

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

Present:

Mr. Justice Bhabani Prasad Singha
And
Mr. Justice Mustafa Zaman Islam

Criminal Appeal No. 4813 of 2007

Nazmul Huda and another.

.....Convict-appellants.

-Versus-

The State and another

.....Respondents.

Mr. Barrister Nazmul Huda, in person with
Mr. Md. Ahasanur Rahman, Advocate

..... For the Appellant no.1

Mr. Ajmalul Hossain Q.C, Senior Advocate

.....for the Appellant no.2

Mr. Md. Khurshid Alam Khan, Advocate

...For the Respondent no. 2, Anti-Corruption
commission.

The State.....no one appears.

Heard on:30.07.2017, 23.07.2017
02.08.2017 ,24.08.2017, 24.11.2017
and Judgment on: 08.11.2017.

Mustafa Zaman Islam, J:

This criminal appeal is directed against the judgment and order of conviction and sentence dated 26.08.2007 passed by the learned Special Judge, Court No.2, Dhaka in Special Case No.02 of 2007 arising out of Dhanmondi Police Station Case No. 70 dated 21.03.2007 corresponding to G.R No. 164 of 2007 convicting the accused appellant no.1 Nazmul Huda under

section 5(2) of the Prevention of Corruption Act, 1947 and under section 161 of the Penal Code sentencing him to suffer rigorous Imprisonment for 7 years and to pay fine of tk. 2,50,00,000/-, in default, to suffer rigorous imprisonment for 1 (one) year more with an order to confiscate the gratification of tk. 2,40,00,000/- to the State and also convicting the accused appellant no.2 Ms. Sigma Huda under sections 161/109 of the penal code sentencing her to suffer simple imprisonment for 3 years.

In order to appreciate the grievance of the accused-appellants, the relevant facts, in short, are that one Shafiqul Islam, Deputy Director of the Anti Corruption Commission being informant lodged an FIR with Dhanmondi Police Station against the accused persons Ms. Sigma Huda and Barrister Nazmul Huda and the said case was registered as Dhanmondi Police Station Case No. 70 dated 21.03.2007 under sections 5(2) of the Prevention of Corruption Act, 1947 read with sections 26 and 27 of the Anti Corruption Commission Act, 2004 and section 109 of the Penal Code alleging, inter alia, that Mir Zahir Hossain has been working as an enlisted contractor with the Roads and Highways Department under the Ministry

of Communications since 1988 and received 5 (five) work orders from the Ministry of Communications on 14th “December, 2004, 10th “March, 2005, 22nd January, 2004 (two work orders) and 04th, “November, 2004 respectively. Upon receiving the above mentioned 5 (five) work orders Mir Zahir Hossain went to the their Communications Minister Mr. Nazmul Huda’s house and personally paid him altogether tk. 2,40,00,000/- (Taka two Crore and forty lac) in three cheques as bribe for the said work orders on 12th February, 2005 and 21st April, 2005 respectively. Out of the said total money of Tk. 2,40,00,000/- (Taka two Crore and forty lac), two cash cheques amounting to tk. 1 crore each and another cash cheque amounting to tk. 40,00,000/- (Taka forty Lac only) were deposited in the account of a weekly publication called the ‘Khoborer Antorale’ owned by the convict-accused-appellant no.2, on 27th February, 2005 and 23rd April respectively. Subsequently, the convict-appellant no.2 withdrawn the said amount of tk.1,40,00,000/- (Taka one crore and Fourty lac) from her account through different cheques and opened two fixed deposits in the names of her two daughters in the sum of tk. 50 lac each. In the light of the above, Nazmul Huda and

Mrs. Sigma Huda have committed an offence under section 5(2) of the Anti Corruption Act, 1947, section 26 and 27 of the Anti Corruption Commission Act, 2004 and section 109 of the Penal Code along with section 15 of Emergency Power Rules, 2007 by taking bribe from Mr. Zahir Hossain (the PW 38). Ms. Sigma Huda has aided and abetted Nazmul Huda in committing the crime under section 109 of the Penal Code.

Thereafter, the mater was taken up for investigation and after investigation, the Investigating Officer submitted charge sheet dated 04.06.2007 against the convict-appellant no.1 under sections 5(2) of the Prevention of Corruption Act, 1947 read with 161 of penal code and against the convict-appellant no.2 Ms. Sigma Huda under sections 109 and 161 of the Penal Code.

Eventually, the case was sent to the learned Metropolitan Special Judge Court no.1, Dhaka for trial and disposal which was registered as Metropolitan Special Case No.27 of 2007. The learned Metropolitan Special Judge took cognizance against the accused-appellants. Subsequently, the case record was transferred to the Special Court no.2, Dhaka wherein it was renumbered as Special Case No.2 of 2007 who after hearing the parties, framed charge against the convict-appellant no.1 under

section 5(2) of the Prevention of Corruption Act read with section 161 of the Penal Code and against the convict-appellant no.2 under sections 161/109 of the Penal Code and the same were read over to them to which both of the appellants pleaded not guilty and claimed to be tried in accordance with law.

To substantiate the case, prosecution examined as many as 40 witnesses. On the other hand, the convict-appellants in their defence examined as many as 8 witnesses including the appellant nos.1 and 2. The convict accused persons were questioned under section 342 of the Code of Criminal Procedure about the incriminating evidence and the circumstances but the accused denied persons all of them and pleaded innocence again.

The defence case as it transpires from the trend of cross-examination of the prosecution witnesses and the defence witnesses is that of innocence and that they had been falsely implicated in the case out of political enmity and grudge. The instant proceedings of Special Case No.02 of 2007 is without jurisdiction and illegal as it was held during emergency having no validity in the eye of law and charges having been framed under an Ordinance. Further defence case is that the

proceedings was totally out of jurisdiction as trial under the Emergency Ordinance, 2007 can take place in relation to the events which takes place while the emergency is in force and admittedly, the offence alleged in the instant case having taken place in 2005 long before the promulgation of emergency on 11th January 2007. The Special Judge, Court No.2 by its judgment dated 26.08.2007 held that mandatory requirement of section 5(1) (d) of the Prevention of Corruption Act i.e. demand of illegal gratification and its acceptance were proved against the appellants beyond reasonable doubt by the prosecution and hence, the accused-appellants were liable to be convicted for the offence in question. They were, accordingly convicted and directed to under-go sentences as mentioned above.

Aggrieved, the appellants filed the Criminal appeal before the High Court Division against the judgment and order dated 26.08.2007.

At the very outset, it is necessary to state that the appellants preferred an appeal against the impugned judgment and order dated 26.08.2007 in Special Case No.02 of 2007 under section 5(2) of the prevention of corruption Act read with sections 161/109 of the Penal Code. After hearing the said

appeal, their Lordships were pleased to allow the appeal and therefore, the judgment and order dated 26.08.2007 passed by the Special Judge was set aside and acquitted them from the charge levelled against them. Against the said Judgment and order, the respondent state filed a Civil Petition for Leave to Appeal before the Appellate Division. Upon hearing of the said Civil Petition for Leave to Appeal their lordships was pleased to dispose of the said leave to appeal on 01.12.2014 directing the High Court Division to dispose of the appeal on merit and this matter is sent back on remand to the High Court Division for disposal of the appeal on merit afresh. Thereafter, on 21.05.2007 Hon'ble Appellant Division sent the aforesaid appeal to this Division bench of the High Court Division presided over by Mr. Bhabani Prasad Singha, J, with direction to dispose of the Criminal Appeal No.4813 of 2007 on priority basis not later than within 8 weeks from the receipt of the said order.

At this juncture, the question which arises for consideration in this appeal is whether Special Judge was justified in convicting and awarding sentence to the appellants for the offences as mentioned above.

Barrister Mr. Nazmul Huda, appeared in person (appellant no.1) with Mr. Ahasanur Rahman, Advocate and Mr. Ajmalul Hossain QC, Senior Advocate appearing on behalf of the appellant no.2.

Barrister Mr. Nazmul Huda, in person submits while assailing the legality and correctness of the impugned judgment and order contended that the ingredients of the offence under section 5(2) of the Act, 1947 are mainly that the accused must be a public servant and the accused must commit some relevant criminal misconduct as defined in section 5(1) of the Act, 1947. The demand of illegal gratification and its eventual acceptance by the appellant no.1 from the witnesses nos.38 and 39 were not proved beyond reasonable doubt by the prosecution and hence, the conviction of the appellant no.1 is bad in law. Mr. Huda submits that the Special Judge should have believed the defence version which was more plausible. He elaborated his submissions by taking us through the evidence on record. He submits that the payment of tk.2.40 crore was not gratification or pecuniary advantage to the accused-appellant no.1 but was paid as part of an investment made by P.w. 38 Mir Zahir Hossain in the weekly newspaper 'Khoborer Antorale'. The

appellant no. 1 was not even present at the place and at the time when the alleged payment of tk.2 crore by 2 chaques was made on 12.02.2005 at 10.00 pm at the Dhanmondi residence of the appellant no.1. The payment of tk.2.40 crores by Mir Zahir Hossain as PW 38 was made directly by him into the account of Khoborer Anotrale by the 3 cash chaques brought in evidence and no cheque were handed over by PW38 Mir Zahir Hossain to the appellant no.1. He drew our attention that the notice under section 26(1) of the Anti-Corruption Act, 2004 was served on 22.02.2007 on which date there was no Commission. Mr. Huda pointed out that such notice which in fact is in the nature of an order can only be issued by the Anti-Corruption Commission. He asserted that the Secretary of the said Commission had no lawful authority to issue such notice. He next submits that the judgment and order of conviction and sentence having been passed on the basis of the memo. dated 22.02.2007 is void-ab-initio. The very initiation of the proceedings is illegal, and have no lawful force as it is based on the memo. dated 11.02.2007. He lastly, submits that the appellant no.1 was in jail when the notice was served on him and he was not allowed to come out from jail custody. So, the

notice in question is no notice in the eye of law. In support of his submissions the learned Advocate referred the case of Anti Corruption Commission vs. Dr. Mohiuddin Khan Alomgir reported in 62 DLR (AD) 290 AKM Mukhlesur Rahman Vs. State, 45 DLR 626, Sabur Alam and others Vs. State, 51 DLR 16, Abdul Jabbar Vs. State, 35 DLR 257

