

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

Present:

Mr. Justice Md. Nazrul Islam Talukder
And
Mr. Justice Khizir Hayat

Criminal Appeal No. 6743 of 2007

Iqbal Hasan Mahmood alias Iqbal Hasan Mahmood Tuku
...**Convict-appellant.**

-Vs-

The State and another

.....**Respondents.**

Mr. Ajmalul Hossain K.C, Senior Advocate with
Mr. Muhammad Saifullah Mamun, Advocate and
Mr. Mamun Chowdhury, Advocate.

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

Mr. A M Amin Uddin, Attorney General with
Mr. A K M Amin Uddin, D.A.G,
Mr. Md. Saiefuddin Khaled, D.A.G,
Ms. Anna Khanom Koli, A.A.G,
Mr. Md. Saifour Rahman Siddique, A.A.G
Mrs. Afifa Begum Swapna, A.A.G and
Mr. Sarwar Akhtar Masud, A.A.G,

..... **For the State-respondent.**

Mr. Md. Khurshid Alam Khan, Senior Advocate,

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

**Heard on 03.02.2019, 31.03.2019, 29.08.2021, 12.09.2021,
31.10.2021, 07.11.2021, 20.11.2022, 21.11.2022,
30.11.2022, 01.12.2022, 04.12.2022, 05.12.2022, 07.12.2022,
08.12.2022, 11.12.2022, 04.01.2023, 05.01.2023, 18.01.2023,
19.01.2023, 30.01.2023, 01.02.2023, 07.02.2023, 08.02.2023,
09.02.2023, 12.02.2023, 13.02.2023, 14.02.2023, 15.02.2023,
22.02.2023, 26.02.2023, 27.02.2023, 28.02.2023, 01.03.2023,
02.03.2023, 05.03.2023, 06.03.2023, 07.03.2023, 09.03.2023
and Judgment on:30.05.2023.**

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 15.11.2007 passed by the learned Special Judge, Court No.05, Dhaka in Special Case No.05 of 2007 arising out of Special Case No.32 of 2007 of the Court of learned Senior Special Judge and Metropolitan Sessions Judge, Dhaka and Mohammadpur Police Station Case No.95(3)/07 corresponding to G.R. Case No.22 of 2007 convicting the convict-appellant and sentencing him to suffer simple imprisonment for 2(two) years under Section 26(2)(ka) of Anti-Corruption Commission Act, 2004 and rigorous imprisonment for 7(seven) years with fine of Tk.50 (fifty) lac under Section 27(1) of the Anti-Corruption Commission Act, 2004 and in default of payment of the fine of the Tk. 50(fifty) lac to suffer

1(one) year rigorous imprisonment more and also confiscating the properties mentioned in the schedule in favour of the State.

The prosecution case, in brief, is that the Durnity Daman Commission (herein after referred to as Commission) having satisfied to believe that convict-appellant Iqbal Hasan Mahmood and his wife, son and daughter on his behalf are in possession of property which are disproportionate to his known source of income, issued notice on 18.02.2007 under Section 26(1) of the Durnity Daman Commission Ain, 2004 requiring him to furnish a statement of his properties and liabilities within the prescribed time and accordingly he declared property worth Tk.12,51,04,429/23 in his name, property worth

Tk.16,49,34,301/31 in the name of his son Abed Hasan Mahmood, property worth Tk.6,72,37,680/74 in the name of his wife and the property valued at Tk.22,88,042/73 in the name of his daughter, totaling Tk.35,95,64,454/01 without explaining the source of most of the properties in the wealth statement submitted to the Commission on 25.02.2007. He declared saving certificates worth Tk.85 lac earned in between 1999-2000 but showed Tk.1,28,40/- on this count in his income tax return of 2006-07 assessment year concealing the saving certificates worth Tk.83,71,600/-. He mentioned fixed deposit amounting Tk.40 lac in his wealth statement but did not disclose its source of income and the year of its acquisition. Though he

stated of keeping it lien against the loan account No.01669010601 in Standard Chartered Bank he did not give this information in his income tax return which is concealment as well as disproportion to known source of his income. He operated four accounts in Sonali Bank, Local Office being account No.34136346 having balance Tk.7,09,260/14, State Bank of India, Dilkusha branch under account No.0510007720001 having balance Tk.3,57,550/14 and another account in the said bank bearing No.0510009592000 having balance Tk.4,26,889/- and in Standard Chartered Bank, Dhanmondi Branch being account No.0111231570 having balance Tk.62,159/95, out of the aforesaid accounts numbers he

disclosed only the account number of Sonali Bank, Local Branch and the account No.0510000772301 opened in State Bank of India, Dilkusha Branch concealing the rest of accounts in his income tax return of the assessment year 2006-07. Apart from those accounts, he has also opened another Bank account being No.0103110000007593 in Dutch Bangla Bank Ltd, Banani Branch having balance Tk.1,68,470/77 about which he stated nothing in both statement of wealth and income tax return and thereby he concealed Tk.4,70,969/33 which is the ingredient of section 26(2)(ka) of ACC Ain, 2004. He disclosed of having 21 decimal of land with 1 storied building at 1/7, Asad Avenue, Mohammadpur by way of gift from his mother at

a consideration of Tk.1,09,377/-. Subsequently he renovated and constructed 2nd floor thereon without giving information about the costs of aforesaid construction work in his income tax return and statement of wealth submitted in the Commission. During investigation the total costs of construction were determined at Tk.27,85,056/- by the Engineer of PWD and the costs of internal wearing of extended portion of his house were determined at Tk.1,57,394/-. The convict-appellant Iqbal Hasan Mahmood declared of having BMW Jeep, X5, SUV-2003 car having registration No.Dhaka-Metro-Ga-11-4690 at a price of Tk.47,76,906/- being financed by Industrial Development Leasing Company in brief IDLC having guaranteed by Apex Weaving

and Finishing Mills Ltd. In the income tax return he did not disclose this aspect. Moreover, IDLC did not give him loan on this count and thus he concealed the source of income and also furnished false statement in the statement of wealth. He purchased an apartment No.1-C at road No.5/A, House No.59, Dhanmondi stating its price to be Tk.20 lac but on inquiry Oriental Real Estate produced documents of getting Tk.31,50,000/- out of total price of Tk.33,32,000/-. The convict-appellant concealed Tk.11,50,000/- on this count. Mrs. Rumana Mahmood is a housewife having no ostensible source of income. The convict-appellant paid the entire money and took it in the name of his wife. He also kept Tk. 50 lac in Fixed Deposit in the

name of his son Abed Hasan Mahmood in the year, 1988 when the later was mere a student having no source of income. The convict-appellant earned it illegally and kept it in FDR in the name of his son who also did not disclose it in his income tax return. He also acquired share 9,850 worth Tk.9,85,000/- in the Apex Weaving and Finishing Mills Ltd. in the name of his daughter Sara Hasan Mahmood in whose name an account No.186669463201 is found in Standard Chartered Bank, Dhanmondi Branch having balance Tk.10,03,042/73 about which nothing was disclosed in the income tax return of the account holders. Apart from it the appellant paid Tk.74,08,330/- for purchasing plot Nos.309 and 311 from East West Property development

Real Estate of Basundhara Group. But he did not disclose this aspect in his wealth statement which is total concealment. A share worth Tk.1 crore is found in One Entertainment Company in the name of his wife who being one of the directors of this establishment executed a letter of guarantee against the loan amounting Tk.23,90,00,000/- granted by Prime Bank Ltd. This aspect was not also disclosed in the wealth statement. Having the aforesaid inconsistency and concealment in the wealth statement the informant P.W.-1 submitted his preliminary inquiry report to the Commission seeking its permission to lodge ejahar and having sanction from the Commission the ejahar was lodged with Mohammadpur Police Station, Dhaka on

21.03.2007 where it was registered as Mohammadpur Police Station Case No.95 dated 21.03.2007 against the appellant Iqbal Hasan Mahmood, his wife Rumana Mahmood, son Abed Hasan Mahmood and daughter Sara Hasin Mahmood under sections 26(2)(ka)/27(1) of the Durnity Daman Commission Ain, 2004. Hence, the case/FIR.

After lodging of FIR, the Commission investigated the case. During investigation, the investigating officer collected the materials on record, recorded the statements of witnesses under section 161 of the Code of Criminal Procedure, 1898 and after conclusion of investigation submitted memo of evidence before the Durnity Daman Commission. The

Commission after perusal of memo of evidence gave sanction. Thereafter the investigating officer submitted charge-sheet along with sanction before the Chief Metropolitan Magistrate, Dhaka being Charge-sheet No.479 dated 28.06.2007 against the convict-appellant under sections 26/27 of the Durnity Daman Commission Ain, 2004 read with section 5(2) of the Prevention of Corruption Act, 1947 (Act No.II of 1947).

After submission of charge-sheet, the case record was transmitted to the Court of Metropolitan Senior Special Judge, Dhaka and the same was registered as Metropolitan Special Case No.32 of 2007 on 02.07.2007. On the said date, after perusing the papers and materials on record the Metropolitan Senior Special Judge,

Dhaka took cognizance of the offences against the convict-appellant under sections 26/27 of the Durnity Daman Commission Ain, 2004 read with 5(2) of the Prevention of Corruption Act, 1947 (II of 1947) read with Rule 15(Gha) (5) of the Emergency Power Rules, 2007 read with Section 109 of the Penal Code, 1860.

Thereafter, on 10.07.2007, the Metropolitan Senior Special Judge, Dhaka transferred the case record to the Court of Special Judge, Court No.5, Dhaka for trial and disposal of the same.

The learned Special Judge, Court No.5, Dhaka received the case record on 10.07.2007 from the Court of Metropolitan Senior Special Judge, Dhaka and registered the same as Special Case No.05 of 2007.

Thereafter, the convict-appellant filed an application for discharge from the case under Section 241A of the Code of Criminal Procedure. The learned Special Judge, Court No.5, Dhaka after hearing the parties rejected the application for discharge under Section 241A of the Code of Criminal Procedure and framed charge against the convict-appellant under Sections 26(2)/27(1) of the Durnity Daman Commission Ain, 2004 read with section 5(2) of the Prevention of Corruption Act, 1947 (Act No.II of 1947) and Rule 15(Gha) of the Emergency Power Rules, 2007 and also under Section 109 of the Penal Code. The said charge read over to the convict-appellant in which he pleaded not guilty and claimed to be innocent on 15.07.2007.

At the trial, the prosecution examined as many as 58(fifty eight) P.Ws. and they have crossed-examined by the defence. On the other hand, the defence examined 4(four) D.Ws. and they were cross-examined by the prosecution as well.

After recording of the evidence, the convict-appellant was examined under Section 342 of the Code of Criminal Procedure in which again he pleaded not guilty and claimed to be innocent.

After hearing the parties, considering the materials on record, after proper assessment of evidence, the learned Special Judge, Court No.5, Dhaka convicted the convict-appellant under Section 26(2) of the Durnity Daman Commission Ain, 2004 read with Rule 15(gha) (5) of the Jaruri

Khamata Bidhimala, 2007 and sentenced him thereunder to suffer simple imprisonment for 02 (two) years only under Section 26(2) (ka) of the Durnity Daman Commission Ain, 2004 and further convicted him under section 27(1) of the Durnity Daman Commission Ain, 2004 read with section 5(2) of the Prevention of Corruption Act, 1947 and sentenced him thereunder to suffer rigorous imprisonment for 07 years with fine of Tk.50(fifty) lac under section 27(1) of the Durnity Daman Commission Ain, 2004, in default of making payment of fine he will undergo for further rigorous imprisonment for one year. The period of his remaining in custody in connection with this case be deducted from the sentence which shall take effect at once. The

property found in his possession being disproportionate to his known source of income be confiscated to the State and their lists are given below:

(1) Bank deposit amounting to Tk.2,38,583/- up to 30.06.06 kept in account No.051309592001 of State Bank of India.

(2) BMW Jeep worth Tk.47,76,906/-.

(3) Plot Nos.309 and 311 in East West Property Development of Basundhara Group worth Tk.74,08,300/-.

(4) 1,250 Share's worth Tk.1 crore in One Entertainment deposited in the Current Account No.0233022613 of IFIC Bank.

Being aggrieved by and dissatisfied with the aforesaid judgment and order of conviction and sentence passed by the learned Special Judge, Court No.5, Dhaka in Special Case No.5 of 2007, the convict-appellant preferred an appeal being Criminal Appeal No.6743 of 2007 before the High Court Division.

The High Court Division admitted the appeal, called for the record of the case and issued usual notices upon the respondents.

During pendency of Criminal Appeal No.6743 of 2007, the convict-appellant filed an application for bail before the High Court Division. The said application for bail was heard and disposed of on 29.10.2008. After hearing the parties, the learned Judges of the High Court

Division granted bail to the convict-appellant on 29.10.2008 on the medical ground for a period of 03(three) months. Subsequently, the period of bail was extended from time to time and ultimately the period of bail was further extended till disposal of the appeal.

The said appeal was heard and disposed of by the High Court Division on 16.06.2011. The High Court Division acquitted of the convict-appellant without touching the merit of the case relying upon the decision of the Anti-Corruption Commission vs Dr. Mohiuddin Khan Alamgir reported in 62 DLR(2010) (AD)290. It may be mentioned here that against the judgment and order dated 04.07.2010 passed in the case of Anti-Corruption Commission vs Dr. Mohiuddin

Khan Alamgir reported in 62 DLR(2010)(AD)290, the Durnity Daman Commission preferred Criminal Review Petition No.18 of 2010 before the Appellate Division.

Anyway, the High Court Division allowed the instant appeal in hand without touching the merit of the case on the following observations:

“... ..

In the present case, the Memo No. দুদক/৭০-২০০৭(অনু-২)৬৭০ তারিখ-১৮/০২/২০০৭ ইং was issued by the Secretary, Anti-Corruption Commission and there was no existence of the Commission in the eye of law and as such Special Case No.05 of 2007 in the Court of Senior Special Judge and Metropolitan Sessions Judge, Dhaka corresponding to G.R. Case No.22 of 2007

arising out of Mohammadpur P.S. Case No.95(3)2007 under Section 26(2) (Ka) of Anti-Corruption Commission Act, 2004 convicting the accused-appellant Iqbal Hasan Mahmood @ Iqbal Hasan Mahmood Tuku and sentencing him thereunder to suffer rigorous imprisonment for 2(two) years and under Section 27(1) of the Anti-Corruption Commission Act, 2004 to suffer rigorous imprisonment for 7(seven) years with a fine of Tk. 50(fifty) lac in default to suffer rigorous imprisonment for 1 (one) year more respectively with an order to confiscate the properties of list as mentioned above.

Mr. Ajmalul Hossain QC, the learned Advocate for the appellant, submits that since the proceedings relates on law point, it is not at all

necessary to go into the detailed facts of the case. We find that, admittedly, there was no Commission from 07.02.2007 to 24.02.2007 when the notice of Memo No. দুদক/৭০-২০০৭(অনু-২)৬৭০ তারিখ-১৮/০২/২০০৭ ইং signed by the Secretary, Anti-Corruption Commission. Therefore, the proceeding of Special Case No.05 of 20074 against the appellant on an invalid notice, consequently, the judgment and order of conviction and sentence delivered on 15.11.2007 in Special Case No.05 of 2007 is void.

In this connection, we may profitably refer to the decision in the case of Anti-Corruption Commission vs Dr. Mohiuddin Khan Alamgir reported in 62DLR(AD)270 wherein Hon'ble Appellate Division held that:

We are of the opinion that the notice dated 18.02.2007, issued by 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.

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.

The findings of Hon'ble Appellate Division are bindings upon the High Court Division and as such, we have also no other alternative to hold the view given by the Hon'ble Appellate Division in the above mentioned case and as such, we also hold that the notices dated 18.02.2007 issued by

the Secretary, Anti-Corruption Commission is of no value and thus proceeding under the said notices is void and the proceeding is a nullity in the eye of law.

Accordingly, the appeal is allowed.”

It is stated that against the judgment and order of acquittal dated 16.06.2011 passed by the High Court Division in Criminal Appeal No.6743 of 2007, the Durnity Daman Commission preferred Criminal Petition For Leave to Appeal No.537 of 2011 before the Appellate Division. The learned Judges of the Appellate Division heard and disposed of the matter on 27.01.2014 and remanded the matter to the High Court Division to dispose of the appeal on merit afresh with the following observations and directions;

“... .. In this case, the accused-respondent was also convicted under section 27(1) of the Ain on the reasonings that he had acquired properties which were beyond his known source of income and the said properties were also confiscated by the learned Special Judge. True, during the relevant time, the Commission was not properly constituted. So, the notice issued upon him under Section 26(1) by the Secretary of the Commission was without jurisdiction. But, for this reason, the High Court Division cannot set-aside the conviction of the accused-respondent in respect of an offence under section 27(1) of the Ain read with section 5(2) of Act 11 of 1947. And in doing so, it has not at all discussed the evidence on record. The learned Special Judge

on a thorough assessment of the evidence on record found the accused guilty under Section 27(1) of the Ain read with section 5(2) of Act 11 of 1947 for possession of wealth which were said to have been beyond his known source of income. In view of the above, the High Court Division acted illegally in setting aside the conviction of the accused-respondent in respect of offence under section 27(1) of the Durnity Daman Commission Ain read with section 5(2) of Act 11 of 1947. The impugned judgment is not legally sustainable in law and the same is liable to be interfered with.

The judgment of the High Court Division so far as it relates to setting aside the conviction and sentence of the accused-respondent under

section 27(1) of the Durnity Daman Commission Ain read with section 5(2) of act 11 of 1947 is set-aside. The matter is remanded to the High Court Division to dispose of the appeal on merit afresh. This petition is disposed of.” (66 DLR(AD)185).

Against the aforesaid judgment and order of remand passed by the Appellate Division, the appellant preferred Criminal Review Petition No.6 of 2014. The learned Judges of the Appellate Division on 13.04.2016 dismissed the review petition with some guidelines which are as follows:-

“The initial onus is upon the prosecution to prove that such person has accumulated ill gotten property. If it proves its initial onus, then the

onus shifts upon the offender to rebut the presumption. Unless and until he can satisfy the court that he has not accumulated any wealth or property beyond his known sources of income the court can base its conviction on the basis of such presumption. If we read section 26 it will appear that for concealment of wealth by any person there is provision for service of notice if the Commission is of the opinion that he should be prosecuted either under section 26 or under 27. If the Commission finds that the concealment of wealth is meager, it may instead of proceeding under section 27 proceed under section 26 and the maximum sentence of the offence is three years in prison. However, if the Commission is satisfied that the offender has deliberately

concealed his wealth beyond his known sources of income and such concealment is huge, then even after initiation of proceeding under section 26 for filing wrong statement, it may prosecute the offender under section 27 for a graver penalty, the maximum sentence of which is ten years imprisonment with the power to confiscate the property which he has accumulated illegally, whereas in respect of section 26, the court may award three years rigorous imprisonment or sentence of fine or both, that is to say, instead of awarding sentence of imprisonment, the court may sentence him with fine only.

In both the sections, the 'satisfaction' is of the Commission as to under which provision it will proceed against the suspected offender. The

manner of inquiry or investigation in respect of an offence punishable under section 26 has been provided in Rules 17 read with Chapter IV, which contains Rules 10 to 12. On the other hand, nothing has been mentioned in the Rules in respect of an offence punishable under section 27. This shows that it is an independent offence and if the Commission is satisfied that the alleged offender has concealed huge amount of wealth which is beyond his known sources of income, it may prosecute him under Section 27 and it shall follow the procedure of investigation as provided in Chapter-14. Though there is a provision for personal hearing of the accused under sub-rule(1) of rule 11, such hearing is not mandatory, inasmuch as, it is not a condition precedent that

without proceeding under section 26, no case can be filed under section 27. Neither the Ain nor the rule provides any embargo in this regard.

Even it is assumed that no proceeding has been initiated under section 26, if the Commission is satisfied from a reliable source that any person has accumulated huge amount of wealth, would he be relived of such offence? The answer is in emphatic “no.” As observed above, a private person or a police officer may also file a case but the difference is, under the general law the police officer has power to start investigation without permission of the Magistrate, but in respect of an offence under the Ain, no police officer nor an officer of the Commission can

investigate the offence without prior permission of the Commission.

If any person commits any cognizable offence in presence of a private person, he may detain the offender and handover him to the police or report the police that he has detained an offender while committing a crime. This apprehension of such offender is tantamount to taking cognizance of the offence for the time being. A police officer or a private person has been given power to arrest a person for commission of a cognizable offence on the spot. Thought section 21 states that an officer with prior permission of the Commission may arrest a person, who has committed an offence punishable under section 27, before lodging an FIR in the

interest of investigation, but the offence punishable under section 27 may also be punishable under other offences mentioned in the schedule.

All offences mentioned in the schedule of the Ain including the offence punishable under section 27 are cognizable. The Commission is invested with the power to authorise any of its subordinate officers to investigate into the offences punishable under the Ain and such officer shall exercise the powers of an officer-in-charge of a police station to investigate any cognizable offence within his local area without permission of the Magistrate. So an investigation officer may exercise this power under section 20(3), but the question that needs to be decided is

whether such officer can arrest any offender before lodging an FIR without the permission of provision and it does not restrict and/or prohibit an officer to arrest an offender who is suspected to have committed a cognizable offence. Law says that the officer can arrest in respect of an offence punishable under section 27 of the Ain and that's too, with the permission of the Commission. Alas! how funny this provision is?

An officer of the Commission or a police officer cannot have a final say in respect of an occurrence which is punishable under section 27 of the Ain or any other provision of the said Ain. The officer may file case against an offence after investigation that the allegation prima-facie discloses an offence under section 27. The final

decision in respect of the allegation is of the Court i.e. the special Judge and his decision is also subject to the decision of the appellate Court which can affirm, modify, set aside the judgment or send the matter on remand for fresh trial. It has all the powers of the trial court.

