

Present:
Mr. Justice A.K.M. Abdul Hakim
And
Mrs. Justice Fatema Najib

Criminal Appeal No. 3742 of 2007

Mir Mohammad Helal Uddin
.... Appellant

-Versus-

The State and another
í . Respondent

Mr. Asaduzzaman, Advocate
í .. For the Appellant.

Mr. Md. Khurshid Alam Khan, Advocate
with

Mr. Md. Zainul Abedin, Advocates
í . For the Anti Corruption Commission.

Mr. Md. Jahangir Alam, D.A.G with
Mr. Mohammad Lokman Hossen, A.A.G
with

Mr. Md. Jahir Ahmed, A.A.G with
Mr. A.T.M. Aminur Rahman, A.A.G and
Mrs. Lily Rani Shaha, A.A.G

í . For the State.

With

Criminal Appeal No. 3743 of 2007

Mir Mohammad Nasir Uddin
.... Appellant

-Versus-

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í . Respondent

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í .. For the Appellant.

Mr. Md. Khurshid Alam Khan, Advocate
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with

Mr. Md. Jahir Ahmed, A.A.G with
Mr. A.T.M. Aminur Rahman, A.A.G and
Mrs. Lily Rani Shaha, A.A.G

í . For the State.

Heard on 01.04.2019, 03.04.2019, 09.04.2019, 05.05.2019, 06.05.2019, 09.05.2019, 12.05.2019, 13.05.2019, 14.05.2019, 15.05.2019, 16.05.2019, 20.05.2019, 22.05.2019, 16.06.2019, 17.06.2019, 19.06.2019 and Judgment on 19.11.2019.

A.K.M. Abdul Hakim, J:

Both the Criminal Appeal No. 3742 of 2007 and 3743 of 2007 under Section 10(A) of the Criminal Law Amendment Act, 1958 are directed against the judgment and order dated 04.07.2007 passed by the learned Special Judge of Special Judge Court No. 2, Dhaka in Special Case No.1 of 2007 arising out of Gulshan Police Station Case No. 26(3) 07 convicting the appellant Barrister Mir Mohammad Helal Uddin and sentencing him to suffer simple imprisonment for 3 (three) years and convicting under Section 27(1) of the Anti Corruption Commission Act, 2004 read with section 109 of Penal Code, 1860 and to pay fine of Tk. 1,00,000/- (one lac) in default to suffer simple imprisonment for 1(one) month more and the period of custody in connection with this case will be deducted.

And by the same judgment and order of the Special Judge Court convicting the appellant Mir Mohammad Nasir Uddin and sentencing him to suffer simple imprisonment for 3(three) years and convicted under section 26(2) of the Anti

Corruption Commission Act, 2004 and Rule 15 Gha (5) of the Emergency Power Rules, 2007 and further sentencing him to suffer rigorous imprisonment for 10(ten) years and convicted under Section 27(1) of the Anti Corruption Commission Act, 2004 read with Section 5(2) of the Prevention of Corruption Act, 1947 and to pay fine of Taka 50,00,000/-(Taka fifty lac) in default to suffer rigorous imprisonment for another 2(two) years more and also confiscating properties of the appellant acquired through improper means in his own name and in the names of his dependants.

Both the sentences imposed upon accused Mir Mohammad Nasir Uddin shall run consecutively. It is directed, as contemplated under Section 35A of the Code of Criminal Procedure, 1898, to deduct the period in custody, in connection with this case, from the sentence of imprisonment of accused Mir Mohammad Nasir Uddin.

These two criminal Appeals involving similar question of law and fact between the same parties have been heard together and are being disposed of by this common judgment.

These criminal appeals was sent by the Honøble Chief Justice by order dated 11.03.2017 to be heard and disposed of by the Division Bench presided over by A.K.M. Abdul Hakim, J.

The prosecution case, in brief, is that, the Anti-Corruption Commission (shortly, the "Commission") received an information that the accused-appellant Mir Mohammad Nasir Uddin, former State Minister for Civil Aviation and Tourism himself and in the name of the members of his family was in possession of property disproportionate to his known source of income. Anti Corruption Commission thus issued a notice dated 18.02.2007 under Section 26(1) of the Anti Corruption Commission Act, 2004 (briefly, the ACC Act, 2004) directing him to submit his statement of wealth along with the statement of wealth of his wife and other dependants within 72 hours from receipt of the said notice. At that time the appellant was in Bogra Jail under an order of detention. He, however, submitted the statement of wealth to the Commission through his representative Advocate Mohammad Mezbah Uddin (p.w.4) wherein, on inquiry, ACC, found that he has concealed wealth of Taka

3,22,11,637/-(three crore twenty two lacs eleven thousand six hundred thirty seven) only.

The Commission, on inquiry, has further found that as per Income-tax returns up to 2006, total income of Mir Mohammad Nasir Uddin along with his wife Dalia Naznin (now dead) and son Barrister Mir Mohammad Helal Uddin stand at Taka 1,60,60,000/-(one crore sixty lac sixty thousand) only, their total expenditure stand at Taka 27,70,000/-(twenty seven lac seventy thousand) only and their total savings stand at Taka 1,32,90,000/-(one crore thirty two lac ninety thousand) only. Further prosecution case is that co-accused Mir Mohammad Nasir Uddin opened income-tax file in 1984 while his wife Dalia Naznin opened her Income Tax file in 1996 and his son Barrister Mir Mohammad Helal Uddin opened income tax file in 2006. In that way, their total savings, as shown in the income-tax returns, stand at Taka 1,32,90,000/- (one crore thirty two lac ninety thousand) only but Mir Mohammad Nasir Uddin declared Tk. 22,50,06,999 in their wealth statement submitted before the Commission. On inquiry it was further found of Tk. 3,22,11,637/- was concealed and thereby Mir Mohammad Nasir Uddin himself, in the names of his wife

and son, had amassed wealth of Taka 22,50,06,499+3,22,11,637= Taka 25,72,18,136/- out of which Tk. 1,32,90,000.00 was found legal. Thus rest Tk. (25,72,18,136-1,32,90,000 =Tk. 24,39,28,136/-(twenty four crore thirty nine lac twenty eight thousand one hundred thirty six) only which is disproportionate to his legal and known source of income. From the aforesaid, it transpires that while he was holding the post of Mayor, (1991-94) Ambassador (1995-96) and State Minister (2001-05) he acquired wealth by abusing his official position and power by illegal means which is disproportionate to his legal and known source of income. Not only that during inquiry, she found that Dalia Naznin, by exercising husband's power and influence, acquired wealth through improper means and she is the beneficiary of said wealth. Barrister Mir Mohammad Helal Uddin is the beneficiary of his father's wealth acquired through improper means. The material particulars of the allegations against each of the accused were specifically described and annexed with the FIR. It was further found that immediately after arrest of Mir Mohammad Nasir Uddin, his son Mir Mohammad Helal Uddin transferred Tk. 2,08,33,195 to unknown place which kept in different Banks in his name

and in joint account to conceal the illegal income of his father. As such on 06.03.2007, on behalf of the Commission, observing necessary formalities, Sharmin Ferdousi, Deputy Director of Anti-Corruption Commission, being informant, has lodged written First Information Report with the Officer-in-charge of Gulshan Police Station, Dhaka Metropolitan Police whereupon Gulshan Police Station Case No. 26 Dated 06.03.2007 was recorded against the accuseds Mir Mohammad Nasir Uddin and Mir Mohammad Helal Uddin under sections 26 and 27 of the Anti Corruption Commission Act, 2004 and Section 5(2) of the Prevention of Corruption Act, 1947 (Act II of 1947) along with Section 109 of the Penal Code, 1860 and Rules 15Ka, 15Kha and 15Gha(5) of the Emergency Power Rules, 2007.

The investigation of the case was held by Sharmin Ferdousi, Deputy Director, ACC, she started investigation and due to her transfer, Abdullah-Al-Zahid, Deputy Director, of the Commission was appointed as investigating officer, who completed investigation.

In course of investigation both of them seized and obtained documents from different offices, recorded statements of witnesses as contemplated by Section 161 of

the Code of Criminal Procedure, 1898 and found in different Bank the amounts of money Tk. 23,78,06,173/- including FDR are lying with in the name of Mir Mohammad Nasir Uddin and his family members. But Mir Mohammad Nasir Uddin disclosed Tk. 17,60,68,645/-, infact in wealth statement it has been concealed Tk. 6,17,37,54/- and further found the wealth of Tk. 7,78,88,968/- beyond the wealth statement submitted earlier to the commission and in this way Mir Mohammad Nasir Uddin himself, in the names of his wife and son had amassed wealth of Tk. 22,50,06,999 + 7,78,88,968 = Tk. 30,28,45,997/- and out of which legal money was found of Tk. 1,28,04,067/- and the rest of money Tk. 29,00,91,930/- has been acquired wealth disproportionate to his legal and known source of income. Mir Mohammad Helal Uddin transferred Tk. 5,64,62,947/- from his and joint account to conceal the illegal money of his father.

On completion of investigation Abdullah-Al-Zahid, p.w.32 submitted a charge sheet being No. 142 dated 29.04.2007 against the appellants under Sections 26, 27 of the Anti Corruption Commission Act, 2004, 5(2) of the Prevention of Corruption Act, 1947, Section 109 of the Penal Code and 15 Gha (5) of the Emergency Power Rules, 2007.

The charge sheet was accompanied by a sanction of Anti Corruption Commission.

After submission of the Charge-Sheet the case record was transmitted to the Court of Metropolitan Senior Special Judge, Court No. 2, Dhaka and registered as Metro Special Case No. 19 of 2007. The Metropolitan Special Judge, Dhaka by Order no. 1 dated 03.05.2007 took cognizance against the accused Mir Mohammad Nasir Uddin and Barrister Mir Mohammad Helal Uddin under Sections 26 and 27 of the Anti-Corruption-Commission Act, 2004 read with section 5(2) of the Prevention of Corruption Act, 1947, Rules 15Gha(5) of the Emergency Powers Rules, 2007 and section 109 of the Penal Code,1860. The accused appellants Mir Mohammad Nasir Uddin and Mir Mohammad Helal Uddin were shown arrested in the case. Eventually, the case was sent to the Special Judge Court No. 2, Dhaka for trial and renumbered as Special Case No. 1 of 2007.

The learned Special Judge, Court No. 2 by order dated 09.05.2007 framed charge in the case against accused Mir Mohammad Nasir Uddin, under sections 26(2) and section 27 (1) of Anti Corruption Commission Act, 2004 read with section 5(2) of Prevention of Corruption Act, 1947 (Act II of

1947) and Rule 15 Gha (5) of the Emergency Powers Rules, 2007 and against accused Barrister Mir Mohammad Helal Uddin under Section 27(1) of the Anti Corruption Commission Act, 2004 along with Section 109 of the Penal Code. The charges was read over and explained to them, to which they pleaded not guilty and claimed to be tried.

In course of trial, prosecution examined as many as 32 witnesses including the informant and the documents produced which were marked as Exhibits-1-44, material Exhibits as I-V to substantiate the charges. After closing the evidences adduced by prosecution, the accused-appellants were examined under Section 342 of the Code of Criminal Procedure, they submitted written defence and pleaded not guilty and led no evidence.

The defence version of the appellants as reveals from the trend of the cross-examination of the prosecution witnesses as well as the written statements submitted by them at the time of examination under Section 342 of the Code of Criminal Porcedure, in short, is that they were falsely implicated in the case. It is asserted by the accused Mir Mohammad Nasir Uddin that all of his wealth has been acquired to his known source of income. It is also asserted

that all income and wealth which has been acquired by his wife and after her death, Mir Nasir Uddin as husband and Mir Mohammad Helal Uddin as son and her other heirs got the same. Further case of the defence is that Mir Helal was nominee of all bank accounts of his mother Dalia Nazneen and after her death all the money from the account of his mother has been transferred to his account. All moveable and immovable property of his mother which he has acquired as her heir. The flat lavender, Mitsubishi car which has been purchased by his mother Dalia Nazneen in his name. He did not pay any money regarding those purchases.

After conclusion of trial, the learned Special Judge of the Special Judge, Court, No. 2 pronounced the judgment and order of conviction and sentence dated 04.07.2007 as stated above.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 04.07.2007, convict appellants Barrister Mir Mohammad Helal Uddin and Mir Mohammad Nasir Uddin preferred Criminal Appeal No. 3742 of 2007 and Criminal Appeal No. 3743 of 2007 respectively before this court.

Earlier these appeal were taken by another Division Bench of the High Court Division, and same was allowed by judgment and order dated 02.08.2010 both on merit as well as on points of law and set aside the order of conviction and sentence passed by the Special Judge on the following findings:-

- a. the Secretary of the Commission is to act as per direction of the Chairman. There is no existence of Commission in between 07.02.2007 to 24.02.2007, as such, notice served on 18.02.2007 is not a notice under law.
- b. The President of the Republic by way of promulgating an Ordinance on 18.04.2007 inserted a clause being 18(2) after the existing clause 18 providing that any Act done by any of the officer of the Commission during 07.02.2007 to 24.02.2007 may be given post facto approval provided however, such act exercised by the officer of the Commission is in consonance with the objective of the Act and the functions of the Commission. But the said Commission never gave any post facto approval of the order dated 18.02.2007.

c. By referring the decision of Appellate Division in Criminal Petition for Leave to Appeal No. 398 of 2009 held- öthat notice dated 18.02.2007 issued by secretary of commission, without any lawful authorities, and as such, void and proceedings barred on said void notice is nullity in eye of law. There is, however, no legal impediment for the commission to issue fresh notice under Section 26 of the Act, if so advised, but not in those cases where the accused has already been acquitted on merit of the case as in this case. With this observation this petition is dismissed.ö

Since the case of appellant is identical in nature as that of above case. Therefore the entire proceedings in instant case and conviction passed against the appellant is nullity.

d. The income tax return was filed but it was not considered, though the case was disposed of by the income tax authority. Income tax return was not considered while disposing of this case by the tribunal.

- e. The assessment made by the Engineer is not supported by the documentary evidence. Engineer was not declared as an expert.

Against the judgment and order dated 02.08.2010 passed by High Court Division acquitting the convicts-appellants, the Commission preferred Criminal Petition for Leave to Appeal No. 246 of 2011, 478 of 2012 before the Appellate Division of the Supreme Court on 29.08.2011 and 08.07.2012 respectively against the self same judgment. The Appellate Division heard both the petition together and vide its judgment and order dated 03.07.2014 set aside the judgment of acquittal of the appellants passed in Criminal Appeal No.3743 of 2007 and 3742 of 2007 and remanded the same to the High Court Division for hearing afresh and disposed of on merit and directed to follow the observations made in the judgment and order dated 21.05.2014 passed by this Division in Criminal Appeal Nos. 16-18 of 2013 heard alongwith Criminal Review Petition No. 18 of 2010 and Criminal Petition No. 298 of 2012 reported in *68 DLR (AD) 118*. The present appellants who were respondents of the above mentioned Criminal Petition for Leave to Appeal being aggrieved filed Criminal Review Petition No.50 of

2015 and 51 of 2015 respectively and those were also dismissed for default on 13.04.2016.

Mr. Asaduzzaman, learned Advocate appearing for the appellants submits since the Honøble Appellate Division remanded the Appeals to the High Court Division giving guidelines to follow the principles enunciated in the decision, passed in Criminal Appeal Nos. 16-18 of 2013 heard with Criminal Review Petition No. 18 of 2010 and Criminal Petition No. 298 of 2012 reported in *68 DLR (AD) 118*, as such the decision of *68 DLR (AD)* is very much important and necessary for disposal of these appeals. He further submits that in the present case prosecution totally failed to prove by any oral or documentary evidence that the notice as envisaged under Section 26(1) of the Act was issued by the secretary, ACC on 18.02.2007 upon the appellant Mir Nasir without having obtained any satisfaction and decision from the commission. To fill up the lacuna Section 18 of the Anti Corruption Commission Act, 2004 was amended by inserting sub-Section (2) of Section 18 of the Act on 18.04.2007 by the Ordinance No. VII of 2007 which provides for ex-post facto ratification of the acts done by the officers of the commission during the period from 07.02.2007 to

24.02.2007 when the commission was not properly constituted as per provision of Section 5 of the Act, as such, the notice issued by the secretary under Section 26(1) of the ACC Act, 2004 is no notice in the eye of law. He also submits the principle enunciated by the Appellate Division in paragraph no. 79 of *68 DLR (AD) 118* it is stated that there is no difficulty to say that the commission must have knowledge that the said person has acquired property beyond known source of income long before the issuance of any notice under section 26 of the Act but in the present case the commission have knowledge about the property after submission of wealth statement by Mir Nasir.

He then by referring paragraph nos. 44 and 45 of the decision of the Appellate Division reported in *62 DLR (AD) 290* submits that observation made in those paragraphs have not been expunged rather re-affirmed by the Appellate Division in the decision reported in *68 DLR (AD) 118* at paragraph no 69. The principles enunciated in *62 DLR (AD) 290* is not an obita dicta and binding upon the High Court Division under Article 111 of the Constitution and apply in the facts and circumstance of the instant case.

He contends that Section 27 of the Anti Corruption Commission Act, 2004 is independent of the notice served under Section 26(1) and proceeding under Section 27(1) have no nexus with the notice dated 18.02.2007 issued by the commission under Section 26(1) of the Anti Corruption Commission Act demanding statement of assets and liabilities of the appellant Mir Nasir which are in direct conflict with the decision reported in *62 DLR (AD) 290*.

He further argued that the proceeding under Section 26 is the consequence of the continuity of the process as enshrined in Rule 17 of the Anti Corruption Commission Rules 207, initiated by the notice under Section 26(1) of the Act and as such the notice under Section 26(1) is void and any proceeding under Section 27 of the Anti Corruption Commission Act would be a nullity in the eye of law.

He next submits that notice was issued and served upon the accused Mir Nasir, while he was in custody, without having access to any record or document or bank account or any opportunity to consult any lawyer makes the notice invalid notice in the eye of law and notice under Section 26(1) of the Anti Corruption Commission Act, 2004 is a nullity in the eye of law. Moreover inquiry was held

without giving opportunity to the appellant Mir Nasir, which violated section 22 of the Anti-Corruption Act, 2004.

He also submits that Sharmin Ferdousi, who was informant as well as investigating officer which is clear violation of Rule 24 of the Anti-Corruption Commission Rules, 2007 and that the Anti-Corruption Commission has violated the provision of Section 19 of the ACC Act, 2004 in conducting the enquiry and investigation. The commission to examine the witness ~~on oath~~ at the time of taking evidence but in the present case same have not been done which is clear violation of section 19(1)(Ka) and (ga) of the ACC Act, 2004, though the Words ~~on oath~~ were omitted by the Anti-Corruption Commission, (Amendment) Act, 2013 (Act No. 60 of 2013) Ain 2013, this amendment is not applicable in the present case.

He further submits that all the assets of the appellants, which were disputed in the instant case were placed before the Income Tax Department which had the legal authority to determine the valuation of the assets of the appellants and Taxes Department found that the valuation submitted by the appellants was correct and as such there is no scope to raise any dispute in respect of the valuation of the property.

He next submits the trial court ought to have considered that the FIR lodged on 06.03.2007 and the informant Sharmin Ferdousi as p.w-1 deposed after completion of inquiry, she has lodged the FIR dated 06.03.2007 (Exhibit-2) but on the contrary Sharmin Ferdousi admitted that she has seized income tax file, Bank statements and other documents on 13.03.2007, 21.03.2007 and 22.03.2007 all after the lodging of the FIR and hence virtually and actually she has not gone for any inquiry. The learned trial court ought to have consider the deposition of the p.w-1 who admitted in cross-examination that the income tax file of 22 years of Mir Nasir, income tax file of one year of Mir Helal and income tax file of 10 years of Dalia Nazneen she found correct Tk. 1,32,90,000/- and the rest Tk. 24,39,28,637 are illegal since no tax has been paid and there was no legal source of income. But if the informant could seized income tax files then it would have been clear to her.

He also submits that the investigating officer p.w. 32 deposed that the appellant Mir Mohammad Nasir showed less amount of value on account of construction of Second and Third floors of the village home, Hathajari but none of the prosecution witness produced any evidence to testify that

the said building belongs to appellant Mir Nasir. p.w. 13 and p.w. 28 heard from his step brother that the Second floor of the building was constructed by him but the said step brother was never produced as prosecution witness.

The allegation of concealment of Tk. 6,17,37,528/- in the Banks FDR concerned brought against Mir Nasir but the prosecution submitted the Banks statement by different Exhibits which reveal the total amount lying in the Banks was Tk. 17,52,45,702. Admittedly, Mir Nasir has disclosed Tk. 17,60,68,645. So the allegation of concealment is frivolous and baseless.

He further submits that the allegation brought against Mir Nasir that he being sole owner of all the alleged assets worth of Tk. 29,22,95,573 out of which Tk. 1,28,04,0671 is from known sources of income disclosed in tax file and Tk. 27,94,91,506/-(Twenty seven crore ninety lac ninty one thousand five hundred six) is from unknown source of income. In this respect he submits the learned Special Judge ought to have considered the evidence of p.w.4 and p.w-19 that the late wife of the appellant Mir Nasir had sufficient business like ship breaking, share business, commission business etc and by dint of those businesses she acquired

good amount of money which was subsequently transferred to the account of the appellants Mir Nasir and her son Mir Helal after her sad demise on 05.03.2006, as the appellants were the nominees of the Bank accounts of the late wife of the appellant Mir Nasir.

He also submits that from the exhibited Bank account, most of the accounts of the appellants were opened after the death of the wife of appellant Mir Nasir. But the learned trial court totally ignored the evidence of p.w. 4 and p.w. 19 and came to a erroneous decision. He submits that the investigating officer, found Tk.1,28,04,067(One crore twenty eight lac four hundred sixty seven) as legal income as the income tax paid on the said amount. The amount of money was transferred to the account of the appellants from the account of deceased Dalia Nazneen between May, 2006 to December, 2006 and said money will be treated as legal money on payment of income tax in the next financial year i.e. 2007-2008 but the present case started before payment of the income tax and deprived the appellants of getting benefit of the Income Tax Law.

He further contends that the prosecution has brought another allegation against Mir Nasir that he has misused or

abused power as minister, but in this respect the prosecution has failed to submit any evidence, rather p.w. 1, p.w. 32 in his examination in chief failed to prove by giving statement that no allegation/case of abuse or misuse of power has ever been raised against Mir Nasir.

He further contends that only allegation was brought against Mir Helal that he transferred Tk. 5,64,62,947/- from his account to his wife and mother-in-law to conceal the money illegally earned by his father Mir Nasir. By referring the deposition of p.w. 6, 7, 10 and 32 he submits that those witnesses said the entire transaction was valid. He submits that Mir Helal transferred those money from his account to his wife and mother-in-law's account due to meet up the emergency situation of his pregnant wife and the said transfer can not be said to be illegal transaction. Subsequently, he transferred the said amount to the account of his wife and mother-in-law of the same Branch and there having been no cash withdrawal and such transfer having been disclosed in Exhibit-6, i.e wealth statement dated 25.02.2007 and at the time of transfer there was no restriction for transfer from one Bank to another Bank and thus such transaction was not unlawful. He further submits that p.w. 1

admitted in her deposition that the money was transferred by Mir Helal to unknown place is not correct. Mr. Abdullah-Al-Zahid p.w. 32, the last investigating officer who submitted charge sheet in his deposition stated that the account holders of the same Branch where the amount of Tk.5,64,62,947/- has been transferred by the appellant. So, the allegation of transfer to unknown place is totally false and fabricated. Moreover, the said witness in his deposition further stated that the transfer of Tk. 5,64,62,947/- has been transferred from the account of Mir Helal to his wife and mother-in-law was valid. He also submits that in the wealth statement it was disclosed that the Lavender Flat and Mitsubishi Car belongs to Mir Helal. Moreover, p.w. 5 admitted that the car belong to Mir Helal.

