

16 SCOB [2022] AD 89

APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique, CJ

Mr. Justice Md. Nuruzzaman

Mr. Justice Obaidul Hassan

Mr. Justice Borhanuddin

Mr. Justice M. Enayetur Rahim

Ms. Justice Krishna Debnath

CRIMINAL PETITION FOR LEAVE TO APPEAL NO.214 OF 2022

(From the order dated the 5th day of December, 2021 passed by the High Court Division in Criminal Revision No.2330 of 2021)

Minaz Ahmed and another . . . **Petitioners**

-Versus-

Arif Motahar and others . . . **Respondents**

For the Petitioners : Mr. Murad Reza, Senior Advocate with Mr. Md. Khurshid Alam Khan, Senior Advocate instructed by Mr. Md. Shafiqul Islam Chowdhury, Advocate-on-Record

For the Respondents Nos.1-2 : Mr. Rokonuddin Mahmud, Senior Advocate with Mr. Mostafizur Rahman Khan, Advocate instructed by Mr. Bivash Chandra Biswas, Advocate-on-Record

For the Respondents Nos.3-4 : Not represented

Date of Hearing and Judgment : The 10th day of March, 2022

Editors' Note

The question came up for consideration in the instant petition is- whether in a case under the Money Laundering Protirodh Ain, 2012 the Magistrate has jurisdiction to deal with the application for bail of an accused as he has no jurisdiction to take cognizance of an offence under the said Ain. The Appellate Division held that under the Money Laundering Protirodh Ain, 2012 beside the Anti-Corruption Commission, Police as well as other agency/organization of the government is empowered to investigate a case but as per schedule, (gha), of Anti-Corruption Commission Act, 2004 and schedule 01 to the Money Laundering Protirodh Bidhimala, 2019 the Commission is authorized to investigating those cases which relate to bribe and corruption only. The other offences under the Ain have to be investigated by the CID or any other agency(s) as prescribed in the schedule of the said Bidhimala, 2019. On the other hand, the other investigation agency(s) as per Upa bidhi 7 of bidhi 51 of the Bidhimala, 2019 shall follow the provisions of Code of Criminal Procedure while carrying out the investigation. The Special Judge has no jurisdiction to deal with a case initiated under Money Laundering Protirodh Ain by any other investigation agency other than the Anti Corruption Commission before taking cognizance. Thus, before submitting report as

per provision of section 173 of the Code of Criminal Procedure and taking cognizance of the offence by a Special Judge at the pre-trial stage an accused has every right to move all kinds of applications including the application for bail before the Magistrate concerned where the case is pending and record lies. As per provision of section 497 of the Code of Criminal Procedure the Magistrate concerned has got the jurisdiction to deal with the matter in accordance with law. It also opined that in the absence of any express or implied prohibition in any other special Law or Rule, the Magistrate concerned may entertain, deal with and dispose of any application for bail of an accused under section 497 of the Code of Criminal Procedure.

Key Words

Money Laundering Protirodh Ain, 2012; Anti-Corruption Commission Act, 2004; Money Laundering Protirodh Bidhimala, 2019; Bail by a Magistrate in a case triable by Special Judge

Jurisdiction and function of a Sessions Judge and a Special Judge is quite distinguishable and one cannot exercise the jurisdiction of other though sometimes judge may be the same person:

In the instant case, admittedly, the case is under investigation i.e. at the pre-trial stage and pending before the Chief Metropolitan Magistrate, Dhaka. Metropolitan Magistrate concerned granted bail to the accused respondents during the period of investigation, against which victim-petitioners moved an application before the Metropolitan Sessions Judge, Dhaka, not before the Metropolitan Senior Special Judge, Dhaka. The learned Metropolitan Sessions Judge had dealt with the matter as miscellaneous case as Sessions Judge. Court of Sessions for every session's division, in particular Dhaka Metropolitan area has been established by the government as per provision of section 7 of Code of Criminal Procedure, whereas Special Judge and Special Court have been set up under the provision of Act of 1958. A Sessions Judge acts under the provisions of Code of Criminal Procedure, whereas the Special Judge acts under the provisions of Act of 1958. Thus, jurisdiction and function of a Sessions Judge and a Special Judge is quite distinguishable and one cannot have the jurisdiction to exercise other jurisdiction though sometimes judge may be a same person.