... ..

The Commission has discretionary power to proceed against the alleged offender under any provisions of the Ain, but its satisfaction is subject to the confirmation by the court. The question of prior knowledge of the Commission before issuing notice under section 26 is not required to be reflected in the FIR or the police report. The law enjoins the Commission to exercise its discretion and in exercising its

discretion, the offender does not have any say. It may collect information on the basis of notice issued under section 26 or it may form its opinion from other sources.” (70 DLR(AD)109).

In view of the above backdrop, this criminal appeal at the instance of the ACC 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.

PW-01 Golum Shahriar Chowdhury was the informant of the case, who, in his examination-in-chief, stated that the Commission having satisfied that accused Iqbal Hasan Mahmood is in possession of a huge property in his name along with his

dependents disproportionate to his known source of income, issued notice upon him on 18/02/07 to declare his asset. He proves the notice, Ext-1. The accused being in captivity submitted written statement through his son Abed Hasan Mahmood on 25/02/07 and Commission assigned him to verify the truthfulness of this statement and upon inquiry in the field, he submitted inquiry report to the Commission having found discrepancy in respect of saving certificates worth Tk. 85 lac acquired between 1999 to July 2000. The accused did not state the source of its acquisition and he also concealed about it. Among the particulars, he stated about Tk. 1,28,400/- in account of saving certificates in his income tax return of 2006-07. He also did not disclose the source of fixed amount Tk. 40 lac and also omitted the aspect in his income tax return. He

did not include the cash amount kept in State Bank of India and Standard Chartered Bank under account No. 0510009592000 and 01123115701 in his income tax return. He also concealed the cash in bank amounting Tk. 1,68,470/77 in account No. 0103110000007593 of Dutch Bangla Bank. Thus he concealed Tk. 4,70,969/33 to this count. He suppressed the fact of extension work of his residence at 1/7 Asad Avenue, Mohammadpur in both income tax return and wealth statement submitted in the Commission. He simply mentioned of gaining of this property having an area 21 cent by way of gift from his mother at a consideration of Tk. 1,09,377/- concealing the fact of constructing of the 2nd floor by himself. He also gave false information about the actual price of BMW Jeep stating its price at Tk. 47,07,000/- instead of its real price Tk.

47,76,906/- claiming of being financed by ILDC which denied the aspect of lending money to accused Iqbal Hasan Mahmood who also purchased flat No. 1-C at Road No. 5-A Dhanmondi making payment of Tk. 31,50,000/- but he disclosed only Tk. 20 lac to be the consideration money for it and thus the concealed Tk. 11,50,000/- in the wealth statement. His wife accused Rumana Mahmood is simply a housewife having no source of income and thus it is he who provided the amount of consideration money for purchasing this flat and took it in the name of his wife. He also kept Tk. 40 lac in FDR and the source of its income was not stated in the wealth statement. Tk. 50 lac are found in FDR in the name of his son accused Abed Hasan Mahmood. This aspect was mentioned in the asset declaration without giving source of its income.

Accused Abed Hasan Mahmood was a student at the time of opening this FDR account in the year 1998 having no source of income and this aspect is also not disclosed in the income tax return of accused Abed Hasan Mahmood. The aforesaid amount of money was acquired by Iqbal Hasan Mahmood by improper means and kept in FDR in the name of his son. The accused also bought share 9,850 worth Tk. 9,85,000/- from Apex Weaving and Finishing Mills Ltd. in the name of his daughter Sara Hasin Mahmood who is also a student having no income and she also found having Tk. 10,03,042/73 in Standard Chartered bank, Dhanmondi Branch. These aspects were not mentioned in her income tax return of 2006-07. In fact, these were acquired by accused No. 1 illegally and he used the name of his daughter to hold the share and amount in her name

and thereby submitted false statement. The accused Iqbal Hasan Mahmood thereby acquired property valued Tk. 2,57,14002/71 for which the informant lodged ejahar obtaining required permission from the Commission. He proves his ejahar Ext-2 with his signature Ext-2/1.

In cross examination, he stated that the Anti-Corruption Rule was not framed on 25/02/07 but it came into force on 29/03/07 and therefore, he failed to state the mode of submitting the wealth statement before the Commission. Before lodging ejahar and during preliminary inquiry, he did not take any hearing of the accused, as it deems unnecessary to him. He has gone through the income tax return of the accused and did not record any statement of the concerned employee of Income Tax Office. He

denied the defence suggestions to the effect that under Money Building Project named Syfanz, the accused deposited Tk. 5 lac in the Green ledge Bank while the said Bank provided Tk. 20 lac to purchase saving certificates valued Tk. 25 lac and the accused repaid the installment to adjust the aforesaid loan provided by the Bank that was kept as lien against the loan account of the accused. He did not go through the O.D taken against FDR. He also denied the defence suggestion that BMW Jeep was purchased by the loan given by ILDC through Dutch Bangla Bank and Apex Weaving Company is the Guarantor of the loan. He further denied the defence suggestion that for scanty of time given by the Commission in submitting the wealth statement without prescribing any mode, omission may have occurred in the wealth statement against the will of

the accused who is innocent and is falsely implicated in this case.

P.W-2 Abdul Bari, S.I of Police attached with Mohammadpur P.S. in his examination-in-chief deposed of recording ejahar lodged by the informant on 21/3/07 filling the FIR form, Ext-3 wherein his signature is Ext-3/1.

P.W-3 Bazlur Rashid, Senior Jail Super ,Central Jail Chittagong in his examination-in-chief deposed of serving notice on 20/2/07 issued by the Commission upon the accused who was in captivity in Chittagong jail. The next day accused No. 1 authorized his son to submit his statement of wealth to the Commission on his behalf. He proved the authority letter being attested by him. His signature therein is Ext-4-1.

In cross-examination, he stated that the accused was detained in Chittagong jail from 13/01/07 and the son and relative of the accused went to see him thereat on 21/2/07 and they also went there to meet the accused subsequent to that date. The notice was handed over to the accused at 8.15 am on 20/2/07. The accused did neither apply to consult with his attorney nor solicit to go through the documents relating with his bank accounts.

P.W-4 Nasrin Ara Surat in his examination-in-chief deposed of having statement of wealth of the accused being submitted by his son on 25/2/07. She proves the wealth statement; Ext-5 and she also deposed that the Commission accorded required approval to the informant to lodge ejahar

with Mohammadpur P.S. She proved the approval letter, Ext-6 with her signature, Ext-61.

In her cross-examination, she stated that a foot note in the wealth statement describes to the effect that the statement was prepared with the information available on records which could not be verified from the accused Iqbal Hasan Mahmood.

P.W-5 Md. Kamal Hossain is the seizure list witness who was tendered by the prosecution and the defence declined to cross-examine him.

P.W-6 Md. Abu Musa, General Manager of Oriental Real Estate, in his examination-in-chief, stated that the appellant purchased C/1 and C/2 duplex flat located at Dhanmondi Road No-5/A, House No. 59 at a price of Tk. 33 lac out of which he paid Tk. 31,50,000/- and the flat was taken in the

name of his wife Rumana Mahmood. He being asked by the Investigating Officer furnished him all the documents, money receipts, payment sheet which were seized by him on 23/4/07. He proved the seizure list Ext-7 bearing his signature therein Ext-7/1. He also proved the documents Mat-Ext-1 series.

In his cross-examination, he stated that the money receipts are for Tk. 28,50,000/- and the remaining payment was made without any money receipt since the cost was incurred for decorating the flat. He denied that Tk. 20 lac was the consideration money for purchasing the flat. He also replied that the payment was made between 1993 to 1997.

P.W-7 Rezaul Karim Khan, Managing Director of Oriental Real Estate Ltd., in his examination-in-chief stated that before 2004 his

father late Amzad Ali was the M.D. of this establishment. On his demise he took over the charge having command on previous transaction. The accused purchased a duplex flat from his real estate. The price of the flat was Tk. 33,32,000/- with vat charge Tk. 28,50,000/- was paid through money receipts and Tk. 21 lac was paid on 14/4/2000 by virtue of a letter. On account of selling this flat his company was paid Tk. 31,50,000/- and Tk. 1,82,000/- remained outstanding to the accused.

In his cross-examination, he stated that letter dated 14/4/2000 acknowledges about receiving Tk.2 lac out of Tk. 3,82,000/- with an urge to make the remaining payment. He also replied being confronted with a letter that Tk. 20 lac is stated to be

construction cost which is not the total cost and value of the flat.

P.W-8 Abullah Yousuf Khan, Priority Service Manager of Priority Chartered Bank, Dhanmondi Branch, in his examination-in-chief, stated that the convict-appellant Iqbal Hasan Mahmood and his wife have purchased saving certificates worth Tk. 85 lac. Apart from it accused Iqbal Hasan Mahmood has an FDR amounting Tk. 40 lac and Tk. 30 lac which now stands at Tk. 55,52,540/- was kept in FDR in the name of his son and daughter. Besides Tk.10,29,433/38 is also kept in FDR in the name of his daughter. The saving certificates valued Tk. 25 lac is in the sole name of accused No.1. Tk. 10 lac is in the joint name of accused No. 1 and 3 while Tk. 10 lac for 6 month

term is in the name of accused No. 1. Moreover, Tk 40 lac for 3 months term is kept in the joint name of accused No. 1 and his wife accused No.3. The Investigating Officer seized Account Number, Account Opening Form, KYC Form and Account of statement from 24/4/98 to 22/4/07. Another accounts with its opening form and the documents of FDR amounting Tk. 40 lac, Accounts statement and the accounts in the name of Sara Hasin, documents related with fixed deposit in the name of his son and daughter along with its present balance were also seized by preparing seizure list, Ext-8, wherein his signature is Ext-8/1. He also proved those documents as Mat-Ext-11 series.

In his cross-examination, he stated that in the saving certificates purchased by the accused No.

1 and his wife, a word syfanz is written which indicates a scheme where the individual invests a certain amount together with the Bank which provided the rest amount for purchasing saving certificates and gets repayment with monthly installment fixed by Bank from that individual. This project has now been closed. The accused person has already repaid the amount of loan by the Bank. Now the accused person is the sole owner of the saving certificates. The original instrument of saving certificates remains in the Bank. Income tax at the rate of 10% has been deducted from the interest of the FDR amount and on the interest of saving deposit and these amounts of tax has been credited to the NBR account.

P.W-9 Md. Masud, Deputy Commissioner of Tax Region-1 Company Circle-1, in his examination-in-chief, stated that the convict-appellant-Iqbal Hasan Mahmood having TIN No. 074-106-7640 has submitted his tax return in this circle. The Investigating Officer seized his income tax file on 25/4/07 including the tax return of accused Abed Hasan Mahmood and in the income tax file, the accused persons did not disclose the FDR amount Tk. 50 lac kept in the name of accused Abed Hasan Mahmood.

P.W-10 A.K.M. Azharul Hasan, in his examination-in-chief, stated that he is the witness of the seizure of the income tax file related with accused Abed Hasan Mahmood.

P.W.11 Mahmood Hasan, the Record keeper of B.R.T.A., Mirpur Office, in his

examination-in-chief, stated that the accused-appellant-Iqbal Hasan Mahmood has a BMW Jeep bearing Registration No. Dhaka-Metro-Ga-11-4690 and the Investigating Officer seized document related with this Jeep from him on 29/4/07, vide seizure list Ext. 10/1 wherein his signature is Ext-10/2. In the document submitted and seized from him the price of the Jeep is mentioned to the tune of Tk. 47,76,909/42. He proved the seized document, Mat-Ext-III.

In his cross-examination, he stated about his ignorance about the contents of the seized documents.

P.W-12 Ismail Hawladar, Inspector of vehicle of BRTA Office, Mirpur, in his examination-in-chief, stated that Investigating Officer seized the documents related with BMW

Jeep of accused No. 1 from him and the said Jeep was purchased at Tk. 47,76,906/42 and he stated it in view of bill of entry and other relevant document which the accused filed in their office for getting registration of it.

In cross-examination, he stated the Jeep was imported under M.P. Kota enjoying the duty free privilege given to Parliament Member. The accused No. 1 is the importer and LC was opened in Dutch Bangla Bank, Banani Branch.

P.W. 13 Ratindra Mohon Chakraborty,
Assistant Manager, State Bank of India, Dilkusha Branch, in his examination-in-chief, he stated that being inquired by the Investigating Officer about account No. 0510009592000 in the name of accused No. 1 who has Tk. 2,38,583/- in this account up to

10/05/07. The Investigating Officer seized account opening form, specimen signature and account statement by preparing seizure list. He proved those document, Mat-Ext-IV.

In cross-examination, he stated that the deposit has been made in this account through clearing cheque. It is difficult to state in view of the cheque that it has been issued on account of house rent. He expressed his ignorance as to the fact whether the amount deposited in this account is debited to the account of the younger brother of the accused No. 1.

P.W. 14 Sankor Prasad Basu Majumdar,
Manager Operation of State Bank of India, in his examination-in-chief, stated that the Investigation Officer seized the account opening form, signature form on going to his Bank on 24/04/07. The accused

No. 1 has balance Tk. 2,38,583/- in this account up to 10/5/07.

In cross-examination, he stated that his ignorance about the transaction under this account.

P.W. 15 Chowdhury Nafis Sharafat, Central Manager of Standard Chartered Bank, in his examination-in-chief, stated that the seizure list witness of the documents related with the Bank account of the accused. Defence declined to cross-examine him.

P.W. 16 Ishtiak Bin Refique, Asstt. Vice President of Dutch Bangla Bank, in his examination-in-chief, stated that the convict-appellant Iqbal Hasan Mahmood has a current account No. 0103110000007593 which was opened on 22/03/03 and the balance remains at Tk. 1,68,420/77 thereat. The Investigating Officer seized the account

opening form, signature form and accounts statement preparing seizure list, Ext-12. The BMW Jeep was imported through this account.

In cross-examination, he stated that the amount was deposited through clearing cheque.

P.W-17 Kazi Towhidul Alam, Executive Vice President of Dutch Bangla Bank, in his examination-in-chief, stated that he is the seizure list witness who proved his signature in the seizure list, Ext-12/2.

P.W. 18 Sorwar Hossain, Deputy Commissioner of Tax, Large Tax Unit, in his examination-in-chief, stated that the Investigating Officer seized from him the income tax file of convict-appellant No. 1 Iqbal Hasan Mahmood, his wife Rumana Mahmood and his daughter Sara Hasin Mahmood preparing seizure list, Ext-13. The

accused No. 1 disclosed in his income tax return about saving certificate valued Tk. 1,28,400/-. He also declared the consideration money to have the House No. 1/7 Asad gate at Tk. 1,09,307/- by way heba deed. He did not announce anything regarding his BMW Jeep, plot No. 309 and 311 purchased from East West Property Development Real Estate and any information in respect of construction done by him at his residence in Sirajgonj town. Accordingly there is no disclosure about the share amounting Tk. 1 Crore in the name of Rumana Mahmood in One Entertainment Company, FDR and Bank account in the name of his daughter Sara Hasin Mahmood.

In cross-examination, he stated that another case was filed by NBR against accused Iqbal Hasan Mahmood for dodging tax and no notice was issued

against the accused after getting the income tax return.

P.W.19 Alamgir Kabir is the seizure list witness of income tax file. Defence declined to cross-examine him.

P.W.20 Md. Jamal Uddin, an officer of Industrial Development Leasing Company (IDLC), in his examination-in-chief, stated that IDLC gave loan to Apex Weaving and Finishing Company Ltd. Defence did not cross-examine him.

P.W. 22 Md. Shamsuzzaman, Custom Inspector of I.C.D. Kamalapur Branch, in his examination-in-chief, stated that assessing the duty free BMW Jeep imported by Iqbal Hasan Mahmood under the privilege of his being Member of Parliament. The price of the car is Tk. 47,76,906/-.

He proved his signature in the bill of entry. Defence declined to cross-examine him.

P.W.23 Abdul Monem, Asstt. Vice President of Dutch Bangla Bank, in his examination-in-chief, stated that Investigating Officer seized two vouchers on 10/05/07 preparing seizure list, Ext-15. Tk. 33,32,867/- was deposited through one voucher on 07/07/03 in the account of accused Iqbal Hasan Mahmood and the said amount was transferred to his Banani Branch through the last voucher, Mat-Ext-VIII. Defence declined to cross-examine him.

P.W. 24 Md. Maminul was tendered by the prosecution.

P.W.25 Kazi Tofazzal, Senior Principal officer of Dutch Bangla Bank, Kawran Bazar

Branch deposed that the amount deposited was credited in the account of accused No.1.

In cross-examination, he stated about his ignorance as to whether Apex Waving has any account in his branch. They have received cash money which was transferred to the account of the accused Iqbal Hasan Mahmood in their Banani branch.

P.W. 26 Md. Zakaria, Asstt. Vice President of Dutch Bangla Bank, in his examination-in-chief, stated about having Tk. 33,32,867/- which was credited in the account No. 1032300859 of the accused Iqbal Hasan Mahmood. Defence declined to cross-examine him.

P.W. 27 Abdul Mannan, Asstt. Register of Joint Stock Company, in his examination-in-chief, deposed of providing Memorandum of Article and

Association of One Entertainment to the Investigating Officer of this case who seized them preparing seizure list, Ext. 16 wherein his signature is Ext-16/1.

In cross-examination, he stated that the accused Rumana Mahmood has 1,250 shares in One Entertainment. He also replied that the call money notice relating with this shares does not lie with the record.

P.W. 28 Md. Ali Azam, the inspector of Register of Joint stock Company, in his examination-in-chief, stated that he is the witness of the seizure list of Memorandum of Article and Association.

In cross-examination, he stated that in serial No. 5 of the Form No. 12 the name of Rumana is written by hand as director but the other names are type-written. The name of Rumana was written there

using fluid. In Form No. 10 the name of Rumana is written with pen while the name of other director is type-written. Some of the directors signed over their name while the others like Shah Habibul, Mahedi Hasan, Amran and Rumana Mahmood did not sign on it. There is a declaration made by Gias Uddin Al Mamun in the form that all the directors have assented to become the directors of the Company, Rumana Mahmood put her signature in the Memorandum of Article.

P.W.29 Abdullah Al Masud, Vice president of Prime Bank, Motijheel Branch, in his examination-in-chief, stated that Rumana Mahmood as one of the directors of One Entertainment Ltd. become personal guarantor against a loan amounting to Tk. 23,90,00,000/- granted to One Entertainment by putting her signature appearing before the Bank

on 4th October '2005. The Investigating Officer of this case seized the personal guarantee letter form, particulars of director's form No. 12 preparing seizure list, Ext. 17.

In cross-examination, he stated that the Investigating Officer did not seize the documents related with the loan given to the One Entertainment Company. At the time of sanctioning loan he was not in this branch but it is the rule that the personal guarantor has to execute the guarantee letter appearing before the Bank.

P.W. 30 A.K.M. Jan-E-Alam, Senior Asstt. Vice President of Prime Bank, in his examination-in-chief, stated that he is the seizure list witness of the documents seized through list, Ext-17, Defence declined to cross-examine him.

P.W. 31 Towhidul Islam, General Manager of Marketing, East West Property Project of Basunhara Group, in his examination-in-chief, stated that the appellant Iqbal Hasan Mahmood purchased plot Nos. 309 and 311 in L-block from their Real Estate and he has already paid Tk. 74,08,300/-. He said to have produced the concerned file Nos. 10989 and 10990 before the Investigation Officer who seized them preparing seizure list Ext-18 and the files are marked as Mat-Ext-X.

In cross-examination, he stated that the registration and handing over the plots are not yet completed. The consideration money was paid through cheque and pay order of State Bank of India, Trust Bank and City Bank. He expressed his ignorance as to whether this payment was made from the fund of Home Textile Mill.

P.W-32 Shahadat Hossain Khan, Manager Marketing, East West Project of Basundhara Group, in his examination-in-chief, stated that he is the seizure list witness who put his signature in the seizure list. The price of the two plots is Tk. 56 lac and 48 lac respectively. The accused No. 1 Iqbal Hasan Mahmood has so far paid Tk. 74,08,300/-.

In cross-examination, he stated that sale agreement will be executed after having full payment but allotment letter has already been issued. In the document maintained by his office, the name of accused Iqbal Hasan Mahmood is shown to be purchaser of these plots.

P.W.33 Md. Zillur Rahman is also the employee of East West Property, who, in his examination-in-chief, stated that he saw the act of

seizure of the documents and record in respect of Purchasing plot by accused Iqbal Hasan Mahmood.

In cross-examination, he stated of not receiving any cheque signed by accused Iqbal Hasan Mahmood by himself as he is not an employee of accounts department of the company.

P.W.34 Abdul Majid, is the witness of seizure list of BMW Jeep and its documents. Defence declined to cross-examine him.

P.W. 36 Abdul Hamid was tendered by the prosecution but the defence declined to cross-examine him.

P.W. 37 Ataus Samad, Vice President of IFIC bank, Gulshan Branch, in his examination-in-chief, stated that one Entertainment has a current account in his Branch. Two cheques amounting to

Tk. 50 lac, each from South East Bank and Oriental Bank, has been received by his Branch and the said amount was credited to the account of One Entertainment. The Investigating Officer has seized the account opening form, Article of Association and documents related with operation of the account preparing seizure list, Ext-20 wherein his signature is Ext 20/1. The documents are marked as Mat-Ext-XI.

In cross-examination, he stated of receiving the cheque through clearing process. The original cheque remains with the aforesaid two Banks. They have got credit.

P.W. 38 Golum Rasul Mohsin is an employee of Apex Weaving and Finishing Mills Ltd., who, in his examination-in-chief, stated that Iqbal Hasan Mahmood after swearing to become

state Minister for Power and Energy continued to be director of this company and this fact is revealed in the audit report of the company. In reply to cross-examination, he stated that accused did not take any remuneration during this period from the company.

