District-Chattogram.

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)
Criminal Miscellaneous Case No.35027 of 2022

An application under Section 561A of the Code of Criminal Procedure.

-And-

IN THE MATTER OF;
Abdul Malek

……. Accused-petitioner.

-Versus-

The State, represented by the Deputy Commissioner, Chattogram.

……..Opposite-parties.

Mr. Prabir Halder, Advocate,

….. For the accused-petitioner.

Mr. A.K.M. Amin Uddin, D A.G
Ms. Anna Khanom Koli, A.A.G. and
Mr. Md. Shaifour Rahman Siddiquie, A.A.G

..... For the State-opposite parties.

Mr. Md. Khurshid Alam Khan, Senior Advocate with
Mr. A.B.M Bayezid, Advocate,

....For the Anti-Corruption Commission.

Present:

Mr. Justice Md. Nazrul Islam Talukder
And
Mr. Justice Md. Mostafizur Rahman

Order dated : the 23rd day of February,2022.

This is an application under Section 561A of the Code of Criminal Procedure filed by the accused-petitioner for quashing the impugned

proceeding of Special Case No. 06 of 2021 (New) corresponding to Old Case No. 65 of 2016 arising out of Bandar Police Station Case No. 09 dated 22.12.2013 corresponding to A.C.C. G.R Case No. 14 of 2014 under Section 4(2) of the Money Laundering Protirodh Ain, 2012, read with Sections 406/511/109 of the Penal Code, now pending before the Divisional Special Judge, Chattogram.

The prosecution case, in short, is that on 22.12.2013, one Mohammad Sirajul Haque, Deputy Assistant Director, Anti-Corruption Commission, District combined office, Chattogram being Informant lodged an F.I.R against the accused-petitioner and two others alleging, inter alia, that the accused-petitioner in collaboration with other accused laundered an amount of Tk.19,96,051.58 to foreign country importing excess goods beyond declaration and tried

to misappropriate an amount of Tk.10,43,753.99 defrauding the government from paying revenue, which are punishable offences under Section 4(2) of the Money Laundering Protirodh Ain, 2012 read with Sections 406/511/109 of the Penal Code. Hence, the F.I.R.

The Anti-Corruption Commission after holding investigation into the allegation submitted investigation report being charge-sheet No.185 dated 30.07.2016 under Section 4(2) of Money Laundering Act, 2012 read with Sections 406/511/109 of the Penal Code against the FIR named accused.

After submitting charge-sheet, the case was transferred to the learned Senior Special Judge, Chattogram wherein the case was numbered as Special Case No.65 of 2016 and the learned Senior

Special Judge, by order dated 19.10.2016, took cognizance of the offences against all the charge-sheeted accused and the case was transferred to the learned Divisional Special Judge, wherein the case has been re-numbered as Special Case No.6 of 2021.

The accused-petitioner filed an application under Section 241A of the Code of Criminal Procedure praying for his discharge from the case but the learned Divisional Special Judge, Chattogram rejected the said application.

Feeling aggrieved by the impugned proceeding, the accused-petitioner has approached this court with an application under Section 561A of the Code of Criminal Procedure challenging the impugned proceeding.

At the very outset, Mr. Probir Halder, the learned Advocate appearing for the accused-petitioner, summits that laundering currency in abroad is an offence under Section 4 of the Money Laundering Protirodh Ain, 2012 which has been scheduled for inquiry and investigation under serial No.14 of the schedule under the Money Laundering Protirodh Rules, 2019, wherefrom it is evident that the National Board of Revenue or Criminal Investigation Department of Bangladesh Police has been designated as investigating authority and in view of the above, the Anti-Corruption Commission has got no lawful authority in holding investigation and submitting of charge-sheet; therefore, since the cognizance has been taken and charge has been framed under Section 4(2) of the Money Laundering Protirodh Ain, 2012 read with Sections 406/511/109 of the Penal Code on the basis of illegal and unlawful

charge-sheet, the impugned proceeding is liable to be quashed.

