

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present:

Mr. Justice Md. Nazrul Islam Talukder

And

Mr. Justice K.M. Hafizul Alam

Criminal Appeal No. 3536 of 2009

Mofazzal Hossain Chowdhury Maya

...Convict-appellant.

-Vs-

The State and another

.....Respondents.

Mr. Abdul Baset Mojumder, Senior Advocate with

Mr. Bashir Ahmed, Advocate and

Mr. M. Sayed Ahmed, Advocate.

...For the Convict-appellant.

Mrs. Rona Naharin, D.A.G with

Mr. A.K.M. Amin Uddin, D.A.G. and

Mrs. Helena Begum (China) A.A.G.

..... For the State-respondent.

Mr. Md. Khurshid Alam Khan, Advocate,

...For the Anti-Corruption Commission.

Heard on 12.08.2018, 13.08.2018, 14.08.2018 and 08.10.2018

Judgment on:08.10.2018.

Md. Nazrul Islam Talukder, J:

This criminal appeal has been preferred by the convict-appellant against the judgment and order of conviction and sentence dated 14.02.2008 passed by the learned Special Judge, Court No.05, Dhaka in

Special Case No.15 of 2007 arising out of Special Case No.144 of 2007 of the Court of learned Senior Special Judge and Metropolitan Sessions Judge, Dhaka convicting the convict-appellant under Section 26(2) of Anti-Corruption Commission Act, 2004 read with Rule 15(Gha) of Jaruri Khamata Bidimala, 2007 and sentencing him to suffer simple imprisonment for 3 (three) years and further convicting the convict-appellant under Section 27(1) of the Anti-Corruption Commission Act, 2004 and sentencing him thereunder to suffer rigorous imprisonment for 10 years with a fine of Tk.5 crore, in default, to suffer rigorous imprisonment for 1 (one) year more along with an order for confiscating

the properties of the convict-appellant and his dependents to the State as has been mentioned in the list therein; and further acquitting the co-accused of the charge leveled against them under Section 109 of the Penal Code read with Sections 26(2)/27(1) of the Anti-Corruption Commission Act, 2004 along with Rule 15 gha(5) of the Jaruri Khamata Bidhimala, 2007.

It may be noted that after delivery of judgment and order in this criminal appeal, we at the instance of the respective parties issued short order mentioning the operative portion of our judgment and order.

The prosecution case, in brief, is that the convict-appellant, his wife, sons and daughters are in possession of the properties disproportionate to their known sources of income. Accordingly, on 18.02.2007, a notice was issued upon the convict-appellant requiring him to furnish statements of his own properties and the properties standing in the names of his wife, sons and daughters. Accordingly, the convict-appellant submitted wealth statement through his wife. After holding the preliminary inquiry, it was found that the convict-appellant acquired properties worth more than Tk. 2 crore in his own name, and in the name of his wife and his children which is disproportionate to the known

sources of income of the convict-appellant. It is also found that the convict-appellant concealed the properties standing in his own name and also in the names of his wife and children. Hence, the F.I.R against the convict-appellant and others under Sections 26 (2) and 27 (1) of the Anti-Corruption Commission Act, 2004 read with Rule 15 Gha of the Jaruri Khamata Bidhimala 2007 (জরুরী ক্ষমতা বিধিমালা, ২০০৭) along with Section 109 of the Penal Code.

After initiation of the F.I.R, the Investigating Officer after holding investigation submitted charge-sheet on 22.10.2007 against the convict-appellant and others. Then the case was sent to the Court of learned Metropolitan Sessions Judge as well as

Metropolitan Senior Special Judge who after taking cognizance of the alleged offence issued warrant of arrest against the convict-appellant because of his non-appearance in the case. The process was issued under Sections 88 and 89 of the Code of Criminal Procedure. During pendency of the case, the charge was framed against convict-appellant and others under Sections 26 (2) and 27 (1) of the Anti-Corruption Commission Act, 2004 read with Rule 15 Gha of the Jaruri Khamata Bidhimala 2007 (জরুরী ক্ষমতা বিধিমালা, ২০০৭) along with Section 109 of the Penal Code. The convict-appellant failed to appear in the case and then the case was taken up for in absentia hearing. Thereafter, the case was sent to the

trial court for trial. The convict-appellant being absent, the defence case could not be put forward. The entire charge relates to the acquisition of assets and calculation thereof.

The prosecution examined as many as 33 witnesses to prove the prosecution case. No witness was examined on behalf of the defence and the trial was proceeded against the convict-appellant in absentia. Finally, the judgment and order was pronounced on 14.02.2008 by the learned Senior Special Judge, Dhaka convicting the convict-appellant under Section 26(2) of Anti-Corruption Commission Act, 2004 read with Rule 15(Gha) of Jaruri Khamata Bidimala, 2007 and sentencing him

to suffer simple imprisonment for 3 (three) years and further convicting the convict-appellant under Section 27(1) of the Anti-Corruption Commission Act, 2004 and sentencing him thereunder to suffer rigorous imprisonment for 10 years with a fine of Tk.5 crore, in default, to suffer rigorous imprisonment for 1 (one) year more along with an order for confiscating the properties of the convict-appellant and his dependents to the State as has been mentioned in the list therein; and further acquitting the co-accused of the charge leveled against them under Section 109 of the Penal Code read with Sections 26(2)/27(1) of the Anti-Corruption

Commission Act, 2004 along with Rule 15 gha(5) of the Jariuri Khamata Bidhimala, 2007.

After pronouncement of the judgment and order, on 19.05.2009, the convict-appellant surrendered before the trial Court. On that date, he was sent to the Dhaka Central Jail for serving out the sentence.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence, the convict-appellant preferred Criminal Appeal No.3536 of 2009 before the High Court Division and the learned judges of the High Court Division upon hearing the parties, by judgment and order dated 27.10.2010, allowed the appeal setting aside

the judgment and order of conviction and sentence under sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004 awarded upon the convict-appellant by the learned special judge.

Being aggrieved by the judgment and order passed by the High Court Division, the Anti-Corruption Commission preferred Criminal Petition For Leave to Appeal No.107 of 2011 before the Appellate Division and the learned judges of the Appellate Division upon hearing the parties by judgment and order dated 14.06.2015 disposed of the appeal setting aside the judgment and order passed by the High Court Division and sent back the matter on remand for fresh hearing of the appeal by

the High Court Division with a direction that the High Court Division shall dispose of the appeal on merit afresh as expeditiously as possible.

Being aggrieved by the judgment and order of the Appellate Division, the convict-appellant preferred Criminal Review Petition No.49 of 2015 before the Appellate Division but the same was dismissed on 10.04.2016 as being not pressed at the instance of the convict-appellant.

In view of the above backdrop, this criminal appeal has appeared in the cause list for hearing and disposal of the same on merit.

Now, we want to see what sort of evidence has been adduced by the prosecution before the trial court to prove the prosecution case.

