

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)**

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 5332 of 2022

**Noor Afroj Begum Juti
.....Appellant**

-Vs-

The state and another

.....respondents

Mr . A.B.M Waliur Rahman Khan, Advocate

... For the appellant

Mr. A.K.M. Fazlul Haque, 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 02.07.2025, 16.07.2025, 21.07.2025,
23.07.2025, 27.07.2025, 03.08.2025,
06.08.2025 and 11.08.2025.**

Judgment delivered on 17.08.2025

This appeal is directed against the impugned judgment and order dated 19.05.2022 passed by Special Judge, Bogura in Special Case No. 08 of 2017 convicting the appellant Noor Afroj Begum Juti under section 26(2) of the Anti-Corruption Commission Act, 2004 and sentencing her thereunder to suffer rigorous imprisonment for 2(two) years and fine of Tk. 50,000, in default, to suffer imprisonment for 3(three) months and convicting her under section 27(1) of the Anti-Corruption Commission Act, 2004, and sentencing her thereunder to suffer rigorous

imprisonment for 5(five) years and fine of Tk. 53,23,790 and confiscating the said amount, which will run concurrently.

The prosecution's case, in short, is that the accused Noor Afroj Begum Juti is the former Member of Parliament (Reserve seat for women), Bogura. After preliminary inquiry, the Anti-Corruption Commission vide Memo dated 09.01.2013 directed the Anti-Corruption Commission, Combined District Office, Bogura, to issue a notice to the accused to submit her statement of assets. The Anti-Corruption Commission, Combined District Office, Bogura vide Memo dated 14.01.2013 served notice upon the accused to submit the statement of her assets, income, and liabilities. After that, she submitted the statement of her assets on 03.02.2013. At the time of inquiry about the statement made by her, it is found that she constructed a 4th-story building on 03 decimals of land at Katnarpara, Ward No. 3, Bogura Pourashava, at a cost of Tk. 22,755,377. In the return submitted for the year 2004-2007, it has been mentioned that she spent Tk. 22,25,377 for the construction of the said house. She constructed an additional rooftop of total 220.05 square feet, and spent total Tk. 24,41,151.23 to construct the house, and she concealed total Tk. 1,65,774 in her statement regarding the construction of the said house. She also purchased flat No. B1, House No. 571(old), 35/(new), Road No. 16. old 12/A new, Dhanmondi Residential Area, Dhaka, total 1812 square feet at a cost of Tk. 14,57,000. From 21.10.2004 to 12.04.2006, she paid total Tk. 41,08,410 to the Developer, Assets Development and Holding Ltd. She concealed total Tk. 26,51,410 regarding the purchase of said

house. In her statement of assets, it has been stated that she acquired total assets of Tk. 37,08,877. During the inquiry, it was found that she concealed total assets of Tk. 67,51,061.23-39,33,877=2817184.23. In the statement of assets, she stated that she acquired total movable property of TK. 12,71,600. During the inquiry, it was found that she acquired total movable property of Tk. 13,81,600, and she concealed Tk. 1,10,000 regarding movable property. In the statement of assets, it has been mentioned that she took loan of Tk. 25,00,000. During the inquiry, it was found that as of 03.02.2013, her outstanding loan was Tk. 13,79,622.37, and she concealed total loan of Tk. 25,00,000-13,79,622.37=11,20,377.63 in her statement of assets. She concealed total assets of Tk. 28,17,184.23+60,000=28,77,184.23 and had given false information regarding an additional loan of Tk. 1120,377.63. She acquired total assets of movable and immovable property of Tk. 8032661.23-1379622.37=6653038.86. She acquired total assets of Tk. 49,99,117.35 beyond her known source of income. In the statement of assets submitted by the accused, she concealed total assets of Tk. 28,77,184.23 and acquired total assets of Tk. 49,99,117.35 beyond her known source of income.

P.W. 12 Deputy Assistant Director Md. Anowar Hossain Islam was appointed as the investigating officer of the case. During investigation, he recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898, seized documents and found prima facie truth of the allegation made against the accused and submitted memo of evidence against her

and obtained sanction from the Anti-Corruption Commission, Head Office, Dhaka and accordingly he submitted charge sheet on 22.11.2016 against her under sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004. The case was sent to the Senior Special Judge, Bogura, and registered as Special Case No. 08 of 2017. Thereafter, the case was sent to the Special Judge, Bogura, for trial.