P.W-39 Md. Waliullah, Auditor of Apex Weaving and Finishing Mills Ltd., in his examination-in-chief, stated that appellant Iqbal Hasan Mahmood was director of the company in the year 2001-02. He further stated that though the Board meeting dated 29/11/02, a proposal was raised to give loan to the accused for purchasing Jeep, there is no information in this regard in the books of accounts of the company. He also deposed that a director cannot be given loan as per provision of company act.

In cross-examination, he stated of his being external auditor of the company. In the Board resolution, the fact of giving loan to accused Iqbal Hasan Mahmood and one Harunur Rashid is mentioned but in the books of accounts no such fact was entered. Apex Weaving company took loan from IDLC for purchasing this Jeep but this fact was not shown in the book of account and he could not say without going through the audit report that in which year of the audit report this aspect was omitted to be mentioned. Apex Weaving Company has been paying loan taken from IDLC. In the resolution it is mentioned that the loan will be adjusted from the share of the dividend of the company.

P.W.-40 Mostafizur Rahman, Senior Executive (Finance) of Home Textile Mills, in his

examination-in-chief, stated that the Investigating Officer of this case seized Board Meeting and Resolution thereof, Mat-Ext-XII preparing seizure list, Ext-21 and 24.

In cross-examination, he could not state what has been there in the resolution. He joined in this company 9 months ago and did not go through the debit voucher.

P.W.-41 Redwanul Hoque, Senior Executive (Finance) of Home Textile Mills, in his examination-in-chief, stated that he is the witness of the seizure list of the documents dated 27/05/07 of Home Textile Ltd.

In cross-examination, he stated that Home Textile paid the consideration money of the plot taken by Basundhara.

P.W.-42 Farid Ahmed, Manager of Apex Weaving and Finishing Mills Ltd. Company, in his examination-in-chief, stated that in his presence, the Investigating Officer of this case seized Board resolutions and cash Book of the Company on 27/05/07. He put his signature in the seizure list.

In cross-examination, he stated that in the resolution it has been written that Tk. 47 lac was given loan to accused Iqbal Hasan Mahmood for 5 years term to purchase car.

P.W.-43 Imrul Iqbal Ali, Deputy Manager of Apex Weaving deposed that he is the witness of the seizure list dated 27/05/07.

In cross-examination, he stated about his ignorance about the contents of the documents.

P.W.-44 Mehbub Alam Chowdhury, First Assistant Vice President of IFIC Bank, Gulshan

Branch, in his examination-in-chief, stated that the Investigation Officer of this case seized the documents related with One Entertainment Company on 24/5/07. Defence declined to cross-examine him.

P.W.-45 Md. Mahbubul Hoque, Executive Finance of One Entertainment Company, in his examination-in-chief, stated that appellant Rumana Mahmood deposited Tk. 1 core to purchase share of the company through voucher No. 11 dated 03/9/05 and voucher No. 21 dated 07/12/05. Investigating Officer of this case seized Bank deposit of the company which contains the voucher No. 11 dated 03/9/05 at page No.6 while voucher No. 21 dated 07/12/05 at page No.39. The money was credited in the current account No. 0233022613 of One Entertainment in the IFIC Bank. He proved the

seized article, Mat-Ext-XVI preparing seizure list, Ext-23/1.

In cross-examination, he stated that after having the cheque they have inquired who issued the cheque and to whom it was issued and thereafter they took the photocopy of the cheque and made the bank receipt voucher giving its number and endorsement. He was not assigned to do that. The bearer of the cheque told him that it belonged to Rumana Mahmood. One Mehadi Hasan director of the company has issued another cheque No. 8191353 of South East Bank and this cheque number is consecutive to the cheque number of Rumana Mahmood. The voucher No. 21 dated 07/12/05 bears the name of Rumana Mahmood and her name was incorporated therein erasing one's name. In the back page of the deposit slip the name

of Rumana Mahmood is also written. Gias Uddin Al Mamun told them that the share money would be credited in the name of Rumana Mahmood.

P.W.-46 Kamal Razzak, Chief Account of One Composite Mills, a sister concern of One Entertainment Group, in his examination-in-chief, stated that receiving a cheque amounting to Tk. 50 lac from Rumana Mahmood and by preparing deposit slip and voucher this cheque was deposited to the concerned Bank.

In cross-examination, he stated of preparing voucher No.11 having seen the cheque. He could not say who carried the cheque which bore the consecutive number of the cheque issued by Mahedi Hasan.

P.W.-47 Zakir Hossain, Executive Senior Accounts of Channel-1, in his examination-in-chief,

deposed of preparing the voucher having seen the pay order amounting to Tk. 50 lac in the name of Rumana Mahmood.

During cross-examination, he stated that the name of Rumana Mahmood was replaced thereat by erasing the name of Mehadi Hasan as per direction of Assistant Manager. He further stated that initially the name of Mahedi Hasan was written as per direction of the Managing Director who later on told him to incorporate the name of Rumana Mahmood erasing the name of Mahedi Hasan. Managing Director Gias Uddin Al Mamun told him that the deposit was made by Rumana Mahmood.

P.W.-48 Masud Hasan, Assistant Manager, Accounts and Finance of One Entertainment Ltd., in his examination-in-chief, deposed of receiving pay order No. 03925-94 amounting to Tk. 50 lac sent

through Oriental Bank, Kawran Bazar Branch as share money of Rumana Mahmood. He deposited it in the IFIC Bank.

In cross-examination, he stated that initially voucher was written in the name of Mehadi Hasan but as per instruction of the Managing Director who having confirmed told him later on that it was from Rumana Mahmood whose name then was inserted therein removing the name of Mehadi Hasan.

P.W.-49 Mahmood Ali is the seizure list witness of the Bank voucher of One Entertainment Company and **P.W-50 A.S.M Kamruzzaman** is tendered by the Prosecution. Defence declined to cross-examine them.

P.W.-51 Mahfuzur Rahman, AGM, Finance and Accounts of Home Textile, in his examination-in-chief, stated that the Investigating

Officer of this case seized audit report and tax file of Home Textile on 27/05/2007 preparing seizure list, Ext-24. In the audit report no information was given concerning giving loan to the accused No. 1 from this company.

In cross-examination, he stated that Iqbal Hasan Mahmood is the main share holder of the company and the signature of Director of the company is not put in the audit report which was signed by auditor.

P.W.-52 Wahidul Iqbal, in his examination-in-chief, deposed of being assigned to assess the construction costs of the extension part of the residence No. 1/7, Asad Avenue of Iqbal Hasan Mahmood and accordingly he taking his SDE and SAE went there on 29/03/2007 and came to know that extended part was constructed in the year 1999

and as per schedule rate of PWD of this year, they determined the construction costs at Tk. 37, 85, 056/- discounting 20%. The internal wearing and electrification, sanitary and water supply system are included with the aforesaid costs. He proved his report, Ext-25 with his signature, Ext-25/1.

In cross-examination, he ascertains that the extended part of the building is 2nd floor. The internal costs are determined at the rate of 10% of the total costs incurred for construction. They have adopted plinth area rate method for determining the costs. He has seen the plan but it was not approved by authorized persons so he did not accept it to be approved by Rajuk. He denied the defence suggestion of submitting an imaginary report.

P.W.-53 Nurul Amin, SDE deposed of corroborating the evidence of P.W.-52.

In cross-examination, he stated of being reported by the wife of the accused Iqbal Hasan Mahmood that the construction was completed in the year 1999.

P.W.-54 Anisur Rahman was tendered by the prosecution but being cross-examined by the defence, he stated of being shown the extended part of the construction by the wife of the accused.

P.W.-55 Abdul Majid, Ex-en, Electric Division, in his examination-in-chief, stated that to have determined the value of the electric appliance found in the residence of the accused including internal wiring which stands at Tk. 1,57,394/- and costs of electro mechanical equipments and fittings stand at Tk. 30,82,112/-. The house is accomplished with 12 air conditioners with 20 KVA Generator, Plasma TV, Closer TV and other materials. The

equipments are found in both old and new part of the house.

In cross-examination, he stated of not making different list of the electrical item found in the extended part of the house. He denied the defence suggestions that the entire electrical appliances are collected and used by the parents of the accused.

P.W.-56 Nur Alam Sarker, SAE deposed of having electrical appliances worth Tk. 30,82,120/-

In cross-examination, he stated that the wife of accused put her signature in the list of the appliances as per schedule rate of PWD and where there is no such rate in the schedule they adopted the Market value of those items. He denied the defence suggestions of determining an imaginary valuation.

P.W.-57 Abdul Motin, in his examination-in-chief, stated that to have gone to the house of the accused at 1/7, Asad Avenue with P.W.-55 and 56 for assessing the electro mechanical appliances found in that house. They have determined the price in accordance with the price mentioned in the PWD schedule rate and Market price.

P.W.-58 S. S. M. Akhter Hamid Asstt. Director of the Commission and Investigation Officer of this case, in his examination-in-chief, stated that he visited the place of occurrence for holding investigation and recorded the statements of 55 witnesses. He also asked the accused. He seized the receipts and vouchers related with Purchase of duplex flat from Oriental Real Estate preparing seizure list Ext-7 and the Bank account, FDR and Savings Certificate preparing seizure list, Ext-8. He

also seized the Income Tax Return file along with the record of BMW jeep from BRTA office, the document from IDLC in respect of giving loan to the Apex Weaving Ltd. the documents related with L/C value of purchasing BMW Jeep from Dutch Bangla Bank Ltd., Memorandum of Article and other related documents of One Entertainment Company. He also seized personal Guarantee letter executed by Rumana Mahmood against the loan granted to One Entertainment from prime Bank. He also seized the document and payment sheet in respect of two plots purchased by accused from East West Property Development, Resolution and Audit Report of Home Textile Ltd. He got the construction costs determined by the Engineer of PWD.

The defence examined as many as 4 DWs to prove the defence case and to disprove the prosecution case.

The convict-appellant has been examined as **D.W.-1** who, in his examination-in-chief, stated that the residence at 1/7, Asad Avenue was gifted to him by his mother and most part of its construction has been done with the money given by his mother at her own instance. The savings certificates were purchased between 1999 to July 2000 with the capital of his business and during the period he did not hold any public office. He is a businessman by profession and has been awarded best client reward from Sonali Bank. Savings Certificates having been matured were converted into fixed deposit. He showed undeclared income worth Tk. 1 crore in pursuance of the circular issued by the Government

on 19th December 2001 and he invested Tk. 50 lac for purchasing Savings Certificates out of the undeclared money and took O.D. against it and repaid its installment showing it as family expenditure in the income tax return. 10% income tax has been deducted out of the interest accrued on fixed deposit by the bank itself and therefore, it was not shown in the income tax return. The price of BMW Jeep amounting to Tk. 47,07,000/- was taken loan from IDLC through Apex Weaving and Finishing Mills Ltd. Loan was taken for purchasing two cars-one is for himself and the other is for his business partner. Apex Weaving is involved in taking loan as IDLC does not grant loan to any individual. The Board of Directors of Apex Weaving has adopted a resolution to this effect with a provision to repay the loan to the company within

5 years out of their dividend. The Apex Weaving has been repaying the installment from its account. Most of the furniture and fixture detailed in the wealth statement are collected by his mother. For want of prescribed form he had to submit the list of his asset in a plain paper through his son during his detention in jail. He submitted the wealth list in a hurry having a few minutes time to consult with his son. The amount of money kept in the Account No. 051309592301 of State Bank of India is not of him, but of his brother Monjurul Hasan who acquired it from house rent paid by Purksin Ltd., a Buyer Company of Hong Kong origin and the said amount was shown in the income tax return of his brother who has TIN No. 467104955-9. The certified copies of the return are submitted in Special Case No. 6/07 and for this reason this was not shown in his income

tax return. The amount remained in the account of Dutch Bangla Bank is the loan money taken for purchasing BMW Jeep and the said account was opened by Executive Motors which is the importer of the said Jeep. He has not issued cheque against this account. The said money belonged to Apex Weaving. He purchased flat in Dhanmondi in the year between 1993 to 1996 when he was not a Public Servant. It was converted to the duplex one comprising of C-1 and C-2 type flat. He mentioned about it in his income tax return. He paid Tk. 20 lac and the concerned real estate gave certificates to this effect. Neither he nor his wife deposits the share money amounting to Tk. 1 crore in one Entertainment Company. He deposited Tk. 30 lac in the fixed deposit account on 23.2.98 in the name of his son and daughter with a view to advancing their

life. This amount was obtained from money building facilities and by way of purchasing saving certificates and having its been matured it was kept in the FDR which was mentioned in the remarked column in his wealth statement and it was kept lien against Account No. 01310475301 on 253.02.2007. It's balance is Tk. 45,31,599/-. He purchased the share in the name of his daughter from his company. He deposited Tk. 2 lac in the Standard Chartered Bank which allotted 4 lac as loan and out of which Tk. 5 lac was invested for purchasing saving certificates. He paid Tk. 10,000/- each month to repay the installment. The saving certificates having been matured stands at Tk. 8,42,476/-. The consideration money for purchasing plot Nos. 309 and 311 from Basundhara Group has been paid from the fund of Home Textile Mills Ltd. which showed

this fact in its income tax return and therefore, he did not declare it in his income tax return as his won wealth. He had cash Tk. 36,35,491/- in hand on 30.06.98 as shown in IT 10B Form while Tk. 43,50,338/- was shown therein on 30.06.99. Similarly on 30.06.2001, he had cash in hand Tk. 37,75,515/-, Tk. 5,15,560/- and Tk. 26,82,375/- had been shown in his hand on 30.06.2002 and 30.06.2003 respectively. He got dividend Tk. 15,12,000/- in the year, 2003 and he showed Tk. 63,14,817/- cash in hand in IT 10B Form on 30.06.2004.

In cross-examination, he replied of having the residence at 1/7, Asad Avenue by way of gift from his mother in 1980 and his mother died in 1997. His mother started construction in 1995 and completed in the year 1999. She was 87/88 years old. The

supervision of the work was done by the Manager of their residence. He did never look for the construction work. His mother was housewife and he could not say whether she had any bank balance. The extended part of the Construction was not shown in his income tax file. He denied the suggestion given by the prosecution that in order to conceal the fact of construction done by him, he is telling the name of his mother. The house rent kept in State Bank of India was remitted to his brother account through advice, but he could not tell whether such provision has been there in the account opening form. He could not show any acknowledgement to the effect of sending money to his brother. He denied the suggestion that the said amount of money belonged to him and he earned it illegally and with a view to concealing the fact, he

used the name of his brother. He gave booking for purchasing two plot Nos. 309 and 311 from L-Block of Basundhara and payment voucher has been issued in his name. He styled himself to be State Minister of Power and Energy in the application form without giving any reference to Home Textile therein. He made his son nominee in column No.8 in the application. He has Board resolution of Home Textile as well as its audit reports to show that Home Textile has paid the installment of purchasing the two plots. He denied the suggestion given by the prosecution that he purchased these plots from his ill-gotten money and now is using the name of Home Textile. He further replied his inability to show the audit report of Home Textile to justify his claim that Home Textile paid the consideration money for purchasing the two plots from

Basundhara. For purchasing saving certificates valued Tk. 25 lac he paid Tk. 5 lac at the rate of 20% in the Standard Chartered Bank which paid Tk. 20 lac directing him to pay Tk. 45,375/- as monthly installment and he paid it from 23.05.99 to 21.11.2002. In 2nd phase he purchased saving certificates worth Tk. 50 lac on 20.07.2000 having monthly installment of Tk. 1,10,925/- to be paid. He did not mention in his asset declaration about repayment of the installment and its source. He could not say how many Bank account he has in different Banks. He replied that though Apex Weaving took loan from IDLC for purchasing car, but the BMW Jeep was imported in his name under the privilege of duty free given to a Member of Parliament. He was then State Minister and also Director of this company. He admitted that in the

documents filed in BRTA office the price of the BMW Jeep was shown at Tk. 47,76,906/. He denied the defence suggestion that there is no information like that in the audit report of the company. He paid the consideration money to Oriental Real Estate for purchasing flat in Dhanmondi denying the amount to the tune of Tk. 31,50,000/- to this count and thereby concealed Tk. 11,50,000/-. He also denied the defence suggestion that he purchased share's worth Tk. 1 crore in one Entertainment Company in the name of his wife and also purchased plot Nos. 309 and 311 from East West Real Estate of Basundhara and Home Textile did not pay for it and its audit report does not reveal this aspect and therefore, he furnished false statement. In view of the voucher he stated that there is an information of having share of Tk. 1 crore in the name of his wife

in One Entertainment, but he was not aware of it. He opened FDR in the name of his son and daughter and also purchased share in the name of his daughter though he did not describe its source in the asset declaration. He also did not disclose the source of depositing Tk. 10,03,042/- in the name of his daughter in the Standard Chartered Bank. He denied the suggestion that he deliberately omitted to mention the source of the money deposited in this account. He further refused the suggestion given by prosecution that by misusing his power while holding the post of State Minister he acquired those monies and shares, kept and took them in the name of his wife and daughter.

D.W.-2 Monir Uddin, in his examination-in-chief, stated that he is an employee of IDLC and deposed of granting loan Tk. 84 lac to Apex

Weaving and Finishing Mills Company Ltd. for purchasing vehicles and the company repaid the said loan in 48 installments. Accused Iqbal Hasan Mahmood, Rumana Mahmood, Anisur Rashid and Harunoor Rashid were personal guarantors of the loan and Home Textile was corporate guarantor of the loan.

In cross-examination, he replied of giving loan to Apex Weaving and not any private individual and he knows nothing else.

D.W.-3 Sayed Salahuddin, Manager of Oriental Bank, Kawran Bazar Branch, in his examination-in-chief, stated that pay order No. 0392594 amounting to Tk. 50 lac dated 06.12.05 was done by this Bank having an application signed by one Fakhrul. He proves his signature in the pay

order, Ext-A/1 and attested photocopy of the application, Ext.B.

In cross-examination, he replied that any one can make any pay order in the name of anybody and they don't verify the identity of the applicant.

D.W.-4 AFM Shariful Islam, Manager of South East Bank, in his examination-in-chief, deposed of maintaining an Account No. 11100012814 by one Obaidul Karim. The cheque No. 8191354 worth Tk. 50 lac dated 03.09.2005 was issued in favour of one Entertainment and by way of clearing method money was en-cashed on 04.09.2005 through IFIC Bank, Gulshan Branch. He submitted the said document, Ext.C series.

In cross-examination, he replied that the money was credited in the account of one

Entertainment and he could not say who for what purpose funded it to one Entertainment.

After recording evidence from the witnesses of the respective parties, the learned judge of the trial court in the ultimate analysis summed up the circumstances gleaned from the evidence on record and hold the view that the prosecution has proved the prosecution case and the charges levelled against the convict-appellant beyond all reasonable doubt and thereby convicted and sentenced the convict-appellant in the manner as mentioned above.

During hearing of the appeal, Mr. Ajmalul Hossain KC, the learned Senior Advocate along with Mr. Mohammad Saifullah Mamun, the learned Advocate and Mr. Mamun Chowdhury, the learned Advocate appearing on behalf of the convict-appellant, has taken us through the prosecution

materials and evidence available on record and categorically submits that the whole case is rested on four counts/issues namely (1) Bank deposit amounting to Tk.2,38,583/- up to 30.06.06 kept in account No.051309592001 of State Bank of India. (2) BMW Jeep worth Tk.47,76,906/-. (3) Plot Nos.309 and 311 in East West Property Development of Basundhara Group worth Tk.74,08,300/-. (4) 1,250 Share's worth Tk.1 crore in One Entertainment deposited in the Current Account No.0233022613 of IFIC Bank.

Mr. Ajmalul Hossain KC, the learned Advocate the for convict-appellant with regard to bank deposit for an amount of Tk Tk.2,38,583/- up to 30.06.2006 kept in Account No. 051309592001 of the State Bank of India, submits that the prosecution case about Tk.2,38,583/- up to

30.06.2006 kept in the Account No. 051309592001 of the State Bank of India is that the convict appellant concealed information of the balance amounting to Tk.2,38,583.00 as of 30/06/2006 kept in the Account No. 051309592001 of the State Bank of India in his income tax return dated 30/06/2006 and therefore it is presumed that the accused illegally or dishonestly earned the said money which is disproportionate to his known source of income.

During hearing of the appeal, Mr. KC has taken us through some relevant evidence adduced by a number of witnesses in this regard.

PW-13, an officer of State Bank of India, in the cross-examination, stated that “এই Account জমাগুলি Clearing এর মাধ্যমে হয়েছে। Bank Statement দিয়েছে। এই হিসাবের টাকাগুলি কোন বাড়ি ভাড়া থেকে এসেছে কিনা তা Detail Cheque Account না দেখে বলা

যাবে না। এই হিসাবের কোন Cheque বা Transfer Voucher জন্ম করে নাই। ৭/০৫/২০০০ থেকে statement দিয়েছি। এই Account এ টাকাগুলো Cheque মাধ্যমে জমা হয়। এই টাকাগুলো কোন Account থেকে এসেছে বা ১নং আসামীর ভাইয়ের নামে Debit হয় কিনা আমি বলতে পারব না। কোন ব্যক্তির পক্ষে সাধারণত হিসাব না দেখে উহার স্থিতি সম্পর্কে বলা সম্ভব নয়, Debit Voucher জন্ম করা হয় নাই।

DW-1 the convict-appellant in examination-in-chief clearly stated that স্টেট ব্যাঙ্ক অফ ইন্ডিয়া 05130959301 একাউন্টের টাকা আমার ভাই মঞ্জুর হাসান এর বাসা ভাড়ার জমাকৃত টাকা। এই বাড়িটির ভাড়াটে হংকং এর পাক্সিস লিমিটেড নামে ব্যাঙ্ককে ভাড়া দেয়া হয়। তাদের ভাড়ার টাকা ছোট ভাইকে দিয়াছি। ছোট ভাইয়ের ইনকাম ট্যাক্স নম্বার 4671049559। তার পাঁচটি করবর্ষের সার্টিফাইড কপি বিশেষ মামলা ৬/২০০৭ এ জমা দেয়া আছে। এই কারণে

আমার আয়কর রিটার্নে এই বিষয়ে শো করা হয় নাই It is submitted that prosecution failed to controvert or disprove the said evidence.

