

12.01.23 12.01.23 12.01.23 15.01.23 15.01.23

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA
(CRIMINAL APPELLATE JURISDICTION)
Dated: The 21st day of July, 2016

Present:

Mr. Justice M. Enayetur Rahim

And

Mr. Justice Amir Hossain

Criminal Appeal No. 7225 of 2013

With

Criminal Appeal No. 7469 of 2013

Criminal Appeal No. 7225 of 2013

Arising out of Judgment and order of acquittal dated 17.11.2013 passed by the Special Judge, (District and Sessions Judge), Special Judge, Court No. 3, Dhaka in Special Case No. 17 of 2011 arising out of Cantonment Thana Case No. 8(10) 09 corresponding to ACC G.R. No. 83//2009.

AND

IN THE MATTER OF:

Durnity Daman Commission, represented by its Chairman, Segunbagicha, Ramna, Dhaka.

..... Appellant
(Informant)

-Versus-

1. Md. Tarique Rahman Son of Late Shahid President Major General (Retired) Ziaur Rahman Rahman Group of Industries House No. 16 Road No.



19/A Banani Bassthan-6 Shahid Moynul Road, Dhaka Cantonment Dhaka At present: 1, The Mall, South Get, London-N-14 O L, R, United Kingdom,

.....Respondent

(Acquitted by the trial Court)

2. The State, represented by the Deputy Commissioner, Dhaka.

..... Respondent

Criminal Appeal No. 7469 of 2013

Arising out of Judgment and order dated 17.11.2013 passed by the learned Special Judge, Court No. 3, Dhaka in Special Case No. 17 of 2011 corresponding to ACC G.R. No. 83 of 2009 arising out of Cantonment Police Station Case No. 08 dated 26.10.2009.

AND

IN THE MATTER OF:

Md. Gias Uddin AL-Mamun Son of Late Alhaj Jainal Abedin of Village-Kuralia Police Station- Borhanuddin District- Bhola. At Present- House No. 78, Road No. 6, Old D.O.H.S, Banani. Police Station- Cantonment, District-Dhaka.

..... Convict-Appellant

(In Jail)

-Versus-

1. The State

.....Respondent

2. Anti-Corruption Commission Segunbagicha, Dhaka.

.....Informant-Respondent



বাংলাদেশ সুপ্রীম কোর্ট হাই কোর্ট বিভাগ
দুই টাকা

Present:

Mr. Justice M. Enayetur Rahim
And
Mr. Justice Amir Hossain

Criminal Appeal No.7225 of 2013

Durnity Daman Commission
-------Appellant

-Vs-

Md. Tarique Rahman (absconding) and the State
-------Respondents

With

Criminal Appeal No.7469 of 2013

Md. Gias Uddin Al- Mamun
-------- Appellant

-Vs-

The State and another
-------- Respondents

Mr. Md. Khurshid Alam Khan, Advocate
----For the Appellant
(In Crl.A.No.7225 of 2013)

Mr. A.J. Mohammad Ali, Advocate
With
Mr. A.K.M. Fakrul Islam, Advocate,
Mr. Ragib Rouf Chowdhury, Advocate and
Mr. S.M. Sabbir Hamza Chowdhury, Advocate
---For the Appellant
(In Crl.A.No.7469 of 2013)

Mr. Mahbubey Alam, Attorney General
With
Mr. Sheikh A.K.M. Moniruzzaman, DAG
Mr. Md. Shahidul Islam Khan, AAG and
Mr. Mia Sirajul Islam, AAG
---- For the State (Respondent No.1)

(In Criminal Appeal No.7469 of 2013)

Mr. Md. Khurshid Alam Khan, Advocate
---For the Respondent No.2

(In Criminal Appeal No.7469 of 2013)

Heard on 05.05.2016, 12.05.2016, 18.05.2016, 25.05.2016, 01.06.2016,



বাংলাদেশ কোর্ট ফি
দুই টাকা

08.06.2016, 09.06.2016, 15.06.2016,
16.06.2016 & Judgment on 21.07.2016

M. Enayetur Rahim, J:

Both the appeals have arisen out of the same judgment and order dated 17.11.2013 passed by the learned Special Judge, 3rd court, Dhaka in Special Case No.17 of 2011 and those were heard analogously and disposed of by this single judgment.

Convict Md. Gais Uddin Al Mamun (Appellant in Criminal Appeal No.7469 of 2013 and herein after referred as convict Mamun) along with Md. Tarique Rahman (Respondent No.1 in Criminal Appeal No.7225 of 2013 and herein after referred as accused Rahman) were put on trial before the learned Special Judge, Court No.3, Dhaka in Special Case No.17 of 2011 arising out of Cantonment Police Station Case No.8(10)09 corresponding to ACC GR No.83 of 2009 and charge was framed against them under sections 2(Tha)(A),(Aa) [২(ঠ), (অ), (আ)] and 13 of the Money Laundering Protirodh Ain 2002 (herein after referred as Ain of 2002).

It is pertinent to mention here that accused Rahman did not face the trial and charge was framed against him in his absence, though he had the knowledge about the proceedings of the instant case. It reveals from the record that as per order of the concerned Court the Government permitted accused Rahman to go abroad for treatment. The learned Metropolitan Special Judge after receiving the case



বাংলাদেশ কোর্ট ফি
দুই টাকা

record on 07.07.2010 for trial fixed next date on 10.08.2010 for hearing on cognizance matter. On 10.08.2010 the learned Advocate for the accused Rahman by filing an application sought adjournment for hearing on cognizance matter on the ground that he was in abroad for treatment and the learned Special Judge allowed the said prayer and fixed next date on 26.09.2010. On 26.09.2010, 04.11.2010, 09.01.2011, 02.02.2011, 10.02.2011, 17.02.2011 dates were fixed for hearing on the cognizance matter but in all those dates on behalf of accused Rahman applications were filed seeking adjournment of the said hearing on various pleas. Ultimately, the learned Special Judge pursuant to the order of the Appellate Division of the Supreme Court by an order dated 05.05.2011 took cognizance into the offence under section ২(ঠ), (অ), (আ) read with section 13 of the Money Laundering Ain 2002 against accused Rahman and convict Mamun and fixed next date on 19.05.2011 for hearing on charge matter. Eventually, the learned Special Judge by its order dated 25.07.2011 fixed date on 08.08.2011 for appearance of both the accused persons and hearing on charge matter. But on 08.08.2011 accused Rahman was not present in the Court in compliance with the Court's order and the learned Special Judge framed charge against both the accused persons under sections ২(ঠ), (অ), (আ) [2(Tha), (A), (Aa)] and 13 of the Money Laundering Protirodh Ain, 2002 and issued warrant of arrest against accused Rahman.



However, charge was read over and explained to convict Mamun who was present in the dock and he claimed to be tried.

The prosecution case as stated by PW-1 Md. Ibrahim, the then Assistant Director, Durnity Daman (Anti-Corruption) Commission (herein after referred as commission), in short, is that he lodged a First Information Report (FIR) on 26.10.2009 with Cantonment Police Station under Sections 2 and 4(2) of the Money Laundering Protirodh Ain, 2009 implicating both the accused persons alleging, *inter alia*, that various incidents of offences alleged to have been committed by the accused persons from 01.01.2003 to 31.05.2007; the accused persons in collusion with each other having earned directly by illegal manner an amount of Tk.20,41,25,843.00 deposited the same secretly in account No.158052 with City Bank NA, Singapore and thereby, committed the offence concealing the same; since January, 2003 convict Mamun had maintained the said Bank account No.158052, Maxi-Save Account No.0-158052-038 and City Access Account No.0-158052-016. Convict Mamun by using a City Bank International Gold Visa Card No.4568-8170-0006-4124 and accused Rahman by Supplementary International Gold Visa Card No.4568-8170-1006-4122 in collusion with each other for making illegal gain knowingfully well about the illegal source of the money in foreign Bank account spent US$ 79,542.78 and US$ 54,982.42 respectively in different countries. And thereby, committed offence



বাংলাদেশ কোর্ট ফি



২০ টাকা

of the Money Laundering. Convict Mamun demanded money from Khadija Islam (PW-6), Chairman of Nirman International and local agent of M/S Harbin Power Engineering Company of China, with an assurance that an work order would be awarded to the said company for construction of an eighty (80) MW capacity power station in Tongi, BISIC Industrial Area through his close friend and business partner accused Rahman. Being induced by such assurance Khadija Islam on 01-08-2003 transferred US$ 7,50,000 from her account maintained with the Overseas Chinese Banking Corporation (OCBC) Limited in Singapore to the account of the convict Mamun with the City Bank NA in Singapore. Besides, Moazzam Hossain, Chairman Hosaf Group, Mayer Ciere and Marina Zaman also deposited US $11,67,000, US $4,20,000 and US $30,000 to the said account of convict Mamun on various occasions. Three drafts being Nos. 241096763 dated 08.05.2007, 241096762 dated 08.05.2007 and 262501698 dated 07.05.2007 in respect of €128609.88, £14059.89 and US $2777351.10 were presented for collection in account No.34450546 of convict Mamun with Sonali Bank, Cantonment Branch, Dhaka and Taka 20,41,25,853.00 was transferred to the account of convict Mamun with Sonali Bank Cantonment Branch, Dhaka on 11.06.2007 from his account No.158052 with the City Bank, Singapore. Thereafter, Taka 20,41,25,613.28 was deposited in Bangladesh Bank vide payment order No.6295121 on 31.07.2007.



বাংলাদেশ কোর্ট ফি
দুই টাকা

At the time of the trial the prosecution in order to prove the case in all examined 13 witnesses. On behalf of the convict Mamun all the said witnesses were duly cross-examined, except PW-2. Moreover, on behalf of convict Mamun 04(four) defense witnesses were examined and the prosecution cross-examined them.

On conclusion of the trial the learned Special Judge by the impugned judgment and order dated 17.11.2013 found convict Mamun guilty under section 13(2) of the Money Laundering Protirodh Ain, 2002 for committing offence under section 2(ঠ) [2(Tha)] of the said Ain and sentenced him to suffer imprisonment for 07(seven) years with a fine of Taka 40 (forty) Crore and also confiscated the Laundered Money amounting to Taka 20(twenty) Crore and acquitted accused Rahman from the charge brought against him.

Being aggrieved by the judgment and order acquitting accused Rahman the Commission has filed Criminal Appeal No.7225 of 2013 and convict Mamun has also filed Criminal Appeal No.7469 of 2013 against the judgment and order of conviction and sentence passed against him.

It is pertinent to mention here that on 12.01.2016 at the instance of the Commission both the appeals were appeared in the daily cause list for fixing a date of hearing.



On that day it appeared from the record that notice upon the Respondent No.1, accused Tarique Rahman, was not served and the Criminal Appeal No.7225 of 2013 filed by the Commission was not ready for hearing.

In the above circumstances, this Court by an order dated 12.01.2016 directed the office to issue fresh notice upon the accused Rahman in his present address and also directed to publish the said notice in one English and one Bangali Newspapers having wide circulation directing him to surrender before the trial Court before 04.02.2016, though the learned Advocate for the Commission tried to convince us that since accused Rahman was absconding during trial, it was not required to serve fresh notice upon a fugitive.

After complying with the said order the office of this Court on 21.01.2016 gave the following note:

> "মাননীয় কোর্টের ১২.০১.১৬ইং তারিখের আদেশের প্রেক্ষিতে Respondent No.1 কে আগামী ১৪.০২.১৬ইং তারিখের মধ্যে বিশেষ জজ, কোর্ট নং-৩ ঢাকায় আত্মসমর্পন করার জন্য তাহার বর্তমান ঠিকানায় আদেশ প্রেরন করা হইয়াছে যাহার স্মারক নং-১৫০৭ তাং ১৭.০১.১৬ এবং R.P. No. RR-51291769 4BD dt-18.01.16.
>
> মাননীয় কোর্টের অপর আদেশের প্রেক্ষিতে একটি ইংরেজি পত্রিকা **'The Daily Star'** এ ২০.০১.১৬ইং তারিখে এবং একটি বাংলা পত্রিকা **'প্রথম আলো'**-এ ২১.০১.১৬ইং তারিখে আত্মসমর্পনের বিজ্ঞপ্তি প্রচার করা হইয়াছে।
>
> প্রেরিত আদেশের কপি ও প্রচারিত পত্রিকার বিজ্ঞপ্তির কপি নথির সঙ্গে সামিল করা হল। "



Having not received the report with regard to the service of notice at the present address of the accused Rahman from the office of the Chief Metropolitan Magistrate, Dhaka this court by an order dated 28.02.2016 sought a written explanation from the learned Chief Metropolitan Magistrate, Dhaka with regard to the service of notice upon accused Rahman.

The Chief Metropolitan Magistrate, Dhaka vide its office memo 01.01.002.0000.2016-145 dated 02.03.2016 informed this Court that they had taken steps for service of notice upon the accused Rahman through Ministry of Foreign Affairs and also sent the notice to him by registered post.

