

**Present:**

Mr. Justice Md. Shohrowardi

**Criminal Appeal No. 6136 of 2022**

Yasmin Sultana

...Convict-appellant

-Versus-

The State and another

...Respondents

Mr. Mohammad Jamal Hossain, Advocate with

Mr. Sharan Chandra Talukder, Advocate

...For the convict-appellant

Mr. Md. Akhtaruzzaman, D.A.G with

Mr. Sultan Mahmood Banna, A.A.G with

Mr. Mir Moniruzzaman, A.A.G with

Ms. Farhana Abedin, A.A.G with

Mr. Md. Kaium, A.A.G

...For the State

Mr. Md. Omar Farook, Senior Advocate

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

Heard on 03.03.2025, 04.03.2025,

05.03.2025, 09.03.2025, 12.03.2025 and

20.04.2025

**Judgment delivered on 28.04.2025**

This appeal under Section 10 of the Criminal Law Amendment Act, 1958 is directed against the impugned judgment and order of conviction and sentence dated 26.06.2022 passed by the Special Judge, Court No. 10, Dhaka in Special Case No. 15 of 2018 arising out of Ramna Model P. S Case No. 10 dated 07.02.2017 corresponding ACC G.R. No. 14 of 2017 convicting the appellant under Section 26(2) of the Anti-Corruption Commission Act, 2004 and sentencing her to suffer simple imprisonment for 2(two) years and fine of Tk. 1,00,000(one lakh), in default, to suffer imprisonment for 6(six) months more.

The prosecution case, in short, is that the Anti-Corruption Commission served notice on 26.04.2012 upon the accused Yasmin Sultana, directing her to submit statement of her assets, which has been challenged in Writ Petition No. 8084 of 2012, and the operation of the said notice was stayed by the Hon'ble High Court Division.

After that, following the judgment and order dated 30.03.2016 passed by this Court, the accused Yasmin Sultana submitted her statement of assets on 16.05.2016 stating that she acquired total movable and immovable property of Tk. 40,50,019+1,39,09,856 total Tk. 1,79,59,875. After enquiry, it is found that the accused concealed total assets of Tk. 41,570, Tk. 2,20,000, Tk. 4,17,800 and Tk. 13,50,000 on the account of the value of the Shop No. 5/32 (4<sup>th</sup> floor) of 10<sup>th</sup> Storied Shopping Complex of Eastern Housing Ltd, Dhanmondi, Dhaka, Plot No. C/64, Road No. 3, Aftab Nagar, Badda, Dhaka, House No. 44, Road No. 11/A, Dhanmondi Residential Area, Dhaka, Shop No. 06/84, 26/1-2, Elephant Road, Dhaka. It was also found that she received Tk. 25,00,000, Tk. 15,54,036, Tk. 7,50,000, Tk. 38,99,355 as donation from her 15(fifteen) relatives, the income from business, the income shown after paying tax vide SRO No. 98/2007, and the tax-free income respectively, but she did not show any document or record in support of her source of income. She acquired total assets of Tk. 20,29,370+87,03,391, total Tk. 1,07,32,761 beyond her known source of income.

K.M. Misbah Uddin, Deputy Director of the Anti-Corruption Commission, was appointed as Investigating Officer. He visited the place of occurrence, recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898, and seized documents. After completing the investigation, he found the prima facie truth of the allegation against the accused and obtained sanction from the Anti-Corruption Commission to submit the charge sheet. Accordingly, the Investigating Officer submitted the charge sheet against the accused under Sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004.

