate as exhibit-6/2, and his signature on the value assessment statement as exhibit-7/2. During cross-examination, he stated that he was not aware of the facts that the 5th and 6th floor was constructed in 2015-2016. It is not a fact that the 3rd floor was constructed in 1999-2000. He denied the suggestion that the valuation report prepared by him is not correct.

P.W. 4 Khandaker Akheruzzaman is the Investigating Officer. He stated that while he was discharging his duty as Assistant Director, Anti-Corruption Commission, Dhaka, on 15.11.2017, he was appointed as the investigating officer of the case. During the investigation, he sent a requisition for the income tax return/record of the accused. The Commissioner of Taxes, Taxes Zone-13, Dhaka, and the Deputy Commissioner of Taxes, Taxes Circle-269, Taxes Zone-13, sent the income tax returns filed by the accused Abdul Jalil for the years 2011-2012 to 2017 to 2018. He proved that the income tax return of the accused, total 69 pages, as exhibit-8 series. He seized those documents. The said circle also sent the income tax record of Ms. Shahida Begum, wife of the accused Md. Abdul Jalil, for the years 2012-2013 to 2017-2018. He seized those documents. He proved the income tax record of the wife of the accused, total 42 pages, as exhibit-9 series. During the investigation, the Headquarters of Bangladesh Police vide memo dated 08.03.2016 submitted a report regarding the corruption of the accused to the Anti-Corruption Commission. He proved the said report as Exhibit 10. He recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. During the investigation, he did not find the valid income of the accused amounting to Tk. 12,89,233, out of total assets shown at Tk. 31,85,400, and he acquired total assets of Tk. 27,70,832 beyond his known source of income. After completing the investigation, he found the prima facie truth of the allegation made against the accused and submitted memo of evidence. On 06.11.2018, he got the approval from the Anti-Corruption Commission, and accordingly, he submitted the charge sheet on 28.11.2018 against the accused. He proved the approval as Exhibit 11. During cross-examination, he stated that he visited the place of occurrence on 23.11.2017. He affirmed that the statement of assets submitted by the accused was also mentioned in the income tax return. He admitted that the accused stated in the statement of assets that he received Tk. 5,04,000 as rent of the tinshed. In the FIR, he stated that the accused received Tk. 50,400 as the rent of the tinshed. He admitted that in the income tax return submitted by the accused for the year 2015 to 2016, it was mentioned that the accused constructed the 4th and 5th floors of the house, which was stated in the charge sheet. He denied the suggestion that in the FIR, the 4th-storied building had been shown as a 5th-storied building and Tk. 11,39,232 had been shown excess. He denied the suggestion that Tk. 50,000 has been deducted from the total sale value of the land of Tk. 3,50,000. The sale proceeds of motorcycle Tk. 46,000 was deducted. He denied the suggestion that the mortgage value of Tk. 1,50,000 had been deducted or the construction material purchased on credit at Tk. 50,000 and the loan of Tk. 200,000 taken from his wife in 2002-2003 was deducted. He denied the suggestion that he created false information about Tk. 15,92,832, or that he did not conceal any assets in his statement. In the income tax return submitted by the accused and his wife, total investment was shown at Tk. 36,40,000.

