

**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.4045 of 2007**

**With**

**Criminal Appeal No. 12098 of 2017**

**With**

**Criminal Appeal No. 11784 of 2017**

**With**

**Criminal Appeal No. 3353 of 2009**

**And**

**Criminal Appeal No. 3990 of 2007**

Wadud Bhuiyan

**.....Convict-appellant-petitioner.**

-Vs-

The State and another

**.....Opposite-parties**

Mr. A.K.M. Fakrul Islam, Advocate

**..For the Convict-appellant-petitioner.**

(In Criminal Appeal No. 4045 of 2007)

Md. Abdul Wahab

**...Convict-appellant-petitioner.**

-Vs-

The State and another

**.....Opposite-parties.**

Mr. Md. Wazed Ali, Advocate

**..For the Convict-appellant-petitioner.**

(In Criminal Appeal No. 12098 of 2017)

Alhaj Md. Mashiur Rahman

**...Convict-appellant-petitioner.**

-Vs-

The State and another

**.....Opposite-parties.**

Mr. Aminul Hoque, Advocate with

Mr. KH Bahar Rummy, Advocate and

Mr. Mahbub Safique, Advocate

**..For the Convict-appellant-petitioner.**  
(In Criminal Appeal No. 11784 of 2017)

Dr. A.Z.M. Zahid Hossain

**...Convict-appellant-petitioner.**

-Vs-

The State and another

**.....Opposite-parties.**

Mr. Rokon Uddin Mahmood, Senior Advocate with  
Mr. Ahsanul Karim, Advocate

Mr. Khairul Alam Chowdhury, Advocate and

Mr. Tanveer Hossain Khan, Advocate

**..For the Convict-appellant-petitioner.**  
(In Criminal Appeal No. 3353 of 2009)

Aman Ullah Aman

**...Convict-appellant-petitioner.**

-Vs-

The State and another

**.....Opposite-parties.**

Mr. Md. Ariful Islam, Advocate

**..For the Convict-appellant-petitioner.**  
(In Criminal Appeal No. 3990 of 2007)

Mr. Mahbubey Alam, Attorney-General with

Mr. Biswajit Deb Nath, Deputy Attorney-General

Mr. A.K.M. Amin Uddin, Deputy Attorney-General and

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

**...For the State (In all the criminal appeals).**

Mr. Md. Khurshid Alam Khan, Advocate,

**...For the Anti-Corruption Commission.**

(In Criminal Appeal Nos.4045 of 2007, 11784  
of 2017, 3353 of 2009 and 3990 of 2007)

Mr. A.K.M. Fazlul Hoque, Advocate

**..For the Anti-Corruption Commission**

(In Criminal Appeal No.12098 of 2017).

**Order dated The 27<sup>th</sup> of November, 2018.**

These applications under section 426 read with  
section 561A of the Code of Criminal Procedure (in

brief the CrPC, 1898), have been filed by the convict-appellant-petitioners for suspending or staying the operation of the conviction and sentence passed by the learned judges of the trial Courts.

Since the points of law involved in this applications are same and identical in nature, we have taken up all the applications together for hearing and disposal of the same and we are going to dispose of all the applications in one consolidated order.

It appears from Criminal Appeal No.4045 of 2007 that the convict-appellant-petitioner Wadud Bhuiyan was convicted under sections 26(2) and 27(1) of the Durnity Daman Commission Ain, 2004 read with section 5(2) of the Prevention of Corruption Act, 1947 and sentenced under section 26(2) to suffer rigorous imprisonment for 3 (three) years and under section 27(1) to suffer 10 (ten) years rigorous imprisonment with a fine of Tk. 10,000/- (ten thousand), in default, to

suffer rigorous imprisonment for 3 (three) months and further sentenced under section 5(2) of the Prevention of Corruption Act, 1947 to suffer rigorous imprisonment for 7 (seven) years with an order for forfeiture of moveable and immoveable properties of the convict-appellant-petitioner amounting to Tk.6,36,29,354.00/- (six core thirty six lacs twenty nine thousands three hundred fifty four only) in favour of the State along with an order to run all the sentences concurrently.