Thereafter, the case record was sent to the Senior Metropolitan Special Judge, Dhaka, who by order dated 02.07.2018, took cognizance of the offence against the accused under Section 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004. After that, the

case was sent to the Special Judge, Court No. 10, Dhaka for disposal. During the trial, the charge was framed against the accused under Sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004, which was read over and explained to the accused, and she pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 7(seven) witnesses to prove the charge against the accused. 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 D.W. 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. Jahangir Alam was the Deputy Director, Anti-Corruption Commission, Combined District Office, Mymensingh. He stated that on 21.06.2016, he was appointed as Enquiry Officer. During the enquiry, he found that the accused concealed Tk. 41,570, Tk. 2,20,000, Tk. 4,17,800 and Tk. 13,50,000 regarding Shop No. 5/32 (4<sup>th</sup> floor) of 10<sup>th</sup> Storied Shopping Complex of Eastern Housing Ltd, Dhanmondi, Plot No. C/64, Road No. 3, Aftab Nagar, Badda, Dhaka, House No. 44, Road No. 11/A, Dhanmondi Residential Area, Dhaka, and shop No. 06/84, 26/1-2, Elephant Road, Dhaka respectively. She stated that she obtained donation amounting to Tk. 25,00,000, Tk. 15,54,036, Tk. 7,50,000 and Tk. 38,99,355 from her 15(fifteen) relatives, the income from business, the income shown after paying tax, and the tax-free income respectively. She could not show any document regarding her source of income and concealed the total assets of Tk. 20,29,370. She acquired total assets of Tk. 1,07,32,762 beyond her known source of income. He proved the FIR as exhibit 1 and his signature on the FIR as exhibit 1/1. He also proved the statement of assets as exhibit 10. During cross-examination, he stated that he verified the income tax file of the accused, and no objection has been raised by the income tax

department. He did not find any valid document regarding the donation of Tk. 25,00,000, which has been mentioned in the income tax file of 1990-1991 of the accused. In the said return, it has been stated that a copy of the statement of the accounts of the donor was submitted to the income tax office. He admitted that he received information regarding the business of the accused from the income tax file from 1990-1991 to 2008-2009. No objection has been raised by the income tax department regarding her income and the tax paid by her. She paid Tk. 7.50,000 as income tax following the SRO No. 98/2007, which has been shown in the income tax file, and there is no objection from the income tax department. The accused also acquired Tk. 2,50,000 as tax-free income in 2005-2006, which has been taken as a loan. The accused received Tk. 9,00,000 from share business, which has been shown in the income tax file as tax-free income of 2008-2009 and Tk. 25,85,535 as tax-free income of 2012-2013. No objection has been raised by the income tax department regarding the tax-free income of 2012-2013. He stated that the accused concealed Tk. 13,50,000 as the value of the Shop No. 6/84 of Eastern Mollika Shopping Complex. The accused submitted her statement of assets on 16.05.2016. He said that erroneously, he did not mention the shop valued Tk. 13,50,000 in her statement dated 16.05.2016, which has been mentioned in the enquiry report. Suppression of Tk. 41570 mentioned in serial No. 2 of the immovable property was not mentioned in the FIR. The Authority of Eastern Housing Limited stated that an agreement was executed between Eastern Housing Limited and Asaduzzaman Khan in respect of the immovable property as stated in serial No. 3, and the accused purchased the same on 16.11.1998. The suppression of Tk. 2,20,000 mentioned in serial No. 3 of the list of immovable property was not mentioned in the FIR. He admitted that he collected two agreements regarding house No. 44 mentioned in serial No. 4, but he did not know the value of the said property, and no money receipt was collected. He also admitted that

all the immovable property had been shown in the income tax file, and no objection was raised by the income tax department.

P.W. 2 Md. Shamsheer Ali is the AGM (Administration) Eastern Housing Ltd, 59B Banani, Dhaka. He stated that Yasmin Sultana purchased 3.62 khatas of land at Aftab Nagar from Eastern Housing Ltd and a shop at Eastern Plaza Shopping Complex. She also purchased two shops and a godown of Eastern Mallika Shopping Complex. The value of the said property was Tk. 81,48,500. She transferred the shops and godown of the Eastern Mallika Shopping Complex, and the value of the shops and godown was Tk. 21,00,000 and Tk. 5,11,500. He affirmed that the entire value of the unregistered land and shop was not paid, and Tk. 7,20,000 was deposited in the name of the accused in respect of the plot of Aftab Nagar till 26.04.2012. The registration fee was not included as value of the land, and the shop No. 6/84 is not registered as yet. Tk. 13,50,000 was deposited against the said shop.