Thereafter, the Chief Metropolitan Magistrate, Dhaka vide its office memo No. 01.01.002.0000.2016-157, dated 08.03.2016 sent a report to the Registrar General of this Court regarding the service of notice upon accused Rahman, which runs as follows:

"মহামান্য আদালতের ফৌজদারী আপীল ৭২২৫/২০১৩ নং মামলার আদেশের নির্দেশনা মোতাবেক উক্ত মামলার রেসপন্ডেন্ট জনাব Tarique Rahman, Son of Late Shahid President Major General (Retired) Ziaur Rahman এর বর্তমান "1. The Mall, South Get, London-N-14 O L, R, United Kingdom" ঠিকানায় বিধি মোতাবেক নোটিশ জারীর জন্য গত ২৯/০২/২০১৬ ইং তারিখে ০১.০১.০০০.০০৫.২০১৬-২২(৪) নং স্মারকের মাধ্যমে "মাননীয় সচিব, পররাষ্ট্র মন্ত্রনালয়" বরাবরে পত্র প্রেরণ করা হয় (কপি সংযুক্ত)। পররাষ্ট্র মন্ত্রনালয়ের এসএস (এ) শাখা হতে অদ্যকার SS(A)-Misc/2015(T.Rah)(Part) নং স্মারকের মাধ্যমে বাংলাদেশ হাইকমিশন, লন্ডন হতে প্রাপ্ত একটি পত্রের অনুলিপি (কপি যুক্ত) নিম্নস্বাক্ষরকারীর বরাবরে প্রেরণ করা



হয়েছে। বাংলাদেশ হাইকমিশন, লন্ডন হতে প্রেরিত উক্ত পত্রে উল্লেখ করা হয়েছে যে, মহামান্য আদালতের ফৌজদারী আপীল ৭২২৫/২০১৩ নং মামলার নোটিশে রেসপন্ডেন্ট এর বর্তমান ঠিকানা 1. The Mall, South Get, London-N-14 O L, R, United Kingdom" উল্লেখ করা হলেও তাদের নিকট থাকা তথ্য মতে তার বর্তমান ঠিকানা "3. Cotswold Close, Kingstone-upon-Thames, KT2 7JN, United Kingdom"। উক্ত বিষয় উল্লেখে বর্ণিত পত্রের মাধ্যমে জরুরী ভিত্তিতে পরামর্শ প্রদানের অনুরোধ করা হয়েছে। বাংলাদেশ হাইকমিশন, লন্ডন হতে প্রেরিত উক্ত পত্রের অনুলিপি পররাষ্ট্র মন্ত্রনালয় কর্তৃক অগ্রায়ণ পূর্বক উক্ত অনুলিপি বিশ্লেষণ করে আলোচ্য মামলার নোটিশ জারীর বিষয়ে পররাষ্ট্র মন্ত্রনালয়কে প্রয়োজনীয় নির্দেশনা প্রদানের জন্য নিম্নস্বাক্ষরকারীকে অনুরোধ করা হয়েছে।"

In view of the said report this Court by its order dated 16.03.2016 for the ends of justice directed the office to send fresh notice upon accused Rahman, at his new address as provided by the Bangladesh High Commission in London.

Accordingly, the notice was sent to the last known address of the accused Rahman, as provided by the Bangladesh High Commission in London.

The Chief Metropolitan Magistrate, Dhaka vide its office স্মারক নং-০১.০১.০০৫.০০০০.২০১৬-৩৭ dated 05.04.2016 intimated this Court the following information as to the service of notice upon accused Rahman:

"মহামান্য আদালতের ফৌজদারী আপীল-৭২২৫/২০১৩ নং মামলার গত ৩১/০৩/২০১৬ খ্রিঃ তারিখের আদেশের নির্দেশনা গত ০৩/০৪/২০১৬ খ্রিঃ তারিখে আমি নিম্নস্বাক্ষরকারী প্রাপ্তির পর একই তারিখের স্মারক নং-০১.০১.০০০.০০৫.২০১৬-২১২ মারফত পররাষ্ট্র মন্ত্রণালয়ে পত্র প্রেরণ করি (কপি সংযুক্ত)। উক্ত পত্রের প্রেক্ষিতে পররাষ্ট্র মন্ত্রণালয়ের সহকারী সচিব সূত্রে বর্ণিত পত্র মারফত বিষয়োল্লিখিত মামলার Respondent জনাব Md. Tarique Rahman, Son of Late Sahhid



বাংলাদেশ কোর্ট ফি দুই টাকা

12

President Major General (Retired) Ziaur Rahman এর বর্তমান ঠিকানায় নোটিশ জারী 'র সর্বশেষ অবস্থা সম্পর্কে বাংলাদেশ হাইকমিশন, লন্ডন হতে প্রাপ্ত ইলেক্ট্রনিক পত্রের অনুলিপি ও নোটিশটি Royal Mail Service এর মাধ্যমে Respondent এর ঠিকানায় প্রেরণের receipt টি নিম্নস্বাক্ষরকারী বরাবর অগ্রায়ন করেছেন (কপি সংযুক্ত)।"

Above report proves that the Bangladesh High Commission in London sent the notice of this court to accused Rahman through Royal Mail Service. Apart from this, the office of this Court also sent a notice through registered post, [memo No.11390 dated 21.03.16; Registry No. RR 5128913 OBD dated 21.03.2016] to accused Rahman.

The office of this Court, office of Chief Metropolitan Magistrate, Dhaka as well as the High Commission in London duly sent notice to accused Rahman, at his presently known address by registered post and after elapsed of a reasonable time this Court taking consideration the above facts and circumstances on 04.06.2016 passed the following order:

> "In view of the provision of section 27 of the General Clauses Act it is the legal and valid presumption that the notice sent to Respondent No.1 by registered post/mail has been properly served.
>
> Moreover, as per direction of the court's order notice was also

12





- 12 -

published in two Daily newspapers having wide circulation namely the **'Daily Star'** [on 20.01.2016] and the **'Prothom Alo'** [on 21.01.2011] directing the Respondent No.1 to surrender before the Trial Court, before 14.02.2016 as the above mentioned appeal had already been admitted for hearing by this Court against the judgment and order dated 17.11.2013 passed by the Special Judge, Court No.3, Dhaka in Special Case No.17 of 2011 acquitting him. Despite, all the steps/efforts taken by this Court the Respondent No.1 did not surrender before the concerned Court and thereby he did not comply the Court's order. As such, the court has reasoned to believe that the Respondent No.1 has absconded and concealed himself in order to avoid the hearing of the appeal.

In the above facts and circumstances justice demands that the appeal should be heard in absence of the Respondent No.1, as the notice has been served upon him in accordance with law and the appeal is ready for hearing otherwise.

12



বাংলাদেশ কোর্ট ফি
দুই টাকা

- 14 -

Let the instant appeal along with the connecting Criminal Appeal No.7469 of 2013 be fixed for being on 4th May, 2016 at 2.00 P.M."

Accordingly, both the appeals were listed on 04.05.2016 for hearing.

Mr. Md. Khurshid Alam Khan, the learned Advocate appearing for the Commission has submitted that in convicting Mamun the learned trial Judge assessed, evaluated and appreciated the evidence, both oral and documentary, properly and rightly and thus, found guilty to convict Mamun; but the learned Judge having misread and misconstrued the evidence and materials on record adduced by the prosecution as well as the definition of 'Money Laundering' as defined in section 2(Tha) of the Ain of 2002 most illegally acquitted accused Rahman though the prosecution proved the charge brought against him beyond reasonable doubt.

Mr. Khan referring to the observations made by the learned trial Judge has further submitted that the learned Judge most illegally himself made out defense case on behalf of absconding accused Rahman and acquitted him and as such the judgment of acquittal of accused Rahman is prima face bad in law and liable to be set aside. Mr. Khan referring to the evidence of PW-2 Devra La Prevottee, Supervisory Special Agent for FBI, US has also submitted that said witness having proved Bank documents relating to



বাংলাদেশ সুপ্রীম কোর্ট হাই কোর্ট বিভাগ

the account of convict Mamun with City Bank, Singapore, material exhibit-I series and II series, categorically testified that she had tracked down the money laundered by the accused Rhaman to a Bank account in Singapore. Her evidence as well as the evidence of other prosecution witnesses were neither controverted nor assailed by the accused Rahman and thus, the learned trial Judge acted illegally in acquitting him.

Mr. A.J. Mohammad Ali, the learned Advocate appearing for convict Mamun referring to the evidence of PW-12 the investigating officer has submitted that the investigation was done in a perfunctory manner and he seized the alleged documents in not complying with the mandatory provision of law. He has further submitted that the present case had been inquired and investigated by same person and under Rule 24 of the Anti-Corruption Commission Rules, 2007 the same person has no authority to inquire and investigate the case and as such the investigation of the present case is without lawfull authority and it has vitiated the whole investigation process as well as the trial.

Mr. Ali has also submitted that PW-2 Devra La Prevottee was not cited as a witness in the charge sheet. All of a sudden she produced before the trial Court and her statements was not supplied to the accused as per section 6(7) of the Criminal Law Amendment Act, 1958 and as such her evidence should be left out of consideration and the learned Special



বাংলাদেশ কোর্ট ফি
দুই টাকা

- 16

Judge erred in law in considering her evidence in finding the guilt of convict Mamun.

It is submitted by Mr. Ali that PW-6, Khadija Islam, in her deposition categorically stated that the alleged money was given to convict Mamun as his remuneration for his work done as consultancy. The prosecution neither declared this witness hostile nor proved that the money earned by convict Mamun as consultancy fee is illegal and as such there is no scope to say that convict Mamun earned US$7,50,000 illegally. Moreover, prosecution has failed to bring an iota of evidence with regard to the excess amount than US$7,50,000. As such, the findings of the learned trial Judge that convict Mamun in total laundered Taka 20 (Twenty) crore is absolutely based on mere surmise and conjecture.

Mr. Ali has also submitted that the offence of money laundering is attracted when the said money is sent illegally from Bangladesh to any other country or it came into Bangladesh from the foreign country, but in the instant case the money was deposited and transferred from one Singapore account to another Singapore account, thereby it shall not be attracted the Money Laundering offence under the Ain of 2002.

Mr. Ali has further submitted that after the parliament election held in 29th December,2008 the parliament in its first sessions enacted total 32 Ordinances (though the approval committee has approved 54 Ordinances) out of 122 Ordinances which



বাংলাদেশ কোর্ট ফি
দুই টাকা

17

were promulgated during Care Taker Government. 68 Ordinances were not placed before the Parliament including Ordinance No.XVII of 2007 dated 30.07.2007 by which section 3(ka) of the Money Laundering Act, 2002 was inserted and the Ordinacne No. VII of 2007 dated 30.07.2007 by which 'Money Laundering' as an offence included in the schedule of the Anti-Corruption Commission Act, 2004. Therefore, aforesaid Acts shall be read without considering of the aforesaid amendment. Hence, the Anti-Corruption Commission Act, 2004 or the Money Laundering Protirodh Ain, 2002 did not authorize the Anti-Corruption Commission to lodge or investigate any offence committed under the Ain of 2002.

Mr. Ali has also submitted that charge was framed for alleged laundering of US$ 7,50,000 and not a single prosecution witness uttered any single word regarding excess amount than US$ 7,50,000; therefore, for the sake of argument even if the prosecution was able to prove it's charge of money laundering of US$ 7,50,000 (that is equivalent to 5 crore) however, learned trial judge imposed fine of Taka 40 crore upon the convict Mamun and as such imposition fine is not only unjust and also illegal.

Mr. Ali has finally submitted that without prejudice to the submission made above, even though the accused committed the alleged offence, it will not come within mischief of Ain of 2002; at best section 163 of the Penal Code may attract the alleged



offence, which is not punishable under the Ain of 2002.

Mr. Mahbubey Alam, the learned Attorney General, appearing for the respondent-State, on the other hand, having supported the judgment and order of conviction and sentence passed against convict Mamun and adopting the submissions of Mr. Khan, the learned Advocate for the commission, has submitted that admittedly convict Mamun took US$ 7,50,000 as consultancy fee from PW-6,Khadiza Islam, local agent of M/s Harbin Power Engineering Company of China, for awarding work order in favour of the said company; but obtaining such money in the name of consultancy fee was not permitted under any law or rules of the country and as such, convict Mamun acquired said money by illegal means and thereby committed offence of Money Laundering as defined section ২(ঠ) of the Ain of 2002 and accused Rahman aided convict Mamun to commit the said offence. He has further submitted that offence of Money Laundering is one of the serious financial crimes, and in a case of financial crime if the fact that the accused has acquired property, movable or immovable, by illegal means is proved, the court shall presume, unless the accused succeeds to rebut such presumption in court, that he is guilty of said offence and a conviction therefore shall not be invalid by reason only it is based on such presumption. In the instant case, convict Mamun failed to rebut the presumption of the court that the money in question was acquired by illegal means.



বাংলাদেশ কোর্ট ফি
দুই টাকা

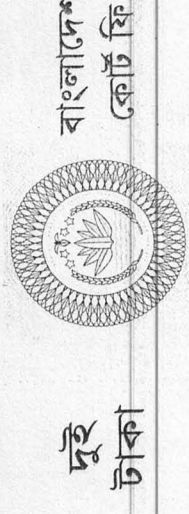
- 19 -

Thus, the appeal filed by convict Mamun is liable to be dismissed.

In the instant case Mohammad Ibrahim, the informant, at first examined as PW-1. As PW-1 he reiterated the prosecution case, proved exhibit-1, the memo of approval by the commission for inquiring the case, First Information Report, exhibit-2, his signature on it as exhibit 2/1, 2/2 respectively.

In cross-examination he stated that at the time of lodging the FIR he was the Assistant Director of the Commission and he had investigated the case under the provision of Money Laundering Ain, 2009 and prior to that the Ain of 2002 was in force. The alleged bank transaction was made in the account of convict Mamun in Singapore; he went Singapore and consulted with the bank record. Khadiza Islam deposited US $7,50,000 in the account of convict Mamun maintained in Singapore. Khadiza Islam paid the said money to convict Mamun as bribe. He had no knowledge whether separate case was lodged for taking the above bribe. He consulted the documents and from the report of FBI (Federal Bureau of Investigation) it was evident that between the accused persons there was collusion. Convict Mamun returned back Tk 20,41,25,843/- from his Singapore account to his account in Bangladesh. There is no document that convict Mamun sent the said money in abroad. Khadiza Islam gave bribe US $7,50,000 to convict Mamun. Khadiza Islam being the local agent of Harbin Engineering Company, a Chinese





20

Company was compelled to give the said money as bribe in order to get the work order in favour of the said Company who was the lowest bidder for installing an 80 MW capacity power station in Tongi. He did not find out the source of the said money and where from Khadija Islam got it. Convict Mamun being the closest associate of accused Rahman, son of the then Prime Minister, compelled various persons to give them bribe in order to get the various work orders. No money was transferred outside the Bangladesh but all the money were received in order to facilitate business gain and awarding work orders. He denied the defense suggestion that he lodged the First Information Report due to political influence.