Being aggrieved by the aforesaid judgment and order of conviction and sentence, this convict-appellant-petitioner preferred this criminal appeal before this court. It may be mentioned that this court by an order dated 11.11.2007 admitted the appeal for hearing and stayed realization of fine till disposal of this criminal appeal. It appears from the record that the

convict-appellant petitioner was enlarged on bail by this court on 28.04.2009.

In Criminal Appeal No.12098 of 2017, Md. Abdul Wahab was convicted under section 26(2) and sentenced to suffer rigorous imprisonment for 3 (three) years and further he was convicted under section 27(1) of the Durnity Daman Commission Ain, 2004 and sentenced to suffer 5 (five) years with a fine of Tk. 30,000/- (thirty thousand), in default, to suffer rigorous imprisonment for 6 (six) months with an order for forfeiture of moveable and immoveable properties of the convict-appellant-petitioner amounting to Tk. 93,00,369.32/- (ninety three lacs three hundred sixty nine point three two only) which is disproportionate to his known source of income, in favour of the State respectively.

Being aggrieved by the aforesaid judgment and order of conviction and sentence dated 30.10.2017, this

convict-appellant-petitioner preferred this criminal appeal before this court. It may be mentioned that this court by an order dated 08.11.2017 admitted the appeal for hearing and stayed the realization of fine till disposal of this criminal appeal. It appears from the record that the convict-appellant-petitioner was enlarged on bail by this court on 06.12.2017.

In Criminal Appeal No.11784 of 2017, the convict-appellant-petitioner Alhaj Md. Mashiur Rahman was convicted under sections 26(2) and 27(1) of the Durnity Daman Commission Ain, 2004 and sentenced thereunder to suffer rigorous imprisonment for 3 (three) years with a fine of Tk. 20,000/-(twenty thousand only), in default, to suffer rigorous imprisonment for 3 (three) months more and 7 (seven) years with a fine of Tk. 50,000 (fifty thousand only), in default, to suffer rigorous imprisonment for 6 (six)

months more respectively with an order for confiscation of his illegal properties.

Being aggrieved by the aforesaid judgment and order of conviction and sentence, this convict-appellant-petitioner preferred this criminal appeal before this court. It may be mentioned that this court by an order dated 13.12.2017 admitted the appeal for hearing, stayed the realization of fine till disposal of this criminal appeal and enlarged the convict-appellant-petitioner on bail.

In Criminal Appeal No. 3353 of 2009, Dr. A.Z.M. Zahid Hossain was convicted under sections 26(2) and 27(1) of the Durnity Daman Commission Ain, 2004 and sentenced thereunder to suffer simple imprisonment for 3 (three) years and rigorous imprisonment for 10 (ten) years with a fine of Tk. 10,00000/- (ten lacs), in default, to suffer rigorous imprisonment for 1 (one) year more respectively with an order for forfeiture of moveable

and immoveable properties of the convict-appellant-petitioner amounting to Tk. 3,09,88,000/- (three crore nine lacs eighty eight thousand only) which is disproportionate to his known source of income, in favour of the State.

Being aggrieved by the aforesaid judgment and order of conviction and sentence dated 25.05.2008, this convict-appellant-petitioner preferred this criminal appeal before this court. It may be mentioned that this court by an order dated 03.06.2009 admitted the appeal for hearing and stayed the realization of fine and the order of confiscation of the properties till disposal of this criminal appeal and enlarged the convict-appellant-petitioner on bail.

In Criminal Appeal No. 3990 of 2007, the convict-appellant-petitioner Aman Ullah Aman was convicted under sections 26(2) of the Durnity Daman Commission Ain, 2004 read with Rule 15 Gha(5) of the



Emergency Power Rules, 2007 and section 27(1) of the Durnity Daman Commission Ain, 2004 read with section 5(2) of the Prevention of Corruption Act, 1947 and sentenced thereunder to suffer simple imprisonment for 3 (three) years and rigorous imprisonment for 10 (ten) years with a fine of Tk.10,00000/- (ten lacs), in default, to suffer rigorous imprisonment for 1 (one) year more respectively with an order for forfeiture of moveable and immoveable properties of the convict-appellant-petitioner, which are disproportionate to his known source of income, in favour of the State.

