

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

Present:

**Mr. Justice Md. Nazrul Islam Talukder
And**

Mr. Justice Khizir Hayat

Criminal Miscellaneous Case No. 23205 OF 2014.

Ahmed Kamal Chowdhury

.....Accused-petitioner.

-Versus-

The State and another

.....Opposite-parties.

Mr. Md. Momtaz Uddin Fakir, Senior Advocate with

Mr. A. H. M. Zia Uddin, Advocate and

Mr. Abu Md. Ziaul Haque, Advocate

.....For the Accused-petitioner.

Mr. A K M Amin Uddin, D A.G with

Ms. Anna Khanom Koli, A.A.G. and

Mr. Md. Shaifour Rahman Siddique, A.A.G

.... For the State-opposite-party.

Mr. Md. Omar Farook, Advocate,

...For the Anti-Corruption Commission.

Heard on : 25.10.2022, 09.11.2022 and 30.11.2022

Judgment on: 30.11.2022.

Md. Nazrul Islam Talukder, J:

On an application under Section 561A of the Code of Criminal Procedure, this Rule, at the instance of the accused-petitioner, was issued calling upon the opposite-parties to show cause as to why the impugned proceeding of Special Case No.17 of 2013 dated

18.08.2009 under Sections 406 / 409 / 420 / 467 / 468 / 471 / 109 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947, now pending in court of learned Divisional Special Judge, Chittagong, should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution case, in short, is that one Sumon Roy, Manager, IFIC Bank Ltd., Teri Bazar Branch, Chittagong filed petition of complaint before the learned Senior Special Judge, Chittagong mentioning the name of 02 (two) officials of the said bank alleging, inter-alia, that one Md. Selim, owner of M/S Selim and Brothers opened 2 F.D.R in IFIC Bank Ltd. being FDR No.078180/14645 for an amount of Tk.1,00,00,000/- (one crore) and FDR No.078179/14637 for an amount of Tk.1,00,00,000/- (one crore). The proprietor of M/S

Selim and Brothers kept the aforesaid 2 FDR as lien to the bank and carried out his business. The branch manager of the concerned bank as the First Assistant Vice-President and another Officer, Grade-1 while in service in the IFIC Bank Ltd., Teri Bazar Branch, Chittagong in collaboration with other accused persons abusing their official power and authority opened SOD loan account in the name of one M/S. Selim and Brothers forging signature and seal of Md. Selim, proprietor of M/S. Selim and Brothers and forging some papers and documents. After sanctioning loan, the loan amounts were transmitted in the different accounts of the firms of the accused persons including the present accused-petitioner through forged cheques. The accused persons without the permission of the Head Office created loan sanction certificate. On different occasions in between 15.06.2008 to 19.10.2008, the

accused persons misappropriated a huge amount of money amounting to Tk. 3,29,62,800/- using their respective cheques provided against their respective accounts. When this matter came to the notice of the bank, the accused persons deposited Tk.1,35,72,300/- in the fake loan account. The remaining amount of Tk.1,93,90,500/- has not been deposited as yet. Thus, the accused-persons in collaboration with each other committed offences of forgery and misappropriation of money under Sections 409/408/106/ 467/468/471/109 of the penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947. Hence, the case being registered as Special Case No.17 of 2013.

After lodging the petition of complaint, the learned judge sent the case for investigation to the Durnity Damon Commission, Chittagong directing to treat it as an F.I.R and after investigation, one Md.

Amirul Islam, Assistant Director of Durnity Damon Commission, Chittagong submitted investigation report under Sections 409/406/420/467/468/471/109 of the Penal Code read with under Section 5(2) of the Prevention of Corruption Act, 1947 against 11 accused including the present accused-petitioner.

On getting investigation report, the learned Judge took cognizance against the accused-petitioner with other co-accused by an order dated 05.04.2012 and issued warrant of arrest against them.

Thereafter, the accused-petitioner surrendered before the High Court Division for anticipatory bail by filing Criminal Miscellaneous CaseNo. 15422 of 2012 and after hearing, the High Court Division granted bail to the accused-petitioner for a period of 4 (four) months by an order dated 30.05.2012.

Being enlarged on anticipatory bail, the accused-petitioner surrendered before the learned Mohanagor Senior Special Judge, Chittagong for regular bail and after hearing, the learned Judge granted him bail till 30.04.2012 by an order dated 30.08.2012 and since that time, he is enjoying the privilege of bail.

