

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 4916 of 2021

Md. Nurul Amin Sikder

...Convict-appellant

-Versus-

The State and another

...Respondents

Mr. Golam Abbas Chowdhury, Advocate with

Mr. Khan Mahamudul Hasan, Advocate

...For the convict-appellant

Ms. Sharmin Hamid, A.A.G. with

Mr. Sultan Mahmood Banna, A.A.G

...For the State

Mr. ASM Kamal Amroohi Chowdhury, Advocate

...For the respondent No. 2 (ACC)

Heard on 25.02.2025, 26.02.2025, 02.03.2025,  
04.03.2025, 10.03.2025 and 11.03.2025

**Judgment delivered on 13.03.2025**

This appeal under Section 10(1A) of the Criminal Law Amendment Act, 1958 is directed against the impugned judgment and order of conviction and sentence dated 31.03.2021 passed by the Divisional Special Judge, Barishal in Special Case No. 13 of 2010 arising out of Kotwali Police Station Case No. 81 dated 28.10.2009 corresponding G.R. No. 758 of 2009 (Sadar) convicting the appellant under Section 26(2) of the Anti-Corruption Commission Act, 2004 and sentencing him thereunder to suffer rigorous imprisonment for 03(three) years and convicting him under Section 27(1) of the said Act and sentencing him thereunder to suffer rigorous imprisonment for 03(three) years and fine of Tk. 3,00,00,000(three crore), which will run concurrently and forfeiting the Lachin Bhaban, 0997, Bogra Alekanda Mouza, Kotwali, Barishal, and 12 decimals of land of S.A. Khatian No. 1843, Dag No. 5568, Mouza Bogura Alekanda, Barishal, and flat No. 403, an area of 1620 square feet, "Eastern Tulip" 92, Bora Mogbazar, Dhaka.

The prosecution's case, in short, is that the accused Md. Nurul Amin Sikder was the Sub-Assistant Engineer, Roads and Highway

Department, Jhalokathi. An application was filed to the ACC stating that he acquired assets beyond his known source of income, and the complaint was registered as E/R No. 20 of 2008. After an inquiry, a report was submitted by the Assistant Director M.H. Rahmatullah of the Anti-Corruption Commission. Thereafter, a notice under Section 26(1) of the Anti-Corruption Commission Act, 2004 was served upon him on 23.12.2008. According to the said notice, the accused Md. Nurul Amin Sikder submitted statement of his assets on 15.01.2009 stating that he acquired total assets of Tk. 1,47,89,641(one crore forty-seven lakh eighty-nine thousand six hundred and forty-one). During the enquiry, the enquiry officer found that legally, he acquired total assets of Tk. 17,20,000(seventeen lakh twenty thousand). In the statement of assets, the accused Md. Nurul Amin Sikder concealed total assets of Tk. 1,30,69,641. In the statement of assets, the accused stated that he spent total Tk. (3137000+1900000), total 50,37,000 as the repairing and construction cost of the house. After submitting the statement of assets, the Executive Engineer, Public Works Department, Barishal, by memo dated 24.03.2009, formed a three-member committee headed by (1) Mohammad Badrul Alam Khan, Sub Divisional Engineer, Public Works Sub-Division, Gouranodi, Barishal and (2) Bidhan Mazumder, Sub-Assistant Engineer (Civil), Gouranodi E/M Sub-Division, Barishal and (3) Md. Shahjahan, Sub-Assistant Engineer (E/M In-Charge), Public Works E/M Sub-Division, Barishal, were member of the said committee. The said committee measured the Lachin Bhaban on 05.04.2009 and submitted a report on 14.07.2009 stating that the accused spent total Tk. 98,99,018 for the repair and construction of the Lachin Bhaban. He purchased 12 decimals of land in Alakanda Mouza of Barishal City at a price of Tk. 2,47,500, a flat of 1620 square feet in the name of his son Adil Amin Lachin at Bora Mogbazar, a car in the name of his wife at a price of Tk. 15,50,000 and other bank deposits and movable assets of total Tk. 5,43,123. The accused concealed total Tk. 48,62,018 as the repairing

and construction cost of the Lachin Bhaban. During the enquiry, it was found that the accused had withdrawn more than Tk. 9(nine) lakh from the different accounts maintained in his name and his wife, Israt Jahan Shilpy. The enquiry committee found his total lawful income of Tk. 17,20,000. He acquired total assets of Tk. 1,30,69,641((one crore thirty lakh sixty nine thousand six hundred and forty one) beyond his known source of income and in the name of his wife, Mosammat Israt Jahan, and son Adil Amin Lachin.