Being aggrieved by the aforesaid judgment and order of conviction and sentence dated 21.06.2007, this convict-appellant-petitioner preferred this criminal appeal before this court. It may be mentioned that this court by an order dated 01.10.2007 admitted the appeal for hearing and stayed the realization of fine till disposal of this criminal appeal. Thereafter the convict-

appellant-petitioner was enlarged on bail on 10.11.2008. It may be noted that this court by judgment and order dated 16.08.2010 allowed the appeal and acquitted the convict-appellant-petitioner.

Being aggrieved by the same, the Anti-Corruption Commission preferred Criminal Petition For Leave To Appeal No. 428 of 2013 before the Appellate Division. Subsequently the Appellate Division by judgment and order dated 26.05.2014 set aside the judgment and order of the High Court Division so far as it relates to the conviction and sentence under section 27(1) of the Durnity Daman Commission Ain, 2004 read with section 5(2) of the Prevention of Corruption Act, 1947 and sent back the said appeal for further hearing on merit to the High Court Division.

At the time of hearing of the applications, Mr. A.K.M. Fakhrul Islam with Md. Wazed Ali the learned Advocates, appearing for the convict-appellant-

petitioners namely Wadud Bhuiyan and Alhaj Md. Mashhur Rahman, in Criminal Appeal No.4045 of 2007 and in Criminal Appeal No.12098 of 2007 with reference to news reports published in the different newspapers, submits that if the conviction and sentence of the convict-appellant-petitioners are not suspended by this court, their nomination papers might be turned down by the Election Commission and in that view of the matter, the conviction and sentence may be suspended for ends of justice.

He next submits that the convict-appellant-petitioners are the potential candidates to participate in the ensuing general parliamentary election for which an order of suspension of conviction and sentence is very much necessary, otherwise the convict-appellant-petitioners might not be allowed to participate in the ensuing general parliamentary election.

He lastly submits that if the convictions and sentences are not suspended, the convict-appellant-petitioners shall suffer irreparable loss and injury and it will cause injustice and irreversible consequences to them and considering the aforesaid situation, the applications for suspension of the conviction and sentence may be allowed for ends of justice. The learned Advocate for the convict-appellant-petitioners, in support of his submissions, has referred to number of legal decisions in the cases of Mamun (Md) alias Walid Hasan Vs. The State reported in 70 DLR (HCD) (2018) 148, AKM Mayeedul Islam Vs. Bangladesh Election Commission and others reported in 48 DLR (AD) (1996) 208, Navjot Singh Sidhu Vs. State of Punjab and another reported in AIR 2007 (SC) 1003, order dated 15.07.2009 passed in Criminal Appeal No.5310 of 2008 and order dated 12.10.2017 passed in Criminal Appeal No.10494 of 2017.

In Criminal Appeal No.11784 of 2017, the learned Advocate Mr. Aminul Hoque appearing on behalf of the convict-appellant-petitioner Alhaj Md. Mashiur Rahman, submits that this convict-appellant-petitioner is a valiant freedom fighter and senior politician of the Bangladesh Nationalist Party and that he is considered by the party as a contestant in the upcoming parliamentary election, but due to conviction and sentence, he might be declared unfit to contest in the upcoming general parliamentary election and under the aforesaid facts and circumstances, unless his conviction and sentence is suspended, he will not be able to submit his nomination paper in the upcoming general parliamentary election and for these reasons, the application for suspension of the sentence may be allowed for ends for justice.

Mr. Hoque next submits that every accused is presumed to be innocent unless his guilt is finally proved by the apex court.

He further submits that the criminal appeal against the conviction and sentence is the continuation of the trial and that at the time of admission of appeal, the sentence so far as it relates to imposition of fine has already been stayed by this court and at present, the conviction and sentence may be suspended so that the convict-appellant-petitioner can participate in the ensuing general parliamentary election.

