

15 SCOB [2021] AD 89**APPELLATE DIVISION****PRESENT:****Mr. Justice Muhammad Imman Ali****Mr. Justice Mirza Hussain Haider****Mr. Justice Abu Bakar Siddiquee**

CRIMINAL PETITION FOR LEAVE TO APPEAL NO. 179 of 2020

(From the judgment and order dated 07.01.2020, passed by the High Court Division in Criminal Miscellaneous Case No. 3160 of 2020).

Md. Hafiz Ibrahim, former Member of Parliament. :Petitioner.

-Versus-

The State represented by the Deputy Commissioner, Dhaka and another. :Respondents.

For the Petitioner. : Mr. Md. Ruhul Quddus, Advocate instructed by Mr. Md. Taufique Hossain, Advocate-on-Record.

For Respondent No.2 : Mr. Md. Khurshid Alam Khan, Advocate, instructed by Mr. Md. Zahirul Islam, Advocate-On-Record.

Respondent No.1 : Not represented.

Date of Hearing. : The 5th October, 2020.

Editor's Note

On 16.08.2011, one Deputy Director of Anti-Corruption Commission, Dhaka, lodged First Information Report (FIR) with the Gulshan Police Station implicating the accused petitioner and his wife under section 13 of the Money Laundering Prevention Act, 2002 read with section 4(2)/7 of the Money Laundering Prevention Act, 2009. A prima facie case of commission of such offence under section 13 of the Money Laundering Protirodh Ain, 2002 read with section 4(2)/7 of the Money Laundering Protirodh Ain, 2009 found to have been committed by the accused persons and charge was framed against them accordingly. Accused challenged the criminal proceeding against him in the High Court Division under section 561A of CrPC which was summarily rejected. Thereafter, he preferred this leave to appeal before the Appellate Division.

The question raised in this petition is whether the investigation made and proceeding initiated against the accused petitioner under the provisions of Money Laundering Prevention Act of 2002 and Anti-Corruption Commission Ain 2002 which were amended and repealed subsequently on several occasions and the money laundering offence which is claimed to have been a schedule offence of the ACC Act being not ratified by the parliament the ACC can investigate, lodge and initiate the proceeding against the accused petitioner. With various explanation of laws, the Appellate Division held that the ACC has such authority and dismissed the criminal petition.

Key Words:

Effect of Amendment or Repeal of an Act, Money Laundering; section 13 of the Money Laundering Prevention Act, 2002; section 4(2)/7 of the Money Laundering Prevention Act, 2009.

Section 13 of the Money Laundering Prevention Act, 2002 read with section 4(2)/7 of the Money Laundering Prevention Act, 2009 and Anti-Corruption Commission Ain 2002:

It appears that whenever any Act was amended or repealed by any Ordinance the Legislature continued giving effect of the previous law as if the previous law has not been repealed. Thus, the offence committed by the accused petitioner between 19.12.2005 to 16.01.2008 being within the period of continuation of the aforesaid law which were amended/repealed subsequently by different Ordinances/Acts, it cannot be said that the ACC did not have any authority to initiate, investigate, lodge FIR and continue to proceed with the case under the amended law it is to be deemed to have been committed under the law which has got a new life by the saving clause. ... (Para 12)

JUDGMENT:**Mirza Hussain Haider, J:**

1. This criminal petition for leave to appeal is directed against the judgment and order dated 07.01.2020, passed by the High Court Division in Criminal Miscellaneous Case No. 3160 of 2020, summarily rejecting the application, filed by the petitioner under section 561A of the Criminal Procedure Code wherein the proceeding of Special Case No. 04 of 2013 corresponding to ACC GR Case No. 88 of 2011 arising out of Gulshan Police Station Case No. 45 dated 16.08.2011 under sections 2(V)(A)(Av) and 13 of the Money Laundering Prevention Act, 2002, now pending in the third Court of learned Special Judge, Dhaka was challenged.