The informant, M.H. Rahmat Ullah, was appointed as Investigating Officer on 23.11.2009, and he took up the investigation of the case on 10.12.2009. During the investigation, he visited the place of occurrence, recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898, seized the documents, and after completing the investigation submitted the charge sheet on 30.08.2010 against the accused Md. Nurul Amin Sikder under Sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004.

After that, the case record was sent on 05.09.2010 to the Senior Special Judge, Barishal for trial. Subsequently, the proceeding of the case was stayed by the High Court Division in Criminal Miscellaneous Case No. 28611 of 2010 till 18.07.2017. The Senior Special Judge, Barishal, by order dated 10.08.2017, took cognizance of the offence against the accused under Sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004, and sent the case to the Divisional Special Judge, Barishal. The Divisional Special Judge, Barishal, by order dated 10.07.2018, framed charge 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 law.

During the trial, the prosecution examined 12 witnesses to prove the charge against the accused, and the defence cross-examined

the prosecution's witnesses. After examination of the prosecution witnesses, the accused was examined under Section 342 of the Code of Criminal Procedure, 1898, and the defence examined 1 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 he filed the appeal.

P.W. 1 M.H. Rahmat Ullah is the Assistant Director, Combined District Office, Barishal. He stated that the Anti-Corruption Commission, District Office, Barishal, appointed him as Enquiry Officer to enquire into the E.R. No. 20 of 2008. After the enquiry, he filed a report with a recommendation to serve notice upon the accused to submit his statement of assets. On 23.12.2008 Md. Abul Hasan, Deputy Director, Anti-Corruption Commission, Barishal, sent notice to the accused to submit his statement of assets with prior approval of the Anti-Corruption Commission, Head Office, Dhaka. He proved the approval dated 17.12.2008 as exhibit 1. He proved the notice dated 23.12.2008 as exhibit 2. According to the said notice, he filed an application on 01.01.2009 praying for time to submit the statement of his assets, and he was allowed 07 days. After that, the accused Md. Nurul Amin Sikder submitted his statement of assets on 15.01.2009 (total 8 pages). He proved the said statement as exhibit 3. Thereafter, the Anti-Corruption Commission, Head Office, Dhaka vide memo No. 2625 dated 09.02.2009 directed the Director, Anti-Corruption Commission, Barishal to make an enquiry as regards the statement of assets submitted by the accused. He proved the memo dated 09.02.2009 as exhibit 4. After that, the Director, Anti-Corruption Commission, Barishal vide memo No. 254 dated 05.03.2009 instructed him to make an enquiry regarding the statement submitted by the accused. He proved the memo dated 05.03.2009 as exhibit 5. Thereafter, on 24.03.2009, he seized 4 items of documents mentioned in column No. 4 of the seizure list and handed over those documents to the custody. He proved the seizure list as exhibit 6 and