P.W-1 Md. Nurul Alam the informant deposed that the commission having been satisfied that the convict-appellant Mofazzal Hossain Chowdhury Maya is in possession of the property disproportionate to his known source of income issued notice upon him under Section 26(1) of the Anti-Corruption Commission Act, 2004 for submitting wealth statement and accordingly he did it through his wife. The Anti-Corruption Commission entrusted him with the task of verifying it with the properties in possession of the convict-

appellant and his dependant's wife, sons and daughter-in-law vide memo dated 11.04.2007, Ext-1. During holding inquiry he found that the convict-appellant has concealed the information of the property worth Tk. 28,13,739/41. He also found landed property 32.05 cent in Mouza Teknog Para under Gazipur and 25.30 cent in the same Mouza worth Tk. 17,15,000/- and Tk. 3 lac respectively acquired with the income in consistent with the known source of the accused. He also found that the convict-appellant paid Tk. 17,08,500/- in advance for purchasing land in Basundhara R/A and 1.84 cent of land under Matlab P.S at a cost of Tk. 9,08,000/- which is disproportionate to his known

source of income. The convict-appellant in his wealth statement did not declare the property 1.84 cent purchased in Matlob P.S and another 25.33 cent purchased in 37 Teknog Para Mouza under Gazipur P.S. He also did not disclose about the investment amounting Tk. 12,57,150/- in purchasing the car.

P.W-2 Bhobatosh Bhowmik deposed of providing certified copy of 6 deeds registered in different Sub-Registry offices under Dhaka city, Ext-8 series.

P.W-3 Md. Shahdat Hossian, Sub-Registrar, Matlob P.S deposed of delivering certified copies of 16 sale deeds in the name of the convict-appellant

and others registered in his Sub-Registry office, Ext-8 series.

P.W-4 Nasrin Ara Surat Amin deposed of according permission to informant on 11/04/2007 being directed by the Commission for holding preliminary inquiry prior to lodging the ejahar against the convict-appellant and others.

P.W-5 Tankin Hoq Siddiqui deposed of receiving the wealth statement submitted by the wife of the convict-appellant on 02/04/2007.

P.W-6 S. M Abdul Karim deposed of giving information to the Anti-Corruption Commission office about the deeds registered in 12 Sub-Registry offices under Dhaka city.

P.W-7 Mofazzal Alam Khan, UNO, Matlab, (Uttar) deposed of collecting the information of the landed property acquired by the convict-appellant and others by way of purchase and inheritance. The record kept in his land office reveals that the convict-appellant inherited 1.6266 yojutangsha from his father. He proves his report dated 29.07.2007, Ext-9 with his signature, Ext-9/1. Besides, he also provided certified copy of 11 deeds registered in Mohonpur Sub-Registrar office to the Commission being asked by it.

P.W-8 Md. Harunur Rashid, Sub-Registrar, Gazirpur Sadar deposed of providing certified copy of deed Nos. 18621 of 2003, 12570 of 2004 and

3218 in the name of Pervin Chowdhury and Shajedul Hossain Chowdhury, Rashedul Chowdhury and the convict-appellant Mofazzal Hossain Chowdhury Maya and last one in the name of the convict-appellant Mofazzal Hossain Chowdhury Maya alone, Ext-10 series.

P.W-9 Ehteshamul Haque, Manager, Customer Service of HSBC deposed that accused Pervin Chowdhury has a current account No. 005-021522-011 and I.O of this case asked him to provide account opening Form and accounts statement from 18.05.2003 to 16.07.2007 and accordingly he did it. He proved those documents, Ext-11 series. The accused has a loan account No. 005-021-327

amounting Tk. 5 lac for purchasing a car and up to 02.08.2007, she paid principal amount Tk. 4,98,607/02 and interest Tk. 1,78,849/59, Ext-11 series.

P.W-10 Suriya Akhtar, Branch Risk Officer of Standard Chartered Bank, Motijheel deposed that the convict-appellant together with his wife, the F.I.R. named accused No. 2 has a current account No. 01215812401 with a balance of Tk. 10,902/25 up to 30.06.2007.

He proves the Bank's Account and Account Opening Form, Mat-Ext-I-1(A).

P.W-11 Abul Hasnat Md. Abdul Hai is tendered by the Prosecution.

P.W-12 Sayed Salahuddin, Manager Oriental Bank, Kawran Bazar Branch deposed that accused Pervin has loan account No. B/M 80/02 under which loan amounting to Tk. 30 lac was granted on 18.06.2005 and up to 29.11.2007 Tk. 19,58,005/44 was repaid. He proved accounts statement, Ext-14. The accused issued a pay order amounting to Tk. 15 lac on 26.12.2002 in favour of NCC Bank, Dhanmondi Branch to be transmitted by his Branch. He proved the voucher copy thereof as Ext-14/A.

P.W-13 Forhad Ahamed Khan, Manager, Prime Bank, Shimrail Branch deposed that accused Pervin Chowdhury mentioned a Savings Account No. 21019711 in his bank wherein balance is Tk.

49,828/75 and he gave statement thereof which was seized by I.O on 14.08.2007 preparing seizure list, Ext-15. He proved Bank Statement, Mat-Ext-II and Account Opening Form with photograph of F.I.R named accused No. 2. He also deposed that a current account in the name of Rinaloy CNG Conversion workshop owned by Shajedul Hossain with balance Tk. 6,920/- is in his Bank and he gave Accounts Statement and Account Opening Form with photograph, Mat-Ext-IV series. He also deposed that accused Suborna Chowdhury has saving account No. 21019708 with balance Tk. 51,653/-83 and he proves the accounts statement and Account Opening Form, Mat-Ext-V. He further deposed that accused

Shajedul Hosaain Chowdhury has an account No. 11007639 with balance Tk. 2,425/- in the name of M/R Construction. He proves Accounts Statement and Accounts Opening Form with photograph, Mat-Ext-VI.

P.W-14 was tendered by the Prosecution.

P.W-15 Md. Habibur Rahman, Deputy Executive President of Islami Bank, Head Office deposed that accused Rashedul Hossain opened a Current Account No. 237702 in the name of his Firm Weaga Zone Ltd and he proved the Accounts Opening Form with photograph and Bank Statement, Ext-16 series. In this account Tk.

3,64,60,124/05 was transacted between 16.02.2005 to 18.06.2007.

P.W-16 Md. Nazrul Islam, Principal Officer, Arab Bangladesh Baik, Principal Branch deposed that the convict-appellant Mofazzal Hossain Chnowdhury Maya has an account No. 40054358-13000 in the name of Rituchakra Traders and Investigating Officer of this case has seized the documents like Accounts Form with photograph and specimen signature card of accounts related to this account preparing seizure list, Ext-17 taking his signature therein, Ext-17/1. He also proved the seized document Mat-Ext-VII series. The accounts

was opened on 25.03.1995 having its balance only Tk. 174/-.

P.W-17 Pervez Reza, Assistant Vice President of Premier Bank, Banani Branch testified that accused Pervin has savings accounts No. 12100018943 and Investigating Officer of this case seized accounts opening form, nomination form, accounts statement related to this account, on 06.08.2007, balance is nil. He also deposed of existing a joint account No. 12100058062 with balance Tk, 14,605/90 as well as another loan account No. 73600000247 through which Tk. 9 lac was given loan to the account holder, the F.I.R named accused No. 2 who repaid Tk. 10,79,600/- up

to this time and the outstanding remains to be paid to the Bank is Tk. 2,96,730/23. Investigating Officer of this case seized the documents related to these accounts Mat-Ext-VII series preparing seizure list Ext-18. He also deposed about a loan account in the name of accused Rashedul No. 7400000150. Tk. 6 lac was granted loan and Tk. 6,77,500/- was repaid and outstanding remains Tk. 2,40,090/-59. Investigating Officer was given the documents related to this accounts including accounts statement on 07.08.2007, Ext.-19 series.

