Present:
Mr. Justice Obaidul Hassan
And
Justice Krishna Debnath

CRIMINAL MISCELLANEOUS CASE NO.4397 OF 2008

IN THE MATTER OF:
Dr. Zubaida Rahman, wife of Tarique Rahman .....…***Petitioner.***

-Versus-

The State and another

…….. ***Opposite parties.***

Mr. A.J. Mohammad Ali, Senior advocate, **Mr. Zainal Abedin**, Senior advocate with Mr. Muhammad Nawshad Zamir, Advocate, Mr. Md. Kawsar Kamal, Advocate, Mr. Raghib Rouf Chowdhury, Advocate, Mr. Md. Zakir Hossain Bhuiyan, Advocate & Mr. AHM Kamruzzaman, Advocate
.....For the Petitioner.

Mr. Md. Motaher Hossain, DAG
..... For the State

Mr. Md. Khurshid Alam Khan, Advocate
.....For the opposite no.2-ACC

Heard on 29.11.2016, 08.12.2016, 11.12.2016, 08.01.2017 & 10.01.2017
And
Judgment on 12.04.2017

Obaidul Hassan, J.

The instant Rule was issued calling upon the opposite parties to show cause as to why the proceedings of Kafrul Police Station Case No.52 dated 26.09.2007 under section 26(2)/27(1) of the Anti Corruption Act, 2004 read with section 109 of the Penal

Code and section 15(D)(5) of the Emergency Power Rules, 2007, now pending before the Court of Chief Metropolitan Magistrate, Dhaka should not be quashed and/or such other or further order of orders passed as to this Court may seem fit and proper.

The petitioner filed this application under section 561A of the Code of Criminal Procedure for quashment of the proceeding of Kafrul Police Station Case No.52 dated 26.09.2007 under section 26(2)/27(1) of the Anti Corruption Act, 2004 read with section 109 of the Penal Code and section 15(D)(5) of the Emergency Power Rules, 2007, now pending before the Court of Chief Metropolitan Magistrate, Dhaka.

The prosecution story in short, is that, the accused no.1, Tarique Rahman, son of late President Ziaur Rahman, No.6, Shahid Moinul Road, Dhaka Cantonment in his submitted wealth statement concealed assets worth BDT 23,08,561.37 and submitted false statement thereof, and the Principal accused, in collusion with his wife Dr. Zubaida Rahman (nee Zubaida Khan), and

Syeda Iqbal Mand Banu, wife of late Rear Admiral Mahbub Ali Khan, Road No.5, House No.49, Dhanmondhi R/A, Dhaka (Mother in law of Principal accused) misrepresented in his statement of wealth dated 07.06.2007 with regard to Tk.4,23,08,561.37 and BDT 35,00,000/- worth of FDR, the source of which is undeclared and allegedly illegal, and not shown in the principal accused's statement of wealth, and hence the case.

The petitioner in her application stated that on 31.03.2008 vide a memo being No.4563 dated 27.03.2008 of the Head Office of the Anti Corruption Commission, a charge sheet was submitted under section 109 of the Penal Code against the petitioner. It is further stated that the learned Additional Chief Metropolitan Magistrate kept the matter for further order on 07.04.2008 as is evident from the order dated 05.03.2008. The allegation as levelled against the petitioner with regards to FDR (being No.FDR No.0046739 for BDT 10,00,000/- and FDR No.41006271 of BDT 25,00,000/- dated

31.07.2005)=35,00,000/- is false, fabricated and is not true , as she inherited that money after her father's death from rental of family property. The explanation of which is given below:

i) After her father's death in 1984 the petitioner inherited the property at plot No.255/A, Road No.18, New DOHS, Mohakhali, Dhaka through succession.

ii) She co-shares the said property with her sister and mother in the following ratio:
   (a) Zubaida Khan 7/16
   (b) Shahina Khan 7/16
   (c) Syeda Iqbal Mand Babu 2/16

iii) The construction of a house in the said plot 255/A, Road No.18, New DOHS, Mohakhali, Dhaka was completed in 1998.

iv) The said house was rented in late 1998 but payment of rent started in March, 1999.

v) Rent was fixed at Tk.80,000/- per month Tennant gave Tk.15 lacs in advance which were adjusted @ 50% with the monthly rent payment. Therefore, actual payment of rent was Tk.40,000/- per month.

vi) Unfortunately, the tenant Mr. A. Mannan was very irregular in paying rents and always remained a defaulter. Tenant never

paid monthly rent per month and preferred to pay certain lump sum amounts at irregular intervals.

vii) Tenant preferred to pay in cash in exchange of cash receipt.