his signature on the seizure list as exhibit 6/1. He proved the Jimmanama as exhibit 7 and his signature on the Jimmanama as exhibit 7/1. During the enquiry, he sent a letter to the Executive Engineer, Barishal, to give a report regarding the value of the 4-story building constructed on holding No. 0997, which is known as Lachin Bhaban. The Executive Engineer directed S.D. Badrul Alam Khan of the Public Works Department, Sub-Assistant Engineer Bidhan Mazumder, and Sub-Assistant Engineer Md. Shahjahan to assess the value of the said house. The committee took the measurement of the house and submitted a report on 12.07.2009. He proved the valuation report as exhibit 7. In the report, it has been mentioned that the total construction cost of the house is Tk. 98,99,018. In the statement of assets, the accused mentioned the construction cost of the house at Tk. 50,37,000 and he concealed total assets of Tk. 48,62,018. During the enquiry, it was found that the accused purchased 12 decimals of land of Dag No. 4468 of Bogura Alekanda Mouza at a price of Tk. 2,47,500 by registered deed No. 3320 dated 01.06.1998 in the name of his wife, Israt Jahan. He also purchased a flat measuring an area of 1620 square feet valued at Tk. 25,50,000 in the name of his minor son Adil Amin Lachin. Thus, he acquired total assets of Tk.  $(98,99,018 + 2,47,500 + 25,50,000) = 1,26,96,518$  in his name and the name of his wife and son. It is also found that the bank balance of the accused maintained in his account with Sonali Bank and ICB Islami Bank was Tk. 16,003. The accused purchased the FDR for Tk. 50,000 in the name of his wife with the City Bank, Mouchak Branch. The accused also invested Tk. 11,5120. In the statement of his assets, the accused mentioned that he purchased gold of Tk. 1,25,000, Air Cooler at a price of Tk. 30,000 and furniture of Tk. 2,07,000. He purchased a private car at a price of Tk. 15,50,000. The accused purchased total immovable property of Tk. 20,93,123. Thus, he acquired total movable and immovable assets of Tk. 1,47,89,641. He found total Tk. 17,20,000 as a known source of income of the accused. He acquired

total assets of Tk. 1,30,69,641 beyond his known source of income. He submitted the report against the accused on 23.08.2009 with a recommendation to file the FIR against him. The Anti-Corruption Commission had approved to lodge the FIR against the accused, and the Anti-Corruption, Barishal, by memo No. 1188 dated 22.10.2009, instructed him to lodge the FIR. He proved the memo dated 22.10.2009 as Exhibit 9. Thereafter, he lodged the FIR. During cross-examination, he stated that during the investigation on 24.11.2008, he recorded the statement of the accused. He stated that he constructed the 'Lachin Bhaban', obtaining a loan from the House Building Finance Corporation, but he could not show any documents. The House Building Finance Corporation could not give any information regarding the loan. He did not record the statement of any officer of the House Building Finance Corporation. He denied the suggestion that the construction cost per square foot of the ground floor of the 'Lachin Bhaban' was Tk. 450(four hundred fifty) and Tk. 342(three hundred forty two) per square foot above the ground floor, and he spent total Tk. 14,35,344(fourteen lakh thirty-five thousand three hundred and forty-four) up to the second floor, for which he did not record the statement of the officer of the House Building Finance Corporation, or he deposed falsely or submitted an untrue charge sheet.

P.W. 2 Nasir Uddin Ahammed is the Data Entry Control Operator, Combined District Office, Barishal. He stated that on 24.03.2009, he was posted with the Anti-Corruption Commission, Combined District Office, Barishal. On that day, Sub-Assistant Director M.H. Rahmat Ullah seized 4 items of documents mentioned in the seizure list, and he signed the seizure list. He proved his signature on the seizure list as exhibit 6/2.

P.W. 3 Md. Abul Hasan stated that from 12.11.2008 to June 2009, he discharged his duty as Deputy Director, Anti-Corruption Commission, Barishal. At that time, Sub-Assistant Director Md.

Rahmatulla of the Anti-Corruption Commission made an allegation against the accused Md. Nurul Amin Sikder, as regards the acquisition of property beyond his known source of income. After the enquiry, he submitted a report with a recommendation to issue a notice to the accused for submitting his statement of assets. He sent the report to the higher authority. After approval of the authority, he sent notice to the accused Md. Nurul Amin Sikder to submit his statement of assets. The accused Md. Nurul Amin Sikder submitted the statement of assets, and he sent the same to the Head Office, Dhaka. Thereafter, he was transferred to the Head Office. During cross-examination, he stated that he did not make any enquiry regarding the statement of assets submitted by the accused.

P.W. 4 Kazi Nazrul Islam stated that on 24.12.2008, a notice was served by the Anti-Corruption Commission to the accused. He signed the notice as a witness. The defence declined to cross-examine P.W. 4.

P.W. 5 Md. Lutfar Rahman Nannu Miah stated that on 24.12.2008, the Anti-Corruption Commission served a notice to the accused, and as a witness, he signed the notice. The defence declined to cross-examine P.W. 5.

