

**IN THE SUPREME COURT OF BANGLADESH**  
**APPELLATE DIVISION**

**PRESENT:**

Mr. Justice Md. Nuruzzaman  
Mr. Justice Borhanuddin  
Ms. Justice Krishna Debnath

**CRIMINAL PETITION FOR LEAVE TO APPEAL NO.396 OF 2022**  
(From the order dated 25.01.2022 passed by the  
High Court Division in Criminal Appeal No.9295  
of 2021)

Durnity Daman Commission,  
represented by its Chairman,  
1, Segunbagicha, Ramna, ..... Petitioner  
Dhaka-1000

=VERSUS=

Dr. Khandaker Mosharraf ... Respondents  
Hossain and another

For the Petitioner :Mr. Md. Khurshid Alam  
Khan, Senior Advocate,  
instructed by Mr. Md.  
Zahirul Islam, Advocate-  
on-Record

For the Respondent :Mr. Sharif Uddin  
No.1 Chaklader, Advocate,  
instructed by Mr.  
Mohammad Ali Azam,  
Advocate-on-Record

For the respondent :Mr. A. M. Amin Uddin,  
No.2 Attorney General (with  
the leave of the Court)

Date of hearing and :The 19<sup>th</sup> April, 2022  
judgment on

**JUDGMENT**

MD. NURUZZAMAN, J:

This criminal petition for leave to appeal is directed against the order dated 25.01.2022 passed by a Division Bench of the High Court Division in Criminal Appeal No.9295 of 2021 disposing of the application with a direction to the trial Court to issue summon to the P.W.8 for cross-examination and also directed to complete recording of the evidence of the recalling witness (P.W.8) within 1(one) month from the date of receipt of the order.

Prosecution case, in brief, is that one Nasim Anwar, Director of the Durnity Daman Commission, District combined Office, Bogura as informant lodged the First Information Report (hereinafter referred as F.I.R.) on 06.02.2014 against the accused-respondent No.1 under section 13 of the Money Laundering Protirdoh

Ain, 2002; section 4 of the Money Laundering  
Protirodh Ain, 2009 and section 4 of the Money  
Laundering Protirodh Ain, 2012 before the  
Officer-in-Charge of Ramna Model Police  
Station, D.M.P., Dhaka alleging, inter alia,  
that the accused-respondent No.1 from 2001 to  
2006 while he was the Minister for the Ministry  
of Health and Family Welfare earned foreign  
currency by misuse of power, corruption and  
money laundering, and violating the law of the  
land deposited a sum of British Pound  
804,142.13 equivalent to Bangladeshi currency  
of Taka 9,53,95,381/- with the joint account of  
the accused-respondent No.1 and his wife Mrs.  
Bilquis Akter Hossain keeping Bank Account No.  
108492, Lloyds TSB Offshore Private Banking,  
St. Peterport, Guernsey, Channel Island, GY 14

EN, UK as fixed term deposit and thereby committed offence under section 13 of the Money Laundering Protirodh Ain, 2002, section 4 of the Money Laundering Protirodh Ain, 2009 and section 4 of the Money Laundering Protirdoh Ain, 2012; that after scrutiny of the charge sheet of Ramna Police Station Case No.19 dated 10.01.2008, that the accused-respondent No.1 concealed the said amount and he has not paid tax till 30.04.2013 on the said amount; that the accused-respondent No.1 and his wife did not obtain permission from the Bangladesh Bank and thereby infringed the section 5 of the Foreign Exchange Regulation Act, 1947. Accordingly, Ramna Model Police Station Case No.13, dated 06.02.2014 corresponding to ACC GR No.68/2014 under section 13 of the Money

Laundering Protirodh Ain, 2002, section 4 of the Money Laundering Protirodh Ain, 2009 and section 4 of the Money Laundering Prorodh Ain, 2012 was started against the accused-respondent No.1, and hence this case.

The Investigating Officer of Durnity Daman Commission (hereinafter referred as Commission) investigated the case as a schedule offence of the Durnity Daman Commission Ain, 2004. During investigation, the Investigating Officer collected the materials on record, recorded the statement of witnesses and after completing the investigation, the Investigating Officer submitted memo of evidence before the Commission. That the Commission after perusing the memo of evidence and other materials on record, accorded sanction under section 32 of

the Durnity Daman Commission Ain, 2004. The Investigating Officer after obtaining sanction from the Commission, submitted charge-sheet along with the sanction before the Chief Metropolitan Magistrate, Dhaka being Charge-sheet No.239 dated 13.08.2014 against the respondent No.1 under section 13 of the Money Laundering Protirodh Ain, 2002; section 4 of the Money Laundering Protirodh Ain 2009 and section 4 of the Money Laundering Protirodh Ain, 2012.