viii) Most of the time payment in cheques by the tenant was dishonoured by the bank.

ix) In 2004 a letter was given to the tenant requesting him to clear all the dues and 6 months, advance. Total amount requested to be paid was about Tk.25,00,000/-.

x) The tenant, Mr. A. Mannan could not afford to pay this amount in one installment and it was agreed between the leassee and the lessor that payment will be made in several installment within a certain period of time.

xi) These payments by the tenant of the property were finally kept as family money FDR in Zubaida Khan's name in July 2005 for 1 year. Address of the FDR is the residence of Zubaida's mother who also has a share in this money as a co-sharer of the land property.

xii) During the time the mother of the petitioner Syeda Iqbal Mand Banu could not reply loan to the bank regularly as the tenant was a rent defaulter. Bank issued legal notice to the

borrower of the loan and the property was lebeled for auction. This was a financial crisis for the family. After long negotiation with the bank it was settled according to the banking rules that payment of certain amount at a time to the bank would save the property from auction & relieve the family from bank loan. This amount was Tk.60 lacs.

xiii) Family savings in the petitioner's name as FDR was Tk.35 lacs only which was not enough repay the bank loan. Taka 25,00,000/- was from DOHS house's due rents and Tk.10,00,000/- was from the income source Motijheel Commercial Area, another inherited family property.

xiv) There was no other big amount saving in any name of the share holders of the said property which would repay the Sonali Bank loan. In that prevailing situation, eldest daughter of Syeda Iqbal Mand Banu, the sister of the petitioner mortgaged her share of 5 katha land of Dhanmondi and paid Tk.60,00,000/- to Sonali Bank and saved the house from being aunctioned.

xv) The rent money from the tenant Mr. A. Mannan for House No.255/A, Road No.18, New DOHS, Mohakhali, Dhaka and other

tenants at 71, Motijheel C/A, Dhaka was given to this FDR.

xvi) As the fixed deposit was done in July, 2005 for one year, this money in the fixed deposit remained in Zubaida's name as mother's gift.

Excepting this there is no specific allegation against the petitioner.

Tax has been paid for Tk.25,00,2000/- and Tk.10,00,000/- FDR for the years 2005-2006 and 2006-2007 tax years.

Mr. A.J. Mohammad Ali, the learned senior advocate appearing on behalf of the accused petitioner submits that the initiation of the instant proceedigns against the petitioner is ex-facie illegal, the petitioner in the instant case has been accused of abetting the principal accused i.e. her husband, Tarique Rahman. The allegation against the petitioner is that she had aided her husband by misrepresentation to show that the FDR in question amounting to Tk.35,00,000/- accrues from valid sources, which is actually the case. He also submits that since the petitioner had paid taxes for this FDR in question in the tax assessment years 2005-2006 ad 2006-

2007 the proceedings initiated against the petitioner should be quashed and are liable to be set aside. He further submits that the proceedings of the instant case is untenable in law in that the FDRs in question stems from valid income of the petitioner and her family and since the source of the asset in question is valid and legal it cannot be alleged that such legal money can be used as an ingredients for abetment of an offence pertaining to furnishing false statement and/or being in possession of illegal wealth and/or wealth, the source of which is unknown or undeclared as contemplated by section 26(2) and 27(1) of the Anti Corruption Commission Act, 2004 and as such the proceedings of the instant case should be quashed and liable to be set aside. He also submits that the allegation against the principal accused, Tarique Rahman, is that he suppressed the fact of this FDR in his tax returns, which is totally absurd since there is no question of Tarique Rahman disclosing or declaring assets which have already been declared in this petitioner's tax returns, and hence the proceedings

are an abuse of process and liable to be quashed to secure the ends of justice. He further submits that the instant proceeding is illegal, arbitrary, malafide, capricious, ill-motivated and vague and unspecific and there is no ingredient of section 109 of the Penal Code in the instant case. Since no offence has been committed by the principal offender himself with regard to the FDR of Tk.35,00,000/- in question, as the principal accused was not bound by any law to show the asset of his wife as has been claimed by the charge sheet submitted on 31.03.2008 i.e. the petitioner in the tax assessment of the principal accused which had been duly shown in the tax return of the petitioner and as such the proceedings of the instant case should be quashed and is liable to be set aside. He also submits that the FIR alleges that the inquiry revealed one Enayetul Bari Jewel, apparently unrelated to the petitioner, to have deposited the money in the bank to get the FDR instruments for the petitioner. This led the Informant to assume that the petitioner had masked this money that actually belonged to the