Mr. Hoque, in support of his submissions, has produced an order dated 26.01.2010 passed in Criminal Appeal No. 4687 of 2009 and order dated 02.08.2010 passed in Criminal Appeal No. 3168 of 2008.

In Criminal Appeal No.3353 of 2009, Mr. Rokon Uddin Mahmood, the learned Senior Advocate along with Mr. Khairul Alam Chowdhury and Mr. Tanveer

Hossain Khan, learned Advocates appearing on behalf of the convict-appellant-petitioner namely Dr. A.Z.M. Zahid Hossain, submits that the Election Commission on 08.11.2008 declared election schedule for holding general election for 11<sup>th</sup> National Parliament and that the convict-appellant-petitioner is an aspirant candidate of the ensuing national parliamentary election but the conviction and sentence are clouding the right of the convict-appellant- petitioner to contest the ensuing election.

Mr. Mahmood next submits that on 03.06.2009, the High Court Division admitted the appeal against the conviction and sentence and enlarged the convict-appellant-petitioner on bail observing that he has a very fair chance of acquittal in the appeal from the charges leveled against him and as such, this application for suspension of conviction and sentence may be allowed until hearing of the appeal for ends of justice.

Mr. Mahmood further submits that unless this Court suspends the conviction and sentence of the convict-appellant-petitioner, he shall not be able to contest the ensuing election though the convict-appellant-petitioner has been convicted and sentenced in a very frivolous case, and as such this application for suspension of the conviction and sentence may be allowed for ends of justice.

He also submits that in view of section 426 read with section 561A of the Code of Criminal Procedure, this court has ample jurisdiction and authority to suspend the conviction and sentence if the Court finds that the allegations are not properly proved against him and there is a fair chance of acquittal of the conviction and sentence.

Mr. Rokon Uddin Mahmood, the learned Senior Advocate taking us through the evidence adduced by the prosecution witnesses, submits that the prosecution



could not prove the allegations against the convict-appellant-petitioner beyond all reasonable doubt by adducing cogent, reliable and satisfactory evidence and for this reason, the conviction and sentence may be suspended for ends of justice.

In addition to submissions made by Mr. Rokon Uddin Mahmood, Mr. Ahsanul Karim, the learned Advocate appearing for the convict-appellant-petitioner, further submits that suspension of the conviction and sentence is a discretionary power of this Court and this Court at the time of dealing and considering the application for suspension of conviction and sentence may consider the following aspects of the case.:

- I) That the Court will not suspend the conviction and sentence if the offences are so dangerous in nature and it may cause

danger to the society and the people as a whole such as the arms case and the drug case etc.

Mr. Karim in support of his submission referring to a decision in the case of (2009)5 SCC 787, submits that before passing an order of suspension of conviction and sentence, the nature and gravity of the offence is to be looked into but in the instant case, the allegations are not so grave and serious.

- II) That if the order of suspension is not passed that will cause serious injustice to the convict-appellant petitioner.
- III) That convenience and inconvenience may be looked into also before passing any order of suspension so that no one is prejudiced or affected for non-passing of the order of this Court.

- IV) That situation at the relevant time of lodging the F.I.R should also be considered before passing any order of suspension.
- V) That whether the convict would be prejudiced if the necessary order of suspension is not passed.
- VI) That whether the allegations are prima-facie proved by adducing the evidence by the prosecution witnesses.
- VII) That the order of suspension may not be passed as a matter of recourse and as a matter of right only but it may be granted in a very exceptional and rare of the rarest cases.

He finally submits that the case of the petitioner is an exceptional one and the same will fall within the purview of ambit of criteria and principle as mentioned

above and for this reason, the conviction and sentence may be suspended/stayed for ends of justice.

He refers to some other cases reported in 48DLR(AD)208, 6BLC(HC)301, 21BLD(AD)142, 53DLR(HC)569, 2009 5(SCC)787, 2013 7(SCC)653, AIR 2007 (SCC)1003 and Mohiuddin Khan Alamgir Vs. The State and another passed in Criminal Appeal No.4393 of 2007.