P.W. 3 Md. Farhaduzzaman is the General Manager, Eastern Housing Ltd. He stated that on 23.04.2017 at 1:30 pm, Jahangir Alam, Deputy Director of ACC, seized documents mentioned in serial No. 2 of the seizure list produced by him. The seized documents were handed over to him. He proved the seizure list as exhibit 2 and the Jimmanama as exhibit 3. He proved his signatures on those exhibits as exhibits 2/1 and 3/1. He proved the seized documents as exhibits 4 series. The defence declined to cross-examine P.W. 3.

P.W. 4 Jannatul Ferdous was the Upper Division Clerk, Circle-106, Taxes Zone-5, Dhaka. She stated that on 20.04.2017 at 11:00 am, Deputy Director Jahangir Alam of ACC seized documents mentioned in serial No. 4 of the seizure list in the presence of witnesses from Circle-97, Taxes Zone-5, Office of the Deputy Commissioner of Taxes, Purana Paltan, Dhaka and the documents were handed over to her custody. She proved the seizure list and the jimmanama as exhibits 5 and 6. She proved her signatures on those

exhibits as exhibits 5/1 and 6/1. She also proved the income tax file of the accused Yasmin Sultana, as exhibit 7. During cross-examination, she stated that she produced the income tax return of the accused from 2012-2013 to 2016-2017. The sale price of the car has been mentioned in the return of 2013-2014 against the tax-free income of Tk. 125000, which has been accepted by the income tax authority, Tk. 2585535 was mentioned as tax-free income in the return of 2012-2013, and the condition of the tax-free income was complied with.

P.W. 5 Abdur Rashid was the Head Assistant, Circle-105, Taxes Zone-5, Office of the Deputy Commissioner of Taxes, Dhaka. He stated that on 20.04.2017 at 11 am, Deputy Director Md. Jahangir Alam of ACC seized the documents from Circle-97, Taxes Zone-5, Dhaka, which have been mentioned in serial No. 4 of the seizure list as produced by Jannatul Ferdous. Those documents were given to her jimma. He proved his signatures on the seizure list and Jimmanama as exhibits 5/2 and 6/2 respectively. He admitted that he is not aware of the content of the seized documents.

P.W. 6 K.M. Misbah Uddin was the Deputy Director, Anti-Corruption Commission, Head Office, Dhaka. He stated that he is the Second Investigating Officer of the case. On 08.06.2017, he was appointed as Investigating Officer of the case. During the investigation, he seized documents. The accused in her statement of assets concealed total assets of Tk. 20,29,370 in respect of the shops, the plot located at Aftab Nagar, and the house located at Dhanmondi. The accused had shown Tk. 38,60,535 as tax-free income and movable property of Tk. 48,04,036 and she acquired assets of Tk. 86,64,571 beyond her known source of income. He submitted the memo of evidence to the ACC against the accused. The accused suppressed total Tk. 20,29,370 and acquired total Tk. 1,06,93,941 beyond her known source of income, for which he submitted charge sheet against the accused with prior sanction of the ACC. He proved the sanction letter as Exhibit 9. During cross-examination, he

admitted that he perused the letter of the Eastern Housing dated 30.08.2016 and Tk. 7,57,000 was mentioned as the price of the shop No. 5/32 in the said letter, and Tk. 22,000 and Tk. 35,000 were shown as society cost and registration fee, respectively, which are not part of the price of the shop. The accused purchased the plot No. C/64 from Asaduzzaman Khan, but he is not aware of the sale price. He did not seize any paper to show that the accused purchased the same at a price of Tk. 22,50,000. He also did not seize any document to show that the accused purchased house No. 44 at a price of Tk. 27,50,000. He admitted in cross-examination that on 16.05.2016, the accused had given a rejoinder to the Deputy Director Md. Jahangir Alam, who erroneously could not mention the Shop No. 6/84 of Eastern Mallika in her statement of assets. She also informed that she invested Tk. 13,50,000 to purchase the same, which has not been registered as yet. He also admitted that in the return 1990-1991, it was mentioned that the accused received total Tk. 25,000 from 15 relatives as a donation, and the addresses of the donors had been verified, and the income tax authority accepted it. He also admitted that he did not consider those donations due to lack of documentary evidence. The accused opened the income tax file as a businessman and paid the business tax. As per SRO No. 98/2007, the accused acquired assets of Tk. 7,50,000 and she paid tax, and no objection has been raised by the income tax authority. In the income tax return of 2005-2006, it has been mentioned that the accused received loan of Tk. 2,50,000. It has also been mentioned in the income tax return of 2008-2009 that the accused earned Tk. 9,00,000 from the share business. In the income tax return of 2013-2014, it was mentioned that the accused acquired Tk. 1,25,000 by selling a vehicle. The accused sold his property at a price of Tk. 30,00,000 by registered deed No. 11362 dated 05.12.2012. The tax authority accepted Tk. 38,60,535 as tax-free income declared in the income tax year 2005-2006, 2008-2009, 2012-2013, and 2013-2014. He denied the suggestion that the accused did