PW-2 Debra La Prevotte, an F.B.I. agent testified that in 2008 the then Ad-Interim Government of Bangladesh requested the assistance of the United States pursuant to a Mutual legal Assistance Request and because of that request the United States sent representative of the United States to Dhaka to obtain information regarding bribery cases. The United State reviewed the request to ensure that it was not politically motivated. There after holding meeting with the Commission she started investigation with the permission of the U.S. Government. As part of her investigation she discovered several Bank accounts in Singapore. Among those accounts she discovered a Bank account in City Bank NA, Singapore in the name of convict Mamun. The U.S. Department of Justice via Mutual legal Assistance requested





Singapore Government to obtain documents of those City Bank accounts. Accordingly, the City Bank authority of Singapore sent documents of convict Mamun's City Bank A/C nos.158052-016-008 and another one is 158052-016. She reviewed those Bank records and found that 02(two) credit cards were issued by the City Bank, Singapore in connection with the accounts of convict Mamun. The first credit card in this account is a visa card no.45688177000064124 in the name of convict Mamun and there were also another Visa Card no.4568817010064122 in the name of accused Rahman. In this regard she submitted 43 pages of documents, material exhibit-I series. US Government obtained the City Bank records in Singapore of 2004 & 2005 and the Government of Bangladesh also made a request to the Government of Singapore via Mutual legal Assistance for bank record from City Bank for many accounts including those of convict Mamun. In December, 2009 she compared the records of City Bank received from Singapore by Bangladesh Government. And on 15th December, 2009 she certified that both copies were identical. She signed a letter of certification stating that those documents were the same. She proved the documents comprising 229 pages as Material exhibit-II (series) and her signatures as material exhibit-II/A & A/1 respectively. Those documents were sent from the Department of Justice to the Embassy of Bangladesh Washington D.C. with Stamped properly of the Embassy Seal. The Embassy of Bangladesh in Washington D.C. sent those records to the office of



বাংলাদেশ কোর্ট ফি
দুই টাকা

the Attorney General of Bangladesh. Bangladesh also requested City Bank NA Bangladesh to turn over documents relating to convict Mamun's account of 2003 to 2006. In material exhibit-I (series) pages-3, 4, 5 & 6 relates to the authenticity of the bank records given by Bangladesh Embassy, Singapore & Foreign Ministry Bangladesh and also Agens Sng Hwee Lee, the Asst. Director Singapore Academy of Law certified the Notary's Signature. The Notary's name in page-4 (who certified) was Soh Kheng Yeow Augustine. She had reviewed all those bank records as a part of her investigation. She found Photostat copy of accused Rahman's passport was submitted to City Bank Singapore to obtain the second Visa Card of convict Mamun's City Bank account. The Photostat copy of accused Rahman's passport was in the pages-40, 42 & 43 of Material exhibit-I (series). There were also Photostat copies of convict Mamun's passport found in page No.29, 30, 31, 32, 33, 34, 35, 36, 37 & 38 of the material Exbt-I (series); the number of accused Rahman's passport was Y 0085483 where his father's name was found late President Ziaur Rahman, Bir Uttam and mother was as Begum Khaleda Zia. Page-39 of those documents was a copy of supplemental Card request to add a Visa Credit Card for accused Rahman. Convict Mamun's passport number was Q 0998382. She also reviewed the bank records from 2003 to 2006 of the Credit Card Statements. Those statements reflected charges made total 50613.97 US Dollars of accused Rahman's Credit Card. She also reviewed accused



বাংলাদেশ কোর্ট ফি
দুই টাকা

-২৪

Manun's City Bank statements and found that accused Rahman's and Mamun's both charge were paid from the account of convict Mamun. Accused Rahman's Credit Card showed that he used his Credit Card to pay his travel expenses to visit Athens Greece, Frankfurt Germany, Singapore, Bangkok & Dubai along with shopping and meet medical expenditures. The documents provided by the Anti Corruption Commission Bangladesh indicated that a Bangladeshi business woman Khadija Islam transferred 7,50,000 U.S Dollars to convict Mamun's City Bank account in Singapore and it was found transferred on 01.08.2003. Convict Mamun's account with City Bank Singapore was used to make payment of accused Rahman's Visa Credit Card.

The learned Advocate for the convict Mamun was reluctant to cross examine the said witness, even convict Mamun who was present in the dock also refused to cross examine personally when asked by the learned trial Judge in the open court.

PW-3 Hosne Ara Begum deposed that on 26.10.2009 while she was serving as the officer in charge of Cantonment Police Station she having received a complaint through Md. Ibrahim, Assistant Director of the Commission registered Cantonment Police Station Case No.8(10)09 against convict Mamun and Rahman under section 2, 4(2) of the Money Laundering Protirodh Ain, 2009. She filled up the FIR form. She proved the First Informant Report exhibt-2, her signature on it exhibit-2/3, FIR form exhibit-3, her





বাংলাদেশ কোর্ট ফি
দুই টাকা

two signatures on it exhibit-3/1 and 3/2 respectively.

In cross-examination she stated that Md. Ibrahim, Assistant Director of the Commission, Head Office presented the First Information Report before her. She denied the defense suggestion that she recorded the First Information Report mechanically.

PW-4 Mir Alimuzzaman deposed that in the year 2007 while he was serving as the Police Inspector of Detective Branch of Dhaka Metropolitan Police, he investigated Gulshan Police Station Case No.38 dated 09.05.2007 under section 386/387 of the Penal Code read with Emergency Powers Rules and in course of the investigation of the said case he came to know that Khadija Islam, Chairman of Nirman Construction, lodged the said case alleging that Nirman Construction Company became the lowest bidder for installing an 80 M.W capacity Power Station at BISIC industrial area in Tongi. Despite no work order was issued by the authority in favour of their company. And then, convict Mamun through telephone told Khadija Islam to the effect that if they want to get the work order in that case they had to pay Tk 05(five) Crore. Convict Mamun also asked Khadiza Islam to deposit the said money in her bank account maintained in Singapore and Khadiza Islam having opened a bank account in OCBC Bank, Singapore transferred US $7,50,000 to the account of convict Mamun and accused Rahman through two separate Credit



বাংলাদেশ কোর্ট ফি
দুই টাকা

Cards spent a huge amount of money from the said account. Convict Mamun made confessional statement under section 164 of the Code of Criminal Procedure in the said case. Eventually, convict Mamun expressed his desire to return back the entire money from the said account of Singapore to Bangladesh. Having obtained necessary order from the concerned court convict Mamun opened a Bank account in Sonali Bank, Cantonment Branch and the said money was transferred from Singapore to his said Bank account. Since the offence was Money Laundering, a schedule offence of Durnity Daman Commission Ain, 2004, he submitted a report to the Chairman of the Commission for necessary action. He proved the said report as exhibit-4 and his signature on it as exhibit-4/1.

In cross-examination he stated that he came to know from Khadiza Islam that convict Mamun demanded TK. 05(five) Crore for awarding the work order and he demanded the said money through telephone; but she could not say the said telephone number. Khadiza Islam paid US $7.50.000 to convict Mamun. He could not know whether the said money was legal or illegal. He had no knowledge whether Khadiza Islam, convict Mamun and Tareque Rahman had any business in aboard. The money in question was returned back. He had no knowledge whether the Commission lodged another case with regard to the money in question and in the mean time convict Mamun was convicted in the said case and sentenced for 10(ten) years and against the conviction and sentence an Appeal was pending. The



বাংলাদেশ কোর্ট ফি
দুই টাকা

friendship of convict Mamun and Rahman was known to everyone. In the case docket the names of the firms/institutions were noted from whom accused Rahman and Mamun obtained money. Convict Mamun made a confessional statement under section 164 of Code of Criminal Procedure in connection with Gulshan P.S. Case No.38 dated 09.05.2007 but he did not make any confessional statement in this case. Convict Mamun had no connection neither in accepting nor refusing the bid. He denied the defense suggestions that in course of the investigation of Gulshan Police Station Case No.38 no witness disclosed to him with regard to the demand of money by convict Mamun from Khadiza Islam, and that under the influence of the Government he lodged the said case.

PW-5 Md. Kamal Uddin deposed that on 05.11.2009 while he was serving as the Officer-in-Charge of Gulshan Police Station Md. Ibrahim Assistant Director of the Commission, (PW-1) vide office memo no.16171 dated 03.11.2009 asked him to provide latest information with regard to Gulshan Police Station Case No.38 dated 09.05.2007 under section 385/386/387 of the Penal Code and Case No.101 dated 31.05.2007 under section 406/420/500 of the Penal Code. Having received the said memo he directed SI Masud Karim to take necessary actions and SI Masud Karim prepared a report and thereafter he forwarded the same to the Commission. He proved the said report exhibit-5, his signature on it exhibit-5/1, the memo no.16171 dated 03.11.2009 of Anti-Corruption Commission, exhibit-6.



বাংলাদেশ কোর্ট ফি
দুই টাকা

-27

In cross-examination he stated that he did not investigate the said two cases. SI Masud Karim prepared the report and he forwarded the same to the Commission.

PW-6 Khadiza Islam deposed that by profession she was a businessman and her company used to work civil and electrical works. In 2002 a tender was invited for installing an 80 M.W. capacity Power Station in Tongi Industrial area. Their company being the local agent of M/s Harbin Power Engineering, a Chinese company, participated in the said tender and became the lowest bidder. PDB (Power Development Board) recommended to the concerned Ministry to issue work order in favour of the M/s Harbin Engineering Company. But, no decision was given on it by the concerned Ministry. In such a situation they made contact with the authority of PDB, and the authority of PDB asked them to make contact with the Ministry. The authority of Harbin Company became annoyed because of such long delay and expressed its desire to take back its bid. They had also tried to make contact with Mr. Iqbal Hasan Tuku, the Minister of the concerned Ministry, but failed. However, Mr. Sammi, private secretary to the minister, asked them to make contact with convict Mamun as he had good relationship with the Minister. She knew convict Mamun as they were from the same locality. She made contact with convict Mamun and informed him that their company became the lowest bidder for installing the Power station in question but the Ministry for



বাংলাদেশ কোর্ট ফি
দুই টাকা

the last 08(eight) months did not give any decision on the matter. In initial stage convict Mamun was reluctant but ultimately he talked with the concerned persons of the Chinese Company and agreed to assist them in order to awarding the work order. After two weeks of such agreement the matter was placed before the concerned committee for its approval and the concerned committee approved the same and accordingly in the year 2003 an agreement was signed between M/s Harbin Power Engineering and PDB (Power Development Board). After signing of the said agreement convict Mamun asked her to pay consultancy fee as the same was agreed by the M/s Harbin Company for assisting it to get the work order and he also asked to make the said payment in his Bank account in Singapore to avoid further delay and complication. As per the advice of Chinese company she having gone to Singapore opened a Bank account with the OCBC Bank and China Harbin company transferred US $7.50.000 from China to her Bank account and thereafter, she transferred the said money to the account of convict Mamun. She identified convict Mamun present on the dock.

In cross-examination she stated that her husband was a renowned businessman and they had businesses in home and abroad. Convict Mamun helped them in getting the work order in favour of their company as it became the lowest bidder for installing a power station. Convict Mamun assisted them taking money and payment was made to convict Mamun by the Chinese



বাংলাদেশ কোর্ট ফি
দুই টাকা

company through them as they were the agent of the company. The transaction was a legal one.

PW-7 Masud Karim deposed that on 05.11.2009 he was serving as Assistant Sub-Inspector of Police in Gulshan Police Station. As per the instruction of the officer in charge of the Police Station he prepared a report, exhibit-5 with regard to the latest position of Gulshan Police Station case No.38 dated 09.05.2007 and case NO.101 dated 11.07.2007. He proved his signature on it as exhibit-5/2.

In cross-examination he stated that proceeding of Gulshan P.S Case NO.101 was stayed by the High Court Division and he mentioned the said fact in his report.

PW-8 Syed Ahsanul Hafiz deposed that on 31.07.2007 while he was serving as the Executive officer Sonali Bank, Cantonment Corporate Branch, he issued a Payment order with regard to Tk. 20,41,25,613.28 in favour of the Bangladesh Government. He proved the Photostat copy of the said payment order as exhibit-7. The original copy of the payment order was being kept in the main branch of Sonali Bank, Cantonment Branch.

In cross-examination he could not say who the owner of the said money was. But he stated that he could say it seeing the payment order.

PW-9 Md. Nazrul Islam deposed that in the year 2007 he was serving as the Deputy General Manager of



Sonali Bank, Cantonment Branch. On 11.06.2007 convict Mamun along with Colonel Zahid came to their bank and convict Mamun opened a savings account being No.34450546 and 03(three) foreign drafts being No.241096763 dated 08.05.2007 amounting to €1,28,609.88, draft No.241096762 dated 08.05.2007 amounting to £14,059.89 and draft No.262501698 dated 07.05.2007 amounting to US $27,77,35100 were deposited for collection. Accordingly, after collection in accordance with law Tk. 20,41,25,843.27 was deposited in the said account of convict Mamun and eventually, said money was transferred to Bangladesh Bank through a payment order. The original documents of those were lying with the record of special case No.01 of 2008 arising out of cantonment police Station case No.2(5)2007. He proved the attested copies of said documents as exhibit-8 series (with objection).