He next submits that the core allegations alleged in the FIR are that "আমদানীকারক কর্তৃক ঘোষণা বহির্ভূত অতিরিক্ত প্রাপ্ত পণ্যের মূল্য মোট ১৯,৯৬,০৫১.৫৮ টাকা যা-আমদানীকারক কর্তৃক অবৈধভাবে বিদেশে পাচার করা হয়। তাছাড়া আমদানীকারক ১০,৪৩,৭৫৩.৯৯ টাকা সরকারী রাজস্ব আত্মসাতের প্রচেষ্টা করেছেন।"; the aforesaid allegations fall under Section 2(ফ)(আ) of the Money Laundering Protirodh Ain, 2012 and under serial Nos.14 and 18 to Section ২(শ) of the said Act of 2012 and those offences also fall under serial Nos.14 and 18 of the schedule under the Money Laundering Protirodh Rules, 2019; in both the cases, either the National Board of Revenue or the Criminal Investigation Department of Bangladesh Police has been made designated authority to investigate into the offence; therefore, the charge-

sheet submitted in the instant case by the Assistant Deputy Director of the Anti-Corruption Commission is an illegal and unauthorized charge-sheet, so no proceeding can be based thereupon and as such, the impugned proceeding is liable to be quashed.

He then submits that Rule 13 of the Anti-Corruption Commission Rules, 2007 speaks that either the Anti-Corruption Commission or by any other authority empowered by the Commission is entitled to submit charge-sheet before the Senior Special Judge for the offences enlisted in the schedule under the ACC Act of 2004; in the instant case, evading of government revenue has not been made a schedule offence and laundering of currency has not also been made schedule offence; on the other hand, in the schedule under the Money Laundering Protirodh Rules, 2019, the authority has been

specified for conducting investigation into the offence of laundering money and offences relating to duties and the said authority being not the Anti-Corruption Commission, the charge-sheet submitted in the instant case by the ACC is an illegal charge-sheet; therefore, the learned Senior Special Judge without having proper sanction from the competent authority has taken cognizance of the offence and as such, the impugned proceeding is liable to be quashed.

He candidly submits that in the instant case, charge-sheet having not been submitted by the authority as has been designated in serial Nos.14 and 18 of the schedule to the Money Laundering Protirodh Rules, 2019, the learned Senior Special Judge in utter violation of Rule 52 of the said Rules, 2019 has taken cognizance of the offence and as

such, the impugned proceeding being based on sheer abuse of the process of law is liable to be quashed.

He lastly submits that the offences under Sections 406 and 511 are not scheduled offences under the ACC Act, 2004 and under the Money Laundering Protirodh Act, 2012 and the MLP Rules, 2019 made thereunder and as such neither the Anti-Corruption Commissin nor any other authority designated in the schedule of the Money Laundering Protirodh Rules, 2019 is empowered for holding investigation into the allegations under the said sections and hence, the impugned proceeding is liable to be quashed.

On the other hand, Mr. Md. Khurshid Alam Khan, the learned Senior Advocate along with Mr. A.B.M Bayezid, the learned Advocate appearing on behalf of the Anti-Corruption Commission, has also

taken us through the pertinent facts of the case and laws and categorically submits that before lodging the F.I.R, there was an inquiry under the Money Laundering Protirodh Ain, 2012 and then after completion of the inquiry, the present F.I.R was lodged on 22.12.2013 under section 4(2) of the Money Laundering Protirodh Ain, 2012; the Anti-Corruption Commission after holding investigation into the allegation submitted charge-sheet against the accused-petitioner and others under Section 4(2) of the Money Laundering Protirodh Ain, 2012 read with Sections 406/511/109 of the Penal Code; as per Section 3 of the Money Laundering Protirodh Ain, 20094, there is no bar to proceed with the case against the accused-petitioner and others under the aforesaid sections.

Mr. Khan, in support of his submissions, has referred to a decision taken in the case of Mohua Ali vs the State and another, reported in 70 DLR(2018)816 and the decision taken in the case of Abdus Salam vs the State and another reported in 69 DLR(2017)463.