He finally submits that no witnesses out of 32 witnesses brought any semblance of evidence against the appellant Mir Helal for having abetted his father or committed any offence that comes under the perview of section 109 of the Penal Code and section 27(1) of ACC Act, 2004. So, the order of conviction is illegal and unlawful.

Mr. Kurshid Alam Khan, the learned Advocate on behalf of the Anti Corruption Commission submits that there

is no illegality or error of law committed by the learned Special Judge in deciding the points of law as well as fact agitated before it which calls for interference by this Honøble court.

He further submits that the Honøble Appellate Division remanded these appeal to the High Court Division to dispose of on merit afresh in accordance with law after setting aside the judgment and order dated 02.08.2010 and 10.08.2010 passed by the High Court Division in Criminal Appeal Nos. 3742 and 3743 of 2007 and to follow the principles enunciated in the decision of the Appellate Division in the case of *Moudud Ahmed Vs. State* reported in *68 DLR (AD) 118*.

He next submits that the judgment passed in the case of Dr. Mohiuddin Khan Alamgir reported in *62 DLR (AD) 290* having been reviewed in *Moudud Ahmed Vs. the State and another 68 DLR (AD) 118* it has got no more referred value and can not be considered for taking decision in any other case.

He strenuously submits that their Lordships of the Appellate Division in reviewing the decision of this Division expunged the paragraph nos. 44 and 45 in the case of *Anti*

Corruption Commission Vs. Dr. Mohiuddin Khan Alamgir 62 DLR (AD) 290.

He also submits that an obiter dictum is not binding as the law declared under Article 111 of the constitution, it can not be relied upon solely and that an obiter dictum is an observation by a court on a legal question suggested by a case before it, but not arising in such manner as to require decision and that it is not binding as a precedent, because the observation was unnecessary for the decision pronounced by the court. That obiter dictum is a judicial comment made during the course of delivering a judicial opinion which is not precedential but considered persuasive.

He contend that the appellant Mir Mohammad Nasir was arrested on 03.02.2007 and while he was in custody, the secretary of the commission issued a notice dated 18.02.2007 under section 26(1) of the ACC Act which was served upon him on 20.02.2007 in Bogra Jail and asking him to submit his statement of assets and liabilities and that of his wife, son, daughter and other dependents within 72 hours. The appellant without raising any objection as to the issuance of notice under the said section of the Act complied with the same by submitting the statement of assets and liabilities

within the stipulated time. This issue was not raised, deliberated upon and decided before the Special Judge Court.

He submits that all the commissioners resigned from the commission on 07.02.2007 and later on the commission was reconstituted on 24.02.2007 and consequently section 18 of the ACC Act, 2004 was amended by inserting sub-section (2) in section 18 of the Act on 18.04.2007 by the amending Ordinance No.VII of 2007 which provides for ex-post facto satisfaction of the acts done by the officers of the commission during the period from 07.02.2007 to 24.02.2007 when the commission was not properly constituted. In view of the section 18(2) of the ACC Act notice issued by the secretary of the commission was given ex-post facto approval on satisfaction of the new commission through the resolution in the 3/2007th meeting dated 25.02.2007 of the commission as validated by the ex-post facto amending by the Ordinance VII of 2007. He also submits that the statement of assets and liabilities are ex-facie false showing false declaration by not making full information of all the assets and liabilities as revealed from legal evidences of the case. False statement filed and non-declaration/concealment of assets of Tk.3,22,11,637/- was

proved against the convict Mir Nasir under Rule 15 Gha (5) of Emergency Powers Rules, 2007, read with section 26(2) of ACC Act and section 5(2) of Prevention of Corruption Act, 1947(Act II of 1947). (Shortly, P.C Act, 1947)

The accused-appellant having not shown legal source of earning of assets Valued Tk. 24,39,28,637/- held in possession and moneys invested by not paying tax under section 19BB of IT Ordinance ,1984 it is proved that the appellant Mir Mohammad Nasir at the relevant time by illegal or corrupt means earned and otherwise acquired wealth by abusing his position as a public servant. So, the appellants guilt under section 27(1) ACC Act, 2004 and Section 5(2) of the P.C. Act, 1947 also proved beyond reasonable doubt, and hence, found guilty under both the offences charged. As such, the same should not have been interfered and this appeal is liable to be dismissed.

He contends that the appellant is to prove that the wealth possessed by him are legitimate earnings but he failed to rebut the trial court's presumption of guilt on fact under special rules of evidence as set out in section 27(2) ACC Act, section 7(1) Criminal Law Amendment Act 1958 and section 5(3) Prevention of Corruption Act, 1947. Presumption of

guilt must be rebutted by the accused by producing cogent evidence to prove that the assets were earned through legal sources and this onus lies on the accused-appellant. In the absence of such rebuttal by the appellant, the findings and judgment and order of the trial court do not suffer from any illegal infraction.

He further submits section 26 and 27 of the ACC Act, 2004 are independent from each other and there is no nexus between these two sections, and the filing of the case punishable under Section 27 is not dependent upon issuance of notice under Section 26 (1) of the Act. In this respect by referring section 27 of ACC Act, 2004, he submits that if the prosecution can establish that any person has acquired or amassed wealth which is beyond his known source of income, he may be prosecuted and convicted, in that case no notice is required by the commission for prosecution of the offence punishable under Section 27 of the Act before instituting a criminal proceeding against him. This court ought to have consider that the offence for possessing assets disproportionate to his legitimate source of income stands proved under Section 27(1) of the ACC Act, which got nothing to do with the notice dated 18.02.2007 under Section

26(1) of the ACC Act issued by the secretary of the commission.

He submits that the sources of the money invested and tax paid under section 19BB of the Income Tax Ordinance, 1984 in no manner precludes scrutiny under the ACC Act for proceeding against the delinquent if found illegally earned. In as much as Income tax law, Anti-corruption law and Penal Code are independent of each other and deal with matters concerning respective fields. Only untaxed money from legal income shall not come under prosecution in the ACC Act but money earned through bribery, fraud, theft, extortion and like offences shall definitely come under criminal proceedings under ACC Act or Penal Code or any other law, and payment of tax under tax law shall not exonerate the owners from criminal liability.

He next submits appointment of Inquiry Officer was made as per Anti Corruption Commission Rules, 2007 and gazette notification was duly published on 28.02.2007 but inadvertently same was not filed in the trial court but filed before this court at the time of hearing of appeal. Since this gazette notification was judicial notice and Public Document

it should be consider and taken into evidence in the present appeals.

Now, in order to appreciate the arguments of the learned Advocates of the respective parties let us have a look into the evidence on record.

The prosecution in order to prove its case examined 32 (Thirty two) witnesses. The prosecution also adduced documentary and material evidences same were duly marked as exhibits- 1-44 and material exhibits- I-V respectively. On behalf of the appellants no defence witness was examined.

Of them **P.W-1, Sharmin Ferdousi**, Deputy Director (Prosecution) of Anti-Corruption Commission, the informant and part investigating officer of this case. She has deposed that in the month of February 2007, Anti-Corruption Commission published a list of 50 corrupt-persons and name of the accused Mir Mohammad Nasir Uddin was in the list. In pursuance of said list, Anti-Corruption Commission issued notice on 18.02.2007 upon Mir Mohammad Nasir Uddin under the signature of the Secretary, Anti Corruption Commission with a direction to submit wealth statement. She has proved the notice which was marked as (Exhibit-1) and the signature of the Secretary therein was marked as

(Exhibit-1/1). In pursuance of said notice Advocate Mohammad Mezbahuddin on behalf of Mir Mohammad Nasir Uddin, as his authorized representative, submitted wealth Statement of immoveable and moveable property on 25.02.2007 to the Anti-Corruption Commission.

She further deposed that being directed, started inquiry. In course of inquiry she found that Mir Mohammad Nasir Uddin declared that he and his family members acquired wealth of Taka 22,50,06,999/-(twenty two crore fifty lac six thousand nine hundred ninety nine) in his wealth Statement. She further found that the wealth statement submitted in the Anti Corruption Commission he concealed Wealth of Taka 3,22,11,637/-(three crore twenty two lac eleven thousand six hundred thirty seven). In the wealth statement he mentioned the price of Lavender Flat No. AI of Mir Mohammad Helal Uddin of Road No.6, Dhanmondi Residential Area, Dhaka Taka 20,56,000/-(twenty lac fifty six thousand). But in the sale-agreement of the seller company, Building for Future price of the said flat was Taka 39,50,000/-(thirty nine lac fifty thousand) and thereby concealed of Taka 18,94,000/-(eighteen lac ninety four thousand). He has shown Taka 13,00,000/-(thirteen lac) as

the price of car in the name Mir Mohammad Helal Uddin but she came to know from BRTA the price of said car is Taka 17,32,050/-(seventeen lac thirty two thousand fifty), here concealed of Taka 4, 32,050/-(four lac thirty two thousand fifty) only. She also found in the wealth statement Mir Nasir shown Taka 17,60,68,645/-(seventeen crore sixty lac sixty eight thousand six hundred forty five) in different Bank accounts including FDR in Mir Nasir and in the name of his dependants. But, in course of inquiry, she found Taka 20,59,54,232/-(twenty corer fifty nine lac fifty four thousand two hundred thirty two), here he concealed of Taka 2,98,85,587/-(two corer ninety eight lac eighty five thousand five hundred eighty seven). In total, he concealed Taka 3,22,11,637/-(three corer twenty two lac eleven thousand six hundred thirty seven) only.

She further deposed that source of income were shown in the Wealth Statement, are receipt of salary, allowance, honourium, income from law-practice, income from house-rent and agriculture of Mir Nasir during the period of 1976 to 2007, income from commission business and trading firm of his wife Dalia Naznin, income from his son Barrister Mir Mohammad Helal Uddin's law-practice, house-rent and gift

from parents and relatives. In the wealth statement he mentioned about the Tax file of his own and son Barrister Helal and wife Dalia Nazneen whose Tin Nos. are 351-101-0984, 351-103-5962 and 351-108-0191 of Chattagram Taxes Region. After scrutiny of Tax files she found that Mir Mohammad Nasir Uddin, for the first time filed income tax return in the year 1984 and during the period 1984-2006 his total income was shown at Taka 67,00,000/- Family expenditure is Tk. 19,00,000/- and savings is Tk. 48,00,000/- respectively. His wife Dalia Naznin for the first time filed income tax return in the year 1996, her total income from 1996 to 2006 was Taka 92,00,000/- (ninety two lac), family expenditure was Taka 8,00,000/-(eight lac) and savings Taka 84,00,000/-(eighty four lac). His son, Mir Mohammad Helal Uddin for the first time opened income tax file in the year 2006, his total income was Taka 1,60,000/- (one lac sixty thousand), family expenditure was Taka 70,000/- (seventy thousand) and savings was Taka 90,000/-(ninety thousand). As per information furnished their total gross income was Taka 1,60,60,000/- (one corer sixty lac sixty thousand), total family expenditure was Taka 27,70,000/- (twenty seven lac seventy thousand) and total Savings was Taka 1,32,90,000/-

(one corer thirty two lac ninety thousand). But Mir Nasir in his wealth statement declared Tk. 22,50,06,999/- only. At the time of inquiry it was further found more Tk. 3,22,11,637.00 in total their wealth in possession stands at Taka 25,72,18,630/-(twenty five corer seventy two lac eighteen thousand six hundred thirty) out of that amount only wealth of Taka 1,32,90,000/- (one corer thirty two lac ninety thousand) was lawfully acquired which shows that balance wealth of Taka 24,39,28,637/-(twenty four corer thirty nine lac twenty eight thousand six hundred thirty seven) is acquired through illegal means and the same is quite disproportionate to his legal and known source of income. From the aforesaid, it transpires that while he was holding the post of Mayor, (1991-94) Ambassador (1995-96) and State Minister (2001-05) he acquired wealth by abusing his official position and power he acquired wealth by illegal means which is disproportionate to his legal and known source of income. Not only that during inquiry, she found that Dalia Naznin, by exercising husband's power and influence, acquired Wealth through improper means and she is the beneficiary of said wealth. Barrister Mir Mohammad Helal Uddin is the beneficiary of his father's Wealth

acquired through improper means and just after his father's arrest he transferred total Taka 2,08,33,195/- (two corer eight lac thirty three thousand one hundred ninety five) to unknown place from the joint accounts of himself and his father. Thus it is found that Mir Nasir and Mir Helal acquired wealth of Tk. 24,39,28,637/- by illegal means and further concealed Tk. 3,22,11,637/- out of said wealth in the wealth statement.

She has further deposed that on 05.03.2006 Dalia Naznin died in road-accident in Saudi Arabia and her immovable and moveable property has been devolved on Mir Nasir and Mir Helal.

On completion of inquiry, she found the allegations to be true and accorded sanction from the Anti Corruption Commission, lodged written First Information Report (Exhibit-2) and signature therein marked as (Exhibit-2/1) along with three summary-sheets of Bank-Accounts marked as Exhibit-3 series and her signatures thereon Exhibit-3/1(KA) series. Statement of transfer of money was submitted, marked as Exhibit- 4 and signatures thereon, Exhibit- 4(1).

P.W-1 in her cross-examination, stated that she seized three income tax files of Mir Mohammad Nasir Uddin, Dalia Naznin and Mir Mohammad Helal Uddin from the office of Assistant Commissioner of Tax, Circle- 13, Tax Zone- 2, Chittagong vide Material Exhibits- III, IV and V under seizure list Exhibit- 31 which bears her signature Exhibit 31/4. In 1979-1980 Mir Mohammad Nasir Uddin submitted Zero income tax return showing himself as a government employee. In 1986-87 he submitted for the first time, statement of assets and liabilities showing net asset of Taka 1,60,000/- (one lakh sixty thousand) earned through law practice and agriculture. At page 245 of his income tax file it is found that upto 30.06.2006 his net asset was shown Taka 1,35,20,246/- (one corer thirty five lakh twenty thousand two hundred forty six) and assessed-income was of Taka 2,60,323/- (two lakh sixty thousand three hundred twenty three). In page no. 1-231 of second-part of file consists of order sheet and other documents. Assessed-income of Mir Mohammad Helal Uddin in 2006-2007 was of Taka 1,60,000/- (one lakh sixty thousand) and at page 4-5 of his income tax file it is found that his professional income was of Taka 1,41,250/- (one lakh forty one thousand two hundred

fifty) and property inherited from his mother was of Taka 1,12,82,140/- (one corer twelve lakh eighty two thousand one hundred forty). At page 1 of income tax file of Dalia Naznin it is found that in 1996-1997 her assessed income was Taka 80,000/- (eighty thousand) earned from poultry and agriculture. At pages 132 and 135 of her income tax file business of DN Enterprise, at page 122 her net income is found Taka 40,000/- (forty thousand) and at page 13 net asset is found Taka 2,21,91,572/- (two corer twenty one lakh ninety one thousand five hundred seventy two) and she died on 05.03.2006.

P.W-1 in cross examination further stated that on perusal of 22 years Income tax file of Mir Nasir Uddin and one year of Income tax file of Mir Helal Uddin and 10 years of income tax file of Dalia Naznin. she found Tk. 1,32,90,000/-(one corer thirty two lac ninty thousand) as legal and since no income tax was paid for remaining amount of money Taka 24,39,28,637/-(Twenty four corer thirty nine lac twenty eight thousand six hundred thirty seven) and no legal source was disclosed as such said amount was found illegal. She inquired about other source of Income of the accused excepting Income Tax file. It is not correct that they

have business of crores of Taka in ship breaking and wife Dalia Naznin earn 15/20 crores Taka from ship-breaking business. It is not correct that Mir Nasir earned Tk. 8-10 crores from law practice. She further stated that most of the Savings Bank accounts were opened from the year 2001. She also stated that she inquired the source of Tk. 1,32,90,000/- and since tax was paid on the said amount same was found right. She found that the income tax return and assessment of each year of Mir Nasir Uddin for last 22 years found correct. After the death of Dalia Naznin all money, lying in her account was transferred to the account of Mir Nasir Uddin and Mir Helal Uddin.

She further stated in cross examination that name of Mir Helal was not in the first list of 50 corrupt persons and no separate notice was issued upon him and he was never in Government service till arrest. At the time of filing ejahar, age of Mir Helal Uddin was 26 but the starting time of commission of offence i.e. in 1984, age of Mir Helal was only two years. No objection was raised either of the party that Mir Helal Uddin can not withdraw money from joint account.

During investigation no one was asked of the selling company of lavender flat and recorded their statements. She did not collect the agreement of other flat. She also did not collect the cheque through which Mir Helal Uddin made payment of the flat. She filed the case on perusal of Income Tax file, Bank account statement, papers relating to Lavender flat and BRTA paper and wealth statement.

P.W-2 Nasreen Ara Surat Amin, is the Director (Inquiry). Being directed by the Anti Corruption Commission she has accorded permission to lodge the First Information Report on behalf of the ACC by Memo dated 06.03.2007 (Exhibit- 5(1)). She stated that she had no knowledge whether it was mentioned in inquiry report that Mir Nasir Uddin earned through improper means. She had also no knowledge whether it was mentioned in inquiry that how much property has been acquired by Mir Nasir Uddin.

P.W-3 Golam Kabir, Sub-inspector of Police and recording officer deposed that on 06.03.2007 while he was Duty Officer in Gulshan Police Station received written FIR and recorded the same as Gulshan Police Station Case No. 26 dated 06.03.2007 against two accuseds, Mir Mohammad Nasir Uddin and Mir Mohammad Helal Uddin under Section

26 and 27 and of the Anti-Corruption Commission Act read with Section 5(2) Prevention of Corruption Act, 1947 read with Rule 15 (gha) (5) of E.P Rules 2007 and Section 109 of the Penal Code. He proved the FIR form (Exhibit- 7) and his signature Exhibit- 7(1). In cross-examination he stated that in 1984 age of accused Mir Helal Uddin was only one and half years.

P.W-4 Advocate Mohammad Mezbah Uddin,

Authorized representative of Mir Mohammad Nasir Uddin deposed that he was member of the Chittagong District Bar and Supreme Court Bar Associations. On 22.02.2007 he came to learn about the notice and the accused Mir Mohammad Nasir Uddin appointed him as his authorized representative for submitting wealth statement in respect of his immovable and moveable property, at that time, Mir Nasir Uddin was in Bogra Jail. Letter of appointment issued under the signature of Mir Nasir (Exhibit- 8 and 8(1). He proved the wealth statement (Exhibit ó 6) and his signature there on, exhibit- 6(1). He further deposed that he submitted wealth statement to Anti Corruption Commission on 25.02.2007 at 10.15 a.m.

P.W-4 in cross-examination stated that none in the family to represent Mir Nasir for submitting wealth statement. He also stated that Mir Nasir joined as Munsif in the Sub-ordinate Judiciary in 1975, then he resigned. Since 1978 and till arrest at different times he was in practice as Lawyer. He was expert in Marine, Shipping and Admiralty cases. He was the highest paid Lawyer in Chittagong. As Lawyer he has earned nearly 10 (ten) corer Taka. He held the post of Mayor, Chittagong City Corporation, Chairman, Janata Bank Board of Directors, Ambassador and State-Minister. His wife was a Law graduate. His son Mir Helal is a Barrister practicing in the Bangladesh Supreme Court. He opted for Law practice in London.

He further stated that Mir Nasir Uddin's father-in-law family is a famous rich family since British Regime. Mir Helal Uddin's father-in-law is a renewed whole sale businessman of Khatunganj, Chittagong, who owns Arzan Carpet Mills. Dalia Naznin had a number of businesses including ship breaking and export. She made hundred cores of Taka business and earned profit of Taka 15 (fifteen) corer. She had share market business. In 1996 she earned profit of

Taka 6 (six) core from that business. She had profitable poultry feed business.

He has stated that Dalia Naznin purchased Apartment at a cost of Taka 18,14,000.00 and Car Tk. 13,00,000/- by her own earned money in the name of her son Mir Helal, who stays in London.

He has further stated that Mir Helal Uddin, as nominee of his mother Dalia Naznin and as joint account holder legally transferred money to the accounts of his wife and mother-in-law. After the death of Dalia Naznin her three Fixed Deposits shown in Serial No. 2(b), 2(c) and 2(d) at page 18 of the Wealth Statement devolved through transfer in the names of her son, daughter and daughter-in-law. Three fixed Deposits are of Taka 10,07,50,000/- (ten corer seven lakh fifty thousand). Her total wealth amounts to Taka 12,77,70,000/- (twelve corer seventy seven lakh seventy thousand).

He has further stated that there had been no case against Mir Nasir on allegation of misuse of power and misconduct. He has failed to mention particulars of 10 (ten) Fixed Deposits of Dalia Naznin in Social Investment Bank

Limited. He had no personal benefit in the preparation of the Wealth Statement.

P.W-5 Lokman Hossain Mollah, at present Deputy Director (Engineering), Bangladesh Road Transport Authority (BRTA), Chittagong deposed that on 22.06.2007 he was Assistant Director of BRTA, Dhaka circle (North), on that date the informant of the case seized registration of file of the Mitsubishi Car being No. Dhaka Metro BHA-11-0812 through seizure list and as a witness he has signed seizure list and proved the seizure list (Exhibit- 9). At the time of seizure two of his colleague Mohammad Hasan, Record-Keeper, Md. Abul Bashar, Mechanical Assistant was present both of them are witness of the seizure list. He proved seized registration file as Exhibit - I (1-20 pages). At page 13 in sale cash memo price of the car was mentioned Tk. 17,32,050/- and at page 14 signature and photo of the applicant, Mir Helal was available.

P.W-6 Md. Abdullah Al Mamun, He is the Manager of Compliance and Control Department of HSBC, Dhaka. He deposed that on 21.03.2007 he forwarded total five Statements of Accounts of Mir Helal to the Deputy Director of Anti Corruption Commission, Sharmin Ferdousi.

Statements of Accounts are computer originated and are signed by the concerned Branch Manager. He has proved forwarding Memo Exhibit- 10 which bears his signature Exhibit- 10/1. He has further proved five Statements of Accounts Exhibit- 11 series. He has further proved signatures of Branch Manger Moniruzzaman Exhibit-11/1 (KA) series.

