

IN THE SUPREME COURT OF BANGLADESH

APPELLATE DIVISION

Present:

Mr. Justice Hasan Foez Siddique, *Chief Justice*

Mr. Justice Md. Nuruzzaman

Mr. Justice Obaidul Hassan

Mr. Justice Borhanuddin

CRIMINAL APPEALS NO.67-71 OF 2019

(From the judgment and order dated 11.10.2018 passed by the High Court Division in Criminal Miscellaneous Cases No.20701-20705 of 2013)

Barrister Muhammad Jamiruddin Sircar**Appellant**
(In all the cases)

-Versus-

The State and another**Respondents**
(In all the cases)

For the appellant : Mr. A.J. Mohammad Ali, senior
(In all the cases) Advocate with Mr. Abdur Razzak Khan,
senior Advocate, instructed by Mr.
Zainul Abedin, Advocate-on-Record.

For the respondent No.1 : Mr. Bashir Ahmed, Deputy Attorney
(In all the cases) General, instructed by Mr. Haridas
Paul, Advocate-on-Record.

For the respondent No.2 : Mr. Sarwar Ahmed, senior Advocate,
(In all the cases) instructed by Mr. Mohammad Ali
Azam, Advocate-on-Record.

Date of hearing : The 11th day of August, 2022.

Date of judgment : **The 25th day of August, 2022**

JUDGMENT

Obaidul Hassan, J. The Criminal Appeals No.67, 68, 69, 70, 71 of 2019 are being disposed of by rendering this common judgment as all the cases involve common questions of law and facts and the parties are also identical in all the cases.

These Criminal Appeals are directed against the judgment and order dated 11.10.2018 discharging all the Rules passed by a Single Bench of the High Court Division in Criminal Miscellaneous Cases

No.20705, 20704, 20701, 20703 & 20702 of 2013 preferred by the appellant.

The appellant initiated applications before the High Court Division under Section 561A of the Code of Criminal Procedure, 1898 challenging the proceedings being Metro Special Case Nos.219, 221, 218, 219 and 223 of 2013 in which Rules were issued with interim order of stay of the further proceedings. A Division Bench of the High Court Division finally heard all the Rules and on 19.05.2016 a splitted judgment was delivered by the said division Bench. One of the Judges of that Bench made all the Rules absolute quashing the proceedings of aforesaid Metro Special Cases while another Judge of that Division Bench discharged all the Rules and vacated the order of stay. Since there was a dissenting opinion regarding the result of the Rules, the matter was placed before the Hon'ble Chief Justice for necessary order. Pursuant to the order of the Hon'ble Chief Justice a Single Bench was constituted and the Judge of that Bench upon hearing discharged all the Rules by its judgment and order dated 11.10.2018 and granted certificate to prefer appeal before this Division. Thereafter, the appellants have come up with these appeals as referred below.

Criminal Appeal No.67 of 2019:

This Criminal Appeal is directed against the judgment and order passed in Criminal Miscellaneous Case No.20705 of 2013 arising out of Metro Special Case No.219 of 2012 corresponding to

Sher-E-Bangla Nagar Police Station Case No.47 dated 28.12.2010 and A.C.C. G.R. No.117 of 2010 under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 pending in the Court of Metropolitan Senior Special Judge, Dhaka.

The prosecution case, succinctly, is that the Anti-Corruption Commission lodged the First Information Report (FIR) with the concerned police station against the appellant along with another person contending *inter alia*, that the appellant being the former speaker of the National Parliament received medical treatment at Mount Elizabeth Hospital, Singapore from 26.01.2006 to 12.02.2006. On his return back to the country after undergoing treatment in abroad, he intending to get his medical treatment bill amounting Tk.27,86,364.00 (twenty seven lac eighty six thousand three hundred and sixty four only) reimbursed applied to the then Prime Minister for approval and he accordingly forwarded a summary proposal to the then Prime Minister on 04.4.2006. But the Prime Minister instead of rejecting the summary sent the same back to the appellant on 31.5.2006 vide memo No.5.2.31.30.00.00.10-2006-82 to dispose of it according to the provisions of Sangsad Shachibalaya Ain, 1994. After receiving back the summary the appellant decided to get the bill approved accordingly. Although the Auditor and the Account Officer raised objection in respect of the said bill, but the Chief Accounts Officer of the Parliament Secretariat sanctioned a sum of

Tk.27,86,364.00 (twenty seven lac eighty six thousand three hundred and sixty four only) against the medical treatment expenditure and the appellant received the same amount reimbursed. The appellant in this way, in collaboration with the Chief Accounts Officer, Bangladesh National Parliament Secretariat illegally got approval of reimbursing the said bill amount and received the said amount. It is alleged that in the aforesaid way, the appellant committed offence under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

The Anti Corruption Commission (ACC) upon investigation submitted charge sheet recommending prosecution of the appellant and another accused under the aforesaid provisions of law. The case was then transferred to the Court of Metropolitan Senior Special Judge, Dhaka, who took cognizance of the offence against the appellant and another accused. Challenging the proceeding of the case, the appellant filed an application under Section 561A of the Code of Criminal Procedure in the High Court Division and obtained Rule and an order of stay of the proceedings. Lastly, upon hearing a Single Bench of the High Court Division by its judgment and order dated 11.10.2018 discharged the Rule and vacated the order of stay. The appellant filed the Criminal Appeal No.67 of 2019 before this Division challenging the aforesaid judgment and order of the High Court Division.

Criminal Appeal No.68 of 2019:

The instant Criminal Appeal is directed against the judgment and order passed in Criminal Miscellaneous Case No.20704 of 2013 arising out of Metro. Special Case No.221 of 2012 corresponding to Sher-E-Bangla Nagar Police Station Case No.51 dated 28.12.2010 and ACC G.R. No.121 of 2010 under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 pending in the Court of Metropolitan Senior Special Judge, Dhaka.