He then submits that since the accused-petitioner by violating the rules and regulations of the Customs Act imported the goods without making proper declaration, this is one kind of corruption, so he denied the submission of Mr. Prabir Halder that there is no allegation of corruption in the instant case; on a plain reading of the F.I.R and the charge-sheet, the elements and ingredients of corruptions are also present in the present case as such the Anti-Corruption Commission has committed no illegality in initiating the F.I.R as well as submitting

investigation report against the accused-petitioner and others under the aforesaid sections and as such, there is no bar to proceed with the case in accordance with law.

He then submits that the learned trial judge framed charge against the accused-petitioner and others under Section 4(2) of the Money Laundering Protirodh Ain, 2012 read with Sections 406/511/109 of the Penal Code.

He vigorously submits that the accused-petitioner is a merchant as per Section 409 of the penal Code and as such, the charge-sheet ought to have framed against the accused-petitioner under Section 409 along with Sections 406/511/109 of the Penal Code and for this reason, Mr. Khan has prayed for observation and direction on this matter so that the charge under the appropriate sections

may be framed in accordance with law during trial of the case or before judgment of the instant case and there is scope to do the same under Section 227 of Code of Criminal Procedure.

Mr. Khan, with reference to ২(ফ)(ই) of the Money Laundering Protirodh Ain, 2012, submits that there are elements of corruption and money laundering together in the instant case, so there is no bar to proceed with the case against the accused-petitioner and others under the aforesaid sections.

He lastly submits that since the accused-petitioner, by importing goods unlawfully without making proper declaration, made suspicious transactions and transferred a huge amount of money to the foreign country, that offence comes within the ambit of corruption as well as money laundering.

Mr. A.K.M. Amin Uddin, the learned Deputy Attorney-General appearing for the State, has submitted that the allegations that have been brought against the accused-petitioner and others are all organized crimes and the accused-petitioner being merchant as per definition of Section 409 of the penal Code has committed offence of money laundering by transmitting money to the foreign country under the disguise of false declaration and importation as such there is an allegation of corruption and money laundering in the instant case and there is no bar to proceeding with the case in accordance with law.

We have gone through the application under Section 561A of the Code of Criminal Procedure and we have also perused the materials annexed thereto. We have also heard the submissions advanced by the learned Advocates for the respective

parties and considered their submissions to the best of our wit and wisdom.

It appears from the F.I.R that the accused-petitioner opened letter of credit from Pubali Bank, Chakbazar Brnach, Dhaka on 29.11.2011 for importing ordinary razor part, hand sewing needles, wooden pencil and ordinary hair grips; the PSI agency firstly issued a CRF Certificate on 02.11.2011 showing value of the goods at $ 82,475.42 and thereafter the said PSI agency issued an amended CRF certificate dated 24.11.2011 certifying the value of the goods at $ 47,242.16; during physical examination of the goods, the customs authority found excess amount of 1250 kg of ordinary razor pant, 1100 kgs of hand sewing needles, 1750 kg of wooden pencil in total 4100 kgs (net weight) beyond declaration; as per computer

database of the customs office, the total value of the goods beyond declaration is taka 19,96,051.58 and the said amount has been laundered and the importer took an attempt in defrauding the government from paying revenue amounting to Tk.10,43,753.99; the head office of the Durniti Daman Commission vide letter dated 26.11.2013 accorded sanction for lodging a case; the accused in collusion with each other accused laundered Tk.19,96,051.58 out of the country and also tried to misappropriate Tk.10,43,753.99 against revenue and thereby they have committed an offence punishable under Section 4(2) of the Money Laundering Act, 2012 and hence the case F.I.R.

The Anti-Corruption Commission after holding investigation into the allegation submitted charge-sheet against the accused-petitioner and

others under Section 4(2) of the Money Laundering Protirodh Ain, 2012 read with Sections 406/511/109 of the Penal Code. Having received the charge-sheet, the learned Senior Special Judge took cognizance of the offence against the accused-petitioner and another under the aforesaid sections. Thereafter the learned Divisional Special Judge, Chattogram having received the record framed charge against the accused-petitioner and another under the aforesaid sections.