During the trial, the charge was framed on 15.05.2017 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 Noor Afroj Begum Juti, and she pleaded not guilty to the charge and claimed to be tried following the 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 she declined to adduce any DW. After concluding the trial, the trial court, by impugned judgment and order, convicted the accused and sentenced her as stated above, against which she filed the instant appeal.

P.W. 1 Md. Faruque Ahmed is the Assistant Director, Combined District Office, Bogura. He stated that in 2014, when he was discharging his duty in the said office, the accused Noor Afroj Begum Juti submitted her statement of assets to the Anti-Corruption Commission. In the statement of assets, she stated that she constructed 4th four-story building on 03 decimals of land

inherited by her at a cost of Tk. 22,75,377. During measurement by the neutral engineer, it was found that the accused constructed an additional 22.05 square feet, and total construction cost of the building was Tk. 24,41,151.23, and she concealed Tk. 1,65,774 in said house. In the statement of assets, she stated that she purchased a flat measuring an area of 1812 square feet by registered deed No. 4825 dated 06.06.2006 at Dhanmondi Residential Area, Dhaka. During the inquiry, it was found that she paid total Tk. 48,08,410 to the Developer, and she concealed total Tk. 26,51,410 in the said flat. She purchased electrical goods of Tk. 60,000, which has been concealed. She concealed total Tk. 28,77,184.23 in her statement of assets. In the statement of assets, it has been stated that she obtained loan of Tk. 25,00,000. During the inquiry, it was found that as of 03.02.2013, the total outstanding loan was Tk. 1,379.622.37 and concealed total loan of Tk. 11,02,377.63 in her statement. In the statement of assets, she concealed the total movable and immovable property of Tk. 80,32,661.23. During the inquiry, it was found that she acquired total assets of Tk. 66,53,381.88. Her total saving was Tk. 16,53,921.51. She acquired total assets of Tk. 49029917.35 beyond her known source of income. He proved the FIR as exhibit-1 and his signature on the FIR as exhibit-1/1. He stated that he was appointed as the Investigating Officer of the case. He served notice, but he did not record any statement of witness. Subsequently, he was transferred and he handed over the case docket to the subsequent investigating officer. During cross-examination, he stated that the ER No. of the accused is 30 of

2011 dated 14.09.2011, and he did not find any other ER. During the inquiry, he did not record the statement of any witness. The accused took loan of Tk. 25,00,000. He denied the suggestion that at that time, there was also another loan of Tk. 40,00,000. The accused constructed the house in 1985 and completed the construction step by step. He did not fix the construction cost of the house. He did not visit the flat of the accused. He did not seize the deed regarding the purchase of the flat. He denied the suggestion that the accused paid the deed value to the developer, or that no additional amount was paid, or that no asset was concealed in her statement of assets, or that she did not acquire any assets beyond her known source of income. He admitted that the accused was a Member of Parliament nominated from the BNP. He denied the suggestion that after 1/11, at the instruction of the higher authority, he filed the case. He denied the suggestion that he deposed falsely in a false case.

P.W.2 Farid Ahmed Patwary was the Assistant Director, Anti-Corruption Commission, Combined District Office, Bogura. He was appointed as enquiry officer of ER 30 dated 14.09.2011 vide memo No. 1577 dated 06.09.2011 issued by the Deputy Director, Anti-Corruption Commission, Head Office, Dhaka. During the inquiry, he made the recommendation to issue a notice to the accused for submitting a statement of assets. He submitted the preliminary inquiry report on 27.11.2012. He proved the photocopy of the ER (exhibit-2), and the original was lying with the head office. He proved the letter dated 06.09.2011 as Exhibit 3. During cross-examination, he stated that during the inquiry, he

did not seize any document. He also did not record any statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. The Assistant Inspector Rakibul Hayet of the Anti-Corruption Commission initially made an allegation against the accused. At the time, he visited the place of occurrence. He denied the suggestion that he did not make any inquiry properly. Doctor Abul Bayes Mia was entrusted with the inquiry of the case. He denied the suggestion that earlier, the accused was discharged from the ER, No. 10 of 2009 dated 06.01.2009. He is not aware of the result of the said ER. Bir Kanto Roy, Somoy Kumar Khana, and Enamul Haque inquired ER No. 10 of 2009. The allegations made in ER No. 09 of 2010 and ER No. 30 of 2011 are similar.

P.W. 3 Md. Shakawat Hossain is a Constable. He stated that on 14.01.2010, he was discharging his duty with the Anti-Corruption Commission, Combined District Office, Bogura. Based on the Memo No. 120 dated 04.01.2013, he went to Dhaka to serve notice upon the accused Noor Afroj Begum Juti, and after service of notice, he submitted the report. He proved the office order and the report as exhibit-4 and his signature as exhibit-4/1. Defence declined to cross-examine P.W. 3.