...(Paras 24 and 25)

Section 435 of the Code of Criminal Procedure:

In view of the above specific provision as contemplated in the Code of Criminal Procedure, if anyone is aggrieved by an order including granting bail to an accused passed by a Magistrate, he ought to have preferred a revisional application before the Court of Sessions, if so advised or desired, as the order is revisable one. We have no hesitation to hold that a specific statutory provision cannot be overridden by so-called usual practice. When there is specific Provision of Law to ventilate a grievance particular in that event an authorized practice cannot be appreciated and endorsed.

...(Paras 30 and 31)

Jurisdiction of Special Judge in cases initiated by any agency other than the Anti-corruption Commission under the Money Laundering Protirodh Ain:

The Special Judge appointed under the provision of Act of 1958 has no jurisdiction to deal with a case initiated under Money Laundering Protirodh Ain by any other investigation agency other than the case initiated by the Commission before taking cognizance.

...(Para 41)

Jurisdiction of the Magistrate in cases initiated by any agency other than the Anti-corruption Commission under the Money Laundering Protirodh Ain:

Thus, before submitting report as per provision of section 173 of the Code of Criminal Procedure and taking cognizance of the offence by a Special Judge appointed under the Act of 1958 i.e. at the pre-time stage an accused has every right to move all kinds of applications including the application for bail before the Magistrate concerned where the case is pending and record lies. And as per provision of section 497 of the Code of Criminal Procedure the Magistrate concerned has got the jurisdiction to deal with the matter in accordance with law. ... (Para 44)

Section 497 and 498 of the Code of Criminal Procedure:

In the absence of any express or implied prohibition in any other special Law or Rule, the Magistrate concerned may entertain, deal with and dispose of any application for bail of an accused under section 497 of the Code of Criminal Procedure. In case of rejection of his application for bail he may move before the Court of Sessions by filing a Criminal Miscellaneous Case under section 498 and thereafter in case of failure before the Court of Sessions, he can move under section 498 of the aforesaid Code for bail before the High Court Division. ... (Para 46)

JUDGMENT

M. Enayetur Rahim, J:

1. Feeling aggrieved by and dissatisfied with the order dated 05.12.2021 passed by a Division Bench of the High Court Division in Criminal Revision No.2330 of 2021 recalling and vacating the order dated 22.11.2021 of the same Bench, the victim-petitioners have filed this leave petition.

2. At the instance of one Al Amin Hossain, Assistant Superintendent of Police, Organized Crime Unit (Financial Crime), Bangladesh Police, CID, Dhaka, Khilkheta Police Station case No.39 dated 28.02.2021 corresponding to G.R. Case No.79 of 2021 has been initiated against the present accused Respondent Nos.1 and 2 and another for allegedly committing offence under section 4(2)/ 4(3) of the Money Laundering Protirodh Ain, 2012.

3. In the First Information Report, it is alleged that the accused respondent Arif Motahar, Kabir Reza and another in the year of 2005 made advertisements in various print and electronic media in the United Kingdom for the purpose of raising investment from non-resident Bangladeshis living in the United Kingdom to the amount of 100 crores for the construction of the hotel named "Dhaka Regency Hotel and Resort Ltd." in the Khilkheta area of Dhaka. It was stated in those advertisements that out of 100 crores, so far 52% shares had already been invested, and that investors were required for the remaining 48% shares. Investors would be able to purchase one block of shares for the amount of GBP 25000 (twenty-five thousand British pounds) equivalent to BDT 29,00,000 (taka twenty nine lac, at the then prevailing exchange rate in 2005). The accused, dishonestly and for fraudulent purposes, divided the total share capital of the company into 337 blocks, fixing the price of each block at GBP 25000 equivalent to BDT 29,00,000. The accused persons claimed to have had already invested in 177 blocks at that time and advertised for investment in the remaining 160 blocks. It was further stated in the advertisements that, those who would purchase one block of shares worth GBP 25000 would be made directors, and those who purchase four such blocks would be made senior directors, as well as they would get other benefits.