Mr. Ajmalul Hossain QC, Senior Advocate appearing on behalf of the appellant no.2 submits that the appellant no.2 has not aided her husband as the appellant no.1 in committing the alleged offence under section 5(2) of the Prevention of Corruption Act, 1947 and section 161 of the Penal Code prior to or at the time of their commission. He submits that the prosecution has not been able to make out any case against the appellant no. 2, alternatively, the totality of the evidence before the Court both from prosecution witnesses and the defence witnesses show that the evidence of the allegation of abetting the alleged bribe taking has been proved to be false. Therefore, the appellant no. 2, should be found not guilty of the offence alleged against her. He submits that no offence has been committed by the appellant no.1 under section 5(2) of the Act or section 161 of the Penal Code. Therefore, the question of

abatement by the appellant no.2 under section 109 of the Penal code does not arise. He next submits that there is no allegation or evidence of physical presence of the appellant no.2 Ms. Sigma Huda at any time when alleged offence were allegedly committed by the appellant no.1 or on any relevant dates. Therefore, there is no evidence of any overt or positive act of instigation, conspiracy or aiding principal accused appellant no. 1 at the time of or prior to the commission of the alleged offence against the appellant no.2. He lastly submits that there is no allegation or any evidence led by the prosecution that the appellant no. 2 was present at the Dhanmondi residence of appellant no. 1 and that, even the pw. 38, Mir Zahir Hossain and pw. 39 Aftabuddin did not say in their evidence that Appellant no. 2 was present therein.

Per contra, Md. Khorshid Alam Khan, the learned Advocate appearing on behalf of the respondent no.2 Anti-Corruption Commission submits that no case is made out to interfere with the impugned judgment as according to him and two mandatory requirement of gratification and its acceptance by the appellant no. 1 from the PW38 and PW39 are made out by the prosecution beyond reasonable doubt and hence, the

appeal deserves to be dismissed. He submits that the trial Court rightly and correctly convicted the appellants and as such, appeal should be dismissed. Mr. Khan next submits that there is no necessity of section 5(2) of the Prevention of Corruption Act with regard to alibi that is defence witnesses in this case. Mr. Huda in person without entering into the merit of the appeal on technical point relied upon the case of 62 DLR (AD)290 which has no manner of application in this appeal which is a different issue.

In order to appreciate their submission we have gone through the record and given our anxious consideration.

Let us now weigh and sift the evidence on record as adduced by the prosecution to prove the charges against the convicting appellants.

PW1 Shafiqul Islam is the Deputy Director of Anti-Corruption Commission. As the informant of the case he deposed that, in course of enquiry, pursuant to memo. dated 22.02.2007 he came to know that regarding disproportionate wealth of former Communications Minister Barrister Nazmul Huda accepted bribe of tk.2.40 crore from pw. 38, Mir Zahir Hossain, Managing Director of Mir Akhter Hossain Limited for

doing favour for different construction works of Roads and Highways Department under the Ministry of communications. He stated that after inquiry into the matter, he submitted a report to which the commission approved him to lodge a first information report against the appellant nos. 1 and 2. During inquiry, he examined Mir Zahir Hossain, who is a contractor under Ministry of Communications. Mir Zahir Hossain paid tk. 2.40 crore as bribe to the appellant no. 1 Nazmul Huda for doing favour for different constructions works. pw.38, Mir Zahir Hossain stated that since 1988, he has been working as contractor of different works of Periodic Maintenance Program-(PMP) under Roads and Highways Department. On 12.02.2005, at about 10.00 pm at night he along with his business partner pw. 39, Khan Md. Aftabuddin went to the Dhanmondi residence of appellant no.1 Barrister Nazmul Huda and handed over tk.2 crore as bribe by two different cash cheques 1 crore- each cheque Particulars of two cash cheques are: 1) Prime Bank Limited, Motijheel Branch, account no.21109756 Cheque no.899601 dated 12.02.2005 and Standard Bank Limited, Dhanmondi Branch. Account no.011434001347 Cheque no. SBLSB 321100 dated 12.02.2005. He deposed that

appellant no. 1 demanded more bribe for which on 21.04.2005 he along with pw. 39, Khan Md. Aftabuddin went at the said Dhanmondi residence of appellant no. 1 and handed over tk.40 lakh as bribe by a single cash cheque. Particular of the cash cheque is: Uttara Bank Limited, Kalabagan Branch, Account no.61-2115 cheque no.73012546 dated 21.04.2005. Pw. 38 stated that he handed over the said three cheques to the appellant no. 1 as bribe for doing favour in the following works:-

- a) PMP -2004-2005 (DBST/ overly works) Contract no. PMP 2004-2005/12 (1) Rajshahi- Natore Road (11) Rajshahi –Nawbgonj Road(iii) Rajshahi greater Road total tk. 9,99,88,754/25
- b) DFID supported -2004-2005 Flood damaged restoration work of Bhultha –Rupgonj-Kayedpara Rampura, Tk. 4,16,22,772/75.
- c) PMP- 2003-2004, Contract no. PMP 2003-2004/12, Faridpur-Kamarkhali Road, Tk. 5,64,96,651/54.
- d) PMP-2003-2004, contract no. PMP 2003-04/10, Rajshahi- Natore Road, tk. 67137055/65 and

e) Construction of vertical Extension works of 4th and 5th floor, Setu Bhaban, Banani, –tk. 4,1451225/-. He stated in his chief that the cheques were deposited with Agrani Bank, Amin Court Corporate Branch, Motijheel in account no. CD 1417-0 of “Khoborer Antoruley” owned by appellant no. 2 Ms. Signa Huda, wife of appellant no. 1. Ms. Huda maintains and operates the said account since 2.06.2004. Three cheques were credited in the said account on 17.02.2005 and 23-04-2005 and on the dates those were debited from the accounts of Pw. 38, Mir Zahir Hossain with Prime Bank Ltd. Motijheel branch and Standred Bank.

He deposed that appellant no. 1, while was Communications Minister in respect of official acts on 12.02.2005 and 21.04.2005 at night at his Dhanmondi residence accepted gratification of tk.2.40 crore as a reward for doing official act from pw. 38, Mir Zahir Hossain.

In his cross examination, he stated that on 09.10.2005, he was attached with Anti-Corruption Commission, Dhaka as the Deputy Director. BNP-led four party alliance handed over

power on 28.10.2006 and state of Emergency was declared on 11.01.2007. Before that, he did not enquire into any allegation against the accused. He stated that on the basis of documents he lodged the FIR. He also stated in his cross that three cheques and debit-credit documents are the proof of taking bribe.

PW2 Md. Monwar Hossain, Inspector who is the Officer-in-Charge, of Dhanmondi Police Station. He recorded the FIR Form on 21.03.2007 being Dhanmondi Police Station Case No.70 dated 21.03.2007 against the accused Barrister Nazmul Huda and his wife Ms. Sigma Huda.

PW3 Md. Shamsul Huq is the Senior Executive Officer of Prime Bank Limited, Motijheel Branch performing the duty as deposit-in-charge. He deposed that on 29.04.2007 at about 12:15 hours the Investigating Officer of this case seized some documents which include account opening form of pw. 38, Mir Zahir Hosssin's SB Account no.21109756, signature card and cheque no. SAA0899601 dated 12.02.2005 of SB Account no. 21109756 for tk.1 crore which was sent to their branch by Agrani Bank, Amin Court Corporate branch, through Bangladesh Bank clearing house. The Investigating Officer also seized the statement of account no.211097756 of Mir Zahir

Hossain from 27.09.2000 to 29.04.2007. It is found from the statement of account that on 17.12.2005 tk. 1 crore was withdrawn by cheque no.899601 through clearing house. He signed the Seizure List (exhibit-5). He proved his signature in it (Exhibit-5/1). He further deposed that cheque no.SAA0899601 dated 12.02.2005 of Mir Zahir Hossain for tk.1 crore was deposited on 17/02/2005 in the account of the owner of 'Khoborer Antoraley' with Agrani Bank, Amin Court Corporate Branch. The said cheque bears crossing seal and clearing seal and concerned bank officer's endorsement of the said Agrani Bank Branch. He signed the cheque as passing officer which bears seal for the owner of Khoborer Antoraley. He debited the cheque in Savings Account no.21109756.

In his cross examination, he stated that the account of Pw. 38 Mir Zahir Hossain was opened on 27.09.2000 but he joined Prime Bank Limited. Motijheel Branch on 21.03.2002.

PW4 Md. Masud Miah is the officer of the standard Chartered Bank, Dhanmondi Branch who deposed that on 30.04.2007 at about 2:30 p.m. the Investigating Officer of this case seized some documents from his branch which include Account Opening Form of PW38 Mir Zahir Hossain being Ac.

no.34001347, signature card, cheque no.321100 dated 12.02.2005 for tk.1 crore and statement of account from 28.12.2002 to 11.04.2007. He proved the Seizure List as Exhibit-7 which bears his signature (Exhibit-7/1).