principal accused Tareque Rahman by misrepresenting that the money was her own (received as gift from the mother). The FIR employed exactly the following language to level an allegation of abetment under section 109 of the Penal Code against the petitioner and her mother. ‘‘একই সা-থ ডাঃ জুবাইদা রহমান এবং সৈয়দা ইকবাল মান্দ বানু জনাব তারেক রহমানের জ্ঞাত আয় বর্হিভূত সম্পত্তিকে নিজেদের অর্জিত ব-ল প্রমা-নর চেষ্টা ক-র তার অপরা-ধ সহায়তা ক-র-ছন।’’ He further submits that the allegation against the petitioner essentially is ‘‘প্রমা-নর চেষ্টা ’’ not aiding the principal accused in commission of any offence. ‘‘প্রমা-নর চেষ্টা’’ does not constitute “abatement” of an offence within the meaning of sections 107 and 108 of the Penal Code even if FIR story that the principal accused had committed the alleged offence are to be taken at its face value. He also submits that this allegation demonstrates sheer ignorance on the part of the Investigation Officer of the legal provision that a person is not required to furnish a statement of wealth of his spouse if his spouse is also a taxpayer assessed in the personal capacity. This position

of law is also evident from the statutory form of a return of income as in Annexure C to the Criminal Miscellaneous Petition that expressly require a person to include a statement of wealth of his spouse only in the event of his spouse herself not being a taxpayer assessed. The petitioner, having a separate TIN and had mentioned the FDRs in her income tax returns for the Assessment Year 2005-2006 and 2006-2007 (Annexure C and C1 to the petition) and paid tax thereon in the said assessment year, her husband was absolutely under no legal obligation to mention his wife's FDRs in his personal income tax returns. The legal position remains the same, if the petitioner's husband in his income tax returns had shown the petitioner to be dependent on him. He further submits that from the order sheet of the impugned proceedings that no summons or warrant was issued by the Court below against the petitioner. As such, the petitioner was under no obligation to appear before the court below. The petitioner in this regard relies upon the observations made by Md. Joynul

Abedin, J. in 61 DLR (AD)17 (Anticorruption Commission Vs. Mahmud Hossain), where an FIR alleging cognizable offence was lodged against Mr. Mahmud Hossain but no process was issued by any court for his appearance, nor did the law enforcing agencies attempted arrest of the accused. In such background, his lordship observed as follows: "An accused named in the first information report can approach the High Court Division for quashing the first information report without surrendering before the Criminal Court where the first information report case is pending. Because the accused is under no obligation to surrender before the criminal Court till the process is issued. The High Court Division is competent to quash the first information report cases where the allegations contained in the first information report (FIR) even if they are taken at their face value and accepted in their entirety do not constitute offence alleged. He further submits that from the order sheet of the present case in Annexure-B to the petitioner that the proceedings of the

present case was stayed by the Hon'ble High Court Division by order dated 01.10.2007 passed in writ Petition No.8556 of 2007 pending disposal of the said writ petition. Proceedings of the present case thus having been stayed, there was no scope for the petitioner to surrender before the court below. In the above special circumstances, the petitioner appeared before the Hon'ble High Court Division in person and prayed for swearing affidavit without surrender. The proceedings of the present case having already been stayed, this was the only way the petitioner could submit to the process of law and seek redress against the harassing proceedings. The Division Bench comprising Mr. Justice Khademul Islam Chowdhury and Mr. Justice Md. Emdadul Huq, obviously taking into account such special circumstances and accepting the personal appearance of the petitioner, was pleased to grant leave to the petitioner to swear affidavit without surrender, and thereafter admit the instant Criminal Miscellaneous Petition, issued rule and stay the impugned proceedings

and personal appearance was also exempted by order dated 08.04.2008. Mr. A.J. Mohammad Ali further submits that the cases cited by the opposite parties, in particular, the ones reported in 64 DLR (HCD) 80 (Md. Nurussafa Vs. State) and the cases relied upon and referred to therein, vix, 61 DLR (AD) 17 (Anti-Corruption Commission Vs. Mahmud Hossain), 18 BLD (AD) 227-3 BLC (AD) 171 (Moulana Md. Yousuf Vs. The Sate), PLD 1956 (FC)43=8 DLR (FC)24 (Chan Shah Vs Crown), and 14 DLR (SC) 321 (Khaled Saigal Vs. Sate) all are distinguishable from the petitioner's case inasmuch as the stay of proceedings in a writ petition being a legal impediment incapacitating the petitioner to surrender before the court below is a distinguishing factor uniquely present in the petitioner's case and absent in the above cited case. As such, the petitioner's case stands on an entirely different, unique footing.