Mr. Ariful Islam, the learned Advocate, appearing for the convict-appellant-petitioner Aman Ullah Aman, has adopted the submissions made by the learned Senior Advocates Mr. Rokon Uddin Mahmood and Mr. Ahsanul Karim.

On the contrary, Mr. Mahbub Alam, the learned Attorney-General appearing on behalf of the State, vehemently opposes the submissions made by the learned Advocates for the convict-appellant-petitioners and draws our attention to paragraph No.10 of

Criminal Appeal No.4045 of 2007, paragraph No.15 of Criminal Appeal No. 11784 of 2017, paragraph No.15 of Criminal Appeal No.12098 of 2017, paragraph No. 3 of Criminal Appeal No.3990 of 2007, and paragraph No.22 of Criminal Appeal No.3353 of 2009 and then submits that the purpose and object of the applications filed by the convict-appellant-petitioners are to contest in the ensuing national parliamentary election but that purposes are not permitted in law.

Mr. Alam next submits that the qualifications and disqualifications for election to Parliament of a convicted person are to be determined by the provision as laid down in Article 66 (2) of the Constitution of the People's Republic of Bangladesh and in that view of the matter, if the conviction and sentence of the petitioners are stayed under section 426 read with section 561A of the Code of Criminal Procedure, that would be very much contrary to the spirit of the

Constitution and Article 66 (2) (d) of the Constitution of People's Republic of Bangladesh.

He further submits that if this Court in view of sections 426/561A of the Code of Criminal Procedure suspends and stays the conviction and sentence it will give wrong message to the Election Commission as well as the regulatory authorities as to the validity of the candidature of the petitioners.

Learned Attorney-General then submits that there is no provision in sections 426/561A of the Code of Criminal Procedure or elsewhere of the Code of Criminal Procedure for suspension of the conviction and sentence awarded to them by the learned Judge of the trial Court and as such the applications filed by the convict-appellant-petitioners are not maintainable in the eye of law and if any order suspending the conviction and sentence is passed that would be violative of

Section 426 of CrPC and Article 66 (2) (d) of the Constitution.

He candidly submits that the Court may suspend the conviction and sentence in an exceptional cases in the rare of rarest case not for election purpose but for other purpose because there are specific provision for determination of validity of the candidature of the convict person in Article 66 (2) (d) of the Constitution of the People's Republic of Bangladesh.

He next submits that the allegations for which the petitioners have been convicted and sentenced in different cases fall within the purview of moral turpitude in view of the decision taken in the case of **Hussain Mohammad Ershad vs. Zahedul Islam Khan and others, reported in 21 BLD (AD)(2001)142.**

Mr. Alam next submits that the conviction of public servant in corruption cases cannot be suspended

just because they would suffer irreparable loss and injury.

He in support of his submission has referred a case of **State of Maharashtra Vs. Bala Krishna Dattarya Kumbhar reported in (2012)12 SCC 384.**

He lastly submits that in view of the above reasons and submissions the applications for suspension of conviction and sentence should be rejected since the applications have no merit of consideration at all.

Mr. Md. Khurshid Alam Khan, the learned Advocate, appearing on behalf of the Anti-Corruption Commission, very strongly submits that there is no provision in sections 426/561A of the Code of Criminal Procedure for suspension of conviction and sentence.

Mr. Khan next submits that since there is provision to examine the validity of the candidature of the convict persons under Article 66 (2) (d) of the



Constitution of the People's Republic of Bangladesh, that may be looked into by the Election Commission and the concerned Authority and this Court no has jurisdiction to suspend the conviction and sentence on that ground.

He further submits that since the petitioners are convicted their status has been changed and they will fall under moral turpitude criteria and thereby they are totally debarred from contesting in the election as per Article 66 (2)(d) of the Constitution of the People's Republic of Bangladesh.