Subsequently, being attracted by the various benefits described in the advertisements, 119 non-resident Bangladeshis living in the United Kingdom transferred funds from the United Kingdom in to various amounts from 2005 to various personal/ company bank accounts held in the names of the accused persons for the purpose of investment in the said hotel construction. However, when the said hotel came into operation, the investors found that against Tk.29 lac paid up by each investor in accordance with the contract, each investor was allotted only 1,74,000 shares of value of Tk.10 each, the total value of which stands at Tk.17,40,000. The remaining shares worth of Tk.11,60,000 in each block, instead of being allotted to the investors, was fraudulently misappropriated through collusion by the accused persons. In this way, the accused persons criminally misappropriated the amount of BDT 18,00,97,425 (taka eighteen crore ninety seven thousand four hundred and twenty-five). In 2005 the accused persons entered into a bayna agreement with RAJUK Kormochari Kollyan Shomiti to buy land and 7th to 15th floor of the building, the total project cost being taka 42.6 crores for construction of the said hotel, whereas the accused persons had falsely advertised in various media that the total cost of the project was taka 112.5 crores. The accused persons also falsely claimed in the said advertisements that they had already invested taka 58.5 crores corresponding to 52% of the total share value of the project, and wanted to sell the remaining 48% of the total share. It is found that the total contract amount under the agreement with RAJUK Kormochari Kollyan Shomiti, only taka 6 crores was paid by the accused persons, and the remaining amount under the contract was paid from funds collected from the investors. The accused persons in collusion with each other misappropriated the amount of BDT 18,00,97,425 (taka eighteen crore ninety-seven thousand four hundred and twenty-five) and thereby committed offence of Money Laundering.

4. The investigation officer on 04.03.2021 made a prayer before the Chief Metropolitan Magistrate, Dhaka to show the accused-respondents arrested in the present case who were earlier arrested in connection with Khilkhet Police Station Case No.08(12) of 2020 and the learned Metropolitan Magistrate allowed the said application by his order dated 08.03.2021 and thereby, the accused-respondents have been shown arrested. On 18.03.2021 the accused-respondents made a prayer for bail before the Chief Metropolitan Magistrate, Dhaka and the learned Metropolitan Magistrate concerned by the order on the same day enlarged them on bail.

5. Being aggrieved by and dissatisfied with the said order of granting bail to the accused respondents, the present victim-petitioners filed an application for cancellation of bail of the said accused vide Miscellaneous Case No.6012 of 2021 before the Metropolitan Sessions Judge, Dhaka. The learned Metropolitan Sessions Judge, Dhaka after hearing the said Miscellaneous Case by its order dated 26.09.2021 rejected the same and maintained the order of bail passed by the Metropolitan Magistrate, Dhaka.

6. Thereafter, the present victim-petitioners moved an application under section 10(A) of the Criminal Law Amendment Act,1958 vide Criminal Revision No.2330 of 2021 before the High Court Division. A Division Bench of the High Court Division on 22.11.2021 issued a Rule and also stayed the operation of the order dated 26.09.2021 passed by the Metropolitan Sessions Judge till disposal of the Rule and the accused-respondents were directed to surrender before the Chief Metropolitan Magistrate, Dhaka within a period of 02(two) weeks from the date of receipt of the order by him.

7. The High Court Division also directed the Metropolitan Magistrate concerned who granted bail to the accused-respondents to explain his position as to under what authority and

what provision of law, he enlarged the accused-respondents on bail.

8. The accused-respondents on coming to know about the said order filed an application before the Bench concerned of the High Court Division for re-calling and vacating the said order and after hearing the respective parties, the High Court Division by the impugned order dated 05.12.2021 recalled and vacated the order dated 22.11.2021.

9. Thus, the victim-petitioners have preferred this criminal petition for leave to appeal before this Division.

10. Mr. Murad Reza and Mr. Md. Khurshid Alam Khan, learned Senior Advocates, appearing on behalf of the petitioners submit that in a case under the Money Laundering Protirodh Ain, 2012 the Magistrate has no jurisdiction to deal with the application for bail of an accused as he has no jurisdiction to take cognizance of an offence under the said Ain of 2012 and thus, the Metropolitan Magistrate acted illegally in assuming the jurisdiction of a Special Judge and granting bail to the accused-respondents.

11. It is further submitted that in a criminal case once a matter has been decided on merit and judgment or order as the case may be signed, it cannot be recalled, altered or reviewed except to correct clerical error. The court after signing and pronouncing its judgment or order becomes *functus officio* and has no power thereafter to review it so as to add or alter such judgment or order in any manner. Any such alteration or addition, if made would be without jurisdiction and a nullity. The High Court Division has failed to appreciate the said legal aspect while passing the impugned order which is liable to be interfered by this Division.