PW-18 the DCT and **PW -58** IO did not say that appellant had any illegal profession, the appellant had no business or job, or the appellant earned the money through illegal means. However, they just said that the said bank account was not mentioned in the Tax return and wealth statement of the appellant.

In light of the above-mentioned evidence, the conviction and sentence under Section 27 of the ACC Act and/ or under Section 5(2) of the Prevention of Corruption Act 1947 with regard to the said bank deposit is illegal and liable to be set aside.

Mr. Ajmalul Hossain, KC appearing on behalf of the convict-appellant, submits as under :

(i) That none of the prosecution witnesses (PW-1, 13, 18 and 58) said that Tk.2,38,583/- kept in the Account No. 051309592001 of the State Bank of India is disproportionate to the known source of income of the appellant acquired through illegal means. It is submitted that in the absence of such evidence, there is no scope to shift the burden of proof upon the appellant.

(ii) That the prosecution witnesses admitted that the money lying in the said account was deposited

through bank cheques and the prosecution also failed to disprove the fact that the money which was deposited in the said account was acquired through illegal means.

- (iii) That none of the PWs said that the appellant had any illegal profession or the appellant had no business or job, or the appellant earned the money through illegal means;
- (iv) That it has been proved from the deposition of PW-1, PW-2 and materials/evidence on record that the appellant is an industrialist/businessman having business since 1977, he has sufficient income

from his business source, and he is a regular tax payer since 1980-81 under LTU, and his other family members are also engaged in business, and they are also regular tax payer, and they have also sufficient income.

- (v) That the appellant had no obligation under ITO 1984 to specifically mention/show the balance amount of Tk.2,38,583/- in the account No. 051309592001 of the State Bank of India in his income tax return of 2006 since there is no head/column in the Income Tax Return Form to mention each and every bank account and as such,

mere non-disclosure of a bank account in the income tax return is not an offence under Section 27 of the ACC Act and /or under Section 5(2) of the Prevention of Corruption Act 1947.

Mr. Ajmalul Hossain KC, the learned Senior Advocate in respect of BMW Jeep worth Tk. 47,76,906/-, submits that the prosecution case in this regard is that **(i)** the convict-appellant as a director was not legally entitled to take any loan from his own company namely Apex Weaving & Finishing Mills Ltd. and **(ii)** the BMW Jeep was not disclosed in the income tax return of the appellant and as such the BMW Jeep is disproportionate to the known source of income of the Appellant and the same was acquired through illegal means. In this

regard, as per Mr. KC, the following evidence is relevant:

It is evident from deposition of **PW-20**, an officer of IDLC that IDLC gave a loan of Tk. 84 lac Apex Weaving & Finishing Mills Ltd. to purchase 2 cars and it is stated by him that **এপেক্স ওয়েভিং এন্ড ফিনিশিং গাড়ি ক্রয় করার জন্য ৮৪ লক্ষ টাকা ঋণ দিয়েছে গাড়ি ক্রয় করার জন্য। এ সংক্রান্ত কাগজপত্র চাইলে উহা তাকে দেই।**

It is evident from the deposition of **PW-39** external auditor of Apex Weaving & Finishing Mills Ltd. that the company obtained a loan from IDLC to purchase cars. He also said that he saw the resolution where the company decided to give a loan to the Appellant and his partner Harun-or-Rashid to purchase the car. He stated in his deposition that **আমি এই কোম্পানীর External Auditor আমি I/O নিকট বলেছি যে**

২০/১১/০২ তারিখে Company একটি Board সভা হয়েছে হিসাব Resolution আমি দেখিছি। এই সভায় Resolution হয় ইকবাল হাসান ও হারুনুর রশিদকে ঋণ দেবার। কিন্তু Book of Account এই ধরনের কোন ঋণের বিষয় উল্লেখ নাই। Audit Report এখন আমার নিকট নাই। শুনেছি Audit কাগজপত্র জব্দ করেছে। Company IDLC থেকে গাড়ী ক্রয়ের জন্য Loan নিয়াছে। কোন বছরের Audit গাড়ী ক্রয় Loan Share করে নাই তা ঐ Audit Report না দেখে আমি এখন বলতে পারিব না। এই Loan টি কোম্পানী IDLC কে পরিশোধ করেছে। Resolution এ আছে ৫ বছর কোম্পানী থেকে ইকবাল হাসান মাহমুদ যে লভ্যাংশ পাবে তা থেকে এই টাকা কেটে নেওয়া হবে। কোম্পানীর আইনের কোন ধারায় Director Loan নিতে পারবে না তা আমি বলতে পারি না।

It is evident from deposition of **PW-42** Manager of finance & account of Apex Weaving & Finishing Mills Ltd. that Apex Weaving and Finishing Mills Ltd. gave Tk. 47 lac as loan to the appellant for 5 years and chairman of the Company was Mr. Harur-or-Rashid. He stated that আমি

ম্যানেজার ফাইন্যান্স এন্ড একাউন্টস এপেক্স ওয়েভিং। গত ২৭/০৫/০৭ তারিখে দুদকের আখতার হামিদ ভূঁইয়া আমার অফিসে যায় এবং ২০/১১/০২ তারিখের বোর্ড রেজুলেশন ১ পাতা এবং কোম্পানির ফের্ময়ারি ০৩ জুলাই ০৩ পর্যন্ত ক্যাশবুক ৩৩ পাতা জব্দ করে। জব্দনামা Exhibit – 22, সই Exi 22/1। আলামত Material Exhibit – XII। রেজুলেশনে বলা আছে ৪৭ লক্ষ টাকা ইকবাল হাসান মাহমুদকে পাঁচ বছরের জন্য লোন দেওয়া হইল। হারুনুর রশিদ ছিলেন চেয়ারম্যান

PW-18 (DCT) said that গাড়ী সংক্রান্ত কোন তার আয়কর নথিতে নাই। but he did not say that the appellant acquired the car through illegal means.

It is also evident from the deposition of DW-1 (Appellant) that সম্পদ বিবরণীতে BMW গাড়ীর মূল্য ৪৭,০৭,০০০/- টাকা। এই টাকা আমি Apex Weaving থেকে Loan যাহা IDLC থেকে কোম্পানী Loan নেয়। দুটি গাড়ীর জন্য Loan নেই আমার Partner একটি নেয়। আমার Loan Guarantor ও হিসাবে

IDLC সকল কাগজ পত্র সই করেছি। যেহেতু IDLC ব্যক্তিকে Loan দেয় না তাই কোম্পানী এই Loan নেয়। কোম্পানী Board of Director এই মর্মে Resolution করে। আমরা এই টাকা কোম্পানীকে ৫ বৎসরে আমাদের Dividend থেকে কেটে দিবো। গাড়ীটি Loan এর বিপরীতে Hypothecated আছে। ইহা Installment Company Account থেকে Pay করেছে।

In the cross-examination, DW 1 stated that BMW গাড়ীটি ৪৭,০৭,০০০/= টাকা। এই টাকা Apex Weaving Company মাধ্যমে IDLC থেকে Loan পেয়েছি। IDLC আমাকে গাড়ী কিনার জন্য ব্যক্তিগতভাবে কোন Loan দেয় নাই। গাড়ী ক্রয়ের টাকা Company পরিশোধ করিলেও উহা আমার নামে M.P কোঠার সুযোগে আনা হয়েছে। তখন আমি মন্ত্রী ছিলাম এবং ঐ সময় Company পরিচালক ছিলাম এবং গাড়ী ক্রয়ের জন্য Company থেকে Loan নেই। এই সংক্রান্ত Company Resolution অবশ্যই আছে।

It is also evident from the deposition of **DW-2(Officer of IDLC)** that “Apex Weaving and Finishing Company কে ৮৪ লক্ষ টাকা Loan দিয়াছি Vehicle ক্রয়ের জন্য যাহা ঐ Company আমাদেরকে ৪৮টি কিস্তিতে পরিশোধ

করেছে। Personal Guarantor ছিল ইকবাল হাসান, রোমানা, আমিনুর রশিদ ও হারুনুর রশিদ। Corporate Guarantor ছিল Home Textile. Third Party Hypothecation ছিল গাড়ী দুটি। সকলকাগজপত্রাদী এই মামলা ও অপর মামলায় আদালতে জমা দেওয়া আছে।

It is evident from the Board Resolution of Apex Weaving and Finishing Mills Ltd. dated 20.11.2002_(Material Exhibit XIII) that company gave a loan of Tk. 48 lac (payable within 5 years) to the appellant to purchase the BMW Car and repay the loan within 5 years from his share income/dividend.

It is evident from the Loan Agreement dated 16.03.2003 (Material Exhibit VII) that IDLC gave a loan of Tk. 84 lac to the appellant's company Apex Weaving and Finishing Mills Ltd. to purchase 2

BMW Cars and the Appellant and his partner Mr. Harun-or-Rashid were guarantors of the said loan and the appellant and his partner hypothecated the said BMW cars to IDLC as security against the loan.

It is also evident from Cheque No. 1166822 dated 16.03.2003 and Cheque No. 1190235 dated 16.06.2003 (Material Exhibit VII) that IDLC disbursed the loan amount to the appellant's company Apex Weaving & Finishing Mills Ltd. against 2 BMW cars.

In light of the above-mentioned evidence, the conviction and sentence under Section 27 of the ACC Act and /or under Section 5(2) of the Prevention of Corruption Act 1947 with regard to the BMW Jeep is illegal and liable to be set aside.

In this regard, Mr. Ajmalul Hossain, KC appearing on behalf of the convict-appellant, submits as under:

- (i) That none of the prosecution witnesses even said that the appellant had any illegal profession, or the appellant had no source of income or business or job, or the appellant earned money through illegal means.
- (ii) That from the deposition of PWs 39, 42 and DWs 1, 2 and documentary evidence (Board Resolution of Apex Weaving & Finishing Mills Ltd. dated 20.11.2002 Material Exhibit XIII, it has been proved that the appellant's won company gave him

a loan of Tk. 48 lac (payable within 5 years) to purchase the BMW Car and as such, the source of money against the BMW Jeep is not illegal.

- (iii) That from the deposition of PWs 20, 39, 42 and DWs 1, 2 and documentary evidence (Material Exhibit VII) it has been proved that the source of money to procure the BMW Jeep came from IDLC through a loan granted in favour of convict appellant's company namely Apex Weaving and Finishing Mills Ltd. and as such, the source of money against the BMW Jeep is not unknown, undisclosed, and illegal and therefore, it has been proved

that appellant did not acquire the BMW Jeep by illegal means and it was not disproportionate to his known source of income.

- (iv) That the prosecution case is that the appellant did not mention anything about the BMW car in his tax return as such it is disproportionate to his known source of income acquired through illegal means. It is submitted that filing of income tax return (showing of asset/income) is a continuing process and section 78 of the Income Tax Ordinance, 1984 allows a person to file a revised return if any omission is discovered or if an incorrect return is filed and

therefore nondisclosure of the said BMW Jeep in the tax file is a mere irregularity which is curable and such omission does not create any offence under 27 of the ACC Act and/or under Section 5(2) of the Prevention of Corruption Act, 1947.

- (v) That it is mentioned here that the appellant subsequently disclosed the information about the BMW Jeep and the personal loan taken from the company in his income tax return for the year 2007-2008 as shown in the application filed under sections 428 and 540 of the Cr. P.C. and the income tax authority duly accepted the same.

Mr. K.C in respect of Plot Nos. 309 and 311 in East West Property Development Pvt. Ltd. worth Tk. 74,08,300/-, submits that in this regard, the prosecution case is that **(i)** the convict-appellant as a director was not legally entitled to take any loan from his own company namely Home Textile Mills Ltd. and **(ii)** the said plots were not disclosed in the income tax return of the appellant and as such, the said plots are disproportionate to the known source of income of the appellant and the same was acquired through illegal means. In this regard, as per Mr. K.C, the following evidence is relevant in this field:

It is evident from the Charge Sheet, depositions of **PW- 41** and **PW 58** (IO) that the installments against the said 2 plots were paid by the convict appellant's company Home Textile Ltd. through

monthly installments from 2003 to 2007 and as such, the source of money against the said 2 plots is not unknown, undisclosed, and illegal and the money had a valid and known source.

The statement made in the Charge Sheet is that: “জনাব ইকবাল হাসান মাহমুদ ০২/০৬/০৩ তারিখে ইস্ট-ওয়েস্ট প্রোপার্টি ডেভেলপমেন্টের বসুন্ধরা প্রকল্পের এল ব্লক প্লট নং ৩০৯(পরিমাণ ১০কাঠা মূল্য ৪৮,০০,০০০/-টাকা) ও ৩১১ (পরিমাণ ১০কাঠা মূল্য ৫৬,০০,০০০/- টাকা) তার অনুকূলে বরাদ্দের আবেদন করে বুকিং মানি হিসাবে মোট ৫০,০০০০/-টাকা জমা দেন। এ পর্যন্ত তিনি উক্ত প্লট দুইটির ক্রয় মূল্যের বিপরীতে ১৯/০২/২০০৭ তারিখ পর্যন্ত ৭৪,০৮,৩০০/-টাকা পরিশোধ করেছেন। উক্ত টাকা হোম টেক্সটাইল লিমিটেড নামীয় কোম্পানির হিসাব থেকে জনাব ইকবাল হাসান মাহমুদ এর অনুকূলে জমা আছে।জনাব ইকবাল হাসান মাহমুদ উক্ত

কোম্পানীর একজন পরিচালক ছিলেন।.....বর্ণিত কোম্পানি থেকে তার ব্যক্তিগত হিসাবে জমা করেন।

P.W. 41 deposed that বসুন্ধরা Plot ক্রয়ের টাকা Home Textile দিয়েছে।

P.W. 58 deposed that প্লটগুলির পেমেন্ট হোমটেক্সটাইল থেকে এসেছে।.....হারুনুর রশিদ নামে অপর ব্যক্তি আর দুটি প্লট ক্রয় করেছে কিনা জানিনা। পজেশন হ্যান্ডওভার বা মালিকানা হস্তান্তর হয় নাই। আমার ইহা জানা নাই যে কোম্পানির মেজর শেয়ার ১ নং আসামীর পরিবারের সদস্য এবং বাকিটা হারুনুর রশিদের।

It is evident from the deposition of DW-1 (appellant) that source of money against the Bashundhara Plots came from the Home Textile Ltd. and 4 plots (2+2) were booked in the name of appellant and his partner Mr. Harun-or-Rashid.....“বসুন্ধরার plot - ৩০৯ ও ৩১১- Home Textile LTD এর। ইহার কিস্তি Payment

Home Textile করে। Home Textile তার Income Tax ইহা Show করেছে। এই জন্য ইহা আমি State of Wealth show করি নাই।.....বসুন্ধরার L Block Plot - দুটি আমার নামে Booking দিয়াছি। এই Booking Money করেছি Home Textile কে। ইহার Accountথেকেই কিস্তির টাকা পরিশোধ হয়। ইহা একটি Private কোম্পানী। ইহার Director আমার ও হারুনুর রশিদের পরিবার। এই দুটি Plot এর সাথেই এই Payment Statement. এই Payment Statement Allotment no. P-2-১০৯৯০. ইহার Payment Voucher আমার নামে হয়েছে।

It is evident from the exhibited/ seized documents that another 2 plots in East-West Property Bashundhara were booked in the name of Harun-or-Rashid who was the chairman of Home Textile Ltd. and partner of the appellant and such evidence corroborates the deposition of DW-1 that as per company's decisions, the appellant and his partner Mr. Harun-Ur-Rashid (the chairman of the

Company) applied for 4 plots in the East-West Property.

It is evident from the deposition of PWs-31, 58 that the title and possession of the said plots were not transferred (as per Transfer of Property Act, 1882 and Registration Act, 1908) in the name of the appellant when the FIR was lodged, therefore there is no scope under the law to say that the appellant was the owner of the said 2 plots at the relevant time although the plots were primarily booked in the name of the appellant.

PW-31 state that অ্যালটমেন্ট প্রতিশ্রুতি। ইহা রেজিস্ট্রেশন হওয়ার পর ফাইনাল হবে। Order Payment অবস্থায় আছে রেজিস্ট্রেশন হবার পর ডেলিভারি হবে। ----- দুটি ইনস্টলমেন্ট ফেইল করলে Allotment বাতিল হবে।

PW-58 state that প্ৰেৰণহাৰ ওভাৰ বা মালিকানা হস্তান্তৰ হয় নাই।

In light of the above-mentioned evidence, the conviction and sentence under section 27 of the ACC Act, 2004 and/or under section 5(2) of the Prevention of Corruption Act, 1947 with regard to the said 2 plots is illegal and liable to be set aside.

In this regard, Mr. Ajmalul Hossain, KC appearing on behalf of the convict-appellant, submits as under:

- (i) That none of the prosecution witnesses even said that the appellant had any illegal profession, or the appellant had no source of income or business or job, or the appellant earned money through illegal means.

- (ii) That the statement made in the Charge Sheet states that এ পর্যন্ত তিনি উক্ত প্লট দুইটির ক্রয়মূল্যের বিপরীতে ১৯/০২/২০০৭ তারিখ পর্যন্ত ৭৪,০৮,৩০০/-টাকা পরিশোধ করেছেন। উক্ত টাকা হোমটেক্সটাইল লিমিটেড নামীয় কোম্পানির হিসাব থেকে জনাব ইকবাল হাসান মাহমুদ এর অনুকূলে জমা আছে। জনাব ইকবাল হাসান মাহমুদ উক্ত কোম্পানীর একজন পরিচালক ছিলেন। and the deposition of PW 41 indicates that বসুন্ধরা Plot ক্রয়ের টাকা Home Textile দিয়েছে and the deposition of PW 58 shows that প্লটগুলির পেমেন্ট হোমটেক্সটাইল থেকে এসেছে। it has been proved that the source of money against said 2 plots came from Appellant's company namely Home Textiles Ltd. and as such the source of money against the said 2 plots are not unknown, undisclosed,

and illegal and therefore, it has been proved that appellant did not acquire 2 plots by illegal means and the same was not disproportionate to his known source of income.

- (iii) That it has been proved from the charge sheet that money against the said 2 plots i.e. Tk.74,08,300/- was paid by Home Textile Ltd. through monthly installments between 02/06/2003 and 19/02/2007. It is submitted that if the money was ill-gotten, then the payment should be made through a single transaction and there was no necessity to pay the money through monthly installments over the long 4 years.

(iv) That it has been proved from the evidence of PW-31 that অ্যালটমেন্ট প্রভিশনাল। ইহা রেজিস্ট্রেশন হওয়ার পর ফাইনালহ বে। Order Payment অবস্থায় আছে রেজিস্ট্রেশনহ বা রপৰ ডেলিভারি হবে। ----- দুটি ইনস্টলমেন্ট ফেইল করলে Allotment বাতিল হবে। Page-244, V-1) and PW-58 (পজেশন হ্যান্ডওভার বা মালিকানা হস্তান্তর হয় নাই। The title and possession of the said plots were not transferred in the name of the appellant and therefore there is no scope under transfer of Property Act, 1882 and the Registration Act, 1908 to say that the appellant was the owner and possessor of the said 2 plots and the appellant was liable to show the said plots in his statement of wealth

which was submitted to ACC and in his tax return.

- (v) That it is submitted that filing of income tax return (showing of asset/income) is a continuing process and section 78 of the Income Tax Ordinance, 1984 allows a person to file a revised return if any omission is discovered or if an incorrect return is filed and therefore nondisclosure of the said 2 plots in the tax file in a mere irregularity which is curable and such omission does not create any offence under section 27 of the ACC Act, 2004 and/or under section 5(2) of the Prevention of Corruption Act, 1947.

(vi) That it is mentioned here that the appellant subsequently disclosed the information about said 2 plots and the personal loan taken from the company in his income tax return for the year 2007-2008 as shown in the application filed under sections 428 and 540 of the Cr. P.C. and the income tax authority duly accepted the same.

Mr. K.C in respect of 1,250 shares worth Tk.1 Crore in One Entertainment Ltd. deposited in the Current Account No. 0233022613 of IFIC Bank, submits that the allegation is that the appellant's wife accused No.3 deposited Tk.1 crore (through Pay Order No. 0312594 dated 06.12.2005 and Cheque No.8191354 dated 03.09.2005) in the

account of One Entertainment Ltd. which she did not disclose in the Statement of Wealth and to the tax authorities. The said money was acquired by unlawful means. In this regard, as per Mr. K.C, the following evidence is relevant in this issue:

There is no allegation in the FIR about this issue and **PW 1 (the informant)** did not say anything in his deposition about 1,250 shares worth Tk.1 crore in One Entertainment deposited in the Current Account No. 0233022613 of IFIC Bank.

P.W. 58 (IO) in his deposition stated that গত ২৪/৫/০৭ তারিখে ১৩ টায় Register of Joint Stock Company Office থেকে One Entertainment এর মেমোরেডাম সংশ্লিষ্ট কাগজপত্র জব্দ করি ও সহ রেজিষ্ট্রারের জিম্মায় দিয়ে আসি। জব্দনামায় সই -Ext-16/3. ঐ তারিখে ১৬ টায় Prime Bank মতিবিল শাখা থেকে One Entertanmaint এর পরিচালক রোমানা মাহমুদের Personal Gurantee সংক্রান্ত কাগজপত্র জব্দ করে উপস্থাপনকারীর জিম্মায় দিয়ে

আসি। জব্দনামায় সই -Ext-17/2.....ঐ তারিখে IFIC Bank গুলশান শাখা থেকে One Entertanmaint শাখা থেকে Bank Account হিসাব জব্দ করে জিম্মায় দিয়ে আসি। জব্দনামায়সই -Ext-20/2. একই তারিখে ২১.৩০ মিনিটে One Entertanmaint Ltd. গুলশান এর পরিচালক রোমানা মাহমুদের নিকট থেকে গ্রহণকৃত Share Money Deposit সংক্রান্ত Record পত্র জব্দ করে ইহার Voucher - নং ১১ ও ২১, তাং-৩/৯/০৫ ও ৭/১২/০৭ যথাক্রমে জব্দ করি। এটা জব্দনামা-Ext-23/2.