P.W. 6 Md. Younus Hawlader stated that in 2009, he was posted in the Office of the Anti-Corruption Commission, Barishal. On 24.03.2009 at 5.00 pm Sub-Assistant Director Md. Rahmat Ulla seized documents and prepared the seizure list (exhibit 6). He signed the seizure list. He proved his signature on the seizure list as exhibit 6/3. During cross-examination, he stated that he is not aware of the subject matter of the case.

P.W. 7 Mohammad Badrul Alam Khan is the Executive Engineer, Public Works Department. He stated that from 2006 to 2009, he was posted with the Public Works Department, Gouranodi, Barishal as Sub-Divisional Engineer. On 12.07.2009, he submitted a report as per the instructions of the Anti-Corruption Commission to

the then Executive Engineer (total 06(six) pages). He proved the report as Exhibit 11. He proved his signature on the report as exhibit 11 (Ka-Cha). During cross-examination, he stated that the building was one-story, and subsequently, the owner of the house repaired the same. They assessed the valuation of the house following the rate of construction of the Public Works Department. He admitted that if anyone personally constructs the house, there is no scope to deduct the cost more than 20%. Following the rate of the schedule of construction of 1997, he assessed the value of the house constructed in 1997. The construction cost of the boundary of the house was also included in the report. He could not say whether the value of per ton rod was Tk. 13,000(thirteen thousand) to Tk. 35,000(thirty-five thousand) for different grades. He denied the suggestion that, without examining the materials of the door and window, he submitted the report as he wished. He denied the suggestion that the accused spent total Tk. 51,87,000(fifty one lakh eighty seven thousand) as the construction cost of the house.

P.W. 8 Md. Khalilur Rahman is a Constable of the Anti-Corruption Commission. He stated that on 25.12.2008, he was posted with the Anti-Corruption Commission, Combined District Office, Barishal. On that day, he went to the address of the accused to serve the notice, and the notice was published on 25.12.2008 in the local 'দৈনিক মতবাদ'. During cross-examination, he stated that the copy of the notice was not produced in Court.

P.W. 9 Masud Ali Khan is an employee of Navana Industry. He stated that he submitted a statement regarding the valuation of the flat No. 403, 08, Bora Mogbazar, Dhaka on 18.05.2010 stating the value of the flat is Tk. 25,00,000(twenty five lakh) and the registration cost is Tk. 2,70,000(two lakh seventy thousand). He proved the report as exhibit 12 and his signature as exhibit 12/1. The defence declined to cross-examine P.W. 9.



P.W. 10 Bidhan Mazumder is the Sub-Assistant Engineer, Public Works Department, Barishal. He stated that he was the Member of the three (03) Member committee formed on 05.04.2009. On 12.07.2009, he submitted a report following the instructions of the Anti-Corruption Commission. He proved his 06 signatures on the report as exhibits 11/1 to 11/06. During cross-examination, he stated that he measured the building. He admitted that he was not aware that the house was constructed by taking a loan from the House Building Finance Corporation. He is not aware that the House Building Corporation assessed the construction cost of the ground floor of the house at Tk. 450(four hundred fifty) per square foot and Tk. 342(three hundred forty two) per square feet above the 1<sup>st</sup> floor. He is not aware that the House Building Corporation assessed the total construction cost of the house from the 1<sup>st</sup> floor to the 5<sup>th</sup> floor, total Tk. 2301588(twenty three lakh one thousand five hundred and eighty eight). He denied the suggestion that he submitted the report as per the instructions of the Anti-Corruption Commission.

P.W. 11 Md. Shahjahan was tendered by the prosecution and declined by the defence.