He further deposed that on 17.02.2005 cheque no.321100 dated 12.02.2005 of SB Account no.34001347 was presented to their Branch by Agrani Bank, Amin Court Corporate Branch, Motijheel, through clearing house. He verified signature on the cheque and debited it.

In his cross, he stated that seized documents show personal information of p.w38, Mir Zahir Hossian and Transaction Profile shows that transaction could be made up to tk. 1 crore.

PW5-Md. Sirajul Haque is the Senior Principle Officer and Manager of Uttara Bank Limited, Kalabagan Branch, who deposed that on 30.04.2007, the Investigating Officer of this case seized documents from his officer relating to CD Account no.2115 of Mir Akter Hossain Limited. He seized cheque no. 7012546 dated 21.04.2005 for tk.40 lakh which was paid through clearing house. He also seized statement of account

from 01.01.2005 to 24.04.2007. He proved the Seizure List as Exhibit-9 and his signature therein as Exhibit 9/1.

In his cross, he stated that it was a cheque anybody can encash it on cash counter.

PW-6 Md. Ibrahim Khalil is Senior Principal Officer of Agrani Bank, Amin Court Corporate Branch, Motijheel. He stated that on 26.04.2007, the Investigating Officer of this case seized some documents from his office which include account opening form of CD account no.1417-0 of appellant no. 2, Ms. Huda, as owner of “Khoborer Antoraley” as the account holder. He also seized specimen signature card of Mrs. Sigma Huda and deposit voucher dated 17.02.2005 of cheque no. 0899601 dated 12.02.2005 of SB account no.21109756 of Prime Bank Limited, Motijheel Branch for tk.1 crore and deposit voucher dated 17.02.2005 of Cheque no. 321100 dated 12.02.2006 of SB account no. 34001347 of Standard Bank Limited, Dhanmondi Branch, for tk.1 crore and deposit voucher dated 23.04.2005 of cheque no.7021546 dated 21.04.2005 of Uttara Bank Ltd., Kalabagan Branch and statement of account from 02.04.2004 to 12.02.2007 where it is found that all the above cheques, through clearing house, have been credited in CD

account no.1417-0. He also deposed that on 15.05.2007, I.O seized as many as eight items from his office. Those are :-1) cheque no. 03B6603493 dated 07.06.2005 of CD Account no. 1417-0 for Tk. 20 lakh signed and issued by appellant no. 2 Ms. Sigma Huda. This cheque was debited through clearing house in account of one Khirul Huda in the local office of Dutch Bangla Bank Ltd. (2) Cheque no. 03B6603495 dated 13.06.2005 of CD Account no. 1417-0 which bears pay to appellant no. 2 and signature of her as account holder. On 13.06.2005, tk. 20 lakh was withdrawn by that cheque (3) Cheque no. 03B6603499 dated 27.05.2005 signed by the appellant no. 2 by which on 27.06.2005 an amount of tk. 50 lakh was withdrawn, (4) Cheque no. 03B6603498 dated 27.06.2005 of CD account no. 1417-0-signed and issued by Ms. Sigma Huda by which on 27.06.2005 an amount of tk. 50 lakh was withdrawn, (5) pay-order form dated 27.06.2005 of tk. 50 lakh which bears name and signature of Antara Selima Huda as payee. (6) pay order form dated 27.06.2005 of tk. 50 lakh which bears name and signature of Srabanti Amina Huda as payee, (7) pay order no. 08B2498967 dated 27.06.2005 of tk. 50 lakh which was credited on 28.06.2005 through clearing house in the

HSBC account of Antara Selima Huda and (8) pay order no. 08B2498969 dated 27.06.2005 of tk. 50 lakh which was credited on 28.06.2005 through clearing house in the HSBC account of Srabanti Amina Huda.

He stated in his cross examination that it was found in the declaration form that Ms. Sigma Huda was the publisher of weekly news paper 'Khaborer Antoraly'. She was an Advocate; At the time of opening of the account he was not attached to the branch.

PW7- ATM Mafuzul Huq, officer of Agrani Bank, Amin Court Corporate Branch, Motijheel, who proved the Seizure List Exhibit-11 which bears his signature i.e. Exhibit-11/2.

In his cross examination, he stated that it was found in the declaration form that Ms. Sigma Huda was the publisher of weekly newspaper "Khaborer Antoralay"

PW8- Md. Iftexhar Uddin, the Vice-President of Prime Bank Limited, Motijheel Branch deposed that on 17.02.2005 they received a cash cheque for tk.1 crore from Agrani Bank, Amin Court Corporate Branch, Motijheel, through Bangladesh Bank clearing house for payment. The cheque was cancelled.

PW9- Christopher Raju Gomes, Customer Service Manager of HSBC, Motijheel Branch deposed that on 23.05.2007 the Investigating Officer of this case seized as many as eight items from his office. Those are: 1) Account opening form, Photograph and specimen signature card of Antara Selima Huda, 2) FDR opening form –FDR account no. 002-131993-101 which was opened on 29.06.2005 for tk.50 lakh in favour of Antara Selima Huda and her specimen signature, 3) Deposite voucher no. B203A0015 P3910071 through which pay order no. 08B2498967 dated 27.06.2005 for tk.50 lakh was deposited in the account of Antara Selima Huda, 4) Statement of Account of Savings Account no. 002-131993-001 of Antara Selima Huda, 5) Account opening form of Srabanti Amina Huda, photograph and specimen signature card, 6) FDR opening form of Srabanti Amina Huda-FDR account no. 002.132009-101 which was opened on 29.06.2005 for tk.50 lakh in favour of Srabanti Amina Huda and her specimen signature, 7) Deposit voucher no. B203A 0016 P391 0071 dated 27.06.2005 through which pay order no. 08B2498969 dated 27.06.2005 for tk. 50 lakh was deposited in the account of

Srabanti Amina Huda and 8) statement of account of Savings Account no. 002-132009-001 of Srabanti Amina Huda.

PW-10 ASM Saiful Bari, customer service officer of HSBC, Motijheel Branch, is a seizure list witness. The defence did not cross examine him.

PW-11 Richard Rudolf Gomes, customer service officer of HSBC, Motijheel Branch is also a seizure list witness. The defence did not cross examine him.

PW-12 Saidul Amin, Branch Manager of HSBC, Motijheel Branch deposed that by pay order dated 28.06.2005 from Agrani Bank, Amin Court Corporate Branch, an amount of tk.50 lakh was deposited in Savings Account no. 002.131993-001 of Antara Selima Huda which was deposited on 26.06.2005 by placement in FDR account of her. By Pay order dated 28.06.2005 from the same bank was deposited in Savings Account no. 002-132009-001 of Srabanti Amina Huda which was deposited on 29.06.2005 by placement in FDR account of her. He also stated that they were daughters of appellant nos. 1 and 2 as per record.

PW-13 Md. Jashim Uddin Bhuiyan, Assistant Engineer, PMD of Roads and Highways stated that on 08.05.2007 the

Investigating Officer of this case seized as many as nine items from his office. Those were:-

- 1) Tender documents of periodic maintenance works on Rajshahi-Natore and Natore–Bogra road under contract no. PMP-2003-2004/10 submitted by Mir Akter Hossain Ltd. (2) Bid evaluation report (3) Notice to commence (4) tender documents package no. 12. (5) Bid evaluation report of PMP 2003-2004. (6) Notice of commence of PMP 2003-2004(7) Tender documents PMP 2004-2005 submitted by Mir Akter Hossain Ltd. (8) Bid evaluation report of PMP 2004-2005 (9) Letter of acceptance and notice to commence.

PW-14 Md. Niamat Ullah, Assistant Engineer, Dhaka Zone, Roads and Highways Department who deposed that on 08.05.2007 the investigating officer of this case seized tender documents of Mir Akhter Hossain Ltd. from his office. Those are:-Tender documents of DFID supported 2004-2005 Flood damaged restoration works submitted by Mir Akhter Hossain Ltd. Tender evaluation report of the said work and notice to commencement of the said work.

PW-15 Md. Shahid Ullah, stenographer to Superintending Engineer of Roads and Highways Department was Seizure List witness.

PW-16 Md. Ferdous Azad Dipu, Executive officer of Prime Bank Limited, Motijheel Branch was also Seizure List witness.

PW-17 Md. Yousuf Ali, Assistant Vice-President of Prime Bank Limited, Motijheel Branch, was also the Seizure List witness.

PW-18 Khalilur Rahman, Senior Principal Officer of Uttara Bank Limited, Kalabagan Branch was a Seizure List witness.

PW-19 Md. Abdus Samad, Principal Officer of Uttara Bank Limited, Kalabagan Branch was a Seizure List witness.

PW-20 Kazi Mezbahuddin, Executive Officer of Standard Bank Limited, Dhanmondi Branch was a Seizure List witness.

PW-21 Niamot Uddin Ahmed, Deputy Branch Manager of Standard Bank Limited, Dhanmondi Branch was a Seizure List witness.

PW-22 Md. Motaleb Hossain, currently Branch Manager of Standard Bank Limited, Gulshan-1 Branch deposed that on 30.04.2007 he was the Branch Manager of Dhanmondi Branch of the same Bank. The cheque was sent to him for cancellation and he finally cancelled cheque no.321100 dated 12.02.2005 for tk.1 crore which was sent by Agrani Bank, Amin Court Corporate Branch, through Bangladesh Bank clearing house.