P.W-18 Monjur Morshed was tendered by the prosecution.

P.W-19 Nasim Ali Akhand, Manager of National Credit and Commerce Bank, Dhanmondi Branch deposed of having an account No. 201565 in the name A S M Nuruddin in his Bank and on 14.12.2002 as pay order amounting Tk. 15 lac being deposited by Nuruddin was credited in his account on 26.12.2007 through clearing method.

P.W-20 Anwarul Azim, SDE of PWD deposed of going to the residence on Plot No. 19 at Road No-7, Sector No-1, Uttara being ordered by his Superior Officer to assess the construction cost of the house which has been constructed in the year 1997 to 1999 as per information given by the neighbour of this house. Accordingly as per Plinth Area Rate

Schedule, 1997 of PWD, they assessed the cost of construction of the building having an area 1026/72 square metre at Tk. 95,73,584/- and he prepared a report and submitted it to his superior authority who sent it to the Commission on 13.08.2007, Ext-21/1 along with his team member Sub-Inspector Riajul's signature, Ext-21/2.

P.W-21, Executive Engineer of PWD, Mohakhali Division deposed of receiving a letter issued from Anti-Corruption Commission to assess the cost of the construction of aforesaid residence and accordingly he deployed his SDE P.W-20 Anwarul Azim and SAE Rejaul Hoq for doing this

job and they prepared a report on going to the field and he countersigned on it, Ext-21/3.

P.W-22 Abdul Latif, Marketing Manager, East West property of Basundhara city Development deposed that Investigating Officer on going to his office seized the documents related to the land, flat, shop purchased by accused Pervin Chowdhury, Rashedul, Shajedul and Rifat Sayed. Accused Pervin has a Plot No. 198 having an area 5 Kathas in Block-I at a cost of Tk. 18 lac. She has also another plot No. 199 of 5 Kathas in Block-G at a cost of Tk, 17,75,000/-. Accused Rashedul together with his brother Shajedul and sister Rifat Sayed has a plot No. 2682/B of 10 Kathas in Block-M of Basundhara

land project purchased at a cost of Tk. 65 lac and they paid Tk. 17,08,500/-. Accused Rashedul has also a shop No. D-56 of 150.24 square feet in level-6 of Basundhara City Shopping Mall at a cost of Tk. 16,23,022/- out of which Tk. 8,27,400/- was paid. Accused Rashedul Hossain together with her wife Doctor Farhana Chowdhury has an apartment No. A-4 of 1942 square feet in Baridhara Project under Basundhara Project on Plot No. 1/A, Block-F named Dakkhina with car parking space No. 6 at a cost of Tk. 46,43,900/- out of which Tk. 18,64,470/- was paid.

Accused Shajedul has a shop No. D-57 of 151.31 square feet in level-6 of Basundhara City

Development at a cost of Tk. 16,34,148/- out of which Tk. 10,29,400/- was paid. He also deposed that Rifat Sayed, the daughter of the convict-appellant Mofazzal Hossain Chowdhury Maya has an apartment Nos. B-2 of 1943 square feet on Plot No:1/A, Baridhara Project, Dakkhin at a price of Tk. 44,49,600/- out of which Tk. 8,71,304/- was paid. He continued to say that accused Suborna Chowdhury together with her husband Shajedul Chowdhury has an apartment No. A-5 on plot No-1/A, Block-E having an area 1943 square feet at a cost of Tk. 46,43,900/- out of which Tk. 10,67,332/- was paid. He proved the seizure list, Ext-22, wherein his signature is Ext-22/1.

P.W-23 Md. Ferdous Iqbal, Deputy Manager, Accounts of Basundhara Development of East West Properties deposed as witness of the seizure list, Ext-22 corroborating the evidence of P.W-22.

P.W-24 Gias Uddin, Assistant Director of BRTA Circle (South), deposed that accused Pervin purchased a car No. Dhaka-Metro-Gha-8713 under loan scheme of Premium Bank at a price of Tk. 11,27,336/-. The cash memo lying with the documents reveals the word “financed by Premium Bank Ltd.” It got registration on 29.01.2004 and I.O of this case was given the documents related to purchasing of the car, Ext-23 series.

P.W-25 AFM Fakhrul Amin, Police Inspector of BRTA, Mirpur Branch deposed that accused Pervin has a car Dhaka-Metro-Ga-12-8969, date of Registration on 16.06.1998 at a price of Tk. 2,48,000/- with Registration Fee 28,567/- and another car Dhaka-Metro-Ga-15-7729, date of Registration 11.06.2003 at a price of Tk. 9,82,000/- with Registration fee Tk. 46,967/- financed by Honkong Sanghai Banking Corporation (HSBC). I.O was provided with the documents related to the aforesaid 2 cars, Ext-23 series. He also deposed that accused Rashedul Hoq has a car Dhak-Metro-Ga-15-9343, date of Registration on 26.10.2003 at a price of Tk. 10,49,224/- with Registration fee Tk.

46,967/- and fitness fee Tk. 5,190/-. Documents show that Tk. 8 lac was taken loan from Premier Bank for purchasing this car and he produced this document related to this car to the Investigating officer, Ext-24 series.

P.W-26 ASM Nuruddin, the owner of flat No. 3/A and 3/B in Morium Tower at 78/3 UN Road, Baridhara deposed of selling the aforesaid two flats at a consideration of Tk. 22,50,000/- each to accused Pervin Chowdhury who paid Tk. 15 lac by a pay order through Ex-AB Bank now Oriental Bank and the remaining Tk. 30 lac was paid in cash. The purchaser got one of the flat registered in the name of accused Suborna Chowdhury and another.

P.W-27 Abdul Hoq deposed that he purchased total 09456 yojutangsha land from plot Nos. 5788, 5769, 5790, 5789 appertaining to Khatian No. 2069 at 46 Tipu Sultan Road on 11.01.2001 from the convict-appellant Mofazzal Hossain Chowdhury Maya. He also purchased another 0.0463 Yojutangsha from Plot No. 5788 vide deed No. 109 on 11.01.2001 from the convict-appellant who has no subsisting interest in the aforesaid plots.

P.W-28 Mizanur Rahman, Assistant Director, Rajuk deposed that accused Shajedul had 3 Kathas plots in Block-44, Sector-1, Uttara in exchange of which he got a 5 Kathas plot in Sector-10 at Road No-6, Plot No-32 at a cost of Tk. 7,50,000/- out of

which Tk. 2,59,800/- was paid. He proved allotment letter dated 25.10.2000, Ext-25. Accused Pervin Chowdhury got allotment of another plot No. 15 on 23.03.2000 in sector-10 at Road No.6, Uttara having an area 5 Kathas at a consideration of Tk. 7,50,000/- out of which Tk. 2,59,800/- was paid. He proved a report given by Secretary, Rajuk acknowledging this aspect on 03.09.2007, Ext-27. He also submitted allotment letter and deposit receipt, Ext-28 series.

P.W-29 Faruk Jalal, Secretary Rajuk deposed corroborating the testimony of 28.