not suppress any assets or that she did not acquire any property disproportionate to her known source of income. He denied the suggestion that he submitted charge sheet without considering the documents.

P.W. 7 Sheikh Saluddin Ahmed was the Managing Director of Bildtek Properties Ltd. He stated that he has been involved in the real estate business since 1992. He sold Flat No. 44, Road No. 11/A Dhanmondi, Dhaka, to the accused Yasmin Sultana, but he could not remember the size and the price of the said flat. In the document, the price has been mentioned as Tk. 27,50,000. He submitted the photocopy of the agreement for sale dated 12.10.1995, which has been submitted to ACC. During cross-examination, he stated that he did not submit the original copy of the agreement for sale to the ACC. He could not recollect his memory regarding the price of the flat mentioned in the registered deed, and he did not submit any money receipt regarding the said flat. The land owner signed the registered deed, but he did not sign the same.

Learned Advocate Mr. Mohammad Jamal Hossain appearing along with learned Advocate Mr. Sharan Chandra Talukder on behalf of the appellant submits that the accused submitted her statement of assets on 16.05.2016 to the Anti-Corruption Commission but inadvertently, she could not mention the value of the Shop No. 06/84, Eastern Shopping Complex, 26/1-2 Elephant Road, Dhaka but on the same date i.e on 16.05.2016 in the afternoon, he had given a rejoinder to the Anti-Corruption Commission stating that inadvertently, she could not mentioned booking money amounting to Tk. 13,50,000 of the said shop and no suppression has been made by the accused in her statement of assets. He further submits that the registration cost of the Shop No. 5/32 of Eastern Housing Ltd, Dhanmondi is required to be paid by the owner under Section 53H of the Income-tax Ordinance, 1984 and the trial Court ought to have accepted the rejoinder dated 16.05.2016. The trial Court passed the impugned judgment and order



without considering Section 53H of the Income-tax Ordinance, 1984 and the rejoinder dated 16.05.2016 exhibit 10. He also submits that the Shop No. 06/84, Eastern Shopping Complex, 26/1-2 Elephant Road, Dhaka has been shown in the income tax return of 2012-2013 which has been accepted by the income tax authority and the trial Court illegally passed the impugned judgment and order and arrived at a wrong decision as to the guilt of the accused. He prayed for acquittal.

Learned Senior Advocate Mr. Md. Omar Farook appearing on behalf of the respondent No. 2 (ACC) submits that the notice under Section 26(1) of the Anti-Corruption Commission Act, 2004 was served upon the accused on 26.04.2012 and after long four years, the accused submitted her statement of assets on 16.05.2016 suppressing the Shop No. 06/84 Eastern Shopping Complex, 26/1-2 Elephant Road, Dhaka and the total assets of Tk. 13,50,000 as the value of the said shop and Tk. 41,570 was concealed as registration fee of the Shop No. 5/32, Eastern Housing Ltd, Dhanmondi, and the trial Court legally passed the impugned judgment and order convicting the accused. He prayed for the dismissal of the appeal.

I have considered the submissions of the learned Advocate Mr. Mohammad Jamal Hossain, who appeared on behalf of the appellant, and the learned Senior Advocate Mr. Md. Omar Farook, who appeared on behalf of the respondent No. 2 (ACC), perused the evidence, impugned judgment and order passed by the trial Court, and the records.