P.W. 12 M.H. Rahmat Ullah is the Investigating Officer. He stated that he also deposed as an informant in the case. On 23.11.2009, he was appointed as Investigating Officer. He took up investigation of the case on 10.12.2009. In the statement of the Saving Account No. 1996 maintained with Sonali Bank Ltd, C & B Branch, Barishal in the name of Nurul Amin, the total balance was Tk. 92,167.20 (exhibit 13). In the Saving Account No. 34032813 (exhibit 14) total balance was Tk. 733184.84. He found the report submitted by the District Registrar, Barishal, by memo No. 762 dated 03.06.2010 total of 03 pages. He proved the report as exhibit 15. He submitted the statement of accounts maintained with Dhaka Bank Ltd in the name of the accused and his wife, total 01 page as exhibit 17. During the investigation, he found the truth of the allegation against

the accused and submitted charge sheet on 30.08.2010 against him. At the time of recording the statement on 24.11.2008, the accused stated that he constructed the 'Lachin Bhabon' after getting a loan from the House Building Finance Corporation. During cross-examination, he stated that during the investigation on 24.11.2008, he recorded the statement of the accused. He stated that he constructed the 'Lachin Bhaban', obtaining a loan from the House Building Finance Corporation, but he could not show any documents. The House Building Finance Corporation could not give any information regarding the loan. He did not record the statement of any officer of the House Building Finance Corporation. He denied the suggestion that the construction cost of the ground floor of the 'Lachin Bhaban' was Tk. 450(four hundred fifty) per square foot and Tk. 342(three hundred forty-two) per square foot above the ground floor, and he spent total Tk. 14,35,344(fourteen lakh thirty-five thousand three hundred and forty-four) up to the second floor, for which he did not record the statement of the officer of the House Building Finance Corporation, or he submitted an untrue charge sheet.

D.W. 1 Md. Nurul Islam Sikder is the brother of the accused Nurul Amin Sikder. He stated that his brother accused Nurul Amin Sikder, constructed the Lachin Bhaban in 1997-98. At that time, he was doing business at Barishal. His brother constructed the house, taking a loan from the House Building Finance Corporation and spending his previous investment. As per the report of the House Building Finance Corporation, the total construction cost of the ground floor was Tk. 450(four hundred fifty) per square foot and Tk. 342(three hundred forty two) per square feet above the 1<sup>st</sup> floor. The house was old, and the second-hand rod and bricks were used. The boundary wall was constructed before purchasing the house. He denied the suggestion that the secondhand rod and bricks were not used for the construction of the house or he deposed falsely to save his brother.

The learned Advocate Mr. Golam Abbas Chowdhury, appearing on behalf of the appellant, along with learned Advocate Mr. Khan Mahamudul Hasan submits that the appellant Md. Nurul Amin Sikder joined in his private service in 1979 and he joined his service as Sub-Assistant Engineer in the Roads and Highway Department in 1981 and the appellant and his wife Israt Jahan are regular tax payee since 1996-1997 and his father gifted 19.5 decimals of land along with a one storied building, total 3010 square feet per floor. In the assessment report dated 15.01.2019 (exhibit 3) submitted by P.Ws 7 and 10, the total income of the accused and his wife was not assessed, and without determining the total income of the accused and his wife, P.Ws 7 and 10 only calculated the total loan of Tk. 17,20,000 as a known source of income. He further submits that P.Ws 5 and 7 included the construction cost of the house up to the first floor, which was gifted by the father of the accused, and wrongly assessed the construction cost of the house. He also submits that the assets mentioned in the statement of assets submitted by the accused (exhibit 3) were mentioned in the income tax return filed by the accused and which was accepted by the income tax department and the Anti-Corruption Commission is not legally empowered to re-assess the assets through the Engineers of the Public Works Department. He also cited a decision made in the case of Anti-Corruption Commission vs Faisal Morshed Khan and another reported in 66 DLR 236. The prosecution failed to prove the charge against the accused beyond a reasonable doubt, and the trial Court illegally passed the impugned judgment and order. He prayed for setting aside the impugned judgment and order passed by the trial Court.

The learned Advocate Mr. ASM Kamal Amroohi Chowdhury, appearing on behalf of the respondent No. 2 (ACC), submits that the accused Md. Nurul Amin Sikder was a Sub-Assistant Engineer of the Public Works Department and the judgment passed by the Hon'ble Appellate Division in the case of Osman Gani (Md) vs State and

another reported in 25 BLC (AD) 64 is applicable in the case of the petitioner and the trial Court passed the impugned judgment considering the reports (exhibits 7 and 11) submitted by the Engineers of the Public Works Department. He prayed for the dismissal of the appeal.