The prosecution case, in short, is that the ACC lodged an FIR with the concerned police station against the then Deputy Speaker Mr. Akter Hamid Siddiqui along with the appellant stating, *inter alia*, that Mr. Akter Hamid Siddiqui, the then Deputy Speaker went to London and Moscow at his own costs with permission from the appellant. On his return to the country the then Deputy Speaker submitted medical bills amounting Tk.1,21,703.59 (one lac twenty one thousand seven hundred three taka and fifty nine paisa only). Although the Audit Officer raised objections against the said bill of the then Deputy Speaker, the appellant ignoring the same got the said bill sanctioned. The then Deputy Speaker in connivance with the appellant received the said medical bill reimbursed. In the aforesaid way, the appellant thus committed offences under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

Criminal Appeal No.69 of 2019:

This Criminal Appeal is directed against the judgment and order passed in Criminal Miscellaneous Case No.20701 of 2013 arising out of Metro. Special Case No.218 of 2012 corresponding to Sher-E-Bangla Nagar Police Station Case No.48 dated 28.12.2010 and ACC G.R. No.118 of 2010 under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947, pending in the Court of Metropolitan Senior Special Judge, Dhaka.

The prosecution case, in brief, is that the ACC lodged an FIR with the concerned police station against Mr. Khandokar Delowar Hossain, the then Chief Whip along with the appellant stating, *inter alia*, Mr. Khandokar Delowar Hossain, the then Chief Whip of the 8th National Parliament was provided with some furniture and other goods from the parliament secretariat for the use at his residential office. After dissolution of the 8th National Parliament the then Chief Whip was requested on 16.11.2006 to make the furniture and other goods supplied earlier to him returned, but he intimated the National parliament secretariat on 31.01.2007 stating that the furniture and other goods had been damaged due to use and it was not possible to return those and he also sought exoneration from the liability of returning those goods. The appellant misusing his power accepted the prayer of the then Chief Whip and exempted him from the liability of returning those goods. In the aforesaid way, the then Chief Whip in collusion with the appellant misappropriated the furniture

and other goods worth about Tk.6,09,662.00 (six lac nine thousand six hundred sixty two only). Thus, the appellant committed offences under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

Criminal Appeal No.70 of 2019:

This Criminal Appeal is directed against the judgment and order passed in Criminal Miscellaneous Case No.20703 of 2013 arising out of Metro. Special Case No.19 of 2013 corresponding to Sher-E-Bangla Nagar Police Station Case No.50 dated 28.12.2010 and ACC G.R. No. 120 of 2010 under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947, pending in the Court of Metropolitan Senior Special Judge, Dhaka.

The prosecution case, in brief, is that the ACC lodged an FIR with the concerned police station against Mr. Khandokar Delowar Hossain, the then Chief Whip along with the appellant stating, *inter alia*, that Mr. Khandokar Delowar Hossain, the then Chief Whip of the 8th National Parliament was used to reside at the 1st floor of House No.103, S.C.C. Road, Armanitola, Dhaka and although only two electric meters were used by him at his own floor while he submitted electric bills from November 2001 to October 2006 for electric meters twelve in numbers. Likewise although he used two double gas burners at his floor he submitted gas bills from November, 2001 to February, 2005 for six double gas burners and two single gas burners. The appellant approved the said electric and gas

bills of the then Chief Whip which he was not entitled to get. In the aforesaid way, the then Chief Whip in accomplice with the appellant made loss of sum amounting Tk.4,40,087.50 (four lac forty thousand eighty seven taka and fifty paisa only) to the government fund.

Criminal Appeal No.71 of 2019:

This Criminal Appeal is directed against the judgment and order passed in Criminal Miscellaneous Case No.20702 of 2013 arising out of Metro. Special Case No.223 of 2012 corresponding to Sher-E-Bangla Nagar Police Station Case No.49 dated 28.12.2010 and ACC G.R. No.119 of 2010 under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947, pending in the Court of Metropolitan Senior Special Judge, Dhaka.

The prosecution case, in brief, is that the ACC lodged an FIR with the concerned police station against Mr. Khandokar Delowar Hossain, the then Chief Whip along with the appellant and another accused stating, *inter alia*, that on 29.7.2006 Mr. Khandokar Delowar Hossain, the then Chief Whip of the 8th National Parliament filed an application to the appellant mentioning that he had been admitted in Singapore National University Hospital on advice of the Medical Board and he needed Tk.10,00000.00 (ten lac only) for bearing his medical expenses. The bills were sent to the then Prime Minister's Office for approval which was returned back to the then Speaker. The appellant misusing his power approved the medical bills amounting Tk.6,00,000.00 (Six lac only). In the aforesaid way, the then Chief

Whip in accomplice with the appellant and another accused person misappropriated the government money.

In all the aforesaid cases the ACC upon investigation submitted charge sheets against the appellant along with other accused persons under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947. All the cases were transferred to the Court of Metropolitan Senior Special Judge, Dhaka, who took cognizance of the offence against appellants and other accused persons.

Challenging the proceeding of those five cases, the appellant filed five applications under Section 561A of the Code of Criminal Procedure in the High Court Division and obtained Rule and an order of stay of the proceedings. Lastly, upon hearing a Single Bench of the High Court Division by its judgment and order dated 11.10.2018 discharged the Rule and vacated the order of stay.

Being aggrieved with the judgment and order dated 11.10.2018 of the High Court Division the Appellant filed the above mentioned five Criminal Appeals before this Division.