12. It is also contended by the learned Advocates for the petitioners that the moment High Court Division stayed the order of bail granted to the accused-respondents by the learned Magistrate, they became fugitive from law and the fugitive have no *locus standi* to file any application and not entitled to obtain a judicial order defying the process of the Court. It is an essential condition for the administration of justice that the fugitive should surrender before the Court of law before seeking any kind of redress as against his grievance and as such the application for recalling and vacating the earlier order is not maintainable. The High Court Division has also failed to appreciate this vital legal issue while passing the impugned order.

13. Mr. Rokonuddin Mahmud, learned Senior Advocate, appearing on behalf of the accused-respondents submits that the High Court Division by its order dated 22.11.2021 directed the accused-respondents to surrender before the Chief Metropolitan Magistrate, Dhaka within a period of 02(two) weeks from the date of receipt of the said order by him and the respondents before expiry of the said period filed the application for re-calling and vacating the order dated 22.11.2021 before the High Court Division and as such it cannot be said that the respondents were fugitive. High Court Division in passing the impugned order rightly held that, the respondents approached before the Court with the application for recalling and vacating before expiry of the period of time frame given by the High Court Division, which indicates that the respondents are still not fugitive from justice.

14. Mr. Mahmud further submits that the learned Magistrate did not act illegally in granting bail to the accused-respondents considering the allegation and facts and circumstances of the present case having his jurisdiction.

15. We have considered the submissions of the learned Advocates for the respective

parties, perused the orders passed by the High Court Division including the impugned order and other materials available on record as well as the relevant provision of laws.

16. Having regard to the fact that the instant case has been initiated by an officer of Organized Crime Unit (Financial Crime) Bangladesh Police, CID with the Khilkhet Police Station which has been registered as Police Case and gave rise to G.R. No.79 of 2021. The learned Metropolitan Magistrate by his order dated 18.03.2021 enlarged the accused-respondents on bail. Two of the victims, the present petitioners of the case preferred Miscellaneous Case being No. 6012 of 2021 before the Metropolitan Sessions Judge, Dhaka against the said order of granting bail.

17. The victim-petitioners having failed to succeed in the said Miscellaneous Case has filed an application under section 10(1A) of the Criminal Law Amendment Act, 1958 (**hereinafter referred to as Act of 1958**) before the High Court Division, which gave rise of the Criminal Revision No.2330 of 2021.

18. Section 10 and 10(1A) of the Act of 1958 runs as follows;

10. Appeal, revision and transfer of cases –¹[(1) An appeal from the judgment of a Special Judge shall lie to –

(a) the High Court Division, if the Special Judge is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge;

² [(b) * * * * *]

(1A) the Court to which an appeal lies under sub-section (1) shall also have powers of revision.] (**Underline supplied**)

19. In the instant case the victim petitioners have preferred an application under section 10(1A) of the Act of 1958 before the High Court Division against the order passed in a Miscellaneous case by the learned Metropolitan Sessions Judge, Dhaka.

20. Section 2(c) of the Act of 1958 defined ‘**Special Judge**’ as under:

“Special Judge’ means a Special Judge appointed under sub-section (1) of section 3.”

21. Sub-section (1) of section 3 of the Act of 1958 speaks that- ‘The Government shall, by notification in the official Gazette, appoint as many Special Judges as may be necessary to try and punish offences specified in the schedule.

22. In section 4 of the Act of 1958, the jurisdiction of a Special Judge has been mentioned which is as under:

“4. Jurisdiction of Special Judges and cognizance of the cases by them.-(1) A Special Judge shall have jurisdiction within such territorial limits as may be fixed by the Government by notification in the official gazette and may take cognizance of any offence committed or deemed to have been committed within such limits and triable under this Act upon receiving a complaint of facts which constitute such offence or upon a report in writing of such facts made by any police officer.

(2) where two or more Special Judges have jurisdiction, wholly or partly in the same territorial limits, the Government, shall, by notification in the official Gazette, declare one of them to be the Senior Special Judge for that area [and notwithstanding anything contained in sub-section (1), such Senior Special Judge shall have exclusive jurisdiction to take cognizance of all offences triable under this Act committed or deemed to have been committed within that area.]

