

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. 3990 of 2007

Aman Ullah Aman and another

...Convict-appellants.

-Vs-

The State and another

.....Respondents.

Mr. A.M. Mahbub Uddin, Senior Advocate with
Mr. Md. Nazmul Huda, Advocate and
Mr. Sanjit Siddique, Advocate

...For the Convict-appellants.

Mr. A.M. Aminuddin, Attorney-General with
Mr. Md. Saiefuddin Khaled, D.A.G with
Mr. A K M Amin Uddin, D.A.G and
Mrs. Afifa Begum Swapna, A.A.G and
Ms. Anna Khanom Koli, A.A.G and
Mr. Md. Saifour Rahman Siddique, A.A.G
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: 23.02.2020, 29.06.2021, 13.11.2022, 23.11.2022,
27.11.2022, 28.11.2022, 29.11.2022, 08.12.2022, 11.12.2022,
12.12.2022, 15.12.2022, 02.01.2023, 03.01.2023, 08.01.2023,
11.01.2023, 02.02.2023, 05.02.2023, 06.02.2023, 09.02.2023,
08.05.2023, 09.05.2023, 10.05.2023, 14.05.2023,
15.05.2023,18.05.2023 and Judgment on:30.05.2023.**

Md. Nazrul Islam Talukder, J:

This criminal appeal has been preferred by the
convict-appellants against the judgment and order of

conviction and sentence dated 21.06.2007 passed by the learned Special Judge, Court No.01, Dhaka in Special Case No.01 of 2007 arising out of Kafrul Police Station Case No.15(3)2007 (corresponding to ACC G.R. No.12 of 2007) convicting the convict-appellant No.1 under Section 26(2) of the Anti-Corruption Commission Act, 2004 and Rule 15Gha(5) of the Emergency Power Rules, 2007 and sentencing him to suffer rigorous imprisonment for 3(three) years and also convicting the appellant No.1 under Section 27(1) of Anti Corruption Commission Act, 2004 read with Section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him to suffer rigorous imprisonment for 10(ten) years with fine of Tk.10,00,000/00 (ten lac) only, in default, to

suffer rigorous imprisonment for 1(one) year more and both the sentences will run consecutively and further convicting the convict-appellant No.2 Sabera Aman under section 27(1) of the Anti-Corruption Commission Act, 2004 read with Section 109 of the Penal Code and sentencing her to suffer rigorous imprisonment for 3(three) years and furthermore, the properties of the appellants mentioned in the case be confiscated to the State.

The prosecution case, in brief, is that the Durnity Daman Commission vide its Memo No. DUDOk/70-2007 (anu-2) 665 dated 18.02.2007, asked the appellant No.1 to submit the statement of wealth in his name and in the name of his wife, the convict-appellant No. 2-Mrs. Sabera Aman and other members of his family and in compliance with

the said notice, the appellant through his representative submitted their wealth statements on 25.02.2007. But he did not state the price of the property and the source of acquiring the same in his aforesaid wealth statement. The Commission held an enquiry to ascertain/assess the price of the properties and the sources of acquisition of the same. On enquiry and on investigation, it is found that the properties were acquired by the convict-appellant, Aman Ullah Aman, an Ex-Minister, Ministry of Labour and Employment in his name and in the name of his wife convict-appellant No. 2- Mrs Sabera Aman through illegal and improper means and the values of the same are disproportionate to his known sources of income, and thus the convict-appellants acquired an amount of Tk.9,84,63,741.00. The description of the

properties as alleged to have been acquired by the convict-appellant No. 1-Aman Ullah Aman in his own name, is as follows:-

(a) A six storied building on Road No.21 at Plot No.2 in Gulshan Model Town, Dhaka. The valuation of which is (after deduction of loan money of Tk. 65,00,000.00) stood at Tk. 2,56,64,473.00; (b) A two storied building measuring two thousand square feet at his paternal house at Village: Bayati Kandi, Hazratpur, Keraniganj, Dhaka, worth Tk.2,05,169.00; (c) A Motor Car worth Tk.17,00,000.00; (d) Furniture at the residence of New DOHS worth Tk.15,50,200.00; (e) Two fire arms worth of Tk.50,000.00; (f) Bank

deposit of Tk. 5,59,034.00 and (g) Cash Tk.50,000.00. Thus, the grand total amount of the value of such properties stands at Tk.3,31,75,009.00 (Taka three crore thirty-one lac Seventy-five thousand and nine).