P.W. 4 Md. Baki Ullah is the Executive Engineer, Bogura. He stated that in 2013, he was posted as Sub-Divisional Engineer, Bogura. At that time, based on the application filed by the Anti-Corruption Commission, a 3-member committee was formed to measure and assess the valuation of the house of accused Noor Afroj Begum Juti. He, Abdul Bayes, and Somoy were the

members of the said Committee. On 16.06.2013, in the presence of the Assistant Director, Anti-Corruption Commission, and the accused, the committee took the measurement of house. She informed that the ground floor was constructed in 1984, and the 1st to 4th floors were constructed from 2004 to 2007, and considering her statement, the committee submitted the report. He proved the report as exhibit-5 and his signature on the report as exhibit-5/1. They found that total construction costs of the said house were Tk. 24,41,151.23. During cross-examination, he stated that, considering the written statement of the accused, they assessed the construction costs of the house. He affirmed that the house was constructed from 1984 to 2007. In 2013, the value of the per metric ton rod was Tk. 50,000/60,000. Now it is 50,000/65,000. He is not aware of the price of the rod of 1984. He admitted that following the rate of construction of the government, they assessed the valuation of the house and deducted 18% of the construction costs as per government rules. In 1984, the rate of construction costs per square feet was Tk. 165. He denied the suggestion that, considering the schedule of construction of 2013, the committee assessed the valuation of the house constructed from 1984 to 2007.

P.W. 5 Kandaker Md. Hasanul Islam is the Assistant Commissioner of Taxes. He stated that on 11.11.2015, he discharged his duty as Assistant Commissioner of Taxes, Taxes Circle-116, Taxes Zone-6, Dhaka. On that day, considering the instruction contained in Memo No. 2413 dated 01.11.2013, he sent the TIN No. 817237401741, Taxes Circle-116, Taxes Zone-6

of Noor Afroj Begum Juti, total 2 parts, 1st part contained page No. 1-33, and. 2nd part contained page No. 1-92. He proved the 1st part of the records and the memo as exhibit-6 series. During cross-examination, he stated that the statement of account of the accused of 2007-2008 is available with the records and Tk. 1,92,000 has been shown as the rent of the flat in Dhanmondi, and the value of the flat has been shown Tk. 14,70,000. In the income tax return, total cost of the 3rd floor and part construction costs of the 4th floor was shown. In the income tax return of 2013-2014, the part construction cost of the 4th floor (Chile quota) was shown. The income tax return of the accused from 2007-2008 to 2013-2014 was accepted with satisfaction. He admitted that no inquiry was made regarding the income tax of the accused. If any discrepancy is found in the record, the authority could take up the matter for inquiry. He affirmed that no irregularity was found in the income tax file of the accused. The taxes for the years 2007-2008 to 2013-2014 were paid by the accused correctly.

P.W. 6 Md. Alamgir Fakhir Talukder is the AGM, Corporate Finance, Assets Development and Finance Ltd, Gulshan, Dhaka. He stated that on 09.08.2016, he was discharging his duty as Senior Manager of Assets Development and Holding Ltd. At that time, the investigating officer instructed him to go to the office of the Anti-Corruption Commission, Combined District Office, Bogura, along with documents regarding the purchase of the flat of the accused Noor Afroj Begum Juti. On 09.08.2016 at 3.00 pm, he went to the Office of the Combined District Office, Bogura, along with the records which were seized by the

investigating officer. He seized the documents and signed the seizure list. The seized documents were handed over to his custody. He proved the seizure list as exhibit-7 and his signature on the seizure list as exhibit- 7/1. He proved the Zimmanama as exhibit-8 and his signature on the Zimmanama as exhibit-8/1. He proved the contract, 4 pages, allotment letter, 4 pages, 11 money receipts paid by the accused as material exhibit-II series. As per the contract, the value of the flat is Tk. 37,00,000. The accused paid Tk. 37,00,000 as the value of the flat, late fee Tk. 3450, registration cost Tk. 404960, total Tk. 41,08.410 and received the money receipt. During cross-examination, he stated that in 2002, he joined Assets Development Company. The accused paid the money by 10 cheques. The accused paid the amount through account payee cheques. The cheques were deposited in the account of the Assets Development Company. The statement of account was not collected to show that the said cheques were encashed. He denied the suggestion that the accused did not pay Tk. 41,08,410 or that the accused paid total Tk. 19,97,000 to the company.