P.W-30 Md. Abdul Mannan an employee of Registrar of Joint Stock Company deposed that accused Pervin and Shajedul have an industry

named Demra Industries Ltd wherein accused Pervin has 6,488 shares worth Tk.6,48,800/- and accused Shajedul has 2781 shares valued Tk. 2,78,100/-. The audit report of the industries revealed the total asset value of the industries stands at Tk. 3,09,29,939. Investigating Officer seized the document related to the industries and submitted in his office preparing seizure list, Ext-26, taking his signature therein, Ext-26/1. He proved the alamot like documents, Mat-Ext-1X.

P.W-32 Jahangir Alam, Sub-Inspector of police attached with Sutrapur P.S deposed of recording ejahar lodged by Assistant Director of the Commission named Nurul Alam on 13.06.2007 by

filing F.I.R Form, Ext-29 wherein his signature is, Ext-29/1.

P.W-33 Md. Towfiqul Islam, Assistant Director of the Commission as well as Investigating Officer (I.O) of this case deposed of being assigned to the task of investigation, vide memo No. সি/৫৬-২০০৭(তদন্ত-২)৪১১৭ on 21.06.2007, Ext-30. He started investigation on the asset declaration made by the accused persons on 02.04.2007. During investigation he did not find any existence of having 22 Biga's of land by way of inheritance by convict-appellant Mofazzal Hossain Chowdhury Maya. He took the list of the property left by the father of the accused No. 1 from A.C land, Matlab P.S which

revealed of having 1.6266 yojutangsha property by his father. He got evidence that the convict-appellant purchased 3.2 acres of land, the particular of which was not stated in the wealth statement. Tk. 2,20,851/- was invested for purchasing the aforesaid land. The accused No. 1 also purchased 165 cent of land in Gazipur on 20.02.2006 stating the consideration money as of Tk. 17,25,000/- without incorporating registration cost Tk. 1,63,000/- which was confirmed from the report of the Sub-Registrar, Gazipur. The convict-appellant together with his son Rashedul bought 50.66 cent of land on 14.06.2004 at a consideration of Tk. 6,57,115/- and this aspect was not mentioned in his wealth statement and

thereby he concealed the investment of Tk. 3,28,557/-. The convict-appellant declared of purchasing 10 Kathas of land in East West Development Company of Basundhara Group in the name of his 3 children without mentioning its consideration which is Tk. 17,08,500/- and this amount was paid from savings accounts No. 012158124-01 in Standard Chartered Bank in the joint name of the convict-appellant and his wife Pervin Chowdhury. Thus the convict-appellant concealed property worth Tk. 24,10,908/- and he declared his source of income from printing business, house rent, honouream as Member of Parliament, sale proceeds of ancestral property and

remuneration from Garments business. But during investigation, it reveals that he had printing business at 46 Tipu Sultan Road which he sold on 17.01.2001 to one Abdul Hoq vide deed No.108 6109. Despite disposal of the said property on 17.01.2001, the accused continued to show of getting his income from printing business up to 2005-2006 which is absolutely false as he had no source of income from this field beyond 2001. He (I.O) did not find any evidence of getting any sale proceeds by way of selling ancestral property of the convict-appellant. He also did not mention in his asset declaration giving particulars of the ancestral property alleged to have been sold by him. So, the income amounting

Tk. 15 lac as shown to have been derived from selling paternal property appears to be baseless and also the income from printing business after 2001 to 2005-2006 is fabricated story designed to give a legal shape of his illegal income. The convict-appellant declared property worth Tk. 89,85,210/- in his name but in the investigation the property worth Tk. 24,10,908/- was found in his possession being concealed. He showed his tax showing year wise income as Tk.1,11,45,076/-. He acquired property worth Tk. 32,01,042/- but the existence of property of Tk. 29,50,000/- has not been found during investigation and if the same is added, the illegal property in his name stands at Tk. 61,59,042/-.

At the very outset, Mr. Abdul Baset Mojumder, the learner Senior Advocate with Mr. Bashir Ahmed, Advocate and Mr. M. Sayed Ahmed, Advocate appearing for the convict-appellant, submits that admittedly, the notice under sections 18 and 26(1) of the Anti-Corruption Commission Act, 2004 read with Rule 15 (Gha) of the Jaruri Khamata Bidhimala 2007 was served the accused on 18.02.2007 and that admittedly, the Commission was not in existence at that time and as such, the very issuance of the notice is illegal and without jurisdiction.

He next submits that the judgment and order of conviction and sentence having been passed on the basis of the notice dated 18.02.2007 is void abinitio.

He then submits that very initiation of the proceeding is illegal and without jurisdiction as it is based on the notice dated 18.02.2007.

He additionally submits that the learned trial judge committed illegality in accepting the valuation of the officers of Public Works Department as neutral, whereas the officers deposed their evidence not as neutral witnesses but as prosecution witnesses; the P.W.D. Rate schedule includes Contractor's Profit, which is not applicable in case of private construction; therefore, any private

construction will be less expensive than those, which have been done as per the P.W.D. Rate Schedule; so the valuation of the property of the appellant having been assessed on assumption and guess and the same being taken into consideration by the learned trial judge, the verdict given by the trial judge is absolutely perverse, wrong and illegal and as such the impugned judgment is illegal.

He vigorously submits that the trial judge while convicting the appellant shifted the onus of proof from the prosecution to the accused; the trial judge in the said judgment and order dated 14.02.2008 held that the appellant has to prove that the property acquired in the name of the appellant

and other members of the appellant were acquired lawfully; the trial judge in an absolute illegal manner shifted the burden of proof upon the appellant requiring him to prove his innocence and exonerated the prosecution from any burden of proof; due to wrong observation of the trial court, the prosecution had no onus to prove anything; the trial judge by way of wrong interpretation of law as laid down under section 27(2) of the ACC Act of 2004 assumed that the appellant has to prove his innocence by way of proving that all property acquired by him was acquired by lawful source of income and the prosecution does not have any onus to prove anything, of whatever degree; so, the said

judgment and order of conviction and sentence is ex facie illegal since the same was passed by way of shifting onus of proof illegally upon the appellant.

He lastly submits that it is not at all necessary to go into the detailed facts of the case as the Appellate Division in the case of **Anti-Corruption Commission Vs. Mohiuddin Khan Alamgir, 62 DLR (AD) 290** has held that notice dated 18.02.2007 issued by the Secretary to the Commission was without any lawful authority as such, void and any proceeding based on the said void notice is a nullity in the eye of law.

On the other hand, Mr. Md. Khurshid Alam Khan, the learned Advocate appearing for the Anti-

Corruption Commission, submits that the prosecution examined as many as 33 witnesses to prove the prosecution case and that the prosecution witnesses have proved the case beyond all reasonable doubt by adducing reliable and satisfactory evidence before the trial court and for these reasons, this criminal appeal may be dismissed upholding the judgment and order of conviction and sentence passed against the convict-appellant.

He next submits that though a Division Bench of the High Court Division by judgment and order dated 27.10.2010 passed in Criminal Appeal No.3536 of 2009 allowed the appeal setting aside the judgment and order of conviction and sentence

but on appeal before the Appellate Division, the learned judges of the Appellate Division disposed of the Criminal Petition for Leave To Appeal No.107 of 2011 setting aside the judgment and order of the High Court Division and directed the High Court Division to hear and dispose of the criminal appeal on merit perusing and examining the evidence and the exhibited materials on record.