P.W-7 Md. Nazrul Wahab, Vice president of Social Investment Bank Limited, Dhaka. He deposed that in compliance with demand of Anti Corruption Commission he forwarded thirty six Statements of Accounts (including Closed Accounts) of Mir Mohammad Nasir Uddin, Dalia Naznin, Mir Mohammad Helal Uddin and Israt Naznin to Deputy Director of Anti Corruption Commission Sharmin Ferdousi. Statements of Accounts are computer originated received through on line and signed by Md. Tarek, Officer, Information Division and First Assistant Vice President (FAVP) Md. Shamsul Alam. He has proved his forwarding letter Exhibit- 12 which bears his signature Exhibit 12/1. He has proved thirty six Statements of Accounts Exhibit- 13 series (total 114 pages) which bear Md. Tarek's signatures Exhibit- 13/1 series and those of Md. Shamsul Alam Exhibit- 13/1 (KA) series. I know the signatures of both the officers.

In cross examination he stated that out of 36 Accounts 14 Accounts was closed, those were in the name of Dalia Naznin, due to her death those were closed. In all the Accounts husband Mir Nasir, son Mir Helal and daughter Ishrat Naznin were nominee. After close of the accouts, joint account was opened in the name of Mir Nasir and Mir Helal.

P.W-8 Md. Akbar Hossain, Manager, Accounts and Finance of Building For Future Limited, Dhaka. He has deposed that on 13.03.2007 Anti Corruption Commission (ACC) sent a letter through FAX demanding papers of Mir Mohammad Helal Uddin's Apartment. Then Deputy Director, Anti Corruption Commission Sharmin Ferdousi seized those papers from his office through seizure-list. Seizure-list was signed by Liaison Officer, Raihan Miah and Sale Officer Quamruzzaman. He also signed seizure-list as presenter of those papers. He has proved Fax-letter Exhibit- 14. He has further proved seizure-list Exhibit- 15 and his signature Exhibit-15/1. He has further proved seized File Material Exhibit- II (page 1-18). Papers include payment schedule, (page- 1) money receipt of Taka 39,50,000/- (thirty nine lakh fifty thousand), (page- 2-8) allotment letter of Flat No. A-1 (page- 9-11) , House No. 27, Road No. 6,

Dhanmondi Residential Area, Dhaka, area 1975 square feet Annexure- 2 of Allotment Letter (page- 12-18). Each and every page of allotment letter and Annexure- 2 has been signed by Mir Mohammad Helal Uddin.

P.W-9 Syed Abul Hashem, Assistant Vice President of Shahjalal Islami Bank Limited, Dhaka. He deposed that he forwarded Statements of Accounts of Ten Accounts including three closed Accounts of Mir Mohammad Nasir Uddin, Mir Mohammad Helal Uddin and Dalia Naznin to Deputy Director of Anti Corruption Commission Sharmin Ferdousi. He has proved his forwarding letter Exhibit 16 which bears his signature Exhibit- 16/1. He has further proved Statements of Accounts (12 pages), Exhibit- 17 which bear his signatures Exhibit- 17/1 series.

In cross-examination he stated that: *৓নমবে বেইয়ৄ রাঁ
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P.W.-10 Md. Latiful Islam, First Assistant Vice President of Eastern Bank Limited, Dhaka. He has deposed that he has forwarded Eight Accounts of Statements of Mir Mohammad Nasir Uddin and Mir Mohammad Helal Uddin to Deputy Director of Anti Corruption Commission Sharmin Ferdousi. He has proved his forwarding letter Exhibit- 18 which bears his signature Exhibit- 18/1. He has proved Statements of Accounts Exhibit- 19 which bears his signature apart from his signature, remaining 11 signatures of Senior Vice President and Head of Service Delivery, M. Akhteruzzaman, he knew his signature (Exhibit-19(1)).

In cross-examination P.W-10 stated-
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 hvq bvB | 01041010033088 bs G"vKvDŠU gxi vjv bwmii Dii' b I
 gxi vjv Dii' *i bvx | D³ G"vKvDŠ cŕg yb-wb nq
 26/04/06 Zwi * | wfb«G"vKvDŠ vuk H Zwi * 68,25,049/57 UvKv
 UvŠdvi nq | wfb«H G"vKvDŠU Wwj qv bvRbx* wKbv Avgvi Rvbv bvB |
 biqub gxi vjv Dii' b wQxb wKbv Rvb bv | cŕy³ i μUi Kvi * wv wv
 vuk G"vKvDŠ bs múYw x cwi bvB gv wv ywdqZ weeiYxZ wv qv
 nq bvB | GKB G"vKvDŠ 08/05/06 Zwi * 1,00,62,000/- UvKv UvŠdvi
 nq Avx | wv G"vKvDŠ vuk UvŠdvi nq Avx wv G"vKvDŠ Wwj qv
 bvRbx* wKbv Avg Rvb bv | H G"vKvDŠi biqub gxi vjv
 Dii' b wQxb wKbv Avg Rvb bv | GKB G"vKvDŠ 03/10/06 Zwi *
 1,00,00,000/- UvKv UvŠdvi nq Avx | wv G"vKvDŠ vuk UvŠdvi nq
 wv G"vKvDŠ Wwj qv bvRbx* wKbv Avg Rvb bv | biqub gxi vjv
 vjv Dii' b wKbv Avg Rvb bv | BJKv Wwj qv bvRbx* Z_ wvcb

K... mZ" bq| 23/04/06 Bs Zvwi * 00051020071005 bs G"vKvDŠU
vuj v nq|.....ö

P.W.-11 Akikunnessa, Deputy General Manager of Agrani Bank, Dhaka. She deposed that she forwarded Statements of Accounts with summary of Mir Mohammad Nasir Uddin, Dalia Naznin and Israt Naznin to Deputy Director of Anti Corruption Commission Sharmin Ferdousi. She has proved her forwarding letter Exhibit- 20 which bears her signature Exhibit- 20/1. She has proved Statements of Accounts (162 pages) Exhibit- 21 which bear signatures of Branch Managers and Officers Exhibit- 21/1series. She has further proved summary Exhibit- 22 which bears her signatures Exhibit- 22/1 series.

In cross-examination she stated that ö í í í í í í ..
`j K* weiaxvZvK Avgiv wnmve weeiYx w` * cwi bv-mZ" bq| 5wJ
etxi cUK cUK diqvWs GLv* bvB| PUMÖgi jvj Lv b evRvi kvLvq
mÂqx wnmve bs- 221 gxi *gvnv\$` bwimi Dwil' b I Wwvj qv bvRbx*xi bxg|
1978 mv* wnmveU vuj v n* *Kbv weeiYx* D*L bvB| Avgiv 10
eQxi wnmve ev` w` * 1988 mvj vuk *wLxpiQ mZ" bq| mvi ms*xi
13 bs AvB* D*LZ wnmveU gxi *gvnv\$` bwimi Dwil' xi | 5 eQi
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 bvRbx~~xx~~i | 11 bs AvB~~xx~~g D~~xx~~LZ wnmv~~xx~~ byni vZ bvRbx~~xx~~i | 26/04/04
 Zwi ~~xx~~ Wwj qv bvRbx~~xx~~i wnmve Pjy n~~xx~~q~~xx~~ | b~~xx~~gwb gxi v~~xx~~nv~~xx~~§` v~~xx~~vj
 Dwî b | H wnmv~~xx~~ 29/12/05 Zwi ~~xx~~ m~~xx~~q~~xx~~ w~~xx~~ 52,18,797/- UvKv |
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 m~~xx~~q~~xx~~ w~~xx~~ 3,33,747/- UvKv wQj | eZ~~xx~~g~~xx~~ w~~xx~~ kb~~xx~~ | D³ `ß wnmv~~xx~~i
 UvKv Uv~~xx~~dvî n~~xx~~ gxi v~~xx~~nv~~xx~~§` v~~xx~~vj Dwî ~~xx~~i bv~~xx~~g Av~~xx~~ wKbv ej ~~xx~~ cwi wQ
 bv | 11bs AvB~~xx~~g D~~xx~~LZ wnmv~~xx~~i b~~xx~~gwb gxi v~~xx~~vj Dwî b wKbv ej ~~xx~~ cwi
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 cY~~xx~~M Z~~xx~~ wnmve veeiYx~~xx~~ w` ~~xx~~ cwi bvB mZ~~xx~~ bq | wnmve v~~xx~~vj vi mgq
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GBZ_” , *v wnmve weei YxZ bvB| Pvg bvB e* `y K* wvqv nq
 bvB|.....ö

P.W.-12 Md. Anwar Hossain Sinha, Deputy General Manager of Janata Bank, Dhaka Zone- 1. He deposed that he only forwarded Statement Accounts of Savings Bank Account No. 0020310811 of Janata Bank, Nawab Abdul Gani Road of Mir Mohammad Nasir Uddin to Deputy Director of Anti Corruption Commission Sharmin Ferdousi. Accounts shows that there was balance of Tk. 5,60,725.64 as on 05/04/2007. He has proved forwarding letter Exhibit- 23 which bears his signature Exhibit- 23/1. He has proved Statement of Accounts (11 pages) Exhibit- 24 which bear signatures of the Branch Manager Exhibit- 24/1 series. He has further proved Branch Manager's forwarding Exhibit- 25 and signature Exhibit- 25/1.

P.W.13- Md. Shafiqur Rahman, at present he is Executive Engineer, Public Works Division, Gazipur. Immediate past he was Executive Engineer, Public Works Division- 2, Chittagong. He deposed that being directed by the Chief Engineer Public Works Department constituted technical team for assessment of valuation of Mir Moghammad Nasir Uddin's village- residence at Mirkhill,

Hathazari, Chittagong and boundary wall of his òKhamar Bariö at Methol, Hathazari, Chittagong. The technical team was constituted with Maruful Hasan Mazumdar, Sub-Divisional Engineer of Hathazari Sub-Division, Md. Abdul Quiyum, Sub-Divisional Engineer, E/M Sub-Division, Nurul Islam Patwari, Sub-Assistant Engineer, Kabiruddin, Sub-Assistant Engineer, E/M Sub-Division and Sub-Inspector of Police of Hathazari Police Station Nurul Islam. The technical team visited the village-residence of Mir Mohammad Nasir Uddin identified by step-brother of Mir Mohammad Nasir Uddin. It is a three-storied building. First floor and second floor were constructed by Mir Mohammad Nasir Uddin in 1993 and in 2002 respectively. The technical team by deducting contractor's profit and incidental expenses assessed valuation of the first and second floor to the tune of Taka 4,92,234/- (four lakh ninety two thousand two hundred thirty four) and value of the boundary wall Taka 8,92,626/- (eight lakh ninety two thousand six hundred twenty six) as per Rate of Schedule of 2004. He has proved report of the technical team Exhibit- 26 and his signatures Exhibit- 26/1 series. He has proved signatures of other members of the technical- team Exhibit- 26/1(KA) Series, 26/1 (KHA)

Series, 26/1(GA) Series, 26/1(GHA) Series and 26/1(UMA) Series.

P.W.-14 Md. Abul Hashem, Executive Engineer, Public Works Division-1, Chittagong. He deposed that being directed by the Chief Engineer he constituted two teams for assessment of valuation of residence of Mir Mohammad Nasir Uddin on Plot No. 110 CDA Chandgaon Residential Area, Chittagong and residence of Dalia Naznin on Gazi Shah Lane, Chatterwari Road, Chittagong. He constituted team No. 1 with Executive Engineer, Public Work E/M Division- 1 Md. Nurul Islam, Sub-Divisional Engineer Zahangir Hossain Miah, Sub-Assistant Engineer Pradip Barua, Sub-Assistant Engineer E/M Nazim Ahmed. Team No. 1 went to Dalia Naznin's residence. Its plan was approved on 05/06/97. They assessed the valuation of the residence including all fittings and fixtures to the tune of Taka 89,15,154/- (eighty nine lakh fifteen thousand one hundred fifty four). He has proved valuation report of team No. 1(16 pages) Exhibit- 27 which bears his six signatures Exhibit- 27/1 series. He proved signatures of others of the team Exhibits -27/1 (KA) series, 27/1-(KHA) series, 27/1 (GA) series, 27/1 (GHA) series and 27/1 (UMA) series. He

further deposed that team No. 2 went to the residence on plot No. 110, CDA Chandgaon Residential Area, Chittagong and assessed valuation of it including all fittings and furniture to the tune of Taka 21,27,502/- (twenty one lakh twenty seven thousand five hundred two). He has proved valuation report Exhibit 28 which bears his six signatures Exhibit-28/1 series. He has proved signatures of other Exhibit-28/1 (KA) series, Exhibit-28/1 (KHA) series, Exhibit-28/1 (GA) series and Exhibit-28/1 (GHA) series. He has forwarded two valuation reports to Deputy Director of Anti Corruption Commission Sharmin Ferdousi. He has proved his forwarding Exhibit 29 which bears his signature Exhibit-29/1. Before that on 15/06/07 he forwarded two valuation reports without furniture Exhibit- 30 which bears his signature Exhibit- 30/1.

P.W-14 in his cross-examination stated that-
 cõbeñix
 cõKkj x B/Gg e"ZxZ `yñv ñUxgi mKj KgRZP Avgvi Aaxb` €MñVZ `yñv
 ñUxgi mKxB cõKkj x| cõKkj x Øviv ñUg Mvb Kwi GRb" x, cõKkj x
 e"ZxZ Ab" vñD feñxi ñbgfY-e"q ñbañY Ki xñ cvñx bv| Avgv ñUg `yñv xñ
 m`m" ñQj vg bv| `yñv ñUg mñRñgñ ñMññ gvcñvc Kññ wi xñU©cñññ Kññ
 Avgvi ñbKU Rgv vñññ| wi xñU©ññ ñU cvl qvi ci Avgv di qñññññ w`ññ cvñvñB|
 wi xñU©cvl qvi ci Avgv mñRñgññ vñññ hvPvB evQvB Kññ Zvi ci wi xñU©
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õAvgvi mvx Dc-uefvMxq cõKfj x Rvrv½xi vwx b igqv I Dc-
mnKvix cõKfj x cõxc eopv uQxb | `p v Uxi m`m`ivB Avgvi mvx
uQj | GK evoxZ v NŠ AvxK evoxZ Avav NŠ uQj vg | Wwj qv
bvRbx i evoxZ v NŠ uQj vg | vB evox v v qv Aew- E vB I qv P
Kugkbvi v Avig WwK bvB | Gj vKvU GKUv m f G j vKv | cvx i
vKRbx i msev ` w x uQj vg | vD Avx bvB | hvPvB-evQvB x i mgq Avig
vB v v i vL bvB | Uxi m`m` e`ZxZ Ab` KvD vB hvPvB-evQvB
Ki x gvc v c m vK vZvg bv-mZ` bq | Avig hvPvB-evQvB Kwi bvB-mZ`
bq | Avgvi mv` v AvBbx Ges ig `v-mZ` bq | wi xv x GKUv evoxi
fvovUqvi bvg v v Avx | wi xv x fvovUqv ev `v xv qv x i mB bvB |
wi xv x mZ`Zv Avbvi Rb` fvovx ev `v xv qv x i bvg wi xv x D x L Kiv
n x x -mZ` bq | `y K ucqb eB x mB K x wi xv U M h Y K x x | vB ucqb-
eB Avig `vLj Kwi bvB | b· v Abjvqx Avd x e x e x m x v R i g x bv v x
wi xv U c t j Kiv n x x mZ` bq | 1983 mv x i v m W D j Ae v v 1986 m j
ch % j y _ v k v i v e l x Avig i j v L Z v v K v M R v v x v L j K w i b v B | U x i
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cõKfj x i ` v ` i A - ú ó | b v g D x L b v B | Z w i L 15/03/07 D x L A v x |
D c - u e f v M x q cõKfj x i ` v ` i A ú ó | b v g D x L b v B | Z w i L 22/03/07
D x L A v x | A v g v i ` v ` i A v x | b v g D x L b v B | Z w i L 22/03/07 D x L

bq| ZUq Zj v I PZy_Zj v 2004 mvx wbgZ nxx| wPZj v I wvZj v
wbgZ nxx 1997-98 mvx| wbgY-mvgMbi `vg mgxi mvx Zvi Zg`
Nxt| Pu`Mul Gi evoxUvi wbgY e`q 20,71,868/- UvKvq wbgZ-mZ` bq|
Avgiv wvwbgy-e`q wvLxqO wvB wbgY-e`q mivK| gxi vgnv`b` bvmi
Dwi b I Zvi `x mve`wKfvx Z`vi wK Kxxb evox wbgxi mgq- GB Z`
Avgvi Rvbw bvB| wi xvU`ci `ui wvax-mZ` bq|ö

P.W.-15 Mahmud Hasan, Record-Keeper of BRTA,
Mirpur Office, Dhaka. He deposed that Deputy Director of
Anti Corruption Commission Sharmin Ferdousi seized
registration papers relating to Mir Mohammad Helal Uddin's
Car No. Dhaka Metro BHA-11-0812 in his presence. He
signed the seizure-list Exhibit-9 which bears his signature
Exhibit- 9/2.

In cross-examination he stated that- öwvRxxxi Rb` wv
KLb wKfvx Avx Avg Rwb bv| MvovU KvMRcÎ wvRgv w` xqR Rwb bv|
RãKv KvMRcx`i wvbwZ Avgvi `v`i bvB| XvKv DËi AÃxi mKj
Mvovi KvMRcÎ Avgvxi wvKwP,vg Avx| Am`úY`Z` _vKj wvRxx kb
nq wKbv Rwb bv| RãKv KvMRcÎ wvKLb msMh Kxx Avg Rwb bv|
wvvc mvxxi K_vgZ mv`v` w` j vg-mZ` bq|ö

P.W.-16 Abul Bashar, He is the Mechanical Assistant
of BRTA, Mirpur, Dhaka who put his signature on the

seizure list Exhibit-9 the Registration papers of Car. It was seized in his presence on 22.03.2007.

In cross examination he stated that he signed on the seizure list as directed by the authority. He had no personal knowledge about the seized papers. He did not give statement to investigating officer.

P.W.-17 Raihan Miah, Liaison officer, Building for Future Limited deposed that the document of the flat in the name of co-accused Barrister Mir Mohammed Helal Uddin, Deputy Director of Anti Corruption Commission seized the file of papers relating to Mir Helal's flat in his presence and he signed the seizure list as witness, which was marked as Exhibit-15 and 15(1) and proved seized file material Exhibit - II. In cross-examination he said he had no personal knowledge about seized papers. He did not give statement to investigating officer. He signed as per direction of the authority.

P.W.-18 Quamruzzaman, Sales Officer of Building for Future Limited in his deposition said that documents of the flat in the name of co-accused Barrister Mir Helal his signature was marked in the seizure list Exhibit- 15(3). In

cross-examination he stated his signature is no where in seized papers. He did not receive any seized papers.

P.W.-19 Amirul Karim Munshi, Assistant Commissioner of Taxes, Circle-13, Tax Zone-2, Chittagong in examinatin-in-chief stated that Sharmin Ferdousi seized Tax file of Mir Mohammad Nasir, (In two part), 1st part consist of (1-254) pages and other part consist of (1-231) pages, Dalia Nazninø 1st part file consist of (1-138), 2nd part (1-78) pages and 3rd part (1-8) pages and Mir Helalø one part file consist of (1-22) pages. He has proved seizure list (Exhibit- 31) which bears his signature Exhibit- 31/1. He also proved seized Income tax file, marked as Material Exhibits- III, IV and V respectively.

P.W- 19 in cross-examination stated that: ö1987 mvxi 30 vWRp gxi vjnvæ§ bvmi Dwi b mæú` weeiYx AvqKi wbañ xi Rb` `wLj Kxb| cU bs-110, vW bs-5, wmwWG, PÆMög-G Pvi KvW gj` 68,000/- UvKv, mxgybv cöPxi wbgæY e`q eve` 20,000/- UvKv wPZjv 1692 eM©dU wbgæY e`q 4,25,000/- UvKv DæL Avæ| Avgiv G`væm Kæ 1692 etdU mwVK cvB| wbgæY e`q Avgiv wbañ Y Kwii 4,46,688/- UvKv| nvDm weii s dvBb`š Kæææxi wbañi Z vW Avgiv AbyñiY Kwii | H eQæxi wbañi Z Ki gxi vjnvæ§ bvmi Dwi b cwi æva Kxb| cög Læi 228 cvZvq mæú` weeiYx Avæ| Ki -cwi æva DæL Avæ wZxq Læi 224

cvZvq| 1988-89 Ki eQx GKB evoxi vWZj vi wbgP-e"q 5,00,000/-
 UvKv vWZj nq| cUg Lxi 223 cvZvq DkL Avx| Avgiv G"vXm Kx
 mWVK cvB Ges Z`vbhvx Ki wbaY Kwi hv cUg Lxi 6 cvZvq DkL
 Avx| Ki-cwi Xva DkL Avx wZxq Lxi 23 cvZvq| 1991-92 Ki
 eQx GKB evoxi wZbZj vi wbgP-e"q 5,42,000/- UvKv I PZy Zj vi
 wbgP-e"q 5,76,000/- UvKv vWZj nq| cUg Lxi 200 cvZvq DkL
 Avx| G"vXm Kx Avgiv cvB vW 11,25,180/- UvKv Z`vbhvx Ki
 wbaY Kiv nq| Avq Ki BbmXKkxi 18/05/92 Zwi Xi wi xU"Abhvx
 gj" wbaY Kiv nq| cv_R" 7,180/- UvKv| wi xU"wxPbvq wX Ki
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 3,71,000/- UvKv Ges RzK dRj nK wXj xi wKU vW 6,80,000/-
 UvKv vW MhY vWZj nq| e"vsK weeiYx vWxi DkL Avx| Ki-
 wba Xi Z" DkL Avx cUg Lxi 21 cvZvq| Ki-cwi Xvxi weiywU
 DkL Avx wZxq Lxi 220 cvZvq| G"vXm Xj ciB Ki-wbaY Kiv
 nq| GB vW wbgq AbjniY Kiv nX| Wwj qv bvRxb 1997-98 Ki
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 `wLj Kxb| wLms I vW wE Ges Kwgkb e"emvi LvZ DkL Kxb|
 AKw Rwg cU bs 16 I 17 Kwkqvi evRvi, vWZqvj x _vbv, P/EMög cwi gvb
 8.62 MÜv| vWRkbnm gj" vWZj Avx 35,00,000/- UvKv| Ki
 cwi Xva Kiv nq| G"vXmxi m"u` weeiYmn Avx`bcT wU cUg Lxi 122
 cvZvq| Ki-wba Xi Avxk cUg Lxi 01 cvZvq| Ki cwi Xvxi Avxk

№Zxq Lxi 78 cvZvq| 30/06/98 Zwi * Wwj qv bvRxb wi Ufb `vLj
 Kxb| GB wi Uv* Kvgkb e'emv| wdvms I wvj wU« e'emvi weIq D*
 Kxb| AKw D³ Rgxi I ci wPZjvi 2200 eM©dU wbgfb-e"q eve`
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 12,65,000/- UvKv wlv* nq| Ki wbañ* ci wZwb Ki cwi *va
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 KZU| MhY Ki * evav bq| cñR* Z` %ok vL* cv*| wi Ufb Av*
 cŭg Lxi 117 cvZvq| G"v* *Š AWñ Av* cŭg Lxi 2 cvZvq|
 №Zxq Lxi 77 cvZvq Av* Ki cwi *xi Z_ | 30/06/01 Zwi * Wwj qv
 bvRxb wi Ufb Av* Drm wmv* wW,Gb, GŠi cŭBR I nvdM cŭwU©BbKvg
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 Ki eQ* wZwb GKB Av* Drm wlv| 2003-2004 Ki eQ* Av* Drm
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 cŭwU© vjvm© Av*db GŠi cŭBRi e'emvqK wKvbr Rvnbviev`,
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Ki 2006-2007 Ki eQ AKR Rng j kvxi Rngi Ici wPZjvi
 wbgY-e"q aiv n 24,90,000/- UvKv| wZxqZjv wbgY e"q aiv n
 22,45,000/- UvKv| ZUq Zjvi wbgY e"q aiv n 20,45,000/-UvKv|
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 Avxi Z_ D L Avxi wi Uvb Avxi 19 cvZvq| Ki cwi xxi Z_ Avxi
 wZxq Lxi 70 cvZvq| Ki vix 2006 mvx gZieiY Kxb gx D L
 Avxi| 2006-07 Ki eQ xxi vjvj wi Uvxi ej v Avxi Zvi gvxi `B-
 ZUqysk wvvi wxb AKR Rng I Rngi Ici wbgZ evoxi | Wwvj qv
 bvRxb Zvi wi Ux Aj skvi I dmbPxi D L Avxi| gxi vjvj Dwi b Zvi
 wi UvxiP gvxi wKU wK AskGZ cB Aj skvi, dmbPvi I UvKv cB
 nxb e D L Avxi| Uv. cUvb I Uv. wbaY Y GKU Pj gvb cUq|
 AvqKi bv w x AvqKi AvB kw wv Avxi| Ki AvB wv Avxi
 Avgiv Ki wbaY Y Ki cwi | AvqKi AvBxi Aaxb Avgvxi wvwb
 wvxi wvxi, x nvBxU wfvxi Avxj nq wKbv Avng Rwb bv| Gvxi
 fj I, U, wvq, wj wvvi wvqZj AvqKi wfvxi | gxi wvxi vjvj
 Dwi xi 2006-2007 Ki eQ Avgvi vxi Ki wbaY bx Avxk wv qv
 nxi|ö

P.W.-20 Shafiqur Rahman, Head Assistant of the
 office of Assistant Commissioner Tax Zone-2, Circle- 13,
 Chittagong in his chief states he put his signature on the
 seizure list prepared by Sharmeen Ferdousi on 27.03.2007 at

the time of seizing the Income Tax file. He proved his signature in the seizure list (exhibit- 31) and his signature was marked as Exhibit-31/2 and their income tax file which were marked as material exhibits- III, IV and V respectively.