P.W. 7 Gazi Md. Mazharul Islam is the Manager, Corporate Finance and Assets Development Holding Ltd. He stated that on 09.08.2017, he discharged his duty as Manager of the said company. He, along with the Senior Manager Alamgir Kabir, went to the Office of the Anti-Corruption Commission, Combined District Office, Bogura, along with the documents. At 3 pm, 3 series of documents were seized, and those were handed over to the custody of Alamgir Kabir. He signed the seizure list and

Zimmanama. He proved his signature on the seizure list and Zimmanama as exhibit-7/2 and 8/2. During cross-examination, he affirmed that the value of the flat was paid before his joining in service of Assets Development and Holdings Ltd. In the contract, the value of the flat has been mentioned Tk. 37,00,000. He is not aware of the fact that the value of the flat was Tk. 13,97,000, but for the convenience of the parties Tk. 37,00,000 has been mentioned in the contract. A few cheques were issued in the name of IDLC.

P.W. 8 Md. Nazmul Haque is the Sub-Assistant Engineer, PWD. He stated that in 2013, he discharged his duty with the PWD, Bogura. At that time, the then Executive Engineer formed a 3 members committee to assess the value of the house of the accused Noor Afroj Begum Juti situated at Katmarpara, Bogura. He was a member of the said committee. After physical inspection of the said house, they assessed the value and submitted the report. He proved his signature on the report as exhibit-5/2. They assessed the value of the said house at Tk. 29,77,013.69, and 18% cost was deducted, and finally, they have assessed the value of the house at Tk. 24,41,151.23. During cross-examination, he stated that the house was constructed in 1984 and they took the measurement in 2013. He affirmed that, considering the value of the construction materials of 2004, they assessed the valuation.

P.W. 9 Md. Mahabubur Rahman is the Assistant Inspector, Anti-Corruption Commission, Combined District Office, Bogura. He stated that on 09.08.2016, he discharged his duty with the

Combined District Office, Anti-Corruption Commission, Bogura. The Investigating Officer Anwarul Haque, seized documents on 09.08.2016 at 3.00 pm produced by Alamgir Kabir Talukder in his presence and prepared the seizure list, and handed over the documents to the custody of Alamgir Kabir Talukder. He signed the seizure list and the Zimmanama. He proved his signatures on the seizure list and Zimmanama as exhibits-7/3 and 8/3. During cross-examination, he stated that Alamgir Kabir was not known to him before. He has no personal knowledge about the seized documents.

P.W. 10 Md. Abdul Basid was the Sub-Assistant Engineer, PWD, Bogura. He stated that on 03.09.2013, he discharged his duty as Sub-Assistant Engineer, PWD, Bogura. A 3-member committee was formed to assess the value of the house of the accused Noor Afroj Begum Juti. He was a member of the committee. After measuring the house, the committee submitted the report. He proved his signature on the report as exhibit-5/3. During cross-examination, he stated that, as per the schedule of the government, they assessed the value of the house. He affirmed that the committee did not attach the schedule of the construction of the government along with the report.

P.W. 11 Md. Rezaul Karim is the Deputy Commissioner, Taxes(retired). He stated that on 29.01.2009, he discharged his duty as Deputy Commissioner of Taxes, Taxes Circle-1, Bogura. The Anti-Corruption Commission, Combined District Office, Bogura, sent a requisition to 3 persons, including the accused

Noor Afroj Begum Juti. After examining the records, he sent the income tax records of accused Noor Afroj Begum Juti from 2002-2003 to 2006-2007 vide memo dated 29.01.2009. He proved the memo dated 29.01.2009 as Exhibit 9. During cross-examination, he stated that the Combined District Office, Anti-Corruption Commission, Bogura, sent the requisition for the income tax file of 3 members of Parliament. Amongst them, accused Noor Afroj Begum Juti and Kazi Rafiqul Islam were the Members of Parliament of BNP. He furnished the information from 2002-2003 to 2006-2007. The income tax authority accepted the tax on the income of the accused with satisfaction, and no irregularity was found in the income tax records of the accused. He submitted the information following the requisition of the Anti-Corruption Commission.