PW-23 Aminuddin Bhuiyan, currently Assistant General Manager of Uttara Bank Limited, Kawran Bazar Branch deposed that he was Branch Manager, Kalabagan Branch of the same Bank at the relevant time. He finally released cash cheque no.1012546 dated 21.04.2005 for tk.40 lakh which was sent by Agrani Bank, Amin Court Corporate Branch, through Bangladesh Bank clearing house for payment.

PW-24 Md. Abdur Razzaq, Officer of Agrani Bank, Amin Court Corporate Branch, Dhaka was the witness of two Seizure List.

PW-25 Md. Azharul Islam, Assistant General Manager of Agrani Bank, Amin Court Corporate Branch, Motijheel. He deposed that owner of “Khoborer Antoraley” Ms. Sigma Huda applied for opening account with their Branch. On receipt of the

application, as per provision of the Bank, he had given permission to open account being no.1417-0. On 27.05.2005 appellant no. 2 Ms. Sigma Huda issued and presented cheque no. 03B6603498 for tk.50 lakh to encash it on cash-counter. He accorded permission for payment. On the same date Ms. Sigma Huda issued and presented cheque no. 03B6603499 for tk. 50 lakh to encash it on cash-counter.

In his cross examination, he stated that at the time of opening of the account most probably appellant no. 2, Ms. Huda was personally present at the branch. He found in the forum-B that Ms. Huda was the publisher of “Khoborer Antoralay”. He also stated that no resolution copy of “Khoborer Antoralay” was attached with the application.

PW-26 Md. Mofizul Islam, Senior Officer of Agrani Bank, Amin Court Corporate Branch, Motijheel deposed that on 16.02.2005, he received cheque no.321100 dated 12.02.2005 for tk.1 crore of Standard Bank Limited, Dhanmondi Branch, which was deposited in CD account no.1417-0. He signed the deposit voucher and the cheque on its back. On the same date cheque no. 0899601 for tk.1 crore was deposited in CD account

no. 1417-0. He signed the deposit voucher and the cheque on its back.

In his cross examination, he stated that both the cheques were deposited in the account of 'Khaborar Antoralay'.

PW-27 Md. Mofizullah Miah. Officer of Agrani Bank, Jatrabari Branch stated that he was attached to Amin Court Corporate Branch of the same Bank at the relevant time. He deposed that cheque no. 7012546 for tk. 40 lakh of Uttara Bank Limited, Kalabagan Branch was deposited in CD account no. 1417-0.

He stated in his cross examination that he did not know actually who had written the deposit voucher.

PW-28 Md. Tafdil Hossain, Senior Officer, Principal Branch of Agrani Bank, Dilkusha stated that he was attached to Amin Court Corporate Branch of the same Bank at the relevant time. He stated that cheque no. 0899601 dated 12-02-2005 for tk. 1 crore of Prime Bank Limited of Motijheel Branch, was deposited in CD account no. 1417-0. Deposit voucher bears his signature. Cheque no. 321100 dated 12-02-2005 for tk. 1 crore of Standard Bank Limited, Dhanmondi Branch was deposited in CD account no. 1417-0. Deposit voucher bare his signature.

Cheque no. 7012546 dated 21-04-2005 for tk. 40 lakh of Uttara Bank Limited, Kalabagan Branch, was deposited in CD account no. 1417-0.

He stated in his cross-examination that deposit vouchers were written by the depositor unknown to him.

PW-29 Syed Ayub Ali, currently Principal Officer of Principal Branch of Agrani Bank, Dilkusha. At the relevant time he was attached to Amin Court Corporate Branch of the same Bank. He deposed that he was remittance-in-charge. On 27-06-2005, he received two pay-order application forms of tk. 50 lakh each. Pay order no. 2498967 dated 27-06-2005 for tk. 50 lakh in favour of Antara Selima Huda. He signed the pay-order as final authority. Pay-order no. 2498969 dated 27-06-2005 for Tk. 50 lakh in favour of Srabanti Amina Huda. He signed the pay-order as final authority. On the following day HSBC collected the amount in the accounts of them. They accordingly credited it HSBC endorsed both the pay orders with clearing seal.

PW-30 AR Khairuzzaman, Assistant Engineer, Technical section of Jamuna Multi-Purpose Bridge Authority deposed that on 10-05-2007 at about 11-00 am, the Investigating Officer

seized some documents from his office in presume of witnesses. Those were; (1) work order in favour of Mir Akter Hossain Ltd. and related papers for construction of Setu Bhavan third phase. (2) pw accounts form 27 running bill-c submitted by Mir Akter Hossain Ltd.

P.W 31 Md. Sharful Islam Sarker, Assistant Engineer, Technical section of Jamuna Multi-purpose Bridge Authority was a seizure list witness.

PW-32 Syed Razob Ali, Assistant Engineer, Muktarpur Bridge Project of Jamuna Multi-purpose Bridge Authority was also a seizure list witness.

PW-33 Md. Amzad Hossain was the Additional Chief Engineer of Roads and Highways Department at the relevant time. He went on LPR on 02-05-2005. He deposed that on 31-01-2004 he was in the service as Additional Chief Engineer. He issued notice to Commence or work-order under his signature in favour of Mir Akhter Hossain Limited for PMP 2003-2004 Contract no. PMP 2003-2004/10. He also issued Notice to Commence or work-order under his signature in favour of Mir Akhter Hossain Limited for PMP 2003-2004 Contract no. PMP

2003-2004/12 having approved by the Ministry of Communications.

In his cross examination he stated that he was the Chief of Tender Evaluation committee. He sent proposal to the Ministry of Communications to issue notice to commerce or work order in favour of the lowest bidder proposal having been approved by the Ministry of Communications, subsequently he issued work order.

PW-34 SM Masudul Huq, Additional Chief Engineer of Roads and Highways Department at the relevant time deposed that on 21-12-2004, he was in the service as Additional Chief Engineer. On that date he issued notice to Commence or work-order under his signature in favour of Mir Akhter Hossain Limited for PMP 2003-2004 Contract no. PMP 2003-2004/12 having approved by the Ministry of Communications.

PW-35 Adam Ali Gazi, Additional Chief Engineer of Roads and Highways Department at the relevant time who deposed that on 20-03-2005 he was in the service as Additional Chief Engineer. On that date he issued notice to Commence or work-order under his signature in favour of Mir Akhter Hossain Limited for DFID supported 2004-2005 Flood Damaged

Restoration work having approved by the Ministry of Communications. On 10-03-2005, he issued letter of acceptance under his signature.

PW-36 Kazi Md. Ferdous, Executive Engineer, Head Office of Jamuna Multi-purpose Bridge Authority. He deposed that having approved and being directed by the Authority on 25-11-2004 he issued work-order in favour of Mir Akhter Hossain Limited for construction of vertical extension works of the 4th and 5th floor of Setu Bhaban, Banani, Dhaka.

PW-37 AZM Abdulla-Hel Baqui, Metropolitan Magistrate, Dhaka deposed that on 15-05-2007, he was also Metropolitan Magistrate, Dhaka. On that date he recorded statements of two witnesses, namely, pw.38 Mir Zahir Hossain and pw.39, Khan Md. Aftab uddin as Exhibits-23 and 24 which bore his signatures i.e. Exhibits-23/1 and 24/1 respectively.

PW-38 Mir Zahir Hossain, Managing Director of Mir Akhter Hossain Limited deposed that Mir Akhter Hossain Limited was a contractor-firm of special category of Roads and Highways, LGED, PWD etcetera. He has been working since 1987 as pre-qualified contractor under Roads and Highways in different projects against International Tenders financed by the

World Bank and the Asian Development Bank with foreign companies. In 2000, he worked jointly with a Chinese Company on getting Contract no. 3 for construction of Dhaka-Maowa-Mongla highway financed by the Asian Development Bank. He got work-order for PMP 2003-2004 Contract no. 10 and started working. In the midst of work, the then Communications Minister Barrister Nazmul Huda asked him to meet at his office. Accordingly, he did it when Communications Minister demanded tk.2 crore as bribe against the said PMP works. He made attempt to make the Minister understand that he was not able to pay such big amount. At this, the Minister got excited and threatened that he could not be able to complete work. Considering his danger, to keep the Minister cool for the time being, he appealed to Minister to grant him some time to meet later on. He disclosed it to his business friend pw.39, Engineer Khan Md. Aftabuddin and was passing days by avoiding the Minister. In October-November of 2004 he got work orders of vertical extension work of 4th 5th floor of Setu Bhaban, Banani, and PMP contract no.12. He started working. In the midst of work, Minister again asked him to meet. He did it. Minister told him that in the past you did two big works and

you are doing another two works. I directed you to pay money. But till now you have not paid that amount of money. Now if you do not pay me tk.3 crore then I will see how you get work and how you get payment of bills. Then, being frightened, thinking of huge manpower of the company, huge construction equipments and materials and large-scale investment, he agreed to give bribe to the Minister but the amount would be less than demand. When asked Minister told him to give cash cheque. He also stated that on 12.02.2005, as per decision, he along with pw 39, Khan Md. Aftabuddin went to the Dhanmondi-residence of the Minister with two cash cheques for tk.1 crore each. On going there they took seat inside the small drawing room on the second floor. After some time, Minister came in. PW 38 Mir Zahir Hossian handed over two cash-cheques for tk.1 crore each in total tk.2 crore to the Minister. Then he asked the Minister, Sir, would you encash or transfer in account. Because he is to inform his Bank for such big withdrawal. Then, the Minister ensured him that he would collect through the account of his wife appellant no. 2, Ms. Sigma Huda. Thereafter, he got another work of DFID. Minister again asked him to meet. He did it when Minister asked him to pay amount of tk.50 lakh, in

default, he would make the work stop. Then Mir Zahir Hossain was compelled to go the Minister's Dhanmondi-residence on 21.04.2005 along with Khan Md. Aftabuddin and handed over cash-cheque for tk.40 lakh to the Minister. Thereafter, he collected information that all the cash-cheques were encashed through collection by Agrani Bank, Amin Court Corporate Branch, Motijheel,

He stated in his cross examination that he started business as contractor in 1970. Initially, it was a partnership firm. His brother Mir Nasir Hossain and their mother were partners. It became limited company in 1980. He stated that before examination by the informant of the case, he did not inform any law enforcing agency of such allegation. The informant called him to informant's office over telephone and he went there for half an hour. The informant showed him photo copies of three cash-cheques and accused him whether those cash cheques were issued by him or not. Having seen, he confirmed that those cash cheques were issued by him and signature on those cheques are of him. Thereafter, on 15.05.2007, the Investigating Officer produced him before the Metropolitan Magistrate for recoding his statement under

section 164 of the Code of Criminal Procedure. He also stated that there were five separate sites for five works. Books of account were also separate. Mr. Sunil Kumar Saha is the Chief Accountant and he is responsible for each and every account of the company. He kept cheque books of the company and prepared three cash-cheques. The counter- foils of those three cash cheques were being with Mr. Sunil Kumar Saha who was still in the office of the company. But he did not come as witness in the dock. He stated that all the said five works had been completed. He got final bills except some of the Bank guarantee.