After submission of charge-sheet, the learned Chief Metropolitan Magistrate, Dhaka transferred the case record to the Court of Metropolitan Senior Special Judge, Dhaka who took cognizance against the accused-respondent No.1 under section 13 of the Money Laundering

Protirodh Ain, 2002; section 4 of the Money Laundering Protirodh Ain 2009 and section 4 of the Money Laundering Protirodh Ain, 2012 and registered the same as Metro Special Case No. 793 of 2014. Subsequently, the Metropolitan Senior Special Judge transmitted the case record to the Court of Special Judge, Court No.1, Dhaka for trial.

The learned Special Judge, Court No.1, Dhaka received the case record and renumbered the case being Special Case No.03 of 2014 who took cognizance and framed charge against the accused respondent No.1 under sections 13 of the Money Laundering Protirodh Ain, 2002; section 4 of the Money Laundering Protirodh Ain 2009 and section 4 of the Money Laundering Protirodh Ain, 2012. The charge was read over

to the accused respondent No.1 to which he pleaded not guilty and claimed to be tried.

During trial, on behalf of the prosecution, as many as 9 (nine) P.Ws were examined and they have been crossed-examined by the defence.

The P.W.8-Ferdous Ahmed Khan was examined on 01.08.2016, and he was cross-examined by the accused-respondent No.1 for long 8 (eight) consecutive days from 07.08.2016 to 03.10.2016. Subsequently, at a belated stage of the trial, the accused-respondent No.1 on 02-12-2021, made an application under section 540 of the Code of Criminal Procedure for re-calling the P.W.8 mentioning specific questions for cross-examination.



The learned Special Judge, Court No.1, Dhaka after hearing both the parties giving reasons was pleased to reject the said application by the order dated 02.12.2021.

Feeling aggrieved by the order dated 02.12.2021 passed by the Special Judge, Court No.1, Dhaka, the accused-appellant preferred Criminal Appeal No.9295 of 2021 along with an application for direction before the High Court Division.

The High Court Division, upon hearing both the parties, by its order dated 25.01.2022 disposed the application allowing to cross amongst other 3(three) questions, thus, allowed to recall the P.W.8.

Hence, the Durnity Daman Commission as petitioner herein feeling aggrieved by the

order dated 25.01.2022 of the High Court Division preferred the Criminal Petition for Leave to Appeal No.396 of 2022 before this Division.

Mr. Md. Khurshid Alam Khan, the learned Senior Counsel appearing on behalf of the petitioner submits that Section 8 of the Criminal Law Amendment Act, 1958 is a positive bar to the De-novo trial. The Special Judge is not bound to re-call or re-hear any witness already examined or re-open the proceeding already held. The term "De novo trial" means fresh trial or a trial from the beginning of a case which is already at certain stage of trial occasioned. In such cases, section 8 of the Criminal Law Amendment Act, 1958 is a positive bar to the De-novo trial. If the Special Judge does not decide, otherwise, for any special

reason, he is not bound to recall or rehear any witness already examined and cross-examined or re-open the proceedings already held.

He further submits that the sub-section 5 of section 33 of the Durnity Daman Commission Ain, 2004 provides that, if any one seeks redress before any Court at any stage of any case initiated by the Anti-Corruption Commission or in any proceeding initiated by it, the Anti-Corruption Commission shall be made a party, and no person, praying for bail or seeking any relief in any case or proceeding initiated by the Commission, shall be heard without giving notice to the Commission. But, in the instant case, the High Court Division without considering the same, passed the impugned order, and the accused-respondent No.1 obtained a full relief without hearing the Durnity Damna Commission. He next submits that

the P.W. 8-Ferdous Ahmed Khan has been cross-examined by the defence elaborately on series of occasions, and the intent of the accused-respondent No.1 is only to frustrate the case by filing an application for re-calling of witness, and also intent to delay and drag the matter for indefinite period. He also submits that the P.W.8-Ferdous Ahmed Khan has been duly cross examined by the defence each an every point of the case consecutively 8 (eight) working days and, as such, the new questions suggested by the defence only to delay in holding the trial of the case and, as such, question of cross-examination does not arise at all. But the High Court Division failed to appreciate the same. He finally submits that at the time of disposal of the appeal, the High Court Division without hearing the central authority, i.e., Attorney General or Additional

Attorney General under the Mutual Legal Assistance Act, 2012 (Act No.IV of 2012) disposed of the appeal by giving full relief to the accused respondent No.1 which is illegal and not in accordance with law. Accordingly, the prosecution has been seriously prejudiced by re-calling the P.W.8-Ferdous Ahamed Khan and, as such, the impugned order passed by the High Court Division is liable to be set aside.