P.W. 12 Md. Anwarul Haque is the Deputy Director of the Anti-Corruption Commission, Combined District Office, Dhaka. He stated that on 27.03.2016, he was discharging his duty in the said office, and he was appointed as the investigating officer. He recorded the statement of witnesses. On 09.08.2016 at 4 pm, Md. Alamgir Kabir Talukder presented the documents in the presence of witnesses at his office regarding the purchase of a flat of the accused Noor Afroj Begum Juti, and he seized those documents. He prepared the seizure list and handed over the documents to the custody. He proved his signature on the seizure list as exhibit-7/4 and his signature on the Zimmanama as exhibit-7/4/1. He proved the statement of assets and the report of the IDLC and HBFC and deed No. 4825 dated 06.06.2006 as Exhibit-10 series. On perusal

of the seized documents, he found that in the statement of assets submitted by the accused, she concealed total Tk. 28,17,184 as the value of the movable and immovable property, and she acquired total assets of Tk. 53,22,790 beyond her known source of income. He submitted memo of evidence against the accused to submit charge sheet under sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004, and obtained the sanction of the Commission, and accordingly, he submitted charge sheet against her. He proved the sanction dated 07.11.2016 as Exhibit 11. During cross-examination, he stated that total 4 investigating officers, including him, investigated the case. After the investigation, they did not make any recommendations. Faruk Ahamed lodged the FIR. ER-30 of 2011 was filed regarding this case. After inquiry of ER No. 30 of 2011, Faruk Ahmed filed the case. He is not aware of the ER No. 10 of 2009. He could not remember whether, after inquiry of ER No. 10 of 2009, the accused was discharged. Based on the ER No. 30 of 2011, the FIR was lodged. The value mentioned in the deed is the actual value of the flat, but the same is not acceptable. The accused submitted the returns from 2002-2003 to 2013-2014. The accused paid the value of the flat by 11 money receipts. The accused paid the value of the flat both in cash and cheque. He did not seize the statement of account of the accused. He denied the suggestion that the accused did not pay the excess value, then the value mentioned in the deed, or that the accused did not spend Tk. 1,65,777. He denied the suggestion that the accused did not conceal Tk. 26,51,400, or that

PWD assessed the excess value of the flat, or that he deposed falsely.

The learned Advocate Mr. A.B.M. Waliur Rahman Khan appearing on behalf of the accused Noor Afroj Begum Juti submits that the accused is an income tax payee since 2002 and all the assets and the liability have been mentioned in the income tax return (Exhibits-6 and 9) which has been duly accepted by the income tax department and tax on income of the accused was received by the income tax department with satisfaction which is admitted by the P.Ws. 5 and 11. He further submits that the cheques and statement of account of the accused were not proved in the case to prove that she paid total Tk. 41,08,410 as the value of the flat situated at Dhanmondi purchased from Assets Development and Holding Ltd, and the building constructed on 3 Kathas land situated at Bogura was also assessed by the income tax department, and nothing has been concealed in her statement submitted on 03.02.2013 to the Anti-Corruption Commission. The learned Advocate, having drawn the attention of this court to the decision made in the case of the State vs. Faisal Morshed Khan, reported in 66 DLR(AD)236, submits that the Anti-Corruption Commission is not legally empowered to reassess the assets of the accused through the Engineer of the PWD, which has been assessed by the income tax authority. The prosecution failed to prove the charge against the accused beyond all reasonable doubt, and the trial court, without considering the decision made in the case of Foisal Morshed Khan (supra), illegally passed the impugned judgment and order. He prayed for allowing the appeal

by setting aside the impugned judgment and order passed by the trial court.

The learned Advocate Mr. AKM Fazlul Haque, appearing on behalf of the Anti-Corruption Commission, submits that the accused purchased the flat of Dhanmodi at a cost of Tk. 41,08,410, and she made a false statement in the statement of assets that she purchased the flat at a cost of Tk. 14,57,000, and she concealed Tk. 26,51,410 regarding the said flat. In respect of the house constructed on 3 decimals of land at Bogura, he submits that in the statement of assets, the accused did not mention that she constructed a rooftop room (chilequota) at a costs of Tk. 1,56,774, and she spends Tk. 24,41,151 as the construction costs of the said house in place of Tk. 22,75,337. He also submits that the accused purchased 176 decimals of land of Mouza Katnarpara at the cost of Tk. 20,000.00, 91.5 decimals of agricultural land of Mouza Dhigi at a cost of Tk. 98,000 and 10 bighas of agricultural land of Mouza Basubila at a price of Tk. 33,000 and immovable property worth Tk. 12,71,600 and he acquired total assets of Tk. 67,51,061+12,71,600=Tk. 79,72,661, and in her statement of assets, she concealed total assets of Tk. 28,17,184. The learned Advocate also submits that the accused did not mention that she paid the loan of Tk. 11,20,377, and she acquired total assets of Tk. 53,22,790 beyond her known source of income. Thereby, she committed offence under sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004, and the trial court, on correct assessment and evaluation of evidence, passed the impugned judgment and order. He prayed for dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. ABM Waliur Rahman Khan, who appeared on behalf of the appellant, and the learned Advocate Mr. AKM Fazlul Haque, who appeared on behalf of the respondent No. 2, Anti-Corruption Commission, perused the evidence, impugned judgment and order passed by the trial court, and the records.

