

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman
And
Mr. Justice A.K.M. Rabiul Hassan

Criminal Appeal No.5815 of 2022

Destiny Multi-Purpose Co-operative Society
Ltd. (DMCSL) represented by its Secretary of the
Management Committee namely Azam Ali

.... Appellant

-Versus-

The State and Anti-Corruption Commission

.... Respondents

Mr. M. Mainul Islam with

Mr. Mehfuz Mohammad Al Shafi, Advocates

.... For the appellant.

Mr. Md. Khurshid Alam Khan, Senior Advocate

.... For the Anti-Corruption

Commission.

Mr. Sujit Chatterjee, D.A.G. with

Mr. Moududa Begum, A.A.G.

Mr. Mirza Md. Soyeb Muhit, A.A.G.

Mr. Mohammad Selim, A.A.G.

Mr. Zahid Ahmed (Hero), A.A.G.

.... For the State

Heard on 16.07.2024 and Judgment on 25.07.2024.

S M Kuddus Zaman, J:

This Criminal Appeal has been sent to us by the Appellate Division for expeditious disposal on merit vide order dated 06.05.2024 passed in Criminal Petition for Leave to Appeal No.1298 of 2022.

This Criminal Appeal under section 22 read with Section 19 of the Money Laundering Prevention Act, 2012 at the instance of a third party, namely, Mr. Azam Ali, Secretary of the Management Committee of Destiny Multi-Purpose Co-operative Society Ltd. (hereinafter referred to as DMCSL) is directed against the judgment and order of conviction and sentence dated 12.05.2022 passed by the learned Special Judge, 4th Court, Dhaka in Special Case No.05 of 2019 arising out of Kalabagan P.S. Case No.33 dated 31.07.202 so far as it relates to the order of forfeiture of all movable and immovable properties of the DMCSL and liquidation/winding up the DMCSL by forming a 6 Members Committee namely “The Assets Disbursement Committee of Destiny Multi-Purpose Co-operative Society Ltd”.

Facts in short are that an Assistant Director of Anti-Corruption Commission lodged an ejarah on 31.07.2012 alleging that the Destiny Multi-Purpose Co-operative Society Ltd. (DMCSL), a Co-operative Society registered under the Co-operative Societies Act, 2001 collected a total amount of Tk.11786123204/- from the common people using multi level marketing tools with an intent of cheating during the financial year from 2009-2010 to 31.03.2013.

The accused persons in the guise of loan, dividend, commission and honorarium in violation of the Co-operative Societies Act, 2001 and misappropriated laundered above money by transferring to non operating companies and persons and thereby committed an offence punishable under Section 4 of the Money Laundering Prevention Act, 2012.

In above FIR 22 persons who were the functionaries of the DMCSL were made accused persons and on conclusion of investigation a total 46 persons who were in charge of the management of the DMCSL were made accused persons.

On conclusion of trial the learned Special Judge, 4th Court, Dhaka convicted all 46 accused persons including the Chairman, Managing Director and other office bearers of the DMCSL and sentenced them to varying terms of imprisonments and fine. Besides the learned Special Judge directed the Registrar of the Co-operative Society for winding up of the DMCSL and constituted a Six Members Committee headed by a retired Judge of the Supreme Court for sale of all the movable and immovable properties of the DMCSL and apply the sale proceeds to compensate the share holders and investors of the DMCSL as mentioned above.

Being aggrieved by and dissatisfied with the latter mentioned operating part of the impugned judgment passed by the learned Special Judge the appellant moved to this Court with this Appeal.

Mr. Mainul Islam, learned Advocate for the appellant submits that there are 8,500,000/- share holders/members of above Co-operative Society, namely, DMCSL but none of them were made a party in above proceedings but by the above order of the learned Special Judge for winding up or liquidation of above society each and every member of the DMCSL has been affected. The DMCSL is a district entity but the DMCSL was not made a party in this proceedings and the DMCSL was not given an opportunity of being heard.

The learned Advocate for the appellant further submits that the appellant was selected as a Secretary of the DMCSL in 2021 and he was authorized to represent above Co-operative Society and prefer this appeal against the above mentioned operating part of the impugned judgment relating to liquidation or winding up of the DMCSL and sale of all its property, movable and immovable.

The learned Advocate lastly submits that the DMCSL being a separate entity it should have been separately convicted and sentenced under Section 4(4) of the Money Launder Prevention Act, 2012 and that having not been done above order of liquidation or winding up of the DMCSL is unlawful and liable to be set aside. All 49 accused persons were convicted for their personal liability in running the DMCSL which constituted an offence under Section 4(2) of the above Act. An entity cannot be held liable for the misdeeds or criminal acts committed by its

office bearers or functionaries without making the entity separately an accused in the proceedings. In support of his above submissions the learned Advocate has referred to the case of Aneeta Handa Vs. Godfather Travels and Tours (P) Ltd. reported in 5 SCC 2012 at Page 668.

On the other hand Mr. Md. Khurshid Alam Khan, learned Senior Advocate for the Anti-Corruption Commission submits that Section 4(4) of the Money Laundering Prevention Act, 2012 providing for a separate punishment for an "entity" was introduced in the Money Laundering Prevention Act, 2012 in 2015 by Act No.25 of 2015 and above amendment was made effective from 26.11.2015. Since the offence of this case was committed during the period from July 2009 to March 2012 and the FIR of this case was lodged on 31.07.2012 and Act No.25 of 2015 was not given retrospective effect the learned Session Judge was not required to record a conviction separately under Section 4(4) of the Money Laundering Prevention Act, 2012 against the DMCSL.

The learned Advocate for the Anti-Corruption Commission further submits that the appellant was not legally authorized to prefer this appeal since he himself was not convicted in this case nor a co-operative society is represented by its Secretary in any way.