In support of his submissions he refers some decisions those are Abdul Qader Chowdhury vs. The State reported in 28 DLR (SC) 38, Abdul Haque & others

vs. The State, reported in 60 DLR (AD)1, Nasiruddin Mahmood vs. Momtazuddin Ahmed reported in 36 DLR 23. He further submits that in Writ Petition No.8556 of 2007 the whole proceeding has been quashed so far as it relates to Syeda Iqbal Mand Banu and he prays for making the Rule absolute and the proceedings of the case may be quashed.

On the other hand Mr. Md. Khurshid Alam Khan, the learned advocate appearing on behalf of the opposite party no.2-ACC by filing a counter affidavit stated that in the FIR and charge sheet there is specific allegation against the accused petitioner. From the said FIR and charge sheet prima facie case has been made out against the accused petitioner. He also stated that the allegation of abetment under section 109 of the Penal Code has been made in the FIR and charge sheet and as such question of quashing the proceeding does not arise at all. Moreover, disputed question of fact cannot be decided under jurisdiction of the 561A of the Code of Criminal Procedure. He further stated that without surrendering

before the Court of competent jurisdiction the accused petitioner filed this application and obtained Rule and stay and as such the petitioner is fugitive from justice when she filed and moved this application before this Court. Mr. Khan submits that it is a settled principle of law that a fugitive from justice is not entitled to any relief from a Court of law unless he/she surrenders to the jurisdiction of the Court. He also submits that the question of abetment question of fact which can only be decided at the time of trial by adducing evidences and as such the Rule is liable to be discharged. He also submits that admittedly the accused petitioner is a fugitive from justice. Fugitive have no *locus standi* to seek any remedy or relief without surrendering before the competent Court of jurisdiction. It is well settled that when a person seeks remedy from a Court of law, either criminal appellate, revisional or miscellaneous jurisdiction under section 561A of the Code of Criminal Procedure or in writ jurisdiction she/he ought to submit to the due process of justice. But without surrendering the accused

petitioner filed this application under section 561A of the Code of Criminal Procedure which is not maintainable in the eye of law and as such the Rule is liable to be discharged on that ground alone. He also submits that since no cognizance has been taken against the petitioner, she cannot challenge this at this stage, thus, he prays for discharging the Rule. Mr. Khan also refers some decisions, those are the cases of ***Anti Corruption Commission Vs. Dr. H.B.M. Iqbal*** reported in ***15 BLC(AD)44, Md. Nurussafa vs. The State,*** reported in ***64 DLR (HCD)81, Abdul Haque vs. The State*** reported in 60 DLR (AD)1, 66 DLR(AD)185 and 66 DLR(AD)180 and ***Durnity Daman Commission vs. Engineer Mosharaf Hossain*** reported in ***21 BLC 711***.

Mr. Md. Motaher Hossain, the learned Deputy Attorney General appearing on behalf of the opposite party no.1-the State adopting the argument of Mr. Khurshid Alam Khan filed counter affidavit and prays for discharging the Rule.

We have gone through the application, the counter affidavit, annexures annexed thereto and the decision cited by the learned advocates for both the sides.

The case in short is that one Mohammad Zahirul Huda, Assistant Director, Durnity Daman Commission, Dhaka lodged the First Information Report on 26.09.2007 before the Kafrul Police Station, DMP, Dhaka against the accused petitioenr and others under sections 26(2)/27(1) of the Durnity Daman Commission Ain, 2004 read with section 109 of the Penal Code alleging inter alia that on 29.05.2007 the Durnity Daman Commission sent a notice to the husband of the accused petitioner, Tarique Rahman. He submitted his wealth statement and he responded to the notice dated 07.06.2007 for submission of wealth statement. Tarique Rahman submitted his wealth statement concealing assets of Tk.23,08,561.37 and submitted false statement thereof, and misrepresented in his statement of wealth with regard to Tk.4,23,08,561.37 and Tk.35,00,000.00 worth of FDR. The accused petitioner abated her husband for committing

offences. Accordingly, Kafrul Police Station Case No.52 dated 26.09.2007 under sections 26(2)/27(1) of the Durnity Daman Commission Ain, 2004 read with section 109 of the Penal Code was started against the accused and others. Investigation officer of the Durnity Daman Commission (hereinafter referred as Dudak) investigated the case, during investigation the investigating officer collected the materials on record, recorded the statement of witnesses and after conclusion of investigation submitted memo of evidence before the Dudak. The Dudak after perusal of memo of evidence gave sanction under section 32 of the Durnity Daman Commission Ain, 2004. After obtaining sanction the investigating officer submitted charge sheet along with sanction before the Chief Metropolitan Magistrate, Dhaka being charge sheet no.78 dated 31.08.2008 under section 26/27 of the Durnity Daman Commission Ain, 2004 read with section 109 of the Penal Code against the accused petitioner and others. Though charge sheet has

been submitted, but no cognizance has yet been taken by the Metropolitan Senior Special Judge, Dhaka.