At the very outset, it is noted that the trial court, considering the income tax file of the accused (exhibits 6 and 9), found that the total valid income of the accused till filing the statement of assets dated 03.02.2013(exhibit 4) was Tk. 76,59,112, which is not disputed by either party.

P.W. 6 Md. Alamgir Hossain is the AGM, Corporate Finance, Assets Development and Holding Ltd. He stated that by 11 money receipts (material exhibit-VII), the accused paid total Tk. 41,08,410 as the value of the flat and other costs. P.W. 7 Gazi Md. Mazharul Islam, Manager, Corporate Finance, Assets Development and Holding Ltd, stated that for the convenience of the parties, in the contract for sale, Tk. 37,00,000 has been mentioned as the value of the flat. The accused paid the amount mentioned in 11 money receipts by 10 cheques, but he could not say the name of the bank through which the said amount were paid. The cheques were deposited in the account of the company, and no statement of account of the seller was proved in the case. P.W. 7 Gazi Md. Mzaharul Islam stated that the purchase value of the flat was paid before he joined his service. P.W. 12 Investigating Officer Md. Anwarul Haque stated that the accused

paid the value of the flat by 11 money receipts, and he did not seize the statement of account of the accused.

No evidence was adduced by the prosecution that the cheques mentioned in material exhibit-VII(2) were encashed. No statement of account of accused Noor Afroj Begum Juti maintained with the Standard Chartered Bank as stated in material exhibit-VII(2) is proved in the case. P.W. 7 stated that for the convenience of the parties, the total value of the flat has been mentioned in the contract. He did not say that for the convenience of the accused, Tk. 37,00,000 has been mentioned in the contract. In the absence of statement of account of the accused through which alleged Tk. 41,08,410 were paid to the Assets Development and Holdings Ltd for purchasing the flat measuring an area of 1812 square feet at Dhanmodi, it cannot be said that Tk. 41,08,410 was paid as the value of the flat. The value mentioned in the deed was assessed by the “বাজার মূল্য নির্ধারন কমিটি” constituted under Rule 4 of the “বাজার মূল্য নির্ধারন বিধিমালা, ২০০২” and there is no scope to reject the value of the flat mentioned in the sale deed.

There is no allegation against the accused Noor Afroj Begum Juti that she concealed any assets in the statement of assets dated 03.02.2013. P.Ws 5 and 11 admitted that the accused submitted her income tax return from 2002-2013, and the returns submitted by the accused were proved by the prosecution as exhibits 6 and 9. P.Ws 5 and 11 admitted that the income tax returns submitted by the accused Noor Afroj Begum Juti were assessed, and the tax on the income of the accused was accepted

by the income tax department without any objection, and no inquiry was held by the income tax authority regarding the income tax return filed by the accused. Therefore, it is crystal clear that there was no objection from the income tax department regarding the income and the assets acquired by the accused.

The 4th-storiy building was constructed on 3 decimals of land in the year from 1984-2007. A 3-member committee was constituted to assess the construction costs of the house of the accused on 3 decimals of land at Bogura. P.Ws 4, 8, and 10 were the members of the said committee who submitted a report on 03.09.2013 (Exhibit 5). In the said report, it has been mentioned that the foundation and the ground floor was constructed in 1984 and 1st floor to 4th floor were constructed in the year from 2004-2007 and construction costs were assessed up to the ground floor considering the schedule of construction of 1983 and the construction cost of the first floor to fourth floor were assessed considering the rate of construction of 2004.

In the statement of assets, the accused mentioned that she spent Tk. 22,75,337 as the construction cost of the 4th-story building, but P.W. 12 stated that the accused did not mention Tk. 1,65,774 as the construction cost of the rooftop room (chilequota) of the building. Nothing has been stated in the report (Exhibit 5) that P.Ws 4, 8, and 10 stated that the rooftop room (chilequota) was constructed after 2007. The accused mentioned her all property in the income tax return, which has been mentioned in the statement of assets dated 03.02.2013. The allegation against

the accused is that she showed the lesser value of her property in the statement of assets dated 03.02.2013.

