

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL REVISIONAL JURISDICTON)

Criminal Revision No. 1352 of 2020

IN THE MATTER OF:

An application for revision under Section 10 (1A) of the Criminal Law Amendment Act, 1958 read with section 439 and section 435 of the Code of Criminal Procedure.

AND

IN THE MATTER OF:

Anti-Corruption Commission, represented
by its Chairman, 1, Segunbagicha, Dhaka
.....Informant-Petitioner

Versus

The State, represented by the Deputy
Commissioner, Dhaka and others
.....Opposite Parties

Mr. A.K.M. Fazlul Hoque, Advocate
.....For the Petitioner

Mr. Md. Jasim Sarker, D.A.G. with
Mr. Md. Geas Uddin Gazi, A.A.G.,
Mr. Md. Shahadat Hossain Adil, A.A.G.,
Mr. Md. Shamsil Arefin, A.A.G.,
Ms. Laboni Akter, A.A.G, and
Ms. Zohura Khatoon (Jui), A.A.G.
.....For the Opposite Party No. 1

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

Judgment on 17.03.2025

Md. Iqbal Kabir, J:

This Rule was issued calling upon the opposite parties to show cause as to why the order dated 19.06.2020 passed by the learned Special Judge, Court No. 01, Dhaka in Special Case No. 10 of 2013 rejecting the application for issuing

warrant to the Deputy Commissioner (Collector of District) authorizing him to realize fine imposed by the judgment and order dated 08.06.2016, should not be set aside and/ or pass such other or further order or orders as to this court may seem fit and proper.

Short facts, in brief, relevant for disposal of the case are that M/S Apparels Limited received a Garments Bond license from Dhaka Custom House on 21.09.1998. The said Bond license was issued to the said Company to export 100% readymade garments importing fabrics against the export by letter of credit. The alleged Company imported 9,21,266 yards of cloth from 11.01.1999 to 27.05.1999 through 21 bills of entry which were released without duty as it was duty-free. Thereafter, the Company declared that the garments made by the imported cloth have been exported through Chattogram Custom House. However, the Officials of Customs Intelligence and Investigation after an investigation found the declaration related to export was false and the export-related papers were forged and fabricated. According to them by such an act Company evaded customs duty and revenue of Taka 4, 10, 77, 383/86. Knowing such the Customs Bond Commissionerate, Dhaka issued a show cause notice dated 17.03.2002 demanding payment of the said money and suspended operation of the said Bond license. Thereafter, the Bonder conceded deposited taka 50, 00, 000/- in two phases against the said evasion of revenue and submitted a written deed of acknowledgment to pay the remaining amount of taka 3,61,77,373/86. But the Bonder showing various pretexts did not pay the same till the date and misappropriated the said money by way of committing criminal breach of trust and forgery. Hence, FIR was lodged for allegation of commission of offence punishable under sections 406/420/467/471/34 of the penal code thereby Ramna Model Police Station being

Ramna Police Station Case No. 37 dated 19.02.2012 has been started.

The investigation officer visited the place of occurrence, examined the witnesses and related papers and documents, and accorded sanction from the Anti-Corruption Commission upon taking sanction submitted charge sheet dated 07.10.2012 under section 406/ 420/ 467/ 471/ 34 of the Penal Code against the accused.

The case was transferred to the Court of Metropolitan Senior Special Judge, Dhaka who upon hearing the parties took cognizance under section 409/ 420/ 467/ 471/ 34 of the Penal Code against the accused.

The case was transferred to the Court of Special Judge, Court No. 1, Dhaka for trial and disposal. Since the case was ready for trial, the charge was framed under section 409/420/467/471/34 of the Penal Code against the accused person vide its order dated 25.09.2013, but the charge could not be read over as they were fugitive from law.

It is pertinent to note that in the course of the trial, the prosecution examined all together 7 witnesses. However, those witnesses were not cross examined and not examined under section 342 of the Cr.PC as they have remained absent/fugitives. However, the Special Judge delivered its judgment and order of conviction.