The learned Divisional Special Judge, by order No.11 dated 30.06.2013, framed charged against the accused-petitioner and others under Sections 409/406/420/467/468/471/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 rejecting the respective applications of the accused filed under sections 265C/241A of the Code of Criminal Procedure.

Being aggrieved by the impugned proceeding of Special Case No.17 of 2013, the accused-petitioner approached this court with an application under Section

561A of the Code of Criminal Procedure and obtained this Rule along with an order of stay of the impugned proceeding.

At the very outset, Mr. Md. Momtaz Uddin Fakir, the learned Senior Advocate with Mr. A. H. M. Zia Uddin, the learned Advocate and Mr. Abu Md. Ziaul Haque, the learned Advocate appearing on behalf of the accused-petitioner, submits that as per FIR story, statements recorded under Section 161 of the Code of Criminal procedure and the investigation report, if the facts of the case are admitted in its entirety for the shake of argument, it does not disclose any offence as alleged against the accused-petitioner and as such, the continuation of the impugned proceeding of the case is nothing but a sheer abuse of the process of the court and is liable to be quashed.

He next submits that the FIR named accused Nos.1 and 2 in collaboration with other accused by forging signature of one FDR holder Md. Selim withdrew a huge amount of money opening SOD loan account and misappropriated the same but the FDR holder is neither a complainant nor an accused nor a witness in this case, so it is clear that the ACC by holding investigation falsely implicated the accused-petitioner in this case out of enmity and grudge at the instance of some bank officials and as such, the impugned proceeding is liable to be quashed.

He then submits that the accused-petitioner is not an FIR named accused and he is not involved in this case in any way and there is no allegation against him in the petition of complaint by the bank authority; the investigating officer intentionally implicated him in the investigation report when he failed to receive

unexpected demand from the accused-petitioner and since no prima facie case has been made out against the petitioner, the impugned proceeding is liable to be quashed.

He candidly submits that the accused-petitioner is a well reputed businessman and is a regular tax payee, he is not named in the FIR and even not suspected in the body of the FIR; he is implicated in this case out of grudge and previous enmity at the instance of some Bank officials who influenced the officer of the Durnity Daman Commission for submitting the investigation report by including the name of the accused-petitioner though no prima facie case is found against him and as such, the impugned proceeding is liable to be quashed.

He vigorously submits that the allegations brought against the accused-petitioner and others are that the accused in collaboration with each other out of

pre-planning opened SOD Account No. 16061 in the name of M/S Selim and Brothers forging signature and seal of Md. Selim and withdrew a huge amount of money by forged cheques and then misappropriated the same by using their own cheques but this fact is not true and if it was true, then the accused-petitioner would have been named as an accused in the petition of complaint filed by the bank authority and as such, this amounts to abuse of process of court and for this reason, the impugned proceeding is liable to be quashed.

He strenuously submits that though some portion of the money in question was withdrawn through the cheques of the accused-petitioner but he is no way connected with the alleged offence since he had no knowledge about the cheques by which the money in question was withdrawn rather the money was

withdrawn at the planning of the bank officials beyond the knowledge of the accused-petitioner and as such, the impugned proceeding is liable to be quashed.

He categorically submits that the proceeding so far it relates to one of the co-accused Farook Ahmed Chowdhury was quashed by the High Court Division on 24.11.2016 in Criminal Miscellaneous Case No.10500 of 2014 and as such, the impugned proceeding against the present accused-petitioner on the similar facts and grounds may be quashed for ends of justice.

He lastly submits that the bank authority did not raise any claim against the accused-petitioner and there is no prima-facie case in the FIR against him but the ACC by filing investigation report falsely implicated the accused-petitioner in the case because of the fact that the accused-petitioner did not meet up the unexpected demand of the investigating officer though

no ingredients of the sections under which the accused-petitioner has been charged, has been made out against the accused-petitioner and as such, in order to prevent the abuse of the process of law and court, the impugned proceeding is liable to be quashed.