The learned advocate for the petitioner submits that the FIR story is preposterous thus the same is liable to be quashed, because on the admitted facts no case can stand for the reason that naming the petitioner as accused no.2 and her mother accused no.3 the FIR states that two FDRs for the aggregate sum of Tk.35,00,000/- was opened with Prime Bank, Banani Branch, on 31.07.2005 in the name of the petitioner. In the course of inquiry by the commission, asked about the source of the money of the FDRs, the petitioner informed that the money was received from her mother as a gift. Her mother, accused no.3 supporting her statement, stated that the money was her income from rent received from the tenants of her house property in Mohakhali and Motijheel and she had gifted the money to her daughter, the petitioner. The allegation against the petitioner essentially is ‘‘প্রমা-নর চেষ্টা’’ not aiding the principal accused in commission of any offence. ‘‘প্রমা-নর চেষ্টা’’

does not constitute "abatement" of an offence within the meaning of sections 107/108 of the Penal Code even if FIR story that the principal accused had committed the alleged offence are to be taken at its face value. At the time of issuing of the Rule there was no process issued by any Court as such the petitioner was under no obligation to appear before the Court below.

On the other hand the learned advocate for the opposite party no.2-ACC submits that in the instant case no cognizance has yet been taken by the Court of competent jurisdiction and as such before such cognizance there is no proceeding in the eye of law. Accordingly, a proceeding cannot be quashed unless cognizance has been taken by the Court of competent jurisdiction. Without surrendering before the Court of competent jurisdiction the accused petitioner filed an application under section 561A of the Code of Criminal Procedure and obtained Rule and stay. From the statement/averment made in the application under section 561A of the Code of Criminal Procedure it

appears that she never appeared/surrendered to the jurisdiction of the competent Court. She is fugitive from justice, thus she is not entitled to any relief from a Court of law unless she/he surrenders to the jurisdiction of the Court. Fugitive has no *locus standi* to seek any relief without surrendering before the competent Court of jurisdiction. It is well settled that when a person seeks remedy from a Court of law, either criminal appellate, revisional or miscellaneous jurisdiction under section 561A of the Code of Criminal procedure or in writ jurisdiction she/he ought to submit to the due process of justice. But without surrendering the accused petitioner filed this application under section 561A of the Code of Criminal Procedure which is not maintainable in the eye of law and as such the Rule is liable to be discharged on that ground alone.

From column no.3 of the charge sheet it is revealed that the petitioner was not arrested and the IO prayed for issuing warrant but no warrant or summon was issued till the date of issuing the Rule. On the other hand

from the charge sheet it appears that a prima facie case has been established against the petitioner. The contents of the charge sheet is given below:

‘‘তদন্তকা-ল আসামী তা-রক রহমা-নর স্ত্রী জুবাইদা রহমান/ ডাঃ জুবাইদা খান এবং তার মা সৈয়দা ইকবাল মান্দ বানু-ক এ সংক্রা-ন্ত বক্তব্য দেয়ার জন্য দূনীতি দমন কমিশন, প্রধান কার্যালয়, ঢাকার স্মারক নং- ১০৭৫৭, তারিখ ১৪/১১/২০০৭ ইং ও স্মারক নং ১০৭৫৬, তারিখ ১৪/১১/২০০৭ ইং মূ-ল নোটিশ দেয়া হয়। কিন্তু এ পর্যা-য় জুবাইদা রহমান তার বিরু-দ্ধ আনীত অভি-যা-গর ব্যাপা-র ব্যক্তব্য প্রদান -থ-ক বিরত থা-কন। অনুরুপভা-ব তার মাতা আসামী সৈয়দা ইকবাল মান্দ বানুও তদন্তকালে কোন বক্তব্য প্রদান করেননি এবং এতদসংক্রান্তে কোন রেকর্ডপত্র সরবরাহ ক-রননি। তাই অনুসন্ধানকা-ল জনাবা জুবাইদা রহমান এবং জনাবা ইকবাল মান্দ বানু কর্তৃক প্রদত্ত বক্তব্যই তদন্তকালে আমলে নেয়া হয়েছে। অনুসন্ধানকালে এ সংক্রান্তে জিজ্ঞাসায় জনাবা জুবাইদা রহমান তার লিখিত বক্তব্যে উ-ল্লখ ক-রছি-লন যে, তিনি মা-য়র নিকট থে-ক উপহার হি-স-ব নগ-দ প্রাপ্ত ৩৭,০০,০০০/- টাকা গ্রহণ ক-র-ছন এবং উক্ত অর্থ দ্বারা এফ,ডি,আর ক্রয় ক-র-ছন।