The description of the properties of the convict-appellant No. 1-Aman Ullah Aman shown to have been acquired in the name of his wife convict-appellant No. 2-Mrs. Sabera Aman is as follows:-

- (a) A six storied building at 98/1, Monipur, Mirpur, Dhaka (after deduction house loan of Tk. 68,00,000.00) worth Tk. 2,01,49,570.00;
- (b) 50% ownership of the house on Plot

No.44, Road No.7, at Banani worth Tk. 55,27,220.00; (c) A six storied commercial building at Mouza Keraniganj worth of Tk. 2,06,76,766.00; (d) 508.5 decimals of land at Hazratpur Mouza, Keraniganj worth Tk. 22,39,000.00; (e) 60 decimals of land at Mourza Char Algi worth Tk. 29,28,000.00; (f) 1101.25 decimals of land at Mouza Boilarpur, Savar worth Tk.58,07,000.00; (g) 1.51 decimals of land at Mouza Kandi Boilarpur, Savar worth Tk.9,82,000.00; (h) Three commercial Plots at Shilpa Nagari, Keraniganj where he (convict-appellant No. 2-Aman Ullah Aman) paid

Tk.7,02,00.00; (i) A motor car worth Tk.10,13,194.00; (j) Bank deposit of Tk.6,21,972.00; (k) Cash in hand at Tk.50,000.00; (l) Savings certificate valued at Tk.1,70,000.00; (m) Two fire arms worth Tk.22,000.00 and (n) Tk.44,00,000.00 given to her brother Askar Ibne Islam as loan. The value of the grand total properties in the name of convict-appellant No. 2-Mrs. Sabera Aman, thus, stands at Tk.6,52,88,732.00 (Taka six crore fifty-two lac eighty-eight thousand seven hundred and thirty-two).

The further case of the prosecution is that before 1991, the convict-appellant No. 1-Aman Ullah Aman was a student leader and he had no

mentionable property by way of inheritance. According to Income Tax record of convict-appellant No. 1-Aman Ullah Aman and his wife convict-appellant No. 2-Mrs. Sabera Aman, their total savings from 1991 to 2006 are at Tk.90,14,018.00 (Taka ninety lac fourteen thousand and eighteen) while they have paid off the loan money with interest amounting to Tk.1,02,82,783.00. Thus, the total amount of money paid by the convict-appellants to the bank against their loan accounts is more than their total savings during the financial year from 1991 to 2006. Convict-appellant No. 2- Mrs. Sabera Aman is a house wife and she is not associated with any service or business. Therefore, the convict-appellant No. 1-Aman Ullah Aman has acquired the above

mentioned entire properties worth Tk. 9,84,63,741.00 through illegal and improper means in his name and in the name of his wife, the convict-appellant No. 2-Mrs. Sabera Aman which is inconsistent with his lawful known source of income and to conceal the fact of acquiring such huge amount of properties, the convict-appellant No. 1-Aman Ullah Aman has not mentioned the value of the properties and sources of acquiring them in the statement of wealth submitted by him. Convict-appellant No. 2-Mrs. Sabera Aman has abetted the convict-appellant No.1 in the acquisition of such properties in her name by her husband convict-appellant No. 1-Aman Ullah Aman through improper means. She has also abetted her husband in submitting the wealth statement without

mentioning the source of acquiring the properties, and the valuation of the same and thereby the convict-appellants committed offences under sections 26 and 27 of the Durnity Daman Commission Ain, 2004 read with section 5(2) of the Prevention of Corruption Act, 1947 coupled with rule 15Gha(5) of the Emergency Power Rules, 2007 and section 109 of the Penal Code, 1860. Accordingly, the informant lodged the First Information Report (hereinafter referred to as FIR) against the convict-appellants under sections 26 and 27 of the Durnity Daman Commission Ain, 2004 read with section 5(2) of the Prevention of Corruption Act, 1947 and Rule 15Gha(5) of the Emergency Power Rules, 2007 and section 109 of the Penal Code, 1860. Hence, Kafrul P.S. Case No.

15(3)2007 corresponding to ACC G.R. No.12 of 2007 under sections 26 and 27 of the Durnity Daman Commission Ain, 2004 read with section 5(2) of the Prevention of Corruption Act, 1947 and Rule 15Gha(5) of the Emergency Power Rules, 2007 and section 109 of the Penal Code, 1860 was started against the convict-appellants.