(3) An offence shall be tried by the Special Judge within the territorial limits of whose jurisdiction it was committed or deemed to have been committed, or where there are more Special Judges then one having jurisdiction within the same territorial limits, [by the Special Judge to whom the case is transferred] by the Senior Special Judge:

Provided that the Senior Special Judge may, by order in writing, transfer, at any stage of the trial, any case from the court of one Special Judge to the Court of another Special Judge having jurisdiction within the same territorial limits.

(4) When an offence triable under this Act, is committed outside Bangladesh, it shall for the purposes of this Act, be deemed to have been committed within the territorial limits of the jurisdiction of the Special Judge in which the person [committing the offence is found or was ordinarily residing before he left Bangladesh].”

23. In view of the provision of section 4(1) of the Act of 1958 it is crystal clear that a Senior Special Judge or Special Judge, as the case may be shall assume its jurisdiction under the said Act upon receiving a complaint of facts which constitute such offence or upon a report in writing of such facts made by any police officer.

24. In the instant case, admittedly, the case is under investigation i.e. at the pre-trial stage and pending before the Chief Metropolitan Magistrate, Dhaka. Metropolitan Magistrate concerned granted bail to the accused respondents during the period of investigation, against which victim-petitioners moved an application before the Metropolitan Sessions Judge, Dhaka, not before the Metropolitan Senior Special Judge, Dhaka. The learned Metropolitan Sessions Judge had dealt with the matter as miscellaneous case as Sessions Judge.

25. Court of Sessions for every session’s division, in particular Dhaka Metropolitan area has been established by the government as per provision of section 7 of Code of Criminal Procedure, whereas Special Judge and Special Court have been set up under the provision of Act of 1958. A Sessions Judge acts under the provisions of Code of Criminal Procedure, whereas the Special Judge acts under the provisions of Act of 1958. Thus, jurisdiction and function of a Sessions Judge and a Special Judge is quit distinguishable and one cannot have the jurisdiction to exercise other jurisdiction though sometimes judge may be a same person.

26. In the instant case the Metropolitan Sessions Judge, Dhaka has dealt the miscellaneous case for cancellation of bail of the accused respondents as Sessions Judge assuming jurisdiction of Court of Sessions, though the case is under Money Laundering Protirodh Ain, 2012 which is at pre-trial stage.

27. The Court asked the learned Advocates for the victim-petitioners that under what provision of law they had filed the Miscellaneous Case before the Metropolitan Sessions Judge challenging the order of granting bail to the accused respondents by a Magistrate, which is a revisable order. The learned Advocates for the victim-petitioners replied that it is the practice of the court below that application for cancellation of bail used to register as Miscellaneous Case.

28. We are unable to appreciate and endorse the above submission of the learned Advocates for the victim-petitioners.

29. Section 435 of the Code of Criminal Procedure speaks as follows:

“435(1) the High Court Division or any Sessions Judge Power to call [,***], may call for and examine the record of any proceeding for records of before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself of himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior court and may, when calling for such record, direct that the execution of any sentence be suspended and , if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation-all Magistrates, **[whether executive or judicial]**, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section.”

30. In view of the above specific provision as contemplated in the Code of Criminal Procedure, if anyone is aggrieved by an order including granting bail to an accused passed by a Magistrate, he ought to have preferred a revisional application before the Court of Sessions, if so advised or desired, as the order is revisable one.

31. We have no hesitation to hold that a specific statutory provision cannot be overridden by so-called usual practice. When there is specific Provision of Law to ventilate a grievance particular in that event an authorized practice cannot be appreciated and endorsed.

32. Learned Advocates for the victim-petitioners argued that in a case under Money Laundering Protirodh Ain, the Magistrate has got no authority to deal with an application for bail and to grant an accused on bail and that as per section 13 of the said Ain only Special Judge is empowered to deal with the matter of bail.

33. We feel to address, the above legal issue because different Benches of the High Court Division on the question of granting bail at the pre trial stage under various special laws have expressed divergent views.

34. Under the Money Laundering Protirodh Ain, 2012 [section 2(R) and schedule] beside the Anti-Corruption Commission (**hereinafter referred to as the Commission**), on behalf of Bangladesh Police Criminal Investigation Department (CID) as well as other agency/organization of the government or more than one agency jointly are authorized and empowered to investigate a case.