As per submission of the learned Advocate for the accused-petitioner, the F.I.R was lodged by the Anti-Corruption Commission on 22.12.2013 under Section 4(2) of the Money Laundering Protirodh Ain, 2012 and the Anti-Corruption Commission after holding investigation submitted charge-sheet against the accused under Section 4(2) of the said

Act read with sections 406/511/109 of the Penal Code but the fact remains that as per Money Laundering Protirodh Ain, 2012 and the Money Laundering Protirodh Rules, 2019, the Anti-Corruption Commission has no authority to hold an investigation into the matter of money laundering and under the aforesaid circumstances, the Anti-Corruption Commission has committed serious illegality in initiating the F.I.R as well as submitting charge-sheet against the accused-petitioner and another and following the unlawful charge-sheet submitted by the Anti-Corruption Commission, the order of framing charge by the learned Special Judge has also become illegal and on the basis of said charge, the accused-petitioner cannot be tried and the impugned proceeding cannot be continued and for the

ends of justice, the impugned proceeding should be quashed.

As per submissions of the learned Advocate for the Anti-Corruption Commission, the money laundering is a predicate offence which may be committed by 27 means and ways as stipulated in Section ২(শ)(১)-(২৭) of the Money Laundering Protirodh Ain, 2012 and that the money laundering may be committed by dint of corruption and bribery and since the offence of money laundering as alleged in the F.I.R has been committed by the accused-petitioner and others resorting to corruption, bribery, embezzlement, evading duties and revenues and suspicious transactions, there is no bar to lodging the F.I.R and holding investigation into the allegations by the Anti-Corruption Commission.

Following the submissions and counter submissions advanced by the learned Advocates for the respective parties, we have gone through the relevant provisions of law as contemplated in the preamble, Sections 2 and 17 and schedule of the Anti-Corruption Commission, 2004 together with Sections 2, 3, 4(2), 4(3) of the Money Laundering Protirodh Ain, 2012 along with Rules 13, 52 and the schedule of the Money Laundering Protirodh Rules, 2019.

It is worthwhile to mention that the word "দুর্নীতি" has been defined in Section ২(ঙ) of the Anti-Corruption Commission Act, 2004 which runs as follows:

২(ঙ) "দুর্নীতি" অর্থ এই আইনের তপশীলে উল্লেখিত অপরাধ সমূহ। But the said term "দুর্নীতি" has neither been defined in the Money Laundering Protirodh Ain,

2012 nor in the prevention of the Money Laundering Rules, 2019. In clause (ঘ) to the schedule of the Anti-Corruption Commission Act, 2004, the word "দুর্নীতি" has been used and the said clause (ঘ) to the schedule runs as follows:

(ঘ) মানি লন্ডারিং প্রতিরোধ আইন, ২০১২ (২০১২ সনের ৫ নং আইন এর অধীন 'ঘুষ ও দুর্নীতি' সংক্রান্ত অপরাধ সমূহ।

Therefore what acts and omissions of a person constitute the commission of offence of "দুর্নীতি" has not been defined specifically either in the Anti-Corruption Commission Act, 2004 or in the prevention of Money Laundering Act, 2012 or in the Prevention of Money Laundering Rules, 2019.

It may be mentioned that the present case brought against the accused-petitioner and others relates to predicate offences which are generally committed by 27 modes and means. The offences of

money laundering perpetrated through corruption (দুর্নীতি) and bribery (ঘুষ) are all the schedule offences of the Anti-Corruption Commission Act, 2004. In "ব্যবহারিক বাংলা অভিধান" published by "বাংলা একাডেমী" the word (দুর্নীতি) means নীতিবিরুদ্ধ, কুনীতি, অসদাচরন। According to WHARTON'S LAW LEXICON, the word corrupt does not necessarily include an element of bribe taking only, it is also used in a much larger sense denoting conduct which is morally unsound or debased which was decided in the case reported in AIR 1966 SC 523. According to Oxford English Dictionary, the word 'corrupt' means- (of people) willing to use their power to do dishonest or illegal things in return for money or to get an advantage. The meaning of the word "corruption" is very wide and it has far reaching effect on our daily lives. The word corruption has a wide connotation and embraces all the spheres of our day-to-day life. In a