He candidly submits that in view of the judgment and order of the Appellate Division, this criminal appeal may be heard and disposed of both on the point of facts and laws following the evidence available on the record.

He lastly submits that the convict-appellant acquired properties which are disproportionate to his known source of income and that the properties which have been acquired by his wife and sons are acquired by the money of the convict-appellant and that the prosecution witnesses have proved the same beyond all reasonable doubt and suspicion and as such, the criminal appeal may be dismissed affirming the judgment and order of conviction and sentence.

Mrs. Rona Naharin, D.A.G with Mr. A.K.M. Amin Uddin, D.A.G. and Mrs. Helena Begum (China) A.A.G appearing for the State-respondent, submits that the convict-appellant with the help of

his dependents acquired a huge amount of properties which are disproportionate to his known source of income and that the convict-appellant concealed the properties standing in his name and dependents.

She next submits that the dependents of the convict-appellant have acquired properties with the monies provided by the convict-appellant and since the dependents had no independent source of income to acquire the properties standing in their name and as such, the criminal appeal may be dismissed affirming the judgment and order of conviction and sentence.

She lastly submits that the prosecution has examined as many as 33 witnesses to prove the

prosecution case and that the prosecution witnesses have proved the prosecution case beyond all reasonable doubt by adducing cogent, reliable and satisfactory evidence before the trial court and as such, this criminal appeal may be dismissed upholding the impugned judgment and order of conviction and sentence.

We have gone through the petition of appeal, the F.I.R, the investigation report, seizure list, all the exhibits and material exhibits, the evidence adduced by the prosecution witnesses and the proposition of law. We have also perused and examined all the materials and evidence available in the paper books analytically. We have also considered the

submissions advanced by the learned Advocates for the respective parties and considered their submissions to the best of our wit and wisdom.

Now, we want to see whether or not the judgment and order of conviction and sentence imposed upon the convict-appellant under section 26(2) of the ACC Act, 2004 by the learned special judge is sustainable in the eye of law.

Admittedly, the case was initiated on the strength of the notice dated 18.02.2007 (Ext.6) issued by the Secretary of the Anti-Corruption Commission. The said notice is quoted below:

দুর্নীতি দমন কমিশন

প্রধান কার্যালয়, ঢাকা।

স্মারক নং-দুদক/৭০-২০০৭/অনু:-২/৬৬১

তারিখ- ১৮/০২/২০০৭ইং

সম্পদের বিবরণী দাখিলের নোটিশ।

আপনি জনাব মোফাজ্জেল হোসেন চৌধুরী মায়া, পিতা-মরহুম আলী আহম্মদ মিয়া, বাড়ী-৩/এ, মরিয়ম টাওয়ার, দক্ষিণ জাতিসংঘ রোড, বারিধারা, ঢাকা। নিজ নামে এবং আপনার, স্ত্রী, পুত্র, কন্যা সহ পরিবারের অন্যান্য সদস্য বা আপনার পক্ষে অন্য কোন নামে বৈধ ও জ্ঞাত আয়ের সহিত অসংগতিপূর্ণ সম্পদ অর্জন করেছেন মর্মে প্রাথমিক অনুসন্ধানে প্রতীয়মান হওয়ায় জরুরী ক্ষমতা বিধিমালা, ২০০৭ এর বিধি ১৫ঘ(১), ১৫ঘ(২) তৎসহ দুর্নীতি দমন কমিশন আইন, ২০০৪ এর ধারা ১৮ ও ২৬(১) এর বিধান ও ক্ষমতা বলে এক্ষণে অত্র নোটিশ প্রাপ্তি/জারীর ৭২ ঘণ্টার মধ্যে ১, সেগুনবাগিচা ঢাকাস্থ দুর্নীতি দমন কমিশনের প্রধান কার্যালয় অফিস চলাকালীন আপনি স্ব-শরীরে কমিশনের পরিচালক (তদন্ত) জনাব মোঃ তানকিন হক সিদ্দিকী এর নিকট উপস্থিত হয়ে আপনার মালিকানাধীন ও দখলাধীন স্বনামে ও আপনার স্ত্রী, পুত্র, কন্যা সহ পরিবারের অন্যান্য সদস্য বা আপনার পক্ষে অন্য নামে থাকা সকল স্থাবর ও অস্থাবর সম্পত্তির এবং উক্তরূপ সম্পত্তি

অর্জনের উৎস সম্পর্কিত বিবরণ দাখিল করার জন্য নির্দেশ দেয়া যাচ্ছে।
ব্যর্থতায় আপনার সকল স্থাবর, অস্থাবর সম্পত্তি অবরুদ্ধ/ক্রোকবদ্ধ
করাসহ উল্লিখিত আইনসহ দেশে প্রচলিত আইন অনুযায়ী যথোপযুক্ত
কার্য ধারা গ্রহণ করা হবে।

(মোঃ দেলোয়ার হোসেন)

সচিব

প্রাপক: মোফাজ্জেল হোসেন মায়্যা,

পিতা-মরহুম আলী আহম্মদ মিয়া,

বাড়ী-৩/এ, মরিয়ম টাওয়ার,

দক্ষিণ জাতিসংঘ রোড, বারিধারা, ঢাকা।

As per submission of Mr. Abdul Baset
Majumder, the learned Advocate for the convict-
appellant, since this appeal rests on law point, it is
not at all necessary to go into the detailed facts of

the case. In view of the above, it is, however, pertinent to quote the relevant portion of the judgment of the Appellate Division given in the case of Anti-Corruption Commission V. Mohiuddin Khan Alamgir, reported in 62 DLR(AD)290, wherein it has been held as follows:

“In the present case, the notice dated 18.02.2007, under Section 26 of the Act, was issued by the Secretary of the Commission but he does not represent the Commission, he is only one of its employees, to carry out the decision of the Commission. But at the relevant time there was no Commission, as such, apparently, the Secretary issued the notice on 18.02.2007, on his own, without

any satisfaction and decision from the Commission, in violation of Section 26 of the Act. The concerned authorities on realizing this error, tried to cover it up by inserting sub-section (2) in Section 18 on 18.04.2007, by Ordinance No. VII of 2007. Sub-section (2) provides for ex post facto ratification of the acts done by the officers of the Commission during the period from 07.02.2007 to 24.02.2007, without any authorization from the Commission, but the question of jurisdiction goes to the root of the matter. If any person acts beyond his authority, to the prejudice of any person, such acts cannot be ratified or validated by post facto legislation, his action remains void.”

From the judgment of the Appellate Division, we find that admittedly there was no Commission from 07.02.2007 to 24.02.2007. The notice Exhibit-6 was issued when the Commission was not in existence. Therefore, the Special Case No. 15 of 2007 was proceeded against the convict-appellant on an invalid notice. Consequently, the judgment and order of conviction and sentence delivered in Special Case No. 15 of 2007 is void.

In the case in hand, the notice was served on 18.02.2007. Therefore, the principle expounded by the Appellate Division applies to the facts and circumstances of the present case.

However, Mr. Khurshid Alam Khan has drawn our attention to the concluding portion of the judgment, which is quoted below:

“There is, however, no legal impediment for the Commission to issue fresh notice under Section 26 of the Act, if so advised, but not in those cases where the accused has already been acquitted on merit of the case as is in this case.”