2. It is contended that on 16.08.2011, one Deputy Director (Special Inquiry and Investigation Cell-1), Anti-Corruption Commission, Dhaka, lodged First Information Report (FIR) with the Gulshan Police Station implicating the accused petitioner and his wife, Mrs. Mafruza Sultana, under section 13 of the Money Laundering Prevention Act, 2002 read with section 4(2)/7 of the Money Laundering Prevention Act, 2009, alleging, inter alia that, on investigation into the record kept with the Anti-Corruption Commission the informant found that the accused petitioner, an influential Member of Parliament elected from Bhola-2 Constituency in the 8th National Parliament Election and also a Member of the then two Standing Parliamentary Committees for the Ministry of Planning and Ministry of Information, along with his wife-Mafruza Sultana, opened a joint account No. 01-7-416270-7 on 19.12.2005 in Standard Chartered Bank, Battery Road Branch, Singapore; that the accused persons received through the aforesaid bank account some money transferred by one Mr. Julfikar Ali, a consultant of Siemens Bangladesh Limited and his wife Rahima Ali from their joint account for lobbying in helping Siemens to get a work tender illegally which was invited by Bangladesh Telecommunication Limited(BTCL); that a prima facie case of commission of such offence under section 13 of the Money Laundering Protirodh Ain, 2002 read with section 4(2)/7 of the Money Laundering Protirodh Ain, 2009 found to have been committed by the accused persons in collusion with the said Julfikar Ali and his wife Rahima Ali from 19.12.2005 to 16.01.2008. Hence, the case wherein the trial court on 03.01.2015

framed charge against the present petitioner and three others which included his wife under the provision as mentioned above.

3. Against the framing of charge on 03.11.2015 by the learned Special Judge, 3rd Court, Dhaka, in the aforesaid case the present accused petitioner filed Criminal Revision No. 334 of 2015 before the High Court Division which after hearing was rejected summarily by judgment and order dated 08.02.2016 on the ground that charge was framed pursuant to the judgment and order dated 12.04.2015 passed by the Appellate Division in Criminal Petition for Leave to Appeal No. 186 of 2014 disposing of the same. Against the said order dated 08.02.2016 passed by the High Court Division in the aforementioned criminal revision, the present petitioner preferred Criminal Petition for Leave to Appeal No. 802 of 2016 before this Division which was dismissed for default on 30.07.2017 and subsequently the application for restoration of the said criminal petition was rejected by judgment and order dated 17.06.2019 holding that there is no cogent reason for allowing the application.

4. Under such facts and circumstances, the accused petitioner filed Criminal Miscellaneous Case No. 3160 of 2020 under section 561A of the Criminal Procedure Code for quashing the proceeding of Special Case No. 04 of 2013 corresponding to ACC GR Case No. 88 of 2011 arising out of Gulshan Police Station Case No. 45 dated 16.08.2011 under sections 2(V)(A)(Av) and 13 of the Money Laundering Prevention Act, 2002, now pending in the third Court of Special Judge, Dhaka on the ground that under section 8(2) of the Money Laundering Prevention Act, 2002 no Court shall take cognizance of any offence punishable under the said Act except upon the complaint lodged in writing by or on behalf of Bangladesh Bank which is totally absent in the present case. The High Court Division rejected the said application summarily by judgment and order dated 07.01.2020 on the ground that since after framing of the charge one witness has already been examined there is no scope to interfere with the matter for quashment.

5. Being aggrieved by and dissatisfied with the same, the accused petitioner filed the instant Criminal Petition for Leave to Appeal No. 179 of 2020 before this Division for redress.

6. Mr. Ruhul Quddus, learned Advocate appearing on behalf of the accused petitioner submits that important question of law has been raised in this petition as to whether complaint lodged by ACC on its own motion in violation of section 8(2) of the Act of 2002 is a valid complaint under the original law of 2002 as there is no written complaint by or on behalf of Bangladesh Bank. He submits that Section 5(2) of the said Law of 2002 also debars any person or authority other than Bangladesh Bank or on its behalf to investigate with regard to the offence committed under the law of 2002. According to him, any offence punishable under the Money Laundering Prevention Act 2002 is to be tried by the Court of Sessions or Additional Sessions Judge as contemplated in section 6 of the said law which has non-obstante clause, and since did not authorize the Commission to investigate/inquire or lodging of FIR and proceed with the case other than by Bangladesh Bank. Thus, the initiation and proceeding of the case is illegal and without lawful authority as well as without jurisdiction. Under section 20(1) of the Anti Corruption Commission Act, 2004 it has been contemplated that offences specified in the schedule of the said Act shall be inquired into or investigated by the Commission only. Although by Ordinance No. VII of 2007 the offences under the Money Laundering Prevention Act of 2002 has been included in the schedule of offences under the Anti Corruption Commission Act, 2004, but the same having not been ratified by in the first session of parliament, the Ordinance is not a valid law and as such, the proceeding of

the instant case is not sustainable in law. Similarly, by Ordinance No. VII of 2007 paragraph 'Kha Kha' has been inserted in the Anti Corruption Commission Act, 2004 whereby money laundering offences under the Money Laundering Prevention Act of 2002 has been included in the schedule of the said Act of 2004 and by Ordinance No. VIII of 2007 the same has also been included in the schedule of the Criminal Law (Amendment) Act 1958. But those two ordinances also having not been ratified by the 9th Parliament in its session, the investigation, trial, lodging of FIR, initiation of case and proceeding of the same is palpably illegal, without lawful authority and without jurisdiction and hence the proceeding should be quashed.