Mr. A.J. Mohammad Ali, learned senior Advocate appearing with Mr. Abdur Razzak Khan, the learned Advocate on behalf of the appellant contended that the allegation brought against the appellant is false for the reasons that after his medical treatment in the abroad he sent the medical bill to the then Prime Minister for sanction, but

the Prime Minister without rejecting the said bill sent it back to the appellant for taking necessary steps as per provisions of the Parliament Secretariat Act, 1994. In the same way the then Chief Whip too submitted foreign medical bills to the appellant which he sent to the Prime Minister. But it was also sent back to the appellant for necessary action according to the Parliament Secretariat Act, 1994. On receipt of the said bills the appellant had no option other than endorsing approval of those. The learned Advocates contended next that the appellant approved the alleged medical bills and other utility bills on good faith, and if the appellant had any criminal intention to misappropriate the government fund he would not forward the alleged bills to the then Prime Minister for sanction.

The learned Counsels submitted further that the appellant approved the alleged medical bills on condition that he would be responsible to refund the medical bill when directed by the Supreme Court of Bangladesh to do so. Similarly, the appellant approved the medical bills of the then Deputy Speaker and the Chief Whip by taking an undertaking to refund the medical bills, if directed by the Supreme Court of Bangladesh. The learned Counsels further contended that earlier late Deputy Speaker Mr. Humayun Rashid Chowdhury and the former Chief Whip Mr. Abul Hasnat Abdullah received the foreign medical bills to which the then Prime Minister provided sanction and thus the appellant justifiably approved the

alleged medical bills. By reference to Sections 9 and 18 of the Parliament Secretariat Act, 1994 the learned Counsels contended next that the appellant being the head of the legislature was empowered to approve the alleged medical bills. The learned Counsels submitted too that the appellant had no criminal intention in allowing the application of the then Chief Whip for exemption from returning the furniture and also approving the alleged utility bills. Assailing the alleged judgment and order of the High Court Division the learned Counsels further submitted that the High Court Division without applying judicial mind discharged the Rules in the Criminal Miscellaneous Cases filed by the appellant and thus the impugned judgment and order dated 11.10.2018 passed by the High Court Division is liable to be set aside. The learned Counsels lastly submitted that the cases brought against the appellant are preposterous and as such the proceedings of those cases are liable to be quashed to prevent the abuse of the process of the Court.

Per contra, Mr. Bashir Ahmed, the learned Deputy Attorney General on behalf of the respondent No.1 contended that according to Rule 12 of the Special Medical Attendant Rules the appellant was not empowered to approve the foreign medical bills of the Speaker, the Deputy Speaker and the Chief Whip without the prior sanction of the Prime Minister. The learned Deputy Attorney General next submitted that the appellant without having sanction of the Prime

Minister approved the alleged medical bills and as such he was liable to be prosecuted. The learned Deputy Attorney General argued that according to Section 18 of the Parliament Secretariat Act, 1994 the Speaker has the authority to use the funds at his choice, but such use of fund can only be made for lawful expenditure. The learned Deputy Attorney General finally submitted that the appellant by abusing his power approved the alleged bills and thus being the head of the National Parliament he would not get impunity for the illegality done by him.

Mr. Sarwar Ahmed, the learned Advocate for the respondent No.2 adopted the submissions extended by the learned Deputy Attorney General. But however he added in his submission that the jurisdiction of the ACC would not be barred by the provisions of the Parliament Secretariat Act, 1994 and as such the appellant could be prosecuted according to the Prevention of Corruption Act, 1947.

For the convenience of discussion we may cluster all the cases in two categories based on the facts of all the five cases corresponding to five Criminal Appeals, as stated above. First category includes Criminal Appeals No.67, 68 and 71 of 2019 which deals with the approval of foreign medical bills by the Speaker of Jatiya Sangsad which he was not allegedly authorized to do while the second category includes Criminal Appeals No.69 and 70 of 2019 which deals with the misappropriation of furniture and other goods

supplied to the then Chief Whip for his use in his residential office and withdrawing excessive electricity and gas bills at his residence to which he was not entitled to get.

Now, we will embark upon discussing the first category. The allegation against the appellant was that he sanctioned medical bills for the then Deputy Speaker and the then Chief Whip. In this regard the main issue hinges on a question whether the appellant i.e. the then Speaker of the National Parliament had the authority to give sanction to such medical bills. Let us eye on Section 9 of the Speaker and Deputy Speaker (Remuneration and Privileges) Act, 1974 which lays down in the following:

“9. Other allowances, facilities and Privileges-The other allowances, facilities and privileges of the Speaker and the Deputy Speaker shall be the same as are admissible to a Minister under the Act.”

Again, Section 13 of the Ministers, Ministers of State and Deputy Ministers (Remuneration and Privileges) Act, 1973 provides that-

“13. Medical Facilities-(1) A Minister, Minister of State or Deputy Minister and his family shall be entitled to such medical facilities as may be prescribed by rules made under this Act.

(2) Until rules are made under sub-section (1), Medical Attendance Rules, 1950 shall be applicable to a Minister, Minister of State or Deputy Minister and his family.”

During hearing it has been brought to notice of this court by the learned counsels for both sides that no Rules under Section 13(1) of

the Ministers, Ministers of State and Deputy Ministers (Remuneration and Privileges) Act, 1973 has yet been formulated for the Minister, Minister of State or Deputy Minister. Thus, it is indisputably evident that the Special Medical Attendant Rules, 1950 (shortly Rules, 1950) is the only law applicable for the Speaker and Deputy Speaker in respect of their medical facilities availed in abroad.