P.W39, Khan Md. Aftabuddin, was a business man by profession who deposed that he was basically an Engineer. He deal in contractor-business under name of the Reza Construction Limited. It was a special category contractor-firm enlisted by Roads and Highways Department. He was the Managing Director of the Firm. Mir Zahir Hossain of Mir Akhter Hossain Limited was his friend for long. In the month of October, 2004 pw. 38, Mir Zahir Hossain told him that he got some works under PMP. At that time communications Minister accused Barriester Nazmul Huda asked pw. 38, Mir Zahir

Hossain to meet at his office. Mir Zahir Hossain did it when accused Barrister Nazmul Huda demanded bribe of tk.2 crore, Mir Zahir Hossain expressed inability to pay it when the Minister threatened to stop work.

He deposed that in the month of January, 2005 Mir Zahir Hossain informed him that he (Mir Zahir Hossain) got some works of DFID and the works were running when Minister the accused Barrister Nazmul Huda called him (Mir Zahir Hossain) to office and demanded money for completing the works. On 12.02.2005, Mir Zahir Hossain called him to his office over phone and told him that it was settled with the Minister to handover cash-cheques for tk.2 crore to the Minister that night. He along with pw.38 Mir Zahir Hossain went to the Dhanmondi residence of the accused Nazmul Huda at 10.00 p.m. at night. They took seat inside the small drawing room. After some time, accused Nazmul Huda came in when Mir Zahir Hossain handed over two cash cheques fot tk. 2 crore each for tk. 1 crore. When asked, Minister told them that he would deposit the cash-cheques in his wife's account. After half an hour they came out.

He further stated that on 21.04.2005 Mir Zahir Hossain again called him to office and informed him that he got another work under roads and highways department. He further informed him that the Minister called him (Mir Zahir Hossain) at his Dhanmondi-residence that night. At about 10:00 pm at night he went to the Dhanmondi-residence along with Mir Zahir Hossain when Mir Zahir Hossain handed over cash cheque of tk. 40 lakh.

He stated in his cross that his firm was in contractor business since 1981. Mr. Abdul Monem, Managing Director of Abdul Momen Ltd. was his father-in-law. His father-in-law was the pioneer of construction of roads and Highways in Bangladesh financed by World Bank. He stated that usually they get tender by virtue of their eligibility. But after getting tender they have to cross many hurdles. He did not come here to speak out any allegation of his own. He heard from pw.38 Mir Zahir Hossain of the conversation between accused Nazmul Huda and Mir Zahir Hossain. He denied the suggestion by defence that he could not remember whether in 2004 the accused Nazmul Huda published weekly news paper "Khoborer Antoralay". He also denied the suggestion put to him by the

defence that no such occurrence of demanding bribe to pw38, Mir Zahir Hossian by Minister Huda did not occur or that he did not hear from Mir Zahir Hossain anything like that or that he did not go the Dhanmodhi residence of accused Nazmul Huda on 12.02.2005 and 21.04.2005 with Mir Zahir Hossain; that to promote “Khoborer Antoralay” from weekly to daily Mir Zahir Hossain along with him had discussion with the accused Nazmul Huda .

PW-40 Mirza Zahidul Alam, Assistant Director of Anti-corruption Commission, Dhaka who, the Investigating Officer of this case deposed that on 12.02.2007, he took the responsibility of investigation of this case. He examined the First Information Report of the Informant. On 26.04.2007 he seized as many as 6(six) items from Agrani Bank, Amin Court Corporate Branch, Motijheel. He proved Seizure List as Exhibit-11 which bore his signature (Exhibit 11/4). For convenience of banking-transaction he left the seized items in the jimma of the Bank except item no. 6. He stated that on 29.04.2007, he seized 3(three) items from Prime Bank, Motijheel branch. He also proved Seizure List (Exhibit-5) which bore his signature (Exhibit 5/4). He proved the jimma

nama (Exhibit6/2). He stated that on 30.04.2007, he seized as many as 4(four) items from Uttara Bank Ltd. Kalabagan Branch. He signed the Seizure List (Exhibt-9) and put his signature therein (Exhibit 9/4). He proved seized documents as material (Exhibit iii). He also stated that on 30.04.2007 he signed as many as 4(four) items from Standard Bank Ltd. Dhanmondi branch. He signed the Seizure List (Exhibit-7) and proved his signature (Exhibit 7/4). He also proved jimma nama (Exhibit-8) and proved his signature therein (Exhibit-8/2). He proved the seized documents Material (Exhibit-II). He further stated that on 08.05.2007 he seized as many as 9(nine) items from Roads and Highways Department, Sarok Bhaban. He proved the Seizure List (Exhibt-17) and his signature therein (Exhibt-17/4). He proved the seized documents as material exhibit –VII. He further deposed that on 08.05.2007, he seized as many as 3 (three) documents from the office of Additional Chief Engineer, Dhaka Zone. He signed in the Seizure List Exhibit-19 and put his signature therein exhibit 19(4). He proved the seized documents as Material Exhibit-VIII. He further stated that on 10.05.2007, he seized as many as 2(two) items from the office of Jamuna Multi-Purpose Bridge

Authority, Setu Bhaban. He proved the seizure list (Exhibit-21) and his signature therein (exhibit-21/4). He proved the seized document as Material Exhibit 12. He stated that on 15.05.2007, he seized as many as 8(eight) items from Agrani Bank, Amin Court Corporate branch, Motijheel. He proved the seizure list (Exhibit-13) and his signature therein (Exhibit-13/4). He proved seized documents Material Exhibit-V. He stated that on 23.05.2007, he seized an many as 8(eight) items from HSBC, Motijheel branch. He proved in the seizure list (exhibit-15) and his signature therein (Exhibt-15/4). He proved seized documents. He further stated that during investigation on examination of the seized documents and deposition of different witnesses he found that against the said 5(five) works former Communications Minister the accused Nazmul Huda on 12.02.2005 took bribe of tk. 2 crore by two cash cheques from Mir Zahir Hossain and on 21.04.2005 took bribe of tk. 40 lakh from Zahir Hossain. He stated that during investigation he found that the said two cash cheques for tk. 2 crore of Prime Bank Limited and Standard Bank Ltd. had been debited on 17.02.2005 and the said cash cheque for 40 lakh of Uttara Bank Ltd. was debited on 23.04.2005 through clearing house in

the CD account no. 1417-0 of 'Khoborer Antoraley' owned by Ms. Sigma Huda, wife of accused Nazmul Huda. He stated that during investigation he recorded statements of concerned Bank officers who confirmed that amount of tk. 2.40 crore were debited in the account of Ms. Sigma Huda. He further found from the statement of account of Ms. Sigma Huda that before debit of tk. 2.40 crore last balance was of tk. 18,39,111/-. After debit of tk. 2.40 crore Ms. Sigma Huda had withdrawn tk. 1.40 crore by 4(four) cheques. He found that the said amount of tk. 1 crore was withdrawn by two cheques on 27.06.2005 and was debited through clearing house by two pay orders in the name of her two daughters Antara Selima Huda and Srabanti Amina Huda in their two savings accounts of HSBC, Motijheel branch. He found that the said amount of tk. 1 crore was withdrawn by two cheques on 27.06.2005 and was debited through clearing house by two pay order in the names of the two daughters in their two saving accounts of HSBC, Motijheel brach and 50 lakh in the saving account no. 002-131993-001 of the Antara Selima Huda and tk. 50 lakh in the saving account no. 002-132009-001 of Srabanti Amina Huda. The said amount was placed in their FDR accounts and thereby, he found that Ms.

Sigma Huda, knowing fully well about the bribery of her husband the accused Nazmul Huda by the said three cash cheques deposited the same in her account and she abetted the offence of bribery.

He recorded statement under section 161 of the Code of Criminal Procedure and he placed before Magistrate the witnesses Mir Zahir Hossain and Khan Md. Aftabuddin for recording their 164 statements. During investigation he found that the accused Nazmul Huda, former Minister has accepted gratification of tk. 2.40 crore from pw 38 Mir Zahir Hossain as a motive in exercise of his official power and in connivance with his wife and deposited the said amount in the account of 'Khaoborer Antoraley' owned by Ms. Sigma Huda.