In cross-examination he stated that he joined in Sonali Bank, Cantonment Branch in the month of March, 2007. Colonel Zahid was with accused when he came to the Bank. He could not say whether convict Mamun was under the Police custody on the relevant day. He knew Colonel Zahid long before. He could not say when the Form for opening the bank account was collected by convict Mamun. Convict Mamun was identified by Anwar Hossain, the principle officer. He denied the defense suggestion that no one identified convict Mamun. The name of the nominee was not mentioned in the Form. No cash money was received from convict Mamun as there



বাংলাদেশ কোর্ট ফি
দুই টাকা

was no hard and first rule to that effect. He had no knowledge whether convict Mamun was on police remand when the account was opened. Convict Mamun applied in a prescribed form for issuing the payment order. Masrur Hossain, a representative of convict Mamun signed on the payment order on his behalf. He denied the defense suggestions that convict Mamun did not open any bank account, and he did not give any permission for any transaction, and as per the instruction of Colonel Zahid he prepared the payment order, and that convict Mamun was not physically present in the Bank.

PW-10 Bivhuti Bhushan Sarker, a Bank Officer, proved exhibit-7&8 series and deposed that he attested the said documents of the Bank seeing the original of it. He proved his signatures on exhibit-7&8 series.

In cross-examination he stated that those documents were seized in connection with Cantonment Police Station Case No.2(5)2007. He denied the defense suggestion that he without verifying the original documents keeping with the bank attested those documents.

PW-11 Omar Faruque, another Sonali Bank officer of the relevant time, deposed that vide exhibit-10 Md. Ibrahim of the commission asked him to supply the necessary documents in connection with the present case, but those were previously seized in connection



with Cantonment Police Station Case No.26(10)2009 and those documents were also sent to the Commission.

In-cross examination he stated that he served in Sonali Bank, Cantonment Branch in between July, 2008 to March, 2010 and the alleged account of convict Mamun was opened prior to his joining to the said Branch. He denied the defense suggestion that he made correction in the documents without taking any permission from Court.

PW-12 Sayed Tahsinul Haque, an officer of the Commission, deposed that he seized the relevant documents regarding the Bank account of convict Mamun maintained with the Sonali Bank, Cantonment Branch in connection with Cantonment Police Station Case No.2 dated 02.05.2007 and he proved the seizure list exhibit-11 (with objection).

In-cross examination he stated that the account No.34450546 was opened on 11.06.2007 and case was started on 08.07.2007. He could not say whether convict Mamun was in jail on 11.07.2007. He was the investigating officer of another case being Special Case No.01 of 2008. He could not say wheather the account was opened on holiday. In the process of investigation he could come to know that the money was transferred to the account of convict Mamun from City Bank, Singapore. He did not supply the original copy of the seizure list to the I.O of the present case.



বাংলাদেশ কোর্ট ফি
দুই টাকা

Md. Ibrahim the informant and the investigating officer of the case further testified as PW-13. He proved exhibit-12(with objection) the Bank documents of City Bank Singapore relating to the Bank account of convict Mamun. He further deposed that Ms. Khadiza Islam was the local agent of M/s Harbin Power Engineering, a Chinese company. Convict Mamun and his business partner accused Rahman demanded money in order to awarding the work order in favour of the said company and accordingly she transferred US $7,50,000 to the Mamun's account being No.158052 with the City Bank, Singapore from her account being No.650-810-0721 maintained in OCBC Bank, Singapore. From the said account convict Mamun through City Bank international Visa Card being No.4568-8170-0006-4124 and accused Tareque Rahman through supplementary Gold Visa Card being No.4568-8170-1006-4122 spent US $79,542 and US $54,982 respectively knowing fully well that money was illegally earned. Moazzam Hossain, Mayer Chire and Marina Zaman also transferred US $11,67,000 US $4,20,000 and US $30,000 to the said account of convict Mamun. Eventually, convict Mamun transferred in total US $27,78,984 amounting to Taka 20,41,25,843 from his City Bank Singapore account No.158052 to the account No.34450546 with Sonali Bank, Cantonment Corporate Branch Dhaka. After getting the sanction from the Commission he submitted the charge sheet before the Court. He proved the sanction letter, exhibit-13.



বাংলাদেশ কোর্ট ফি
দুই টাকা

-03-

In-cross examination he stated that he lodged two cases against convict Mamun. In the present case Tk. 20,41,25,843 is involved. Convict Mamun was convicted in Cantonment Police Station case No.2(5)2007. He had no knowledge whether convict Mamun was acquitted in the said case on appeal. He denied the defense suggestion that the allegation of Cantonment Police Station Case No.2(5)2007 is similar to the present case. Convict Mamun opened the bank account on 11.06.2007 and the present case was filed after two years four months and fifteen days of the said date. He could not say where convict Mamun was in jail on 11.06.2007 that is the date of opening of the Bank account. In the opening form no name was mentioned as identifier and nominee and many columns of the form were not filled up and the nature of Bank account was not also mentioned. There was one signature of convict Mamun in the form. He did not arrest convict Mamun and he had no knowledge who arrested him. But he made prayer on 02.11.2009 before the Chief Metropolitan Magistrate, Dhaka to show him arrested in connection with this case. He recorded the statement of seven witnesses under section 161 of the code of criminal procedure including Ms. Khadiza Islam, convict Mamun and received written statement of accused Rahman. PW-2 Devora La Prevotte was not cited as a witness in the charge sheet. He had no knowledge whether any cheque book was issued in favour of convict Mamun. He did not cite any of the officers of OCBC Bank, Singapore as a witness and did



বাংলাদেশ কোর্ট ফি
দুই টাকা

not mention about material exhibit No.II/A in the charge sheet. He denied the defense suggestions that Moazzam Hossain, Meyar Chire and Marina Zaman did not transfer any money to the account of the convict Mamun with City Bank in Singapore and that he investigated the case in a perfunctory manner, and at the instance of interested quarter he submitted the charge sheet against the accused persons.

On behalf of convict Mamun 05(five) defense witnesses were examined.

Advocate Ahammed Azam Khan as D.W-1 deposed that he was an Advocate and tax consultant of convict Mamun and he knew him for last twenty years. Convict Mamun was a renowned businessman and for last twenty years he had been working as his tax consultant and each and every year he submitted income Tax return on behalf of convict Mamun and his business firms. He did not find any irregularity and illegality in Mamun's income tax record and he did not launder any money from Bangladesh.

In-cross examination he could not say whether convict Mamun had any account in any Bank of Singapore, and that convict Mamun and Rahman spent money from the said account by using International Gold Visa Card and Supplementary Gold Visa card. He had also no knowledge about the instant case which initiated for disguising illegal money in abroad under Money Laundering Protirodh Ain.



D.W-2 Nasir Uddin Mia deposed that he was a Director of 'One Group' and convict Mamun was the Managing Director of it.

In-cross examination he stated that he had no knowledge about the allegation and charge leveled against convict Mamun and whether he had any Bank account in abroad. He further admitted that accused Rahman and Mamun were close friends.

D.W-3 Enamul Haque deposed that he was a Director of 'One Composit' and he knew convict Mamun for last 17-18 years as he was with them.

In-cross examination he stated that he had no knowledge what charge was brought against convict Mamun and whether he disguised any money in Singapore.

D.W-4 Abed Hasan Mahmud, a Director of 'One Textile' deposed that convict Mamun was one of the Director of the said Company and he was not involved in laundering money and he was a good man.

In-cross examination he stated that he did not involve with Politics but his father was one of the advisors of the Chairperson of BNP (Bangladesh Nationalist Party) and a Minister. He had no knowledge whether accused Rahman, the son of the Chairperson of BNP, was an accused in the present Case. He had no knowledge whether convict Mamun and Rahman laundered any money and he had also no knowledge in which case he came to depose.



বাংলাদেশ কোর্ট ফি

দুই টাকা

-37

D.W-5 A.H.M Jahangir deposed that he was a Director of 'One Spining Mills Limited' and convict Mamun was the M.D. of the same. He had no knowledge about the subject matter of the present case.

In-cross examination he stated that he had no knowledge about the present case and whether convict Mamun and Rahman laundered any money, and that convict Mamun and Rahman were close friends.

Convict Mamun at the time of examination under section 342 of the Code of Criminal Procedure submitted a written statement. In the said statement he categorically stated to the effect:

> "অভিযোগের বিষয় বস্তু ৭, ৫০,০০০/০০ ইউ এস ডলার সম্পর্কে আমার বক্তব্য হলো উক্ত টাকা আমার নয়। আমার টাকা নিজ নামীয় একাউন্টে জমা ছিল। আমার সিংগাপুরের টাকা বৈধভাবে উপার্জিত। বিদেশী কোং এর সাথে পরামর্শক হিসাবে কাজ করেছি বিধায় বিদেশী কোং আমার কনসালটেন্সি ফি বিদেশে প্রদান করেছে। সংশ্লিষ্ট দেশে আইন অনুযায়ী আয়কর পরিশোধ করা হয়েছে। উল্লেখিত টাকা বাংলাদেশ থেকে পাঠান হয়েছে কিনা মর্মে দালিলিক আই/ও, কর্মকর্তারা দুর্নীতির অভিযোগ প্রমানে সমর্থ হয়নি এবং বাংলাদেশ থেকে কোন টাকা সিংগাপুর সিটি ব্যাংকে ১৫৮০৪২ নং একাউন্টে উক্ত টাকা জমা হয়নি যাহা তিনি জেরার জবাবে স্বীকার করেছেন।
>
> .....।
>
> P.W.-6 মিসেস খাদিজা ইসলাম বলেন যে, হারবিন পাওয়ার ইন্ডঃ চায়না খাদিজা ইসলামের সিংগাপুরে ওসিবিসি ব্যাংকের একাউন্টে ৭,৫০,০০০/০০ ডলার চায়না হতে পাঠায়। অর্থ্যাৎ আমার সিংগাপুরস্থ বাংলাদেশ বা বিদেশ হতে উক্ত ৭,৫০,০০০/০০ ডলার জমা হয়নি।
>
> সিংগাপুরে ওসিবিসি ব্যাংক হতে সিংগাপুরে আমার একাউন্টে ট্রান্সফার হয় যাহা খাদিজা তার জবানবন্দিতে বলেছে। পুলিশ হেফাজতে থাকাবস্থায় ব্যাংকে হিসাব খোলা, বিদেশ





থেকে অর্জিত টাকা আসা সম্পর্কে মামলা দায়ের করা এবং কোর্টের অনুমতি ছাড়া উক্ত অভিযোগকৃত টাকা সরকারের অনুকূলে নিয়ে যাওয়া বে-আইনি।

সিটি ব্যাংক ইন্টারন্যাশনাল গোল্ড ভিসা কার্ড ও সাপ্লিমেন্টারী গোল্ড ভিসা কার্ড সম্পর্কে আমার বক্তব্য হলো বিদেশী কোং এর সাথে পরামর্শক হিসাবে বিদেশে কাজ করেছি বিধায় তারা আমার কনসালটেন্সি ফি পরিশোধ করেছে এবং সংশ্লিষ্ট দেশের আইন অনুসারে উল্লেখিত দেশে আয়কর পরিশোধ করা আছে।

সিংগাপুরে আইন অনুসারে আমি বৈধ একাউন্টধারী ব্যক্তি। উক্ত দেশের ব্যাংক আইন অনুযায়ী ইন্টা: ভিসা কার্ড ও সাপ্লীমেন্টারী ভিসা কার্ড প্রাপ্ত হই। কার্ড ২ টি আমার নামে ইস্যুকৃত।

উল্লেখিত টাকা বাংলাদেশ থেকে পাঠান হয়েছে কিনা এই মর্মে দালিলিক প্রমান দেয়নি বা উপস্থাপন করতে সক্ষম হয়নি।

আই/ও ইন্টাঃ গোল্ড ভিসা কার্ড এবং সাপ্লিমেন্টারী ভিসা কার্ডের মুলকপি জব্দ করতে পারেনি বা সিংগাপুরে গিয়ে উক্ত ব্যাংকে এ ব্যাপারে তদন্ত করেনি। উক্ত ব্যাংকের নিয়ম কানুন সম্পর্কে তাহার জবানবন্দিতে বা অভিযোগপত্রে বলেনি। আমি বাংলাদেশ হতে বিদেশে টাকা পাঠিয়েছি মর্মে বাংলাদেশ ব্যাংক বা আয়কর পরিশোধ করার কথা যা ট্যাক্স ফাইলে উল্লেখ করেছি মর্মে জাতীয় রাজস্ব বোর্ড এ পর্যন্ত কোন কেছ করেনি।

আমি সম্পূর্ন নির্দোষ। আমার জ্ঞাত আয় বহির্ভূত সম্পদ নাই বা সংগৃহিত টাকা বিদেশে প্রেরন করিনি বা বিদেশে অর্জিত বৈধ অর্থ সংশ্লিষ্ট দেশের নিয়মকানুন অমান্য করে ইন্টাঃ গোল্ড ভিসা কার্ড এবং সাপ্লীমেন্টারী গোল্ড ভিসা কার্ড ব্যবহার করে দেশের সুনাম ক্ষুন্ন করিনি বা মানি লন্ডারিং কোন অপরাধ করিনি। আন্তজার্তিক শ্রম আইন মতে বিদেশে উপার্জিত অর্থ বিদেশে খরচ করেছি। সিংগাপুরের একাউন্ট নং-১৫৮০৫২ এটা আমার । এই একাউন্টে বিদেশে বৈধভাবে অর্জিত ডলার সিংগাপুরের ১টি একাউন্ট থেকে সিংগাপুরস্থ আমার একাউন্টে জমা হয়। অতএব এই মামলায় আমার বিরুদ্ধে ৩৪২ ধারায় যে অভিযোগ পড়িয়া শুনান হলো তা সম্পূর্ন ভিত্তিহীন ও আমি নির্দোষ।" [Underlines supplied]

Before evaluating and assessing the evidence on record and arriving at the findings it will be



বাংলাদেশ কোর্ট ফি
দুই টাকা

39

pertinent to discuss what is Money Laundering, how is the offence committed, its consequence and the stages of money laundering.