On the other hand, Mr. Md. Omar Farook, the learned Advocate appearing on behalf of the Anti-Corruption Commission, submits that in the petition of complaint, through the name of accused-petitioner was not directly mentioned in the column of the name of accused but the name of the firm of the accused-petitioner namely Royal Touch Trading Corporation has been mentioned in the body of the FIR wherefrom it is clearly evident that the accused-petitioner's firm Royal Touch Trading Corporation received Tk.2,00,000/-, Tk.3,30,000/-, Tk.50,00,000, Tk.2,75,000/- and Tk.3,50,000/- through 5 forged

cheques forging the signature and seal of the proprietor of M/S Selim and brothers and then the accused-petitioner withdrew the same using his cheques and under the aforesaid facts and circumstances, there is no scope to say that the accused-petitioner is not involved in the commission of forgery and misappropriation of money and for this reason, the Rule is liable to be discharged.

He next submits that the case was investigated by the Anti-Corruption Commission and thereby submitted the investigation report on 12.08.2020 against the accused-petitioner and 10 others under Sections 409/406/420/467/471/109 of the Penal Code read with Section 5(2) of Prevention of corruption Act, 1947, having found prima-facie case against the accused and that being the reason, the impugned proceeding should not be quashed.

He candidly submits that the learned Divisional Special Judge, by an order dated 30.06.2013, framed charge against all the 11 accused including the present accused-petitioner following the investigation report submitted against the present accused-petitioner and others under Sections 409/406/420/467/468/471/109 Penal Code read with Section 5 (2) of the Prevention of Corruption Act, 1947 rightly rejecting the respective applications of the accused filed under Section 265C/241A of the Code of Criminal Procedure and on that landscape, the impugned proceeding should not be quashed.

He lastly submits that since there are specific allegations against the accused-petitioner and others in the prosecution materials and that the allegations that have been brought against the accused are highly disputed and complicated questions of fact which

cannot be decided by this court invoking its jurisdiction under Section 561A of the Code of Criminal Procedure and in that view of the matter, the impugned proceeding should not be quashed.

Mr. A.K.M Amin Uddin, the learned Deputy Attorney- General appearing for the State, submits that all the facts emanated from the prosecution materials are disputed questions of fact and for this reason, this Rule is liable to be discharged.

It is pertinent to note that the inherent power under Section 561A of the Code of Criminal Procedure can be invoked at any stage of the proceeding even after conclusion of the trial, if it is necessary to prevent the abuse of process of the court or otherwise to secure the ends of justice. The aforesaid view finds support in decision taken in the case of Sher Ali (Md) and others

Vs The State, reported in 46 DLR (AD) (1994) 67 wherein it was decided as under:-

“the inherent power under Section 561A of the Code of Criminal Procedure can be exercised to quash a proceeding or even a conviction on conclusion of a trial if the court concerned got no jurisdiction to hold the said trial or the facts alleged against the accused do not constitute any criminal offence, or the conviction has been based on ‘no evidence’ or otherwise to secure ends of justice”.

The guidelines and principles for quashing a proceeding were initially formulated and settled in the decision taken in the case of Abdul Kader Chowdhury Vs The State reported in 28 DLR (AD)38. Subsequently, the aforesaid views were reiterated in the decision taken in the case of Ali Akkas Vs Enayet Hossain and others, reported in 17BLD(AD)(1997)

44=31 DLR(AD)69 wherein it was spelt out that to bring a case within the purview of Section 561A of the Code of Criminal Procedure for the purpose of quashing a proceeding, one of the following conditions must be fulfilled:-

- (I) Interference even at an initial stage may be justified where the facts are so preposterous that even on admitted facts no case stands against the accused;
- (II) Where the institution and continuation of the proceeding amounts to an abuse of the process of the Court;
- (III) Where there is a legal bar against the initiation or continuation of the proceeding;
- (IV) In a case where the allegations in the FIR or the petition of complaint, even if taken

at their face value and accepted in their entirety, do not constitute the offence as alleged and

- (V) The allegations against the accused although constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge.

The aforesaid principles were reechoed in the decision taken in the case of Begum Khaleda Zia Vs. The State and another, reported in 70 DLR (AD) (2018) 99.

Now, question arises as to whether the principles and guidelines for quashing a proceeding settled by our Appellate Division, are applicable in the instant case at hands for quashing the same.

We have gone through the application filed under Section 561A of the Code of Criminal Procedure and perused the prosecution materials annexed therewith.

We have also heard the learned Advocates for the respective parties at length and considered their submissions to the best of our wit and wisdom.