I have considered the submissions of the learned Advocate Mr. Golam Abbas Chowdhury who appeared on behalf of the appellant and the learned Advocate Mr. ASM Kamal Amroohi Chowdhury who appeared on behalf of the respondent No. 2 (ACC), perused the evidence adduced by both the parties, impugned judgment and order passed by the trial Court and the records.

On perusal of the evidence, it appears that the accused Md. Nurul Amin Sikder was the Sub-Assistant Engineer, Roads and Highways Department, Jhalokathi. P.W. 1 served a notice (exhibit 2) on 23.12.2008 to the accused Md. Nurul Amin Sikder to submit the statement of his assets and the assets acquired by his wife and son. The accused Md. Nurul Amin Sikder submitted the statement on 15.01.2009 (exhibit 3) stating that the accused, his wife and son acquired total assets of Tk. 1,47,89,641. On the requisition of the Anti-Corruption Commission, the Executive Engineer, Public Works Department, Barishal, formed a three-member committee headed by P.W. 7 Mohammad Badrul Alam Khan, Sub-Divisional Engineer, Gouranodi, Barishal. P.W. 10 Bidhan Mazumder, the Sub-Assistant Engineer, and P.W. 11 Md. Shahjahan was the members of the committee who visited the house and made an assessment and submitted the report on 14.07.2009 (exhibit 7). In the report, the committee assessed the total construction cost of the Lachin Bhaban at total Tk. 98,99,018 and mentioned that the accused concealed total Tk. 48,62,018 in his statement.

On perusal of the exhibits 3 and 7, it reveals that the movable and immovable property mentioned in the report (exhibit 7) were also stated in the statement of assets dated 15.01.2009 (exhibit 3)

submitted by the accused. In exhibit 3, the accused stated that his father gifted a one-story Lachin Bhaban (3010 square feet on the ground floor), which has not been disputed by the enquiry committee. In the report (exhibit 7) submitted by the enquiry committee construction cost up to the first floor of the house has been shown at Tk. 15,93,079. During cross-examination, P.W. 7 Mohammad Badrul Alam Khan stated that the disputed house was an old one, and subsequently, the accused repaired the said house, and they have assessed the construction cost following the schedule of the Public Works Department. If anyone constructs the house privately, the construction cost would not be deducted by more than 20%. In the report, the total construction cost of the house has been shown at Tk. 98,99,018. The prosecution did not dispute that the one-story house was gifted by the father of the accused. Therefore, the total construction cost of Tk. 15,93,079 was required to be deducted at the time of assessment of the house. Furthermore, 20% of the total construction cost, as stated by P.W. 8, was not deducted from the total construction cost of the building constructed privately. In the report (exhibit 7), only the loan amounting to Tk. 17,20,000 was deducted by the enquiry committee.

In the statement of assets dated 15.01.2009 (exhibit 3), the accused Md. Nurul Amin Sikder stated that he joined in private service in 1979, and the accused has been serving in the Roads and Highway Department for about 20 years. The accused and his wife are the income tax payers, and the accused submitted their income tax return along with the statement of assets (exhibit 3). At the time of assessment, the Investigating Officer did not consider the net income of the accused and his wife, who is also an income taxpayer. The Investigating Officer, without calculating the net income of the accused and his wife, stated that, except the loan amounting to Tk. 17,20,000, he did not find any other valid income of the accused, although admittedly, he has been serving as Sub-Assistant Engineer

of the Roads and Highway Department for 20 years. At the time of assessment of the total assets, the net income of the accused and his wife was not considered. Therefore, I am of the view that the Investigating Officer submitted the charge sheet against the accused without determining the net income of the accused.

In the case of Anti-Corruption Commission vs Faisal Morshed Khan and another reported in 66 DLR (AD) 236 para 19 and 20 judgment dated 05.05.2014 the Hon'ble Appellate Division (Syed Mahmud Hossain, J) has held 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. 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.

But there may be a situation when there is no assessment of valuation by any competent authority of the Government exercising power in that behalf and in such a case, the Anti-Corruption Commission has no other option but to take the assistance of the PWD officials in making assessment of the valuation of any property. Therefore, it cannot be said that the assessment of valuation made by the PWD Officials does not have any evidentiary value in all situations.”