Rule 2(e) of the Rules, 1950 defines the term 'medical attendance' in the following-

"2.(e) 'medical attendance' means attendance in hospital or at the resident of a Government servant, and includes-

- (i) such pathological, bacteriological, radiological or other methods of examination for the purposes of diagnosis as are available in any Government hospital or laboratory in Bangladesh and are considered necessary by the authorised medical attendant ; and
- (ii) such consultation with a specialist or other medical officer in the service of the Government as the authorised medical attendant certifies to be necessary, to such extent and in such manner as the specialist or medical officer may in consultation with the authorised medical attendant determine."

Again, Rule 9 of the Rules, 1950 provides that-

"9. Nothing in these Rules shall be deemed to entitle a patient-

- (a) to travelling allowance for a journey-
- (i) for attendance by a dentist or oculist; or
- (ii) outside Bangladesh ; or

(b) to reimbursement of costs incurred in respect of medical services obtained by him, or to travelling allowance for any journey performed by him, otherwise than as expressly provided in these Rules.”

On bare reading of Rule 9 in conjunction with Rule 2(e) of the Rules, 1950 it emanates patently that there is no scope for the Speaker and the Deputy Speaker to claim medical expenses occurred in abroad from the government fund. But Rule 12 of Rules, 1950 empowers the Government for sanctioning such foreign medical treatment bills to the Speaker and Deputy Speaker.

Rule 12 of the Rules, 1950 reads thus-

“12. Nothing in these rules be construed as preventing the Government from granting to any person to whom they apply any concession relating to medical treatment or attendance which is not authorised by these rules.”

At this juncture, it is important to know about the medical facilities of the Chief Whip. Section 2(b) of the Members of Parliament (Remuneration and Allowances) Order, 1973 reads in the following-

“2(b) ‘Member’ means a Member of Parliament but does not include the Speaker or the Deputy Speaker or the Prime Minister or a Minister or a Minister of State or a Deputy Minister.”

Thus, the Chief Whip falls within the definition of Section 2(b) of the Members of Parliament (Remuneration and Allowances) Order, 1973 and is entitled to get remuneration, allowances and medical facilities like a Member of Parliament.

Again, Section 7 of the Members of Parliament (Remuneration and Allowances) Order, 1973 provides that-

“7. A Member and the members of his family shall be entitled to the same medical facilities as are admissible to a gazetted officer (Class I) of the Government and the members of the family of such officer under the Government Servants (Medical Attendance) Rules, 1963: Provided that, notwithstanding anything contained in the said Rules, a Member shall be entitled to a sum of seven hundred taka per *mensem* as medical allowance, but shall not be entitled to reimbursement of any expenses incurred by him for his treatment or for the treatment of the members of his family.”

In view of the aforementioned provisions of law it appears that the Chief Whip is not entitled to get medical expenditure occurred in abroad reimbursed from the government fund except when the Prime Minister gives sanction in that behalf.

Now we may advert to a pertinent question as to whether the Appellant had *mens rea* in approving the alleged foreign medical bills submitted by himself, the then Deputy Speaker and the then Chief Whip. From the record it divulges that on 04.04.2006 pursuant to Rule 12 of the Rules, 1950 the appellant sent a summary proposal to the then Prime Minister for having approval of his own medical treatment bill amounting Tk.27,86,364.00 (Twenty seven lac eighty six thousand three hundred and sixty four only). In the summary it was also mentioned that earlier the Prime Minister approved the medical

bills for the treatment of the former Speaker Mr. Humayun Rashid Chowdhury and former Chief Whip Mr. Abul Hasnat Abdullah. But the then Prime Minister on perusal of the said summary without rejecting the summary sent it back to the appellant to dispose of as per provisions of the Parliament Secretariat Act, 1994. The relevant segment of the charge sheet in respect of Metro. Special Case No.219 of 2012 has been extracted below:

"উল্লেখিত ১২ নং বিধি প্রয়োগ করে উক্ত রুলের বিধান শিথিলপূর্বক বিদেশে চিকিৎসা ব্যয় নির্বাহ অনুমোদনের জন্য সংসদ সচিবালয় থেকে মাননীয় প্রধানমন্ত্রীর নিকট সারসংক্ষেপ প্রেরণ করা হলে প্রধানমন্ত্রীর কার্যালয়ের পত্র সংখ্যা নং- ৫.২.৩১.৩০.০০.০০.১০.২০০৬-৮২, তারিখ: ৩১.৫.২০০৬ ইং মোতাবেক অনুমোদন না দিয়ে জাতীয় সংসদ সচিবালয় আইন, ১৯৯৪ অনুযায়ী ব্যবস্থা নেয়ার কথা উল্লেখ করে সারসংক্ষেপটি ফেরত প্রদান করা হয়। প্রধানমন্ত্রীর কার্যালয় হতে সার-সংক্ষেপটি ফেরত পাওয়ার পর বাংলাদেশ জাতীয় সংসদ সচিবালয়ের সংশ্লিষ্ট (২৩ থেকে ২৭নংনোটানুচ্ছেদ) স্পীকারের সিদ্ধান্তের জন্য উপস্থাপন করা হলে সাবেক স্পীকার ব্যারিস্টার মুহাম্মদ জমিরউদ্দিন সরকার ২৮-৩০ নং অনুচ্ছেদে বিশদ বিবরণ লিপিবদ্ধ করে ৩১ নং নোটানুচ্ছেদে নিম্নরূপ সিদ্ধান্ত প্রদান করেন।