A reference to the prosecution materials indicates that one Md. Selim, owner of M/S Selim and Brothers opened 2 F.D.R in IFIC bank being FDR No.078180/14645 for an amount of Tk.1,00,00,000/- (one crore) and FDR No.078179/14637 for an amount of Tk.1,00,00,000/- (one crore). The proprietor of M/S Selim and Brothers kept the aforesaid 2 FDR as lien to the bank and carried out his business. The branch manager of the concerned bank as the First Assistant Vice-President and another Officer, Grade-1 while in service in the IFIC Bank Ltd., Teri Bazar Branch,

Chittagong in collaboration with other accused persons abusing their official power and authority opened SOD loan account in the name of one M/S. Selim and Brothers forging signature and seal of Md. Selim, proprietor of M/S. Selim and Brothers and forging some papers and documents. After sanctioning loan, the loan amounts were transmitted to the different accounts of the firms of the accused persons including the present accused-petitioner. The accused persons without the permission of the Head Office created loan sanction certificate. On different occasions in between 15.06.2008 to 19.10.2008, the accused persons misappropriated a huge amount of money amounting to Tk. 3,29,62,800/- using their respective cheques provided against their respective accounts. When this matter came to the notice of the bank, the accused persons deposited Tk.1,35,72,300/- in the fake loan

account. The remaining amount of Tk.1,93,90,500/- has not been deposited as yet. Thus, the accused-persons in collaboration with each other committed the offences of forgery and misappropriation of money under Sections 409/408/106/ 467/468/471/109 of the penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

It appears from the petition of complaint that the name of the accused-petitioner has not been mentioned in the column of the accused but there are specific allegations against him to the effect that the loan money from the alleged SOD loan account which was opened forging the signature and seal of the proprietor of M/S Selim and brothers has been transferred to the account of Royal Touch Trading Corporation, a business firm of the accused-petitioner through the forged cheques of M/S Selim and Brothers. Thereafter, the accused-

petitioner withdrew and misappropriated the same using his cheques. The allegations mentioned in the petition of complaint against the Royal Touch Trading Corporation, a business firm belonging to the accused-petitioner, runs as follows:

paragraph ৭(জ) একইভাবে আসামীদ্বয় মেসার্স সেলিম এন্ড ব্রাদার্স নামক প্রতিষ্ঠানের নামের চেকের মাধ্যমে Royal Touch Trading Corporation নামক প্রতিষ্ঠানকে প্রাপক উল্লেখিত গত ০৮-০৭-২০০৮ ইং তারিখে CAD 8860739 নং চেক মূলে মং ২,০০,০০০/- টাকা মেসার্স সেলিম এন্ড ব্রাদার্স এর নামক মালিক মো: সেলিম এর জাল দস্তখত দিয়া এবং সীল প্রদানের মাধ্যমে নগদ উত্তোলন করিয়া বিশ্বাস ভঙ্গের মাধ্যমে আত্মসাৎ করে।

paragraph ৭(দ) একইভাবে আসামীদ্বয় মেসার্স সেলিম এন্ড ব্রাদার্স নামক প্রতিষ্ঠানের নামে চেকের মাধ্যমে Royal Touch নামক প্রতিষ্ঠানকে প্রাপক উল্লেখিত গত ০৫-০৮-২০০৮ ইং তারিখে CAD 8862089 নং চেক মূলে মং ৩,৩০,০০০/- টাকা মেসার্স সেলিম এন্ড ব্রাদার্স

এর মালিক নামক মালিক মো: সেলিম এর জাল দস্তখত দিয়া এবং সীল প্রদারেনর মাধ্যমে উত্তোলন করিয়া বিশ্বাস ভঙ্গের মাধ্যমে আত্মসাৎ করে।

paragraph ৭(খ) একইভাবে আসামীদ্বয় মেসার্স সেলিম এন্ড ব্রাদার্স নামক প্রতিষ্ঠানের নামের চেকের মাধ্যমে Royal Touch নামক প্রতিষ্ঠানকে প্রাপক উল্লেখ গত ০৫-০৮-২০০৮ ইং তারিখে CAD 8862090 নং চেক মূলে মং ৫,০০,০০০/- টাকা মেসার্স সেলিম এন্ড ব্রাদার্স এর মালিক মো: সেলিম এর জাল দস্তখত দিয়া এবং সীল প্রদারেনর মাধ্যমে নগদ উত্তোলন করিয়া বিশ্বাস ভঙ্গের মাধ্যমে আত্মসাৎ করে।