Mr. Khan lastly submits that in view of the attending facts and circumstances of the case, provision of Sections 426/561A of the Code of Criminal Procedure and the provision of Article 66(2) (d) of the Constitution of People's Republic of Bangladesh, the applications should not be allowed rather the applications are liable to be rejected.

Mr. A.K.M. Fazlul Hoque, the learned Advocate appearing on behalf of the Anti-Corruption Commission in Criminal Appeal No.12098 of 2007, submits that apart from the admission of appeal and enlargement of bail, there is no provision under section 426 of the CrPC to stay and suspend the conviction and sentence.

Mr. Hoque next submits that it is clear that intention of law framers is that the power of suspending conviction and sentence is to be exercised so that the convicted person will not suffer in jail any more when there is a chance of acquittal not for any other reasons; since the court has discretion of suspending the sentence for limited purpose to prevent unnecessary suffering in the jail, but this section does not permit for suspending the conviction and sentence of the trial Court without setting aside/rebutting the same after hearing the parties.

He lastly submits that there is no provision of suspension of conviction under section 561A of the Code of Criminal Procedure by the High Court Division and inherent power cannot be exercised which will defeat the purpose of law and any other provision of law and the Constitution as such all the applications, are liable to be rejected.

We have gone through all the applications filed by the convict-appellant-petitioners under section 426 of the Code of Criminal Procedure read with section 561A of the Code of Criminal Procedure. We have heard the submissions made by the learned Advocates for the convict-appellant-petitioners and the learned Advocates for the Anti-Corruption Commission as well as the learned Attorney General appearing on behalf of the State.

It appears to us that in order to properly deal with the applications filed under section 426 of the CrPC, the following legal issues are required to be addressed:-

1. Whether there is any provision in section 426 read with 561A of Code of Criminal Procedure to suspend the conviction and sentence?
2. What is the status of convicted person with regard to presumption of innocence during pendency of the appeal?
3. Whether the convict person being convicted and sentenced is debarred from participation in the National Election in view of Article 66(2)(d) of the Constitution?

Let us discuss the above issues chronologically. Firstly, whether there is any provision of suspension of conviction and sentence in section 426 read with section 561A of the Code of Criminal Procedure.

In order to have a convenient discussion, section 426 of CrPC is quoted below:

**“Section 426**

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court Division in the case of any appeal by a convicted persons to a Court subordinate thereto.

(2A) -----

(2B)-----

(3)-----”

On a plain reading of section 426, it is apparent that after conviction and sentence, on appeal, the Appellate Court can suspend the sentence but in the said section there is no provision for suspension of conviction. If the sentence is not suspended by explicit order but the convict-appellant is enlarged on bail, in that case, the sentence is treated as suspended. In view of the above, as per section 426 of the Code of Criminal Procedure, we do not find any provision as to suspension of the conviction awarded. Therefore, in the instant cases, there is no scope to suspend the conviction of the appellant-petitioners.

We have stated earlier that 426 of the CrPC allows for the suspension of the execution of a sentence or order upon appeal, but it does not provide for the suspension of the conviction itself. The suspension of the sentence does not nullify the conviction, and it remains in effect until set aside on appeal. The High

Court Division may grant a stay of conviction only in exceptional circumstances where not doing so would lead to injustice and irreversible consequences. In our criminal jurisprudence, the concept of suspending a conviction itself is not commonly found. Conviction generally refers to the formal declaration by a court that an individual is guilty of a criminal offence. Once a conviction is made, it becomes a matter of record and remains in effect unless it is overturned or set aside by a competent court of law through a legal process, such as an appeal or a pardon. Since there is specific forum to deal with the matters in hand, the conviction and sentence cannot be stayed invoking jurisdiction under Section 561A of CrPC.

Secondly-What is the status of the convicted persons with regard to presumption of innocence during pendency of appeal.

We know that conviction is the ultimate outcome of the trial. Now question arises weather a convicted-person after filing criminal appeal before the appellate court being enlarged on bail is cleared from the conviction and sentence. In appeal when a person is enlarged on bail then execution of sentence is suspended but the status of a person as “convict” is not changed unless the said conviction is set aside by the competent Court of law. In the case of Union of India vs Ramesh Kumar (1997)7SCC514, it was held that by suspension of execution of sentence under section 426 of the CrPC an accused avoids undergoing sentence pending the appeal, but the Conviction continues and is not obliterated.