On perusal of the records, it appears that the charge was framed against the accused under Section 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004, and the accused was convicted under Section 26(2) of the Anti-Corruption Commission Act, 2004 for concealing Tk. 13,50,000 as the value of the Shop No. 06/84, Eastern Shopping Complex, 26/1-2 Elephant Road, Dhaka, and the

registration fee amounting to Tk. 41,570 of Shop No. 5/32, Eastern Housing Ltd, Dhanmondi, Dhaka.

On perusal of the evidence, it appears that the notice under Section 26(1) of the Anti-Corruption Commission Act, 2004 was served upon the accused on 26.04.2012, and on the prayer of the accused, the operation of the said notice was stayed by the High Court Division. After that, following the judgment and order dated 30.03.2016 passed by the High Court Division in Writ Petition No. 8084 of 2012, the accused submitted her statement of assets on 16.05.2016. It is admitted by P.W. 6 Investigating Officer K.M. Misbah Uddin that on 16.05.2016, the accused also submitted a rejoinder stating that he paid Tk. 13,50,000 as the booking money of the Shop No. 06/84, Eastern Shopping Complex, 26/1-2 Elephant Road, Dhaka, which was not stated in the statement of assets dated 16.05.2016.

It is found that the statement of assets and the rejoinder were submitted on 16.05.2016. Therefore, there was no reason for rejection of the rejoinder dated 16.05.2016. To err is human. No man is beyond error. The said shop was not registered at the time of filing the statement of assets on 16.05.2016, and on the same date, he had given the rejoinder. I am of the view that the accused bona fide made the mistake in not mentioning the total Tk. 13,50,000 paid in advanced for Shop No. 06/84, Eastern Shopping Complex, 26/1-2 Elephant Road, Dhaka, and the Investigating Officer ought to have accepted the same. A person cannot be found guilty of the offence for any bona fide mistake. No cogent reason has been assigned by P.W. 6 for rejection of the rejoinder dated 16.05.2016. No false or baseless statement has been made by the accused in her statement of assets submitted under Section 26(2) of the Anti-Corruption Commission Act, 2004.

It is found that all the assets mentioned in the statement of assets and the rejoinder dated 16.05.2016 had been mentioned in the

income tax return filed by the accused, which had been assessed and accepted without any objection by the income tax authority. In this respect, it is relevant here to rely on a decision made by this Bench in Criminal Appeal No. 8511 of 2019 judgment dated 14.01.2024 in the case of A.K.M. Alamgir Hossain -Vs- the State and another, in which, 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 whose assets and income tax return have been assessed by the income tax authority.”

Under Section 53H of the Income-tax Ordinance, 1984 any person responsible for registering any document of a person under the provisions of clause (b), (c) or (e) of sub-section (1) of section 17 of the Registration Act, 1908, the income tax is required to be paid by the person whose right, title or interest is sought to be transferred, assigned, limited or extinguished, thereby, at the time of registration of such document at such rate and in such manner as may be prescribed. In the instant case, no right, title, or interest of the accused was transferred. Rather, he acquired a title of the Shop No. 06/84, Eastern Shopping Complex, 26/1-2 Elephant Road, Dhaka, and no tax was required to be paid by the accused under Section 53H of the said Ordinance. Rather the Eastern Housing Ltd, as the owner of the shop (land), was responsible for paying the registration fees. Therefore, the trial Court arrived at a wrong decision as to the concealment of the registration fee which was payable by Eastern Housing Ltd. The trial

Court did not consider the provision made in Section 53H of the Income Tax Ordinance, 1984. Since the statement of assets and the rejoinder (exhibit 10) were submitted on 16.05.2016, following the order dated 30.03.2016 passed by the High Court Division in Writ Petition No. 8084 of 2012, the trial Court ought to have accepted the rejoinder.

Because 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 Yasmin Sultana beyond all reasonable doubt.

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 Yasmin Sultana is hereby set aside.

However, there will be no order as to costs.

Send down the lower Court's records at once.