35. However, as per schedule, (gha), of Anti-Corruption Commission Act, 2004 and schedule 01 to the Money Laundering Protirodh Bidhimala, 2019 (**hereinafter referred to as Bidhimala, 2019**) the Commission is authorized to investigating those cases under Money Laundering Protirodh Ain which relates to bribe and corruption (যুষ ও দুর্নীতি সংক্রান্ত) only. The other predicated offences under Money Laundering Protirodh Ain have to be investigated by the CID or any other agency(s) as prescribed in the schedule of the said Bidhimala, 2019.

36. Upon scrutiny of Anti-Corruption Act, 2004, Money Laundering Protirodh Ain, 2012 and Bidhimala, 2019 it transpires that the investigation procedure of the Commission is to some extent different from other agencies.

37. For investigation of a case under Money Laundering Protirodh Ain, the Commission is bound by its own Rules i.e. rule 10 of the Anti Corruption Rules 2007 which is as follows:

“১০। অপরাধের তদন্তকার্যক্রম গ্রহণ, সম্পন্ন ও প্রতিবেদন দাখিল।-(১) এই বিধির অধীন-

- (ক) কমিশনের প্রত্যেক জেলা কার্যালয় প্রত্যেক সিনিয়র স্পেশাল জজের অধিক্ষেত্রাধীন এলাকা ভিত্তিক একটি করিয়া তফসিলের ফরম-২ক অনুযায়ী তদন্ত রেজিস্ট্রার সংরক্ষণ করিবে;
- (খ) কমিশনের নির্দেশপ্রাপ্ত কর্মকর্তা অপরাধ সংঘটনের স্থানীয় অধিক্ষেত্রসম্পন্ন সিনিয়র স্পেশাল জজের এলাকার দায়িত্বপ্রাপ্ত কমিশনের জেলা কার্যালয়ে আইনের তফসিলভুক্ত অপরাধ সংঘটনের তথ্য সম্বলিত এজাহার দাখিল করিবেন;
- (গ) সংশ্লিষ্ট জেলা কার্যালয় সংশ্লিষ্ট সিনিয়র স্পেশাল জজের এলাকার জন্য নির্ধারিত তদন্ত রেজিস্ট্রারে এজাহারে বর্ণিত তথ্যাদি অন্তর্ভুক্ত করিবে এবং তদন্ত কার্যক্রমের জন্য প্রয়োজনীয় সংখ্যক কপি সংরক্ষণ করিয়া তফসিলের ফরম-২খ সহ মূল এজাহারটি সংশ্লিষ্ট সিনিয়র স্পেশাল জজের নিকট প্রেরণ করিবে;
- (ঘ) সংশ্লিষ্ট সিনিয়র স্পেশাল জজ তদন্তের স্বার্থে কোন আদেশ প্রদানের প্রয়োজন এবং তদন্ত প্রতিবেদন প্রাপ্তিসাপেক্ষে পরবর্তী ব্যবস্থা গ্রহণের জন্য উক্ত এজাহার সংরক্ষণ করিবেন;
- (ঙ) বিধি ১৩ এর উপ বিধি (৩) এর অধীন সিনিয়র স্পেশাল জজ কর্তৃক প্রেরিত অভিযোগ সংশ্লিষ্ট এলাকার দায়িত্বপ্রাপ্ত কমিশনের জেলা কার্যালয় প্রাপ্ত হইলে এই উপ-বিধির দফা (খ) এ বর্ণিত মতে ব্যবস্থাদি গ্রহণ করিবে;
- (চ) কমিশন যে কোন সূত্রে প্রাপ্ত তথ্যের ভিত্তিতে যদি এই মর্মে সন্তুষ্ট হয় যে, আইনের তফসিলভুক্ত কোন অপরাধ সংঘটিত হইয়াছে বলিয়া বিশ্বাস করিবার মত যথেষ্ট কারণ রহিয়াছে তাহা হইলে সরাসরি এজাহার দায়েরের জন্য উহার সংশ্লিষ্ট কোন কর্মকর্তাকে নির্দেশ প্রদান করিতে পারিবে।” (Underlines supplied)

38. From the above provision of law it is manifested that the Commission after lodgment of an FIR ought to have sent it to the Senior Special Judge, under whose jurisdiction the alleged offence was committed and the learned Senior Special Judge upon receiving such FIR shall give direction for investigation, and he has also the jurisdiction to direct an officer of the Commission to lodge an FIR on the basis of a complaint filed before it, if he satisfied so, and shall take necessary steps subject to the investigation report i.e. at the pre-trial stage before taking cognizance of the case the Senior Special Judge has the jurisdiction to deal with the matter.