In cross-examination he stated that ৩নং আসামীর নামে One Entertainment Share Cetrificate পাই নাই। এই টাকার উৎস আমি যাচাই করি নাই। ৫৮ জন সাক্ষীর মধ্যে যারা যে বিষয়ের সাথে সম্পর্কিত তারা সে বিষয়ে সাক্ষী দিয়াছে।

PW 27, (Officer, RJSC) in the cross-examination stated that Memorandum of Article রোমানার ১২৫০টি শেয়ারের কথা উলেখ আছে। ১২৫০ টি শেয়ারের বাইরে তার নামে আর কোন শেয়ার আছে কিনা সে সংক্রান্ত কোন রেকর্ড আমার

কাছে নাই। এই ১২৫০টি শেয়ার সংক্রান্ত কল মানি নোটিশ এই রেকর্ডে নাই।

PW 28, (Officer, RJSC) in the cross examination stated that এই মামলা জব্দ তালিকার সাক্ষী আমি। এর বাহিরে কিছু বলতে পারিব না। Form নং ১২, মামলার নথি ৫নং ক্রমিকে Director হিসাবে আছি। এখানে রোমানার নাম ঠিকানা হাতের লেখা বাকীদের নাম **Type** করা। সাদা **Fluid** দিয়া মুছে রোমানার নাম লিখা আছে। অনুরূপভাবে ঠিকানা টাও লেখা আছে। Form নং ২০ টি হচ্ছে Director দের সম্মতি Form ইহাতে রোমানা মাহমুদ ছাড়া অপর নাম **Type** করে। তার নাম ও ঠিকানা হাতের লিখা আছে **Fluid** দিয়ে মুছে। এখানে এস, এ, সেলিম তার নামের উপরে **Signature** আছে। অনুরূপ ভাবে গিয়াসউদ্দিন আল মামুন, প্রফেসর মাজেদুল ইসলামের নামের উপরে **Signature** আছে। রোমানা মাহমুদের নামের উপরে সই নাই। শাহ হাবিবুরে, মেহেদী হাসান আমরানের নামের উপরে সই নাই। এই Form লেখা আছে যে, Director গণ সম্মতি দিয়াছে। Director হবার জন্য আমার মনে হয়েছে গিয়াস উদ্দিন আল মামুন এই Form টি সই করেছে Memorandum of Article রোমানা মাহমুদের নামের পাশে

তার সই আছে। Signature Witness আছে। ইহা ছাড়াও যদি কোন কাগজে সই Very করে তবে আমরা উহা যাচাই করি।

P.W.45, an Officer of one entertainment in cross examination admitted that ওয়ান এন্টারটেইনমেন্টের ব্যাংক বোর্ড রেজুলেশন ১৮ জুন ২০০৫ থেকে শুরু হয়েছে ইহাতে ব্যাংক জমা ও তোলাৰ চেকের বিবরণী লেখা হয়। এই বই দিয়ে ০৮/০২/০৭ পর্যন্ত এন্ট্রি আছে। আমরা চেক পাওয়ার পর কে ইহা দিয়েছে বা কার পক্ষে দিয়েছে তা যাচাই করি। এরপর চেকের ফটোকপি করে এবং ব্যাংক রিসিষ্ট ভাউচার তৈরি করি নম্বর দিয়া। ডিপোজিট স্লিপটি যে জমা দেয় সে লেখে। সে আমাদের অফিসের লোক। এইগুলোর কোনোটিতে আমার সিগনেচার নাই। ০৩/০৯/০৫ তারিখের চেক ফটোকপি আছে। ইহা সাউথইস্ট ব্যাংক গুলশান ব্রাঞ্চ একাউন্ট নং 1000 12814, চেক নং 98191354। ইহাতে কার একাউন্ট সে তথ্য নাই। চেক থেকে বলা যাবেনা যে এটা রুমানা মাহমুদের

অ্যাকাউন্ট থেকে এসেছে। চেক বাহক আমাদেরকে বলে যে রুমানা মাহমুদের টাকা। এই চেকের বাহক কে ছিল তা এখন আমি বলতে পারবনা। এই চেক বাহককে ছিল তা কামাল রাজ্জাক বলতে পারবে। এই ভাউচার তার সহ আছে এফ্রভ বাই গিয়াস উদ্দিন আল মামুন তিনি এখন জেলে আছেন। ডিপোজিট স্লিপ তৈরি করেছে কামাল রাজ্জাক। ইহার পিছনে রুমানা মাহমুদের নাম আছে কে লিখেছে তা বলতে পারবনা।..... অরিয়ান্টাল ব্যাংক পে অর্ডার 0392594 তাং ৬/১২/২০০৫। ইহা কাওরান বাজার শাখার। ইহার ভাউচার নং ২১ তাং ০৭/১২/২০০৫। ইহাতে Received From মেহেদী হাসান লেখা ছিল, উহাতে মিসেস রুমানা মাহমুদের নাম লেখা হয়েছে। Particulars of received মেহেদী হাসানের নাম কাটিয়া রোমানা মাহমুদের নাম লেখা আছে। ৫০,০০,০০০/ টাকা Pay Order Deposit টি মেহেদী হাসান লেখা ছিল। উহা কেটে রোমানা হাছান মাহমুদ লেখা হয়েছে।

P.W.46, an Officer of One Entertainment in examination in chief stated that আমি One Composite Mills Ltd. এর চিফ অ্যাকাউন্টেন্ট। ইহা One Group এর প্রতিষ্ঠান। গত ০৩/০৯/০৫ তারিখে মিসেস রোমানা মাহমুদের তরফ থেকে ৫০ লক্ষ টাকার চেক পাই। এটা ৮১৯১৩৫৪ ইহা আমার ডিপোজিট স্লিপ এর মাধ্যমে ব্যাংকে জমা দেই। ভাউচার চেক সইটি আমার।

In cross examination he stated that Voucher নং ১১টি আমি করছি। Cheque টি বাহককে ছিল তা বলতে পারিবনা। ২৩/০৮/০৫ তারিখে ১ কোটি টাকা জমা হয়েছে মেহেদী হাসানের নামে। এই চেকন স্বরটি পরের চেক রোমানার পক্ষে দেওয়া হয়েছে। এই চেকটি মেহেদী হাসানের কিনা তা আমি বলতে পারিব না।

P.W.47, an Officer of One Entertainment in examination in chief stated that আমি চ্যানেল ওয়ান পূর্বে সিনিয়র একাউন্টেন্ট ছিলাম। রুমানা মাহমুদের নামীয় পে-অর্ডারটির

ভাউচার আমি লিখেছি। ভাউচার ৫০ লক্ষ টাকার। ইহা প্রিপেয়ার্ড বা ইমি। সইটি আমার।

In cross examination, he stated that অরিজিনাল পে-অর্ডার আমি দেখি নাই। মেহেদী হাসানের নাম আগে লিখেছিলাম এসিস্ট্যান্ট ম্যানেজার মাসুদের আদেশে লিখেছি। তিনি মেহেদির নাম লিখতে বলেছিলেন। পে-অর্ডারের বাহককে ছিল তা আমি জানিনা। এই নাম কাটা নিয়ে আমার মনে কোন প্রশ্ন জাগে নাই। ভাউচার প্রিপেয়ার্ডকারীতে এমডি গিয়াস উদ্দিন আল মাহমুদ। ব্যাংক বহি ৭/১২/০৫ তাংপৃষ্ঠা 39 এর হাতের লেখা আমার। সেখানে আমি মেহেদী হাসানের নাম লিখেছিলাম। উহা কেটে রুম্মানার নাম লিখেছি। এসিস্ট্যান্ট ম্যানেজার এর নির্দেশেই এই নাম কেটেছি।

P.W.48, an Officer of One Entertainment in examination in chief stated that আমি অ্যাসিস্ট্যান্ট ম্যানেজার একাউন্টস এন্ড ফাইন্যান্স, ওয়ান এন্টারটেইনমেন্ট লিমিটেড। দুদকের

ডাইরেক্টর আখতার হামিদ রোমানা মাহমুদের নামীয় শেয়ার সংক্রান্ত কাগজপত্র জানতে চায়। রোমানা মাহমুদের নামে পে অর্ডার 0392594 পাই। এটা অরিয়েন্টাল ব্যাংক কাওরান বাজার শাখা থেকে রোমানা মাহমুদের নামে শেয়ার মানি Deposit হিসেবে পাই। আমি ইহা আইএফআইসি ব্যাংক ডিপোজিট করেছি। এটা আমার সই। ডিপোজিট স্লিপ।

In cross-examination, he stated that মেহেদি হাসান আমাদের চ্যানেলের একজন ডাইরেক্টর। Pay Order টি প্রথমে লেখা হয়েছিল মেহেদী হাসানের নাম। প্রথমে MD বলেছিলেন মেহেদী হাসান। কিন্তু পারফেক্ট হয়ে এপ্রভ সিগনেচার করার আগে এই নাম চেঞ্জ করে রোমানার নাম লিখতে বলেন। Pay Order টি প্রথমে MD সাহেবের নিকট আসে। ইহাকে তাকে দিয়েছে তা আমি বলতে পারিবনা। অরিয়েন্টাল ব্যাংকে পে অর্ডার এর জন্য কে দরখাস্ত করেছিল তা বলতে পারিবনা। ভাউচার থেকেই এসেছে যে Pay Order টি রুমানা মাহমুদের পক্ষ

থেকে এসেছে। কেতার পক্ষে কে দিয়েছে তা আমি বলতে পারি। সাধারণত এমডি সাহেব বলেছেন কার নামে এই শেয়ার ডিপোজিট এসেছে। পেমেন্ট সব ব্যাংক বাউচার নম্বর থাকে। ইহাতে ভাউচার নম্বর ২১।

DW-1, in the examination in chief, stated that **One Entertainment** কোন টাকাই আমার স্ত্রী বা আমি জমা দেই নাই। যে টাকাটি জমা হয়েছে তা আমার বা আমার স্ত্রীর **Account** থেকে দেওয়া হয় নাই। The prosecution in the cross-examination failed to controvert or disprove the said fact. In the Cross-examination **DW-1** stated that ইহা সত্য নহে যে, **Channel 1, One Entertainment Company** আমি আমার স্ত্রীর নামে ১ কোটি টাকা **Invest** করি। এই **Voucher** আমার স্ত্রীর নামে এক কোটি টাকা **Share Investment** আছে। এই বিষয়ে আমি **Aware** নাই।

DW-3, in the examination in chief, stated that আমি **Oriental Bank** কাউরান বাজার শাখায় আছি। আদালতের সমন পেয়ে সাক্ষী দিতে এসেছি। গত ৬/১২/০৫ তারিখে আমাদের ব্যাংক থেকে **Pay order** নং-০৩৯২৫৯৪ মূলে ৫০ লক্ষ টাকা করা হয়। এটা **Pay order**

এর মূল Copy. ইহার attested photocopy দাখিল করিলাম, Ext-A. আমি ম্যানেজার হিসাবে ইহা attested করেছি। এটা আমার স্বাক্ষর, Ext-A/1. এই Pay order করার একটি Application করতে হয়। এই দরখাস্তে Signature কলামে ফখরুল নামটি লেখা আছে। এটা ঐ দরখাস্তের Photocopy যাহা আমার কর্তৃক attested করা হয়েছে। মূল দরখাস্তটিও আছে এখানে, Ext-B।

The prosecution in the cross-examination failed to controvert or disprove the said fact. In the cross examination, DW-3 stated that Pay order হওয়ার সময় আমি এই ব্যাংকে এই শাখায় ছিলাম না। দরখাস্তে Signatory নামটি অস্পষ্ট। ফখরুল বলেছি নিজ ধারণা থেকে। Pay order করতে গেলে সে ব্যক্তির নাম ঠিকানা যা Form লিখে তার সত্যতা আমরা যাচাই করি না এই বিধানও নাই। যে কোন ব্যক্তির নামে তৃতীয় কোন ব্যক্তির Pay order করার সুযোগ আছে। সত্য নহে যে টাকাটি রুমানা মাহমুদের নামে Pay order হয়েছে বা সুকৌশলে এই বিষয় আমি এড়িয়ে গিয়াছি। আমি এই Record এর বাহিরে কিছু জানি না।

DW-4, in the examination in chief stated that আমি ম্যানেজার South East Bank গুলশান শাখা। আমার শাখায় ওবায়দুল

করিমের নামে পরিচালিত **Account** নম্বর ১১১০০০১২৮১৪ আছে। এই **Account Holder** এর ছবি **Specimen Signature Card** ২ ফর্দ। **Opening Form, Nominates Form TIN** নম্বর এবং **Cheque** নং ৮১৯১৩৫৪ Dt ০৩/০৯/০৫. ইহা **One Entertainment Gi Favour Issue** হয়। টাকার পরিমাণ ৫০ লক্ষ টাকা। এটাই সেই **Cheque** ইহা ৪/৯/০৫ তারিখে **Clearing** এর মাধ্যমে **IFIC** ব্যাংক গুলশান শাখার মাধ্যমে **Cash** হয়। এই সকল কাগজগুলির মূল Copy দাখিল করিলাম। Ext- C Series.

The prosecution in the cross-examination failed to controvert or disprove the said fact. In the cross-examination, DW-4 sated that আমি ২০০৪ এর জুলাই থেকে এই Bank কর্মরত আছি। এই Cheque এর মাধ্যমে দেওয়া One Entertainment এর Fund গিয়াছে। এই Fund কে কি উদ্দেশ্যে জমা ছিল তা আমার জানা নাই। এই Document এর বাহিরে কিছু আমি বলতে পারিব না। এই Account এর statement আনি নাই তবে উহা যথোপযুক্ত ভাবে সই স্বাক্ষর করা নাই।

In light of the above-mentioned evidence, the conviction and sentence under section 27 of the

ACC Act, 2004 and/or under section 5(2) of the Prevention of Corruption Act, 1947 with regard to the Tk. 1 crore is illegal and liable to be set aside.

In this regard, Mr. Ajmalul Hossain, KC appearing on behalf of the convict-appellant, submits as under:

(i) That DW-1 (appellant) in his deposition stated that he himself or his wife did not deposit the said Tk.1 (one) crore in the bank account of One Entertainment Ltd. maintained in IFIC Bank Ltd. and they disowned the said money stating that One Entertainment কোন টাকাই আমার স্ত্রী বা আমি জমা দেই নাই। যে টাকাটি জমা হয়েছে তা আমার বা আমার স্ত্রীর Account থেকে দেওয়া

হয় নাই। The prosecution in the cross-examination failed to disprove the evidence of the DW-1. Further, the IO in cross-examination admitted that he did not find any share certificate in the name of the appellant's wife and he also did not seize the share register of One Entertainment Ltd. or the said Tk. 1 (one) crore.....৩নং আসামীর নামে One Entertainment Share Certificate পাই নাই। এই টাকার উৎস আমি যাচাই করি নাই। ১নং আসামীর বিরুদ্ধে কোন ঘুষ গ্রহণের সাক্ষ্য আমি পাই নাই।

- (ii) That it is submitted that according to ACC, the alleged amount of Tk. 1

crore was kept in the account of One Entertainment Ltd. maintained in IFIC Bank Ltd. and the convict appellant is not a shareholder or director of One Entertainment Ltd. It is also evident from the prosecution case that the convict appellant did not deposit the said amount to the bank account of One Entertainment Ltd. It is also evident from the record that ACC did not seize or recover the said money (i.e. Tk. 1 crore) from the account of One Entertainment Ltd. maintained in IFIC Bank Ltd. to prove the existence of the said money and also to shift the burden of proof upon the

appellant. Further, it has been proved from the evidence on record that one Mehidi Hasan and Obaidul Karim who were the director of One Entertainment Ltd were related to the alleged Pay Order No. 0312594 dated 06.12.2005 and Cheque No.8191354 dated 03.09.2005 since the Pay Order was initially deposited for Mehedi Hasan and since the Cheque was issued by Obaidul Karim from his bank account. However, Mehidi Hasan and Obaidul Karim were not produced as a witness or made as accused in the case.

(iii) That ACC failed to prove that the appellant or his wife deposited Tk.1(one) crore in the account of One Entertainment Ltd. maintained in IFIC Bank Ltd. or that the alleged deposited money is the money of the accused No.1 Appellant or the accused No.1-Appellant or his family members were in the control or possession of Tk. 1 crore when the statement of wealth was filed, or FIR was lodged and as such the conviction against the Appellant is illegal.

(iv) That accused No. 3 Romana Mahmood is a major taxpayer and income earner and she maintains her

income tax files. Romana Mahmood furnished her statement of wealth before the ACC and if she acquired any asset by illegal means then she should explain during the trial, however, Hon'ble High Court Division quashed the proceeding against accused No. 3 Romana Mahmood and the ACC did not challenge the said judgment and thus accepted the verdict and as such the conviction against the Appellant in connection with the alleged share of accused No. 3 Romana Mahmood is not valid.

- (v) That **P.W.45**, an Officer of One Entertainment admitted that **অবিস্মান্টাল**

ব্যাংক পে অর্ডার 0392594 তাং ৬/১২/২০০৫। ইহা
 কাওরান বাজার শাখার। ইহার ভাউচার নং ২১
 তাং ০৭/১২/২০০৫। ইহাতে Received From মেহেদী
 হাসান লেখা ছিল, উহাতে মিসেস রুমানা মাহমুদের
 নাম লেখা হয়েছে। Particulars of received মেহেদী
 হাসানের নাম কাটিয়া রোমানা মাহমুদের নাম
 লেখা আছে। ৫০,০০,০০০/ টাকা Pay Order Deposit
 টি মেহেদী হাসান লেখা ছিল। উহা কেটে রোমানা
 হাছান মাহমুদ লেখা হয়েছে।

(vi) That P.W.46, an Officer of One Entertainment
 admitted that Cheque টি বাহক কে ছিল তা বলতে
 পারিবনা। ২৩/০৮/০৫ তারিখে ১ কোটি টাকা জমা
 হয়েছে মেহেদী হাসানের নামে। এই চেক নম্বরটি
 পরের চেক রোমানার পক্ষে দেওয়া হয়েছে। এই
 চেকটি মেহেদী হাসানের কিনা তা আমি বলতে
 পারিবনা।

(vii) That it is evident from the materials
 on record that মেহেদী হাসান was a

director of One Entertainment and defense case is that, the pay order was deposited by মেহেদী হাসান for himself and the deposit voucher was changed to show that the pay order was deposited for accused No. 3. Further মেহেদী হাসান was not made witness to prove that the pay order was deposited by him for the accused No.3 and not for himself.

(viii) That it is evident from the deposition of DW -3 (Officer Oriental Bank, Exhibit B that the Pay Order 0392594 dated 06.12.2005 for the amount of Tk. 50,00,000/- (Material Exhibit XIV(ক)Page 1706 of V-II Part 3)

was not issued from the account of accused No. 3 Rumana Mahmood or from the account the Convict Appellant.

- (ix) It is evident from the deposition of DW- 4, an Officer of Southeast Bank, Exhibit B that Cheque No.8191354 dated 03.09.2005 for the amount of Tk.50,00,000/-, Material Exhibit XIV(☞)was issued by one Mr. Obaidul Karim from his personal account. It is evident from the materials on record that Mr. Obaidul Karim was a director of One Entertainment and he was not made witness to prove that the cheque was deposited by him for

accused No.3 or for himself. It is evident from the materials on record that Mr. Obaidul Karim was a director of One Entertainment and defense case is that the Cheque was deposited by Mr. Obaidul Karim for himself and the deposit voucher was created to show that the pay order was deposited for accused No. 3. Further Mr. Obaidul Karim was not made witness to prove that the pay order was deposited by him for the accused No.3 and not for himself.

- (x) That it is evident from the depositions of P.Ws 27, 28, 45 – 49 and D.W. 3 and 4 that the appellant or his wife did not deposit Tk.1(one)

crore in the bank account of One Entertainment Ltd. maintained in IFIC Bank Ltd. and as such the conviction against the appellant in connection with the alleged share of accused No. 3 Romana Mahmood is illegal.

Mr. Ajmalul Hossain KC, the learned Senior Advocate, in support of his submissions and deliberations, has referred to a large of number of legal decisions which are as follows :

- 1) The case of **Anti-Corruption Commission Vs Faisal Morshed Khan and another reported in 66 DLR (AD) page 236** wherein it has been held as under:

“The assessment of valuation made by the Income Tax Department has legal validity which

should not be questioned by another independent government department unless the Income Tax Department reviews its own assessment. There cannot be a conflicting exercise of power between the two independent departments of the Government. If the assessment of valuation made by the Income Tax Department is allowed to be questioned then the very sanctity of such assessment will be at stake and this may cause the overlapping exercise of jurisdiction between the two independent departments of the Government. The officials of the Income Tax Department exercise their power under a statute.”

2) The case of **Engineer Monjurul Ahsan Munshi vs the State and another reported in 39 BLD (HCD) Page 110** wherein it has been spelt out:

“If any money is illegally shifted from a company’s fund, it may be at best constitute an offence of money laundering as defined in section 2(Ttha)(Aa) of the Money laundering Act 2002 but cannot constitute any offence under section 27 of the Act V of 2004. It would also contribute in an illegality/irregularity under the Company Act and the other directors/ shareholders aggrieved thereby can raise the question in the proper forum.”

