

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
Mr. Justice M. Enayetur Rahim

CRIMINAL PETITION FOR LEAVE TO APPEAL NO.793 of 2019

(From the order dated 11.11.2018 passed by the High Court Division in Criminal Revision No.3497 of 2018)

Mirza Abbas Uddin Ahmed, son of late**Petitioner**
Abdur Razzak

-Versus-

The State and another**Respondents**

For the petitioner : Mr. Abdur Razzaque Khan, senior Advocate along with Mr. Sagir Hossain Leon, Advocate, instructed by Mr. Zainul Abedin, Advocate-on-Record.

For the respondent No.1 : Not represented.

For the respondent No.2 : Mr. Md. Khurshid Alam Khan, senior Advocate, instructed by Mr. Md. Zahirul Islam, Advocate-on-Record.

Date of hearing and judgment : The 25th day of October, 2022.

JUDGMENT

Obaidul Hassan, J. This Criminal Petition for Leave to Appeal has arisen out of the order dated 11.11.2018 passed in Criminal Revision No.3497 of 2018 by a Division Bench of the High Court Division rejecting the revisional application summarily which was filed against the order No.79 dated 23.09.2018 read with order No.80 dated 30.09.2018 passed by the learned Special Judge, Court No.6, Dhaka in Special Case No.13 of 2008 corresponding to ACC G.R. No.84 of 2007 arising out of Ramna Police Station Case No.35 dated 16.08.2007

under Sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004.

The prosecution case, in a nutshell, is that one Shafiqul Alam, Assistant Director, Anti-Corruption Commission (shortly, ACC) as informant lodged a First Information Report (shortly, FIR) under Sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004 (shortly, ACC Act, 2004) read with Rule 15(Gha)(5) of the Emergency Powers Rules, 2007 and Section 109 of the Penal Code, 1860 against the accused-petitioner and his wife with Ramna Police Station, DMP, Dhaka stating, *inter alia*, that after scrutiny of নথি নং-দুদক/২৩-২০০৭(অনু:-২) it has been found that the accused persons with ill motive collusively acquired wealth of Tk.5,97,13,234.00 illegally beyond their known sources of income and concealed the information about wealth amounting Tk.33,48,581.00 in the wealth statement filed by them which is an offence under Sections 26(2) and 27(1) of the ACC Act, 2004 read with Rule 15(Gha)(5) of the Emergency Powers Rules, 2007 and Section 109 of the Penal Code, 1860. Accordingly, Ramna Police Station Case No.35 dated 16.08.2017 arising out of ACC G.R. No.84 of 2007 under Sections 26(2) and 27(1) of the ACC Act, 2004 read with Rule 15(Gha)(5) of the Emergency Powers Rules, 2007 and Section 109 of the Penal Code, 1860 was started against the petitioner and his wife.

The ACC investigated the case. During investigation the Investigating Officer collected the supporting materials, recorded the statement of witnesses and after investigation, the Investigating Officer submitted memo of evidence before the ACC for necessary sanction under Section 32 of the ACC Act, 2004 and after obtaining sanction from the ACC submitted charge sheet being No.238 dated 14.05.2008 against the accused-petitioner and his wife under Sections 26(2) and 27(1) of the ACC, 2004 read with Rule 15(Gha)(5) of the Emergency Powers Rules, 2007 and Section 109 of the Penal Code, 1860.

After submission of charge sheet, the case record transferred to the Court of Special Judge, Court No.6, Dhaka for holding trial and registered the same as Special Case No.13 of 2008.

During trial, charge has been framed by the learned Special Judge, Court No.6, Dhaka against the accused-petitioner and his wife under Sections 26(2)/27(1) of the ACC Act, 2004. The said charge was read over to the accused persons while they pleaded not guilty and claimed to be tried.

On 30.09.2018 the petitioner filed an application under Section 403 of the Code of Criminal Procedure stating that the trial of the instant case is barred on the ground that earlier another case was filed against him on the self same facts under Sections 155/156 of the Income Tax Ordinance, 1984 read with Section 15(Gha)(5) of the

Emergency Power Rules, 2007 in which he was convicted, but subsequently acquitted in Criminal Appeal No.6464 of 2008. The trial court upon hearing rejected the said application.

Being disgruntled with the order No.79 dated 23.09.2018 read with Order No.80 dated 30.09.2018 passed by the Special Judge, Court No.6, Dhaka in Special Case No.13 of 2018 corresponding to ACC G.R. No.84 of 2007 arising out of Ramna Police Station Case No.35 dated 16.08.2007 under Sections 26(2)/27(1) of the ACC Act, 2004 the petitioner filed Criminal Revision No.3497 of 2018 under Section 10(1A) of the Criminal Law Amendment Act, 1958. The High Court Division, after hearing the parties rejected the application summarily by order dated 11.11.2018.