If the appellant has any true grievance as to the winding up or liquidation of the DMCSL he could raise the issue to the

Registrar of the Co-operative society or the Six Member Committee constituted by the learned Special Judge.

We have considered the submissions of the learned Advocates for respective parties and carefully examined all materials on record.

This is a unique Criminal Appeal. As mentioned above 46 accused persons who were functionaries and officers in charge of the DMCSL were convicted and sentenced for varying terms of imprisonment and fine. All above convicts have preferred appeals challenging the legality and propriety of above impugned judgment and order of conviction and sentence and those are awaiting hearing.

The appellant was not an accused in above case nor he was convicted in above case. The cause of action of this case arose during the period from July 2009 to March 2012, the FIR was lodged on 31.07.2012, the charge was framed on 24.08.2016 and the impugned judgment and order of conviction and sentence was passed by the learned Special Judge on 12.05.2022. The learned Advocate for the appellant claims that the appellant was made Secretary of the DMCSL in 2021 but no such document was annexed with the Memorandum of Appeal nor produced at the time of hearing of this appeal.

As to the competence of the Secretary of the Management Committee to represent the DMCSL and institute this appeal the

learned Advocate refers to Article 55(1)kha of the Sub-rule of the DMCSL. Above provision provides that under the authority of the Management Committee of the DMCSL the Secretary shall institute and take necessary steps in cases. The learned Advocate could not produce any resolution of the Management Committee of the DMCSL authorizing its Secretary Mr. Azam Ali to institute this appeal.

Section 410 of the Code of Criminal Procedure, 1898 provides that only a person convicted on a trial by the Session Judge or an Additional Session Judge can prefer an appeal to the High Court Division. There is no provision in above Code for preferring an appeal by a third party who was not convicted. This appeal has been preferred under Section 22 of the Money Laundering Act, 2012 which provides that any person aggrieved by an order, judgment, decree or sentence passed by the Special Judge Court may prefer an appeal within 30 days from the date of passing of the order, judgment, decree or sentence. This appeal has been preferred against conviction and sentence not against an interculpatory order. The word aggrieved as mentioned above has not been defined in the above Act, as such, in the light of spirit of Section 410 of the Code of Criminal Procedure, 1898 we hold that the person who has been convicted and sentenced under the Money Laundering Act, 2012 is an aggrieved person and competent to prefer an appeal under Section 22 of the above Act. In above view of the materials on record we hold that appellant

Azam Ali does not have any locus standi to prefer and maintain this appeal.

The learned Advocate for the appellant submits that the impugned judgment and sentence suffers from illegality for not making the DMCSL an accused in this case and recording a sentence separately against the DMCSL under Section 4(4) of the Money Laundering Prevention Act, 2012.

At the very outset we would like to reproduce the provision of Section 27 of the Money Laundering Prevention Act, 2012 which provides the consequence and liability of an offence committed under above Act by an entity. Section 27 of the Money Laundering Prevention Act, 2012 runs as follows:

“Section 27. Offences committed by an entity.- If any offence under this Act is committed by an entity, every proprietor, director, manager, secretary or any other officer, staff or representative of the said entity who is directly involved in the offence shall be deemed to be guilty of the offence, unless he is able to prove that the offence has been committed beyond his knowledge or he tried his best to prevent it.”

Above provision clearly provides that for an offence committed by an entity the liability shall be on the shoulder of the functionaries of the entity who are in charge of the management of the entity. As mentioned above all 46 functionaries of the DMCSL who were in charge of the DMCSL were made accused persons in this case and on conclusion of trial all of them were convicted and sentenced. There is no scope for making an entity who is an artificial person responsible for an offence which is committed in its name by its officers or functionaries.

In a criminal proceedings unlike a civil suit an artificial person is not made a party and only a natural person who is alive and who can defend himself is made an accused in a criminal proceeding. As such we do not find any substance in the submissions of the learned Advocate for the appellant that the impugned order is bad for not impleading the DMCSL as an accused in above proceeding.

As far as non recording of separate sentence of the DMCSL under Section 4(4) of the Money Laundering Prevention Act, 2012 is concerned the learned Advocate for the Anti-Corruption Commission has rightly pointed that above provision of the Money Laundering Prevention Act, 2012 was introduced in 2015 by Act No.25 of 2015 and made effective from 26.11.2015 long after the alleged offence was contained and this case was initiated.

We also do not find any substance in the submissions of the learned Advocate for the appellant that the appellant who is

allegedly Secretary of the DMCSL or its 8,500,000 share holder were affected by the impugned order of the learned Special Judge for liquidation or winding up of the above co-operative society. In the impugned judgment the learned Special Judge held that the DMCSL being involved and used for commission of the offence punishable under the Money Laundering Preventing Act, 2012 the same cannot survive or allowed to continue its function. The sale proceeds of all movable and immovable properties of the DMCSL would be distributed equitably by a Six Member Committee headed by a retired Judge of the Supreme Court among the share holders and investors of the DMCSL. As such all the share holders shall get back their money as far as the same is covered by the sale proceeds through a transparent process which will be done by a committee headed by a retired Judge of the Supreme Court. Even if any share holder of the DMCSL has any grievance he can raise the issue to the Six Member Asset Disbursement Committee mentioned above.

In above view of the facts and circumstances of the case and materials on record we are unable to find any substance in this appeal which is liable to be dismissed.

In the result, this Criminal Appeal is dismissed.

The order of stay granted earlier by this Court is hereby recalled and vacated.

Communicate this judgment and order to the Court concerned at once.

A.K.M. Rabiul Hassan, J:

I agree.

*MD. MASUDUR RAHMAN
BENCH OFFICER*