3) The case of **Mofazzal Hossain Chowdhury Maya Vs The State and another** passed in **Criminal Appeal No. 3536 of 2009**, wherein it has been decided:

“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 earnings 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.”

4) The case of **Engineer Monjurul Ahsan Munshi -Vs- The State and another reported in 39 BLD (HCD) Page 110**, wherein it has been held:

“It is also to be kept in mind that evasion of income tax and offense of acquiring/ possessing/owning

disproportionate property by illegal means as defined in section 27 of the Act V of 2004 are not the same. There might be some professionals/businessmen who legally earn a lot of money but pay less income tax. It is an offense of evasion of tax or suppression of facts under the income tax ordinance 1984. But if any public servant or an individual acquires property by illegal means which is apparently disproportionate to his known legal source of income and fails to satisfactorily account such property an offence under section 27 of the Act V of 2004 would be committed.”

5) The case of **KrishnanandVs. the State of Madhya Pradesh, AIR 1977 SC Page 796**, wherein the fact and the decision are as follows:

“The principal question which arises for determination in this appeal is whether in the facts of the present case the prosecution was justified in invoking the applicability of the presumption contained in Sub-section (3) of Section 5 of the Prevention of Corruption Act, 1947. That sub-section provides that in any trial of an offence punishable under Sub-section (2) of Section 5, namely, the offence of criminal misconduct committed by a public servant in the discharge of his duty, the fact that the accused is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to

his known sources of income may be proved and on such proof, it is presumed unless contrary is proved that the accused is guilty of criminal misconduct in discharge of his official duty and his conviction therefore shall not be invalid by reason only that it is based solely on such presumption. The subsection consists of two parts. The first part sets out the facts which if proved give rise to a rebuttable presumption. It requires, in order to the raising of this presumption, that the accused must be shown to be in possession of pecuniary resources or property disproportionate to his known sources of income and he should be unable to satisfactorily account for such pecuniary resources or property. If these facts are shown to exist a presumption would be raised by the court trying the offence that the accused was guilty of criminal misconduct in the discharge of his

official duty. This presumption would of course be a rebuttable presumption and it would be open to the accused to establish that despite the disproportion of his pecuniary resources or property to his known sources of income, he is not guilty of criminal misconduct in the discharge of his official duty. The burden of displacing the presumption would be on the accused and if he fails to discharge the burden, he would be liable to be convicted for the offence under Sub-section (2). Both the Special Judge as well as the High Court convicted the appellant with the aid of this presumption though the specific charges leveled against the appellant under Clauses (a) to (f) of the charge were held not established by the High Court. It was contended on behalf of the appellant that since the specific charges preferred against the appellant failed, it was not competent to

the Special Judge and the High Court to convict the appellant merely on the basis of the presumption. The argument was that the presumption could be invoked by the prosecution only by reference to a charge under any one or more of Clauses (a) to (d) of Sub-section (1) of Section 5 and for the purpose of establishing such charge, but if the charge under one or more of Clauses (a) to (d) of Sub-section (1) of Section 5 failed, the presumption could not be invoked because it could be applied only in aid of the charge under the main provision in Sub-section (1) of Section 5 which defines the offence of criminal misconduct in discharge of official duty and did not operate in vacuum. Prima facie we do not think there is any substance in this contention urged on behalf of the appellant but in the view we are taking on the facts we do not think it necessary to

pronounce any final opinion upon it. Let us consider the facts and see whether they at all attract the applicability of the presumption in Sub-section (3) of Section 5.....

The first question which must be considered in order to determine the applicability of the presumption in Sub-section (3) of Section 5 is as to what was the total income of the appellant during the period between 29th November, 1949 when he joined service as Income-tax Officer and 1st January, 1962, being the date with reference to which the prosecution sought to establish the disproportion of the pecuniary resources or assets of the appellant qua his known sources of income.....

The result of this discussion is that the total income of the appellant during the period 29th

November, 1949 to 1st January, 1962 must be taken to be Rs. 1,12,515.43 plus Rs. 300/- plus Rs. 5,300/- plus Rs. 7,000/- plus Rs. 2,000/- plus Rs. 600/- totalling in the aggregate Rs. 1,27,715.43.....

The net result of the above discussion is that the total expenditure incurred by the appellant during the relevant period must be taken to be an aggregate sum of Rs. 83,331.84 as per the following particulars.....

We find as a result of the aforesaid discussion that the total assets of the appellant as on 1st January, 1962 amounted to Rs. 55,732.25 as per the following particulars.....

It will, therefore, be seen that as against an aggregate surplus income of Rupees 44,383.59 which was available to the appellant during the

period in question, the appellant possessed total assets worth Rupees 55,732.25. The assets possessed by the appellant were thus in excess of the surplus income available to him. but since the excess is comparatively small - it is less than ten per cent of the total income of Rs. 1,27,715.43 - we do not think it would be right to hold that the assets found in the possession of the appellant were disproportionate to his known sources of income so as to justify the raising of the presumption under Sub-section (3) of Section 5. We are of the view that, on the facts of the present case the High Court as well as the Special Judge were in error in raising the presumption contained in Sub-section (3) of Section 5 and convicting the appellant on the basis of such presumption.....

We accordingly allow the appeal, set aside the order of conviction and sentence recorded against the appellant and acquit him of the offences charged against him. Since the appellant is on bail, the bail bonds will stand discharged.”

6)The case of Kedari Lal vs State of M.P. and Ors, MANU / SC / 0343 / 2015, 2015 (4)SCALE 175, (2015) 14 SCC 505.

7)The case of M. Krishana Reddy vs State 1992(4)SCC49.

8) The case of D.S.P Chennai vs K. IbasagarainMANU/SC/2223/2005:2006(1)SCC420.

9)The case of Krishnanand vs State of Madhya Pradesh MANU/SC/0134/1976:1977(1)SCC 816.

10) The case of M. Krishna Reddy vs State, Deputy Superintendent of Police, Hyderabad, MANU/SC/0830/1992.

11) The case of the Executive Engineer and Ors vs Seetaram Rice Mill, MANU / SC / 1334 / 2011 (2012) 2SCC 108.

12) The case of Anti-Corruption Commission vs Dr. Mohiuddin Khan Alamgir, 62 DLR(AD)290.

13) The case of Moudud Ahmed vs The State and another, 68 DLR(AD)118.

14) The case of Md. Hafiz Ibrahim vs The State and another, LEX/BDHC/0126/2018, High Court Division, Criminal Appeal No.5310 of 2008, wherein it was held that:

“there are so many businessmen and professionals who legally earn a lot of money, but do not show it in their tax files just to evade tax. Such evasion, if detected, he/she may be liable to be prosecuted under the penal provisions of the Income Tax Ordinance, 1984, but it does not constitute any

offence of corruption or that under section 27 of the Act V of 2004.”

15) The case of Anti-Corruption Commission vs Iqbal Hasan Mahmood alias Iqbal Hasan Mahmood Tuku and another, 66 DLR(AD)185.

On the other hand, Mr. Md. Khurshid Alam Khan, the learned Senior Advocate appearing on behalf of the Anti-Corruption Commission, submits that there are specific allegations of concealment of information of the properties and acquisition of properties which are deemed to be disproportionate to his known sources of income and that in order to prove the prosecution case, the prosecution examined as many as 58 witnesses who by adducing reliable, satisfactory, credible and impeccable evidence proved the prosecution case beyond all reasonable doubt and suspicion and

considering this aspect of the case, the appeal may be dismissed on merit affirming the judgment and order passed by the learned trial judge.

He next submits that though a Division Bench of the High Court Division by judgment and order dated 16.06.2011 passed in Criminal Appeal No.6743 of 2007 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.537 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 afresh perusing and examining the evidence and the exhibited materials on record.

He then submits that the convict-appellant kept Tk.2,38,583/- in Account No.051309592001 of the State Bank of India up to 30.06.2006 but he neither disclosed this information in the wealth statement nor in the income tax return; the convict-appellant imported and purchased BMW Jeep worth Tk.47,76,906/- taking loan from his own company namely Apex Weaving and Finishing Mills Ltd. while he was State Minister but he did not disclose the same in the income tax return of the appellant; the convict-appellant purchase 02(two) plots from East West Property Bashundhara worth Tk.74,08,300/- taking loan from his own Company namely Home Textile Mills Ltd. being director of that Company but he did not disclose about purchase

of 02(two) plots in the income tax return of the convict-appellant; by the money of convict-appellant, the wife of the convict-appellant purchased 1,250 shares worth Tk.1 crore from one Entertainment Ltd. depositing through Pay Order No.0312594 dated 06.12.2005 and Cheque No.8191354 dated 03.09.2005 in the Account No.0233022613 of One Entertainment Ltd. lying with IFIC Bank but the convict-appellant did not disclose the said fact in the statement of wealth and the income tax return and for the aforesaid reasons, it is crystal clear that the convict-appellant concealed the information with regard to acquisition of properties which are disproportionate to his

known sources of income and for this reason, this appeal may be dismissed for ends of justice.

He candidly submits that the convict-appellant disclosed about the undisclosed property in the income tax return in the year of 2021 though he was supposed to disclose the undisclosed property in the next assessment year as per section 78 of the Income Tax Ordinance, 1994 by way of revised return; the convict-appellant did not disclose the undisclosed property in the relevant assessment years and considering this aspect of the case, the revised return showing undisclosed property cannot be accepted since it is a afterthought matter being created during pendency of the appeal sensing dangerous consequence of the non-disclosure of the properties

in question in the wealth statement and the income tax return and as such, the appeal may be dismissed for ends of justice.

Mr. Khan, in support of his submissions, has referred to a decision taken in the case of **State of Karnataka vs Selvi J. Jayalalitha and others** passed by the Supreme Court of India in Criminal Appeal Nos.300-303 of 2017, 304-307 of 2017, 308-313 of 2017, 314-319 of 2017, wherein it was decided that payment of tax in the income tax return against any property does not verify the genuineness, authenticity and lawfulness of the source of property and of the transactions relating thereto.

He strongly submits that at the time of purchase of two plots from East-West Property and

BMW Jeep, the convict-appellant was the director of Home Textile Ltd. and Apex Weaving and Finishing Mills Ltd. and that he was a State Minister at that time and that as per Article 147 of the Constitution of the People's Republic of Bangladesh, the convict-appellant is not lawfully authorized to take loan from his Company and considering this aspect of the case, the appeal may be dismissed.

He categorically submits that the conviction and sentence awarded on the convict-appellant under section 26(2) of the ACC Act, 2004 was not set aside by the Appellate Division rather the Appellate Division has remanded the appeal to the High Court Division for hearing the same on merit afresh and that no decision was given by the

Appellate Division in respect of conviction and sentence under section 26(2) of the ACC Act, 2004 and that the conviction and sentence awarded upon the convict-appellant under section 26(2) of the ACC Act, 2004 may be upheld in view of the decision taken in the case of Moudud Ahmed vs State and another, reported in 68 DLR(AD)118 and as such, considering the above aspect of the case, the judgment and order of the conviction and sentence awarded on the convict-appellant under sections 26(2)/27(1) of the ACC Act, 2004 read with section 5(2) of the Prevention of Corruption Act, 1947 may be affirmed dismissing the appeal.

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.

Mr. A. M Amin Uddin, the learned Attorney-General 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.

He 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.

He lastly submits that the prosecution has examined as many as 58 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, the impugned judgment and order and the propositions 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.

On this point, Mr. Ajmalul Hossain KC, the learned senior Advocate for the convict-appellant points out that at the time of the issuance of the notice, there was no Commission and the notice dated 18.02.2007 under Section 26(1) of the Anti-Corruption Commission Act, 2004 was issued by the Secretary of the Commission but he does not

represent the Commission and he is only one of its employees to carry out the decision of the Commission and that Section 26 certainly does not envisage a notice upon a person who is in detention and he is not expected to give any details of his assets within the time specified and that the conviction and sentence awarded on Mofazzal Hossain Chowdhury Maya was set aside in Criminal Appeal No. 3536 of 2009 following the decision taken in the case of Anti-Corruption Commission vs. Dr. Mohiuddin Khan Alamgir and others reported in 62 DLR(AD)(2010) 290.

He further points out that the aforesaid issue is not the subject matter for discussion and decision in this appeal since the Appellate Division by its

judgment and order dated 27.01.2014 remanded this appeal before this Court for hearing the appeal with respect to the conviction and sentence under Section 27(1) of the Anti-Corruption Act, 2004 only.

According to Mr. KC, the learned trial judge initially convicted the convict-appellant under Section 26(2) of the ACC Act, 2004 and sentencing him there under to suffer simple imprisonment for 02 years and also convicting the convict-appellant under Section 27(1) the ACC Act, 2004 and sentencing him there under to suffer rigorous for 07 years along with a fine of Tk.50,00,000/-, in default, to suffer rigorous imprisonment for 01 year more. Being aggrieved by the aforesaid judgment and order, the convict-appellant preferred Criminal

No.6743 of 2007 before the High Court Division and the learned Judges of the High Court Division upon hearing the parties and considering the evidence of record allowed appeal setting aside the judgment and order of conviction and sentence. Being aggrieved by the judgment and order of High Court Division, the Anti-Corruption Commission preferred Criminal Petition For Leave to Appeal No.537 of 2011 and the learned Judges of the Appellate Division on hearing the concerned parties disposed of the appeal setting aside the judgment and order of the High Court Division so far as it relates to conviction and sentence under Section 27(1) ACC, Act, 2004 and remanded the appeal to the High Court Division for hearing of the same afresh. Since

the Appellate Division did not make any observation about the acquittal of the convict-appellant under Section 26(2) of the ACC Act, 2004, it means that the conviction and sentence under Section 26(2) of the ACC Act, 2004 were affirmed by the Appellate Division. Under the aforesaid landscape of the case, the subject matter in respect of conviction and sentence under Section 26(2) of the ACC Act, 2004 is not the issue of this appeal and for this reason there is not necessary to take up the issue for discussion and decision in this appeal. This Court in view of the judgment and order of the Appellate Division can only take up the conviction and sentence under Section 27(1) of the ACC Act, 2004

and dispose of the same on merit in accordance with law.

On the contrary, Mr. Md. Khurshid Alam Khan, the learned Senior Advocate appearing on behalf of the Anti-Corruption Commission, opposes submission of Mr. KC and categorically submits that there is no bar to holding hearing and coming to decision in respect of conviction and sentence awarded on the convict-appellant under Section 26(2) of the Anti-Corruption Commission Act, 2004 together with conviction and sentence under Section 27(1) of the Anti-Corruption Commission Act, 2004 read with Section 5(2) of the Prevention of Corruption Act, 1947 in view of the decision taken

in the case of Moudud Ahmed vs. the State and another reported in 68 DLR(AD)118.

Before coming to a decision in this matter, we want to discuss about the case of Mofazzal Hossain Chowdhury Maya who was acquitted of the charge levelled against him in Criminal Appeal No.3536 of 2009. The case against Mofazzal Hossain Chowdhury Maya and others 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।

Following the decision taken in the case of
 Anti-Corruption Commission vs Mohiuddin Khan
 Alamgir, reported in 62 DLR(AD)290, the
 submission of the learned Advocate for Mofazzal
 Hossain Chowdhury Maya was that at the time of
 issuance of the notice, there was no Commission

and the notice dated 18.02.2007 under Section 26 of the ACC Act, 2004 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. 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.”

Mr. Khurshid Alam Khan, the learned Senior Advocate appearing on behalf of the Anti-Corruption Commission, submits that there is no legal impediment for the Commission to issue fresh notice under section 26 of the ACC Act, 2004.

In reply to the same, the submissions of the learned Advocate for Mofazzal Hossain Chowdhury Maya was that the decision of the Appellate Division is binding upon the High Court Division and since the case has been ended with judgment and order, there is no scope to issue fresh notice upon the convict-appellant under section 26 of the ACC Act, 2004.

During hearing of the case of Mofazzal Hossain Chowdhury Maya, none of the learned Advocates for the respective parties submitted about the development of this issue as mentioned and disclosed in the case of Moudud Ahmed vs State and another, reported in 68 DLR(AD)118 and in consequence thereof, Mofazzal Hossain Chowdhury Maya was acquitted of the charge levelled against him in Criminal Appeal No. 3536 of 2009. Moreover, the trial of Mofazzal Hossain Chowdhury Maya was held in absentia.

Now we want to discuss about the development of this issue which has been settled in the case of Moudud Ahmed vs State and another,

reported in 68 DLR(AD)118, wherein it has been categorically observed as follows :

“paragraph No.55 in this case the respondent No.1 was arrested by the Joint Forces on 03.02.2007, under the provisions of Rule 16 of the EPR, 2007 and while he was in such custody, he was put under detention as per the provisions of the Special Powers Act, 1974. On 18.02.2007 the Secretary of the Commission issued an order notice under section 26 of the ACC Act which was served upon him on 20.02.2007 while he was in custody asking him to submit his statement of assets and liabilities within 72 hours. It is on record that all the Commissioners resigned from the Commission on 07.02.2007 and the Commission was reconstituted

on 24.02.2007. On the date of issuance of notice the Commission was not properly constituted as per provisions of Section 5 of the Act though the Commission was in existence as an institution under the provisions of section 3 and 4 of the ACC Act, 2004. In order to pass an order/notice under section 26 of the ACC Act the Commission is required to be satisfied that a person has in his possession assets or acquired assets beyond his known source of income through illegal means then the Commission may by an order in writing direct the said person to submit the statement of all his assets and liabilities or nay other information as directed by the said order. In the case of the Respondent No.1 the order/notice was issued by the Secretary of the

Commission without having obtained any satisfaction or decision of the Commission. In that view of the matter the notice dated 18.02.2007 was defective for not having obtained satisfaction/decision from the Commission. To fill up the lacuna section 18 of the ACC Act, 2004 was amended by inserting sub-section (2) in section 18 of the Act on 18.04.2007 by the vides 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 when the Commission was not properly constituted as per provisions of section 5 of the Act. In this context it is pertinent to reproduce section 18 of the Act, 2004 as amended by Ordinance No.VII of 2007 which reads as under:

“১৮(১) এই আইনের বিধানাবলী সাপেক্ষে কমিশন, উহার দায়িত্ব পালনের ক্ষেত্রে কোন কমিশনার বা কমিশনের কোন কর্মকর্তাকে যেরূপ ক্ষমতা প্রদান করিবে, উক্ত কমিশনার বা কর্মকর্তা সেইরূপ ক্ষমতা প্রদান করিতে পারিবেন।

(২) কমিশনের কোন কর্মকর্তা কোন বিশেষ ক্ষেত্রে, কমিশনের আবশ্যিক পূর্বানুমোদন ব্যতিরেকে, ৭ ফেব্রুয়ারী ২০০৭ হতে ২৪ ফেব্রুয়ারী ২০০৭ সময়কালে, যদি এমন কোন কার্য সম্পাদন বা ক্ষমতা প্রয়োগ করিয়া থাকেন যাহা আইনের উদ্দেশ্য ও কমিশনের কার্যাবলীর সহিত সংগতিপূর্ণ, তাহা হইলে কমিশন উক্ত কর্মকর্তার অনুরূপ কার্য সম্পাদন বা ক্ষমতার প্রয়োগকে ভূতাপেক্ষ (ex post facto) অনুমোদন জ্ঞাপন করিতে পারিবে।”

paragraph 56 in view of the section 18(2) of the ACC Act notice issued by the Secretary of the Commission was given ex-post facto approval on satisfaction of the new Commission through the

resolution in the 3/2007th meeting dated 25-02-2007 of the Commission as validated by the ex-post facto amending Ordinance VII of 2007, it cannot be said that the notice under section 26(1) of the ACC Act was defective. But in this case no issue in respect of ex-post facto approval was framed, deliberated upon and decided in view of the provisions of section 18(2) of the ACC Act and in the facts and circumstances of the case the observation made by this Division in paragraph 41 of the decision reported in 62 DLR(AD)290 as reproduced below is an obiter dicta: “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.” This Division

misconceived the provisions of sections 18(2) and 26 of the ACC Act in observing that “but by subsection (2) of section 18, the Commissioners can only ratify the ‘satisfaction’ of the Secretary which is certainly not stipulated in section 26. (para-42)

paragraph 57 as such, the notice dated 18.02.2007, issued by the Secretary in favour of the Respondent No.1, was not issued on behalf of the Commission as envisaged under section 26 and is without jurisdiction and void abinitio.” (para-43)

paragraph 58 the views expressed in the aforesaid observations 62 DLR(AD)290 and 297 paragraphs 42 and 43 of this Division do not convey the correct principle of law. Because the pre-amble of the Anti-Corruption Commission Act, 2004

envisages that for constitution of an independent Anti-Corruption Commission, for prevention of corruption and offences relating to corruption and certain other offences and matters connected thereto the Act is enacted. Sub-section (1) of section 18 provides that subject to the provisions of this Act the Commission may, in the discharge of its duty, empower any Commissioner or Officer of the Commission to do an act on its behalf and the said Commissioner or Officer would be able to exercise the said power. Sub-section (2) of section 18 contemplates that if an Officer of the Commission in a special situation without prior approval of the Commission from 7th February to 24th February, 2007 performed an act or exercised his power in

such a manner which is in conformity with the purposes of the Act and functions of the Commission then the Commission may accord ex-post fact approval to such performance of act or exercise of power by the said Officer. In other words, subsection (2) of section 18 of the ACC Act enables the Commission to accord ex-post facto approval to any act done or power exercised by the Officer of the Commission which is very much inconformity with the purposes, objectives and functions of the Commission but not the approval of the satisfaction of the Secretary. In the instant case the order/notice dated 18.02-2007 under section 26 read with section 18 of the Act was issued in conformity with the purpose of the ACC Act and functions of the

Commission when the Commission was not properly constituted as per provisions of section 5 of the Act though as an Institution the Commission was very much in existence as per provisions of sections 3 and 4 of the Act, inasmuch the Commission was having its Head Office in Dhaka and its Branch Offices all over the country. Therefore, according ex-post facto approval to the issuance of order/notice dated 18.02.2007 by the Secretary of the Commission is very much legal pursuant to the provisions of section 18(2) of the Act and in conformity with the purposes, objectives and functions of the Commission.

paragraph 59 A provision of law cannot be struck down without examining the vires of the law

having been challenged before a competent court of law. This principle of law has been reiterated in the case of Khondker Dwlwar vs Italian Marble Works, 62 DLR(AD)298 and 348 para 106. In the instant case reported in 62 DLR(AD)290 the vires of the law, section 18(2), was not challenged before a competent court of law and no issue in respect of vires of the law was raised deliberated upon and decided by the competent court. Therefore, in a hearing of a Criminal Petition for Leave to Appeal a provision of law cannot be struck down or repealed by indirect means or by implication. The view expressed by this Division regarding the effect of section 18(2) of the Act, granting ex-post facto approval of any act done or power exercised by an

Officer of the Commission during the period when the Commission was not properly constituted as per section 5 of the Act does not reflect the correct principle of law. We are therefore of the view that order/notice issued by the Secretary of the Commission was rightly ratified by ex-post facto approval on satisfaction of the New Commission through resolution in the 3/2007th meeting dated 25.02.2007 of the Commission was validated by the ex-post facto amending Ordinance VII of 2007. Accordingly, the foregoing observations and findings of this Division in paragraphs 42(partly) and 43 of the decision, 62 DLR(AD)290 and 297 do not depict the correct principle of law. In this case the issue before the court was whether the notice

issued by the Secretary of the Commission was rightly accorded ex-post facto approval by the Commission as per provisions of section 18(2) of the Act. In view of the foregoing discussions we are convinced to hold it in the affirmative.

paragraph 62 the foregoing observations of this Division are not relevant in the instant case, because the Respondent No.1 did not raise any objection as to the issuance of notice/order under section 26(1) of the ACC Act while he was in custody. Rather he complied with the same by submitting the statement of assets and liabilities within the stipulated time. Moreover, he was allowed to submit long after the stipulated date a supplementary statement of assets and liabilities

which was marked as an exhibit during the course of trial. This issue was not raised, deliberated upon and decided before the trial court and the High Court Division in as much as no such issue was raised and deliberated upon before the Appellate Division and that this observation being an obiter dictum cannot operate as a binding precedent, which is not a law declared by the Appellate Division pursuant to Article 111 of the Constitution and as such, it is not binding on the High Court Division and all the courts and tribunals as a legal precedent. Therefore, observation made in paragraph 44 of the decision of the case reported in 62 DLR(AD)290 cannot be used as the binding precedent under Article 111 of the Constitution in

disposing of Criminal Miscellaneous Case Nos.21084 of 2011, 14900 of 2009 and 12240 of 2009 by the High Court Division. Moreover, it seems to us that the observation made in paragraph 45 is wrong in principle and cannot be justified by provisions of law as discussed above.