The learned Advocate Mr. Md. Abdur Rouf appearing on behalf of the appellant submits that the then Bureau of Anti-Corruption served notice on 12.08.2002 upon the accused to submit the statement of his assets and his dependents and he submitted the statement of his assets and his dependents on 25.09.2002 but the Bureau of Anti-Corruption did not take any step about the statement dated 25.09.2002 which proved that the then Bureau of Anti-Corruption accepted the statement of assets dated 25.09.2002 and the Anti-Corruption Commission illegally took the measurement of the house of the petitioner on 22.08.2016 and lodged the FIR on 05.11.2017. He further submits that nothing has been concealed by Md. Abdul Jalil in his statement of assets and all the assets mentioned in the statement of assets dated 25.09.2002 (Exhibit 1) had been mentioned in the income tax return submitted by the appellant. Having drawn the attention of the evidence of P.W. 1 and 4, the learned Advocate submits that, admittedly, the appellant constructed the house on 3 Kathas of land, which has been stated in the statement of assets dated 25.09.2002, but P.Ws. 1 and 4 stated that the appellant concealed 3 Kathas of land in his statement of assets. He also submits that without calculating the total valid income of the appellant, the investigating officer stated that total income of the appellant was Tk. 20,07,400 and excluded the valid salary, and other income of Tk. 9,54,000 derived from household property, and the sale proceeds of other assets. He vehemently submits that the prosecution totally failed to prove the charge against the accused beyond all reasonable doubt. He prayed for setting aside the impugned judgment and order passed by the trial court.

The learned Advocate Mr. A.K.M. Alamgir Parvez Bhuiyan, appearing on behalf of the respondent No. 2, Anti-Corruption Commission, submits that in the statement of assets, the accused concealed total assets of Tk. 23,73,232 and acquired total assets of Tk. 277832 beyond his known source of income, and the trial court, on correct assessment and evaluation of the evidence, passed the impugned judgment and order. He prayed for dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Md. Abdur Rouf, who appeared on behalf of the accused Md. Abdul Jalil and the learned Advocate Mr. AKM Alamgir Parvez Bhuiyan, who appeared on behalf of respondent No. 2, Anti-Corruption Commission, perused the evidence, impugned judgment and order passed by the trial court, and the records.

On perusal of the evidence, it reveals that the then Bureau of Anti-Corruption issued a notice on 12.08.2002 upon the accused Md. Abdul Jalil following the direction of the Office of the Prime Minister contained in a memo dated 27.07.2002 to submit the statement of his assets and his dependents. On receipt of the said notice, the accused submitted statement of his assets and his dependents on 25.09.2002 (exhibit-2). Thereafter, no step was taken by the then Bureau of Anti-Corruption regarding the statement of assets dated 25.09.2002 (Exhibit 1). During cross-examination, P.W. 1 admitted that he was entrusted with the inquiry of the case on 25.02.2016 and after the inquiry, he submitted the report on 31.10.2016. After 15 years from the date of submitting the statement of assets, the FIR was lodged on 05.11.2017.

On perusal of the evidence, it reveals that P.W. 1 Khondaker Akheruzzaman is the informant and P.W. 2 Md. Kaisar Ibne Shaiek is the Sub-Divisional Engineer of the Public Works Department. The accused Md. Abdul Jalil submitted statement of his assets and his dependents on 25.09.2002 (exhibit-1). P.W. 2 measured the house of the accused on 22.08.2016. P.Ws. 1 and 2 admitted that the house of the accused was constructed in 1999-2000. P.W. 2 did not say that he assessed the valuation of the house following the schedule of the rate of construction of 1999-2000. Therefore, it cannot be said that PW. 2 assessed the valuation of the house of the accused Md. Abdul Jalil following the schedule of construction of 1999-2000.

P.W. 4 investigation officer admitted in cross-examination that in the income tax return submitted by the accused for the year 2015-2016, it was mentioned that the accused constructed the 4th and 5th floors of the house of the accused. The income tax department did not raise any objection regarding the construction of the house of the accused in 2014. No reason has been assigned by PWs 1 and 4 as to why the construction costs of the house of the accused were not assessed immediately after submitting the statement of assets dated 25.09.2002(exhibit-1), which has been assessed on 22.08.2016 after 14 years of submitting the statement of assets dated 25.09.2002.