39. On the other hand the other investigation agency(s) as per Upa bidhi 7 of bidhi 51 of the Bidhimala, 2019 the investigating officer shall follow the provisions of Code of Criminal Procedure. Upa Bidhi 7 of bidhi 51 of the above Bidhimala, 2019 is as follows:

“৫১। তদন্ত ১-(১) তদন্তকারী সংস্থা অনুসন্ধানান্তে নিজস্ব সংস্থার একজন কর্মকর্তাকে তদন্ত কর্মকর্তা হিসাবে মনোনয়ন প্রদান করিবে, তবে শর্ত থাকে যে, কোনো তদন্তকারী সংস্থা কর্তৃক তদন্ত কর্মকর্তা নিয়োগ করা হইলে এবং পরবর্তীতে যৌথ তদন্ত দল গঠন করার প্রয়োজন অনুভূত হইলে, বিএফআইইউকে তাহা লিখিতভাবে অনুরোধ করিবে।

(২). |

(৩). |

(৪). |

(৫). |

(৬). |

(৭) এই বিধিমালার অধীন কোনো অভিযোগের তদন্তকার্য সম্পাদনের ক্ষেত্রে তদন্ত কার্যে দায়িত্বপ্রাপ্ত কর্মকর্তা দৈনিক ভিত্তিতে তাহার তদন্তকার্যের অগ্রগতি সম্পর্কে The Code of Criminal Procedure, 1898 (Act No.V of 1898) অনুযায়ী তদন্তের ক্ষেত্রে ব্যবহৃত কেস ডায়েরি প্রস্তুত ও সংরক্ষণ করিবেন।” (underlines supplied)

40. For these two different procedures for investigation under the same law i.e. Money Laundering Protirodh Ain, 2012 by different investigation agencies Sometimes confusions arises among the all concerned, which needs to be resolved.

41. The Special Judge appointed under the provision of Act of 1958 has no jurisdiction to deal with a case initiated under Money Laundering Protirodh Ain by any other investigation

agency other than the case initiated by the Commission before taking cognizance.

42. The moot question is whether during investigation of a case i.e. at the pre-trial stage before taking cognizance by a Special Judge under Money Laundering Protirodh Ain by an agency other than the Commission, the accused is entitled to move an application for bail or for any remedy before the Magistrate concerned where the case record lies who used to pass necessary orders for the purpose of investigation, including the order of remand.

43. We have already noticed that Upa bidhi 7 of bidhi 51 of the Bidhimala, 2019 has made Code of Criminal Procedure applicable during investigation period for the cases initiated by the agencies/organisations other than the Commission.

44. Thus, before submitting report as per provision of section 173 of the Code of Criminal Procedure and taking cognizance of the offence by a Special Judge appointed under the Act of 1958 i.e. at the pre-time stage an accused has every right to move all kinds of applications including the application for bail before the Magistrate concerned where the case is pending and record lies. And as per provision of section 497 of the Code of Criminal Procedure the Magistrate concerned has got the jurisdiction to deal with the matter in accordance with law.

45. For the sake of argument, if Magistrate is found to be lacking in authority and power to entertain and dispose of an application for bail of an accused in a case under the Money Laundering Protirodh Ain or any other special Law at the pre-trial stage, then how can the Magistrate pass an order for police remand of an accused under section 167 of the Code of Criminal Procedure and pass various necessary orders for the purpose of investigation at that stage? An accused cannot be remediless at pre-trial stage i.e. before taking cognizance by a Special Judge or Tribunal as the case may be.

46. In the absence of any express or implied prohibition in any other special Law or Rule, the Magistrate concerned may entertain, deal with and dispose of any application for bail of an accused under section 497 of the Code of Criminal Procedure. In case of rejection of his application for bail he may move before the Court of Sessions by filing a Criminal Miscellaneous Case under section 498 and thereafter in case of failure before the Court of Sessions, he can move under section 498 of the aforesaid Code for bail before the High Court Division.