Likewise, in the instant case, it also appears from the lower court records that, the appellant did not raise any objection as to the issuance of notice/order under section 26(1) of the ACC Act, 2004 while the appellant was in custody. Rather, the appellant complied with the same by submitting the statement of assets and liabilities within the stipulated time. Moreover, the appellant has elaborately crossed upon the P.Ws. regarding the

issuance of service of notice, submission of wealth-statement, disproportionate to known source of income. In view of the findings of the above cited cases, we can safely embark and rely on the same in respect of the concealment of wealth which is fundamental ingredients of section 26(1) of the ACC Act, 2004.

Besides section 26, the appellant has also been convicted under section 27(1) of the ACC Act, 2004 which is an independent and separate penal provision having no nexus with section 26. Section 27 of the ACC Act, 2004 is an independent provision and for initiation of a proceeding against any person under the said provision, no notice is required to be served. If the ACC can establish that,

any person has acquired or amassed or accumulated wealth which is beyond his known source of income, he/she may be prosecuted and convicted under section 27(1) of the ACC Act, 2004.

In the aforesaid reference, i.e., 68 DLR(AD)118 para 79 is aptly relevant. Para 79 runs as follows:

“We have already discussed the purpose, intendment and scheme of the ACC Act, 2004. From the scheme and contents of the Act it appears that section 26 and section 27 of the ACC Act are independent from each other and there is no nexus between these two sections. Section 27 being an independent section provides that if there are sufficient reasons to think that a person has acquired or amassed property illegally which is

beyond his known source of income then he may be sentenced to suffer imprisonment for a term not more than 10 years and not less than 3 years and to pay fine and the property in question is liable to be confiscated. Therefore, there is no difficulty to say that before issuance of any notice under section 26 of the ACC Act upon a person the Commission must have knowledge that the said person has acquired property beyond known source of income. In other words, the fact of acquiring property beyond some one's known source of income was within the knowledge of the Commission long before the issuance of the order/notice under section 26 of the Act. Section 27 of the ACC Act is independent of the notice served under section 26(1) of the ACC Act.

Therefore, in the instant cases the proceedings under section 27(1) have no nexus with the notices dated 03.07.2007 or 29.05.2007 issued under section 26(1) of the ACC Act.”

In view of the above discussions and propositions of law, we may come to a conclusion in the following manner:

(i) The Appellate Division in Criminal Petition For Leave To Appeal No.537 of 2011 did not set aside the conviction and sentence inflicted on the convict-appellant under section 26(2) of the ACC Act, 2004 rather remanded the same to the High Court Division for hearing and disposal of the appeal on merit afresh.

(ii) The Commission has been conferred a statutory empowerment and obligation under section 26(1) of the ACC Act, 2004 to issue notice upon any person who appears to have acquired property which is beyond known source of income;

(iii) The notice issued by the Secretary of the Commission cannot be considered invalid if the Commission being constituted gives ex-post facto approval to the said notice;

(iv) In the instant case, the notice issued by the Secretary was not challenged before any court of law rather the convict-appellant submitted the wealth statement following the notice and then contested the case and he did not raise any question

regarding validity of the notice during trial of the case;

(v) No question was raised by the appellant to the effect that no ex-post facto approval was given to the notice given by the Secretary;

(vi) It is contended by the ACC that the notice issued by the Secretary was approved by the Commission following section 18 of the ACC Act, 2004 being amended by Ordinance No.VII of 2007.

(vii)The ratio decided in the case of Anti-Corruption Commission vs. Mohiuddin Khan Alamgir reported in 62DLR(AD)290 in respect of notice, has been overruled/modified in the case of Moudud Ahmed vs. State and another reported in 68DLR(AD)118.

Considering the facts and circumstances of the case, the submissions of the respective parties and the propositions of law cited and discussed above, we are of the view that we can hold hearing on the judgment and order of conviction and sentence awarded upon the convict-appellant under section 26(2) of the Anti-Corruption Commission Act, 2004 along with conviction and sentence under Section 27(1) of the Anti-Corruption Commission Act, 2004 read with Section 5(2) of the Prevention of Corruption Act, 1947.

It is pertinent to note that the allegations against the convict-appellant is that he concealed the information in respect of acquisition of the properties namely bank deposit in the State Bank of

India, purchasing of the BMW Jeep and plot Nos. 309 and 311 of the East West Property Development of Basundhara Group and 1250 shares from One Entertainment Ltd, in the wealth statement and the income tax returns and those properties, according to the prosecution, were disproportionate to his known sources of income. In order to prove the prosecution case, the prosecution examined as many as 58 PWs and disclosed the case of nondisclosure of properties in wealth statement and in the income tax returns along with other allegations.

Sub-section 2 of Section 27 of the Anti-Corruption Commission Act, 2004, prescribes that if in any trial of an offence under sub-section (1), it is proved that the accused person or any other person

on his behalf has acquired title or is in possession of property, movable or immovable, disproportionate to his known sources of income, the court shall presume, unless rebutted, that the accused person is guilty of said offence; and a conviction shall not be illegal as is based only on such presumption.

So, it goes without saying that as per section 27(2) of the Anti-Corruption Commission Act, 2004, the accused shall have to rebut presumption about the allegation and explain his position as to the acquisition of properties disclosing sources of income. In other words, the accused-petitioner is under the obligation to clear his position and account for in respect of the possession of the

property allegedly disproportionate to his known sources of income to the satisfaction of the court.

Section 7 of the Criminal Law Amendment Act, 1958, indicates that when any person is charged before a Special Judge with an offence triable under this Act, the fact that such person or, any other person through, him or on his behalf, is in possession, for which he cannot satisfactorily account, of pecuniary resources, or property disproportionate to his known sources of income or that such person has, on or about the time of offence with which he is charged, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved, and may be taken into consideration by the Special

Judge as a relevant fact in deciding whether he is guilty of the particular offence with which he is charged.

So, it is worthwhile to recall that as per ambit of Section 7 of the Criminal Law Amendment Act, 1958, if any person fails to satisfactorily account for pecuniary resources or property disproportionate to his known sources of income, the fact of failure of that person to explain about his pecuniary resources or property may be proved and may be taken into consideration by the court as a relevant fact to prove the prosecution case for the offences as alleged unless rebutted by that person during trial of the case.

As regards revised return, Section 78 of the Income Tax Ordinance, 1984 postulates that any person who has not filed a return as required by Section 75 or 77 or who, having filed return, discovers any omission or incorrect statement therein, may, without prejudice to any liability which he may have incurred on this account, file a return or a revised return, as the case may be, at any time before the assessment is made.

Article 147(1) of the Constitution of the People's Republic of Bangladesh suggests that (1) The remuneration, privileges and other terms conditions of service of a person holding or acting in any office to which this article applies shall be

determined by or under Act of Parliament, but until they are so determined---

(a) they shall be those (if any) appertaining to the person holding or, as the case may be, acting in the office in question immediately before the commencement of this Constitution; or

(b) if the preceding sub-clause is not applicable, they shall be determined by order made by the President.

(2) The remuneration, privileges and other terms and conditions of service of a person holding or acting in any office to which this article applies shall be be varied to the disadvantage of any such person during his term of office.

(3) No person appointed to or acting in any office to which this article applies shall hold any office, post or position of profit or emolument or take any part whatsoever in the management or conduct of any company, association or body having profit or gain as its object:

Provided that such person shall not for the purposes of this clause be deemed to hold any such office, post or position by reason only that he holds or is acting in the office first above-mentioned.

(4) This article applies to the offices of –

(a) President;

(b) Prime Minister;

(c) Speaker or Deputy Speaker;

(d) Minister, Minister of State or Deputy Minister;

(e) Judge of the Supreme Court;

(f) Comptroller and Auditor-General;

(g) Election Commissioner;

(h) Member of a public service commission.

Therefore, according to Article 147 of the Constitution, the convict-appellant being State Minister was unable to hold the office of the director of the Companies and he being director of Companies was also not entitled to take loan and financial benefits in any form for purchasing BMW Jeep and 02(two) plots from East West Property Development Ltd.

It is now well settled that Section 27 is an independent provision of law and for initiation of a proceeding against any person under the provision, 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 purpose and object of the Income Tax Ordinance, 1984 is to realize income-tax in respect of the total income of the income year or income years as the case may be of every person. On the other hand, The purpose and object of enactment of the Anti-Corruption Commission Act, 2004 is to prevent the corruption and the corrupt practices in

the country and to conduct enquiry and investigation of cases of corruption and certain other offences and matters ancillary thereto. Furthermore, the payment of income tax of the incomes originating from any properties does not verify the genuineness, authenticity and lawfulness of the source of the properties or the transactions relating thereto.

Now, we want to come to decision in respect of bank deposit for an amount of Tk.2,38,583/- up to 30.06.2006 kept in account No.051309592001 of the State Bank of India.

According to the prosecution case, the convict-appellant kept an amount of Tk.2,38,583/- in account No.051-309592301 of the State Bank of India up to 30.06.2006, but the convict-appellant

neither mentioned the said balance of money in the wealth statement nor in the income tax return. The convict-appellant is supposed to disclose and declare all the information in the wealth statement and in the income tax return in the relevant assessment years but he did not do the same. The convict-appellant as D.W-1 deposed before the trial court stating that the balance money found in the aforesaid account is of his brother Monjurul Hasan who acquired it from house rent paid by Purksin Ltd, a buyer company of Hong Kong Origin but the brother of the convict-appellant did not adduce any evidence supporting the plea of the convict-appellant coming before the trial court. P.W-13 and 14 Manager and Assistant Manager of State Bank of India deposed before the

trial court stating that the aforesaid account belongs to the convict-appellant and they have also submitted statements of bank account of the convict-appellant. The convict-appellant being D.W-1 has given testimony to the effect that he has given the explanation about the balances remained in all the Bank accounts in Para No.7 of his wealth statement. On our perusal of record, we find that the balance of Tk.2,38,583/- kept in bank account No.051-309592301 of the State Bank of India has not been mentioned in the wealth statement. The testimony of D.W-1 being contradicted with his explanation given in the wealth statement is unworthy of credence. Moreover, the defence could have adduced evidence summoning the brother of the

convict-accused to ascertain this aspect of the matter. The convict-appellant is also supposed to show this amount of money in the income tax return in the relevant assessment years 2006-2007 and/or 2007-2008 but he did not disclose the same in the income tax return. It is argued by the convict-appellant that non-disclosure of assets in the income tax return does not constitute any offence under sections 26/27 of the ACC Act, 2004. It is true that if the convict-appellant did not pay income tax making any concealment of income and deliberately furnishes inaccurate particular of his income, he will be liable for an offence under Section 166 of the Income Tax Ordinance Act, 1984 but at the same time, it should bear in mind that payment of income

tax of the income coming out from particular assets does not verify the genuineness, authenticity and lawfulness of the source of income originated from any properties or of the transactions relating thereto.

In this regard, the case of State of Karnataka vs Jaylalitha reported in (2017)6 SCC 263, may be taken into consideration. In the aforesaid case, Jaylalitha for her cash, demand draft, jewellery and silver did not submit income tax returns and wealth tax returns in time but the same were submitted in a belated income tax returns and wealth tax returns but that pleas were not accepted by the Supreme Court of India. It was held therein that payment of taxes of income originated from the properties does not verify the genuineness, authenticity and

lawfulness of the source thereof or of the transactions relating thereto. In the instant case in hand the convict-appellant submitted income tax returns in the year of 2021 but he was supposed to submit the same in the assessment year 2006-2007 and/or 2007-2008. It is argued on behalf the convict-appellant that his income tax returns have not been accepted by the tax authority due to pendency of the case initiated against him but this issue has not been challenged before any court of law. The convict-appellant has submitted revised income tax returns during pendency of the appeal in order to save his skin from the negative consequences of the case. The convict-appellant did not submit revised tax returns as per requirement of section 78 of the

Income Tax Ordinance, 1984 following the mandate of law in time. As per sub-section 2 of section 27 of the Anti-Corruption Commission, 2004, section 7 of the Criminal Law Amendment Act, 1958 and Section 5(3) of the Prevention of Corruption Act, 1947, the convict-appellant has to satisfactorily account for pecuniary sources or properties which are claimed to be disproportionate to his known sources of income. In the instant case, the convict-appellant has totally failed to prove that the balance amount in the State Bank of India has come to his account from legal and proper sources of income. Accordingly, our considered view is that there is specific allegation of concealment of information of monies in the State Bank of India and acquisition of

the same is deemed to be disproportionate to his known source of income and the convict-appellant is liable to be responsible for that offences since the convict-appellant did not disclose the same in the wealth statement and in the income tax returns in time in the relevant assessment years.

Now we want to come a decision in respect of BMW Jeep worth Tk. 47,76,906/-.

The allegation in respect of BMW Jeep, inter-alia, is that under duty-free facility the appellant imported a BMW Jeep on 24 February 2003. By a resolution dated 20 November 2002, Apex Weaving and Finishing Mills Ltd. decided to sanction a loan in favour of the appellant to purchase a BMW Jeep as he was a director of the said Company. The

appellant was a State Minister at that time. Therefore, according to Article 147 of the Constitution, he was unable to hold the office of the director of the Company. Further, according to the Company law a director cannot take a loan from his Company. However, the convict-appellant did not show the BMW Jeep in his income tax return. Therefore, it is presumed that the convict-appellant illegally or dishonestly acquired the BMW Jeep which is disproportionate to his known source of income. Further, the convict-appellant concealed Tk.69,906/- in the Statement of Wealth in respect of the price of the BMW Jeep.

It is contended on behalf of the convict-appellant that the allegation in respect of

concealment of the price of BMW Jeep i.e. Tk.69,906/- (Taka sixty nine thousand nine hundred six only) in the Wealth Statement is not true. It is not proved from the evidence of P.W.11, 12 and 22 that the appellant purchased the BMW Jeep paying Tk.47,76,906. According to the deposition of P.W.22, Tk.47,76,906 is the assessment value of the BMW Jeep. It is not proved from the deposition of P.W.11, 12, 22-26 that Tk.47,76,906 was the actual price of the BMW Jeep and this amount was paid by the appellant in order to purchase BMW Jeep.

It is further contended by the convict-appellant that it is evident from the statement of IO made in his deposition that the BMW Jeep was purchased under a loan of IDLC and the said Jeep is mortgaged

to IDLC against the said loan. It is further evident from the deposition of P.W.20 that the BMW Jeep is mortgaged against the loan of IDLC and the appellant gave his personal guarantee to IDLC against the said loan. It is also evident from the deposition of P.W.39 that the appellant is a director of APEX Weaving Ltd. and on 20.11.2002 APEX Weaving Ltd. passed a resolution for taking a loan from IDLC in order to purchase two BMW Jeeps for its directors. Therefore, it is evident that the appellant did not acquire the BMW Jeep by illegal means.

It is further pointed out by Mr. K.C that the appellant in his deposition stated that the price of the said BMW Jeep was Tk.47,07,000/- and he spent

this amount. Further, the appellant in his deposition stated that the BMW Jeep was purchased under a loan given by IDLC and the said Jeep is mortgaged to IDLC. The loan from IDLC has not been fully adjusted and as such, he did not mention the BMW jeep in his tax file. Further, D.W.2 the officer of IDLC also gave his deposition supporting the evidence of the appellant.

In view of the submissions of the convict-appellant with regard to purchasing BMW Jeep, it appears that the convict-appellant purchased the BMW Jeep by the loan granted by IDLC to Apex Weaving and Finishing Ltd and the said Company paid the installments of the loan from its fund. According to the convict-appellant, IDLC does not

approve loan against any individual and for this reason he decided to take loan from IDLC through his Company Apex Weaving and Finishing Ltd. For this reason, a decision was taken in the Board meeting of the Company to the effect that the Company will give loan to the convict-appellant Iqbal Hasan Mahmood and the said loan will be adjusted within 5 years from his dividend in the Company. The evidence of P.W-20 and D.W-2, shows that IDLC granted loan to Apex Weaving and Finishing Ltd. The evidence of P.W-39 and P.W-42 indicates that by the resolution of Board of Directors dated 20.11.02, a decision was taken to provide loan Tk.47 lacs from the Apex Weaving and Finishing Ltd. to the convict-appellant for purchasing BMW

Jeep. In this regard, the prosecution case is that the source of money for purchasing BMW Jeep by the convict-appellant has been acquired by dishonest means and the same is disproportionate to his known sources of income while the gist of defence plea is that Apex Weaving and Finishing Ltd. taking loan from IDLC for purchasing car lent that money to the convict-appellant Iqbal Hasan Mahmood to purchase the BMW Jeep on the arrangement of repayment of the loan out of his dividend over a period of 5 years. The evidence of D.W-2 and P.W-20 suggests about the fact of providing loan to the Apex Weaving and Finishing Ltd. for purchasing vehicle and getting repayment in 48 installments from the Company. In view of the aforesaid

evidence taking loan and its repayment in respect of purchasing BMW car are apparent but the evidence of P.W-39 the External Auditor of Apex Weaving and Finishing Ltd, indicates that the fact of providing loan to the convict-appellant from the fund of Apex Weaving and Finishing Ltd. was not found in the Book of Accounts of the Company. In view of above evidence on record, a question obviously arises from which source the fund was collected to make repayment of the loan taken by the Apex Weaving and Finishing Ltd. to the IDLC. If the fact of giving loan to the convict-appellant from the fund of the Apex Weaving and Finishing Ltd. is not found in the Audit Report/Books of Accounts, then the genuineness of the transaction is

shrouded with the doubt and suspicion. The question also arises in our mind that the transaction of loan and purchasing BMW Jeep was made in disguise with a view to concealing the real source of money by creating colourful transactions and averments of purchasing the vehicle from the borrowed money. It is pertinent to note that Apex Weaving and Finishing Ltd. is a corporate organization having its fair and transparent mood of transaction on different heads for facing regular audit by external auditor with independent character. The question arises had there been any loan provided by it to its Director convict-appellant Iqbal Hasan Mahmood, there would have been incorporation of such information in the Accounts Book of the Company and the

reflection of such information in the Audit report would have made the transaction genuine and trustworthy. It may be mentioned here that the convict-appellant neither mentioned about the purchase of BMW Jeep at Tk.47,76,906/- in the wealth statement nor mentioned about the same in the income tax return. The prosecution by adducing evidence by the PWs has specifically disclosed that the source of money for purchasing BMW Jeep has not come from legal, proper and genuine source of income rather the said monies are acquired by dishonest means and the same are disproportionate to his known sources of income. The primary onus to prove the prosecution case has been discharged by the prosecution. Now the onus is shifted upon the

convict-appellant to disprove or disburden its part of onus by giving cogent and convincing account to satisfy the special rules of evidence as enacted in section 27(2) of the ACC Act, 2004, section 7 of the Criminal Law Amendment Act, 1958 and section 5(3) of the Prevention of Corruption Act, 1947. The evidence given by the employee of IDLC is limited with getting refund of the loan from its borrower Apex Weaving and Finishing Ltd. They need not inquire about the source of money of the installment and therefore their evidence of mere getting installment by the Apex Weaving and Finishing Ltd. does not satisfy the requirement of proof to the hilt regarding the source of money for repayment unless it is established from the Books of Accounts of the

Apex Weaving and Finishing Ltd. that the repayment has been made from its own funds and accounts against the loan given to the convict-appellant. Moreover, the resolution of Board of Directors appears to be passed by One Harun-or-Rashid, Mrs. Rumana Mahmood and Aminur Rashid with a decision to provide Tk. 47 lacs as loan for acquisition of BMW Jeep has not been reflected in the Book of Accounts of the Company. Therefore, the resolution itself is not sufficient to satisfy the rule of proof with regard to loan amount for purchasing BMW Jeep since this facts are not inserted in the account book of the Company.