P.W. 1 admitted in cross-examination that in the return submitted by the accused for the year 2015-2016, the accused stated that he constructed the 4th and 5th floors of the house. In the said return, the construction costs have been shown at Tk. 36,89,000. To assess the valid income of a government servant, the salary and other benefits received by him from the government are required to be considered. No statement was collected by the investigating officer from the audit department of the government regarding the total salary and other benefits received by the accused Md. Abdul Jalil from the government. Without following any objective criteria and assaining any reason P.W. 4 stated that the accused acquired total assets of Tk. 27,70,832 beyond his known source of income.

Furthermore, the accused stated that he derived income of Tk. 5,04,000 from the rent of the tinshed house, but the investigating officer accepted the house rent of Tk. 50,000 without assigning any reason. The accused also stated that he acquired total income of Tk. 9,54,000 from other sources and sold land of Tk. 100,000 and the tinshed house at Tk. 50,000. He also sold the land of Tk. 50,000. The investigating officer stated that the accused and his brother sold the land of Tk. 100,000. No document was proved to show that the brother of the accused was also the owner of the land sold at Tk. 100,000 by the accused.

The evidence adduced by the prosecution depicts that the 4th and 5th floor of the building of the accused was constructed in 2014, which has been mentioned in the return of 2015-2016, and the same was accepted by the income tax authority. In the statement of assets, the accused declared that he spent Tk. 36,89,000 as part construction costs of the house up to the 5th floor and in the report (exhibit-5), the construction cost of the house up to the 5th floor was assessed at Tk. 47,78,323.20. Since the 4th and 5th floor was constructed in 2014, there was no scope to include the construction costs of the 4th and 5th floors of the house in the assessment report dated 22.08.2016 (exhibit-5). I am of the view that P.Ws. 2 and 3 illegally included the construction cost of the 4th and 5th floors of the house of the accused in the assessment report (exhibit-5).

P.W. 4 admitted that the accused constructed the house up to the 3rd floor in 1999-2000, and P.W. 2 assessed the valuation of the house on 22.08.2016. He did not say that he assessed the valuation of the house following the schedule of 1999-2000. Admittedly, the accused constructed the building on 3 Kathas of land at Barabag, Mirpur, which has been stated in the statement of assets, but the investigating officer stated that the accused did not mention 3 Kathas of land in his statement of assets (exhibit-1).

It is found that no action was taken against the accused by the then Bureau of Anti-Corruption regarding the statement of assets dated 25.09.2002 submitted by the accused, and long after 14 years from the date of submitting the statement of assets dated 25.09.2002, the FIR was lodged on 05.11.2017. No valid explanation has been given by P.W. 1 for such an inordinate delay in lodging the FIR against the accused. Therefore, I am of the view that nothing has been concealed by the accused in the statement of assets dated 25.09.2002 (Exhibit 1), and the prosecution failed to prove that the accused Md. Abdul Jalil acquired any assets beyond his known source of income. Due to the delayed assessment of the house of the accused Md. Abdul Jalil by P.Ws. 2 and 3, 4th and 5th floor of the house of the accused, constructed in 2014, was wrongly included in the assessment report dated

22.08.2016(exhibit-5), as if, it was constructed before filing the statement of assets dated 25.09.2002(exhibit-2).

The Anti-Corruption Commission is entrusted with the duty of preventing corruption of government servants, but in discharging the duty, it should not keep any inquiry pending for an indefinite period, as has been done in the instant case. After filling any statement of assets by any person, the Anti-Corruption Commission shall dispose of the statement of assets submitted by him within a reasonable time, preferably within 6 months from the date of submitting the statement of assets.

In view of the above evidence, findings, observation, and proposition, I am of the view that the prosecution failed to prove the charge against the accused Md. Abdul Jalil beyond all reasonable doubt, and the trial court, without correct assessment and evaluation of the evidence of the prosecution witnesses, illegally arrived at a finding as to the guilt of the accused.

I find merit in the appeal.

In the result, the appeal is allowed.

The impugned judgment and order passed by the trial court against the accused Md. Abdul Jalil is hereby set aside.

However, there will be no order as to costs.

Send down the lower Court's record at once.

3791