What is Money Laundering?

'Money laundering' is the generic term used to describe the process by which criminals disguise the original ownership and control of the proceeds of criminal conduct by making such proceeds appear to have derived from a legitimate source. Laundering allows criminals to transform illegally obtained gain into seeming by legitimate funds. **[source: https://www.int-comp.org]**

Interpol's definition of money laundering is: "any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources." **[Interpol General Secretariat Assembly in 1995;** http://www.interpol.int/Crime-areas/Financial-crime/Moneylaundering]

The criminals herein try to disguise the origin of money obtained through illegal activities to look like it was obtained from legal sources because otherwise they will not be able to use it as it would connect them to the criminal activity and the law enforcement officials would seize it. [David A. Chaikin "Investigating Criminal & Corporate Money Trials" in The Money Laundering and Cash Transaction Reporting, edited by Brent Fisse, David Fraser and Graeme Coss. North Ryde, NSW: law book co. pp257-293.(1992).]

33



The term 'money laundering' is derived from the gangster Al Capone, who funneled his ill-gotten gains through launderettes to make it appear legal [Duyne, P.C. van (2003) Money laundering, Fears and facts, in: Duyne, P.C. Van, Lampe, K. von & Newell, J.L. (Ed.), Criminal Finances and organizing crime in Europe, Nijmegen: Wolf Legal Publishers, p.67-104, relevant page, 73]

The notion of 'money laundering' as above consistently goes with the definition of **'Money Laundering'** as contained in section 2(ঠ)(ষ)(আ) [2(Tha)(A)(Aa)] of the Money Laundering Protirodh Ain, 2002.

How is the offence of money laundering committed?

Money laundering offences have similar characteristics globally. There are two key elements to a money laundering offence:

1. The necessary act of laundering itself i.e. the provision of financial services; and
2. A requisite degree of knowledge or suspicion (either subjective or objective) relating to the source of the funds or the conduct of a client.

The act of laundering is committed in circumstances where a person is engaged in an arrangement (i.e. by providing a service or product)



বাংলাদেশ কোর্ট ফি
দুই টাকা

- ৬৭ -

and that arrangement involves the proceeds of crime. These arrangements include a wide variety of business relationships e.g. banking, fiduciary and investment management.

The requisite degree of knowledge or suspicion will depend upon the specific offence but will usually be present where the person providing the arrangement, service or product knows suspects or has reasonable grounds to suspect that the property involved in the arrangement represents the proceeds of crime. In some cases the offence may also be committed where a person knows or suspects that the person with whom he or she is dealing is engaged in or has benefited from criminal conduct.

Why is money laundering illegal?

The objective of the criminalization of money laundering is to take the profit out of crime. The rationale for the creation of the offence is that it is wrong for individuals and organizations to assist criminals to benefit from the proceeds of their criminal activity or to facilitate the commission of such crimes by providing financial services to them.

[source: https://www.int-comp.org]

How is money laundered?

Traditionally money laundering has been described as a process which takes place in there distant stages:

i. Placement



বাংলাদেশ কোর্ট ফি
দুই টাকা

-42

ii. Layering

iii. Integration

Placement

At this stage, illegal funds or assets are first brought into the financial system. This placement makes the funds more liquid. For example, if cash is converted into a bank deposit, it becomes easier to transfer and manipulate. Money launderers place illegal funds using a variety of techniques, which include depositing cash into bank accounts and using cash to purchase assets.

Layering

To conceal the illegal origin of the placed funds and thereby make them more useful, the funds must be moved, dispersed and disguised. The process of distancing the placed funds from their illegal origins is known as layering. At this stage, money launderers use many different techniques to layer the funds. These include using multiple banks and accounts. Having professionals act as intermediaries and transacting through corporations and trusts. Funds may be shuttled through a web of many accounts, companies and countries in order to disguise their origins.

Integration

Once the funds are layered and distanced from their origins, they are made available to criminals to use and control as apparently legitimate funds.



বাংলাদেশ কোর্ট ফি
দুই টাকা

This final stage in the money laundering process is called integration. The laundered funds are made available for activities such as investment in legitimate or illegitimate businesses, or spent to promote the criminal's lifestyle. At this stage the illegal money has achieved the appearance of legitimacy.

It should be noted that not all money laundering transactions go through this three-stage process. Transactions designed to launder funds can also be effected in one or two stages, depending on the money laundering technique being used. [Underlines supplied]

Why do criminals launder money and what are the consequences?

There are several reasons why people launder money. These include:

- **Hiding wealth**: criminals can hide illegally accumulated wealth to avoid its seizure by authorities
- **Avoiding prosecution**: criminal can avoid prosecution by distancing themselves from the illegal funds
- **Evading taxes**: criminals can evade taxes that would be imposed on earnings from the funds in businesses



বাংলাদেশ কোর্ট ফি
দুই টাকা

- **Becoming legitimate:** criminals can use the laundered funds to build up a business and provide legitimacy to this business.

[Source: Introduction to money laundering; Australian Transaction Reports and Analysis Center, Australian Government.]

Let us now assess and evaluate the evidence adduced by both the parties in the light of above proposition regarding Money Laundering.

On scrutiny of the evidence of PW-2, Debra La Prevotte, an F.B.I. agent, the following incriminating facts are revealed:

i) in 2008 the then Ad-Interim Government of Bangladesh requested the assistance of the United States pursuant to a Mutual legal Assistance Request and in response to that request the United States sent representative to Dhaka to obtain information regarding bribery cases;

ii) the United states reviewed the request to ensure that it was not politically motivated;

iii) after holding meeting with the Commission, PW-2 started investigation with the permission of the U.S. Government.

iv) during investigation PW-2 discovered two Bank accounts in City Bank, Singapore in the name of convict Mamun;



বাংলাদেশ কোর্ট ফি
দুই টাকা

v) the U.S. Department of Justice via Mutual legal Assistance requested Singapore Government for obtaining documents of those City Bank accounts and accordingly, the City Bank authority Singapore sent documents of convict Mamun's City Bank A/C nos.158052-016-008 and another one is 158052-016;

vi) convict Mamun had 02(two) credit cards from those accounts maintained with the City Bank, Singapore, and the first credit card in the account in question was a Visa Card no.45688177000064124 in the name of convict Mamun and there was also another Visa Card no.4568817010064122 in the name of accused Rahman and to substantiate the same PW-2 submitted 43 pages of documents, material exhibit-I series;

vii) the Government of Bangladesh also made a request to the Government of Singapore via Mutual legal Assistance for bank record from City Bank for many accounts including those of convict Mamun and in December, 2009 PW-2 compared the records received from Singapore to those City Bank records received by Bangladesh Government form Singapore and on December-15, 2009 she certified that both copies were identical and accordingly she signed a letter of certification stating that the documents were the same;



বাংলাদেশ কোর্ট ফি
দুই টাকা

viii) PW-2 proved the documents comprising 229 pages as Material exhibit-II (series) and her signatures as material Exbt-II/A & A/1 respectively;

ix) material exhibit I and II were sent from the Department of Justice of USA to the Embassy of Bangladesh Washington D.C. with properly Stamped of the Embassy Seal and the Embassy for Bangladesh in Washington D.C. sent those records to the office of the Attorney General of Bangladesh;

x) Bangladesh also requested City Bank, Singapore to provide transaction documents relating to convict Mamun's account for the year 2003 to 2006;

xi) pages-3, 4, 5 & 6 of material exhibit-I (series) relates to the authenticity of the bank records given by Bangladesh Embassy Singapore & Foreign Ministry Bangladesh and also Agens Sng Hwee Lee the Assistant Director, Singapore Academy of Law certified the Notary's Signature;

xii) Photostat copy of accused Rahman's passport was submitted to City Bank Singapore to obtain the second Visa Card of convict Mamun City Bank account. [Pages-40, 41, 42 & 43 of Material exhibit-I (series)] and the number of accused Rahman's passport was Y 0085483 where his father's and mother's names were mentioned as



বাংলাদেশ কোর্ট ফি
দুই টাকা

42

late President Ziaur Rahman, Bir Uttam and Begum Khaleda Zia respectively; Page-39 of those documents was a copy requesting to add a of supplemental Visa Credit Card for accused Rahman;

xiii) Photostat copies of convict Mamun's passport being No. Q 0998382 is available in page no.29, 30, 31, 32, 33, 34, 35, 36, 37 & 38 of material exhibit-I (Series);

xiv) the Credit Card Statements, from the year 2003 to 2006, reflected charges made total 50613.97 US Dollars of accused Rahman's Credit Card and accused Rahman's and convict Mamun's both charges were paid from the account of convict Mamun;

xv) accused Rahman's Credit Card showed that he used his Credit Card for the payment of traveling expenditure to Athens Greece, Frankfurt Germany, Singapore, Bangkok & Dubai along with shopping and meeting medical expenses;

xvi) the documents provided by the Commission indicated that a Bangladeshi business woman Khadiza Islam transferred US $7,50,000 in convict Mamun's City Bank account in Singapore on 01.08.2003; and

xvii) Convict Mamun's account with City Bank, Singapore was used to make payment of accused Rahman's Visa Credit Card.

42



বাংলাদেশ কোর্ট ফি
দুই টাকা

The above incriminating facts stated by PW-2 remained unchallenged. Convict Mamun and his learned lawyer refrained to cross-examine PW-2. Rather, convict Mamun during his examination under section 342 of the Code of Criminal Procedure admitted that he had maintained a Bank account being No.158052 with city Bank, Singapore and Khadija Islam (PW-6) transferred US $7,50,000 to his said account from her account with OCBC Bank, Singapore as consultancy fee for awarding the work order in favour of M/s Harbin Power Engineering Company, a Chinese firm for installing 80 MW capacity power plant at Tongi Industrial area. He further stated that the money deposited in his said account was the profit of his business done in abroad and those were legal income.

It is true that PW-2 was not cited in the charge sheet as a witness. But record shows that on 15.11.2011 after completion of examination of P.W-1 on behalf of the prosecution an application under section 540 of the Code of Criminal Procedure was filled before the trial court to record testimony of Debra Laprevottee, a Special Agent of FBI as a witness stating inter-alia that she was now staying in Bangladesh and as a member of Federal Bureau of Investigation, Department of Justice, USA, under the United Nations Convention Against Corruption (UNCAC) for asset recovery she had assisted the Commission during investigation of this case and accordingly tracked the money in question alleged to have been laundered by the accused persons. As such, she was a



বাংলাদেশ কোর্ট ফি
দুই টাকা

competent person and she might be called as a witness under section 540 of the Code of Criminal Procedure.

Defense raised objection verbally against the said application saying that it was unconventional to call an unscheduled witnesses before completing witnesses mentioned in the charged-sheet.

The trial Court after hearing the respective parties by the order of the same date allowed the said application and thereby permitted the prosecution to testify Debra Laprevotte of FBI before the Court and accordingly notice was issued upon her. And eventually, on 16.11.2011 Debra Laprevottee was testified before the Court. It is pertinent to mention here that on behalf of convict Mamun it was informed to the Court that they would move before the Higher Court against the said order allowing the application under section 540 of the Code of Criminal Procedure filed by the prosecution but there is nothing on the record that they had challenged the said order before the Higher Court. Even, convict Mamun did not avail the opportunity to rebut the statement of PW-2 by cross-examining her. Thus, there is hardly any scope to say that the defense was prejudiced in any way in examining PW-2.

It is now well settled that the trial Court has unfettered power under section 540 of the Code of Criminal Procedure to call any person to be examined as witness at any stage of trial or inquiry, if it appears essential for just decision of the case



বাংলাদেশ কোর্ট ফি
দুই টাকা

- 30

before it, no matter whether his statement was recorded under section 161 of the Code of Criminal Procedure or not.

In the case of Hemayetuddin alias Aurango Vs. State, reported in 46 DLR 186(AD), it has been held that:

> "Section 540 Criminal Procedure is expressed in the widest possible term and it cannot be said that the intention of the section is to limit its application to court witness only. The power is available to the Court, "if his evidence appears to it essential to the just decision of the case"."

Thus, the submission of the learned Advocate for convict Mamun that the evidence of PW-2, not being a charge sheeted witness, should be left out of consideration is absolutely misconceived and not tenable in law.

PW-4 Mir Alimuzzaman deposed that in the year 2007 while he was serving as the Police Inspector of Detective Branch of Dhaka Metropolitan Police, he investigated Gulshan Police Station Case No.38 dated 09.05.2007 under section 386/387 of the Penal Code read with Emergency Power Rules and in course of the investigation of the said case he came to know that Khadiza Islam, Chairman of Nirman construction, lodged the said case alleging that Nirman



বাংলাদেশ কোর্ট ফি
দুই টাকা

-51-

Construction Company became the lowest bidder for installing an 80 M.W capacity Power Station at BISIC Industrial area at Tongi, despite no work order was issued by the authority in favour of their company. And then, convict Mamun through telephone informed Khadiza Islam to the effect that if they wanted to get the work order in that case they had to pay Tk 05(five) crore. Convict Mamun also asked Khadiza Islam to deposit the said money in her bank account operated in Singapore and Khadiza Islam having opened a bank account in OCBC Bank, Singapore transferred US $7,50,000 to the account of convict Mamun and convict Mamun and accused Rahman through Credit Cards spent a huge amount of money from the said account. Convict Mamun made confessional statement under section 164 of the Code of Criminal Procedure in the said case. Eventually, convict Mamun expressed his desire to return back the entire money from the said account to Bangladesh. Having obtained necessary order from the concerned court convict Mamun opened a Bank account in Sonali Bank, Cantonment Branch and the said money was transferred from Singapore to his said Bank account. Since the offence was Money Laundering which is a schedule offence of Anti-Corruption Commission Act,2004 he submitted a report to the Chairman, Anti-Corruption Commission for necessary action. He proved the said report as exhibit-4 and his signature on it as exhibit-4/1.