একইভা-ব অনুসন্ধানকা-ল জনাবা সৈয়দা ইকবাল মান্দ বানু দূর্নীতি দমন কমিশ-ন দাখিলকৃত তার লিখিত বক্ত-ব্য উ-ল্লখ ক-রছি-লন যে, তার ২৫৫/এ, ডিওএইচ এস, মহাখালী, ঢাকার বাড়ী এবং ৭১, মতিঝিল বা/এ, ঢাকাস্থ মাহাবুব ম্যানশ-নর বাড়ী ভাড়া থে-ক প্রাপ্ত আয় হ-ত উক্ত অর্থ ডাঃ জুবাইদা খান-ক প্রদান করা হয়, যা দ্বারা তার মে-য় এফ,ডি,আর ক্রয় ক-র-ছন। এছাড়াও জনাবা ইকবাল মান্দ বানু তার বক্তব্যের সমর্থনে কিছু রেকর্ডপত্র ও দাখিল করেন।

তদন্তকা-ল এ সংক্রা-ন্ত প্রাপ্ত তথ্য ও সংশ্লিষ্ট-দর বক্ত-ব্য দেখা যায় যে, ২৫৫/এ, ডিওএইচ,এস মহাখালী, ঢাকা বাড়ীটি-ত ১/৩/১৯৯৯ ইং তারিখ হ-ত জনাব মোঃ মান্নান ভাড়া থাক-তন। তিনি বর্ণিত বাড়ীর ভাড়া তার কোম্পানীর হিসাব হ-ত পরি-শাধ কর-তন এবং ভাড়া পরি-শা-ধর তথ্য তার কোম্পানীর লেজার ও ডেভিড ভাউচা-র লিপিবদ্ধ র-য়-ছ। কিন্তু সৈয়দা ইকবাল মান্দ বানুর দাবী ম-ত ভাড়াটিয়া কর্তৃক জুলাই ২০০৫ সা-ল ২৫,০০,০০০/- টাকা ভাড়া পরি-শা-ধর কোন

প্রমান কোম্পানী হ-ত জব্দকৃত রশিদ/ডেভিড ভাউচার বা লেজা-র পাওয়া যায়নি। তদ-ন্ত আ-রা দেখা যায় যে, জানাবা ইকবাল মান্দ বানুর দাবী এবং এ সংক্রা-ন্ত দাখিলকৃত রেকর্ড সমূহ মিথ্যা, ভিত্তিহীন এবং উদ্দেশেল্যমূলকভাবে প্রস্তুতকৃত। অর্থ্যাৎ শাশুড়ী সৈয়দা ইকবাল মান্দ মানুর কাছ থে-ক উপহার হি-স-ব ৩৫,০০,০০০/- টাকা প্রাপ্তির যে দাবী তা-রক রহমান ক-র-ছন তা মিথ্যা। প্রকৃত পক্ষে, তারেক রহমান তার জ্ঞাত আয় বহির্ভূত উৎস হতে অর্জিত অর্থ দ্বারাই এফডিআর দুটি সম্পাদন করেছেন। কিন্তু জ্ঞাত আয় বহির্ভূত সেই উৎসকে গোপন করার লক্ষ্যে তিনি উদ্দেশ্যে প্রনোদিতভাবে শ্বাশুড়ীর কাছ থেকে উপহার প্রাপ্তির মিথ্যা দাবী ক-রন।

এছাড়াও তদন্তকা-ল তা-রক রহমা-নর ব্যক্তিগত আয়কর নথি পর্যা-লাচনায় দেখা যায় যে, তিনি এ পর্যন্ত দাখিলকৃত আয়কর রিটা-র্ণর সম্পদ ও দায় বিবরণী-ত স্ত্রী জুবাইদা রহমান-ক সর্বদাই তার উপর নির্ভরশীল দেখি-য়-ছন। কিন্তু এ পর্যন্ত দাখিলকৃত কোন আয়কর রিটা-র্ণ তিনি স্ত্রীর না-ম সম্পাদিত ৩৫,০০,০০০/- টাকার এফ,ডি,আর এর তথ্য প্রদর্শন ক-রননি।