In view of the order of bail and suspension of sentence by way of bail, it cannot be said that status of convict person has been changed. The presumption of innocence of a person comes to an end with the



pronouncement of conviction and sentence by a trial Court. The conviction and sentence would ultimately be ineffective if the appeal is disposed of on merit setting aside the conviction and sentence. Therefore, there is no scope to treat the convicted-person as innocent one till the final verdict is passed by the appellate court/ higher court. As the conviction is pronounced on the basis of evaluation and assessment of evidence, therefore, unless the findings of guilty is set aside, the conviction will remain in force and convict-person will not be treated as innocent person.

For examining the legal issue namely whether the convict persons are debarred from participating in election of Parliament in view of Article 66(2)(d) of the Constitution following the disqualification of conviction and sentence of the convict persons for contesting election in Parliament, we need to look into

sub-Articles (2) (d) of Article 66 of the Constitution, which are quoted below:

66. (1) A person shall subject to the provisions of clause (2), be qualified to be elected as, and to be, a member of Parliament if he is a citizen of Bangladesh and has attained the age of twenty-five years.

(2) A person shall be disqualified for election as, or for being, a member of Parliament who-

(a) is declared by a competent court to be of unsound mind;

(b) is an undischarged insolvent;

(c) acquires the citizenship of, or affirms or acknowledges allegiance to, a foreign state;

(d) has been, on conviction for a criminal offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release;

From the plain reading of the provisions of Article 66(2) (d) it appears that if any person is convicted and sentenced to imprisonment for a term of not less than 2(two) years, he will not be eligible or allowed to participate in any election to Parliament unless a period of five years has elapsed since his release.

The submissions of the learned Advocates for the petitioners, are that the appeal is a continuation of trial and there is no bar to contesting in the election of Parliament on the ground of “conviction” as referred in Article 66(2)(d) of the Constitution unless the convict-petitioners are finally convicted by the Appellate Division. In this context, we admit that appeal is a continuation of trial but we have already held that after concluding trial, the court if after evaluation and assessment of evidence finds that the accused person is guilty then the Court pronounces the order of

conviction and sentence. Accordingly presumption of innocence of accused person ends up by the pronouncement of judgment unless the conviction and sentence is set aside by any competent court of law. Therefore, we are of the view that once a person is convicted, as per the provision of Article 66(2)(d), the convicted person will be disqualified to contest in the parliament election and therefore question of finality of the conviction unless it is affirmed by the Appellate Division, does not arise at all.

It is pertinent to mention here that since the Constitution is the supreme law of the land, notwithstanding anything contained in any other law, the provision of constitution shall prevail over the other laws. In the instant cases though all the convict-appellant-petitioners have been enlarged on bail but it cannot be said that they are acquitted or they are discharged or they are released or they are finally got

acquittal of the conviction and sentence. So the bar that has been imposed upon the convict in view of Article 66(2)(d) of the Constitution of People's Republic of Bangladesh, will remain in force unless the conviction is set aside by any competent Court of law. Mere taking advantage of bail granted to them by the appellate Court or taking any order of suspension of execution of sentence by any manner, the convict-person will not be exonerated from the disqualification to contest in Parliament Election in view of Article 66(2)(d) of the Constitution. In this context, the preamble is relevant from where we get light about the intention of the legislature. The preamble is quoted as below:

“We, the people of Bangladesh, having proclaimed our independence on the 26th day of March, 1971 and, through a historic struggle for national liberation, established the independent, sovereign People's Republic of Bangladesh;

Pledging that the high ideals of nationalism, socialism, democracy and secularism, which inspired our heroic people to dedicate themselves to, and our brave martyrs to sacrifice their lives in, the national liberation struggle, shall be the fundamental principles of the Constitution.