PW-6 Khadiza Islam, Chairman Nirman International deposed that her company used to work



বাংলাদেশ কোর্ট ফি
দুই টাকা

civil and electrical sectors. In the year 2002 a tender was invited for installing an 80 M.W. capacity Power Station at Tongi industrial area. Their company being the local agent of M/S Harbin Power Engineering, a Chinese company; participated in the said tender and became the lowest bidder. PDB (Power Development Board) recommended to the concerned Ministry to issue the work order in favour of the Harbin Company. However, no decision was given on it by the concerned Ministry though 08(eight) months elapsed. In that situation they made contact with the authority of PDB, and they asked them to contact with the Ministry. The authority of Harbin Company became annoyed because of such long delay and it expressed desire to take back its bid. They had also tried to make contact with Mr. Iqbal Hasan Mahmud Tuku, the Minister of the concerned Ministry, but failed. However, Mr. Sammi, the private secretary to the minister, asked them to make contact with convict Mamun as he had good relationship with the Minister. She knew convict Mamun as they were from same locality. She made contact with convict Mamun and informed him all the matters. In initial stage convict Mamun was reluctant but ultimately he talked with the concerned persons of the Chinese Company and agreed to assist them in order to awarding the work order. After two weeks of such agreement the matter was placed before the concerned committee for its approval and the concerned committee approved the same and accordingly in the year 2003 agreement was



বাংলাদেশ কোর্ট ফি
দুই টাকা

52

signed between M/s Harbin Power Engineering and PDB (Power Development Board). After signing of the said agreement convict Mamun asked her to pay consultancy fee as the same was agreed by the Harbin Company for assisting it to get the work order and he also asked to make the said payment in his Bank account in Singapore to avoid further delay and complication. As per the advice of the Chinese company she having went to Singapore opened a Bank account in OCBC Bank and China Harbin company transferred US $7.50.000 from China to her Bank account and thereafter, she transferred the said money to the account of convict Mamun.

PW-8 Syed Ahsanul Hafiz deposed that on 31.07.2007 while he was serving as Executive officer Sonali Bank, Cantonment Corporate Branch, he issued a Payment order with regard to Tk. 20,41,25,613.28 in favour of the Bangladesh Government. He proved the Photostat copy of the said payment order as exhibit-7.

PW-9 Md. Nazrul Islam deposed that in year 2007 he was serving as the Deputy General Manager of Sonali Bank, Cantonment Branch. On 11.06.2007 convict Mamun came to their bank and he opened a savings account being No.34450546 and 03(three) foreign drafts being No.241096763 dated 08.05.2007 amounting to €1,28609.88, draft No.281096762 dated 08.05.2007 amounting to £14059.89 and draft No.262501698 dated 07.05.2007 amounting to US $27,77,351 were deposited for collection. Accordingly, after collection in



বাংলাদেশ কোর্ট ফি
দুই টাকা

accordance with law Tk. 20,41,25,843.27 was deposited in the said account of convict Mamun and eventually, said money was transferred to Bangladesh Bank through a payment order (exhibit-7). He proved the attested copies of said documents as exhibit-8 series.

PW-10 Bivhuti Bhushan Sarker, a Bank Officer, proved exhibit-7&8 series and deposed that he attested the said documents of the Bank comparing the original of those. He proved his signatures on exhibit-7&8 series.

PW-12 Sayed Tahsinul Haque, an officer of the Commission, deposed that he seized the relevant documents regarding the Bank account of convict Mamun maintained in Sonali Bank, Cantonment Branch in connection with Cantonment Police Station Case No.2 dated 02.05.2007 and he proved the seizure list exhibit-11.

PW-13 Md. Ibrahim Proved exhibit-12, the Bank documents relating to the account of convict Mamun with City Bank, Singapore. He further deposed that Ms. Khadija Islam was the local agent of M/s Harbin Power Engineering, a Chinese company. Convict Mamun and his business partner accused Rahman demanded money in order to provide the work order in favour of the said company and accordingly she transferred US $7,50,000 to the Mamun's account being No.158052 with the City Bank, Singapore from her account being No.650-810-0721 maintained in OCBC Bank, Singapore. From the said account convict Mamun through City Bank



বাংলাদেশ কোর্ট ফি
দুই টাকা

international Visa Card being No.4568-8170-0006-4124 and accused Rahman through supplementary Gold Visa Card being No.4568-8170-1006-4122 spent US $79,542 and US $54,982 respectively knowing fully well that the money was illegally earned. Moazzam Hossain, Mayer Chire and Marina Jaman also transferred US $11,67,000, US $4,20,000 and US $30,000 respectively to the said account of convict Mamun. Eventually, convict Mamun transferred in total US $27,78,982 amounting to Taka 20,41,25,843 from his City Bank Singapore account No.158052 to the account being No.34450546 with Sonali Bank, Cantonment Corporate Branch, Dhaka.

On careful scrutiny and examination of the above evidence, it is crystal clear that the prosecution witnesses corroborated each other on material points particularly that convict Mamun compelled Khadija Islam (PW-6) to deposit US$ 7,50,000 in his Bank account with City Bank, Singapore. Besides PW-6, some other persons namely Moazzam Hossain, Mayer Chire and Marina Jaman also deposited money in the said account and eventually, at the instance of convict Mamun in total Taka 20,44,25,843 was transferred in his account with Sonali Bank, Cantonment Branch, Dhaka from the account maintained in Singapore. And thereafter, a payment order (exhibit-7) was issued regarding the said amount infavour of Bangladesh Bank. The entire money was earned by illegal means.



বাংলাদেশ কোর্ট ফি
দুই টাকা

56

It is further evident from the evidence of D.W-1 Ahmed Azam Khan, the Tax Consultant of convict Mamun who had been submitting his tax return for last 20(twenty) years, that in the said returns convict Mamun at no point of time disclosed about the account maintained with City Bank, Singapore and the money deposited therein. DW-1 also testified that he had no knowledge about the account maintained by convict Mamun in Singapore. As per Article 75 and 80 of the Income Tax Ordinance, 1984 and Rule 25 of the Income Tax Rules, 1984 convict Mamun was under obligation to disclose about his said account and money in his tax return. This fact also proves that convict Mamun with malafide intention concealed the said facts and thereby, disguised about the said illegally earned money which is 'dirty money' or 'corrupt money'.

In the instant case accused Rahman and his friend convict Mamun were prosecuted and tried under the Ain of 2002 and the trial Court convicted only Mamun while it acquitted Rahman. Allegation, as transpires, is that on demand of convict Mamun, Khadija Islam deposited 7,50,000 US Dollar from her account No.650-410-0721 with OCBC Bank, Singapore to the account of convict Mamun with the City Bank in Singapore. Convict Mamun also admitted the said fact during examination under section 342 of the Code of Criminal Procedure. Convict Mamun Knowingly received the said 'dirty money'/'corrupt money' in the name of 'consultancy fee' with the assurance that a work order would be



বাংলাদেশ কোর্ট ফি
দুই টাকা

awarded to her company for constructing an 80 (eighty) MW capacity power station in Tongi BISIC Industrial Area.

It has been unfolded from bank records, material exhibit-I and II and exhibit-12, which were duly proved by PW-2 and PW-13, that accused Rahman used to maintain a supplementary Gold Visa Card being No.4568-8170-1006-4122 and it was intended to hide the source of money by spending the same which constituted the offence of money laundering punishable under the Ain of 2002. Accused Rahman in collaboration with convict Mamun by using the said visa card had drawn and spent 54,942 US Dollar.

We have already noticed that Money laundering is a single process. However, its cycle can be broken down into three distinct stages namely, placement stage, layering stage and integration stage. At the placement stage of deriving the amount [alleged consultation fee] accused Rahman got him engaged through convict Mamun who inserted the 'dirty money' in his account into a legitimate financial institution in Singapore in the form of cash deposits, it may be validly inferred. Next, at the layering stage too accused Rahman's involvement stands proved as he is found to have had drawn 54,981.42 US Dollar by using the supplementary Gold Visa card being No. 4568-8170-1006-4122 and it was done intending to keep the fund distant from their source. And even at integration stage accused Rahman



বাংলাদেশ কোর্ট ফি
দুই টাকা

used the money without getting caught, by using the Supplementary Gold Visa card which was well within the knowledge of convict Mamun. Moreover, convict Mamun at the time of examination under section 342 of the Code of Criminal Procedure had explained so many facts but he was silent about such withdrawing money from his account using supplementary Gold Visa card by accused Rahman.

Further, convict Mamun admitted during examination under section 342 of the Code of Criminal Procedure that he received US $7,50,000 as consultancy fee from Khadija Islam (PW-6) intending to favour her company in getting work order. The amount was deposited in convict Mamun's account with City Bank, Singapore and thus, offence of money laundering was committed by convict Mamun.

Mr. Mohammad Ali, the learned Advocate for the convict Mamun has tried to convince us that taking such consultancy fee is not illegal and no money was transferred from Bangladesh to the account of Convict Mamun with City Bank, Singapore and as such no offence of Money Laundering was committed.

Was the alleged consultancy fee acquired by any lawful means? And whether the amount so obtained was transferred to convict Mamun's bank account in Singapore in lawful way? Did convict Mamun and his close friend and associate accused Rahman disguise the entire activities? All these questions are essentially involved in resolving the matter of



violation of Section **২(ঠ)(অ)(আ)** [2(Tha)(A)(Aa)] of the Money Laundering Protirodh Ain, 2002.

The offence of **'Money Laundering'** has been defined in the Ain of 2002 as below:

২।(ঠ) মানিলন্ডারিং অর্থ-

(অ)অবৈধ পন্থায় প্রত্যক্ষ বা পরোক্ষভাবে আহরিত বা অর্জিত সম্পদ;

(আ) বৈধ বা অবৈধ পন্থায় প্রত্যক্ষ বা পরোক্ষভাবে আহরিত বা অর্জিত সম্পদের অবৈধ পন্থায় হস্তান্তর, রুপান্তর, অবস্থানের গোপনকরণ বা উক্ত কাজে সহায়তা করা;

In view of the above definition acquiring wealth illegally, directly or indirectly, and any illegal transfer, conversion, concealment of acquired wealth, either legally or illegally, and assisting in accomplishing any of those acts will come within the mischief of 'Money Laundering'. The above definition of Money Laundering is very wide.

Further, the word "অবৈধ পন্থা" (illegal means) has also been defined in section **২(ক) [2(Ka)]** of the said Ain, which is as follows:

"অবৈধ পন্থা অর্থ কোন আইন, বিধি বা প্রবিধান দ্বারা স্বীকৃত নহে এমন কোন পন্থা"

Thus, 'Unauthorized means' any means not recognized as legal by any law, regulation or rule.

It is found proved that accused Rahman withdrew a huge amount by using his supplementary Gold Visa card from the account in question. It remained unexplained why convict Mamun permitted his friend



বাংলাদেশ কোর্ট ফি
দুই টাকা

accused Rahman to get the supplementary Gold Visa card against his [Mamun] bank account operated in Singapore. It rather proved collective criminality.

The facts unveiled from the cumulative evaluation of evidence tendered tend to prove that accused Rahman was aware about receiving the said 'consultancy fee' from Khadija Islam (PW-6). Accused Rahman was a mighty man having profile of being the son of the then Prime Minister Begum Khalida Zia. Convict Mamun was his close companion which also admitted by D.W-2.

Further, it transpires from material exhibit-1, the bank documents relating to the account of convict Mamun with City Bank, Singapore that at time of opening the said account convict Mamun provided information in the opening form that he was a Director of Rahman Group of Industries (paper book, 2nd part, page-498) and his address was mentioned in the said form and in the statement of account as follows:

"Md. Gias Uddin Al-Mamun,

C/o. Rahman Group of Industries,

House No.16, Road No.19A, Banani,

Dhaka-1212, Bangladesh."

(Paper book, 2nd part, page-733-792)



বাংলাদেশ কোর্ট ফি
দুই টাকা

The above address is the address of accused Rahman's business firm, as it transpires from the charge sheet.

Thus, the relationship of both convict Mamun and accused Rahman are well proved and obtaining the amount of US $7,50,000 as 'consultancy fee' obviously took place within the knowledge of accused Rahman.

Convict Mamun's alleged consultancy for providing/awarding the work order to M/s Harbin Power Engineering Company, Chinese Company, for installing an 80 MW capacity power station influencing and interfering the concerned Ministry was nothing but an illegal, unauthorized and unwarranted act. Concerned Ministry that is the Government was supposed to take decision on the recommendation of Power Development Board (PDB) regarding the tender in their own way. A private person or a businessman like convict Mamun or accused Rahman is not permitted or allowed under any existing law, regulation or rules of the country to do such an act in the name of consultancy. Convict Mamun being a private person and an ordinary businessman, as claimed by the DWs, had no authority to interfere with the internal affairs and works of the Ministry that is the Republic. The Ministry kept itself silent on the matter refraining from giving any decision on the recommendation of PDB regarding the work order for about 08(eight) months and it became active and awarded the work order within 02 (two weeks) when convict Mamun had come into scene in



the name of consultancy. Thus, it can be validly presumed that convict Mamun made it possible as he was the close friend and business partner of accused Rahman and obviously, Mamun's source of such 'supernatural power' was accused Rahman, son of the then Prime Minister. Convict Mamun's such act of consultancy as claimed by him was a 'supernatural work (অলৌকিক)' and the money acquired in the name of such consultancy is nothing but 'dirty money'.