By the judgment and order Special Judge convicted the accused under sections 409/ 420/ 467/ 471/ 34 of the Penal Code and sentenced them under section 409 of the Penal Code to suffer imprisonment for life and to pay each a fine of Taka 2,05,38,691.93/ which will be recoverable from their immovable and movable properties as per section 386 of the Code of Criminal Procedure. If it becomes impossible to recover the fine from their moveable and immovable properties, the accused persons will suffer imprisonment for

7(seven) years and 6(six) months. The accused persons also have been sentenced under section 420 to suffer imprisonment for 7(seven) years and to pay a fine of Taka 10,000/- each, in default, to suffer imprisonment for 1(one) year more. The accused persons also have been sentenced under section 467 of the Penal Code to suffer imprisonment for 10(ten) years and to pay a fine of Taka 10,000/- each, in default, to suffer imprisonment for 1(one) year more. The accused persons also have been sentenced under section 471 of the Penal Code to suffer imprisonment for 2(two) years and to pay a fine of Taka 5,000/- each, in default, to suffer imprisonment for 6(six) months more. Sentences under sections 420/ 467/ 471 of the Penal Code will run concurrently. And since the accused persons are fugitives, the sentence will run from their arrest or surrender.

However, the Anti-Corruption Commission applied to Special Judge Court No. 1, Dhaka to issue a warrant for the levy of fine prescribed under the law against the movable and immovable property of the defaulter convicted parties who are still fugitive.

But the said Court after hearing the ACC rejected the application by the impugned order dated 19.06.2019.

It is at this juncture the ACC moved this Court and obtained the instant Rule.

However, long after 5(five) years, at the instance of ACC, this matter has been fixed for hearing, though reason best known to them why they come to this Court after five years. No one appears on behalf of the convict-pro-forma opposite parties to contest the Rule. The record shows convict-pro-forma opposite parties are fugitive.

Mr. A.K.M. Fazlul Hoque, learned Advocate for the petitioner submits that by the judgment Court ordered to realize the fine imposed for the commission of an offence under section 409 of the Penal Code from the convicted

person and in case of failure to realize the fine accused have been sentenced to suffer imprisonment. According to him Court below cannot refuse to issue a levy warrant for realizing a fine from the convicted person's immovable and movable property on the application of the prosecution.

It is respectfully submitted that judgment and order already passed, that judgment and order at the instance of the ACC cannot be changed. Therefore, the impugned order dated 19.06.2019 rejecting the application to issue a warrant for a levy of a fine is not tenable in the eye of the law and should be set aside.

He next submitted that the said Court of Special Judges has failed to conceive that there is no scope in law to allow the convicts fugitive to give a choice to decide whether they will suffer in jail instead of the fine imposed upon them. Therefore, the impugned order dated 19.06.2019 rejecting the application to issue a warrant for the levy of a fine is liable to be set aside.

Mr. Md. Jasim Sarker, learned DAG for the State finds difficulties in opposing the Rule.

Heard the learned advocate for the petitioner, perused the application along with annexures, and also considered the facts and circumstances of the case including the law bearing on the subject.

From above it appears that the rule was issued on 29-09-2020, since then it has been pending.

No one appears to contest the Rule, an aggrieved party may challenge the order by which s/he is aggrieved, instead of that those who are supposed to be aggrieved are sitting idle without taking any initiative against the judgment and order. The record shows, that convict-proforma Opposite Parties are fugitive and remain absent from the inception of this case. Though, it appears the judgment and order has passed on 08-06-2016, long after 3 years of judgment and

order ACC brings this application to implement the judgment and order passed by the Court below. The Court rejected such an application vide its order dated 19-06-2019 based on wrong conception and law. There is no scope to pass such an order in the facts and circumstances noted above.

This Court finds substance in the submissions made by the ACC, therefore, we find merit substance in the Rule.

Accordingly, the Rule is made absolute.

The impugned order dated 19.06.2020 passed by the learned Special Judge, Court No. 01, Dhaka in Special Case No. 10 of 2013 is hereby set-aside.

There will be no order as to cost.

Communicate the order.

Md. Riaz Uddin Khan, J:
I agree.