P.W.-21 Sadek Hossain Chowdhury, Upper Division Assistant Office of the Assistant Commissioner of Tax, Circle-13 of Tax Zone-2, Chittagong deposed that he put his signature on the seizure list prepared by informant on 27.03.2007. At the time of seizing the Income Tax file (Exhibit- 31) of the co-accuseds he was present and proved his signature thereon Exhibit-31/3.

P.W.-22 Md. Abdul Quiyum, Senior Manager, Legal and Compliance Department, Standard Chartered Bank, Dhaka in his chief states that on demand, he sent thirteen Statements of Accounts (130 pages) Exhibit- 32 with his forwarding Exhibit-33 to Sharmin Ferdousi, Deputy Director, Anti-Corruption Commission, Dhaka. He has sent Statements of thirteen Accounts of Mir Nasir, Dalia Naznin, Mir Helal, Israt Naznin, Nowshin Arzan and Shawkat Ara Chowdhury out of which three are fixed Deposits and three are closed Joint-Accounts of Mir Nasir and Dalia Naznin. Balance as on 03.02.07 in Savings Account No. 18-3069133-01 of Mir

Nasir and Mir Helal was of Taka 1,26,23,743/30 (one crore twenty six lakh twenty three thousand seven hundred forty three and paisa thirty). Balance as on 22/02/07 in Joint-Savings Account No. 18-3070387-01 of Mir Mohammad Helal Uddin and Israt Naznin was of Taka 1,09,19,550/96 (one corer nine lakh nineteen thousand five hundred fifty and paisa ninety six). He has further deposed that on 11/02/07 Savings Account No. 18-3310418-01 was opened in the name of Nowshin Arzan, wife of Mir Mohammad Helal Uddin wherein on 12/02/07 amount of Taka 30,00,000/- (thirty lakh) and on 15/02/07 amount of Taka 40,00,000/- (forty lakh) were deposited. Call-Deposit No. 02-3310418-01 belongs to Nowshin Arzan. There ware two cash deposits on 14/02/07 for an amount of Taka 20,00,000/- (twenty lakh) and on 18/02/07 for an amount of Taka 30,00,000/- (thirty lakh). He has further deposed that Savings Account No. 18-3310744-01 was opened on 19/02/07 in the name of Shawkat Ara Chowdhury. She is the mother-in-law of Mir Mohammad Helal Uddin. On 19/02/07, 20/02/02 and 22/02/07 there were cash deposits of amounts of Taka 15,00,000/- (fifteen lakh), Taka 15,00,000/- (fifteen lakh) and Taka 15,00,000/- (fifteen lakh) respectively. He has further

deposited that on 12/02/07 by two separate cheques total amount of Taka 30,00,000/- (thirty lakh) was withdrawn from Savings Account No. 18-3069133-01. From the same Account on 14/02/07 amount of Taka 20,00,000/- (twenty lakh), on 15/02/07 amount of Taka 40,00,000/- (forty lakh), on 18/02/07 amount of Taka 30,00,000/- (thirty lakh), on 19/02/07 amount of Taka 15,00,000/-(fifteen lakh), on 20/02/07 amount of Taka 15,00,000/- (fifteen lakh) and on 22/02/07 amount of Taka 15,00,000/- (fifteen lakh) were withdrawn.

In cross-examination P.W-22 stated that: $\delta`y`xi`wPwWU` Avig`vWlj`Kwi`bvB|`wNB`wPwWx`wvZ`Pvl`qv`nq`wNB`Zx`l`weeiY` Avgvi`di`qvWsx`bvB|`wvC`G`vKvD`$`Acv`k`k`xi`wb`x`Rbvej`x`G`vKvD`$`i` GKwU` ,`i`Z`cY`Ask|`wvU`mvZwU`wvC`G`vKvD`$|`Wwvj`qv`bvRbxb`mn`Pvi`wU` G`vKvD`$|`gxi`bvmmi`Dwi`b`I`Wwvj`qv`bvRbxb`-`g`x`-`x,`Wwvj`qv`bvRbxb`I` gxi`wvj`vj`Dwi`b`gv`I`wvx|``y`xi`wPwWx`kI`KZ`Aviv`wvj`xi`G`vKvD`$` m`u`x`w`b`Z`Pvl`qv`nq`bvB|`e`vs`UvKv`Rgv`wv`qvi`Z`wU`GKwU` w`cb`Z`|`kI`KZ`Aviv`wvj`xi`G`vKvD`$`m`u`x`Z`w`x`Avig`e`vs`xi` weva`j`sNb`K`xi`Q-mZ`bq|`gxi`bvmmi`Dwi`b`I`Wwvj`qv`bvRbxb`xi`c`l`g`wvC` wv`fsm`G`vKvD`$`bs-18-6350771-01`wvj`v`nq`07/10/93`Zwi`x|`Gi` Av`x`27/07/89`Zwi`x`wv`fsm`G`vKvD`$`18-1531948-01`wvj`v`nq|` gj`G`vKvD`$`w`GGb`x`w`w`U`x`R`e`vs`x|`bs-5505790|`eZ`gvb`e`vj`v`$`$

kb" | 01/12/97 Zwi L **vuk** GB G"vKvD**Š**i weei Yx w` **xqQ** | GB Zwi **xi**
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 05/03/06 **wKbv Rmb bv** | GB G"vKvD**Š** 19/04/06 Zwi **x** e"vj v**Š** **wQj**
 1,24,58,034/22 UvKv | **wQZxq vlc** **inmveU** **wj** v nq 07/10/93 Zwi **x** |
 30/10/93 Zwi **xi** ci **vuk** weei Yx w` **xqQ** | GB Zwi **xi** c**xP** **vwb**
 weei Yx w` B bvB | 02/02/06 Zwi L ch**%** e"vj v**Š** **wQj** 30,95,502/53
 UvKv | Z**Uq vlc** **inmveU** **wj** v nq 16/09/99 Zwi **x** | bs- 01-1531921-
 01 | GUvI G**GbRW MÜ****xR** e"vs**xi** **inmve** **wQj** | bs- 7674219 | GB
 G"vKvD**Š** m**xjP** **vwmU** e"vj v**Š** 2,00,000/- UvKv | Zv**xi** PZy[©]**vlc**
inmveU c**xP****wQj** Av**x** **gri Kvb G** **xñ** e"vsK | 19/09/05 Zwi **x** Av**g****x**
 e"vs**x** **inmveU** P**x** Av**x** | **vwfsm** G"vKvD**Š** bs- 18-5114632-01 |
 01/02/06 Zwi **x** e"vj v**Š** **wQj** 92,98,686/84 UvKv | Pvi **wU vlc** G"vKvD**Š**
 Acv**xkxi** **wbxxRvej x** weei Yx**x** bvB | 07/10/93 Zwi **x** **vG**"vKvD**Š****U**
wj v nq **vwb** G"vKvD**Š****U**i eZ**g**vb e"vj v**Š** kb" | 15/09/99 Zwi **xi** **wj** v
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 18-3069133-01 **wj** v nq 30/05/06 Zwi **x** | 05/06/06 Zwi **x** **vuk**
 Uv**Š**dvi n**x** G**xx** 94,502/- UvKv | 08/06/06 Zwi **x** **vuk** Uv**Š**dvi nq
 66,50,000/- UvKv | **vuk** `B**wU** gxi **bwmi Dwi** b I Wwij qv bvRbx**xi**
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 G'vKvDŠ | vC inmvxi GKRxı gZjz vC inmvıU Avi Pvj y_vx bv |
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 mZ" bq | 09/10/06 Zwi x GKıU vuk UvŠdvi nxx Avx 3,92,900/-
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nxx0 | GKB kvLvq 19/04/06 Zwi * 5,00,000/- UvKv, 05/05/06
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 05/06/06 Zwi * 90,000/- UvKv I H GKB Zwi * 1,40,000/- UvKv
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 vuk vlv hvq vuk bpxi Avx wZbiU kb" bvB | weeYxZ wZbiU Kx kb"
 Avx | c0ukZ vuk eBiU Avgvxi e"vsxi gx nxx0 | msukó kvLv Kbdvg®
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 DVv nxx0 | 14/02/07 Zwi * D³ vuc wmv vuk 20,00,000/- UvKv
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nxx0 wKbv weei Yx vuk eSv hvq bv | 15/02/07 Zwi * D³ vlc wnmve
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 bs wnmvx bM` Rgv nq | 18/02/07 Zwi * D³ vlc wnmve vuk
 30,00,000/- UvKv Dxvj b Kx GKB kvLvq bI wkb Avi Rvxi Kj
 wvrvRU 02-3310418-01 bs wnmvx Rgv nq | wvrvRU vnc-B
 wvrvRxi KbKymf Mjd | weei Yx Dxvj b I Rgvi mgq DxL bvB |
 mgq vKW^o Kiv nq wKbv Avig Rvb bv | gxi vjvj Dwi b I BmivZ
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 18-3310744-01 bs wnmvew kI KZ Aviv xaj x, gxi vjvj Dwi xi
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 A` u³ k³ Rgv-mxc Avbx Avgvx evav w³ x³-mZ" bq | ö

P.W.-23 Rais Uddin Ahmed, Company Secretary and
 Head of the Risk Management, BRAC Bank Limited, Dhaka
 deposed that on demand by Anti Corruption Commission he
 sent 20 pages of statement of accounts with forwarding letter

(Exhibit- 35) of Mir Mohammad Nasir Uddin, Mir Mohammad Helal Uddin, Dalia Naznin and Nusrat Naznin Exhibit-34 with his forwarding Exhibit- 35 to Sharmin Ferdousi, Deputy Director of Anti Corruption Commission, Dhaka. Statements of Accounts are computer-originated. There are in all 13 Joint-Accounts. Joint-Savings Account No. 110180038112 of Mir Mohammad Nasir Uddin and Dalia Naznin of Agrabad Branch, Chitagong is now closed. They have to closed FDR Accounts. In the same Branch Mir Mohammad Nasir Uddin and Mir Mohammad Helal Uddin have one Savings Account and two FDR Accounts. In the Savings Account No. 110180108571 on 17/02/07 balance was of Taka 27,77,942/58 (twenty seven lakh seventy seven thousand nine hundred forty two and paisa fifty eight). In the same Account on 18/02/07 an amount of Taka 91,36,463/89 (ninety on lakh thirty six thousand four hundred sixty three and paisa eighty nine) and amount of Taka 1,19,131/89 (one lakh nineteen thousand one hundred thirty one and paisa eighty nine) were deposited. On the same date an amount of Taka 1,19,97,630/08 (one corer nineteen lakh ninety seven thousand six hundred thirty and paisa eight only) was withdrawn. He has further deposed that on 17/02/07 in FDR

Account No. 110180108684 balance was of Taka 1,50,00,000/- (one corer fifty lakh) and on 18/02/07 an amount of Taka 1,44,95,659/- (one corer forty four lakh ninety five thousand six hundred fifty nine) was withdrawn. In another FDR Account No. 110180124604 on 17/02/07 balance was of Taka 1,00,00,000/- (one corer) and on 18/02/07 an amount of Taka 91,36,463/- (ninety one lakh thirty six thousand four hundred sixty three) was withdrawn. He has further deposed that in Gulshan Branch, Dhaka, Mir Mohammad Nasir Uddin maintains one Savings and two FDR Accounts. In Savings Account No. 150180173242 on 17/02/07 balance was of Taka 14,85,378/- (fourteen lakh eighty five thousand three hundred seventy eight) and on 18/02/07 an amount of Taka 14,85,000/- (fourteen lakh eighty five thousand) was withdrawn. In FDR Account No. 150180319372 on 31/03/07 balance was of Taka 1,00,00,000/- (one corer). In another FDR Account No. 150180239093 on 31/03/07 balance was of Taka 1,40,00,000/- (one corer forty lakh). He has further deposed that in Agrabad Branch, Chittagong, Nowshin Arzan maintains two Savings and two FDR Accounts in her name. In Savings Account No. 110180137538 on 18/02/07 an

amount of Taka 1,44,95,659/- (one corer forty four lakh ninety five thousand six hundred fifty nine) was deposited. In Savings Account No. 110180134286 on 19/02/07 an amount of Taka 2,79,74,294/- (two corer seventy nine lakh seventy four thousand two hundred ninety four) was deposited. In FDR Account Nos. 110180137615 and 110180137627 on 19/02/07 balance was of Taka 1,25,000/- (one corer twenty five lakh) and Taka 1,25,000/- (one corer twenty five lakh) respectively. He has further deposed that in his forwarding Exhibit- 35 date 28 March 2007 has been printed erroneously in place of 2 April 2007. The printing date of Statements of Accounts is 02.04.2007. It is a printing mistake.

In reply to cross-examination, he stated that:
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 ৱD Dcw-€ ৱQj bv| Avgiv ৱৱUKl Kwi bvB| ৱbXkZ nX Avgiv ৱbXivB
 ৱeeiYx cŃyT KxQ| `yX ৱPwU ৱvLj Kwi bvB| ৱewa ৱyZvXK Kivi
 ৱbqg| RãZvwj Kvi gva`xg n`vŪi fvi KiX nq ৱKbv Avg Rwb bv| ৱewa
 ৱyZvXK Avg diqvwS ৱ`X ৱnmve ৱeeiYxi KvMRcÎ n`vŪi fvi Kwi bvB-
 mZ` bq| evsjvXk e`vsXki ৱbXki K_v diqvwS® G D`L bvB| ৱw
 ৱbXR bvgv ৱQj bv mZ` bq| Z`%x Aৱdmvxi ৱbKU Avg RvbwŠ
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gxi ~~gxi~~ bwmí ~~gxi~~ AvZkq-`Rb~~gxi~~ ~~gxi~~ Zvwj Kv ~~gxi~~ qv nq bvB|
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Pj gvb bvB| gxi ~~gxi~~ bwmí Dwí b I gxi ~~gxi~~ Dwí ~~gxi~~ Mõg ~~gxi~~ ~~gxi~~
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1,00,60,107/53 UvKv| 18/02/07 Zwi ~~gxi~~ 110180108571 bs ~~gxi~~
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bs- 110180137538 GKB ~~gxi~~ GKB Zwi ~~gxi~~ 1,44,95,659/- UvKv
GKB ~~gxi~~ Av~~gxi~~| ~~gxi~~ ~~gxi~~ Av~~gxi~~ ~~gxi~~ ~~gxi~~ ~~gxi~~ ~~gxi~~ gxi ~~gxi~~
bwmí Dwí b I gxi ~~gxi~~ ~~gxi~~ Dwí ~~gxi~~ ~~gxi~~ ~~gxi~~ | 19/02/07 Zwi ~~gxi~~
110180132286 bs ~~gxi~~ Uv~~gxi~~ dvi n~~gxi~~ Av~~gxi~~ 2,79,74,294/34 UvKv|
ce~~gxi~~ ~~gxi~~ kb" n~~gxi~~ hvq| 19/02/07 Zwi ~~gxi~~ H ~~gxi~~ UvKv ~~gxi~~
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P.W.-24 Abdul Quader Chowdhury, Executive Engineer, Maintenance Division, Public Works Department, Dhaka in chief states that he submitted the valuation report of the Gulshan Residence owned by Dalia Nazneen which was marked as Exhibit-37. For the purpose of valuation assessment he constituted a team comprising Sub-Divisional Engineer (Civil) Sarwar Jahan, Sub-Assistant Engineer (Civil) Rajab Ali Sarkar, Sub-Assistant Engineer, E/M Rafiqul Islam, Sub-Divisional Engineer, E/M Md. Nasiruddin, Executive Engineer E/M Md. Nurul Islam and himself. On 01/03/07 along with the team he visited the Gulshan-residence of Dalia Naznin in order to assess valuation of the residence according to the Schedule of Rate of 2002. In all, including foundation and construction cost of four-storied residential building, costs of internal and external electrifications, special sanitary fittings, water supply, roof-top, water-tank, gas-connection, underground water-reservoir, pump-house, WASA charge, motor-set, IPS, boundary-wall, etc., the team assessed valuation at Taka 1,24,10,095.56 (one corer twenty four lakh ten thousand ninety five and paisa fifty six).

In cross examination P.W- 24 stated that he went to that house on 01.03.2007. He did not give notice earlier to the owner of the house. To determine the valuation, it is necessary for an engineer. He has been given suggestion if the construction work was made by the owner himself, the construction cost will be decreased to 18%, sometimes the construction cost will be decreased to 20%, 25%, even 50%, if it was made by the owner himself, which he denied. He also said in cross to get proper information about assessment he has to visit each room which was not mentioned in the report. No assessment of door and window was shown in the report. It is not correct the total construction cost of the house is Tk. 50,70,095/-.

P.W.-25 Md. Jahangir Hossain Miah, Sub-Divisional Engineer, Public Works Division-1, Chittagong deposed that Executive Engineer P.W.D Division- I Chittagong constituted Team No. 1 in order to assess valuation of Dalia Kunja. He accompanied with team no. 1 for assessing the valuation of deceased Dalia Nazneen's Chatteswari residence Dalia Kunja. They went to the residence on 01.03.2007. They assessed valuation of the four-storied residential building, in all, including foundation

cost, construction cost, special works cost, sanitary and water supply cost, gas-connection cost, boundary-wall construction cost, RCC road and parking area construction cost, furniture cost, MS gate cost, internal and external electrification cost, etc., at total Taka 89,15,154/- (eighty nine lakh fifteen thousand one hundred fifty four). They submitted valuation report Exhibit-27 to the said Executive Engineer who sent it to Anti-Corruption Commission.

In cross-examination stated that he had no knowledge about issuance of notice to the owner of that house. He did not go with the people who resided in that house. Dalia Nazneen was the owner of Dalia Kunjo. He did not collect the certificate of heirs. He did not issue the written notice to the heirs. He did not call the concern persons connected with purchasing brick, rod, cement, electric goods, etc. He did not examine any of those, since it was possible.

P.W-26 A.K.M. Jahangir Hossain, Sub-Divisional Engineer Public Works Sub-Division-2, Chittagong deposed that he was member of the team comprising Executive Engineer E.M. Division, Nurul Islam Sub-Assistant Engineer E/M Abdul Karim and team leader XEN P.W.D. Division - 2 Abul Hashem on 01.03.2007 this team went to Mir Nasir

CDA, Chandgaon residence for assessing the valuation of the residence. They collected plan of the house from CDA Office. They assessed valuation of 5 storied residential building and submitted valuation report which was marked as Exhibit-28 which bears his signatures Exhibit-28/1(ka) series.

In cross examination P.W- 26 stated that-no one was called in connection with construction work. He does not know whether the actual construction cost was taka 20,63,000/-(Twenty lac sixty three thousand). In the report there is no signature of owner's re-presentative.

P.W-27 Md. Nurul Islam, Executive Engineer, Public Works E/M Division-1, Chittagong deposed that he was member of both the Teams (Team No. 1 and 2) in order to assess valuation of two residences of Mir Nasir Uddin and Dalia Naznin. On 01/03/07, along with team No. 1, he went to Chattersawari oDalia Kunjaö residence of Dalia Naznin. After assessment team No. 1 submitted valuation report Exhibit-27 which bears his signature Exhibit- 27/1(GA). He has further deposed that on the same date they went to Mir Nasir Uddin's CDA Chandgaon residence in order to assess valuation of the residence and after assessment they

submitted valuation report Exhibit- 28 which bears his signature Exhibit- 28/1(GA).