Obtaining the amount as 'consultancy fee' for awarding work order was not permitted under any law or Rules of the country and thus, itself was an offence as it was the upshot of criminal activities intending to achieve illegal monetary gains for which both accused Rahman and convict Mamun were responsible.

Obviously political position and might made them imbued to receive the said amount in the name of consultancy fee. Accused Rahman and convict Mamun jointly designed to conceal or disguise the nature, location, source, ownership, or control of the fund kept deposited in Mamun's account in Singapore. (Underlines supplied to give emphasis)

It appears that the amount equivalent to more than Taka 20 Crore was found deposited in the account of Convict Mamun. He admitted during his examination under section 342 of the Code of Criminal Procedure that he received US $7,50,000 (take five crore) as consultancy fee from Khadija Islam (PW-6). He earned



বাংলাদেশ কোর্ট ফি
দুই টাকা

63

the said money by doing business in abroad. Convict Mamun did not explain the deposit of rest amount of Taka more than 15(fifteen) Crore and why Moazzam Hossain, Mayer Chire and Marina Jaman deposited a huge amount of money in his account. It was convict Mamun's obligation to explain the source and means of obtaining the said amount in view of the provision of section 106 of the Evidence Act.

Section 106 of the Evidence Act deals with the burden of proving a fact especially within the knowledge of any person. Burden of proving of fact which is especially within the knowledge of any person lies upon him. Thus, it is an exception to the general rule laid down in section 101 of the Act.

Section 106 of the evidence Act runs as follows:

106. Burden of proving fact especially within knowledge- when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused.

In Shambu Nath Mehra vs. State of Ajmer, AIR 1956 SC 404: 1956 SCR 199: the following legal principle has been enunciated:

63



বাংলাদেশ কোর্ট ফি
দুই টাকা

"This lays down the general rule that in a criminal case the burden of proof is on the prosecution and section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word 'especially' stresses that. It means facts that are pre-eminently or exceptionally within his knowledge." [Under lines supplied]

In the case of **Sucha VS. State of Punjab**, AIR, 2001 SC 1436: (2001)4 SCC, 375 it has been observed that:

"Section 106 of the evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where the prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to



offer any explanation which might drive the court to draw a different inference."

In the case of **Prithipal Sing Vs. State of Punjab**, (2012) SCC, page-10 it has also been held that:

> "Section 106 of the Evidence Act, 1872 is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused."

In the case of **State of Madya Pradesh Vs. Awadh Keshore Gupta**, reported in AIR 2004(SC), page-517 it has been observed to the effect:

> "The expression "known sources of income" has reference to sources known to the prosecution after thorough investigation of the case. It is not, and cannot be contended that "known sources of income" means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters "especially within the knowledge" of the accused, within the meaning of section 106 of the Indian Evidence Act, 1872." (Underlines supplied)



In the case of **Murlidhar Vs. the State of Rajastan** reported in AIR 2005 SC, page-2345 it has been held that:

> "Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience."

In the case of **State of WB Vs. Mir Mohammad Omar**, reported in AIR 2000 SC, page-2988, it has been held that:

> "The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which drive the court to draw a different inference."

And



> "The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilized doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage the offenders in serious offences would be the major beneficiaries, and the society would be the casualty." (Underlines supplied)

In view of the above proposition in absence of any explanation or indication whatsoever it may be validly inferred that the entire amount of Taka 20,41,25,843 was obtained not from any lawful source and that money derived from several crimes and thus, the said money was 'dirty money' or 'corrupt money' which was kept deposited in the bank account in question in Singapore, disguising the source and location.

In absence of anything contrary, the facts and circumstances as unveiled impel to conclude that the amount found deposited in Mamun's account including the amount of US $7,50,000 obtained through criminal act which was laundered to Mamun's bank account in Singapore as there has been nothing to show any



বাংলাদেশ সুপ্রীম কোর্ট হাই
দুই টাকা

68

lawful source and means of the rest of the amount found deposited in his account. This inference leads us to conclude that the entire amount found deposited in convict Mamun's account was obtained through criminal means and to hide the source of the same is an act of Money Laundering.

From a plain reading of section 2 (ঠ) [2(Tha)] of the Ain of 2002 it is crystal clear that to construe an offence of Money Laundering under the said Ain it is not necessary to prove that money in question is to be transferred from Bangladesh to any other country or to be brought it to Bangladesh from other countries illegally. Rather, acquision of wealth by illegal means, directly or indirectly, and illegal transfer, conversion, concealment of acquired wealth, either legally or illegally and aiding in accomplishing any of those acts may be considered as Money Laundering as defined in the Ain. Thus, the submission of Mr. Ali to the effect: 'since no money was transferred from Bangladesh to the account of convict Mamun with City Bank Singapore and thus, no offence of Money Laundering was committed' is absolutely misconceived and not tenable in law.

In acquitting accused Rahman the learned trial Judge has observed that:

> "আসামী তারেক রহমান যদি মামুনের মাধ্যমে অবৈধ অর্থ অর্জন করে সিংগাপুর মামুনের একাউন্টে জমা করতো তাহলে জমাকৃত সাড়ে বিশ কোটি টাকার সিংহভাগ আসামী তারেক কর্তৃক নিজ স্বার্থে উত্তোলন বা খরচ করতো। কিন্তু আসামী তারেক রহমান মাত্র পয়ত্রিশ লক্ষ টাকা উত্তোলন করে খরচ করেছে। ফলে যুক্তিসংগত কারণে বিশ্বাস করা যায় না যে,



বাংলাদেশ কোর্ট ফি
দুই টাকা

62

আসামী তারেক রহমান আসামী মামুনের একাউন্ট থেকে ভিসা কার্ডের মাধ্যমে মাত্র পয়ত্রিশ লক্ষ টাকা উত্তোলন করে মানি লন্ডারিং অপরাধ সংঘটন করেছে এবং তারেক রহমান মূল টাকার মালিক বা ভাগিদার ছিল বা অধিকন্তু আসামী তারেক রহমান ভিসা কার্ডের মাধ্যমে সিংগাপুরস্থ মামুনের সিটি ব্যাংক একাউন্ট থেকে টাকা উত্তোলন করে গোপন করেছে।

আসামী মামুন তার একাউন্ট থেকে তার ব্যবসায়িক পার্টনার বা বন্ধু বা অন্য কোন ব্যক্তিকে অর্থ প্রদান করলে অর্থ গ্রহনকারী ব্যক্তি মানি লন্ডারিং অপরাধে অপরাধী হবেন এমন কোন বিধান আইনে বলা হয়নি। ফলে একাউন্টের প্রকৃত মালিক আসামী মামুন। তিনি তার একাউন্ট থেকে আসামী তারেক রহমানকে ৫০ হাজার বা ৫৪ হাজারের বেশী মার্কিন ডলার প্রদান করায় এবং আসামী তারেক রহমান আসামী মামুনের নিকট থেকে উক্ত অর্থ গ্রহণ করার বিষয়টি তার সম্পদ বিবরণীতে স্পষ্টভাবে উল্লেখ করায় তদন্তকারী কর্মকর্তা নিজে তার তদন্ত রিপোর্টে সম্পদ বিবরণী সম্পর্কে ব্যাখ্যা প্রদান করায় বাস্তবতার নিরীখে বিশ্লেষণ করলে দেখা যায় আসামী তারেক রহমান সাপ্লিমেন্টারী গোল্ড ভিসা কার্ডের মাধ্যমে আসামী মামুনের সিংগাপুরস্থ সিটি ব্যাংক একাউন্ট থেকে ডলার উত্তোলনের বিষয়টি ১৯/০৫/০৭ইং তারিখে দুদকের জারীকৃত সম্পদ নোটিশের প্রেক্ষিতে ০৭/০৬/০৭ইং তারিখে তারেক রহমান কর্তৃক দাখিলকৃত সম্পদ বিবরণীতে সরল বিশ্বাসে ব্যক্ত করেছেন। এতে তার কোন অসৎ উদ্দেশ্য বা দুরভিসন্ধি পরিলক্ষিত হয় না। কাজেই উপরোক্ত আলোচনার প্রেক্ষিতে এই সিদ্ধান্ত আসা যায় যে, তারেক রহমান সাপ্লিমেন্টারী ক্রেডিট কার্ড বিদ্যমান থাকা বা কার্ডের মাধ্যমে টাকা উত্তোলন ও ব্যয় করার বিষয়ে তিনি কোন গোপন না করায় বা আড়াল না করায় তিনি ২০০২ সালের মানি লন্ডারিং আইনে বর্ণিত মতে মানি লন্ডারিং এর কোন অপরাধ করেননি এবং এই কারণে তারেক রহমানকে দোষী সাব্যস্থ করা নিরাপদ মনে করি না।"

The above findings of the learned trial Judge are absolutely based on surmise and conjecture. The learned trial Judge himself made out defense case on behalf of the absconding accused Rahman and thereby committed serious error of law in acquitting accused Rahman. Moreover, the learned trial judge misread and misconstrued the definition of 'Money Laundering' as



বাংলাদেশ কোর্ট ফি
দুই টাকা

defined in section ২(ঠ), (অ), (আ) [2(Tha)(A)(Aa)] of the Ain of 2002 and also failed to understand its scope and purport.

In view of the nature of the offense and allegation as brought against accused Rahman, burden is upon him to explain why the Photostat copy of his passport was submitted in obtaining supplementary Gold Visa Card in connection with the account of convict Mamun with City Bank in Singapore and why he spent huge amount of money in different countries for his personal visits, shopping and meeting medical expenses by using the said visa card.

These facts are especially within the knowledge of accused Rahman and the burden cast on him to rebut the allegation made against him. Having regarded to the fact that accused Rahman knowingfully well about the trial absconded and avoided the trial willfully and thereby, failed to discharge his burden in view of the provision of section 106 of the Evidence Act. And thus, it can be validly inferred that he is guilty of offence of Money Laundering.

Further, Transactions done by accused Rahman by using supplementary Gold Visa card thus involved criminal profits and it makes him criminally responsible for the offence of laundering the amount received as 'consultancy fee' and other various pleas through the convict Mamun. Indisputably accused Rahman used the bank account of convict Mamun in transacting 'dirty money' received through illegal



বাংলাদেশ কোর্ট ফি
দুই টাকা

means (অবৈধ পন্থা) which is an offence under the Ain of 2002. It is a financial corruption which affects and derogates states economy and it is increased. No leniency should be shown to an individual who is found to be orchestrator of such activity of money laundering. (Underlines supplied to give emphasis)

Earlier, accused Rahman had challenged the proceeding of the present case before the High Court Division by filing writ petition No.6286 of 2016 and being unsuccessful he filed Civil Petition for Leave to Appeal No.10 of 2011 before the Appellate Division **[63 DLR (AD) page-18]**. The said leave petition was disposed of. The Appellate Division in disposing the leave petition held that;

> "The question is whether an offence committed within the validity period of Ain, 2002 be prosecuted under the provision of the Ain of 2009 when the Ain of 2002 had already been repealed by the Ordinance of 2008 on 15.04.2008 with a provision of saving clause of pending cases and proceeding which will be disposed of in such a manner as if the said Ain had not been repealed and subsequently the said Ordinance was also repealed by Ain of 2009 with another saving clause of section 31(2) of the Ain whereby pending cases and proceeding have been saved as if those were filed or initiated under provision of Ain



বাংলাদেশ কোর্ট ফি
দুই টাকা

of 2009. There is no doubt that the alleged offence was committed when the Ain of 2002 was in force. But subsequently the FIR was lodged on 26.10.2009 under the Ain of 2009. Having considered the FIR, charge-sheet and other materials on record we have found that the allegation lodged against the petitioner discloses the prima-facie case under section 2(ট)(আ)(ই) and section 13 of the said Ain."

The Appellate Division has further held that:

"In the instant case the alleged offence was disclosed under the provisions of section 2(ট)(অ)(আ) of the Ain of 2002 but there was no pending case or proceeding under the Ain of 2002 when the said Ain of 2002 or the Ordinance of 2008 was repealed. Rather the FIR was lodged under sections 2 and 4(2) of the Ain of 2009 on 26.10.2009 long after the repeal of the Ain of 2002 by the Ordinance of 2008 and also after the enactment of the Ain of 2009 on 24.02.2009. It appears that according to the FIR occurrence took place from 01.01.2003 to 31.05.2007 when the Ain of 2002 was in operation. The Ain of 2009 was given retrospective effect from 15.04.2008 when the Ain of 2002 was repealed by the promulgation of the Ordinance of 2008. The



বাংলাদেশ কোর্ট ফি
দুই টাকা

facts and circumstances of the instant case is very unique in its nature wherein an offence committed under the repealed Ain of 2002 and the FIR was lodged much long after the repeal of the said Ain when the Ain of 2009 came into effect with the intervening Ordinance of 2008 which had already been repealed before the lodging of the FIR. It is well established that a criminal offence never abates or destroyed even after the repeal of the law under which the offence is alleged to have been committed. From the aforesaid discussions it is obvious that the Ordinance of 2008 or the Ain of 2009 has not saved the offence alleged to have been committed from 01.01.2003 to 31.05.2007 under the Ain of 2002 till the date of its repeal. According to Halsbury's laws of England Vol.36, para-714 the general principle that an enactment which is repealed is to be treated as if it had never existed is subject to any saving which may be made expressly or by implication by the repealing enactment".