উপরিউক্ত বিষয় মাননীয় প্রধানমন্ত্রীর নির্দেশ ও সংসদ সম্পর্কিত আইন বিচার বিশ্লেষণ করে on good faith and on my honest understanding of law বিলটি পরিশোধের সিদ্ধান্ত নিলাম। যদি কোনদিন উপযুক্ত কর্তৃপক্ষ এ ব্যাপারে দ্বিমত পোষণ করেন এবং বিলের টাকা পরিশোধের জন্য আইনের আশ্রয় নেন, তাহলে বাংলাদেশ সুপ্রীম কোর্টের সিদ্ধান্ত অবশ্যই মাননীয় স্পীকার মেনে নিবেন বলে এতদ্বারা Guarantee/Undertaking দিচ্ছেন। ইতিপূর্বের মত উপযোজন পূর্বক সিদ্ধান্ত বাস্তবায়ন করা হউক।"

From the above it has been demonstrated that being loyal to the existing law of the land the appellant sent the summary to the then Prime Minister for having approval of his own medical bill. Had the appellant any criminal intention to misappropriate the money he would not have sent it for the approval of the Prime Minister who

was legally empowered to provide approval of the said medical bill. But when the then Prime Minister without rejecting the said medical bill sent back to the appellant for taking necessary steps as per provisions of the Parliament Secretariat Act, 1994, he had no other alternative, but to approve the said medical bill, being the head of the Legislature. Accordingly the appellant approved the said bill *bona fide* on giving endorsement in the following terms “*On good faith and on my good understanding of law*”. Moreover, the appellant approved the bill together with a certificate that he would give an undertaking or guarantee to pay back the amount, if the appropriate authority disagrees with his opinion and resort to legal process, the appellant would abide by the decision of the Supreme Court of Bangladesh. From the foregoing discussion it is palpably patent that the appellant had no intention to misappropriate the alleged medical bill.

Now let's discuss what about the rest two medical bills of then Deputy Speaker and Chief Whip. It is the clear standing of law that the Deputy Speaker and Chief Whip are not entitled to reimburse foreign medical expenses except with the sanction of the Prime Minister. In the cases in hand, the Prime Minister did not provide sanction to the alleged medical bills of the Deputy Speaker and the Chief Whip. But the then Deputy Speaker and the Chief Whip got the alleged medical bills approved by the appellant, for which the then Deputy Speaker and the Chief Whip were liable. Despite that the

appellant approved the said medical bills in good faith as the head of the National Parliament, and on belief that earlier former Speaker Mr. Humayun Rashid Chowdhury and former Chief Whip Mr. Abul Hasnat Abdullah received such medical bills, we deduce. It has been drawn closer to our notice that the Appellant approved the medical bill of the then Deputy Speaker Mr. Akter Hamid Siddiqui amounting Tk.1,21,703.59 subject to the condition that the Deputy Speaker would refund the said sum of money if so directed by the Supreme Court of Bangladesh in legal proceeding. Accordingly, the then Deputy Speaker submitted an undertaking signed by him to the Parliament Secretariat. The relevant portion of the charge sheet of Metro. Special Case No.221 of 2012 reads as under:

"সাবেক স্পীকার ব্যারিস্টার জমির উদ্দিন সরকার উক্ত বৈদেশিক চিকিৎসা ব্যয় অনুমোদনের জন্য প্রধানমন্ত্রীর কার্যালয়ে সারসংক্ষেপ প্রেরণ না করে জাতীয় সংসদ সচিবালয় আইন, ১৯৯৪ এর আওতায় তাকে ১,২১,৭০৩.৫৯/= টাকা প্রদানের নির্দেশ প্রদান করেন। তবে শর্ত আরোপ করেন যে, যদি কোনদিন সুপ্রীম কোর্টের রায়ে টাকা ফেরত দেয়ার নির্দেশ দেয়া হয় তাহলে টাকাটা ফেরত দিতে হবে। সাবেক ডেপুটি স্পীকার জনাব আখতার হামিদ সিদ্দিকী এক অঙ্গীকারনামায় স্বাক্ষর করে জাতীয় সংসদ সচিবালয়ে দাখিল করেন যা হিসাব -১ শাখায় ১৯-২-০৮ খ্রি. তারিখে গৃহীত হয়। তিনি অঙ্গীকারনামায় উল্লেখ করেন যে, সরকার বা অন্য কোন প্রতিষ্ঠান যদি কোনদিন আইনের আশ্রয় নেয় এবং আদালতে যদি উক্ত টাকা ফেরত প্রদানের বিষয়ে নির্দেশ প্রদান করে তাহলে তিনি উত্তোলিত ১,২১,৭০৩.৫৯/= টাকা ফেরত প্রদানে বাধ্য থাকবেন।"

In view of discussions as made above, we find that the appellant had no *mens rea* in approving the medical bill of the then Deputy Speaker. Now, we turn to the case of the then Chief Whip in respect of approval of his medical bill by the appellant. From the record it transpires that the then Chief Whip filed an application to

the appellant i.e. the then Speaker of Jatiya Sangsad praying for reimbursement of medical treatment expenditure by submitting medical bill amounting Tk.10,00,000.00 (Ten lac only), which was sent to the then Prime Minister in the form of a summary for having approval as per provisions of Rule 12 of Rules, 1950. On 07.08.2006 the then Prime Minister without rejecting the summary sent it back to the appellant with a recommendation for disposal of the same as per provisions of the Parliament Secretariat Act, 1994. On receipt of the said recommendation the appellant gave approval to the medical bill to the extent of Tk.6,00,000.00 (Six lac only) on condition of refunding the said sum of money in future. Thus, the appellant was constrained to approve the said medical bill as the head of the National Parliament. The relevant portion of charge sheet of Metro. Special Case No.223 is being reproduced below:

"উক্ত আবেদনের প্রেক্ষিতে সংসদ সচিবালয় হতে দি স্পেশাল মেডিকেল এটেনডেন্ট রুলস ১৯৫০ এর ১২ নং বিধি শিথিল করে ১০,০০০০০/- টাকা প্রদানের বিষয়ে মাননীয় প্রধানমন্ত্রীর অনুমোদনের জন্য সারসংক্ষেপ প্রেরণ করা হলে প্রধানমন্ত্রীর কার্যালয়ের ৭/৮/২০০৬ তারিখের এক পত্রে জাতীয় সংসদ সচিবালয় ,১৯৯৪ এর আওতায় প্রয়োজনীয় কার্যক্রম গ্রহণ করার লক্ষ্যে সারসংক্ষেপটি ফেরত দেয়া হয়। উল্লেখিত সারসংক্ষেপটি ফেরত পাওয়ার পর তৎকালীন স্পিকার ব্যারিস্টার মুহাম্মদ জমির উদ্দিন সরকার জাতীয় সংসদ সচিবালয় আইন, ১৯৯৪ এর ১৮ নং ধারায় প্রদত্ত ক্ষমতা প্রয়োগ করে অঙ্গীকারনামা প্রদানের শর্তে জনাব খোন্দকার দেলোয়ার হোসেনকে ৬,০০,০০০/- টাকা চিকিৎসা বিল পরিশোধের অনুমোদন প্রদান করেন। খোন্দকার দেলোয়ার হোসেন ওই সময় সিঙ্গাপুর চিকিৎসাধীন থাকায় তার পক্ষে তার ছেলে খোন্দকার আব্দুল হামিদ ও কন্যা দেলোয়ারা বেগম পান্না শর্তানুযায়ী অঙ্গীকারনামা প্রদান করেন। অঙ্গীকারনামায় তারা উল্লেখ করেন যে, যদি কোনদিন সুপ্রিম কোর্টের রায়ে টাকা ফেরত দেয়ার নির্দেশ প্রদান করা হয় তা হলে উল্লেখিত ৬,০০,০০০/- টাকা তাদের পিতার অবর্তমানে তারা ফেরত প্রদানে বাধ্য থাকবেন।"

Thus, it is unerringly transparent that the appellant had no *mens rea* in providing approval to the medical bill submitted by the then Chief Whip Mr. Khandokar Delwar Hossain and as such the appellant cannot be prosecuted.

According to our Constitution there are three organs of the State i.e. the Executive, the Legislature and the Judiciary. The Executive is headed by the Prime Minister, while the Legislature and the Judiciary are headed by the Speaker and the Chief Justice respectively.

The Prime Minister is the head of government of the Republic of Bangladesh. Executive authority is vested in the Prime Minister and their chosen Council of Ministers, despite the president of Bangladesh being the head of the executive having nominal power. The Prime Minister is often the leader of the party or the coalition with a majority in the Parliament, which is the legislative body in the Republic of Bangladesh. The Prime Minister and their cabinet are at all times responsible to the Parliament.

The position of Speaker in parliamentary system of government is as below:

The Speaker of the Lok Sabha in India is the presiding officer and the highest authority of the Lok Sabha, the lower house of the Parliament of India. He conducts the business in house and decides whether a bill is a money bill or not. He maintains discipline and decorum in the house and can punish a member for unruly behavior with respect to law after suspending them.

He also permits the moving of various kinds of motions and resolutions such as a motion of no confidence, motion of adjournment, motion of censure and calling attention notice as per the rules. The Speaker decides on the agenda to be taken up for discussion during the meeting.

Further, all comments and speeches made by members of the House are addressed to the Speaker. In Bangladesh Parliament the Speaker enjoys the similar power as the Speaker of Lok Sabha in India enjoys.

In the case of *Maves Jasmin and others vs. Md. Ruhul Amin-3 and others* reported in *26 BLC(AD)[2021] 239 paragraph-8*, it has been held by this Division that “The office of the Speaker is held in the highest respect and esteem in parliamentary traditions and the Speaker holds an important and ceremonial office. Such respect is historical and inherent in the concept of Parliamentary democracy. Pandit Jawaharal Nehru had to say about the position of the Speaker, which is reproduced below:

The Speaker represents the House. He represents the dignity of the House, the freedom of the House and because the House represents the nation, in a particular way, the Speaker becomes the symbol of the nation freedom and liberty.”

This Division in the above said case rendered its decision that “The Parliament Secretariat is an independent constitutional and statutory body which functions under the guidance and control of the Speaker. The Parliament Secretariat is part of the second organ of the

State. The Speaker is the executive head of the Parliament Secretariat. In the discharge of the constitutional and statutory responsibility, the Speaker of the Parliament is assisted by the officers and staffs of Parliament Secretariat. The main activity of the Secretariat is to provide secretarial assistance and support to the functions of the Speaker and Parliament.”

The role of Chief Justice where parliamentary form of government exists is as under:

Indian Chief Justice is the chief Judge of the Supreme Court of India as well as the highest-ranking position holder of the Indian Judiciary. The Constitution of India grants power to the president of India to appoint, in consultation with the outgoing Chief Justice, the next Chief Justice, who will serve until they reach the age of sixty-five.

On the administrative side, the Chief Justice carries out functions of maintenance of the roster, appointment of court officials and general and miscellaneous matters relating to the supervision and functioning of the Supreme Court.

In Bangladesh the Chief Justice also tasked with similar jobs like the Chief Justice of India.

Further, in view of the judgment delivered by this Division in the case of *Bangladesh vs. Md. Ataur Rahman and Ors.* reported in *69 DLR(AD)(2017) 17, paragraphs 43-46*, this division observed that the present position of the Speaker of the Jatiya Sangsad is placed at serial No.3, right after the Prime Minister but in 1975 both Speaker and the Chief Justice was in the same serial i.e. in serial No.4. This

division further observed that the Chief Justice should be placed in serial No.3. Meaning thereby both the Speaker of the Jatiya Sangsad as well as the Chief Justice of Bangladesh are in the same serial of the warrant of precedence.