Mr. Sharif Uddin Chaklader, the learned Advocate appearing on behalf of the respondent No.1 made submissions in support of the impugned order of the High Court Division. He submits that 8(eight) witnesses were examined and cross-examined but at the time of cross-examination, the learned Advocate for the respondent No.1 could not properly conduct the defence case due to lack of non-preparation,

and, as such, further cross-examination recalling the witness No.8 is necessary for ends of justice.

Mr. A. M. Amin Uddin, the learned Attorney General (with leave of the Court) appearing on behalf of the respondent No.2 made submission in support of the learned Advocate for the petitioner-Durnity Daman Commission.

We have considered the submissions of the learned Advocates for the respective parties and the learned Attorney General for Bangladesh. Perused the impugned order of the High Court Division and connected other materials on record.

To appreciate and assess the legality and propriety of the impugned order it would noteworthy to quote the provision of Section

33(5) of the Anti-Corruption Commission Act, 2004 (দুর্নীতি দমন কমিশন আইন, ২০০৪) which is as follows:

“দুর্নীতি দমন কমিশন কর্তৃক দায়েরকৃত মামলায় অথবা দুর্নীতি দমন কমিশন কর্তৃক গৃহীত যে কোন কার্যক্রমের যে কোন পর্যায়ে কোন আদালতে কেহ কোন প্রতিকার প্রার্থনা করিলে দুর্নীতি দমন কমিশনকে পক্ষভুক্ত করিতে হইবে এবং দুর্নীতি দমন কমিশন কর্তৃক দায়েরকৃত কোন মামলায় বা কার্যক্রমে কোন ব্যক্তি জামিন কিংবা অন্য কোন প্রকার প্রতিকার প্রার্থনা করিলে কমিশনকে শুনানীর জন্য যুক্তিসংগত সময় প্রদান না করিয়া শুনানি গ্রহণ করা যাইবে না।”

Nevertheless, on the face of the order of the High Court Division it is evident that the respondent-appellant no.1 obtained a full-fledged relief from the Court where the Commission was not able to place their submissions as required by law.

The crux point of the case is that- whether further cross-examination asking 3(three) questions as allowed by the High Court

Division is essential for just decision of the case.

The provision of Section 540 of the Code of Criminal Procedure may quote herein for discussion and to take proper decision of the case which runs as follows:

"540. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and reexamine any such person if his evidence appears to it



essential to the just decision of  
the case."

From the careful reading of the provision of section 540 of the Code it is apparent that the provision of section can apply only to examine or recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

On a careful examination and perusal of the testimonies and cross-examination of P.W.8 which enclosed with memo of appeal it appears that the 3 (three) questions allowed by the High Court Division to be asked as further cross to the P.W.8 which has already been asked by the defence which is apparent from the earlier cross-examinations dated 07-08-2016 and 21-09-2016. It is crystal clear that these

questions have already put to the witness, he had replied the same and further questioning on the same point is nothing but prolongation and dragging the trial of the case. The learned Judges of the High Court Division has failed to appreciate the matter in accordance with the law and hence, committed error of law.

It further appears from the material on record the defence side filed petition on 02-12-21 under section 540 of the Code of Criminal Procedure, 1898 in a belated stage i.e. after long 5 years more from the last date of the cross-examination of the P.W.8 when the prosecution had concluded the prosecution case. So, the recalling of P.W.8 is nothing but with intention to delay and drag the case for indefinite period of time. This Division

decided in this point in the case of Bahalul Kabir vs. Ekramul and others reported in 16 MLR 2011(AD)94 as such:

It appears that from the facts and circumstances of the case that the High Court Division was right in observing that the very application under Sections 439 and 540 of the Code of Criminal Procedure was filed only to delay the matter and rightly rejected the application under Section 439 of the Code of Criminal Procedure.

Moreover, as per section 8 of the Criminal Law Amendment Act, 1958 (Act No. XL OF 1958)

there is a statutory proscription on trial afresh. Concerned provisions are as follows:

"Bar on trial de novo

8. A Special Judge, unless he otherwise decides, shall not be bound to recall or rehear any witness, whose evidence has already been recorded, or to re-open proceedings already held, but may act on the evidence already produced or recorded and continue the trial from the stage which the case has reached."

This Division earlier decided the same in the self same issue in the case of Begum Khaleda Zia VS. State and others reported in 71 DLR(AD) (2019)9. So, we place the reliance on the abovementioned case.

Accordingly, we find that the impugned judgment and order of the High Court Division do call for intervention.

Hence, the Criminal Petition for Leave to Appeal is disposed of. The impugned judgment and order of the High Court Division is set aside, however, without any order as to cost.

J.

J.

J.

The 19<sup>th</sup> April, 2022  
Hamid/B.R/\*Words 2,424\*