7. Mr. Khurshid Alam Khan, learned Advocate appeared on behalf of respondent Commission by filing caveat submits that the points raised in this case on behalf of the accused petitioner has already been settled in the case of **Tarique Rahman Vs. Government of Bangladesh, reported in 63 DLR(AD)18 and those reported in 63 DLR(AD)162** and as such, the offence committed with necessary mens rea remains an offence for all time to come even if the provisions of law creating the said offence is repealed, without declaring the said law as ultra vires to the Constitution. Thus any offence committed during the subsistence of law but detected/revealed subsequently even if the said law is repealed/amended would still come under the mischief of the said repealed/amended law as if the said law has not been repealed. He submits that it has been detected that the account has been opened abroad on 19.12.2005 and the offence of money laundering and transferring the money from Bangladesh to Singapore having been done from 19.12.2005 to 16.1.2008 during the continuance of Anti-Corruption Commission Act, 2002 and subsequently under the amended Act of 2004 and inclusion of Money Laundering Prevention Act, 2002 in the Anti Corruption Commission Act by Ordinances No. VII of 2007 and also by Ordinance No. VIII of 2007 during the continuance of the Act of 2002 subsequently amended by Act of 2004 and Ordinance No. VII of 2007 as well as Ordinance No. VIII of 2007 there is no illegality in the proceeding with the case. He next submits that out of four accused persons accused Julfikar Ali (Consultant of Siemens Bangladesh) made confessional statement under section 164 of the Criminal Procedure Code before the concerned Magistrate admitting the transaction made in order to get a contract for work order with regard to Teletalk Mobile Phone from BTTB(Now BTCL) and since it appears that total 1,75,000 has been transacted from the joint account of accused, Julfikar Ali and his wife Rahima Ali, to the foreign account of the accused petitioner and his wife for the purpose of getting a work order in favour of Siemens Bangladesh Limited regarding Teletalk Mobile Phone(BTCL) and after framing of charge the wife of the present accused petitioner namely, Mafruza Sultana having unsuccessfully moved the High Court Division in Criminal Revision No. 357 of 2013 and then unsuccessfully moved this Division in Criminal Petition for leave to Appeal No. 186 of 2014 and the present accused petitioner also having unsuccessfully moved the High Court Division earlier in Criminal Revision No. 334 of 2016 and in Criminal Petition for Leave to Appeal No. 802 of 2016 before this Division there is no illegality in proceeding with the case before the trial Court. Moreover at the instance of the accused petitioner after framing of charge till examination of P.W.1, the proceeding of the case was stayed on different pleas and thereby created obstruction in disposal of the case. Now the accused petitioner has come up with the prayer for quashment of the proceeding on different pretexts so that the trial of the case cannot be concluded rather be kept in abeyance which is completely dilatory tactics and as such this criminal petition should be dismissed with cost.

8. On hearing the learned Advocates appearing on behalf of their respective parties and on perusal of the materials on record it appears that the question raised in this petition is whether the investigation made and proceeding initiated against the accused petitioner under

the provisions of Money Laundering Prevention Act of 2002 and Anti-Corruption Commission Ain 2002 which were amended and repealed subsequently on several occasions and the money laundering offence which is claimed to have been a schedule offence of the ACC Act being not ratified by the parliament the ACC can investigate, lodge and initiate the proceeding against the accused petitioner. In the case of **Tarique Rahman Vs. Government of Bangladesh, reported in 63 DLR(AD)162 this Division while reviewing the decision reported in 63 DLR(AD)18 and dismissing the same** (wherein same submissions in respect of maintainability of the proceeding was made) this Division held:

“Inquiry, investigation, lodging of complaint and conduct of prosecution of cases and holding of trial in respect of those cases under the Ain of 2002 shall proceed under the provisions of ACC Act, 2004 and that in case of any conflict with the provisions of the Ain of 2002, the provision of the ACC Act, 2004 and the Criminal law Amendment Act 1958 shall prevail though the Ain of 2002 was repealed by the Ordinance of 2008 keeping similar provisions as of section 3(Ka) in section 9 of the Ordinance of 2008 and also in section 9 of the Ain of 2009.”