At this stage, it is relevant here to cite a decision made in the case of the State vs. Faisal Morshed Khan, reported in 66DLR (AD) 236 para 19, judgment dated 05.05.2014, passed in CPLA No. 117 of 2011 and CPLA No. 210 of 2011. In the referred case, our Apex Court considered the decision made in the case of Dr Mohiuddin Khan Alamgir vs. Anti-Corruption Commission, reported in 15BLC 107 and held 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”.

After the judgment passed by our Apex Court in the case of the State vs. Faisal Morshid Khan(supra), the Anti-Corruption Commission issued a circular on 31.01.2017 directing all concerned to follow the judgment and order passed by our Apex Court in the Faisal Morshed Khan(Supra). In the above conspectus, it is relevant here to quote the office order dated

31.01.2017 issued by the Anti-Corruption Commission, Head Office, Dhaka, which runs as follows;

“দুনীতি দমন কমিশন
প্রধান কার্যালয়
১ সেগুনবাগিচা, ঢাকা।

স্মারক নং দুদক/প্রশাঃ ও লজিঃ/৬৩/২০০৭(অংশ-৪)/৩৫৬৬(১০)তারিখঃ
৩০/০১/২০১৭

বিষয়ঃ সম্পদ সংক্রান্ত অভিযোগের অনুসন্ধান/মামলার তদন্তের ক্ষেত্রে যথাযথ নীতি অনুসরণ।

সূত্রঃ কমিশনের মানি লন্ডারিং অনুবিভাগের অনিস্পন্ন বিষয়াদি শাখার নথি নং
সি/৩৯/২০০০/মেট্রো/অ:বি:সেল-২।

উপর্যুক্ত বিষয়ের প্রেক্ষিতে জানানো যাচ্ছে যে, ৬২ ডিএলআর (এডি)
(২০১০)২৭৭ অনুযায়ী সিপি নং ১৬৫৮-৫৯/২০০৮ এর প্রেক্ষিতে আপীল
বিভাগের রায় মোতাবেক আলাদা আয়কর দাতার ক্ষেত্রে আলাদা সম্পদ বিবরণী
নোটিশ জারী না করে জ্ঞাত আয় বহির্ভূত সম্পদ অর্জনের অভিযোগ/সহযোগিতার
অভিযোগে দায়ী করা যাবে না এবং সিপি নং ১১৭ ও ২১০/২০১১ এর রায়
অনুযায়ী আয়কর বিভাগ বা সরকারের অন্য কোন বিভাগ কর্তৃক যদি পরিমাপ বা
হিসাব গৃহীত হয় তবে সরকারের অন্য কোন বিভাগ হতে এ বিষয়ে প্রশ্ন তোলা
যাবে না। উক্ত দু’টি রায়ে আপীল বিভাগ কর্তৃক স্থিরীকৃত দিক নির্দেশনা অনুযায়ী
আয়কর দাতা স্ত্রীর আয়কর বিভাগ কর্তৃক গৃহীত সম্পত্তি বিবেচনায় নিয়ে স্বামীর
বিরুদ্ধে জ্ঞাত আয় বহির্ভূত সম্পদ অর্জনের অভিযোগে মামলা চালিয়ে নেয়ার
সুযোগ না থাকায় সূত্রোক্ত নথির মামলাটিতে কমিশন কর্তৃক এফ.আর.টি দাখিলের
প্রস্তাব অনুমোদিত হয়।

উক্ত মামলার নজীর বিবেচনায় সম্পদ সংক্রান্ত অভিযোগের অনুসন্ধান/মামলার
তদন্তের ক্ষেত্রে যথাযত পদ্ধতি/নীতি অনুসরণ করার জন্য সংশ্লিষ্ট সকলকে
নির্দেশক্রমে অনুরোধ করা হলো।”

কাজী শফিকুল আলম
পরিচালক (প্রশাসন)
ফোন: ৯৩৫২১১৫

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Subsequently, in the case of Md. Hafiz Ibrahim vs. the State reported in 7CLR 27, judgment and order dated 06.02.2018, considering the earlier decision made in the case of Faisal

Morshed Khan (supra), after elaborate discussion at para 147, the High Court Division has held that;

“There are so many businessmen and professionals who legally earn a lot of money, but do not show it in their tax files just to evade tax. Such evasion, if detected, he/she may be liable to be prosecuted under the penal provisions of the Income Tax Ordinance, 1984, but it does not constitute any offence of corruption or that under section 27 of the Act V of 2004.”