It is true that the above finding of the Appellate Division is binding on the High Court Division but the fact remains that the case has been ended with the judgment and order passed by the learned Senior Special Judge. Under the circumstances, there is no scope to issue fresh notice

upon the convict-appellant and others under section 26 of the ACC Act, 2004.

Considering the facts and circumstances of the case and the legal decision taken in the case of Anti-Corruption Commission V. Mohiuddin Khan Alamgir, reported in 62 DLR(AD)290, we are of the view that the judgment and order of conviction and sentence awarded against the convict-appellant under section 26(2) of the ACC Act, 2004 by the learned special judge is not sustainable and maintainable in the eye of law and the same deserves to be knocked down for ends of justice.

Now, we want to see where or not the judgment and order of conviction and sentence

awarded on the convict-appellant under section 27(1) of the ACC Act, 2004 by the learned special judge is maintainable and sustainable in the eye of law.

The allegations against the convict-appellant and others as disclosed in the prosecution materials and evidence are as follows:-

P.W-33 Md. Towfiqul Islam, Assistant Director of the Commission as well as Investigating Officer (I.O) of this case deposed before the trial court that he being assigned with the task of investigation, vide memo No. সি/৫৬-২০০৭(তদন্ত-২)৪১১৭ on 21.06.2007, Ext-30 investigated into the case. He started investigation on the asset

declaration made by the accused persons on 02.04.2007. During investigation he did not find any existence of having 22 Biga's of land by way of inheritance by convict-appellant Mofazzal Hossain Chowdhury Maya. He took the list of the property left by the father of the accused No. 1 from A.C land, Matlab P.S which revealed of having 1.6266 yojutangsha property by his father. He got evidence that the convict-appellant purchased 3.2 acres of land, the particular of which was not stated in the wealth statement. Tk. 2,20,851/- was invested for purchasing the aforesaid land. The accused No. 1 also purchased 165 cent of land in Gazipur on 20.02.2006 stating the consideration money as of

Tk. 17,25,000/- without incorporating registration cost of Tk. 1,63,000/- which was confirmed from the report of the Sub-Registrar, Gazipur. The convict-appellant together with his son Rashedul bought 50.66 cent of land on 14.06.2004 at a consideration of Tk. 6,57,115/- and this aspect was not mentioned in his wealth statement and thereby he concealed the investment amounting to Tk. 3,28,557/-. The convict-appellant declared of purchasing 10 Kathas of land in East West Development Company of Basundhara Group in the name of his 3 children without mentioning its consideration which is Tk. 17,08,500/- and this amount was paid from savings accounts No.

012158124-01 in Standard Chartered Bank in the joint name of the convict-appellant and his wife Pervin Chowdhury. Thus the convict-appellant concealed property worth Tk. 24,10,908/- and he declared his source of income from printing business, house rent, honorarium as Member of Parliament, sale proceeds of ancestral property and remuneration from Garments business. But during investigation, it reveals that he had printing business at 46 Tipu Sultan Road which he sold on 17.01.2001 to one Abdul Hoq vide deed No.108 6109. Despite disposal of the said property on 17.01.2001, the accused continued to show of getting his income from printing business up to 2005-2006 which is

absolutely false as he had no source of income from this field beyond 2001. He (I.O) did not find any evidence of getting any sale proceeds by way of selling ancestral property of the convict-appellant. He also did not mention in his asset declaration giving particulars of the ancestral property alleged to have been sold by him. So, the income amounting Tk. 15 lac as shown to have been derived from selling paternal property appears to be baseless and also the income from printing business after 2001 to 2005-2006 is fabricated story designed to give a legal shape of his illegal income. The convict-appellant declared property worth Tk. 89,85,210/- in his name but in the investigation the property worth

Tk. 24,10,908/- was found in his possession being concealed. He showed his tax showing year wise income as Tk.1,11,45,076/-. He acquired property worth Tk. 32,01,042/- but the existence of property of Tk. 29,50,000/- has not been found during investigation and if the same is added, the illegal property in his name stands at Tk. 61,59,042/-.

P.W-22 Abdul Latif, Marketing Manager, East West property of Basundhara city Development deposed that Investigating Officer on going to his office seized the documents related to the land, flat, shop purchased by accused Pervin Chowdhury, Rashedul, Shajedul and Rifat Sayed. Accused Pervin has a Plot No. 198 having an area 5 Kathas in

Block-I at a cost of Tk. 18 lac. She has also another plot No. 199 of 5 Kathas in Block-G at a cost of Tk, 17,75,000/-. Accused Rashedul together with his brother Shajedul and sister Rifat Sayed has a plot No. 2682/B of 10 Kathas in Block-M of Basundhara land project purchased at a cost of Tk. 65 lac and they paid Tk. 17,08,500/-. Accused Rashedul has also a shop No. D-56 of 150.24 square feet in level-6 of Basundhara City Shopping Mall at a cost of Tk. 16,23,022/- out of which Tk. 8,27,400/- was paid. Accused Rashedul Hossain together with her wife Doctor Farhana Chowdhury has an apartment No. A-4 of 1942 square feet in Baridhara Project under Basundhara Project on Plot No. 1/A, Block-F named

Dakkhina with car parking space No. 6 at a cost of Tk. 46,43,900/- out of which Tk. 18,64,470/- was paid.

Accused Shajedul has a shop No. D-57 of 151.31 square feet in level-6 of Basundhara City Development at a cost of Tk. 16,34,148/- out of which Tk. 10,29,400/- was paid. He also deposed that Rifat Sayed, the daughter of the convict-appellant Mofazzal Hossain Chowdhury Maya has an apartment Nos. B-2 of 1943 square feet on Plot No:1/A, Baridhara Project, Dakkhin at a price of Tk. 44,49,600/- out of which Tk. 8,71,304/- was paid. He continued to say that accused Suborna Chowdhury together with her husband Shajedul

Chowdhury has an apartment No. A-5 on plot No-1/A, Block-E having an area 1943 square feet at a cost of Tk. 46,43,900/- out of which Tk. 10,67,332/- was paid. He proved the seizure list, Ext-22, wherein his signature is Ext-22/1.

It is worthwhile to mention that in order to prove the prosecution case, the prosecution examined as many as 33 prosecution witnesses. From the evidence on record, it appears that PW 1 is an Assistant Director of the Anti-Corruption Commission, who more or less stated the same facts as narrated in the FIR. He stated that the convict-appellant concealed the properties and acquired the properties which are disproportionate to his known

sources of income. PW 2 has not stated anything against the appellant but he deposed that he provided certified copies of 6 deeds registered in different sub-registry offices (Ext-8 series). PW 3 is the sub-registrar of Motlab (Uttor), Chandpur, who deposed that he supplied certified copies of 16 registered sale deeds (Ext-8 series). PW 4 being Director of Anti-Corruption Commission accorded permission to the informant for inquiry into the allegation against the convict-appellant and others. PW 5 being Director of the Anti-Corruption Commission received the wealth statement of the convict-appellant submitted by his wife. PW 6 is a district registrar who supplied documents and deeds

relating to the properties of the convict-appellant and others. PW 7 was the UNO of Motlab (Uttor), Chandpur who provided information of the landed property acquired by the convict-appellant and others by way purchase and inheritance (Ext-9). P.W-8 Md. Harunur Rashid, Sub-Registrar, Gazirpur Sadar provided certified copy of deed Nos. 18621 of 2003, 12570 of 2004 and 3218 in the name of Pervin Chowdhury and Shajedul Hossain Chowdhury, Rashedul Chowdhury and the convict-appellant Mofazzal Hossain Chowdhury Maya and last one in the name of the convict-appellant Mofazzal Hossain Chowdhury Maya alone (Ext-10 series). PW.9 is the Manager, Customer Service of