paragraph ৭(ব) একইভাবে আসামীদ্বয় মেসার্স সেলিম এন্ড ব্রাদার্স নামক প্রতিষ্ঠানের নামে চেকের মাধ্যমে Royal Touch নামক প্রতিষ্ঠানকে প্রাপক উল্লেখ গত ০১-০৯-২০০৮ ইং তারিখে CAD 8862094 নং চেক মূলে মং ২,৭৫,৭৬০/- টাকা মেসার্স সেলিম এন্ড ব্রাদার্স এর মালিক মো: সেলিম এর জাল দস্তখত দিয়া এবং সীল প্রদারেনর মাধ্যমে নগদ উত্তোলন করিয়া বিশ্বাস ভঙ্গের মাধ্যমে আত্মসাৎ করে।

paragraph ৭(র) একইভাবে আসামীদ্বয় মেসার্স সেলিম এন্ড ব্রাদার্স নামক প্রতিষ্ঠানের নামের চেকে Self লিখে গত ০৯-০৯-২০০৮ ইং তারিখে CAD 8862097 নং চেক মূলে মং ২,০০,০০০/- টাকা মেসার্স

সেলিম এন্ড ব্রাদার্স নামক প্রতিষ্ঠানের মালিক মো: সেলিম এর জাল দস্তখত দিয়া এবং সীল প্রদানের মাধ্যমে নগদ উত্তোলন করিয়া বিশ্বাস ভঙ্গের মাধ্যমে আত্মসাৎ করে।

We have stated earlier that the name of the accused-petitioner has not been mentioned in the column of accused in the petition of complaint but there are specific allegations of forgery and misappropriation of money against the accused-petitioner's firm Royal Touch Trading Corporation. On investigation, the allegations disclosed against the accused-petitioner in the petition of complaint have been found prima-facie true in the investigation report. The Investigating officer finding the complicity of the accused-petitioner in the alleged allegations submitted investigation report. The relevant portion of the investigation report showing involvement of the accused-petitioner, runs as under:

“.....একইভাবে মেসার্স সেলিম এন্ড ব্রাদার্স এর মালিক মোঃ সেলিম এর স্বাক্ষর জাল করিয়া সেলিম এন্ড ব্রাদার্স এর নামে সৃজিত উক্ত এসওডি হিসাব নং ১৬০৬১ এর বিপরীতে ৮-৭-০৮ তারিখে ২,০০,০০০/-টাকার চেক নং সিওডি ৮৮৬০৭৩৯, ১৫-৭-০৮ তারিখে ১,৭০,০০০/-টাকার চেক নং-৮৮৬০৭৪০, ৫-৮-০৮ তারিখে ৩,৩০,০০০/- টাকার চেক নং সিএডি ৮৮৬২০৮৯, ৫.৮.০৮ তারিখে ৫,০০,০০০/- টাকার চেক নং সিএডি ৮৮৬২০৯০, ১.৯.০৮ তারিখে ২,৭৫,৭৬/- টাকার চেক নং সিএডি ৮৮৬২০৯৪ এবং ৭.১০.০৮ তারিখে ৩,৫০,০০০/- টাকার চেক নং সিএডি ৮৮৬২০৯৮ মেসার্স রয়েল টাচ ট্রেডিং কোং এর নামে ইস্যু করিয়া উক্ত ৬টি চেকে উল্লেখিত (২,০০,০০০/- +১,৭০,০০০/-+৩,৩০,০০০/- + ৫,০০,০০০/- +২,৭৫,৭৬০/-+৩,৫০,০০০/-=১৮,২৫,৭৬০/- টাকা সেলিম এন্ড ব্রাদার্স এর এসওডি হিসাব নং ১৬০৬১ হইতে রয়েল টাচ ট্রেডিং এর টেরী বাজার শাখার চলতি হিসাব নং ১৭৯৪২ এর বিপরীতে ট্রান্সফার করা হয়। রয়েল টাচ ট্রেডিং এর উক্ত হিসাবে ট্রান্সফারকৃত ১৮,২০,৭৬০/-টাকা উক্ত তারিখেই জমা হইলেই য়েল টাচ ট্রেডিং এর মালিক জনাব আহমদে কামাল চৌধুরী বিভিন্ন তারিখে চেক নং ৩২৪৯৯৮৬, মোতাবেক ৬,৩২,০০০/- ও ১০.০৮.২০০৮ তারিখে চেক নং ৩২৪৯৯৮৯, মোতাবেক ৬,৩২,০০০/- ও ১০.০৮.২০০৮ তারিখে চেক নং ৩২৪৯৯৮৯ মোতাবেক ২,৯০,০০০/- টাকা সর্বমোট (৬,৩২,০০০/- +২,৯০,২৮০/-) = ৯,২২,২৮০/- টাকা মেসার্স সেলিম এন্ড ব্রাদার্স এর উক্ত