9. In the said decision it has further been held:

“If the actus reus of an offence is committed with necessary mens rea it remains an offence for all time to come, even if the provisions of law creating the said very offence is repealed, without declaring the said law as ultra vires the Constitution. There is no doubt that, after the repeal of the relevant provision of law, the subsequent actus reus even, if committed, ceases to be an offence. But if the offence committed during the period when the said provision of law was in force, any offence committed during the substance of the said law but, detected/revealed later on, even after it’s repeal would still come under the mischief of the said repealed law as if the said law has not been repealed.”

10. Apart from this, it is to be noted that the Anti-Corruption Act, 1957 and the Anti-Corruption (Tribunal) Ordinance, 1960 were repealed by the Anti-Corruption Commission Act, 2004, but in spite of such repeal order inquiry, investigation into any allegation, application for sanction to file cases pending before the tribunal established by the Ordinance immediately before such repealing of such Act were given a new life under the saving clause, of the Act of 2004 for disposal of the same under the Act of 2004. Thus any case pending before the tribunal would be transferred to the Special Judge having local jurisdiction thereof. Similarly, Money Laundering Prevention Ain, 2002 being also repealed by the Money Laundering Prevention Ordinance, 2008 has got a new life under its saving clause. The saving clause, provides that ‘in spite of repealing the Money Laundering Protirodh Ain, 2002, if any case filed under the said repealed law or proceeding of any case taken under the said repealed law is pending, then the same would be disposed of under the said repealed law as if the law had not been repealed’. Thereafter, the Money Laundering Protirodh Ain,

2009 was also enacted upon repealing the Ordinance of 2008 wherein all cases filed under the repealed law of 2008 which were pending before the tribunal were directed to be continued under the new Law of 2009 treating those cases to have been filed under the new Law of 2009. Subsequent thereto, Money Laundering Protirodh Ain, 2012 was enacted wherein similar saving clause has been incorporated with addition that “(৩) উক্তরূপ রহিত হওয়া সত্ত্বেও Foreign Exchange Regulation Act, 1947 (Act No. VII of 1947) এবং উক্ত আইন ও অধ্যাদেশের আওতাধীন কোন অপরাধ সংঘটিত হইলে বা তদন্তাধীন বা বিচারাধীন থাকিলে উক্ত অপরাধসমূহ এই আইনের বিধান অনুযায়ী এইরূপে নিষ্পন্ন হইবে যেন উহা এই আইনের অধীন দায়েরকৃত বা গৃহীত হইয়াছে।”

11. It further appears that Money Laundering Protirodh Ain 2012 was amended further by Ordinance No. II of 2015 and then the same was further amended by Ordinance No. XXV of 2015 repealing the earlier Ordinance No. II of 2015 and it has been provided in the saving clause that in spite of repealing the said law, any act done or step taken under the said repealed law would be deemed to have been done and taken under the present Ordinance.

12. Thus, it appears that whenever any Act was amended or repealed by any Ordinance the Legislature continued giving effect of the previous law as if the previous law has not been repealed. Thus, the offence committed by the accused petitioner between 19.12.2005 to 16.01.2008 being within the period of continuation of the aforesaid law which were amended/repealed subsequently by different Ordinances/Acts, it cannot be said that the ACC did not have any authority to initiate, investigate, lodge FIR and continue to proceed with the case under the amended law it is to be deemed to have been committed under the law which has got a new life by the saving clause. Moreover, since it appears that from the date of framing of charge on 03.11.2015, the proceeding of the Case could not be concluded in last 5(five) years because of obstructions created by the accused petitioner by obtaining stay orders from higher court on different pleas, the submission made by the learned Advocate for the accused petitioner has no substance in the eye of law.

13. Hence the findings and decision arrived at by the High Court Division being based on proper appreciation of fact and law the same does not call for any interference by this Division.

14. Accordingly, this criminal petition for leave to appeal is dismissed.

15. The trial Court is directed to proceed with the trial and conclude the same within 06(six) months from the date of receipt of this judgment and order without any adjournment.

16. Communicate this judgment and order at once.