Feeling aggrieved with the judgment and order dated 11.11.2018 passed by the High Court Division in Criminal Revision No.3497 of 2018 the accused-petitioner preferred this Criminal Petition for Leave to Appeal before this Division.

Mr. Abdur Razzaque Khan, the learned senior Advocate along with Mr. Sagir Hossain Leao, the learned Advocate, appearing for the petitioner took us through the order dated 11.11.2018 passed by the High Court Division in Criminal Revision No.3497 of 2018, the materials on record and submit that the High Court Division has not applied its judicial mind having failed to appreciate that earlier the accused-petitioner was prosecuted under Sections 155/156 of the

Income Tax Ordinance, 1984 read with Section 15(Gha)(5) of the Emergency Power Rules, 2007 and the present case against the petitioner has arisen out of the same and identical matter. The learned Counsels next contend that as per provisions of Sections 235(2)/236/403 of the Code of Criminal Procedure and Article 35(2) of the Constitution read with Section 26 of the General Clauses Act, 1897, there is a bar to proceed in subsequent case originated from the same and identical facts. The learned Counsels further contended that Section 403 of the Code of Criminal Procedure bars a second trial on the self same facts, thus, the present case against the petitioner is not maintainable in the eye of law. But the High Division without considering the aforesaid provisions of law passed the impugned order, which is liable to be set aside. The learned Counsels lastly submit that the petitioner had earlier been dealt with, convicted and sentenced by trial Court and subsequently the said judgment and order of conviction was set aside by the High Court Division, and as such the trial on the same and identical subject matter is barred by law.

Per contra, Mr. Md. Khurshid Alam Khan, the learned senior Counsel appearing on behalf of the respondent No.2, has seriously controverted the submissions produced by the learned Counsels for the petitioner. The learned senior Counsel contends that the earlier case was filed against the accused-petitioner under Sections 155 and

166 of the Income Tax Ordinance, 1984 read with Section 15(Gha)(5) of the Emergency Power Rules, 2007 at the behest of Deputy Commissioner of Taxes and the present case has been filed against him under Sections 26(2)/27(1) of the ACC Act, 2004 at the instance of the ACC, from which it is clear that the present case is quite different and separate from the earlier case and the High Court Division has not committed illegality in rejecting summarily the Criminal Revision filed by the petitioner. The learned Counsel argues further that on face of the FIR and charge sheet there is a *prima facie* case against the petitioner under Sections 26(2)/27(1) of the ACC Act, 2004, and as such the High Court Division rightly rejected the Criminal Revision. In support of his submissions the learned Counsel has relied on a decision reported in 21 BLC(HC) (2016) 200 wherein it has been held that the Income Tax Ordinance is purely a law relating to prevention of tax evasion and realization of income tax, which is completely distinct offence unlike the present one which relates to corruption.

We have gone through the judgment and order dated 11.11.2018 passed by the High Court Division in Criminal Revision No.3497 of 2018, considered the submissions of the learned Counsels for both sides and the materials on record. The main question in the case in hand is whether the earlier case filed against the petitioner under Sections 155 and 166 of the Income Tax Ordinance, 1984 read

with Section 15(Gha)(5) of the Emergency Power Rules, 2007 and the subsequent case filed under Sections 26(2)/27(1) of the ACC Act, 2004 are same and identical in nature ? To get answer of the question let us peruse the provisions of law in this regard.

Sections 165 and 166 of the Income Tax Ordinance, 1984 is extracted below:

“Section 165. Punishment for false statement in [verification, etc.]-

A person is guilty of an offence punishable with imprisonment for a term which may extend to three years [but shall not be less than three months], or with fine, or with both, if he-

(a) makes a statement in any verification, etc in any return or any other document furnished under any provisions of this Ordinance which is false;

(b) knowingly and willfully aids, abets, assists, incites or induces another person to make or deliver a false return, account, statement, certificate or declaration under this Ordinance, or himself knowingly and willfully makes or delivers such false return, account, statement, certificate or declaration on behalf of another person;

[(c) signs and issues any certificate mentioned in the first or second proviso to section 82 which he either knows or believes to be false or does not believe to be true];

[(d) refuses to furnish such information as may be necessary for the purpose of survey under section 115.]

Section 166. Punishment for concealment of income, etc.--

A person is guilty of an offence punishable with imprisonment which may extend to five years [but shall

not be less than three months], or with fine, or with both, if he conceals the particulars, or deliberately furnishes inaccurate particulars, of his income.”

Now let us have a glimpse on Sections 26 and 27(1) of the ACC Act, 2004.