Further pleading that it shall be a fundamental aim of the State to realize through the democratic process a socialist society, free from exploitation- a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens;----”

The will of the people has been reflected in the preamble and Article 66(2)(d) of the Constitution.

We, the people of this country got the independence at the cost of lives of 3 million martyrs and supreme sacrifice of 2 lacs heroic women. It was the key expectation that our country will be ruled by

law and our country would be free from all sorts of exploitation; and the country would be ruled by the people who are honest having highest level of integrity not by the corrupt people. In view of the spirit, the framers of our constitution with due caution has added the Article 66(2)(d) to make the convict person disqualified to contest in Election to Parliament. The Article 66(2)(d) is very stringent law which has not only made disqualified the convict-person for his sentence period but also provides that the convict persons will be debarred from participation in the election of Parliament unless a period of five years has elapsed since his release. In view of the above if any person being convicted participates in the election that will be wholly contrary to the spirit of the preamble of the Constitution and Article 66(2)(d) of the Constitution. So a person who is convicted no matter whether he is on bail or his conviction has been

suspended by the order of the Court, he will not be allowed to participate in the election unless the conviction and sentence are set aside by the competent Court of law. Mere pendency of the criminal appeal does not mean that the convicted person would be treated as innocent person unless those are set aside by the competent Court of law.

In the case in hand we have found that the appellant-petitioners have been convicted and sentenced for corruption. The allegation of corruption is a serious type of offence. Corruption goes to the root of the integrity of a person. The Member of Parliament is the trustee of the power, property and well being of the people. They will have to have high moral character and highest level of integrity. Any deviation from honesty and integrity are considered as moral turpitude. We are of the view that the offences for which the



petitioners are convicted amount to their moral turpitude.

The Constitution itself has created the post of Member of Parliament and determines the disqualification of a person to be elected as Member of Parliament. The corrupt people if elected cannot discharge his duties and responsibilities as a Member of Parliament as per his oath beyond going to any fear and favour.

In the case in hand we find that the learned trial judge after assessing the evidence on record has convicted the appellant-petitioners. They have preferred appeals which are pending before this court. Therefore, in spite of pending of appeal, their status is that they are convicted persons. This court has not suspended the sentence of the petitioners but they have been enlarged on bail by this court. By operation of the bail order, the order of sentence is deemed to have been suspended but

the conviction is still in force. Therefore, there is no scope to suspend the conviction of the appellant-petitioner on the ground to facilitate them to participate in the election of Parliament since as per the provision of Article 66(2)(d) of Constitution, the appellant-petitioners are disqualified to contest or participate in election of Parliament.

In view of the discussions made above we are of the view that though the convict-appellant-petitioners have been enlarged on bail, the question of suspension of conviction does not arise at all. Accordingly, the convict-appellant-petitioners are debarred from participating in election of Parliament unless a period of 5 years has elapsed since their release or their conviction and sentence are set aside by the apex court in view of Article 66(2)(d) of the Constitution. It is to be mentioned that even a person who has been lawfully elected in the election of Parliament but subsequently

convicted and sentenced, in that case as per the provision of Article 67(1) (d) his seat as member of Parliament will automatically be vacated. Our considered view is also that if a person is elected in the election of Parliament hiding his conviction and sentence and if subsequently it is found that the said person was convicted and sentenced more than 2 years by a competent court of law, in that case also, his seat as a member of Parliament will also be vacated as per Article 66(2) (d) of the Constitution. The aforesaid view also finds support in the case of **Hussain Mohammad Ershad vs. Zahedul Islam Khan and others, reported in 21 BLD (AD)(2001)142.**

Having considered all the facts and the circumstances of the cases, the submissions of the learned Advocates for the respective parties and the learned Attorney-General and the propositions of law

cited and discussed above, we do not find any substances in these applications.

In consequences thereof, the applications filed by the appellant-petitioners seeking suspension of conviction and sentence are hereby rejected.

Let a copy of this order be kept with the record of all the concerned appeals.

The parties are directed to take necessary steps for quick disposal of the criminal appeals.