হিসাবে জমা দেন। বর্তমানে হমেদ কামাল চৌধুরীর নিকট ব্যাংকের
(১৮,২৫,৭৬০-৯,২২,২৮০)= ৯,০৩,৪৮০/-টাকা পাওনা রহিয়াছে।”.....
..... তদন্তকালে দেখা যায় ১। মেসার্স পলি জোনের আব্দুল
গোফরান উত্তোলিত ৫০,০০,০০০/- লক্ষ টাকা। ২। এজেএম সাইফুর রহমানের
উত্তোলিত ৩,০০,০০০/-টাকা (৩) মেসার্স রয়েল টাচ ট্রেডিং এর মালিক জনাব
আহমদ কামাল চৌধুরী উত্তোলিত ১৮,২৫,৭৬০/- টাকার মধ্যে ৯,০৩,৪৮০/-
টাকা, (৪)জমির এন্ড ব্রাদার্স এর মালিক জমির উদ্দিনের উত্তোলিত
১০,০০,০০০/- টাকা, (৫) মেসার্স চলন্তিকা সু. এর মালিক বিশ্বজিৎ চৌধুরীর
উত্তোলিত ১০,০০.০০০/- টাকার মধ্যে ৭,৬২,০০০/, টাকা, (৬) ফারুক আহমদ
চৌধুরীর উত্তোলিত ৩,১৫,০০০/- টাকা, (৭) আহাদ ইলেকট্রনিক্স এর মালিক
আব্দুল আজিজ চৌধুরীর উত্তোলিত ২০,০০,০০০/- টাকা মধ্যে ১৭,৭৮,০০০/-
টাকা সর্বমোট (৬০,০০,০০০/-+৩,০০,০০০/-+৯,০৩,৪৮০+১০,০০,০০০/-
+৭,৬২,০০০/-+৩,১৫,০০০/-+১৭,৭৮,০০০/-) ১,০০,৫৮,৪৮০/- টাকা
ব্যাংকের পাওনা রহিয়াছে। জাল জালিয়াতি মূলকভাবে উত্তোলিত উক্ত
১,০০,৫৮,৪৮০/- টাকা যেহেতু উক্ত ৭ জন ব্যক্তির স্বাক্ষরে তাহাদের হিসাব
হইতে উত্তোলন করা হইয়াছে এবং তাহাদের নিকট এখন ও ব্যাংকের উক্ত
১,০০,৫৭৮,৪৮০/- টাকা পাওনা রহিয়াছে সেহেতু উক্ত টাকা আত্মসাতের দায়

হইতে তাহারা অব্যাহতি পাইতে পারে না। উক্ত টাকা তাহাদের সহায়তায় পরস্পর যোগসাজসে আত্মসাত করা হইয়াছে বলিয়া তদন্তে প্রমানিত হয়।

তদন্তকালে দেখা যায় মেসার্স সেলিম এন্ড ব্রাদার্স এর মালিক মোঃ সেলিম এর স্বাক্ষর জাল করিয়া সেলিম এন্ড ব্রাদার্স এর নামে সৃজিত উক্ত এসওডি হিসাব নং ১৬০৬১ এর বরাবরে নিম্নে বর্ণিত ১৯টি চেক ইস্যু করিয়া চেকে উত্তোলিত সর্বমোট ১,১২,৪৭,০০০/- টাকা নগদে উত্তোলন করিয়া আত্মসাত করা হয়।”