47. It is pertinent to mention here that granting or refusal of bail to an accused is the discretion of a Magistrate or Judge concerned. However, such discretion has to be applied judiciously upon consideration of the gravity of an offence and keeping in mind the provision for granting bail as laid down in that particular law, if any.

48. Section 13 of the Money Laundering Protirodh Ain, 2012 makes provisions of granting bail, which is as follows:

“১৩। জামিন সংক্রান্ত বিধান।- এই আইনের অধীন অভিযুক্ত কোন ব্যক্তিকে জামিনে মুক্তি দেওয়া যাইবে, যদি-
(ক) তাকে জামিনে মুক্তি দেওয়ার আবেদনের উপর আভ্যন্তরীণ পক্ষকে শুনানীর সুযোগ দেওয়া হয়; এবং
(খ) তাহার বিরুদ্ধে আনীত অভিযোগে তিনি দোষী সাব্যস্ত হওয়ার যুক্তিসঙ্গত কারণ রহিয়াছে মর্মে আদালত সন্তুষ্ট না হন; অথবা
(গ) তিনি নারী, শিশু বা শারীরিকভাবে বিকলাঙ্গ এবং তাকে জামিনে মুক্তি দেওয়ার কারণে ন্যায় বিচার বিঘ্নিত হইবে না মর্মে আদালত সন্তুষ্ট হন।”

49. The above provision speaks that, ‘আদালত’ is the competent authority to consider the

prayer of bail of an accused under Money Laundering Protirodh Ain, 2012.

As per section ২ (জ) of the Money Laundering Protirodh Ain, 2012 ‘আদালত’ means ‘স্পেশাল জজ এর আদালত’.

50. We have already observed that in view of section 4(1) of the Act of 1958 the Special Judge shall assume its jurisdiction upon receiving a complaint of fact which constitute such offence or upon a report in writing of such facts made by any police officer. After taking cognizance of any offence punishable under the Money Laundering Protirodh Ain, 2012, if an accused files an application for bail, then the Senior Special Judge/Special Judge concerned will hear and dispose of the same in accordance with the provision of section 13 of the Money Laundering Protirodh Ain, 2012. However, because of different procedure of investigation as mentioned and discussed earlier the cases which are being initiated by the Commission, the Courts of Magistrates have got no jurisdiction to deal with the same in any manner rather as per rule 10 of the Anti-Corruption Rules, 2007 the Special Judge has got every jurisdiction to deal with the case including bail matter after its initiation.

51. Having discussed as above we are of the view that in the cases initiated by the agency(s)/ organization(s) other than the Commission at the pre-trial stage before taking cognizance by the Special Judge, the Magistrate concerned is not powerless to entertain the application for bail of an accused under Money Laundering Protirodh Ain, 2012.

52. However, in granting bail to an accused under Money Laundering Protirodh Ain, the Magistrate concerned or the Special Judge, as the case may be, has to follow the guidelines as laid down in section 13 of the said Ain.

53. Keeping in mind the relevant provision of laws as discussed above couple with the facts and circumstances of the present case, we are constrained to hold that since the order dated 26.09.2021 was passed by the learned Metropolitan Sessions Judge, Dhaka in a Miscellaneous Case, not by a Special Judge appointed under the Act of 1958, the application under section 10(1A) of the Act of 1958 is not amenable before the High Court Division against said order.

54. Thus, the application under section 10(1A) of the Act of 1958 filed by the victim-petitioners against an order passed by the Metropolitan Sessions Judge before the High Court Division is absolutely misconceived one and the High Court Division at the time of issuance of the Rule has failed to take notice of it and to appreciate this legal aspect and thereby, erroneously issued the Rule and passed various ad-interim orders including the impugned order.

55. Since the application under section 10(1A) of the Act of 1958 filed by the victim-petitioners is not amenable in the High Court Division and the High Court Division wrongly applied its jurisdiction, thus the Rule issuance order and all the orders including the impugned order passed by the High Court Division, in the said Rule is nullity in the eye of law and are liable to be interfered with.

56. Accordingly, this leave petition is disposed of.

57. The Rule issued by the High Court Division in Criminal Revision No.2330 of 2021 is discharged and all the orders including the impugned order passed by the High Court Division is set aside.

58. However, the victim-petitioners are not precluded to proceed with the matter in accordance with law.