এমতাবস্থায় তদ-ন্ত প্রাথমিকভা-ব প্রমানিত হয় যে, তা-রক রহমান তার জ্ঞাত আয় বহির্ভূত উৎস হতে অর্জিত অর্থ দ্বারা ৩৫,০০,০০০/- টাকার এফ,ডি,আর সম্পাদন ক-র দূর্নীতি দমন কমিশন আইন ২০০৪ এর ২৭(১) ধারায় শাস্তি-যাগ্য অপরাধ ক-র-ছন।

জনাবা জুবাইদা রহমান এবং তার মাতা জনাবা সৈয়দা ইকবাল মান্দ বানু কর্তৃক তারেক রহমানের সাথে পরস্পর যোগসাজসে তারেক রহমানের জ্ঞাত আয় বহির্ভুত উৎস হ-ত অর্জিত ৩৫,০০,০০০/- টাকার দুটি এফডি,আরকে তা-দর বৈধ উৎস হ-ত অর্জিত ব-ল প্রমা-নর অপ-চষ্টায় সহায়তা ক-র এবং এ সংক্রা-ন্ত মিথ্যা বক্তব্য ও রেকর্ডপত্র উপস্থাপন করে দন্ড বিধির ১০৯ ধারায় শাস্তি-যাগ্য অপরাধ ক-র-ছন।''

From the above fact it appears to us that the truthfulness of the allegation brought against the petitioner can only be ascertained by taking evidence, thus at this stage the FIR cannot be quashed. Since the charge sheet has not

yet been accepted by the Court, in the eye of law there is no proceeding pending against the petitioner and until and unless the Court takes cognizance there is no any scope to exercise the extraordinary power of the High Court to quash the proceeding. In this regard the case of ***Durnity Daman Commission vs. Engineer Mosharaf Hossain*** reported in ***21 BLC(AD)211*** is relevant.

Now let us see how the petitioner without surrendering before the Court invoked the criminal miscellaneous jurisdiction of this Court: On 07.04.2008 their Lordships in the High Court Division ordered that "The petitioner appears in Court in person. The application is heard in part. Mr. Anisul Huq, the learned advocate for Dudak assisting the State prays for 1(one) day time. The prayer is allowed. The personal appearance of the petitioner Dr. Zubaida Rahman is dispensed with. Let this application come up in the list on 08.04.2008 for further hearing and order", on 08.04.2008 their Lordships issued the Rule, the petitioner's appearance has been dispensed with by the

order of this Court. True she did not obtain bail from any Court or she was not in custody at the time of issuance of the Rule, but nevertheless she remained present before this Court when her application was placed and this Court dispensed with her appearance. From the charge sheet it appears that no process was pending against the petitioner at the time of issuing Rule. The investigation officer in column no.3 of the charge sheet has mentioned that *''ক্রমিক ১ এর আসামী তারেক রহমান বর্ণিত মামলায় গ্রেফতার হ-য় বর্তমা-ন কেন্দ্রীয় কারাগার, ঢাকায় আটক আছেন। ক্রমিক ২ ও ৩ এর আসামী যথাক্রমে জুবাইদা রহমান খান এবং সৈয়দা ইকবাল মান্দ বানু-ক গ্রেফতার করা হয় নাই। তা-দর বিরু-দ্ধ ওয়া-রন্ট ও হুলিয়া এবং ক্রোকী পরোয়ানা (WP &A) ইস্যু করার জন্য বিজ্ঞ আদালতে প্রার্থণা করা হয়।''* which clearly shows that at the time of issuing Rule no process was issued from any Court of law, thus unerringly it can be said that at the time of issuing Rule the petitioner was not fugitive. The decision given in the case of ***Anti Corruption Commission vs. Dr. HBM Iqbal Alamgir*** reported in ***15 BLC (AD) 2010 Page-44*** does have any manner of application in this case. The

observation given by their Lordships in the said case runs as follows:

> "Admittedly the writ petitioner was a fugitive from justice on the date he moved the writ petition. He was away from the country and craved permission of the court to affirm affidavit on his behalf by one H.B.M. Shoave Rahman. The permission was given and the learned Judges issued rule nisi as above. It is now settled that a fugitive from justice is not entitled to obtain a judicial order defying the process of the court. Beside, the learned advocates who move applications for the fugitives shall also have to face the consequence of committing contempt of court. This principle is being followed for over 60 years in this sub continent. References in this connection are Chand Shah Vs. Crown, 8 DLR (FC) 24, Gul Hassan Vs. State reported in 21 DLR (SC)109, Anti-corruption Commissioner and others vs Mahmud Hassan and others 61 DLR (AD)17.
>
> Admittedly, the writ petitioner was convicted in absentia by the judgment and order dated 13 March, 2008 by the Special