In reply to cross-examination, he stated that: $\delta W w j q v$
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evoxi ` $\ddot{v} \ddot{x} v q b \ddot{x}$ A wig A v \ddot{x} $\ddot{v} \ddot{x}$ w P b Z v g b v | g x i b w m i D w i \ddot{x} i f w M \ddot{x} I

A v \ddot{x} $\ddot{v} \ddot{x}$ w P b Z v g b v | w Z v b $\ddot{v} \ddot{v}$ _ v q _ $\ddot{v} \ddot{x}$ b Z v I R v b b v | Z w j K v c \ddot{f} \ddot{y} K \ddot{x}

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Z w j K v c \ddot{f} \ddot{x} i A v \ddot{x} A wig $\ddot{v} \ddot{v}$ w $\ddot{v} \ddot{v}$ $\ddot{v} \ddot{v}$ D V v B b v B | g v j v g v \ddot{x} i g v \ddot{x} i

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A v g v i m B b v B | g v j v g v \ddot{x} i \ddot{y} i x - \ddot{x} k D \ddot{x} L K w i b v B | w d R, w W c i d R,

g v C \ddot{x} v i \ddot{x} b, w U w f - G i $\ddot{v} \ddot{v}$ R v i $\ddot{x} \ddot{v}$ e v K \ddot{v} c w m i w U D \ddot{x} L K w i b v B | K b K v I

b \ddot{v} k b v j $\ddot{v} \ddot{v}$ w f k \ddot{x} i ` v g $8 \times 2 = 16$ n v R v i U v K v w b i , c b K w i | $\ddot{v} \ddot{v}$ b K \ddot{v} k

f v D P v i m s M \ddot{h} K w i b v B | m e A v B \ddot{x} g B e \ddot{e} y Z A v B \ddot{x} g | m \ddot{e} $\ddot{v} \ddot{v}$ Z v G \ddot{x}

e v R v i ` i h v P v B K w i b v B | d \ddot{v} \ddot{x} i g j \ddot{v} m w K $\ddot{v} \ddot{v}$ v B b v B - m Z \ddot{v} b q | M \ddot{v} m I

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m w K f v \ddot{x} $\ddot{v} \ddot{v}$ v B b v B - m Z \ddot{v} b q | c \ddot{f} Z w U 90/- U v K v ` \ddot{x} e v R v \ddot{x} c v l q v h v q -

m Z \ddot{v} b q | j v B \ddot{x} i e $\ddot{v} \ddot{x}$ \ddot{x} i g j \ddot{v} m w K $\ddot{v} \ddot{v}$ v B b v B e v c \ddot{f} Z w U e $\ddot{v} \ddot{x}$ i g j \ddot{v} 50/-

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P.W-28 Maruful Hasan Mojumder, Sub-Divisional Engineer, Hathazari Sub-Division, Chittagong. He deposed that by verbal order of Executive Engineer he went to Mir Mohammad Nasir Uddin's village-residence, Hathazari, in order to assess valuation of the residence. During assessment Sub-Divisional Engineer Abdul Quaiyum, Sub-Assistant Engineer Nurul Islam Patwari, Sub-Divisional Engineer E/M, Sadequl Amin, Sub-Inspector of police Nurul Islam of Hathazari Police Station and Mir Mohammad Nazir Uddin, step-brother of Mir Mohammad Nasir Uddin were present. He has further deposed that Mir Mohammad Nazir Uddin disclosed to them that the first floor and the second floor of the residential building were constructed by Mir Mohammad Nasir Uddin on RCC frame structure in 1993 and 2002 respectively. They assessed construction cost as per Schedules of Rate of 1993 and 2002. After deducting 18% profit and miscellaneous expenditure of contractor they assessed construction cost of the first and second floors at Taka 13,92,234/16 (thirteen lakh ninety two thousand two hundred thirty four and paisa sixteen). He has further deposed that on the same date they went to Mir Mohammad Nasir Uddin's 'Khamar Bari' in order to assess construction

cost of boundary-wall. Local resident Babul Dutta disclosed to them that most part of boundary-wall was constructed in 2005 and a little part of it in the first part of 2007. He assessed construction cost of boundary-wall at Taka 8.91,626/13 (eight lakh ninety one thousand six hundred twenty six and paisa thirteen) and submitted valuation report Exhibit-26 which bears his signatures Exhibit-26/1 (KA) series.

In reply to cross-examination he has stated that: ৓GB
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 wbgfbKvxi mxi msikó KvDx Awig WwK bvB| Zvxi cvlqv mæe bq|
 BDwbq cwi lxi mPxi wBKU wKl Wwbo Z_` msMh Kwi bvB| wi xvxP
 cÜg cvZvq Kvi l mB bvB| wZxq cvZvq Avgvi mB Avx| GLvxy` jwZK
 Kvxi weeiY Avx| µwgK bs-5 wK 3 Kiv nxx| Wwbo Bwbmqvj bvB|
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 Avgvxi wi xvUmwK bq-mZ` bq| etbZ gj` mwK bq-mZ` bq| mxgvbv

côPxxi `B Asxi wbgfb wPy AxxK mgq eSv hvq bv | mxgvbv côPxxi wwb
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 gvxi wbgfbKvx xx eSv hvq-mZ" bq | 2005 mvxi wbgPyKvj I 2007
 mvxi wbgfbKvj Avgvi wi xxvxc_ukfvx wlvxv nq bvB | 1993 mvx gri
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P.W-29 Md. Abdul Quaiyum, Sub-Divisional
 Engineer, E/M Sub-Division, Bayezid Bostami, Chittagong
 stated in Examination-in-chief that as a member of the team
 he went to assess valuation of the residence. After
 assessment the team submitted Valuation Report Exhibit- 26
 which bears his signature Exhibit- 26(1) Gha. In his cross
 examination he stated that among 16 items which were made
 in the year of 1993 and in the year 2002 was not mentioned
 in the report. He does not know whether the house was
 ejmali House of Mir Mohammad Nasir Uddin.

P.W.-30 Md. Sarwar Jahan, Sub-Assistant Engineer,
 Public Works Maintenance Sub-Division, Dhaka and a
 member of the assessment team went to assess the valuation

of Gulshan residence of Dalia Nazneen After assessment they made a report which was marked as Exhibit-37 which bears his signature (Exhibit- 37/1 (kha) series.

P.W. 30 in his cross examination stated that- 025/02/07

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MVb Kx wQxb | wUg Avgvi bvg wQj | wj wLZ wUg Awig ev cvj k wQj bv |
evoxwUj gwij K Wwj qv bvRbxb gvi v wvb | Zvi gZi ci H evoxi gwij K
wvZv Awig Rvib bv | wi xvx evoxi gwij xi bvg vlv bvB | H mgq gri
bwmj Dwi xi wj I vj H evoxZ wQj wKbv Rvibbv | H evoxi wvZj vi
GKUv Kx | GKRb Amy egwj vx wvZ cvB | f'vj pkb wvxi gri
bwmj Dwi xi d'wigij vj xi bvg DxL Kwi bvB | Zvxi bvg Rvib bv |
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nq bvB | Avxi w`b GKv H evoxZ hvl qvi K_v wj wLZfvx wbePhx
c0K f j x Rvibbv bvB | Awig H evoxZ hvB bvB ex wbePhx c0K f j x
Rvibbv bvB-mZ'' bq | D³ evoxi cx I cw0x GKwvK evox Avx | wvb
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bq | mxgvbv c0Px xi wcl x msj M evox wj i wv gwij Kvbv Avx wKbv Zv
LwZx xwL bvB | mxgvbv c0Px xi ck` z I gj fexi gwU Lp
dvDxkxi Ae` I cwi gvc wby q Kwi bvB | dvDxkxi Mfxi Zv vlx I

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P.W.-31 Md. Rafiqul Islam, Sub-Assistant Engineer,
 Public Works E/M Sub-Division-3 Dhaka who is a member
 of the assessment team went to assess the valuation of the
 Electrical appliances of Gulshan residence of Dalia Nazneen.

In cross-examination he stated that no written notice
 was issued. He did not make statement to investigating
 officer to the effect in which year that house was built. He
 did not take the signatures of the people of that house. The
 house was concealed wiring and the wire of switch can not
 be seen from outside. The said items were used and old.

P.W-32 Abdullah Al-Zahid, Deputy Director, ACC
 and last Investigating Officer of the case. He deposed that he
 took over the charge for further investigation of the case

from p.w.1 on 04.04.2007. He took up investigation of the case on 04.04.2007. Anti Corruption Commission appointed him by appointment letter (Exhibit- 43). He received, case docket, seized papers, collected Bank Statements and other Alamats by challan from previous Investigating Officer Sharmin Ferdousi. He took permission from the court to examine the accuseds at Dhaka central jail. During investigations he recorded the statements of both the accuseds under Section 161 of the Code of Criminal Procedure. On 11/04/07 he examined Advocate Mohammad Mezbahuddin and recorded his statement under section 161 of the Code of Criminal Procedure, 1898. He received Statement of Account of Mir Mohammad Nasir Uddin from Janata Bank, Regional Office, Dhaka, Exhibit- 24. On 18/04/07 he examined DGM of Janata Bank, Anwar Hossain Sinha and recorded his statement under section 161 of the Code of Criminal Procedure, 1898. He has further deposed that, on scrutiny, he has found that total Wealth of Taka 1,61,51,470/- (one corer sixty one lakh fifty one thousand four hundred seventy) has been concealed in the Wealth Statement. Total balance in eight Accounts of Mir Mohammad Nasir Uddin is of Taka 97,51,350/- (ninety

seven lakh fifty one thousand three hundred fifty). But in the charge-sheet erroneously he put the amount as Taka 1,96,51,350/- (one corer ninety six lakh fifty one thousand three hundred fifty). In the name of Mir Mohammad Helal Uddin he erroneously put the amount in the charge-sheet as Taka 6,05,31,572/- (six corer five lakh thirty one thousand five hundred seventy two) in place of Taka 5,98,31,148/- (five corer ninety eight lakh thirty one thousand one hundred forty eight). In the same way balance in Account No. 001-091305001 of Mir Mohammad Helal Uddin of HSBC was erroneously shown by the previous investigation officer as Taka 1,25,135/- (one lakh twenty five thousand one hundred thirty five). Correct amount will be of Taka 4,24,711/- (four lakh twenty four thousand seven hundred eleven). He has further deposed that total balance of all the Bank Accounts is of Taka 22,72,05,749/- (twenty two corer seventy two lakh five thousand seven hundred forty nine). But in the charge-sheet erroneously he put the amount as Taka 23,78,06,173/- (twenty three corer seventy eight lakh six thousand one hundred seventy three). In all, Mir Mohammad Nasir Uddin has concealed amount of Taka 5,11,37,104/- (five corer eleven lakh thirty seven one hundred four). But in the

charge-sheet erroneously he put the amount as Taka 6,17,37,528/- (six corer seventeen lakh thirty seven thousand five hundred twenty eight). So, in all, amount of Taka 6,72,88,574/- (six corer seventy two lakh eighty eight thousand five hundred seventy four) has been concealed in the Wealth Statement. But in the charge-sheet erroneously he put the amount as Taka 7,78,88,998/- (seven corer seventy eight lakh eighty eight thousand nine hundred ninety eight). He has further deposed that Mir Mohammad Nasir Uddin and his dependents have acquired Wealth of Taka 29,22,95,573/- (twenty nine corer twenty two lakh ninety five thousand five hundred seventy three). But in the charge-sheet erroneously he put the amount as Taka 30,28,95,997/- (thirty corer twenty eight lakh ninety five thousand nine hundred ninety seven). He has further deposed that Mir Mohammad Nasir Uddin in his own-name and in the names of his dependents has acquired Wealth of Taka 27,94,91,506/- (twenty seven corer ninety four lakh ninety one thousand five hundred six) through improper means which is disproportionate to his known source of income. But in the charge-sheet erroneously he put the amount as Taka 29,00,91,930/- (twenty nine corer ninety one thousand nine

hundred thirty). In course of investigation he found that Mir Mohammad Helal Uddin is the beneficiary of his father's Wealth acquired through improper means and to conceal such Wealth, just after the arrest of his father, transferred total amount of Taka 5,64,62,947/- (five corer sixty four lakh sixty two thousand nine hundred forty seven) to the Accounts of his wife and his mother-in-law from different single and Joint-Accounts with a purpose to protect his father. On completion of investigation, having found prima-facie case against both the accuseds, by obtaining necessary sanction from Anti-Corruption Commission, he submitted Gulshan Police Station charge-sheet No. 142 dated 30/04/07 under sections 26/27 of the Anti-Corruption Commission Act, 2004 and 5(2) of the Prevention of Corruption Act, 1947 read with Rule 15GHA(5) of the Emergency Power Rules, 2007 and 109 of the Penal Code, 1860.

P.W. 32 in cross-examination stated that: *ôkvi* *igb* *wi* *x* *mx* *Dc-cwi* *Pvj* *K* *c* *x* *GLbl* *`y* *x* *Kg* *PZ* *Av* *x* *b* | *Avig* *GB* *gv* *gj* *vi* *w* *b* *KvMRc* *Î* *Rã* *Kwi* *bvB* | *ce* *z* *P* *Z* *`* *%* *b* *x* *Kg* *RZ* *ñ* *Kvh* *g*, *m* *u* *`* - *weei* *Yx*, *Rã* *K* *v* *Avj* *vgZ* | *c* *ö* *B* *mv* *x* *i* *w* *f* *w* *E* *x* *PvRR* *x* *U* *`* *w* *L* *j* *Kwi* | *`y* *x* *i* *AvBb* *w* *Z* *v* *x* *K* *kvi* *igb* *wi* *x* *f* *xi* *Z* *`* *%* *b* *g* *Aza* *e* *x* 04/04/07 *Zwi* *x* *Zvi* *w* *x* *M* *Av* *x* *k* *cwi* *e* *Z* *B* *K* *x* *Av* *g* *v* *x* *Z* *`* *%* *b* *x* *Kg* *RZ* *P* *w* *x* *M*

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 evox I gxi bwmi Dwi **x** i M**x** i evox hvB bvB| XvKv` **€** j kv**x** i evox **x**
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Kx Zvi Revbe **Š** **w** f`vix Kvhiw 161 aviq **w** W[©]Kwi bvB| m`ú`
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cUK fivx vlvx Avx-mZ" bq| GKxvfivM Avx-mZ" bq| Asxi mWK
vMdx Avig A'Kvi KivQ mZ" bq| Avgi ceZP AbmÜvbKvix
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vcb Kivi Awfxx Awfhy³ Kivi Rb" Zvxi GdWAVi I vvfsm
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Dw'xi bxg ebvxi cU I Wwjqv bvRbxixi bxg PLACID-LAKE
G'cvUš vlv bs-7, avbgÜxi gj" I Z` mWK cvl qvq-Awfxxxi
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Wwij qv bvRbx*xi* bvxg 13uU **vwRW G'vKvDŠ Avx** | c0 k0-13 wmi R | D³
13uU **vwRW G'vKvDŠ** me*xi* e'vj vŠ uQj 1,58,00,795/37 UvKv **vwM**
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e'vs*xi* Ab" G'vKvD*xi* UvŠdvi n*x* **vw** | gxi bwmi Dwi b I gxi **vjvj**
Dwi *xi* bvgxq G'vKvD*xi* UvŠdvi n*x* **vw** wKbv Avgvi Rvbv bvB | Z*x*
G'vKvDŠ b*xi* D*x*L Av*x* | kvnRvj vj Bmj vgx e'vsK vj w*x*W, j kvb kvLv,
XvKv Wwij qv bvRbx*xi* GKUv I H GKB e'vs*xi* AvM0ev` kvLv, PÆM0*xi*
`*xi* G'vKvDŠ **vwRW G'vKvDŠ** | c0 k0- 17/11 I 17/12, c0 k0-17/11-
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bmi vZ bvRbx*xi* I bwmi Dwi b c0Z*xi* K*x* G'vKvDŠ **vwRW Avx** |
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1,54,45,289/11 UvKv-*x*M Ki *x* hv nI qvi ZvB n*x* | e'vK e'vsK
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kvLv PvrRxx Dxl Kwi bvB | fj μx .50j ¶+.50j ¶ =1,00,000/- Gi
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 cvB bvB | e"vK e"vsK AvMev` kvLv PÆMög cð kð-34/1(K-6), cð kð-
 34/1(K-8), cð kð-34/1(K-9), óvUvW©PvUvW©e"vsK, bwmi vev` kvLv PÆMög
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m^u`-weei Y**x** Avmvgx Zvi **ei**-Ae`**ei**, Mvox, evox, dvU M^gxb K**v**
Rig, GRgwj m^uÉ, e'vs**x** i vLv GdWAVi I **x**wfsm G'vKvDŠ+cY⁸M
UvKvmn, **w**bgg-gwdK UvŠdvi, d**w**bPvi, R**x**j wii, B**x**K**w**K'vj **w**dvUsm,
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gj" Kg **vuv** nq bvB-mZ" bq | **ya** UvŠdvi **x**vb Z_" **w**wcb K**x**b
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bq | **w**wb Aciva msNU**x** gxi **v**vj D**w**i b **w**wb m**v**qZv K**x**b bvB-mZ"
bq | **w**RÁvmvev**x** Rvb**x** **w**wkQ gxi **v**vj D**w**i b **w**KQj` b c**x**®evi -G'vU-j
K**x** evsj **v**x**w** **w**dvU**w** | gv, **w**wb I d**w**l**w**i `N⁸bv R**w**bZ g**z**i I **w**cZvi
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`xi **w**P**w**Krmvi Rb" **w**Z**w** **w**KQyUvKv Zvi **g** I k**ji**oxi **v**x**w** **w**b**x**i G'vKvDŠ
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mZ" bq | Avgvi Z` **to** **w**vdj fj -mZ" bq | Avgvi **v**x**w** GB gvgj vq Z` **%**
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hiv Z` **%**ix KgRZP AwQ mK**x**i **v**x**w** Av**x**B GKUv **w**wb**x**j **w**wRU

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 Avgvi Rvbn bvB| Avig i xQ vAvxk e`xv Ae G`wSkivckb vuk
 Avgvxi Kvgk G`veRie Kiv n k vB AvxkuU gnvgnb` nvBkvUefvxi-
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 Zvi mKj m`u` ya Avq Øviv AvRZ| wZvb Rvbn xQ k vuv AvqKi
 DvKxi mWK ci v gk`bv cvl qvq Zvi m`u` ARxi weiq Avxi Drxi
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 bwmi Dwi b AvZ Avq ewnfZ 27,94,91,506/- UvKv AR® Kxb gx
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We have considered the submissions of the learned Advocates of both the sides, examined the oral and documentary evidence and other materials on record and gone through the decisions referred by the parties and particularly the decision relied by the learned Advocate for

the appellants reported in *62 DLR (AD) 290* and the latest decision of the Appellate Division on this point relied by both the parties reported in *68 DLR (AD) 118*.

It is pertinent to note that after being aggrieved by the judgment and order dated 02.08.2010 and 10.08.2010 passed by High Court Division in Criminal Appeal Nos. 3742 and 3743 of 2007 the respondent, Anti-Corruption Commission preferred Criminal Petition for Leave to Appeal Nos. 478 of 2012 and 343 of 2011 before Appellate Division and their Lordships of the Appellate Division after hearing by the judgment and order dated 03.07.2014 set aside the judgment and order of acquittal dated 02.08.2010 and 10.08.2010 and remanded the same to High Court Division to hear and dispose of the appeals on merit and further directed to follow the guidelines made in the judgment and order dated 21.05.2014 passed by this Division in Criminal Appeal Nos.16 of 2013, 17 of 2013, 18 of 2013, Criminal Petition No. 298 of 2012 and Criminal Review Petition No.18 of 2010 at the time of hearing of the present appeals reported in *68 DLR (AD) 118*.

Now, for effective adjudication and the points of law involved in these appeal, the relevant paragraphs of the decisions reported in *68 DLR (AD) 118* is very much necessary for proper disposal of the present appeals.

In the decision reported in 68 DLR (AD) 118 in paragraphs 56, 57, 58, 59, 60, 61, 62, 69, 78 and 79 it was held in the following manner:

It was held in paragraph 56 and 57:

“56. In view of the section 18(2) of the ACC Act notice issued by the Secretary of the Commission was given ex-post facto approval on satisfaction of the new Commission through the resolution in the 3/2007th meeting dated 25-02-2007 of the Commission as validated by the ex-post facto amending Ordinance VII of 2007, it cannot be said that the notice under section 26(I) of the ACC Act was defective. But in this case no issue in respect of ex-post facto approval was framed, deliberated upon and decided in view of the provisions of section 18(2) of the ACC Act and in the facts and circumstances of the case the observation made by this Division in paragraph 41 of the decision reported in 62DLR (AD) 290 as reproduced below is an obiter dicta: “If any person acts beyond his authority, to the prejudice of any person, such acts cannot be ratified or validated by post facto legislation, his action remains void.ö This Division misconceived the provisions of sections 18(2) and 26 of the ACC Act in observing that “But by sub-section (2) of section 18, the Commissioners can only ratify the ‘satisfaction’ of the Secretary which is certainly not stipulated in section 26.(para 42)

57. As such, the notice dated 18-02-2007, issued by the Secretary in favour of the respondent No. 1, was not issued on behalf of the Commission as envisaged under section 26, and is without jurisdiction and void abinitio.(para 43)

It was also held in paragraphs 58, 59, 60, 61 and 62:

“58. The views expressed in the aforesaid observations 62 DLR (AD) 290 and 297 paragraphs 42 and 43 of this Division do not convey the correct

principle of law. Because the preamble of the Anti-Corruption Commission Act, 2004 envisages that for constitution of an independent Anti-Corruption Commission, for prevention of corruption and offences relating to corruption and for enquiry into, and investigation of corruption and certain other offences and matters connected thereto the Act is enacted. Sub-section (1) of section 18 provides that subject to the provisions of this Act the Commission may, in the discharge of its duty, empower any Commissioner behalf and the said Commissioner or Officer would be able to exercise the said power. Sub-section(2) of section 18 contemplates that if an officer of the Commission in a special situation without prior approval of the Commission from 7th February to 24th February, 2007 performed an act or exercised his power in such a manner which ins in conformity with the purposes of the Act and functions of the Commission then the Commission may accord ex-post facto approval to such performance of act or exercise of power by the said Officer. In other words, sub-section (2) of section 18 of the ACC Act enables the Commission to accord ex-post facto approval to any act done or power exercised by the Officer of the Commission which is very much inconformity with the purposes, objectives and functions of the Commission but not the approval of the satisfaction of the Secretary. In the instant case the order/notice dated 18-02-2007 under section 26 read with section 18 of the Act was issued in conformity with the purposes of the ACC Act and functions of the Commission when the Commission was not properly constituted as per provisions of section 5 of the Act though as an Institution the Commission was very much in existence as per provisions of sections 3 and 4 of the Act, Inasmuch the Commission was having its Head Office in Dhaka and its Branch Officers all over the county. Therefore, according ex-post facto approval to the issuance of order/notice dated 18-02-2007 by the Secretary of the Commission is very much legal pursuant to the provisions of section 18(2) of the Act and in conformity with the

purposes, objectives and functions of the Commission.

59. A provision of law cannot be struck down without examining the vires of the law having been challenged before a competent court of law. This principle of law has been reiterated in the case of Khondker Delwar vs Italian Marble Works, 26 DLR (AD) 298 and 348 para106. In the instant case reported in 62 DLR (AD) 290 the vires of the law, section 18(2), was not challenged before a competent court of law and no issue in respect of vires of the law was raised, deliberated upon and decided by the competent court. Therefore, in a hearing of a Criminal Petition for leave to Appeal a provision of law cannot be struck down or repealed by indirect means or by implication. The view expressed by this Division regarding the effect of section 18(2) of the Act, granting ex-post facto approval of any act done or power exercised by an Officer of the Commission during the period when the Commission was not properly constituted as per section 5 of the Act does not reflect the correct principle of law. We are therefore of the view that order/notice issued by the Secretary of the Commission was rightly ratified by e ex-post facto approval on satisfaction of the New Commission through resolution in the 3/2007th meeting dated 25-02-2007 of the Commission as validated by the ex-post facto amending Ordinance VII of 2007. Accordingly, the foregoing observations and findings of this Divisions in paragraphs 42 (partly) and 43 of the decision, 62 DLR (AD) 290 and 297 do not depict the correct principle of law. In this case the issue before the court was whether the notice issued by the Secretary of the Commission was rightly accorded ex-post facto approval by the Commission as per provisions of section 18(2) of the Act. In view of the foregoing discussions we are convinced to hold it in the affirmative.