The judgment in the case of Md. Hafiz Ibrahim vs. The State and another, reported in 7CLR (HCD)(2019) 27, was passed by a Division Bench of this court. Therefore, there is no scope to arrive at a different view by this bench. The view of the High Court Division in the referred case is that section 27 of the Anti-Corruption Commission Act, 2004, is only applicable in the case of a public servant and his/her dependents.

After that, this Bench in the case of A.K.M. Alamgir Hossain vs the state and another passed in Criminal Appeal No. 8511 of 2019, judgment dated 14.01.2024, it has been held that;

“Since the income tax return filed by the accused has been assessed and accepted by the income tax authority under the Income Tax Ordinance, 1984, if any evasion of tax is detected, only the income tax authority is legally empowered to take action against the accused under the Income Tax Ordinance, 1984. The Anti-Corruption Commission is not legally empowered to raise any objection as regards the assets acquired by any private individual who’s assets and income tax return has been assessed by the income tax authority.”

In the case reported in 7 CLR 219 27, the accused Hafiz Ibrahim was a Member of Parliament nominated from BNP. In the instant case, the accused Noor Afroj Begum Juti was also a Member of Parliament nominated from BNP. It is found that the income tax returns submitted by the accused have been assessed, and the tax on her income was also accepted by the income tax department without any objection. Subsequently, no inquiry was held by the income tax authority regarding the income and assets acquired by the accused. Therefore, I am of the view that the Anti-Corruption Commission is not legally empowered to raise any objection as regards the income and assets of the accused Noor Afroj Begum Juti, already assessed by the income tax authority. In the case of the state vs Faisal Morshed Khan(supra) the Honourable Appellate Division passed the judgment and order on 05.05.2014 and in the instant case, P.W. 12 Md. Anwarul Hoque, Deputy Director of Anti-Corruption Commission, submitted charge sheet on 22.11.2016 in defiance of the said judgment and order passed by the Hon'ble Appellate Division.

At this stage it is relevant here to rely on a decision made in the case of Tahera Nargis Syed vs. Shamsur Rahman, DIG Prison, Dhaka Central Jail, reported in 41 DLR 509 para 23, in which Mostafa Kamal J, as his Lordship was then, has held that;

“If the order is passed by the Appellate Division, this is final. No other authority can delay, stay or set it aside. No instruction, circular, direction, notification, advice or other instrument of any kind issued by any Ministry or any department of the Government which has the effect of staying, postponing, delaying,

thwarting or superceding an order of the Supreme Court is binding on any functionary in the country. Unless this observation of ours is followed strictly in letter and spirit it will be the end of Rule of Law in this country.”

Initially, ER No. 10 of 2009 was inquired into by the Anti-Corruption Commission, and the accused was discharged. Subsequently, ER No. 30 of 2010 was registered and reopened the inquiry. No reason has been assigned for reopening the enquiry against the accused. After the judgment and order passed by our Apex Court in the case of Faisal Morshed Khan (supra), the Anti-Corruption Commission issued a circular on 30.01.2017 directing all concerned to follow the said judgment and order passed by our Apex Court. Therefore, the Anti-Corruption Commission cannot blow hot and cold. All members of Parliament are citizens of Bangladesh and they are equally entitled protection of the law. There cannot be any discrimination amongst the citizens of Bangladesh. The Anti-Corruption Commission should not unnecessarily harass and humiliate any citizen of Bangladesh on political ground.

On perusal of the judgment and order passed by the trial court, it reveals that in the absence of any statement of account of the accused maintained with the bank through which the accused Noor Afroj Begum Juti paid the alleged Tk. 41,08,410 as the purchased value of flat measuring an area of 1812 square feet and in defiance of the judgment and order passed by the Appellate Division in the case of the State vs. Faisal Murshed Khan, reported in 66 DLR(AD)236, the trial court illegally accepted the

report (exhibit-5) submitted by P.Ws. 4, 8 and 10 and arrived at a wrong decision as to the guilt of the accused under sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004.

In view of the above evidence, findings, observation, and the proposition, I am of the view that the prosecution failed to prove the charge against the accused beyond all reasonable doubt, and the trial court, without correct assessment and evaluation of the evidence, illegally convicted the accused Noor Afroj Begum Juti.

I find merit in the appeal.

In the result, the appeal is allowed.

The impugned judgment and order of conviction and sentence passed by the trial court against the accused Noor Afroj Begum Juti are hereby set aside.

However, there will be no order as to costs.

Send down the lower Court's record at once.