In his cross examination he stated that he took up investigation of this case on 12.04.2007. He submitted charge sheet on 04.06.2007. He denied the suggestion put to him by the defence that on 12.02.2005 and 21.04.2005 for five works as stated in the FIR, Mir Zahir Hossain did not go to the Dhanmondi residence of the accused Nazmul Huda and handed over three cash cheques or that being influenced by the enemies of the accused Nazmul Huda, he picked up Mir Zahir

Hossain and Khan Md. Aftabuddin by giving threat or that he manufactured story as stated in the charge sheet or that Ms. Sigma Huda operated account of 'Khaborer Antoraley' as its publisher and that he submitted false charge sheet against the appellants.

This is the evidence as adduced by the prosecution in this case

In the light of the submission made by learned Advocates for the parties, let us now discuss the evidence of the defense witnesses.

DW-1 the accused Barrister Nazmul Huda who was communications Minister from 2001 to 2006 deposed that he was a Barrister from Hon'ble Society of Lincon's Inn in 1969 and he returned from England to Bangladesh the same year and started law practice. He got married Ms. Sigma Huda in 1971. She would active by practiced in law. They established law chamber under name and style 'The Chancery Chambers' at the aid of late Barrister Ishtiaq Ahmed which was a reputed law firm of Bangladesh deal with large multinational client as law adviser particularly various Diplomatic mission. Being practiced in law at the relevant time one political organization

was formed namely Nationalist Democratic Party at the end of 1977 in short 'Jagdal'. In this way, he had given vivid description about his professional and political carrier, more so all this deposition of DW1 narrated in the trial court judgment but some of the political background is reproduced below:-

“রাষ্ট্রপতি হিসাবে নির্বাচিত হওয়ার পর প্রেসিডেন্ট জিয়াউর রহমান জাতীয়তাবাদী ফ্রন্টকে একটি রাজনৈতিক দলে রূপান্তর করার কার্যক্রম শুরু করেন। এবং নয় সদস্য বিশিষ্ট একটি কমিটি প্রস্তাবিত নতুন দলের ঘোষণাপত্র এবং কমিটির+ একজন। এবং এই নতুন দল বিএনপির ঘোষণাপত্র ও গঠনতন্ত্র drafting দায়িত্ব পড়ে আমার ওপর। ১৯৭৮ সালের ১লা সেপ্টেম্বর বাংলাদেশ ন্যাশনালিস্ট পার্টি - বিএনপি আত্মপ্রকাশ করে। দলের চেয়ারম্যান প্রেসিডেন্ট জিয়াউর রহমানের নেতৃত্বাধীন দলের সর্বোচ্চ নীতি-নির্ধারনী কমিটি জাতীয় স্থায়ী কমিটির ১২ জন সদস্যের একজন হিসাবে আমাকে অন্তর্ভুক্ত করা হয়। ১৯৮১ সালের ২৯শে মে চট্টগ্রাম সার্কিট হাউজে জাতীয় স্থায়ী কমিটির চেয়ারম্যান জিয়াউর রহমানের সভাপতিত্বে শেষ সভা পর্যন্ত আমি তার পাশে ছিলাম। এবং সেই রাতে চট্টগ্রাম স্টীল মিলসের রেপ্ট- হাউজে রাড্রিয়াপনকালে সার্কিট হাউজে ৩০ মে ভোরে জিয়াউর রহমানের নির্মম হত্যাকাণ্ডের সংবাদ শুনি। এরপর বিচারপতি এম এ সাওদার সাহেবের রাষ্ট্রপতি নির্বাচনে অংশগ্রহণকরি। ১৯৮২ সালের ২৪ মার্চ হুসেইন মুহাম্মাদ এরশাদ ক্ষমতা গ্রহণ করেন এবং আমি বেগম খালেদা জিয়ার নেতৃত্বাধীন স্বৈরাচার বিরোধী আন্দোলনে সক্রিয়ভাবে অংশগ্রহণ করি।

He also stated in his deposition that-

আওয়ামী লীগ সরকার গঠন করলে আমরা দায়িত্বশীল বিরোধীদলের ভূমিকা পালন করি। আমি ল প্রাকটিস চালিয়ে যাই এবং সুপ্রীমকোর্ট

বার এসোসিয়েশনের সভাপতি নির্বাচিত হই। উক্ত এসোসিয়েশনের অনেক উন্নয়ন কর্মকান্ড আমার হাত দিয়ে হয়েছে। আন্তর্জাতিক মানসম্পন্ন অডিটোরিয়াম হয়েছে। বিচারপতি কেএম হাসান এবং বিচারপতি সৈয়দ জেআর মোদাচ্ছির হোসেনকে সুপারসিড করে আপীল বিভাগের বিচারপতি নিয়োগ করা হলে তার প্রতিবাদে আইনজীবীদের আন্দোলনে আমি নেতৃত্ব দিই।

He stated in his deposition that-

“আমি স্পষ্ট ভাষী এবং স্পষ্ট ভাষায় অপ্রিয় কথা বলি। একারণেই হয়তো কোন কোন সময় আমি প্রতিপক্ষের অপপ্রচারের শিকার হয়েছি। সেই ধরনের অপপ্রচার রোধ করার জন্য আমি সাপ্তাহিক খবরের অন্তরালে পত্রিকা প্রকাশ করি। দেশে এখন অনেক বস্তুনিষ্ঠ সংবাদপত্র আছে যারা সত্যিকার অর্থে জাতীয়ভাবে মূল্যবান অবদান রেখে চলেছে। পাশাপাশি কোন কোন পত্রিকা হলুদ সাংবাদিকতা করে থাকে। হলুদ সাংবাদিকতার প্রতিবাদে এবং হলুদ সাংবাদিকতার কারণে যারা ক্ষতিগ্রস্ত হয়েছে তাদের বক্তব্য Prominent করার উদ্দেশ্যে আমি খবরের অন্তরালে পত্রিকা প্রকাশ করি। এত আকৃষ্ট হয়ে অনেকেই এই পত্রিকার প্রতি সম্পৃক্ত হতে আগ্রহ প্রকাশ করে। যোগাযোগ মন্ত্রী থাকাকালে আমি অনেক জাতীয় ইস্যুতে নিজের মতামত দিয়েছি। নির্বাচনী সংস্কার, কালো টাকা ছাড়া নির্বাচন, কম টাকায় নির্বাচন-অনুষ্ঠান, ভোটার আইডি কার্ড, ন্যাশনাল আইডি কার্ড ইত্যাদি বিষয়ে আমি মতামত দিয়েছি যা বিভিন্ন পত্রিকায় প্রকাশিত হয়েছে। খবরের অন্তরালে পত্রিকাতেও প্রকাশিত হয়েছে। ম্যাগনেটিক ট্রেন ও আন্ডার গ্রাউন্ড ট্রেন চালুর কথা আমি বলেছি। বিভিন্ন ইলেকট্রনিক মিডিয়াতেও প্রচারিত হয়েছে। মাননীয় বিচারপতিগণ, ডিসি, এসপি প্রভৃতি জনের নিকট খবরের অন্তরালে পত্রিকার প্রচার ছিল। পত্রিকাটিকে দৈনিকে রূপান্তর করার জন্য সুধীমহল, ব্যবসায়ী মহল সহ বিভিন্ন মহল থেকে আমার নিকট আগ্রহ প্রকাশ করা হয়। মীর জাহির হোসেন তাদের মধ্যে

একজন। তিনি সম্পৃক্ত হতে আগ্রহ প্রকাশ করেন। তিনি Tender-related একজন ব্যবসায়ী-আমার আত্মীয়।”

DW-2 ATM Nazemuddin was the husband of Nasreen Huda, fourth sister of the accused Nazmul Huda who stated that they got married in 1975. Accused Nazmul Huda had six sisters, of them, two lost their husbands. They were Bablee Khondkar and Naznin Siddiqui. Bablee Khondkar's residence was housed in Escaton Plaza. Her husband was Nurul Arefin Khondkar, younger brother of Nurul Ahad Khondkar. He had come-and-go with both the families. He knew wife and the only daughter Rafa of Nurul Arefin Khondkar. Rafa was a student of class VIII of Scholastica School. In that way he knew the maternal uncles of Rafa. They were Mir Zahir Hossain and Mir Nasir Hossain. He stated that he knew the accused Nazmul Huda who published weekly 'Khoborer Antoraley' in 2004. In the same year he came to know that it was going to be published as Daily and he further came to know from family sources that Mir Zahir Hossain and Khan Md. Afftabuddin were taking steps, therefore, and, there had been a meeting at the Eskaton-residence of Bablee Khandker and an agreement was signed. Thereafter, it had never occurred due to situation of the country.