The evidence of P.W-58 shows about the difference of price of BMW Jeep mentioned by the

convict-appellant in his wealth statement which differs with the price stated in the Bill of Entry/Report as enclosed in the record of BRTA, Mat-Ext-III.P.W-11 and 12 which indicates that the price of the Jeep is Tk.47,76,906/42. The defence did not cross-examine the witness on this particular point. It is worthwhile to recall that the essential rule of cross-examination to controvert the testimony given by a witness in examination in chief and on failure of a party to cross-examine the witness of his adversary, it will be presumed that the testimony given by the witness in examination in chief has been accepted. In view of the above facts and circumstances and the evidence on record, we are of the view that the price of the BMW Jeep is

Tk.47,76,906/42 but the convict-appellant provided false information in his wealth statement stating the price of BMW Jeep as Tk.47,07,000/-.

At the relevant time of taking loan the convict-appellant was a director of the aforesaid Company and at the same time he was also a State Minister. Therefore, according to Article 147 of the Constitution, he was unable to hold the office of the director of the Company. Further according to Company law a director cannot take a loan from his company. However, the convict-appellant did not show the BMW Jeep in his income tax return. Therefore, it is our considered view that that the convict-appellant illegally or dishonestly acquired the BMW Jeep which is disproportionate to his

known source of income. Further, the convict-appellant concealed Tk.69,906/- in the Statement of Wealth in respect of the price of the BMW Jeep.

The convict-appellant is supposed to show this amount of money in the income tax return in the relevant assessment year 2002-2003 and/or 2003-2004 but he did not disclose the same in the income tax returns in the relevant assessment years in time and he did not clarify about source of money. It is argued by the convict-appellant that non-disclosure of assets in the income tax return does not constitute any offence under sections 26/27 of the ACC Act, 2004. It is true that if the convict-appellant did not pay income tax making any concealment of income and deliberately furnishes inaccurate particular of

his income, he will be liable for an offence under Section 166 of the Income Tax Ordinance Act, 1984 but at the same time, it should bear in mind that payment of income tax of the income coming out from particular assets does not verify the genuineness, authenticity and lawfulness of the source of income originated from any properties or of the transactions relating thereto. In this regard, the case of State of Karnataka vs Jaylalitha reported in (2017)6 SCC 263, may be taken into consideration. In the aforesaid case, Jaylalitha for her cash, demand draft, jewellery and silver did not submit income tax returns and wealth tax returns in time but the same were submitted in a belated income tax returns and wealth tax returns but that

pleas were not accepted by the Supreme Court of India. It was held therein that payment of taxes of income originated from the properties does not verify the genuineness, authenticity and lawfulness of the source thereof or of the transactions relating thereto. In the instant case in hand the convict-appellant submitted income tax returns in the year of 2021 but he was supposed to submit the same in the assessment year 2002-2003 and/or 2003-2004. It is argued on behalf the convict-appellant that his income tax returns have not been accepted by the tax authority due to pendency of the case initiated against him but this issue has not been challenged before any court of law. The convict-appellant has submitted revised income tax returns during

pendency of the appeal in order to save his skin from the negative consequences of the case. The convict-appellant did not submit revised tax return as per requirement of section 78 of the Income Tax Ordinance, 1984 following the mandate of law in time. As per sub-section 2 of section 27 of the Anti-Corruption Commission, 2004, section 7 of the Criminal Law Amendment Act, 1958 and section 5(3) of the Prevention of Corruption Act, 1947, the convict-appellant has to satisfactorily account for pecuniary sources or properties which are claimed to be disproportionate to his known sources of income. In the instant case, the convict-appellant has totally failed to prove that the monies in question for purchasing vehicle has come from legal and proper

sources of income. Accordingly, our considered view is that there is specific allegation of concealment of information of monies and acquisition of the same is deemed to be disproportionate to his known source of income and the convict-appellant is liable to be responsible for that offences since the monies in question for purchasing vehicles were not found in the book of accounts of the Company and in not disclosing the same in the income tax returns of the relevant assessment years.

Now we want to discuss about two plot Nos.309 and 311 in East West Property Development Ltd. worth Tk. 74,08,300/- and come to a decision in this matter.

The allegation in respect of plots from East West Property Development Ltd, inter-alia, is that on 02 June 2003 the appellant gave a booking of 02 plots by depositing Tk.50,000/-. As of 19 February 2007, the appellant deposited Tk.78,08,300/- to the East West Property. The said amount was deposited from the account of Home Textile Ltd. on behalf of the appellant. The appellant was a director of the said company. The appellant was also a State Minister at that time. Therefore, according to Article 147 of the Constitution, he was unable to hold the office of the director of the Company. Further, no resolution of the company was found at the time of investigation in respect of the said payment made by the Company. Therefore, it is presumed that the

appellant illegally or dishonestly made the said payment and as such, he did not show the same to the income tax authority.

It is contended by Mr. K.C that the appellant being DW-1 in his deposition stated that as per the company's decisions the appellant and his partner Mr. Harun-Ur-Rashid (the chairman of the Company) applied for 4 plots in the East West Property in order to create an asset of their Company. The installments of the said plots are not yet fully paid by the Company and the title and possession of the said plots are not yet transferred in his name or his Company's name. He is not the owner of the said plots and therefore he did not mention the plots in the statement of wealth and in

his income tax returns. The prosecution failed to disprove the evidence of the appellant.

It appears from the submissions of the learned Advocate for convict-appellant that for purchasing plot Nos. 309 and 311 from East West Real Estate of Basundhara Group, the convict-appellant gave booking for plots in his name nominating his son Abed Hasan Mahmood. For this purpose, the convict-appellant paid Tk.74,08,000/- and the evidence of P.Ws 31 , 32 and 33 corroborated the aforesaid fact of purchasing plots. The convict-appellant being D.W.1 gave evidence to the effect that he purchased the plots for Home Textile Ltd. and the consideration money as paid was taken from the fund the Home Textile Ltd. It may mentioned

that the prosecution seized the audit reports of Home Textiles of the relevant years. It is evident from the payment sheet of East West Real Estate of Basundhara Group that the booking for plots was given on 02.06.03 and last installment was paid on 27.02.07 and 02.08.07 for the said two plots. Going through the audit report of 2003 to 2006-07, no information about paying installment money from the aforesaid two plots from companies account is found. The Investigating Officer mentioned in his evidence that the payments were made from the accounts of the Home Textile Ltd. but no documents are available to show that the company decided to give loan to the convict-appellant for purchasing these two plots. The Investigation Officer seized 13

resolutions of the Company covering from 22.07.02 to 02.04.07 but none of the resolutions suggest anything about giving loan to the convict-appellant for purchasing the two plots. It goes without saying that all the payments have been made by the convict-appellant Iqbal Hasan Mahmood who is the holder and operator of the accounts from which the cheque and pay order were issued. There is no documentary evidence on record to show that Home Textile lent money to accused Iqbal Hasan Mahmood for purchasing the two plots. Under such circumstances, it is difficult to accept the claim of the convict-appellant that he purchased these two plots for the Companies with its fund. The evidence of D.W-51 Assistant General Manager, Finance and

Accounts of Home Textile denotes that no information with regard to giving loan to the convict-appellant from the Company was found in the audit report though the application form shows the convict-appellant as applicant and his son as his nominee. Therefore, it is evident from the evidence that the convict-appellant purchased the plots for himself with his own source of monies which remain undisclosed in the wealth statement and in the income tax returns of the relevant assessment years.

At the relevant time of purchasing plots, the convict-appellant was a director of the aforesaid Company and at the same time he was also a State Minister. Therefore, according to Article 147 of the

Constitution, he was unable to hold the office of the director of the Company. Further according to Company law a director cannot take a loan from his company. Therefore, it is our considered view that that the convict-appellant illegally or dishonestly acquired the monies for purchasing the plots, which are disproportionate to his known source of income.

The convict-appellant is supposed to show this amount of money in the income tax return in the relevant assessment year 2003-2004 and/or 2004-2005 but he did not disclose the same in the income tax return. It is argued by the convict-appellant that non disclosure of assets in the income tax return does not constitute any offence under sections 26/27 of the ACC Act, 2004. It is true that if the convict-

appellant did not pay income tax making any concealment of income and deliberately furnishes inaccurate particular of his income, he will be liable for an offence under Section 166 of the Income Tax Ordinance Act, 1984 but at the same time, it should bear in mind that payment of income tax of the income coming out from particular assets does not verify the genuineness, authenticity and lawfulness of the source of income originated from any properties or of the transactions relating thereto. In this regard, the case of State of Karnataka vs Jaylalitha reported in (2017)6 SCC 263, may be taken into consideration. In the aforesaid case, Jaylalitha for her cash, demand draft, jewellery and silver did not submit income tax returns and wealth

tax returns in time but the same were submitted in a belated income tax returns and wealth tax returns but that pleas were not accepted by the Supreme Court of India. It was held therein that payment of taxes of income originated from the properties does not verify the genuineness, authenticity and lawfulness of the source thereof or of the transactions relating thereto. In the instant case in hand the convict-appellant submitted income tax returns in the year of 2021 but he was supposed to submit the same in the assessment year 2003-2004 and/or 2004-2005. It is argued on behalf the convict-appellant that his income tax returns have not been accepted by the tax authority due to pendency of the case initiated against him but this issue has not been

challenged before any court of law. The convict-appellant has submitted revised income tax returns during pendency of the appeal in order to save his skin from the negative consequences of the case.

The convict-appellant did not submit revised return as per requirement of section 78 of the Income Tax Ordinance, 1984 following the mandate of law in time. As per sub-section 2 of section 27 of the Anti-Corruption Commission, 2004, section 7 of the Criminal Law Amendment Act, 1958 and section 5(3) of the Prevention of Corruption Act, 1947, the convict-appellant has to satisfactorily account for pecuniary sources or properties which are claimed to be disproportionate to his known sources of income.

In the instant case, the convict-appellant has totally

failed to prove that the monies in question for purchasing plots have come from legal and proper sources of income. Accordingly, our considered view is that there is specific allegation of concealment of information of monies in purchasing plots and acquisition of the same is deemed to be disproportionate to his known source of income and the convict-appellant is liable to be responsible for that offences.

Now, we want to come to a decision in respect of 1250 shares worth Tk.1 crore in One Entertainment Ltd. deposit in the Current Account No. 0233022613 of IFIC Bank.

In this regard, the convict-appellant being D.W.1 deposed that neither he nor his wife

deposited the share money amounting to Tk.1 crore in One Entertainment Company. The evidence of P.W-27 and 28, the employees of Registrar of Joint Stock Company Office shows that Rumana Mahmood has share in One Entertainment Company. The evidence of P.W-45, 46 and 47, the employees of One Entertainment Company indicates that a cheque and pay order of Tk. 50 lacs each have been received by them and they prepared Bank voucher for depositing such amount in the account of the company in IFIC Bank. They, in their cross-examination, narrated that the name of Rumana Mahmood has been written in the Form of Directors removing the name of Mehedi Hasan. In cross-examination, they also narrated that in the Form of

Directors, some of them signed over their name except Rumana Mahmood and others. In the evidence of P.W-37, Vice President of IFIC Bank, it is stated that Tk.1 crore was credited to the account of One Entertainment. Furthermore, the evidence of D.W-4, Manager of South East Bank, suggests that the cheque No.8191354 worth Tk. 50 lacs dated 03.09.05 was issued in favour of One Entertainment from the account No.11100012814 belonged to one Obaidul Karim. The defence case of the appellant is that Rumana Mahamood did neither issue any cheque for having share in One Entertainment nor put any signature consenting her to be it's Director but from the evidence of P.W-29, Vice President of Prime Bank, Motijheel Branch, it is ascertained that

Rumana Mahmood appearing before the Bank put her signature as one of the Directors of One Entertainment Ltd. for becoming personal guarantor against a loan amounting to Tk.23,90,00,000/-. The photocopy of personal guarantee letter was submitted before the trial court, which was marked as Mat-Ext-17/2. In cross examination, he narrated that it is the rule of business that for becoming personal guarantor, she had to appear before the Bank. We have compared signature of Rumana Mahmood put in the vokalotnama as well as in the resolution of Home textile Ltd. dated 05.10.06, 10.08.06 and 07.08.06 and found it same and similar with those signatures. Now quesiton arises if the convict-appellant has not invested such a big

amount of money for having share in One Entertainment, then why the said Company will acknowledge his wife to be it's share holder worth Tk.1 Crore. It is very important to note that the transaction was done much before filing the case by the Commission which is neither a party in the aforesaid transaction nor had any intention at the relevant time to create this paper involving the wife of the convict-appellant to be one of its share holders and Directors apprehending of filing this case against him. Apart from the above, we do not find any reason to believe that why one Obaidul Karim and Fakhrul will issue a cheque and pay order of Tk.50 lacs each for depositing in the name of the wife of the convict-appellant. From the trend

of evidence, the case of the prosecution is that it is the ill gotten money of the convict-appellant Iqbal Hasan Mahmood who invested it in the One Entertainment Company for purchasing 1250 shares from it in the name of his wife. Furthermore, the evidence of P.W-29 contemplates that the wife of the convict-appellant signed on the personal guarantee letter as one of the Directors of One Entertainment and under such circumstances, the convict-appellant cannot be absolved from the liabilities to explain how he got the money amounting to Tk.1 crore to purchase the aforesaid shares in One Entertainment.

According to the prosecution case, the convict-appellant is supposed to show this amount

of money in the wealth statement and in the income tax returns in the relevant assessment years 2006-2007 and/or 2007-2008 but he did not disclose the same in the wealth statement and in the income tax returns. It is argued by the convict-appellant that non-disclosure of assets in the income tax return does not constitute any offence under sections 26/27 of the ACC Act, 2004. It is true that if the convict-appellant did not pay income tax making any concealment of income and deliberately furnishes inaccurate particular of his income, he will be liable for an offence under Section 166 of the Income Tax Ordinance Act, 1984 but at the same time, it should bear in mind that payment of income tax of the income coming out from particular assets does not

verify the genuineness, authenticity and lawfulness of the source of income originated from any properties or of the transactions relating thereto. In this regard, the case of State of Karnataka vs Jaylalitha reported in (2017)6 SCC 263, may be taken into consideration. In the aforesaid case, Jaylalitha for her cash, demand draft, jewellery and silver did not submit income tax returns and wealth tax returns in time but the same were submitted in a belated income tax returns and wealth tax returns but that pleas were not accepted by the Supreme Court of India. It was held therein that payment of taxes of income originated from the properties does not verify the genuineness, authenticity and lawfulness of the source thereof or of the

transactions relating thereto. In the instant case in hand the convict-appellant submitted income tax returns in the year of 2021 but he was supposed to submit the same in the assessment year 2003-2004 and/or 2004-2005. It is argued on behalf the convict-appellant that his income tax returns have not been accepted by the tax authority due to pendency of the case initiated against him but this issue has not been challenged before any court of law. The convict-appellant has submitted revised income tax returns during pendency of the appeal in order to save his skin from the negative consequences of the case. The convict-appellant did not submit revised returns as per requirement of section 78 of the Income Tax Ordinance, 1984 following the mandate of law in

time. As per sub-section 2 of section 27 of the Anti-Corruption Commission, 2004, section 7 of the Criminal Law Amendment Act, 1958 and section 5(3) of the Prevention of Corruption Act, 1947, the convict-appellant has to satisfactorily account for pecuniary sources or properties which are claimed to be disproportionate to his known sources of income. In the instant case, the convict-appellant has totally failed to prove that the monies for purchasing shares have come from legal and proper sources of income. Accordingly, our considered view is that there is specific allegation of concealment of information of monies in purchasing shares and acquisition of the same is deemed to be disproportionate to his known

source of income and the convict-appellant is liable to be responsible for that offences.

On perusal and examination of the evidence and materials on record, we do not find any illegality and impropriety in the impugned judgment and order passed by the learned judge of the concerned court below.

It is worthwhile to mention that corruption is a form of dishonesty or a criminal offence which is undertaken by a person or an organization which is entrusted in a position of authority. A person or an organization commits corruption in order to acquire illicit benefits or personal gains abusing power and authority. Corruption may involve many activities which include bribery, influence peddling and the embezzlement and it may also involve practices

which are not legal in the country. Political corruption occurs when an office-holder or other governmental employees act with an official capacity for personal games. In order to combat corruption, a zero-tolerance policy must be taken towards corruption since many high-profile civil and political actors and high profile individuals are embroiled in various corruptions and embezzlements. Both the corrupt and the corrupter are indictable and answerable to the society and the country as a whole. Considering this aspect of the matter of corruption, we want to state a few words in a bid to prevent corruption in the society.

Mr. Jose Mujica, the President of Uruguay is the worlds' poorest president who lives on a ramshackle farm and gives away most of his pay. He has shunned the luxurious house that the Uruguayan

state provides for its leaders and opted to stay at his wife's farmhouse.

The President and his wife work the land themselves, growing flowers. He was shot six times and spent 14 years in jail. Most of his detention was spent in harsh condition and isolation, until he was freed in 1985 when Uruguay returned to democracy. Those years in jail, Mujica says, helped shape his outlook on life. He donates about 90% of his monthly salary to charity, which benefits poor people and small entrepreneurs. He says that poor people are those who only work to try to keep an expensive lifestyle and always want more and more. He further says if you do not have many possessions then you do not need to work all your life like a slave to sustain them and therefore you have more time for yourself.

The pious wish of this court is that the persons who are involved and engaged in politics should not run after monies and properties. If politicians belong to a huge amount of properties and monies, they have to spend a lot of time of their life behind them to sustain them and in that case they have a little time to spend for the welfare of the people and the country as well.

There are many ways and means to make monies and properties resorting to lawful businesses and other professions but the politics and politicians do not come within the purview of a profession to make a huge amount of monies and properties in their name and in the name of their dependents.

The politicians engage in politics with a view to sacrificing themselves for the welfare of the people and the country and it is a kind act of great

sacrifice and dedication for the wellbeing of the people and the country as well.

The politicians being ‘রক্ষক’ cannot be ‘ভক্ষক’।

Corruption affects people across all genders, ages and races and it hits poor and vulnerable groups the hardest. The people of the country particularly the responsible stakeholders should set a positive example, showing that they are not only victims of corruption, but also the key players in the struggle against it.

The people of this country along with the stakeholders should have taken up the fight, regardless of adverse circumstances and they should stand for a strong message: If you want to create change in the world and if you want to make Bangladesh free from corruption and money laundering, take action.

You cannot really beat big money with more money. You have to beat them with a totally different game. There must be an effective and strong system to be developed to bring the corrupt people to book, there must be a responsibility to give account and there must be action to be taken following the provisions of law.

Children are refreshingly truthful until we socialise them to be otherwise. The children must be taught to differentiate between the honesty and dishonesty from the very boyhood and girlhood.

Bad guys help each other to silence critics and hide stolen wealth. It is time for those who expose them to work together.

Citizens cannot sit idly by waiting for the world and Bangladesh to change, each of us must be part of that transformation.

No one can fight corruption for Bangladeshis except Bangladeshis. Everyone has to be committed from the top to the bottom to fight it.

As a global movement, our goal is to end corruption in the world and in Bangladesh, no matter where or in what form it occurs. We know that the only way to succeed is to involve a broad spectrum of engaged citizens and that's what we have been trying to alleviate, prevent and root out all sorts of corruptions and money laundering from the society.

And the last but not the least, if the politicians indulge themselves in corruption, the entire society will plunge into darkness.

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 do not find any illegality and impropriety in the impugned judgment and order of conviction and sentence passed by the learned judge of the concerned court below and accordingly, we do not find any substance in this criminal appeal.

Resultantly, this criminal appeal is dismissed.

In consequence thereof, the impugned judgment and order of conviction and sentence dated 15.11.2007 passed by the learned Special Judge, Court No.05, Dhaka in Special Case No.05 of 2007 arising out of Special Case No.32 of 2007 of the Court of learned Senior Special Judge and

Metropolitan Sessions Judge, Dhaka and Mohammadpur Police Station Case No.95(3)/07 corresponding to G.R. Case No.22 of 2007 convicting the convict-appellant and sentencing him to suffer simple imprisonment for 2(two) years under Section 26(2)(ka) of Anti-Corruption Commission Act, 2004 and rigorous imprisonment for 7(seven) years with fine of Tk.50 (fifty) lac under Section 27(1) of the Anti-Corruption Commission Act, 2004 and in default of payment of the fine of the Tk. 50(fifty) lack to suffer 1(one) year rigorous imprisonment more and also confiscating the properties mentioned in the schedule in favour of the State, is affirmed.

The convict-appellant is discharged from his bail bond.

The convict-appellant is also directed to surrender before the concerned court below within 15 (fifteen) days from the date of receipt of this judgment and order by the learned judge of the concerned court below to undergo the remaining sentence as per jail code and in accordance with law.

In view of the above observations and propositions of law, the application under section 428 read with section 540 of the Code of Criminal Procedure filed by the convict-appellant for accepting annexure-A series as additional evidence, is rejected.

Let a copy of this judgment and order along with lower court's record be communicated to the learned Special Judge, Court No. 5, Dhaka, the Chairman, Anti-Corruption Commission and the Registrar General of the Supreme Court of Bangladesh, at once.

Khizir Hayat, J:

I agree.