Now let us see how the medical expenses of the President, Prime Minister and Chief Justice of Bangladesh and other Judges of the Supreme Court are met.

President:

The position of the President is at the top in the warrant of precedence and he is entitled to medical facilities abroad. Section 10 of The President's (Remuneration and Privileges) Act, 1975 lays down that-

“The President and his family shall be entitled free of charge, to treatment at any hospital in Bangladesh, that can, in the opinion of his physician, provide necessary and suitable treatment:

Provided that the President and his family shall ordinarily be entitled to receive medical treatment at the residence:

Provided further that the President and his family may, if so advised by his physician, receive medical treatment abroad or consult a foreigner or a physician other than his own and receive such other treatment at the Government cost as may be prescribed.”

Prime Minister:

The Prime Minister being the head of the Executive Organ of the Country also enjoys medical facilities in abroad. Section 12 of The

Prime Minister's (Remuneration and Privileges) Act, 1975 provides that-

“The Prime Minister and his family shall be entitled free of charge, to treatment at any hospital in Bangladesh, that can, in the opinion of his physician, provide necessary and suitable treatment.

Provided that the Prime Minister and his family shall ordinarily be entitled to receive medical treatment at the residence:

Provided further that the Prime Minister and his family may, if so advised by his physician, receive medical treatment abroad or consult a foreigner or a physician other than his own and receive such other treatment at the Government cost as may be prescribed.”

Chief Justice and others Judges of the Supreme Court:

Being the head of the Judiciary the Chief Justice of Bangladesh has been delegated by the Government with its power (under Rule 12 of the Special Medical Attendants Rule, 1950) vide letter dated 13th March, 2013 under memo No.10.00.0000.128.002.06.2013-355 issued by the Law and Justice Division of the Ministry of Law, Justice and Parliamentary Affairs to take necessary steps for endorsing payment in respect of the medical expenses incurred by the learned Judges of the Supreme Court of Bangladesh and their family members.

In compliance with the said letter the Chief Justice of Bangladesh framed Guidelines for Supreme Court Judges for Claiming Medical Expenses Incurred Home and Abroad, 2015 (shortly Supreme Court Judges Medical Expenses Guidelines, 2015)

which was adopted in the Full Court Meeting comprising both the Divisions of the Supreme Court of Bangladesh, held on 23rd November, 2015 and 23rd June, 2022 which has been acted upon and thus, the said guideline has got force of law. All the Judges of the Supreme Court and all other concerned of the State functionaries are bound to follow this guideline in respect of payment of medical expenses incurred at Home and Abroad. For better understanding the preamble of **The Supreme Court Judges Medical Expenses Guidelines, 2015** is extracted in the following:

“Whereas, in the letter dated 13th March, 2013 under memo No.10.00.0000.128.002.06.2013-355 issued by the Law and Justice Division of the Ministry of Law, Justice and Parliamentary Affairs of the People’s Republic of Bangladesh, it has been spelt out that in view of the judgment of the High Court Division of the Supreme Court of Bangladesh, passed in Writ Petition No.10803 of 2011, the Chief Justice of Bangladesh may take necessary steps for approving the bills submitted by the Judges of the Supreme Court against the expenses incurred for their medical treatment and expenses ancillary and incidental thereto;

And

Whereas, by virtue of Rule 12 of the Special Medical Attendance Rules, 1950, the Government, vide aforesaid letter dated 13th March, 2013 under memo No.10.00.0000.128.002.06.2013-355, accorded concession and, thereby, delegated its power to the Chief Justice of Bangladesh to take necessary steps for making payment in respect of medical expenses

incurred by the Judges of the Supreme Court and their family members.

And

Whereas, in the aforesaid backdrop and pursuant to the resolution adopted in the Full Court Meeting comprising both the Divisions of the Supreme Court of Bangladesh, held on 23rd November, 2015, a guideline was approved for providing guidance to the Judges of the Supreme Court of Bangladesh for reimbursement of medical expenses incurred home and abroad, and after taking further decision by the full Court meeting comprising both the Divisions of the Supreme Court of Bangladesh, held on 23rd June, 2022, it is expedient to amend and update the said guidelines, the following guidelines (as amended) have now been accepted and adopted.” (Full context of the guideline is available in the Supreme Court website i.e. www.supremecourt.gov.bd)

Judges of the Supreme Court of Bangladesh, one constitutional organ have been functioning unstintingly. Their wellbeing needs to be ensured. Chief Justice of Bangladesh being the guardian of judiciary, one constitutional organ of the State has paid due attention to this matter. Guidelines as to reimbursement of medical expenditure enunciated have been formulated formally on approval of the Chief Justice of Bangladesh.

On examination of the aforesaid provisions it is crystal clear that the Chief Justice of Bangladesh has the authority to approve the medical expenses of the Supreme Court Judges in home and abroad and in keeping pace with the aforesaid provisions the Chief Justice of

Bangladesh has formed a three member committee by the Appellate Division Judges for discharging the task of approving the medical bill of the Supreme Court Judges.

But the fact remains that despite the head of the Legislature the Speaker has not been delegated with the power of approval of medical bill for himself including the Deputy Speaker, Chief Whip, Whip and members of parliament. In a fair democratic polity it is highly expected that the existence of equal and identical privileges among the constitutional post bearers of the same status. The Speaker being head of the Legislature is also no exception in enjoying approval of the medical expenses abroad *vis-à-vis* other two heads of organs that is the Executive and Judiciary. To that end we are of the view that the government may consider to delegate the power to the Speaker of approval of reimbursement of the foreign medical expenses for the Speaker, Deputy Speaker, Chief Whip and Whip to the Speaker of the Jatiya Sangsad.