limited sense, it connotes to decisions and actions of a person to be influenced not by rights or wrongs of a cause, but by the prospects of monetary gains or other selfish considerations which were settled in the case of State of APV Vasudeva Rao, (2004) 9 SCC 319 has been defined and described as predicate offence which is committed resorting to corruption and bribery.

Accordingly, our considered view is that the word corruption does not necessarily include an element of bribe taking only, it is also used in a much larger sense denoting conduct which is morally unsound or debased. The word corruption has a wide connotation and embraces almost all the spheres of our day to day life affairs. It connotes to decisions and actions of a person to be influenced not by rights or wrongs of a cause but by the prospects of

monetary gains or other selfish considerations. Hence, the meaning of the word "দুর্নীতি" (corruption) is very wide and it has far reaching effects on our daily lives.

If we consider the aims and objects of the Anti-Corruption Commission Act, 2004 as contemplated in the preamble and in Section 17 particularly in sections 17(ga), 17(jha), 17(aaw) and 17(ta) of the Anti-Corruption Commission Act, 2004, we have no hesitation to hold the view that to prevent "দুর্নীতি" (corruption), the Commission has got the unfettered power to make any enquiry, investigation and to take necessary actions/steps in accordance with law if it thinks fit and proper in respect of any offences relating to "দুর্নীতি", no matter whether the offence is investigatory by the police or by other investigating agencies.

In the instant case at hand, we find that the accused-petitioner with the help of other accused imported goods without making proper declaration making suspicious transactions and transferred a huge amount of money to the foreign country and tried to defraud the Government/State from paying revenue resorting to corruption, bribery, embezzlement, evading duties and revenues and suspicious transactions. The present case brought against the accused-petitioner and others relates to predicate offences which are generally committed by 27 modes and means. The offences of money laundering perpetrated through corruption (দুর্নীতি) and bribery (ঘুষ) are all the schedule offences of the Anti-Corruption Commission Act, 2004. So, we are of the view that the Anti-Corruption Commission is competent to make investigation into any offence where there are elements of corruption and bribery

which, in fact, fall within the schedule offences of the Anti-Corruption Commission Act, 2004. Similar views have been expressed in the decision taken in the case of Abdus Salam vs the State and another reported in 69 DLR(2017)463. and in the decision taken in the case of Mohua Ali vs the State and another, reported in 70 DLR(2018)816.

Having considered all the facts and circumstances of the case, the submissions advanced by the learned Advocates for the respective parties and the propositions of law cited and discussed above, we don't find any cogent reason to interfere with the impugned proceeding.

Accordingly, in view of the above, we do not find any merit in this application.

However, it is apparent from the record of the case that the charge has been framed against the accused-petitioner and another under Section 4(2) of the Money Laundering Protirodh Ain, 2012 read with Sections 406/511/109 of the Penal Code. Our considered view is that since the accused-petitioner is a merchant as per definition of Section 409 of the penal Code and if any merchant commits any offence of money laundering as well as corruption, the charge may be framed against the accused-petitioner under Sections 409/406/511/109 of the Penal Code but the same most probably has not been done due to inadvertence of the learned trial judge with respect to existing provision of law.

Under the aforesaid circumstances, the learned trial judge shall be at liberty to insert/add 409 of the penal Code with the order of framing charge during

trial or before delivery of the judgment under Section 227 of the Code of Criminal Procedure.

In consequence thereof, with the above observations and directions, the application is rejected summarily.

The learned trial judge is directed to proceed with the case in accordance with law and conclude the trial as expeditiously as possible.

Communicate the order to the learned judge of the concerned court below at once.