“২৬। সহায় সম্পত্তির ঘোষণাঃ- কমিশন কোন তথ্যের ভিত্তিতে এবং উহার বিবেচনায় প্রয়োজনীয় তদন্ত পরিচালনার পর যদি এই মর্মে সন্তুষ্ট হয় যে, কোন ব্যক্তি, বা তাহার পক্ষে অন্য কোন ব্যক্তি, বৈধ উৎসের সহিত অসঙ্গতিপূর্ণ সম্পত্তির দখলে রহিয়াছেন বা মালিকানা অর্জন করিয়াছেন, তাহা হইলে কমিশন, লিখিত আদেশ দ্বারা, উক্ত ব্যক্তিকে কমিশন কর্তৃক নির্ধারিত পদ্ধতিতে দায়-দায়িত্বের বিবরণ দাখিলসহ উক্ত আদেশে নির্ধারিত অন্য যে কোন তথ্য দাখিলের নির্দেশ দিতে পারিবে।

(২) যদি কোন ব্যক্তি-

(ক) উপ-ধারা (১) এ উলিখিত আদেশ প্রাপ্তির পর তদনুযায়ী লিখিত বিবৃতি বা তথ্য প্রদানে ব্যর্থ হন বা এমন কোন লিখিত বিবৃতি বা তথ্য প্রদান করেন যাহা ভিত্তিহীন বা মিথ্যা বলিয়া মনে করিবার যথার্থ কারণ থাকে, অথবা

(খ) কোন বই, হিসাব, রেকর্ড, ঘোষণা পত্র, রিটার্ন বা উপ-ধারা(১) এর অধীন কোন দাখিল পত্র দাখিল করেন বা এমন কোন বিবৃতি প্রদান করেন যাহা ভিত্তিহীন বা মিথ্যা বলিয়া মনে করিবার যথার্থ কারণ থাকে, তাহা হইলে উক্ত ব্যক্তি ৩(তিন) বৎসর পর্যন্ত কারাদন্ড বা অর্থদন্ড বা উভয়বিধ দন্ডে দন্ডনীয় হইবেন।

২৭। জ্ঞাত আয়ের উৎস বহির্ভূত সম্পত্তির দখলঃ- (১) কোন ব্যক্তি তাহার নিজ নামে বা তাহার পক্ষে অন্য কোন ব্যক্তির নামে, এমন কোন স্হাবর বা অস্হাবর সম্পত্তির দখলে রহিয়াছেন বা মালিকানা অর্জন করিয়াছেন, যাহা অসাধু উপায়ে অর্জিত হইয়াছেন এবং তাহার জ্ঞাত আয়ের উৎসের সহিত অসঙ্গতিপূর্ণ বলিয়া মনে করিবার যথেষ্ট কারণ রহিয়াছেন এবং তিনি উক্তরূপ সম্পত্তি দখল সম্পর্কে আদালতের নিকট বিচারে সন্তোষজনক ব্যাখ্যা প্রদান করিতে ব্যর্থ হইলে উক্ত ব্যক্তি অনূর্ধ্ব ১০(দশ) বৎসর এবং অনূ্যন ৩(তিন) বৎসর পর্যন্ত যে কোন মেয়াদে কারাদন্ডে দন্ডনীয় হইবেন এবং তদুপরি অর্থ দন্ডেও দন্ডনীয় হইবে, এবং উক্তরূপ সম্পত্তিসমূহ বাজেয়াপ্তা যোগ্য হইবে।”

On going through Sections 26 and 27(1) of the ACC Act, 2004 it appears that Section 26 envisages the provision for issuance of notice, holding preliminary inquiry by the Anti-Corruption Commission in

order to ascertain the wealth of a person while Section 27(1) of the ACC Act, 2004 lays down the provision regarding the Anti-Corruption Commission of offence where the wealth of a person is found not in proportionate to his known sources of income. The intention of the legislature behind the enactment of ACC Act, 2004 is prevent corruption.

On the other hand, the Income Tax Ordinance, 1984 is enacted to regulate the income tax matter. It is enacted for realization of income tax and to prevent the evasion of income tax. Sections 165 and 166 are penal sections in respect of making false statement in any verification in any return or any other document and concealment of income.

From the above, it is evident that the offences under Sections 26 and 27(1) of the ACC Act, 2004 and Sections 165 and 166 of the Income Tax Ordinance, 1984 are completely separate and distinct and one is not dependant on others. Therefore, the present case under Sections 26 and 27(1) of the ACC Act, 2004 shall proceed independently. Although the petitioner was earlier acquitted in a case under Sections 165 and 166 of the Income Tax Ordinance, 1984 it will not put any embargo on the trial of the present case.

On meticulous observation, we find the submissions made by the learned Counsel for the respondent No.2-ACC merit consideration. We find no infirmity in the order dated 11.11.2018

passed by the High Court Division in Criminal Revision No.3497 of 2018 and as such it does not warrant interference by this Division.

In view of the aforesaid facts and circumstances, the Criminal Petition for Leave to Appeal is **dismissed**.

C.J.

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