Now, we will discuss about the second category of the cases which are related to the misappropriation of furniture and utility bills. In Criminal Appeal No.69 of 2019 the case of the prosecution is that the then Chief Whip Mr. Khandokar Delwar Hossain was asked by the parliament secretariat to return the furniture and other goods supplied at his residential office. But the then Chief Whip instead of returning those furniture and goods prayed for exemption to return

the same and the appellant allowed the said prayer. In Criminal Appeal No.70 of 2019 the prosecution case was that the then Chief Whip Mr. Khandokar Delwar Hossain took electricity and gas bills at a larger amount at his residence to which he was not entitled to get but the appellant approved the said application of exemption as well as the utility bills.

We know that the parliament secretariat is established under the Parliament Secretariat Act, 1994. According to Section 4 of the Parliament Secretariat Act, 1994 the task of monitoring in respect of proper use of furniture and payment of utility bills is assigned with the parliament secretariat and the concerned department of the secretariat is responsible for making such monitoring effective. In the present cases it appears that some subordinate officers of the concerned department were bound by the rules of business of the government and to look after the alleged matters. The Speaker being the head of the Parliament simply gives approval of utility bills when the concerned Officers of the Parliament Secretariat use to place those after due scrutiny. But there was no objection as to failure of such scrutiny in respect of the alleged utility bills and accordingly the appellant approved the same.

In the aforesaid backdrop, we find that the appellant, in exercise of his authority, on good faith allowed the said application believing the statements of the then Chief Whip and he also

approved the utility bills of the then Chief Whip *bonafide*. Sequence of facts does not lead to conclude that it was done with malafide intention.

During hearing the learned Counsel for the appellant contended that according to Section 18 of the Parliament Secretariat Act, 1994 the appellant was empowered to approve the alleged medical bills. The learned Counsel further contended that according Section 9 of the Parliament Secretariat Act, 1994 the Parliament is the proper authority to take decision, action or raise question on the approval of alleged bills and neither the ACC nor any authority does have power to raise question about the approval of said bills. To decide about the said issue let's examine the provisions of the Parliament Secretariat Act. Section 18 of the Parliament Secretariat Act, 1994 provides that-

"১৮। অর্থ ব্যয়: সংসদ সচিবালয়ের জন্য বাজেটে বরাদ্দকৃত অর্থ অনুমোদনের ব্যাপারে স্পিকার চূড়ান্ত কর্তৃপক্ষ হইবেন।"

Section 9 of the Parliament Secretariat Act, 1994 states that-

"৯। বাজেট- অনুমোদিত ব্যয়ের ব্যাপারে সচিবালয়ের দায়িত্ব: সংসদ সচিবালয়ের জন্য বাৎসরিক বাজেটে বরাদ্দকৃত অর্থ ব্যয়ের ক্ষেত্রে সংসদ সচিবালয় মহাহিসাব নিরীক্ষক ও নিয়ন্ত্রকের মাধ্যমে কেবল সংসদের নিকট দায়ী থাকিবে।"

From the combined reading of Section 9 together with Section 18 of the Parliament Secretariat Act, 1994 it appears indubitably that the parliament secretariat will be responsible only to the Parliament through the Controller and Auditor General over the matter of expenditure of the financial allocation in the yearly budget and

nobody else can raise any question as to the use of such budget. But in the cases in hand, those provisions of the Parliament Secretariat Act, 1994 will not give any protection to the appellant since the Anti-Corruption Commission brought allegation against the appellant and other accused persons as to the mode of approval of medical bills in doing which the Speaker was not authorized to approve without the sanction of the Prime Minister. However, we have already viewed that neither the ACC nor any authority does have power to raise question about the authority of the Speaker in approving said bills.

In view of the above discussions, we may conclude that the aforesaid criminal proceedings against the appellant are liable to be quashed to prevent the abuse of the process of law and the High Court Division committed illegality in passing the impugned judgment and order dated 11.10.2018 and as such the same is not tenable in the eye of law.

Accordingly, the appeals are **allowed**. The judgment and order dated 11.10. 2018 passed by the High Court Division in Criminal Miscellaneous Case Nos.20705, 20701, 20702, 20703 & 20704 of 2013 are hereby set aside.

Consequently the proceedings of

Metro. Special Case No.219 of 2012 arising out of Sher-e-Bangla Nagar Police Station Case No.47 dated 28.12.2010 corresponding to ACC G.R. No.117 of 2010;

Metro. Special Case No.221 of 2012 arising out of Sher-e-Bangla Nagar Police Station Case No.51 dated 28.12.10 corresponding to ACC G.R. No.121 of 2010;

Metro. Special Case No.218 of 2012 arising out of Sher-e-Bangla Nagar Police Station Case No.48 dated 28.12.2010 corresponding to ACC G.R. No.118 of 2010;

Metro. Special Case No.19 of 2013 arising out of Sher-e-Bangla Nagar Police Station Case No.50 dated 28.12.2010 corresponding to ACC G.R. No.120 of 2010; and

Metro. Special Case No.223 of 2012 arising out of Sher-e-Bangla Nagar Police Station Case No.49 dated 28.12.2010 corresponding to ACC G.R. No.119 of 2010,

all are pending before the Court of Metropolitan Senior Special Judge, Dhaka are hereby quashed so far as it relates to the appellant Barrister Mohammad Jamiruddin Sircar.

However, the appellant is directed to refund the amount which he has withdrawn from the government exchequer within 6(six) months from the date of receiving a copy of the said judgment by the trial Court.

C.J.

J.

J.

J.