HSBC who gave information relating to Bank Accounts of the wife of the convict-appellant (Ext-11 series). PW 10 is officer of Standard Chartered Bank, Motijheel who provided information relating to Bank Accounts of the convict-appellant and others. PW 11 was tendered by the prosecution. PW 12 is an officer of Oriental Bank, Kawran Bazar Branch, who disclosed about loan account of the wife of the convict-appellant (Ext-14). PW 13 is an officer of prime bank, Shimrail Branch, who gave information relating to Bank Accounts of the convict-appellant and his dependents (Ext-15 and material Ext-II, IV and VI). PW 14 was Bank official and seizure list witness. PW 15 is an officer

of Islami Bank, Head Office, who disclosed about the Bank accounts of accused Rashedul Hossain (Ext-16 series). PW 16 is the principal officer of AB Bank, Principle Branch, who supplied some bank documents to the investigating officer (Ext-17 and material Ext-VII series). PW 17 is the Vice President of Premier Bank, Banani Branch, who supplied some bank documents in respect of loan accounts to the investigating officer (Ext-18 and material Ext-VIII). PW. 18 was tendered by the prosecution. PW 19 is the Manager of NCC Bank, Dhanmondi Branch, who supplied some bank document to the investigating officer (Ext-20 series). P.W 20 is SDE of PWD Officer PWD made

measuring of the building and assessed the construction costs of the House which was constructed in year 1997 to 1999 (Ext-21). PW 21 is the Executive Engineer of PWD, who made valuation statement of the building and the construction costs along with PW-20 (Ext-21/3). PW 22 is the Marketing Manager of East West property of Basundhara City Development, who supplied documents relating to land, flat and shop purchased by the dependents of the convict-appellant (Ext-22). PW 23 is the Deputy Manager of Bashundhara Group, East West Property development who stated about the apartment, plot and flat purchased by the dependents of the convict-

appellant and he is also the seizure witness of Ext-22. PW 24 is the Assistant Director of BRTA, Dhaka Circle (South) gave evidence in respect of purchasing a car under loan scheme of Premium Bank (Ext-23 series). PW 25 is the Police Inspector of BRTA, Mirpur Branch, who deposed that accused Pervin and accused Rashedul Hoq purchased car at the finance provided by Honkong Sanghai Banking Corporate (HSBC) (Ext-24 series). PW 26 is the owner of flat No.3/A and 3/B in Morium Tower at 78/3 UN Road, Baridhara, who sold out the aforesaid flats to accused Pervin Chowdhury and the purchaser got one of the flat registered in the name of accused Suborna Chowdhury and another. P.W-

27 Abdul Hoq deposed that he purchased total 0.9456 yojutangsha land from plot Nos. 5788, 5769, 5790, 5789 appertaining to Khatian No. 2069 at 46 Tipu Sultan Road on 11.01.2001 from the convict-appellant Mofazzal Hossain Chowdhury Maya. He also purchased another 0.0463 Yojutangsha from Plot No. 5788 vide deed No. 109 on 11.01.2001 from the convict-appellant who has no subsisting interest in the aforesaid plots. P.W-28 Mizanur Rahman, Assistant Director, Rajuk deposed that accused Shajedul had 3 Kathas plots in Block-44, Sector-1, Uttara in exchange of which he got a 5 Kathas plot in Sector-10 at Road No-6, Plot No-32 at a cost of Tk. 7,50,000/- out of which Tk.

2,59,800/- was paid. He proved allotment letter dated 25.10.2000, Ext-25. Accused Pervin Chowdhury got allotment of another plot No. 15 on 23.03.2000 in sector-10 at Road No.6, Uttara having an area 5 Kathas at a consideration of Tk. 7,50,000/- out of which Tk. 2,59,800/- was paid. He proved a report given by Secretary, Rajuk acknowledging this aspect on 03.09.2007, Ext-27. He also submitted allotment letter and deposit receipt, Ext-28 series. P.W-29 Faruk Jalal, Secretary Rajuk deposed corroborating the testimony of 28. P.W-30 Md. Abdul Mannan an employee of Registrar of Joint Stock Company deposed that accused Pervin and Shajedul have an industry named Demra Industries

Ltd wherein accused Pervin has 6,488 shares worth Tk.6,48,800/- and accused Shajedul has 2781 shares valued Tk. 2,78,100/-. The audit report of the industries revealed the total asset value of the industries stands at Tk. 3,09,29,939. Investigating Officer seized the document related to the industries and submitted in his office preparing seizure list, Ext-26, taking his signature therein, Ext-26/1. He proved the alamot like documents, Mat-Ext-1X. P.W-32 Jahangir Alam, Sub-Inspector of police attached with Sutrapur P.S deposed of recording ejahar lodged by Assistant Director of the Commission named Nurul Alam on 13.06.2007 by filing F.I.R Form, Ext-29 wherein his signature is,

Ext-29/1. PW 33 investigating officer being entrusted with the investigation having found prima facie case submitted charge-sheet against the accused-appellant and others under sections 26(2) and 27(1) of ACC Act, 2004 read with Rule 15(Gha) of the Jaruri Khamata Bidhimala, 2007.

It is evident from the record and the evidence of PW-1 that the particulars of the property acquired by appellant in his name and in the name of his dependents found to be disproportionate to this known source of income are 32.05 cent of land at 37 Teknog Para Mouza under Gazipur District valued Tk.17,15,000/- and 25.30 cent of land of the same Mouza at a consideration of Tk.3

lac, payment of installment amounting to Tk.17,08,500/- for purchasing residential plot from Basundhara Project and 1.88 cent of land purchased at Tk.98,000/- under Matlab P.S of District Chandpur, in total Tk.38,21,500/-. Of the aforesaid properties, the particulars of 1.84 cent of land under Matlab P.S, Chandpur at Tk.98,000/- and 25.30 cent of land at 37 Teknog Para Mouza under Gazipur District at Tk.3 lac and investment of Tk.4,80,000/- at Chowdhury Garments and Tk.12,57,150/- in purchasing the car have not been declared in his wealth statement.

Wife of the appellant is found in possession of plot No.19, Sector-1, Road No.7, date of purchase is on 02.04.95 at a consideration of Tk.17 lac and the construction costs as assessed by the Engineers of PWD is Tk.95,73,584/-. She is in possession of plot No.15 of 10 Katha at Road No.5, Sector-10 at a consideration of Tk.2,59,800/-, land in her share in Mouza Teknog Para under Gazipur District worth Tk.2,63,000/-, another plot No. 198 &199 in block No.I, Basundhara R/A at a cost of Tk. 18 lac and Tk.17,75,000/- in total Tk.35,75,000/- from 31.01.2000-15.12.2005 and flat No.E 8 Niketon, Road -6/A Gulshan at a consideration of

Tk.8,44,000/-. Apart from these, she made payment of Tk.14,70,616/- from 15.06.03 to 22.04.07 on account of loan for purchasing car and also spent an amount of Tk.2,40,000/47. Thus she is found in possession of the property worth Tk.1,83,44,941/47. She has no source of income and thus the aforesaid property is acquired in the name of the wife of the convict-appellant with his illegal money and by this way, she aided her husband to commit such offences.