.....তদন্তকারে রয়েল টাচ ট্রেডিং কর্পোরেশন এর মালিক জনাব আহমেদ কামাল চৌধুরীকে জিজ্ঞাসাবাদ করিলে তিনি জানান আইএফসিআই ব্যাংক লিঃ টেরী বাজার শাখায় তাহার নামে চলতি হিসাব নং ৩৬৩৩০১৭৯৪২ খোলা আছে। যাহা তাহার আত্মীয় আইএফআইসি ব্যাংকের অফিসার জনাব শফিউল আজম পরিচালনা করিয়াছে। তাহার হিসাবে চেক স্বাক্ষর করিয়া শফিউল আজম এর নিকট রাখিতেন। জনাব শফিউল আজম তাহার হিসাবে টাকা জমা করিয়া উত্তোলন করিতেন। সেলিম এন্ড ব্রাদার্স এর হিসাব হইতে তাহার হিসাবে প্রেরিত ১৮,২৫,৭৬০/- টাকার ব্যাপারে তিনি জানেন না। তিনি উক্ত টাকা উত্তোলন করেন নাই। তদন্তকালে তাহার বক্তব্য গ্রহণযোগ্য বলিয়া বিবেচিত হয় নাই।”

.....মেসার্স রয়েল টাচ ট্রেডিং এর মালিক জনাব আহমেদ কামাল চৌধুরী অসৎ উদ্দেশ্যে ব্যবস্থাপক জনাব ফয়েজ আহমেদ সিদ্দিকী ও অফিসার গ্রেড-১ জনাব শফিউল আজম এর সহায়তায় পরস্পর যোগসাজসে সেলিম এন্ড ব্রাদার্স এর নামে

সৃজিত ভূয়া এসওডি হিসাব নং ১৬০৬১ হইতে তাহার টেরী বাজার শাখার হিসাব নং ১৭৯৪২ এর বিপরীতে ৬টি চেকের মাধ্যমে ১৮,২৫,৭৬০/- টাকা জালজালিয়াতিমূলক ভাবে ট্রান্সফার করিয়া ট্রান্সফারকৃত টাকা তিনি নিজে উত্তোলন করিয়া উত্তোলিত টাকা হইতে ৯,২২,২৮০/- টাকা জমা দিয়া অবশিষ্ট (১৮,২৫,৭৬০-৯,২২,২৮০/-)= ৯,০৩,৪৮০/- টাকা পরস্পর যোগসাজসে আত্মসাত করতঃ দঃ বিঃ ৪০৬/৪৬৭/৪৭১/১০৯ ধারা বলে শাস্তিযোগ্য অপরাধ করিয়াছেন।”

On perusal of the petition of complaint (now FIR) and the charge-sheet, it is crystal clear that prima facie specific allegations of forgery and misappropriation of money have been disclosed against the accused-petitioner and others who in collaboration with each other created and opened SOD loan account in the name of M/S Selim and Brothers forging the signature and seal of the proprietor of M/S Selim and Brothers and transmitted the loan money in the accounts of the firms of the accused persons including the present accused-petitioner through the false and forged cheques

of M/S Selim and Brothers and then the accused-petitioner and others using their cheques withdrew the money and misappropriated the same.

It is worthwhile to mention that following the aforesaid allegations as disclosed in the prosecution materials, the learned Divisional Special Judge, by an order dated 30.06.2013, rightly framed charge against all the accused-persons including the present accused-petitioner under Sections 408 / 409 / 402 / 406 / 467 / 468 / 471 / 109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

It is pertinent to note that the allegations that have been brought against the accused-petitioner and others are highly disputed and complicated questions of fact which cannot be decided by this court invoking its jurisdiction under Section 561A of the Code of Criminal Procedure. The disputed questions of fact may

only be resolved by the learned trial judge taking evidence from the witnesses of the respective parties. Furthermore, this court has no jurisdiction to look into the factual aspects of the case unless the conditions for quashing a proceeding are fulfilled.

Having considered all the facts and circumstances of the case, the submissions of the learned Advocates for the respective parties and the propositions of law cited and discussed above, we do not find any illegality or infirmity in the impugned proceeding and accordingly, we do not find any merit in this Rule.

In consequence thereof, the Rule is discharged.

Consequently, the order of stay granted at the time of issuance of the Rule stands vacated.

The learned judge of the trial court is directed to proceed with the case in accordance with law and conclude the trial of the case as early as possible

preferably within 01 (one) year from the date of receipt of this judgment and order positively and without fail.

Let a copy of this judgment and order be communicated to the learned judge of the concerned court below and the Chairman, Anti-Corruption Commission, at once.

Khizir Hayat, J:

I agree.