Judge, First Court, Dhaka. Naturally, the learned Special Judge issued warrant for the execution of the sentence under section 389 of the Code of Criminal Procedure at the time of delivery of judgment, and the writ petitioner moved the petition on 17th September, 2008 when there was warrant for the execution of the sentence. We failed to understand in the backdrop of the case, how the learned Judges of the Division Bench could even entertain the writ petition on behalf of a fugitive from justice, ignoring the long settled principles being followed by the courts? If this process is allowed, the fugitives from justice either convicted or not will be emboldened and despite processes have been issued, they will defy the processes of the courts and in such cases, the administration of criminal justice will be crumpled. We cannot conceive of a more flagrant violation of this principle that a convict who seeks the interference of the sovereign to obtain revision of a judicial order must submit to the court instead of engaging himself in setting that judicial order at naught. It is well settled that when a person seeks remedy from a court of law,

> either in writ jurisdiction or criminal appellate, revisional or miscellaneous jurisdiction under section 561A of the Code of criminal Procedure he ought to submit to the due process of justice. Let it be made clear to him, if it is not already known that the court would not act in aid of an accused person who is a fugitive form law and justice."

A 'fugitive' is someone who is running away or hiding intending to avoid being arrested. But it does not appear from the record that process was issued by a competent Court of law for securing petitioner's arrest and as such no question of evading execution of process arises. Thus, and since petitioner's personal appearance was dispensed with by this Court she cannot be considered as a 'fugitive'.

It has already been observed that the petitioner's appearance was dispensed with by this Court and till 08.04.2008 no warrant or summon has been issued from any Court of competent authority in connection with this case we are constraint to hold that the petitioner is not a fugitive in the eye of law, the present case is clearly

distinguishable with the case of Dr. H.B.M. Iqbal reported in 15 BLC (AD) 210.

Section 561A of the Code of Criminal Procedure confers wide power, true. But the well settled proposition is that in exercising this power the court requires being more cautious and this power in a matter of quashment of proceedings is to be exercised sparingly. Exercise of this inherent power relates to onerous and more diligent duty of the Court. Only when the Court, in light of facts and circumstances is justifiably prompted to conclude that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, it can make it convinced that the proceedings need to be quashed. As the power under section 561A of the Code of Criminal Procedure is conferred in order to secure due dispensation of justice, this Court has to be extremely circumspect on issuing order in intervention of a case.

But what we see in the matter in hand? It transpires that on lodgement of FIR investigation started

and on conclusion of investigation police report recommending prosecution of the petitioner was submitted and the matter was at the stage of taking cognizance of offences alleged. At this stage, we do not deem it just to interfere with the proceedings by exercising power vested in section 561A. Only the Court of competent jurisdiction can arrive at decision whether cognizance of offence is to be taken, on appraisal of materials before it.

Besides, in exercising power vested in section 561A of the Code of Criminal Procedure there has been no room to resolve the truthfulness of the arraignment particularly when police report has been submitted after concluding investigation recommending prosecution of the petitioner.

This Court does have power to interfere with the proceedings at its any stage only where the facts involving the arraignment are appear to be preposterous and when no case appears to stand against the accused petitioner and the further continuation of such

proceedings would indisputably cause an abuse of the process of the Court.

But the matter in its entirety impels to conclude that reliability of the accusation against the petitioner can be well adjudicated only in trial on the basis of evidence to be tendered by the prosecution when the petitioner must have due opportunity of being defended and to refute the arraignment brought against her, if cognizance of offence is taken and trial commences on framing charge by the Court of competent jurisdiction.

However, since no cognizance has yet been taken in this case as per section 4(1) of the Criminal Law Amendment Act, (Act XL of 1958), and there are specific allegations in the First Information Report (FIR) and charge sheet against the petitioner, truthfulness of the accusation needs to be proved by taking evidence, and thus we are not inclined to quash the FIR at this stage. The decisions cited by Mr. A.J. Mohammad Ali do not have any manner of application in this case. There will be opportunity for the petitioner to prove herself

innocent by cross-examining the prosecution witnesses, if any. We do not think the allegation brought against the petitioner is preposterous, thus the Rule is **discharged.**

The order of stay granted earlier by this Court is hereby vacated. The concerned Court is directed to proceed with in accordance with law.

However, since at the time of issuing the Rule this Court dispensed with the appearance of the petitioner, she should be allowed to appear before the concerned Court without any hindrance. The petitioner is directed to appear before the concerned Court within 8(eight) weeks from date of taking cognizance of the offence, if any so that she can defend herself in accordance with law.

Let a copy of this judgment be communicated at once.

Krishna Debnath, J.

I agree.

Ismial H. Pradhan
BO