DW-3 Accused Ms. Sigma Huda, an accused of this case and the wife of the appellant no. 1 Nazmul Huda the former Communications Minister gave her family and professional back ground in her deposition. She stated that her name was Sigma Huda who was a patient of heart disease. She was also a Senior Advocate of the Supreme Court of Bangladesh. She was enrolled as an Advocate in the year 1970 and had been in active practice with good reputation and established a law firm, namely, Chancey Chamber. She was one of the partner of this firm with her husband. She articulated as an apprentice Advocate of B. Ahmed & co. They started a journey in the blessings, of Fakir Shahabuddin, Syed Ishtiaq Ahmed and Dr. Kamal Hossain. Many of the Diplomatic missions were their clients and have multinational Clients also. She stated that she had initiated many training and Advocacy programs about the basic laws of the country through her organizations, namely Bangladesh National Women Lawyers Association (BNWLA) and the Institute for law and Development. She held workshops, discussion and seminars at village and district town levels. Working with these organizations, she had fought against trafficking and sexual

exploitation, particularly of women and girls from Bangladesh to India. In recognition of her work against trafficking, she was appointed to the National council for women in development in Bangladesh, the highest national body for the development of women headed by the Prime Minister or head of the Government of Bangladesh. She stated that she had organized and attended many international seminars and workshops on many subjects and was also involved in several engagements with UNICEF, UNFPA and other international organization on issues relating to human rights. She had also founded the Acid survivors Foundation, a body created to look after the human rights of acid victims. She also stated that she had to her Credit many public interest litigations and land marks decisions affecting the status of women and minority and ethnic groups. In recognition of her expertise, she was appointed by UNO as the special repporteur on trafficking in persons, engaged in the mission of reporting on the global situation of trafficking in persons, particularly of women and children, and to ensure the human rights of the victims of trafficking globally with age old traditions, her family was highly respected in the sub-continent, she came from a very respectable family. As the wife of a

Cabinet Minister, she avoided clients who had or could have potential dealing with the ministry under her hundred. Her father's name was Akbar Kabir and her grand uncle was Khawaja Shahabuddin and she maintained her dignified position.

DW-4 Khushi Kabir was the younger sister of the appellant no. 2 Ms. Sigma Huda. She was a Development-Worker stated that since, 1980 she was attached to NGO namely-"Nizera-Kori". Before that from 1972 to 1980, she was attached to BRAC. For welfare of the people her father, grandfather's family was well known in this subcontinent. Accused Nazmul Huda, launched a program under the banner of "Falgun Charcha" on 12-02-2005 at his Gulshan-residence. It was also a farewell function of Tamzid Huda, nephew of Nazmul Huda. She attended the function. Relatives and friends of both the families of Nazmul Huda and Sigma Huda also attended the function. Between 10.00 pm and 10.45pm Nazmul Huda went to Airport with his nephew Tamzid Huda and other family members to see Tamzid Huda off who was scheduled to board SQ 436 flight for Australia. So far her knowledge both Nazmul Huda and Sigma Huda were honest and hardworking. She had

submitted attested copy of log-book of her official transport dated 12-02-2005.

She stated in her cross examination by the prosecution that she did not know how many accounts Ms. Sigma Huda operated or maintained. She denied the suggestion put to her by the prosecution that she come in to the witnesses box and deposed falsely for Nazmul Huda and Sigma Huda and she had manufactured log book.

DW-5 Doctor Zafrullah Chowdhury, who deposed that he was a doctor by profession. He was a health-activist. He had come to depose for Sigma Huda. He started his career in England as Vascular Surgeon. He was there for seven years. From England, instead of coming back to country, he directly joined the Liberation War. The name of his Organization was “Ganosasthyo Kendra” recognized by WHO in 1978 at ALMA-ATA for “Health For All”. He was a member in the eight-member-committee for formulation of National Drug Policy of 1982. He obtained Ramon Magsaysay Award in 1985. He obtained independence Award for the first time in Bangladesh in 1978. He obtained Alternative Nobel Award from Swedish Parliament in 1992. He stated that Advocate Sigma Huda was

not his relative. He had no monetary transaction with her. For human rights and family cases he would have appointed Sigma Huda. She was the pioneer-Advocate of Public Interest Litigation-PIL. He found her absolutely attentive and utmost sincere in providing legal aid. She established her honesty and capability. He did not find any proof of personal inclination or thirst for money in her. Possibly, for that, the United Nations appointed her Special Repporteur. Bangladesh had not ever received such great honour. He did not believe that Sigma Huda could do corrupt-practice.

In his cross examination by the prosecution he stated that it was his personal opinion about Sigma Huda. Sigma Huda was facing charge of abetting the offence of bribery.

DW-6 Naznin Siddiqui was a younger sister of accused Nazmul Huda who deposed that Nazmul Huda had a house by the side of Gulshan Shooting Club. They were four brothers and six sisters. The youngest brother Badrul Huda died on 8 October, 2004 leaving three sons Tamzid Nurul Huda, Taqbir Nurul Huda and Tahrin Nurul Huda. Nazmul Huda was a singer. On 12-02-2005, at his Gulshan-residence he launched a program under the banner of “Falgun Charcha.” That was

Saturday and that program continued from evening till 11/12 mid night. She attended that program as a guest at 07.00 pm in the evening and stayed there till 11.00 pm. Relatives of both the families including Nazmul Huda, Sigma Huda and Khushi Kabir were present in the program. Approximately 150 guests attended the program followed by dinner. Nazmul Huda attended the program around 08.00 pm. Mrs. Sigma Huda was all along present. Along with family-members including Tamzid Nurul Huda and his mother Nazmul Huda went to Airport to see Tamzid off. She also went with them. After the see-off they all came back to Gulshan-residence where the program was on running. At that time Nazmul Huda was not present at the Dhanmondi-residence. He was with them at his Gulshan-residence.

DW-7 Rina Akhtar deposed that from November, 2006 to April, 2007 she was the Accounts Officer of “Khaborer Antoraley”. Mir Hamid was Senior Accountant. Nasiruddin-al-Mamun was the Editor. She beard that “Khoborer Antoraley” would be promoted to daily from weekly. After joining she came to know that Mir Zahir Hossain and Khan Md. Aftabuddin had invested as share-holders. “Khoborer

Antoraley” maintained CD account no. 1417-0 with Agrani Bank, Amin Court Corporate Branch, Motijheel, Dhaka. On seeing statement of account she had confirmed that on 09.01.2006 balance was tk. 2,42,19,912/- (two crore forty two lakh nineteen thousand nine hundred twelve) and on 18.12.2006 tk.2,46,09,048/- (two crore forty six lakh nine thousand forty eight). During her tenure she never saw Sigma Huda in the office of the weekly.

DW-8 Amiyo Kanti Mutsuddi, retired Joint Secretary, who deposed that at present, he was the Administrator of “Nizera Kori”. Khushi Kabir was the Chief Co-Ordinator. She was entitled to full time office transport.

Let us now scrutinize the evidence of PWs and Dws. Suffice it to note that PW38 Mir Zahir Hossain and PW39, Khan Md. Afftabuddin were the Star witnesses in the instant case. It appears that the informant as PW1 Shafiqul Islam, in course of inquiry could know regarding disproportionate wealth of former Minister Nazmul Huda who accepted bribe of tk. 2.40 crore from PW38, Mir Zahir Hossain, Managing Director of Mir Akter Hossain Ltd. for doing favour for different construction works and Roads and Highways department under

Communications Ministry. PW 38 stated that on 12.02.2005 at about 10 pm(night) along with his business partner PW39 Khan Md. Afftabuddin went to Dhanmondi residence of the appellant no. 1 Nazmul Huda and handed over tk. 2 crore as bribe by two cash cheques tk. 1 crore each cheque being cheque no. 899601 dated 12.2.2005 and account no. 2110975 of Prime Bank, Motijhel branch and account no. 011434001347 cheque no. SBL SB 321100 dated 12.2.2005 of Standard Bank Ltd. He stated that appellant no. 1 demanded more bribe for which on 21.04.2005, he along with PW39 went at the said residence of the appellant no. 1 and handed over tk. 40 lakh as bribe by one cheque being cheque no. 73012546 dated 21.04.2005, account no. 61-2115 of Uttara Bank Ltd. Kalabagan branch. He also corroborated the FIR story as a whole. PW38 Mir Zahid Hossain stated in his chief that he had been working as pre-qualified contractor since 1987 under Roads and Highways in different Projects against international Tender, financed by World Bank and Asia Development Bank with foreign companies. In 2000, he worked jointly with a Chinese company on getting contract no. 3 for construction of Dhaka-Maowa highway financed by ADB. He got work order for PMP-2003-

2004 contract no. 10. In the midst of work, the then communications Minister Nazmul Huda asked him to meet at his office, accordingly, he did it, when Minister demanded tk. 2 crore as bribe against the said PMP works. Being so, he disclosed it to his business friend PW39 Khan Md. Afatabuddin. Thereafter, he got another work orders of vertical extension work of 4th and 5th floor of Setu Bhaban and PMP contract no. 12. Pursuant to that Minister asked to meet. He did it. Minister told him that you had not given that amount of money. Now if you did not give me tk. 3 crore than I would see how you get work and how you get payment of bills. Being frightened, and due to large-scale investment he agreed to give bribe to the Minister Huda but the amount would be less than demand. On 12.02.2005, he along with PW39 went to the residence of Minister Huda, the appellant no. 1 with two cash cheque for tk. 1 crore each. They took seat inside the small drawing room on the 2nd floor. Minister Huda came in and PW38 handed over two cash cheque for 1 crore cash in total 2 crore to the Minister. Appellant no. 1, Minister Huda ensured him that he would collect money through the account of his wife Ms. Sigma Huda, the appellant no 2. He got another work and Minister, again

asked him to meet. He did it when Minister asked him to give amount of tk. 50 lakh in default he would make the work stop and as such, he along with PW39 handed over cash cheque for tk. 40 lakh to the Minister. He also collected information that all the cheques were encashed through collection by Agrani Bank. PW39 Khan Md. Aftabuddin stated that PW38 was his friend for long. In October, 2004, PW38 told him that he got some works under PMP. At the relevant time, the accused Huda asked PW38 to meet at the office and PW38, his friend did it the accused Huda demanded tk. 2 crore as bribe. On 12.0.2005 he along with PW38, Mir Zahir Hossain at about 10.00 am at night went to Dhanmondi residence of accused Nazmul Huda. After some time the accused Huda came in when PW38 handed over two cash cheque for tk. 2 crore for tk. 1 crore each cheque.