60. This Division having considered the facts and circumstances of the case rightly dismissed the Criminal Petition for Leave to Appeal No. 398 of 2009 on merit by the impugned judgment and order. In the instant case relevant issues on point of law

were in respect of sanction by the Commission pursuant to section 32 of the ACC Act read with sub-rule (1) of rule 13, sub-rule (4) and sub-rule (7) of rule 15 of the Rules and the order/notice dated 18-02-2007 under the provisions of section 26 read with section 18 of the ACC Act which was served upon the respondent No. 1 on 20-02-2007. This Division rightly observed that the High Court Division erred in law in holding that the learned Special Judge committed illegality in taking cognizance of the offence without sanction from the Commission purportedly under section 32(1) of the ACC Act and that requirement of sub-section (1) of section 32 was complied with when the charge sheet was submitted along with a copy of the sanction letter from the Commission to the concerned court. As per provision of law only one sanction will be required under section 32 of the unamended Act or the amended Act. In that view of the matter no illegality was committed by the learned Metropolitan Special Judge in taking cognizance of the case. At the time of hearing of the Criminal Petition for Leave to Appeal No. 398 of 2009 the Learned Advocate for the Anti-Corruption Commission could not make correct submissions in assisting this Division regarding the true scope and import of section 26 read with section 18(2) of the Act and as a result an error of law crept in formulating the opinion by this Division while disposing of the leave petition with the above observations on misconceived view of law as reported in 62 DLR (AD) 290 and 297 paragraphs 42 (partly) and 43. The aforesaid observations of this Division are not tenable in law because sub-section (2) of section 18 of the Act in unequivocal terms made it abundantly clear that the Commission can accord ex-post facto approval pursuant to the amending Ordinance No.VII of 2007. In disposing the leave petition, if the opinion formed by this Division on the effect of the ex-post facto amending Ordinance No. VII of 2007 is treated to be correct, then it would amount to declaring the law ultra vires or repeal of the law, section 18(2), without examining the vires of the law by a competent court. We are of the view that declaring a law ultra vires

or striking down a law or treating a law to be repealed or nullity without having assailed the vires of the law would tantamount to legislation by the court which is unknown to our jurisprudence.

61. Having meticulously examined the judgment reported in 62 DLR (AD) 290 we find that the observations made in Para 44 started with the word "Besides" which according to Chambers Twentieth Century Dictionary means "in addition" or "moreover" or "over and above" and according to Oxford Advanced Learner's Dictionary means "in addition to" or "used for making an extra comment that adds to what you have just said." In view of the foregoing discussions and findings the following observations made by this Division in paragraph Nos. 44 and 45 were not necessary for the disposal of the Criminal Petition for Leave to Appeal No. 398 of 2009 rather it is a passing comment and they do not relate to the material facts in issue and no issue on such point of law was ever raised, deliberated upon and, as such,, the following observations not being at all relevant in the disposal of the case on merit are obiter dictum not ratio decidendi of the case:

õ44. Besides the notice dated 18-02-2007 was not a notice required by law, the notice directed the respondent No. 1, detenu, to submit return of his assets within a period of 72 hours, is itself a worst example of arbitrary action on the part o the concerned authority. A notice must allow a reqasonable time to check-up the details of the assets of a person if necessary, on examination of his records and after consultation with his lawyers and other concerned persons. Section 26 certainly does not envisage a notice upon a person who is in detention and he is not expected to give any details of his assets within the time specified. The person concerned must be afforded a fair and reasonable opportunity to

respond to the notice; otherwise, it is no notice in the eye of law. A notice issued under section 26 of the Act to a detenu, away from his hearth and home, cannot be said to be a fair and bonafide exercise of power.

45. Under the circumstances, we are of the opinion that the notice dated 18-02-2007, issued by the Secretary to the Commission, was without any lawful authority, as such, void and any proceeding based on the said void notice is a nullity in the eye of law.ö

62. The foregoing observation of this Division are not relevant in the instant case, because the respondent No. 1 did not raise any objection as to the issuance of notice/order under section 26 (1) of the ACC Act while he was in custody. Rather he complied with the same by submitting the statement of assets and liabilities within the stipulated time. Moreover, he was allowed to submit long after the stipulated date a supplementary statement of assets and liabilities which was marked as an exhibit during the course of trial. This issue was not raised, deliberated upon and decided before the trial court and the High Court Division in as much as no such issue was raised and deliberated upon before the Appellate Division and that this observation being an obiter dictum cannot operate as a binding precedent, which is not a law declared by the Appellate Division pursuant to Article 111 of the Constitution and, as such, it is not binding on the High Court Division and all other courts and tribunals as a legal precedent. Therefore, observation made in paragraph 44 of the decision of the case reported in 62 DLR (AD) 290 cannot be used as the binding precedent under Article 111 of the Constitution in disposing of Criminal Miscellaneous Case Nos. 21084 of 2011, 14900 of 2009 and 12240 of 2009 by the High Court Division. Moreover, it seems to us that the observation made in paragraph 45 is wrong

in principle and cannot be justified by provisions of law as discussed above.”

The Appellate Division further spelt out in paragraph 69:

“69. In the instant case the observations of this Division in paragraph 44 of the judgment in respect of service of notice dated 18-2-2007 under section 26 read with section 18(2) of the ACC Act upon the respondent No. 1 when he was in custody was not an issue in the case before the court. The very observation was not at all necessary for the decision of the case and does not relate to the material facts in issue. At best it can be said that is an observation by the court on question suggested by the case before the court but it has not arisen in such a manner as to require a decision by the court. The foregoing observations made in 62 DLR (AD) 290 and 297 Para 44 is contrary to the purpose and intendment of the ACC Act, 2004. In fact the case was decided on merit as well as on points of law. The issue on points of law was in respect of the number of sanctions required to be obtained under section 32 of the Act for lodging complaint with the Commission or the Police Station and for submission of the investigation report before the concerned court or whether the court requires any letter of sanction from the Commission before taking cognizance. But at no point of time the issue in respect of passing of an order in writing /notice dated 18-2-2007 under section 26 of the Act with ex-post facto approval on satisfaction of the new Commission through resolution in the 3/2007th meeting on 25-2-2007 of the Commission as validated by the ex-post facto amending Ordinance VII of 2007, upon the respondent No. 1 to submit statement of assets and liabilities in accordance with the prescribed procedure and other information as directed while he had been in custody, was raised, deliberated upon and decided by both the trial court and the High Court Division in as much as no such issue was raised and deliberated upon before this Division. Therefore, a solitary, isolated and passing observation or an opinion expressed by the way in the judgment of this

Division on a matter which was not before the court and which was not necessary in disposing of the criminal petition for leave to appeal for which no principle and precedent was cited and which was not even remotely a ratio of the judgment is nothing but an obiter dictum. In the case of Armit Das vs State Bihar(2000) 5 SCC 48 : the Supreme Court of India held that a decision not expressed and accompanied by reasons and not proceeded on a conscious consideration of issue cannot be deemed to be a law declared to have a binding effect as contemplated under Article 141 of the Constitution. In the facts and circumstances of the case reported in 62 DLR (AD) 290 we are of the opinion that a decision of this Division as depicted in paragraphs 44 and 45 which is not proceeded on consideration of issue, cannot be deemed to be law declared to have a binding effect as contemplated by Article 111 of the Constitution. A statement of law which is an obiter dictum cannot operate as a binding precedent pursuant to Article 111 of the Constitution as it was unnecessary for the decision of the case. The Supreme Court of India in the case of Hari Singh vs State of Haryana(1993) 3 SCC 114 held that the doctrine of precedent does not apply to an order rejecting a special leave petition. However in the case of Union India vs ACC India Services pensioners Association, AIR 1988 SC 501 the Supreme Court of India opined that there is a law declared if the court gives reasons for dismissing the petition. Venkataramiah, J. observed at page 504 para 6 as under:

“With great respect to the Tribunal it should be stated that the way in which it has tried to ignore the decision of this Court in the Andhra Pradesh State Govt. Pensioners Associations case (AIR 1986 SC 1907) (supra) is not correct. In the Above decision the two learned Judges, who decided that case have given reasons for not applying the rule in DS Nakara case (AIR 1983 SC 130) (supra) insofar

as the liability of the Government to pay gratuity on retirement is concerned. The first ground relied on by the Tribunal not to follow the said decision is that it had been rendered by this Court while dismissing some special leave petitions. This is a wholly untenable ground. The special leave petitioners were not dismissed without reasons. This court had given reasons for dismissing the special leave petitions. When such reasons are given the decision becomes one which attracts Article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding on all the courts within the territory of India. We are, therefore, of the view that a law is declared pursuant to Article 111 of the Constitution when an issue is raised and deliberated upon before the Appellate Division which gives reason in dismissing a leave petition.

It was also held in paragraphs 78 and 79:

“78. In respect of Criminal Appeal Nos. 16-18 of 2013 we are required to examine whether for initiating a proceeding under Section 27(1) of the ACC Act, 2004 a prior notice is necessary and whether a proceeding under Section 27(1) of the ACC Act, 2004 is liable to be struck down for service of unlawful notice. To answer the aforesaid question we have to decide firstly, whether the notice dated 19.05.2007 or 03.07.2007 under Section 26(1) of the ACC Act is lawful or not and Secondly, whether Section 27 is independent of the notice served under Section 26(1) of the ACC Act and whether the proceedings under Section 27(1) have any nexus with the notices dated 03.07.2007 or 29.05.2007 issued by the Commission under Section 26(1) of the Act demanding statement of assets and liabilities of the appellants in Criminal Appeal Nos.

16 and 18 of 2013 and the respondent No. 1 in Criminal Appeal No. 17 of 2013. As regards the 1st option in the foregoing discussions we have formed the opinion that order/notice under Section 26(1) of the ACC Act is very much in accordance with the provisions of law. Regarding the 2nd option it is to be noted that Section 26(1) of the ACC Act contemplates that if the Commission on the basis of any information and after holding necessary inquiry is satisfied that a person or any other persons on his behalf acquired or possessed property disproportionate to his known source of income, then the Commission may by an order in writing direct him to submit the statement of assets and liabilities and any other information as pointed out in the said order in the prescribed manner. Sub-section (2) of Section 26 provides for imposition of sentence for a term not exceeding 3 years or with fine or with both on a person who fails to submit written statement or information in respect of assets and liabilities or supplies false or baseless information and documents in violation of the order pursuant to Section 26(1) of the ACC Act. Whereas Section 27 of the ACC Act provides for maximum Sentence of 10 years and minimum 3 years imprisonment for acquiring/amassing property beyond known source of income and the property in question be confiscated if he fails to explain satisfactorily to the court in the trial in respect of acquisition or amassing of the property. Generally, no notice is required to be served upon a person before instituting a criminal proceeding against him. Moreover, Section 27 does not envisage any notice to be served upon the person before initiation of a criminal proceeding under the section. In other words, there is nothing in Section 27 requiring service of any prior notice before initiation of a criminal proceeding. Therefore, Section 27 is independent of the notice served under Section 26(1) of the ACC Act and the proceedings under Section 27(1) have no nexus with the notice served by the ACC under Section 26(1) of the ACC Act demanding statement of assets and liabilities of the accused appellants in Criminal Appeal Nos. 16 and 18 of 2013 and the accused respondent No. 1 in

Criminal Appeal No. 17 of 2013. The established principle of law is that if the law enforcing agency knows that a person has committed an offence or there are sufficient reasons to believe that the person has committed an offence, then the law enforcing agency is empowered to institute a criminal proceeding against him and no notice is required to be served upon him before initiation of the same against him. This view has been aptly expressed in the decision of this Division in the case of ACC Vs. Iqbal Hasan Mahmud reported in 66 DLR (AD) 185 wherein we observed as under: "Section 27 is an independent provision and for initiation of a proceeding against any person under the said provision no notice is required to be served. If the prosecution can establish that any person has acquired or amassed wealth which is beyond his known source of income, he may be prosecuted and convicted under Section 27(1)."

79. We have already discussed the purpose, intendment and scheme of the ACC Act, 2004. From the scheme and contents of the Act it appears that Section 26 and Section 27 of the ACC Act are independent from each other and there is no nexus between these two sections. Section 27 being an independent section provides that if there are sufficient reasons to think that a person has acquired or amassed property illegally which is beyond his known source of income then he may be sentenced to suffer imprisonment for a term not more than 10 years and not less than 3 years and to pay fine and the property in question is liable to be confiscated. Therefore, there is no difficulty to say that before issuance of any notice under Section 26 of the ACC Act upon a person the Commission must have knowledge that the said person has acquired property beyond known source of income. In other words, the fact of acquiring property beyond some one's known source of income was within the knowledge of the Commission long before the issuance of the order/notice under Section 26 of the Act. Section 27 of the ACC Act is independent of the notice served under Section 26(1) of the ACC Act. Therefore, in the instant cases the proceedings under Section 27(1) have no nexus with the notices

dated 03.07.2007 or 29.05.2007 issued under Section 26(1) of the ACC Act.”

Reverting to the present case in hand, on careful examination of the oral and documentary evidence, it appears that Anti-Corruption Commission issued notice on 18.02.2007 under section 26(1) and 18 of the Anti-Corruption Commission Act, 2004 read with Rules 15 Gha (1) and (2) of the Emergency Power Rules, 2007 under the signature of its secretary, an officer of the commission directing convict appellant Mir Mohammad Nasir Uddin while in jail custody to submit his statement of wealth alongwith the statement of wealth of his wife and other dependants through his authorized representative to Nasrin Ara Surat Amin, Directors, (Enquiry) within 72 hours from the service of notice which he duly complied with by submission of the statement with raising any objection.

In this connection the learned Advocate for the appellants submits that the issuance of notice by the secretary, Anti-Corruption Commission under Section 26 and 18 of the ACC Act read with Rule 15 Gha (1) and (2) of E.P.Rules, 2007 without satisfaction and decision of the commission followed by inadequate and untenable

investigation and the entire proceedings and trial before the special court was initiated illegally.

Learned advocate for the appellant further submits that secretary of the commission issued notice under Section 26 of the ACC Act which served upon Mir Mohammad Nasir on 20.02.2007 while he was in jail. It is on record that all the commissioners resigned from the commission on 07.02.2007 and commission was re-constituted on 24.02.2007. On the date of issuance of Notice commission was not properly constituted as per Section 5 of the Anti Corruption Commission Act though the commission was in existence as an institution under the provisions of Sections 3 and 4 of the Anti Corruption Commission Act, 2004. In order to issue notice under Section 26 (1) of the ACC Act, the commission is required to be satisfied that a person possesses or has acquired ownership of property disproportionate to his assets known source of income through illegal means then the commission may by an order in writing direct the said person to submit the statement of his assets and liabilities or any other information as directed by the said order. In the case of the appellant the order/notice was issued by the secretary of the commission without having obtained any satisfaction by

or decision of the commission. In that view of the matter the notice dated 18.02.2007 was defective for not having obtained satisfaction decision from the commission. To fill up the lacuna Section 18 of the Anti Corruption Commission Act, 2004 was amended by inserting sub section (2) in Section 18 of the Act on 18.04.2007 by the amending ordinance No. VII of 2007 which provides for ex-post facto ratification of the acts done by the officers of the Commission during the period from 07.02.2007-24.02.2007 when the commission was not properly constituted as per provision of section 5 of the Act. In support of his submission learned Advocate relied on paragraphs 42 and 43 of the decision of 62 DLR (AD) 290. But on this issue their Lordships of the Appellate Division in the latest decision in the case of *Moudud Ahmed Vs. State* reported in 68 DLR (AD) 118 in unequivocal terms declared that the view expressed by this Division regarding effect of section 18(2) of the Act, granting ex-post facto approval of any act done or power exercised by an officer of the commission during the period when the commission was not properly constituted as per provisions of Section 5 of the Act does not reflect the correct principle of law. Having regard to the aforesaid

decision of *68 DLR (AD) 118* it can not be said that the notice under Section 26(1) of the Anti Corruption Commission Act was defective. Moreover, in this case no issue with regard to ex-post facto approval was framed, deliberated upon and decided in view of the provision of section 18(2) of the Anti Corruption Commission Act. So, ex-post facto approval to the issuance of notice dated 18.02.2007 (Exhibit-1) by the secretary of the commission is very much legal in pursuant to the provisions of section 18(2) of the Act. In view of the forgoing discussions and the principles enunciated in *68 DLR (AD) 118* we are of the view that the initiation and the conviction based on such notice is legal and inconformity with the purposes, objectives and functions of the commission.

Learned Advocate for the appellants further submits that Section 26(1) of the Act does not envisage a notice upon a person who is in detention. The person concerned must be afforded a fair and reasonable opportunity to respond the notice, otherwise, it is no notice in the eye of law. A notice under Section 26 of the Act to a detinue away from his hearth and home, can not be said to be a fair and bonafide exercise of power. On this question he relied the decision of

Anti Corruption Commission Vs. Mohiuddin Khan Alamgir
reported in 62 DLR (AD) 290.

In the instant case the notice under section 26(1) and 18 of Anti Corruption Commission Act, 2004 issued upon the appellant Mir Nasir Uddin on 18.02.2007 (Exhibit-1) and directing him to submit the statement of assets and liabilities within 72 hours while he was in custody. The appellant Mir Nasir Uddin submitted his wealth statement on 25.02.2007 (Exhibit- 6 (series) through his authorized representative Mohammad Mezbah-uddin (P.W.4) without raising any objection that he had no access to necessary records, bank accounts and without having any opportunity of consultation with his lawyers or concerned chambers staff and relatives who were not allowed to see him during the period of detention or he had given less time to submit the wealth statement. Moreso, the accused Mir Nasir Uddin had an ample opportunity to submit supplementary wealth statement which he did not avail. The ACC Act and Rules thereunder should be interpreted not in such legal vacuum but with reference to object and purpose and in the context of the established standard practice in relation to Anti-Corruption law and rules in filing wealth statement. In that view of the

matter the notice issued under section 26(1) and 18 of ACC Act upon the appellant no.1 Mir Nasir Uddin is a valid one and legal in the eye of law.

The learned Advocate of appellants also submits that before initiating Criminal Proceeding under section 27(1) of ACC Act, 2004, notice under Section 26(1) of the Anti Corruption Commission Act required to be served and without notice the conviction imposed upon the accused is not tenable in the eye of law. The learned Advocate of ACC on the other hand submits that section 27 is independent of the notice served under section 26(1) of the ACC Act and proceedings under section 27(1) have no nexus with the notice served by the ACC under section 26(1) of the ACC Act demanding statement of assets and liabilities of the accused. Moreover, there is nothing in Section 27 requiring service of any prior notice before initiation of criminal proceedings. In this connection their Lordships of the Appellate Division in the latest decision reported in *68 DLR (AD) 118* held- *“that section 26 and section 27 of the ACC Act are independent from each other and there is no nexus between these two sections. Section 27 being an independent section provides that if there are sufficient reasons to think that a person*

has acquired or amassed property illegally which is beyond his known source of income then he may be sentenced to suffer imprisonment for a term not more than 10 years and not less than 3 years and to pay fine and the property in question is liable to be confiscated. Therefore, there is no difficulty to say that before issuance of any notice under section 26 of the ACC Act upon a person the Commission must have knowledge that the said person has acquired property beyond known source of income. In other words, the fact of acquiring property beyond some one's known source of income was within the knowledge of the Commission long before the issuance of the order/notice under section 26 of the Act. Section 27 of the ACC Act is independent of the notice served under section 26(1) of the ACC Act." So, the proceedings under Section 27(1) have no nexus with the notice dated 18.02.2007 (Exhibit- 1) issued by the secretary of the commission upon the appellant Mir Nasir under Section 26(1) of the Anti-Corruption Commission Act. Thus the conviction imposed upon the appellants do not fall illegal.

We have already noticed that in the present case notice was issued by the ACC dated 18.02.2007 (Exhibit- 1) upon the appellant, Mir Nasir Uddin Ex-State Minister for Civil Aviation and Tourism under section 18 and 26(1) read with section 15 Gha(1) and (2) of the Emergency Power Rules,

2007. In the notice it was mentioned that Mir Nasir Uddin himself and in the name of his dependants acquired wealth disproportionate to his known source of income and directed him to submit his statement of wealth alongwith the statement of wealth of his wife, son, daughter and other dependants within 72 hours from the receipt of notice. In response to the notice dated 18.02.2007, the accused-appellant Mir Nasir Uddin appointed Advocate Mohammad Mezbahuddin (p.w.4) as his authorized representative by a letter dated 20.02.2007 (Exhibit- 8) from Bogra Jail, who submitted the wealth statement (Exhibit- 6 (series) before the Commission on 25.02.2007 in his own name, wife, son and daughter.

Mir Nasir Uddin alongwith the wealth statement furnished list of moveable and immoveable properties and details of source of income of himself and his family members including list of FDRs of Mir Nasir, Mir Helal (inherited from late mother Dalia Naznin), Nowshin Arjan Helal wife of Mir Helal Uddin, daughter Ishrat Naznin Nasir, list of immoveable properties of Mir Nasir Uddin, Mir Helal Uddin and late Dalia Naznin wife of Mir Nasir Uddin.

Mir Nasir Uddin in his wealth statement for the year ended as on 25.02.2007 Exhibit -6(15) - 16 as under:

1. Non-Agricultural property (at cost including legal charges):

Description:

a) Inherited Village Home including home stead as before	Tk	30,000.00
b) 4 Katas Plot with 4 storied Building at Plot No.110, Road No.5, C.D.A.Chandgaon R/A as before	Tk	2,131,000.00
c) ¼ th share of 8.62 Gandas land at Kaseir Bazar plot No.16 & 17 including 2 storied building obtained from late wife	Tk.	1,521,250.00
d) ¼ th share of App. No.303 at the Placid Lake Apartment from late wife	Tk.	6,37,500.00
e) ¼ th share of 5 khata plot of land including 3 storied building with car space at Gulshan Residential Modenl Town obtained from late wife	Tk.	2,856,250.00
f) Obtained 4 khata 14 chattaks plot of land at Banani Residential Model Townof RAJUK(Plot No.2,Road No.3) vide Lease Deed No.Vide Lease Deed No.14883 dt.29.06.2006 including registration cost comes to	Tk.	5,600,000.00

2. AGRICUL TURAL PROPERTY:

a) 24 satak plot of land at village home including reg. cost in the year 1982	Tk	8000.00
b) 0.40 Acres of Agricultural land as before	Tk	25000.00
d) 1/4 th share of non agricultural & Agricultural Property obtained from late wife	Tk	412,500.00

3. INVESTMENT (at cost including brokerage):

a) D.S.C. as before	Tk	440,000.00
Add:-During the year	Tk.	490,000.00
<u>50,000.00</u>		
b) 1/4 th share of D.S.C. obtained from late wife	Tk.	202,500.00
c) FDRø\$ in different Banks	Tk.	62,500,000.00

4. JEWELLERY (at cost):

a) 10 Tolas of Jewellery as before	Tk	20,000.00
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b) ¼ th share of jewellery
obtained from late wife Tk 30,000.00

5. FURNITURE AND FITTINGES
(RESIDENCE)(at cost):

a) Personal effect as before Tk 25,000.00
b) ¼ th share of personal
effects obtained from late wife Tk 7,500.00

6. CASH OUTSIDE BUSINESS:

Cash in hand & at Bank Tk 9,500,000.00
Total Assets- Tk **85,996,500.00**

7. LESS LIABILITIES:

a) Loan as before Tk 14,00,000.00

**Total Net wealth:- as on
25.02.2007** Tk 84,596,500.00

Less:-

ready shown in the Wealth
Statement as on 30.06.2006 Tk 13,520,246.00
Tk 71,076,254.00

Less:-

¼ th share of Non agricultural &
Agricultural Property obtained from late
wife Tk 4,12,500.00
Tk. 70,663,754.00

**He showed total Net wealth as on 25.02.2007 at Taka
7,06,63,754.00.**

In this respect, I beg to mention that I was actively employment from
since 1978 as follows:-

- a) I am a Lawyer since beginning of my professional Carreare and I had sufficient money out of that source.
- b) I was Mayor in Chittagong City Corporation from Year 1991 to 1994.
- c) I was served as Janata Bank Chairman from year 1994 to 1995.
- d) I was posted in Saudi Arabia as Ambassador from year 1995 to 1996.
- e) I was appointed in Civil Aviation & Tourism Ministry as State Minister from year Oct, 2001 to 2005.