In the case of Md. Hafiz Ibrahim Vs. The State and another reported in 7 CLR 27 para 148 judgment dated 06.02.2018 (Md. Ruhul Quddus, J) it has been held that;

“However, if any pure and simple public servant holds unearned income, which is acquired by criminal misconduct or any other illegal means and taking advantage of such SRO whitens such income, the ACC can certainly prosecute him bringing charge with all material particulars so that the presumption of holding property disproportionate to his known sources of income under section 27(2) of the Act V of 2004 read with section 7 of the Act XL of 1958 can be taken.”

In the case of Osman Gani vs State and another reported in 25 BLC (AD) 64 para 19 judgment dated 22.01.2019 our Apex Court (Mirza Hussain Haider, J) has held that;

“The defence took another plea that the authority did not assess the market value of furniture, seized from his house properly and rather the assessment has been made on the basis of the market rate prevailing after 14 years. Perusing Exhibit-28/7 it appears that the assessment of such furniture has been made by the engineer of Public Works Department (PWD) who is the authorised and appropriate person to assess the market value of that furniture. So, the submission of the learned advocate for defence finds no foundation in the eye of law.”

In the report (exhibit 7) submitted by the P.Ws 7, 10 and 11 the total construction cost of the house has been assessed at Tk. 98,99,018. The enquiry committee submitted the report (exhibit 7) including Tk. 15,93,079 (admitted construction costs of the building up to the first floor), and without deducting 20% of the construction costs of the remaining building. 20% of Tk. 8305939 is Tk.

16,61,187.8. P.Ws 7, 10, and 11 illegally included Tk.  $(15,93,079 + 16,61,187.8) = 32,54,266.8$  in the report (exhibit 7), as the construction costs of the house. The said amount, i.e Tk. 32,54,266.8 would be deducted from the alleged concealment of Tk. 48,62,018. The accused concealed total Tk.  $48,62,018 - 32,54,266.8 = 16,07,751.2$  in his statement of assets (exhibit 3) and committed an offence under Section 26(2) of the Anti-Corruption Commission Act, 2004.

The informant P.W. 1 M.H. Rahmat Ullah without calculating the net income of the accused and his wife, and without following any objective criteria, stated that he found his total valid income of Tk. 17,20,000, which is taken as a loan from the bank for the construction of the house, although the accused Md. Nurul Amin Sikder served for about 20 years as Sub-Assistant Engineer of the Road and Highways Department. He also stated that the accused, his wife, and son acquired total assets of Tk. 1,47,89,641, and he acquired total assets of Tk. 1,40,69,641 beyond his known source of income.

To find the accused guilty of the offence under Section 27(1) of the said Act calculation of the net income of the accused and his wife is sine qua non. The trial Court passed the impugned judgment and order convicting the accused under Section 27 of the said Act without arriving at any finding as to the net income of the accused and his wife. The trial Court only considered the loan amounting to Tk. 17,20,000 as valid income of the accused and without following any objective criteria, mechanically arrived at a finding as to the guilt of the accused under Section 27(1) of the said Act.

In view of the above evidence, finding, observation and the proposition, I am of the view that the prosecution failed to prove the charge under Section 27(1) of the Anti-Corruption Commission Act, 2004 against the accused beyond all reasonable doubt, and proved the charge under Section 26(2) of the said Act against the accused beyond all reasonable doubt.



It is found that after passing the impugned judgment and order of conviction by the trial Court, the accused surrendered on 10.06.2021, and this Court by order dated 19.07.2021 granted him bail. He served in custody total 39 days. Considering the gravity of the offence, I am of the view that the ends of justice would be best served if the sentence passed by the trial Court under Section 26(2) of the said Act is modified as under;

The accused Md. Nurul Amin Sikder is found guilty of the offence under Section 26(2) of the Anti-Corruption Commission Act, 2004, and he is sentenced thereunder to suffer imprisonment already undergone.

The property forfeited by the trial Court is hereby released from attachment and forfeiture.

In the result, the appeal is allowed in part.

Send down the lower Court's records at once.