The Appellate Division has also held that:

"The next question is as to which procedure has to be followed for prosecuting the petitioner. The answer is that Ain of 2002 has been inserted in the schedule to the

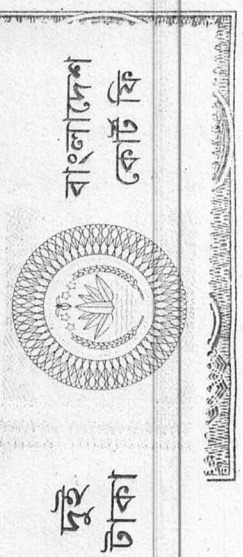


Anti-Corruption Commission Act 2004 (the "ACC Act, 2004") and as such the procedure in respect of inquiry, investigation, conducting prosecution and holding of trial shall be governed under the provisions of the ACC Act, 2004. Since the Ain of 2002 has been incorporated in the schedule to the ACC Act, 2004 by an amendment made by the ACC (Amendment) Ordinance of 2007 and thereby the offence of money laundering disclosed under the Ain of 2002 has been made triable under the provisions of the special procedures enumerated in section 28 of the ACC Act of 2004. According to section 28(1) the offences under the Act or the offences mentioned in the schedule to the Act shall be exclusively triable by the Special Judge who has been appointed under the provisions of the Criminal Law Amendment Act, 1958. But the offence as well as its punishment would be dealt with under the provisions of the Ain of 2002".

Convict Mamun previously also moved a Revisonal application vide Criminal Revision No.01 of 2013 before this Court **[65 DLR, page-41, paragraph-74]**. In rejecting the said application summarily the High Court Division has observed as follows:

"It is to be noticed that Money Laundering Protirodh Ain, 2009 has given effect on and





from 15th April, 2009 corresponding to 2nd Baishak, 1413 BS that is before the election of 9th Parliament and its 1st meeting. Money Laundering Protirodh Ain, 2002 had been repealed by Money Laundering Protirodh Ordinance, 2008 on 15.04.2008 with a provision of saving clause; Money Laundering Protirodh Ordinance 2008 was also repealed by the Money Laundering Protirodh Ain, 2009 with another saving clause in section 31(2) of the Ain and there is a continuity of legislation in between the Ain of 2002 and Ain of 2009 and thus, the Ordinances in question have got no manner of application after enactment of Money Laundering Protirodh Ain, 2009 which has come into force before the constitution of the 9th Parliament and its first meeting and as such the question whether the Ordinance Nos.VII and VIII 2007, by which the Money Laundering Protirodh Ain, 2002 was incorporated in the scheduled of Anti-Corruption Commission Act, 2004 and Criminal Law Amendment Act, 1958 respectively, were not placed before the first meeting of 9th Parliament and was not approved by the Parliament as per provision of Article 93(2) and (4) of the Constitution and thus it is deemed that Money Laundering Protirodh Ain, 2002 is no



more in the schedule of Anti-Corruption Commission Act of 2004 and Criminal Law Amendment Act of 1958 has also become irrelevant which has got no substance. It is also a redundant issue."

In view of the above proposition, the submissions of Mr. Ali that the Durnity Daman Commission Ain, 2004 or the Ain of 2002 did not authorize the Commission to lodge or investigate any offence Committed under the Ain of 2002 have no legs to stand.

Next, we are sorry to say that possibly Mr. Ali is not aware about the amendment of the relevant Rule. Rule 24 of the Durnity Daman Commission Bidhimala 2007 has been amended by SRO No.265/Am/2007 dated 26.11.2007. By that amendment the informant officer of the Commission is legally empowered to hold investigation into the case. Thus, the submission of Mr. Ali that the investigation of the case by the informant officer of the commission is without lawful authority is baseless.

On behalf of the convict Mamun objection was raised with regard to exhibit-7, exhibit-8 and exhibit-12. Exhibit-7 is a Photostat copy of the payment order in respect of Taka 20,41,25,613.28 issued at the instance of convict Mamun by Sonali Bank, Dhaka Cantonment Corporate Branch in favour of the Government and exhibit-8 is the Photostat copy of Bank documents (19 pages) regarding Bank account



বাংলাদেশ কোর্ট ফি
দুই টাকা

No.34450546 of convict Mamun with the said Bank and exhibit-12 is the Bank documents of convict Mamun's account with the City Bank NA, Singapore relating to statement to the credit cards.

PW-8, the Bank Officer who issued the payment order and PW-9 another Bank Officer who attested the Photostat copy of exhibit-8 and PW-10 Executive Officer of the Bank who attested the Photostat copies of the both exhibit-7 and 8 proved those documents in accordance with law. PW-9 and PW-10 corroborating each other categorically testified that original of those documents were seized earlier in connection with cantonment Police Station Case No.2(5)07 which gave rise Special Case No.01 of 2008. The said prosecution witnesses proved the authencity of those documents.

In view of the provision of section 63 of the Evidence Act the Photostat copy of its original being the secondary evidence is admissible in evidence.

Exhibit-12 was duly certified as true copy by the concerned official, having the legal custody of the original, of City Bank NA, Singapore and the said document was also duly authenticated by Lien Geon Heok, a Notary Public of Singapore, who was identified by Lien Lin Casol, Deputy Director, Singapore Law academy, Republic of Singapore, and all of those were attested by the concerned officer (Counsellor) of Bangladesh High Commission, Singapore.



বাংলাদেশ কোর্ট ফি
দুই টাকা

Thus, exhibit-12 is a valid document and as per provision of section 78 of the Evidence Act it is admissible in evidence.

Thus, the objection raised by the defense regarding exhibit-7, 8 and 12 is not at all sustainable in eye of law.

Moreover, it is well proved from exhibit-7 and 8 that convict Mamun had opened a savings account being No.34450546 with the Sonali Bank, Cantonment Branch, Dhaka and at his instance the money deposited in the account of City Bank Singapore was transferred to his said account and thereafter, the said money (Taka 20,41,25,613.28) was deposited to the Bangladesh Bank (exhibit-7) in favour of the Government. Those transactions to have been done through banking channel and as such there is no scope to deny the said undisputed facts.

It will be pertinent to say that no doubt or cloud has been created about the veracity of the prosecution case of laundering money by any irregularities, if at all occurred at the time of opening the Bank account by convict Mamun with the Sonali Bank, Cantonment Branch, Dhaka, and the defense has also not been prejudiced thereby in any manner as it was given ample opportunity to cross-examine the prosecution witnesses.

It is imperative to note that the act of money laundering is intrinsically damaging to the society



বাংলাদেশ কোর্ট ফি
দুই টাকা

in which it occurs. It is a criminal offence whose effects usually are insidious for the socio economic fabric of a country.

There are severe economic and social consequences of money laundering. These include:

- **Undermining financial systems:** money laundering expands the black economy, undermines the financial system and raises questions of credibility and transparency
- **Expanding crime:** money laundering encourages crime because it enables criminals to effectively use and deploy their illegal funds
- **Criminalizing society:** criminals can increase profits by reinvesting the illegal funds in businesses
- **Reducing revenue and control:** money laundering diminishes government tax revenue and weakens government control over the economy.

[Source: Introduction to money laundering; Australian Transaction Reports and Analysis Center, Australian Government.]

Money laundering is a criminal offence aimed at presenting wealth of illicit origin or the portion of wealth that has been illegally acquired or concealed from the purview of tax and other authorities, as



legitimate, through the use of methods that obscure the identity of the ultimate beneficiary and the source of the ill-gotten profits. **[The puppet Masters, the world Bank and UNOCD, 2001 http://star.worldbank.org/star/publication/puppet-masters].**

The possible social and political costs of money laundering, if left unchecked or deal with ineffectively, are serious. Organized crime can infiltrate financial institutions, acquire control of large sectors of the economy through investment, or offer bribes to public officials and indeed Governments. The economic and political influence of criminal organizations can weaken the social fabric, collective ethical standards, and ultimately the democratic institution of the society. In countries transitioning to democratic systems, this criminal influence can undermine the transition.

It reduces productivity in the economy's real sector by diverting resources and encouraging crime and corruption, which makes economic growth slow and distorts the country's economy. Ill obtained money is remitted abroad by act of laundering thus deprives national exchequer for meeting its peoples lawful needs. Civil society, print and electronic media should remain pro-active in playing pivotal role for money laundering stoppage.

Money laundering is a most organized economic crime. The object of the offender is aimed to use the



বাংলাদেশ কোর্ট ফি
দুই টাকা

proceeds of crime in the manner as if it has been earned legally. And using the ill-gotten funds in this way is possible as long as the source of the funds deposited in bank account remains concealed. This is the reason why the money launderer makes the origin proceeds of crime concealed.

Acquiring wealth illegally and keeping it concealed or assisting in accomplishing it, directly or indirectly is violation of Section 2 (ঠ)(অ)(আ) of the Ain of 2002. In the case in hand, not only convict Mamun alone but principally accused Rahman steered the matter of obtaining the 'dirty money' and getting it deposited in his friend Mamun's Bank account in Singapore, disguising the source. Accused Rahman designed to get it happen by abusing his political position and might.

It is to be noted with regret that accused Rahman belonging to a political class which was saddled with the responsibility of directing the affairs of the country had acted as a conscious part of the financial crime. He being the mighty political elite by virtue of his position obtained dirty money in the name of 'consultation fee' through his close cohort's [convict Giasuddin Al-Mamun]. This kind of corruption being backed by political influence threatens good governance, sustainable development, and democratic process.

This manner of financial crimes the upshot of achieving wealth in corrupt ways committed under



বাংলাদেশ কোর্ট ফি
দুই টাকা

political shield is increased. Time has come to get this type of criminal activities carried out by using political favour and patronization halted for the cause of well being of the country and its development process. We emphatically observe that corrupt practices and political influences indisputably make significant space for an individual or group to be indulged in such financial crime like 'money laundering' which leaves perverse influence on the entire society.

The trend of obtaining ill-gotten money by extending undue favour to an individual or a group, in exercise of political might must be stopped. The society should awake to condemn and prevent political patronization in accomplishing such organized financial criminal activities affecting country's economy and development.

The victim of the financial crime like money laundering is the every citizen of this country. Accused Rahman who is found guilty of the offence of laundering the huge amount of ill-gotten funds and he was culpably a conscious part to the financial crime thus deserves no leniency. Might of the offender engaged in laundering huge amount of ill-gotten money, hiding its source and means, must be resisted by awarding appropriate punishment for the shake of country's ongoing economic development.



বাংলাদেশ কোর্ট ফি
দুই টাকা

Having discussed and considered as above we find merit in Criminal Appeal No.7225 of 2013 and no merit in Criminal Appeal No.7469 of 2013.

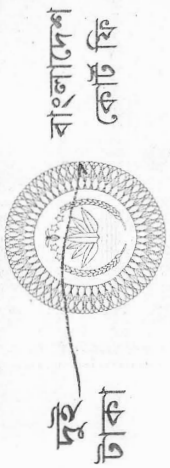
Accordingly, Criminal Appeal No.7469 of 2013 is dismissed. The judgment and order of conviction and sentence dated 17.11.2013 passed by the learned Special Judge, 3rd Court, Dhaka in Special Case No.17 of 2011 arising out of Cantonment Police Station Case No.8(10)09 finding Md. Gias Uddin Al-Mamun guilty under section 13(2) of the Money Laundering Protirodh Ain,2002 and sentencing him to suffer imprisonment for 07(seven) years is maintained with the modification of sentence of fine. Convict Md. Gias Uddin Al Al-Mamun is liable to pay a fine of Taka 20(twenty) crore instead of fine of Taka 40(forty) crore.

And, Criminal Appeal 7225 of 2013 is allowed.

The judgment and order passed by the trial Court acquitting Md. Tarique Rahman altogether is set aside. And he is found guilty under section 13(2) of the Money Laundering Protirodh Ain,2002 for the offence as defined in section **2(ঠ)(অ)(আ)** of the said Ain and sentenced to suffer imprisonment for 07(seven) years and to pay a fine of Taka 20(twenty) crore.

The order of confiscation of laundered money amounting to Taka 20(twenty) crore is set aside as the relevant law does not provide so.





However, the said money be kept with Bangladesh Bank till realization of fine.

Since Convict Md. Tarique Rahman has been absconding the sentence of imprisonment as awarded above shall be executed after causing his arrest or when he surrenders before the trial court, whichever is earlier.

The trial Court is directed to issue conviction warrant against convict Md. Tarique Rahman.

The Commission is also directed to take necessary steps in accordance with law to prosecute 1. Md. Moyazzam Hosen, Chairman, Hosaf Group, 2. Khadiza Islam, Chairman, Nirman Construction, 3. Mayer Chire and 4. Merina Jaman who were the parties in the process of laundering money and aided the present convict persons in gaining the laundered money.

Send down the lower Court records with a copy of this judgment and order at once.

Let a copy of this judgment and order also be sent to the 1. Chairman, Anti-Corruption Commission, 2. Secretary, Ministry of Home Affairs, Government of Bangladesh and 3. District Magistrate, Dhaka for information and necessary action and compliance.

এম, ইনায়েতুর রহিম

Amir Hossain, J:

I agree

Amir Hossain

Type by: Helal. 15.01.2023.

Read by: 15.01.2023

Exm by. 15/01/2023

প্রত্যায়িত অবিকল প্রতিলিপি

15.01.2023
সহকারী রেজিস্ট্রার
বাংলাদেশ সুপ্রীম কোর্ট হাইকোর্ট বিভাগ
(১৮৭২ ইং সনের ১নং আইনের)
৫৬ ধারামতে ক্ষমতা প্রাপ্ত

15.01.2023

15.01.2023