There were so many income from different sources like T.A.D.A. &
other Allowance which I was mentioned above from time to time.

He further submitted the wealth statement (Exhibit - 6(17) in the name of his son Mir Mohammad Helal Uddin Son of Mir Mohammad Nasiruddin at Tk.2,935,214.00 and stated in the following way:

NET WEALTH as on 25.02.2007

1. **Non Agricultural Property** (at cost including legal charges):

Description:

a) 2/3 rd share of 8.62 gandas land at kaseir Bazar plot No.17 & 16 including 2 storied building obtained from late mother	Tk	3,042,500.00
b) 2/3 rd share of App. No.303 at the placid lake apartment from late mother	Tk	1,275,000.00
c) 2/3 rd share of 5 khata plot of land including 3storied building with car space at Gulshan Residential Model Town obtained from late mother	Tk	5,712,500.00
d) 2/3 rd share of non agricultural & Agricultural property obtained from late mother	Tk	825,000.00
e) purchased flat no.A-1 of Lavender of Road no.6 Dhanmondi R/A, Dhaka vide deed No.7436 dated 21.09.2005 including registration cost comes to	Tk	2,056,000.00

3. **Investment (at cost including brokerage):**

2/3 rd share of D.S. C obtained from late mother	Tk	405,000.00
FDR obtained from late mother(issued in my name after the death of my mother)	Tk	81,750,000.00

4. Motor Vehicles (at cost):

one Black Mitshubhishi Car
Purchased during the year Tk 1,300,000.00

one Black Mitshubhishi Car
Purchased during the year
Tk.One Mitshubhishi
Pazero(reconditioned jeep)
obtained from mother Tk 1,000,000.00

5. Jewellery(at cost):

20 tolas of jewellery
obtained at the time of
marriage Tk 125,000.00

2/3rd share of jewellery
obtained from late mother Tk 60,000.00

6. Furniture and fittings (Residence) (at cost):

personal Effects obtained at
the time of marriage Tk 50,000.00

2/3rd share of personal effects
obtained from late mother Tk 15,000.00

8. Cash outside business:

Cash in hand Tk 11,354.00

9. Any other Assets:-

Tk 165,000.00

Electrical Appliances received at the time marriage

Total Net wealth:- as on
25.02.2007 Tk 97,792,354.00

Less:- Tk 11,282,140.00

Already shown in the wealth
statement as on 30.06.2006 Tk 86,510,214.00

Less:

1/4th share of non
agricultural & Agricultural Tk 83,575,000.00

Property, FDR & Car
obtained from late mother Tk 2,935,214.00

I am a lawyer, since beginning of my professional career and I had sufficient money out of this.

In the wealth statement (Exhibit -6(18) total net wealth of Late Dalia Nazneen Shahid, wife of Mir Mohammad Nasir Uddin was disclosed at Tk.105,578,428.00 and was shown net wealth As on 25.02.2007.

1. Non-Agricultural property (at cost including legal charges):

Description:

a. 8.62 Gandas land at Kasei Bazar.	Tk	6,085,000.00
Plot No. 17 & 16 including 2 storied building as before	Tk	2,550,000.00
b. 5 khata plot off land at Gulshan Residential Model Town as before	Tk	44,00,000.00
(including second floor with car space 6U/S-19B	Tk	<u>70,25,000.00</u>
	Tk	<u>1,14,25,000.00</u>
e) Agricultural & Non Agricultural properties obtained earlier including reg. cost as per separate sheet enclosed	Tk	1650,000.00

INVESTMENT (at cost including brokerage):

a) D.S.C. as before	Tk	8,10,000.00
b) FDRs in different bank (After the death transferred in the name of son)	Tk	81,750,000.00
c) FDR in South East bank (After the death transferred in the name of daughter)	Tk	25,00,000.00
d) FDR in the name of son's wife (Nawshin Arjan Helal gifted)	Tk	16,50,000.00
3. MOTOR VEHICLES (at cost): One Mitshubishi Pazer (reconditioned jeep)	Tk	1,00,000.00

4. JEWELLERY (at cost):

Jewellery as before	Tk	1,20,000.00
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5. FURNITURE AND FITTINGS (RESIDENCE) (at cost):

Personal effect as before	Tk	30,000.00
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6. CASH OUTSIDE BUSINESS:

a) Cash Money Gifted to Daughter (Ishrat Nazneen Nasir)	Tk	450,000.00
b) Cash Money Gifted to sons wife (Nawshin arjan Helal)	Tk	<u>2,900,000.00</u>
Total Net wealth:- as on 25.02.2007	Tk	127,770,000.00
Less:-		
Already shown in the wealth statement as on 30.06.2006.	Tk	<u>22,191,572.00</u>
	Tk	105,578,428.00

However, the said late Dalia Nazneen had two reputed business such as namely:-

- Commission Business

- b) Arafin Enterprise(30% share income from joint venture firm)

The details of which could not be ascertained as suddenly she died, the outcome from the above business might have covered the balance of Tk.105,578,428.00 in full.

In wealth statement (Exhibit -6(19) of Miss. Ishrat Nazneen Nasir, Daughter of Mir Mohammad Nasir Uddin at Tk.8,707,500.00 which was stated in the following:

Wealth statement for the year ended as on 25.02.2007.

1. Non agricultural property (at cost including legal charges):

Description:

- a) 2/3rd share of 8.62 gandas land at kaseir Bazar plot No.17 & 16 including 2 storied building obtained from late mother Tk 1,521,250.00
- b) 2/3rd share of App. No.303 at the placid lake apartment from late mother Tk 637,500.00
- c) 2/3rd share of 5 khata plot of land including 3storied building with car space at Gulshan Residential Model Town obtained from late mother Tk 2,856.250.00

2. Agricultural Property:

- a) 2/3rd share of non agricultural & Agricultural property obtained from late mother Tk 412,500.00

3. Investment (at cost including brokerage):

- a) 2/3rd share of D.S.C. obtained from late mother Tk 202,500.00
- FDR obtained from late mother (issued in my name after the death of my mother) Tk 2,500,000.00

4. JEWELLERY (at cost):

- a) 30 Tolas of Jewellery obtained as presentation earlier Tk 50,000.00

b) 2/3rd share of jewellery
obtained from late mother Tk 30,000.00

5. FURNITURE AND FITTINGES RESIDENCE

(At cost):

a) Personal effect obtained
earlier as presentation Tk 40,000.00
b) 2/3rd share of personal
effects obtained from
late mother Tk 7,500.00

6. CASH OUTSIDE BUSINESS:

Cash in hand & at Bank
obtained from late mother Tk 450,000.00
Total Net wealth:- as on
25.02.2007 Total Assets Tk 8,707,500.00

So, from the above wealth statement (Exhibit- 6) series it is evident that the appellant Mir Nasir Uddin in his own name and in the name of his wife, son and daughter disclosed moveable and immoveable property Tk.(7,06,63,754.00+29,35,214.00+10,55,78,428.00+87,07,500)= in total Tk. 18,78,84,896.00. But the statement of Bank Accounts including FDRø of Mir Mohammad Nasir Uddin, Mir Mohammad Helal Uddin and Miss Israth Nazneen Nasir Exhibit- 3/1 (K), 3/1 (K-1) and 3/1 (K-2) series shown the amount of money depositing in several Bank Account of different Banks and total amount lying Tk. 20,59,54,232.00.

No objection was raised from the accuseds-appellants that the Statements of Bank Account filed by them were false. No suggestion has been given on behalf of the accuseds to the p.wø including p.w.ø 1 and 32, the

investigating officers. Not only this the accuseds had an opportunity to raise objection at the time of examination of the accuseds under Section 342 of the Code of Criminal Procedure, but the accused did not take the legal benefit. So, this step of the accuseds clearly proved that they conceded the Statements of Banks produced before court by the prosecution. Thus it is evident from the aforesaid exhibits Mir Mohammad Nasir Uddin has concealed wealth worth Tk. (20,59,54,232.00-18,78,84,896.00) = Tk. 1,80,69,336.00 (one corer, eighty lacs sixty nine thousand and three hundred, thirty six) only.

The investigating officer as P.W-32 in his examination in chief stated that Mir Mohammad Nasir Uddin in his wealth statement showed less value against the (flat) named lavender and Mitsubishi car of Mir Mohammad Helal Uddin at Tk. 18,94,000.00 and 4,32,050.00 respectively. She also deposed that the construction cost of the house of Dalia Nazneen at Gulshan, the house of Mir Mohammad Nasir Uddin at Chandgaon, Chattogram, the house named Dalia Kunjaø and the house at Hathajari, Chittagong were showed less value at Tk. 50,75,095/-, 56,000 63,30,154/- and 23,63,669/- respectively. In this way Mir Mohammad Nasir

Uddin concealed construction cost worth Tk. 1,61,50,968/- in respect of the aforesaid houses.

In order to prove the valuation showed in Wealth Statement, in respect of the flat Lavendor and Mitsubishi Car of Mir Helal the prosecution produced the witness before court. Md. Akbar Hossain Manager, Building for Future Ltd. p.w-8 in his examination óin- chief stated that he seized file regarding flat, Lavendor which was marked as (Material exhibit-II) wherein the page no. 1 is the schedule of payment and page 2-8 is money receipt and total amount was mentioned at Tk. 39,50,000.00 which do not tally with wealth statement. Wherein value was shown Tk. 20,56,250.00. So, Mir Mohammad Nasir Uddin concealed (Tk. 39,50,000-20,56,250)= Tk. 18,93,750/- showing lesser price against the flat Lavendor.

Lokman Hossain Mollah, P.W. 5 Deputy Director of BRTA, Chattogram in examination óin- chief stated that he obtained the record about the registration of Car Dhaka-Metro-Va-11-0812 by seizure list Exhibit-9 and 9/1 and the value of the car was mentioned at Taka 17,32,050/-. But in the wealth statement the value of the Car of Mir Mohammad Helal Uddin was mentioned at Tk. 13,00,000/-. The said

witness in cross examination stated that the paper showed to him wherein price was mentioned at Tk.13,00,000/-. So, at showing the paper by defence it is proved the value of Mitsubishi Car mentioned in wealth statement do tally. Hence the issue of concealment about the valuation of Car does not arise.

In order to prove the valuation showed in the wealth statement of the 4 (four) house of Mir Nasir and Dalia Naznin prosecution examined 10 p.wø, namely, p.wø 13, 14, 24-31. All of them are Engineers of P.W.D of the government.

Shafiqur Rahman P.W-13, Executive Engineer (XEN), P.W.D, Gazipur, Ex-XEN, Division- 2, P.W.D, Chittagong, who ascertained the construction cost of boundary wall of village home and agriculture Farm house of Mir Mohammad Nasir Uddin situated at Hathazari and thereby prepared a report Exhibit-26 and Exhibit-26/1. A technical team was formed comprising 6 members headed by him. In his chief he stated that the village house was 3 (three) storied building; the ground floor was made by father of Mir Mohammad Nasir Uddin and first and second floor was constructed by Mir Mohammad Nasir Uddin. In their Income Tax

assessment it was found the 1st and 2nd floor was constructed in the year 1993 and 2002 respectively. The technical team ascertained the value as per schedule of rate of the P.W.D. and they found the value of the first and second floor of the village house at Tk. 4,62,234/- on the basis of the said schedule. They also ascertained the valuation of the boundary wall of the farm house situated at Mekhol under Hathazari Upazila and found the valuation as per valuation schedule, 2004 at Tk.8,91,626/- and ascertained the value of Electrical materials at Tk.79,809/-. He was crossed by the accused but nothing has been come out which goes infavour of the accused. Thus the valuation of construction of village home and boundary wall of village Farm was at Tk. (4,62,234.00+8,91,626)= Total Tk.13,53,860/-. Though in Ejahar and Charge Sheet it was not mentioned about concealment value of boundary wall of village home and village Farm. According to wealth statement the valuation of village home showed Tk. 30,000/-. So here the amount of concealment is Tk. (4,62,234.00-30,000.00) = Tk. 4,32,234.00 only.

Md. Abul Hashem Executive Engineer, Division -1
P.W.D, Chittagong as p.w.14 in his examination-in-chief

stated two team were formed to determine the valuation of House of Dalia Nazneen situated at Gazi Shah lane, Chatteshwari, Chattagram and the house of Mir Mohammad Nasir Uddin situated at plot no. 5, CDA, Chandgaon residential Area, CDA, Chattagram. But she objected about the valuation determined in respect of house of Mir Nasiruddin situated at Chandgaon, Chattagram. She stated in presence of Guard and tenants the house was measured (gvc~~5~~6K). Total floor area of Ground and First floor is 7317.26 square feet but plan passed for 6871.74 square feet. Area of Third and Fourth floor are 3212.81 and 486.66 square feet respectively. After measurement the committee submitted a report (Exhibit- 28) and in the report the valuation was ascertained Tk. 21,27,502.00 (excluding value of land). In the wealth statement it was mentioned at Tk. 21,31,000/-. Here, no concealment is found.

Abdul Kader Chowdhury, p.w. 24, Executive Engineer, Maintenance Division, P.W.D, Dhaka in examination-in-chief stated that a committee was constituted headed by him. They visited the House of Dalia Nazneen situated of Plot No. 5B, Road No. 136, Gulshan- 1 and measured the house and found the total valuation of the

house at Tk.1,24,10,095.56 on the basis rate of the year 2002 and accordingly prepared a report which was marked (Exhibit-37). But in wealth statement it was mentioned at Tk. 28,56,250.00. So here concealment is $(1,24,10,095.56 - 28,56,250.00) = \text{Tk. } 95,53,845.00$ only.

Jahangir Hossain Sub-Divisional Engineer, Sub-Division- 1, P.W.D., Chittagong p.w.25 in his examination-in-chief stated that one Team was formed for determination of cost regarding the Duplex house of Dalia Nazneen named 'Dalia Kunja' at Chatteswari, Chattogram. He was one of the member of the team. They found total construction cost (excluding cost of land) of the aforesaid Dalia Kaunja Tk. 89,15,154/- and thereby prepared a report which was marked as (Exhibit-27) and his signature there on was marked as Exhibit-27/1(Ka) series). So, comparing with the wealth statement (Exhibit- 6) series it appears the concealment of the house of Dalia Kunja at Tk. $(89,15,154.00 - 60,85,000.00) = \text{Tk. } 28,30,154/-$ only.

Upon careful examination and scrutiny of the aforesaid exhibits and on appreciation of the deposition of aforesaid p.w.s, Nos. 13, 14, 24-31 it is well proved by the prosecution that appellant Mir Mohammad Nasir has concealed a sum of

Tk. (1,80,69,336.00 + 18,93,750.00 + 4,62,234.00 + 95,53,845.00 + 28,30,154.00) = Total Tk. 3,28,09,321.00 (three corer twenty eight lac nine thousand and three hundred twenty one) only.

Mr. Md. Asaduzzaman, the learned Advocate on behalf of the appellants submits that P.W.D. and BRTA are Government office having its distinct duty and functions. The Commission can not delegate its distinct, duty and function to P.W.D. to asses the value of the property belonged to an individual. It is not the duty of P.W.D. to assess the value of such property. The conviction and sentence imposed upon the appellants on an imaginary assessment by an office, which they are not authorized to do and same is illegal and liable to be set aside. Moreover, their assessment of valuation of Houses can not be treated as reliable and should not be taken into consideration.

In this case committes were formed by the Engineers of the P.W.D, to assess valuation of the houses of the appellants and they deposed in the case as p.w.s 13,14, 24-31 and two BRTA officials as p.w.s 15 and 16 are most competent, neutral, disinterested and independent witness and all them successfully proved the guilt of the appellants in

respect of concealing the valuation of properties. Their credibility, in the facts and circumstances of this case can not be curtailed without any tangible materials to show that they are otherwise biased. Mere suggestion by the defence will not suffice. Moreover, no attempt was made by the accused to file contrary measurement and contrary valuations of all those buildings and structures.

In this connection the learned Advocate for the Anti Corruption Commission by referring the decision of *state Vs. Faisal Morshed Khan and another* reported in *66 DLR (AD) 236* submits that it has already been settled by our Appellate Division that there may be a situation when there is no assessment of valuation by any competent authority of the Government exercising power on that behalf and in such a case, the Anti-Corruption Commission has no other option but to take the assistance of the PWD officials in making assessment of the valuation of any property. Therefore, it cannot be said that the assessment of valuation made by the PWD officials does not have any evidentiary value in all situation.

As far as we know, the decision in the case of *Moudud Ahmed Vs. the State and another* reported in *68 DLR (AD)*

118 is the latest decision of the Appellate Division, which was passed after reviewing the decision of this Division in the case of Mohiuddin Khan Alamgir *62 DLR (AD) 290*. So the law declared later by the Appellate Division is binding upon the High Court Division in view of the mandate of Article 111 of the constitution.

The learned Special Judge elaborately discussed and considered each and every piece of evidence and arrived at a finding that the appellant Mir Mohammad Nasir Uddin was guilty of offence under section 26(2) of Anti Corruption Commission Act, 2004 in respect of the concealment properties, which is based on sufficient evidence and appears to be rational. There is no reason to disbelieve the evidence in respect of concealment properties.

It is alleged against Mir Mohammad Nasir Uddin that he in his own and in the names of his dependants has acquired assets worth Tk. 24,39,286,37.00 through improper means and is inconsistent with his legal and known sources of income and thereby he has committed an offence punishable under section 27(1) of the Anti-Corruption Commission Act, 2004 read with section 5(2) of the Prevention of Corruption Act, 1947. The appellant Mir Nasir

Uddin furnished statement of wealth which itself proved falsehood of the statement. It transpires from ejahar (Exhibit-2) that Mir Nasir Uddin himself, in the names of his wife Dalia Nazneen Nasir and son Mir Helal Uddin had amassed wealth of Tk. 24,39,28,637.00. After inquiry Anti Corruption Commission submitted Charge sheet wherein it was stated that Mir Nasir Uddin in his name, in the name of his wife Dalia Nazneen and in the name of his son Mir Helal Uddin acquired wealth all-together Tk. 30,28,95,997.00 and out of which legal source of income was shown Tk.1,28,04,667 and the rest Tk. (30,28,95,997/- - 1,28,04,067/-) = Total Tk. 29,00,91,930/- are found disproportionate to his known source of income. The Investigating Officer, Abdulla Al Zahid Deputy Director, ACC, p.w-32 in his examination-in-chief stated he found Tk. 27,94,91,506.00 in the name of Mir Mohammad Nasir Uddin and his dependants which is disproportionate to his known source of income.

Amirul Karim Munshi, P.W.19 Assistant Commissioner of Taxes, Circle 13 of Tax Zone-2 Chittagong in examination-in-chief stated that Sharmin Ferdous, Deputy Director of ACC seized income tax files of Mir Nasir Uddin, Dalia Nazneen and Mir Helal Uddin from his office. He

produced those files through seizure list which was marked as Exhibit-31 and his signature thereon marked as Exhibit-31/1. The seized files were marked as Material exhibit Nos. III, IV and V respectively.

Sharmin Ferdousi as P.W.-1 in her examination in chief stated that Mir Nasir Uddin opened his income tax file in the year of 1978. After scrutiny the tax files she found that Mir Nasir Uddin in his tax return (Material exhibit- III) during financial year 1979-1980 to 2006-2007 under Tin No. 351-101-0984, Circle-13, Zone- 2, Chittagong showed his total income and expenditure and payment of Tax in the following manner:

Financial year	Total income	Expenditure	Tax paid
1979-80	NIL	NIL	NIL
1980-81	NIL	NIL	NIL
1981-82	NIL	NIL	NIL
1982-83	1500.00	NIL	
1983-84	1800.00	NIL	
1984-85	NIL	NIL	
1985-86	4,500.00	NIL	
1986-87	8,740.00	20,000.00	
1987-88	15,456.00	22,500.00	
1988-89	16,772.00	25,000.00	
1989-90	(Negative) 59,596.00	30,000.00	11,079.00
1990-91	(Negative) 5,220.00	32,000.00	NIL
1991-92	(Negative) 58,615.00	32,000.00	NIL
1992-93	14,102.00	40,000.00	14,478.00
1993-94	52,560.00	40,000.00	384.00
1994-95	64,428.00	40,000.00	1,564.00

1995-96	90,172.00	40,000.00	5,276.00
1996-97	90,172.00	45,000.00	4,526.00
1997-98	1,41,236.00	1,20,000.00	18,846.00
1998-99	1,41,236.00	1,20,000.00	35,065.00
1999-2000	1,41,300.00	1,20,000.00	3,822.00
2000-2001	1,62,499.00	1,20,000.00	8,728.00
2001-2002	1,87,064.00	1,20,000.00	2,613.00
2002-2003	1,91,564.00	1,25,000.00	20,839.00
2003-2004	2,00,692.00	1,40,000.00	7,000.00
2004-2005	2,00,820.00	1,60,000.00	8,000.00
2005-2006	2,00,948.00	1,70,000.00	8,000.00
2006-2007	2,10,323.00	1,70,000.00	3,83,000.00
Total	21,38,039.00	17,31,500.00	4,06,539.00

In the tax return Mr. Mir Nasir Uddin showed his source of income against the Heads of income in respect of 20 years of law practice, salary, allowances and honorarium as Assistant Judge, Ambassador, Mayor, Chairman of Janata Bank and State Minister, Agricultural income, House property income, share income from late wife's property and business.

It is evident from the above exhibit that appellant Mir Nasir Uddin earned Total income at Tk. 21,38,039.00/- during the assessment years of 1979-1980 to 2006-2007, on deduction of expenditure of Tk. 17,31,500.00 his savings was remained at Tk. 4,06,539.00 only.

Sharmin Ferdousi as P.W.-1 in her examination in chief stated that Dalia Nazneen opened her income tax file in the year of 1996 and paid income tax.