He stated that on 21.04.2005, he along with pw38 went to the residence of the accused Huda and pw 38 handed over cash cheque of taka 40 lakh to accused Huda. The accused Huda also told them that he would deposit the cheque in his wife's accounts.

As could be seen that the prosecution heavily relied on documentary evidence to convict the appellants for commission

of the offence. Be that, pw6 Ibrahim Khalil stated that the Investigating Officer seized some goods from his office which included account opening form of CD account no. 1417-0. The appellant no. 2 Ms. Sigma Huda as owner and publisher of Koborer Antoralay was the account holder. I.O seized specimen signature card of Ms. Sigma Huda and deposit voucher dated 17.02.2005 of cheque no. 0899601 dated 12.02.2005 of SB account no. 21109756 of Prime Bank for tk. 1 crore and deposit voucher dated 17.02.2005 of cheque no. 321100 dated 12.02.2006 of SB account no. 34001347 of Standard Bank for 1 crore and deposit voucher dated 23.04.2005 of cheque no. 7021546 dated 21.04.2005 of Uttara Bank Ltd. It was found that all the above cheques have been credited in CD account no. 1417-0. He also seized as many as eight items from his office including cheque no. 03B6603499 dated 27.05.2005 signed by the appellant no.2 on amount of tk. 50 lakh. This cheque was debited. Pw9 stated that the Investigating Officer seized many items from his office i.e account opening form, photograph and specimen signature card of Antara Selima Huda and FDR account no. 002-131993-101 which was opened on 24.06.2005 pay order no. 08B2498967 dated 27.06.2005 for tk. 50 lakh was

deposited in the account of Antara Selima Huda. More so, account opening form of Srabanti Amina Huda, Photograph and specimen signature card. FDR account no. 002-132009-101 which was opened on 29.06.2005 and tk. 50 lakh deposited in her account through pay order no. 08B2498969 dated 27.06.2005. They are the daughters of the appellant nos. 1 and 2. Pw.12 also corroborated the statement of pw9. Suffice it to say that pw25, pw26, and pw27 also corroborated the same which were also corroborated by pw1 and pw40 of this case.

It is necessary to say that for proper disposal of this case it may be profitable to address the relevant section 5(1)(d) and 5(2) of the prevention of corruption Act, 1947 which runs as follows-

“ 5- Criminal misconduct-1) A public servant is said to commit the offence of Criminal Misconduct-

(a) If he accepts or obtains or agrees to accept.....

(b)

(c)

(d) If he, by corrupt or illegal means or by otherwise abusing his position as public servant obtains or

attempts to obtain for himself or for any other person
any valuable thing or pecuniary advantage, or

(e)

5(2) “ Any public servant who commits or attempts to
commit Criminal Misconduct shall be punishable with
imprisonment for a term which may extend to seven
years or with fine. Or with both, and the pecuniary
resources or property to which the Criminal
Misconduct relates may also be confiscated to the
state”

It is crystal clear that to bring the matter within the
mischief of section 5(1)(d) of the Act, mens-rea must be
established, that is, the accused obtained by corrupt or illegal
means and in abuse of his position as public servant, some
pecuniary advantage. More over, to constitute an offence under
section 5(1)(d) of the Act, two ingredients are to be proved that
is, demand and acceptance of illegal gratification.

Corruption is a curse. Corruption is seen everywhere in
society. Corruption corrodes the moral fabric of society and
corruption by public servants not only leads to corrosion of the
moral fabric of the society but is also harmful to the national

economy and national interest, as the person, occupying high posts in the Government by misusing his power due to corruption can cause considerable damage to the national economy, national interest and image of the country.

On perusal of the evidence of the witnesses, we find that it is consistent on the issue of demand and acceptance of illegal gratification from the pw38, Mir Zahir Hossian who deposed that the appellant no. 1 made a demand of tk. 2.40 crore from him for doing favour for different construction works of Roads and Highways Department, Ministry of communications. It is not in dispute that pw38 handed over 2 cash cheques for tk. 1 crore each in total 2 crore to the Minister. It is also not disputed that appellant no.1 being the ex-Minister of communications and appellant no. 2 his wife and the cheques were deposited in the account of “Khobarer Antoraray” being account no. 1417-0 which was owned and published by the appellant no. 2 Ms. Sigma Huda. Pw40 Investigating Officer who investigated the case, duly proved the seized articles.

We have not found any evidence of the defence to discard the evidence of prosecution on this material issue. As could be seen that the defence has given family and political

background in their depositions. We are not inclined to believe the defence version of Dws 1-8 as in our considered view, the trial Court, rightly did not believe their version. Dw1 as accused narrated his political and professional achievement. So far as Dw2 is concerned, he is the husband of Nasreen Huda who is sister of appellant no.1. He did not see what had happened between pw38 and appellant no.1. Dw3 also is an accused in the case, she also stated her professional and family background in her deposition. So far as Dw4, Dw5, Dw6, Dw7 and Dw8 are concerned, they do not know as to what happened between pw38 and appellant no. 1. Moreover, the decisions referred to above by the Barrister Nazmul Huda in person for the appellants reported in several Law journal are quite distinguish able from the facts and circumstances of the instant case.

This evidence of the defence, in our considered view does not help the appellants in any manner for many reasons. Firstly, there is nothing in the defence version which deserves acceptance to acquit the appellants of the charge against the appellants. Secondly, the allegation against the appellants in the FIR are corroborated by the witnesses in the dock. Pw.38 handed over the cheques to appellant no.1 and acceptance of the

same is believable in the light of the evidence adduced by the prosecution. Thirdly, Dws 4-8 were the chance witnesses who came forward to help the appellants and lastly, even, according to appellant no.1, he did not dispute the cheques and the payment of tk. 2.40 crore was not gratification or pecuniary advantage to appellant no.1, but was paid as part of an investment made by pw38 Mir Zahir Hossain in the weekly news paper, "Khoborer Antoralay". So far as the evidence of other defence witnesses is concerned, we have perused there evidence and find no relevancy in their evidence. None of these witnesses have witnessed the incident and hence, their evidence does not in any way help the appellants. It is pertinent to note that the appellants examined under section 342 of the Code of Criminal Procedure and they produced defence witnesses including them, which is called the plea of alibi. An alibi is a form of defence used in Criminal Procedure wherein the appellants attempted to prove that he or she was in some other place at the relevant time the offence was committed. It is well settled in law that when a plea of alibi is taken by an accused, the burden is upon him to establish the same by positive evidence after the onus as regards the presence on the relevant

time, place and manner is established by the prosecution. The plea of alibi has to be taken at the earliest opportunity and it was to be proved to the satisfaction of the Court. Strict proof is required for establishing the plea of alibi. In support of that, it may be profitable to mention the case of Binay Kumar Singh Vs. State of Bihar (97): 22 wherein it is observed that:-

“We must bear in mind that an alibi is not an exception (Special or general) envisaged in the Penal Code, 1860 or any other law. It is only a rule of evidence recognized in section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant.

illustration: (a) given under the provision is worth reproducing in this context:-

The question is whether A committed a Crime at Kalkata on a certain date, the fact that, on that date, A was at Lahore is relevant.”

Trial Court, therefore rightly rejected the defence version being totally devoid of any merit. We concur with the reasoning of trial court on this issue and, accordingly, uphold this same.

It is a settled principle in law laid down by this court in a number of decisions that once the demand and voluntary acceptance of illegal gratification knowing it to be the bribe are proved by evidence then conviction must follow under section 5(2) of the prevention of corruption Act against the appellants. Indeed, these two requirements, are sine qua non for proving the offence under section 5(1)(d) of the Act.

Coming now to the last submission of the accused Nazmul Huda, in person that the appellant no.1 filed an application under section 540 of the Code of Criminal Procedure for summoning the pw 39 to substantiate his statement made by securing affidavit on oath by disclosing the true facts as to the initiation of the instant case. In this connection, it is to be seen from the order no. 22 dated 30.07.2007, the appellants filed an application under section 540 of the Code before the trial court earlier and after hearing, the trial court rejected the same and against the said order, the appellant did not file any appeal or revision before higher court, as such, the matter has already been settled by the trial court. At this stage, we cannot interfere it.

Noted that the appellants took the false plea of alibi in their statement under section 342 of the Code of Criminal Procedure, which remained not proved. Having regard to the aforementioned martial on record, in our considered opinion, the trial Court was justified in convicting the appellants by concluding that all the documentary evidence are proved by the prosecution forming a complete chain. Even on reconsidering the martial, we do not find any reason to interfere with the judgment and order of conviction.

In the facts and circumstances of this case, we think the ends of justice will be sufficiently met if the sentence of the appellant no. 1 is reduced from 7 years rigorous imprisonment to suffer rigorous imprisonment for 4(four) years and also to pay a fine of tk. 2,50,00,000/- as already awarded by the trial Court but in default, to suffer rigorous imprisonment for 1 year more with an order to confiscate the gratification of tk. 2,40,00,000/- to the State and appellant no. 2 is sentenced to the period of imprisonment had already been in the custody (i.e. served out).

In the light of the foregoing discussion, we find no merit in this appeal. It fails and is, liable to be dismissed with modification.

In the result, the appeal is dismissed.

The appellant no.1 shall surrender to the trial Court concerned for serving out the remaining sentence within 45 days from the date of receipt of the Judgment and order of conviction and sentence by the trial Court. In the event of failure on the part of the appellant no.1 to surrender, the trial Court shall take appropriate steps to secure his arrest.

Send down the original case record at once with the copy of this Judgment for taking necessary action.

(Mustafa Zaman Islam, J:)

Bhabani Prasad Singha, J:

I agree.