The property found in possession of the accused Shajedul, the son of the appellant is investment of Tk.2,59,800/- between 10.12.96 to 31.12.03, purchasing land in plot No.32 in sector

10 at Road 6, Uttara. The payment of Tk.2,60,000/- in his share for purchasing land in Teknog Mouza under Gazipur District, depositing Tk.10,29,400/- in advance between the period of 05.07.99 to 14.12.05 for purchasing shop No.57 in level-6, Block-D of Basundhara shopping mall. Flat No.A/5 of Basundhara on plot No.1/A. Block-E, named Dakkhina with making payment in advance amounting to Tk.10,67,332/- between 05.05.06 to 17.02.07. Besides he together with his wife Suborna is found in possession of property worth Tk.27,53,970/42. Accused Shajedul has no means of income at the time of acquiring those properties. He taking those properties in his name

assisted his father to acquire those with his illegal earning. The particulars of 1.65 cent of land under Matlab P.S. and Bank balance amounting to Tk. 87,438.42/- are not mentioned in the wealth statement.

The list of properties acquired in the name of Rashedul, the son of the appellant is land in Mouza Teknog para under Gazipur District worth Tk.3 lac, shop No.56 in Block-D at level-6 of Basundhara Shopping Mall at Tk.8,27,400/-. Purchasing car and payment of loan of Tk.5,81,044/-, purchasing of flat No.A/4 in plot No.1/A in Block-E named Dakkhina under Basundhara R/A at a cost of Tk.7,76,576.65/-.

Balance of Tk.4210.00/- in the joint accounts and payment of Tk.50,000/- against 1.65 acres of land under Matlab P.S. The total property is worth Tk.25,39,230/- but this accused had no means of income and the same indicates that he assisted his father by lending his name to get those properties with his illegal income. Of the aforesaid properties the information of 1.65 cent of land valued at Tk.50,000/- and Bank balance amounting to Tk.4,210.02/- are not stated in the wealth statement.

The property taken in the name of Subrona Chowdhury is flat No.3/B in Morium Tower at a cost of Tk.22,50,000/- for which Suborna had no

ostensible means of income but the same is of the property of appellant who declared his source of income as honorarium having received as Member of Parliament from 1956 to 2001, Printing press business and remuneration from Chowdhury garments but in investigation, the existence of printing business is not found. The other members of his family have no source of income, they in collusion with others acquired property disproportionate to the known source of income of the appellant and also furnished false wealth statement.

It appears from the record that the evidence adduced by the PW-1 has been corroborated by

P.W 2-P.W 33 with regard to acquisition of properties by the convict-appellant and his dependents.

The submissions of the learned Advocate for the Anti-Corruption Commission are that 33 prosecution witnesses have proved the prosecution case beyond all reasonable doubt and suspicion by adducing reliable and satisfactory evidence to the effect that the convict-appellant in collaboration with other accused i.e the dependents of the convict-appellant acquired properties with illegal monies which are disproportionate to their known sources of income and in that view of the matter, the appeal may be dismissed affirming the judgment and order

of conviction and sentence passed by the learned Senior Special Judge.

In reply to the same, the submissions of the learned Advocates for the convict-appellant are that the convict-appellant and others have been implicated in this case out of political grudge and that the prosecution has hopelessly fail to prove that the convict-appellant and others acquired the property by the illegal monies which are disproportionate to their known sources of income.

It is now well settled that section 27 is an independent provision and for initiation of a proceeding agaisnt any person under the provisioin, no notice is required to be served. If

the prosecution can establish that any person has acquired or amassed wealth which is beyond his known source of income, he may be prosecuted and convicted under section 27(1). The aforesaid view finds support in the decision taken in the case of **Anti-Corruption Commission Vs. Iqbal Hasan Mahmood, 66 DLR.(AD)185.**

From the impugned judgment and order of conviction and sentence, it is apparent that the wife, daughter and son of the convict-appellant were acquitted of the charge levelled against them. Neither the Anti-Corruption Commission nor the State preferred any criminal appeal before the High

Court Division challenging the judgment and order of acquittal.

From a plain reading of section 27(2) of the said Act of 2004 it manifestly shows that the prosecution has to prove that the appellant or any other third party on behalf of the appellant is in possession of any property or acquired any property, which properties are disproportionate to the known source of the income of the appellant. Therefore, it is ex-facie clear that the prosecution has to prove that firstly, the appellant has acquired or is in possession of particular property; secondly, any third party in the instant case wife and sons of the appellant have acquired or is in possession of a

particular property on behalf of the appellant which means that the prosecution has to prove that the property in possession of the wife and sons was acquired out of the money of appellant; thirdly, the prosecution has to show the aggregated amount of income of the appellant obtained through the known sources of income as well as the aggregated amount obtained through the illegal sources of income after thorough investigation, fourthly, the value of the property of the appellant and other property, proved as being held by third party on behalf of the appellant, are exorbitantly excessive than the aggregated amount of known income of the appellant, which shows the said properties to be

disproportionate to the known source of income of the appellant. In the instant case, the prosecution has failed to discharge its onus of proof in this regard. The prosecution has failed to prove that the properties obtained by the convict-appellant and his dependents are acquired by their illegal monies.

It is now well settled that for convicting a person under section 27(2) of the said Act of 2004 the prosecution has to prove that not only the alleged assets is beyond known source of income of the accused, but the prosecution has to further prove in addition, to the former that the said alleged assets were acquired by way of illegal means. No evidence was adduced by the prosecution nor did any

prosecution witness give any deposition to the effect that any property was acquired by the appellant by way of illegal means. Further, the prosecution did not even tender an iota of evidence to prove that the appellant ever had any earning by illegal means and/or he acquired any asset beyond his known sources of income. The learned trial judge without taking into consideration of the same convicted and sentenced the convict-appellant.

Having considered all the facts and circumstances of the case, the evidence on record, the propositions of law cited and discussed above and the submissions advanced by the learned

Advocates for the respective parties, we find substance in this criminal appeal.

Accordingly, this criminal appeal is allowed.

In consequence thereof, the impugned judgment and order of conviction and sentence dated 14.02.2008 passed by the learned Special Judge, Court No.05, Dhaka in the Special Case No.15 of 2007 corresponding to Special Case No.144 of 2007 of the Court of Senior Special Judge and Metropolitan Sessions Judge, Dhaka convicting the convict-appellant under Section 26(2) of Anti-Corruption Commission Act, 2004 read with Rule 15(Gha) of Jaruri Khamata Bidimala 2007 and thereby sentencing him to suffer simple

imprisonment for 3 (three) years and further convicting him under Section 27(1) of the Anti-Corruption Commission Act, 2004 and thereby sentencing him to suffer rigorous imprisonment for 10 years with a fine of Tk.5 crore, in default, to suffer rigorous imprisonment for 1 (one) year and also confiscating the property of the convict-appellant, are set aside and the convict-appellant is acquitted of the charge levelled against him.

Let the convict-appellant be discharged from his bail bond.

Let a copy of the this judgment and order be communicated to the learned Senior Special Judge,

Dhaka and the Chairman, Anti-Corruption
Commission at once.

K.M. Hafizul Alam, J:

I agree.