After scrutiny the tax file (Material exhibit- IV) she found that Dalia Nazneen in her tax return during assessment year 1997-1998 to 2006-2007 under Tin No. 351-103-5962, Circle- 13(1), Zone- 2 showed her total income and expenditure and payment of Tax in the following manner:

Financial year	Total income	Expenditure	Tax paid
1997-1998	80,000.00	50,000.00	
1998-1999	80,500.00	50,000.00	2,000.00
1999-2000	92,575.00	53,066.00	1,934.00
2000-2001	1,10,000.00	66,000.00	1,550.00
2001-2002	1,26,500.00	70,000.00	59,900.00
2002-2003	1,51,800.00	75,000.00	6,048.00
2003-2004	17,77,892.00	80,000.00	5,680.00
2004-2005	1,29,019.00	NIL	10,330.00
2005-2006	1,84,048.00	90,000.00	37,039.00
2006-2007	1,03,032.00	1,00,000.00	1,01,400.00
Total	35,74,707.00	6,29,966.00	2,25,881.00

In this way Dalia Nazneen earned Total income at Tk. 35,74,707.00 during the assessment years 1997-1998 to 2006-2007. On deduction of expenditure of Tk. 6,29,966.00 from total income Tk. (35,74,707.00-6,29,966.00) Tk. 29,44,741.00 was remained as savings.

Sharmin Ferdousi as p.w.1 in cross examination stated that Mir Helal Uddin opened his income tax file in the year of 2006 and his total savings was at Tk. 40,000.00. On perusal of income tax file of Mir Helal Uddin (Material exhibit-V) it is evident that accused-appellant Mir Mohammad Helal Uddin was paying income tax since 2006-2007 having Tin No. 351-108-0191 Circle -13, Tax Zone-2, Chittagong and paid income tax wherein he showed his total income and expenditure:

Financial year	total income	Expenditure	Tax paid
2006-2007	1,11,354.00	33,396.00	
Total	1,11,354.00	33,396.00	4,000.00

In tax return, Mir Helal Uddin showed his source of income as professional income, share of house property, gift from father, mother, in laws and well-wishers. In this way Mir Helal Uddin earned total income Tk. 1,11,354.00 during the assessment year of 2006-2007. On deduction of expenditure of Tk. 33,396.00 from total income Tk. (1,11,354.00 ó 33,396.00) = Tk. 77,958.00 was remained as savings.

On foregoing discussion, it appears after deduction of total expenditure Taka (17,31,500.00 + 6,29,966.00 +

33,396.00) = Tk. 23,94,862.00 from total income, (Tk. 21,38,039/-+35,74,707/-+1,11,354/-)= Total Tk. 58,24,100/- total savings of Mir Nasir Uddin, Dalia Nazneen and Mir Helal Uddin was remained at Tk. (58,24,100 ó 23,94,862) =Tk. 34,29,238.00. But they paid income tax since 1979-1980 to 2006-2007 at Tk. (4,06,539.00+ 2,25,881.00+4,000.00) = Total Tk. 6,32,420.00 (six lac thirty two thousand and four hundred twenty) only.

In fact as per tax return of the appellant Mir Nasir Uddin and his dependants wealth should be found at Tk. 34,29,238.00. But it is evident from wealth statement (Exhibit-6) total valuation of moveable and immoveable property was shown at Tk. 18,78,84,896.00. On the basis of savings of Mir Md. Nasir Uddin in his name and in the name of his dependants the wealth should be at Tk. 34,29,238.00. But from aforesaid discussion it is evident total value of wealth thus stood at Tk. (18,78,84,896.00-34,29,238.00) =Tk. 18,44,55,658.00 in terms of money and total moveable and immoveable property found in possession of Mir Nasir Uddin and his dependants. Whereas Mir Nasir Uddin declared his own income and also income of his wife and childrens during the assessment year of 1979-1980 to 2006-

2007 to the tune of Tk. (21,38,039.00 + 35,74,707.00 + 1,11,354.00) = Total Tk. 58,24,100.00. On deduction of expenditure, i.e. 17,31,500.00 + 6,29,966.00 + 33,396.00 = Tk. 23,94,862.00 total savings of Mir Nasir Uddin, Dalia Nazneen, Mir Helal Uddin as per income tax file (Material exhibit- III-IV) remained at Tk. 34,29,238.00 for the aforesaid period. Thus it is proved that Mir Nasir Uddin and his dependants acquired wealth worth of Tk. 18,44,55,658.00 by illegal means. Upon consideration of unimpeachable, trustworthy and corroborative evidence of p.w. 1, 4, 13, 14, 17, 19, 24-31 and 32 coupled with material exhibits I, II, III, IV and V, we have no other option but to hold that prosecution has successfully proved the guilt against the appellants.

In wealth statement exhibit 6 (series) of Late Dalia Nazneen, filed by Mir Nasir, source of income was shown from her commission Business and Arafin Enterprise (30% share income from joint venture firm) and the details of which could not be ascertained as she died suddenly on road accident on 05.03.2006, the out come from the above business might have covered the balance net wealth Tk. 10,55,78,428 in full.

The investigating officer, Abdullah Al Zahid as p.w-1
in cross examination stated:

∴ তিনি জানি-য়ছি-লন যে, আয় উকি-লর সঠিক পরীক্ষা
না পাওয়ায় তার সম্পদ অর্জ-নর বিষ-য় আ-য়র উৎ-সর ব্যাখ্যা
তার আয়কর নথি-ত দেখা-না হয় নাই। তিনি আরও জানান -য,
তার স্ত্রীর নিজস্ব ব্যবসা ছিল ও তিনি একজন সফল আইনজীবী
ছি-লন। তিনি আরও জানান যে, তার স্ত্রীর অর্জিত সম্পদ তার
(স্ত্রীর) নিজস্ব আয় দ্বারা অর্জিত এবং তার স্ত্রীর সকল সম্পদ
স্ত্রীর মৃত্যুর পর ওয়ারিশ-দর ম-ধ্য বন্টন হ-য়-ছ।

P.W.4- Advocate Mesbahuddin in his cross-
examination stated that:

৐Zıb PUM0xi nvBxó vBW DıKj ıQxb| DıKj
ııımvx ıZıb c0q 10 vııU UvKv DcvR0 Kxx0b i xııQ|
ıZıb vııı, RbZv eıvsxi vıııgıvb, ivóı Z I c0Zg%o
ıQxb| Zvi ıı GKRb j 0 M0RııU ıQxb|ö

The learned Advocate on behalf of the ACC submits
that the burden of proof lies on the defence instead of usual
onus on the part of the prosecution to prove facts of valuation
of different assets and liabilities and concealment of
information and acquisition of wealth of Taka Tk.
18,44,55,658.00. The defence did not prove by oral or
documentary evidence that concealment of information or

illegal acquisition of the moveable and immoveable property which disproportionate to his known source of income under section 27(2) of Anti Corruption Commission Act, 2004. Section 27(2) of the Anti Corruption Commission Act reads as under:

Section 27 (২) উপ-ধারা (১) ৩ এ উল্লিখিত কোন অপরা-ধর বিচার চলাকালীন যদি প্রমাণিত হয় যে, অভিযুক্ত ব্যক্তি নিজ না-ম, বা তাহার প-ক্ষ অপর কোন ব্যক্তির না-ম, তাহার জ্ঞাত আ-য়র উৎ-সর সহিত অসঙ্গতিপূর্ণ স্থাবর বা অস্থাবর সম্পত্তির মালিকানা অর্জন করিয়া-ছেন বা অনুরূপ সম্পত্তির দখ-ল রহিয়া-ছেন, তাহা হই-ল আদালত অনুমান করি-ব (shall presume) যে, অভিযুক্ত ব্যক্তি উক্ত অপরা-ধ দোষী, যদি অভিযুক্ত ব্যক্তি আদাল-ত উক্ত অনুমান খণ্ডন (rebut) করি-ত না পা-রন এবং কেবল উক্তরূপ অনুমা-নর উপর ভিত্তি করিয়া প্রদত্ত কোন দণ্ড অবৈধ হই-ব না।^৩

In the light of the above evidence and the aforesaid provision of law it is proved that the allegation raised against the accused Mir Nasir Uddin, prosecution by adducing sufficient oral and documentary evidence successfully proved his guilt beyond reasonable doubt for possessing and owning wealth earned from illegal source of income, since the accused failed to place, whereas during trial the accused

did not rebut presumption as contemplated under Section 27 (2) of the ACC Act, 2004 either by any oral or documentary evidence in respect of his position as to the acquisition of properties disclosing source of income allegedly disproportionate to his known source of income to the satisfaction of the court at the time of trial, in such case it shall be considered the accused has committed offence and punishable under Section 27 (1) of the ACC Act, 2004.

It is stated above that Dalia Nazneen died on 05.03.2006. On examination of Income Tax return, after deduction of total income from expenditure of Dalia Nazneen, her total savings was remained at Tk. 29,44,741.00. But it transpires from wealth statement (Exhibit-6) that the total wealth of Dalia Nazneen was shown Tk. 10,55,78,428.00 as on 25.02.2007 which proved she acquired property both moveable and immovable at total net wealth of Tk. $(10,55,78,428.00 - 29,44,741.00) = \text{Tk. } 10,26,33,687.00$ by illegal means which is disproportionate to her known source of income. After her demise those properties have been acquired by her husband Mir Nasir Uddin, son Mir Helal Uddin and daughter Israt Nasir by inheritance. After deduction of total wealth of Dalia Nazneen the total wealth

of Mir Nasir Uddin, Mir Helal Uddin and Ishrat Nazneen was remained Tk.(18,78,84,896.00-10,55,78,428.00)=Tk. 8,23,06,468.00. On deduction of total expenditure from total income of Mir Nasir Uddin and Mir Helal Uddin the total savings was remained Tk. (4,06,539.00+77,958.00)=Tk. 4,84,497.00. So, Mir Nasir Uddin and Mir Helal Uddin acquired property Tk. (8,23,06,468-4,84,497)= Total Tk. 8,18,21,971.00 by illegal means which tantamount disproportionate to his legal source of income. As observed above the statement of Accounts of Mir Helal Uddin, Mir Mohammad Nasir Uddin and Miss Israth Nazneen Nasir, Exhibit- 3/1 (K), 3/1 (K-1) and 3/1 (K-2) shows the amount of money including FDRs lying in several Banks at total amount of Tk. 20,59,54,232.00. So, Mir Nasir Uddin acquired total wealth (Tk. 20,65,62,105.00+8,18,21,971.00)= Total Tk. 28,77,76,203.00 by illegal means in his own name and in the name of his son and daughter which is disproportionate to his known source of income.

Learned Advocate for the appellant submits that the Special Judge failed to appreciate the mandatory provision of Section 20(2) of the Anti Corruption Commission Act, 2004 that notwithstanding anything contained in the Code of

Criminal Procedure, the offence under this Act and specified in the schedule shall be inquired into or investigated only by the commission and sub-section (2) of Section 20, the commission may by Gazette notification empower any of its sub-ordinate officer to inquire into or investigate the offences mentioned in sub-section (1). But this mandatory provision of law has not been complied with and no Gazette notification was published in the name of first I.O, Sharmin Ferdousi and last I.O, Abdullah-Al-Zahid as provided in the law. So, non-compliance of the above provision of law, the whole investigation conducted by p.w.1 as informant and Investigating Officer, this case stands nullity in the eye of law.

On the other hand, learned Advocate for the Anti Corruption Commission argued that First Investigating Officer Sharmin Ferdousi p.w.1 and last I.O, Abdullah-Al-Zahid, p.w. 32 were appointed by the ACC by issuing notification dated 22.02.2007 and same was duly published in the official Gazette dated 28.02.2007. In reply, learned Advocate for the appellants submits that notification of Anti-Corruption Commission dated 22.02.2007 and Gazette notification dated 28.02.2007 were not produced by the ACC

and Exhibited in this case but only Memo of Anti Corruption Commission dated 20.03.2007 and dated 03.04.2007 were produced in this case and same was marked as Exhibit- 39 and Exhibit- 43 respectively.

It is true that inadvertently the ACC did not filed the Gazette notification before the trial court but at the time of appeal hearing before this court the learned Advocate for the respondent Anti Corruption Commission filed notification issued by the Anti Corruption Commission dated 22.02.2007, same was duly published in the official Gazette dated 28.02.2007 and same is kept with the record but no objection was raised by the learned Advocate for the appellant. Moreover, the Gazette notification is a public document as per section 74 of the Evidence Act, as such it can easily be taken into consideration as evidence in this case.

Learned Advocate for the appellant submits that the learned Special Judge ought to have considered the evidence of p.w. 4 and p.w. 19 that Dalia Nazneen late wife of Mir Nasir Uddin acquired sufficient money through business like ship breaking and after her said demise on 05.03.2006 the appellants as nominees of the bank Accounts of late wife which was subsequently transferred to the Account of Mir

Nasir, Mir Helal Uddin. But the learned Advocate totally ignored the written statement dated 20.06.2007 filed by Mir Helal Uddin at the time of examination under Section 342 wherein he categorically stated that he was sole "Nominee" of all the Bank Accounts of his late mother, Dalia Nazneen. After the death of his mother same was transferred to his bank account, most of the accounts which was marked in this case were opened in his name after her mother's death on 05.03.2006. Similarly, he inherited entire immovable and moveable properties of his mother. So, this submissions of the learned Advocate has no leg to stand.

On the other hand, Mir Mohammad Nasir in his 342 statement said that after death of his wife, he inherited entire immovable and moveable property as her legal heir. The aforesaid statements made by Mir Nasir and Mir Helal are apparently misleading, contradictory and not based on evidence and materials on record. Thus we are unable to accept such fruitless and misconceived submission of the learned Advocate for the appellant.

Learned Advocate for the appellants tried to submit that p.w. 1 Sharmin Ferdousi was informant as well as I.O. of the case is clear violation of Rule 24 of the Anti Corruption

Commission Rules, 2007. This questions has already been decided in the case of *Nuruzzaman (Md) Vs. State* reported in *14 BLC (HCD) 51 (para 7)* subsequently rule 24 has been amended on 26.11.2007 by SRO No 265 Ain /2007. So, there is no legal bar to hold investigation into the case by the informant. Learned Advocate for the appellants submits that the Anti Corruption Commission has violated the provision of section 19(1) (ka) and (ga) of the Anti Corruption Commission Act, 2004 since the witness were not taken on oath at the time of taking evidence in the present case. The words "on oath" were omitted by Section 7(a)(II) and Section 7(b) of the Anti-Corruption Commission (Amendment) Act 2013 (Act 60 of 2013). Therefore, the question raised by the learned Advocate of the appellants in this respect does not hold good.

The learned Special Judge in his judgment did not expressly give finding about conviction of accused appellant Mir Nasir Uddin under Section 5(1) (d) of Prevention of Corruption Act, 1947. But learned Special Judge on the basis of the evidence and materials on record found strong presumption under Section 27 of the Anti Corruption Commission Act, regarding accumulation of wealth and

gradual enhancement/ increase of wealth through illegal and dishonest means Mir Nasir during his tenure as Mayor, Chittagong City Corporation, Chairman, Janata Bank, Ambassador in Kingdom of Saudi Arabia and State Minister for Civil Aviation and Tourism and Transfer Tk. 6,00,00,000/- (six corer) to his son Mir Helal's account from his Account but that presumptions has not been rebutted by the accused-appellant under Section 27 (2) of the ACC Act, 2004. Although ingredients of Section 5(1) (c) (d) are very much available in the present case that convict-Mir Nasir Uddin has committed criminal misconduct.

We hold that there was good evidence on the record on the basis of which the Special Judge was justified in awarding conviction of the appellant Mir Nasir Uddin.

The allegation was brought against Mir Helal Uddin that he transferred Tk. 5,64,62,947.00 from his own and joint account with his father Mir Nasir Uddin to conceal the illegal money of his father. But in the list of FDR's of Mir Helal Uddin inherited from his late mother Dalia Nazneen Exhibit-6 shows the total amount of money Tk. 8,55,12,216.06. The prosecution witness Abdullah Al Mamun p.w.6, Md. Nazrul Wahab p.w.7, Abdullah Al Zahid p.w.32 stated in their

examination in chief that there is no illegality to transfer from one account to another account. But List of Bank Statement (Exhibit-3/1(ক)) of Mir Helal Uddin the amount of money in FDRs and others Bank accounts lying in different Banks till 05.02.2007 stands at Tk. 10,19,79,191.00. The income tax file material Exhibit-V enables that after deduction of expenditure from the total income the savings of Mir Helal Uddin was remained at Tk. 77,958.00. It is pertinent to mentioned that convict-appellant Mir Helal Uddin for the first time filed tax return for the assessment year 2006-2007 wherein his professional income was shown at Tk. 92,604/-, house property income Tk. 18,750/- and total income Tk. 1,11,354/-. He filed wealth statement for first time in the same assessment year and showed total wealth Tk. 1,12,82,140/- out of which he inherited 2/3rd share from his late mother Dalia, 1 (one) house in Chittagong and 2 (two) houses in Dhaka, value of those houses Tk. 1,00,30,000/- and also shown net income in respect of Non-Agricultural and Agricultural property. In income tax return he further showed Tk. 4,05,000/- as 2/3rd share from late mother, cash money 2/3rd share from late mother Tk. 5,85,786/- and money in other heads.

In the wealth statement (Exhibit- 6) filed by Mir Nasir in the ACC in the name of Mir Helal wherein under Investment Head in FDR column amount was shown at Tk. 8,17,50,000/- obtained from his late mother. But surprisingly in the statement of assets and liabilities dated 12.10.2006 filed by Mir Helal with the Income Tax return for the assessment year 2006-2007, in the Investment Head no FDR amount was shown obtained from his late mother Dalia Naznin. Consequently, in the assessment order dated 21.12.2006 passed by the Assistant Commissioner of Taxes, Md. Amirul Karim Munshi p.w.19 nothing is appearing that Mir Helal obtained FDR amount of Tk. 8,17,50,000/- from his late mother. Thus it is evident from (Material exhibit- V) that Mir Helal obtained no FDR money of Tk. 8,17,50,000/- from her late mother. So, acquisition of FDR money by Mir Helal Uddin at Tk. 8,55,12,212.00 (inherited from his mother) Exhibit- 6 and savings of + Tk. 77,958.00 shown in tax return in total Tk. 8,55,90,170.00 are absolutely baseless, malafide, illegal and beyond the tax file (Material exhibit-V).

P.W. 32 in her cross-examination stated Mir Helal Uddin transferred Tk. 5,64,62,947.00 to the account of his wife and mother-in-law to meet up emergency, since wife of

Mir Helal Uddin was pregnant at the relevant time. The prosecution by Exhibit-4/1 proved that Mir Helal Uddin transferred Tk. 2,08,33,195.00 but on admission by the p.w.1 that Mir Helal Uddin transferred Tk. 5,64,62,947.00. Therefore, after deduction of Tk. 5,64,62,947.00 (five corer sixty four lac, sixty two thousand and nine hundred forty seven) in different bank the rest amount of money was remained Tk. $(8,55,12,212.00 - 5,64,62,947.00) =$ Tk. 2,90,49,265.00. So, the money acquired from his mother and amount of his savings money in total do not tally with the money Tk. 2,90,49,265.00. Therefore, we can easily conclude that the aforesaid money Tk. 2,90,49,265.00 was transferred by Mir Mohammad Helal Uddin with dishonest purpose to conceal their illegal money which is disproportionate to known source of income of his father Mir Nasir Uddin to the satisfaction of the court. So, we do not find any reason to disagree with the findings of the Special Judge in giving conviction and punishment of the appellant Mir Mohammad Helal Uddin for abetment under section 27(1) of Anti Corruption Commission Act, read with section 109 of the Penal Code.

:-Criminal Misconductø has been defined in Section 5 of the Prevention of Corruption Act II of 1947, which reads as under:

“Section 5 Criminal Misconduct-
(1) A public Servant is said to commit the offence of criminal misconduct-

- (a) í í í í í í í í í í í í í í
- (b) í í í í í í í í í í í í í í
- (c) í í í í í í í í í í í í í í
- (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 other person any valuable thing or pecuniary advantage, or
- (e) if he or any of his dependents is in possession, for which the public servant cannot reasonably account, of pecuniary resources or of property disproportionate to his known sources of income.

Explanation- In this clause òdependentö in relation to a public servant means his wife, children and step children, parents, sisters and minor brothers residing with and wholly dependent on him.

(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.

(3) In any trial of an offence punishable under sub-section (2) the fact that the accused person or any other person on his behalf is in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the Court shall presume, unless the contrary is proved, that the accused person is guilty of criminal misconduct and his conviction there for shall not be invalid by reason only that it is based solely on such presumption.

(4) í í í í í í í í í í ..ö

Considering the evidence, the prosecution conclusively proved that the appellant Mir Mohammad Nasir Uddin by abusing his different positions as public servant obtained pecuniary advantage for himself and other dependants by concealing wealth and also of the property disproportionate

to his known source of income thereby committed offence of criminal misconduct under Section 5 (1) (d) (e) punishable under Section 5 (2) of the Prevention of Corruption Act, 1947.

We hold that there was sufficient evidence and materials on record on the basis of which the Special Judge was justified in convicting the appellant Mir Mohammad Nasir Uddin, under Section 5 (1) (d) and (e) and punishable under Section 5 (2) of the Act II of 1947 quoted above.

In view of the discussions made herein above, relevant provision of Anti Corruption Commission Act, 2004, Emergency Powers Rules, 2007 and Prevention of Corruption Act, 1947 and pursuant to the judgment of the Appellate Division passed in C.P.L.A No. 246 of 2011 and 478 of 2012 in the *Moudud Ahmed* case reported in 68 DLR (AD) 118, we find no merit in these appeals.

In the result, the appeals fails and are dismissed.

The Judgment and order of conviction and sentence dated 04.07.2007 convicting appellants Barrister Mir Mohammad Helal Uddin and Mir Mohammad Nasir Uddin as awarded by the learned Special Judge, Special Judge

Court No. 2, Dhaka passed in Special Case No. 1 of 2007 is hereby maintained.

Barrister Mir Mohammad Helal Uddin is convicted under Section 27(1) of the Anti-Corruption Commission Act, 2004 and Section 109 of the Penal Code and sentencing him to suffer simple imprisonment for 3(three) years and to pay a fine of Tk. 1,00,000/- (one lac) and in default to suffer simple imprisonment for 1(one) month more and the period of custody in connection with this case will be deducted.

Appellant Mir Mohammad Nasir Uddin is convicted under Section 26(2) of the ACC Act, 2004 and Rule 15 gha(5) of the Emergency Power Rules, 2007 and sentenced under Section 26(2) of the ACC Act, 2004 to suffer simple imprisonment for 3 (three) years and conviction against him is also maintained under Section 27(1) ACC Act, 2004 read with Section 5(2) of the Prevention of Corruption Act, 1947 and sentenced him to suffer rigorous imprisonment for 10 (ten) years and to pay a fine of Tk. 50,00,000/- (Taka fifty lacs) only and in default to suffer rigorous imprisonment for 2(two) years and confiscation of the moveable and immovable property in his name and in the names of the his dependants. Both the sentences imposed upon the convict-

appellant Mir Md. Nasir Uddin shall run consecutively and the period of custody in connection with this case will be deducted. The order of stay realisation of fine stands vacated.

Both the appellants are directed to surrender before the Special Judge Court No. 2, Dhaka within 3 (Three) months from the date of receipt of this judgment to serve out the sentences imposed upon them.

Transmitted the Lower Court Record with a copy of this judgment and order immediately to the court concerned for information and necessary action.

Fatema Najib: J

I agree