After initiation of the F.I.R, the Durnity Daman Commission started investigation into the case. During investigation, the investigating officer recorded the statement of witnesses, collected the documentary and other materials on records. After investigation, the investigating officer submitted memo of evidence before the Commission. The Commission after perusing the memo of evidence and after considering entire case record, accorded sanction under section 32 of the Durnity Daman

Commission Ain, 2004 for submission of charge-sheet before the Court. Thereafter, the investigating officer submitted charge-sheet along with the sanction before the Metropolitan Senior Special Judge, Dhaka being Charge Sheet No.144 dated 29.04.2007 against the convict-appellants under sections 26 and 27 of the Durnity Daman Commission Ain, 2004 read with section 5(2) of the Prevention of Corruption Act, 1947 and Rule 15Gha(5) of the Emergency Power Rules, 2007 and section 109 of the Penal Code, 1860 .

After submission of charge-sheet, the case record was transferred to the Court of Metropolitan Sessions Judge and Senior Special Judge, Dhaka, who took cognizance against the convict-appellants. Subsequently, the Metropolitan Sessions and Senior

Special Judge transferred the case record to the Court of Special Judge, Court No.1, Dhaka.

The Special Judge, Court No.1, Dhaka received the case record from the Court of Metropolitan Senior Special Judge, Dhaka and registered the same as Special Case No.1 of 2007.

At the trial, charge has been framed by the Special Judge, Court No.1, Dhaka against the convict-appellant No. 1-Aman Ullah Aman 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, and against the convict-appellant No. 2-Mrs. Sabera Aman under section 27(1) of the Durnity Daman Commission Ain, 2004 read with Rule 15 Gha (5) of the Emergency Power Rule, 2007 and section 109 of the Penal Code 1860. The said charges have been read

over to the convict-appellants, in which they pleaded not guilty and claimed to be tried.

During trial of the case, the prosecution examined 23 (twenty three) witnesses and they have been cross-examined by the defence. But, the defence examined none in support of the defence case.

After recording evidence from the prosecution witnesses, the convict-appellants have been examined under section 342 of the Code of Criminal Procedure, 1898, in which they again pleaded not guilty and claimed to be innocent.

The defence case, as it appears from the trend of cross-examination of the P.Ws, in short, is that the convict-appellants are innocent and they have not acquired any property through illegal and improper means and the properties are not

disproportionate to their known sources of income as alleged by the prosecution. The convict-appellants submitted the wealth statements before the commission without mentioning the price and valuation of the properties since there was no space in the prescribed form to mention the price and valuation of the properties. Apart from the above, the convict-appellants submitted revised income tax returns showing the price and valuation of the properties. The further case of the defence is that the convict-appellant No. 1-Aman Ullah Aman is a renowned leader of BNP, he has falsely been implicated in this case out of political grudge and enmity at the instance of his political opponents.

Now, we want to see how the prosecution has been able to prove the prosecution case by the evidence given by the prosecution witnesses.

PW-01 Abdullah-Al-Zahid, Deputy Director, Anti-Corruption Commission was the informant of the case who, in examination-in-chief, stated that on receipt of the information to the effect that convict-appellant No. 1-Aman Ullah Aman, Ex-State Minister, Ministry of Labour and Employment is in possession of properties which are disproportionate to his known sources of income; the Commission, vide its Memo No. 665 dated 18.02.2007 in exercising of the power under Rule 15Gha(1)(2) of the Emergency Power Rules, 2007, read with section 26(1) of the Durnity Daman Commission Ain, 2004, directed the convict-appellant No. 1-

Aman Ullah Aman to submit statement of assets in his name and also in the name of other members of his family. In pursuance of the aforesaid notice, the convict-appellant No. 1-Aman Ullah Aman submitted the statement of assets in his name and in the name of his wife, the convict-appellant No. 2-Mrs. Sabera Aman on 25.02.2007 through his representative, Advocate Mr. Shahaj Uddin. The said wealth statement was submitted under the joint signatures of Aman Ullah Aman's wife Mrs. Sabera Aman and representative Advocate Mr. Shahaj Uddin. But, he did not mention the price of the properties and the sources of acquiring of the same in the said wealth statement. Thereafter, the Commission has directed to hold an inquiry and to verify the wealth statements submitted by the

convict-appellant No. 1-Aman Ullah Aman vide Memo No. 939. On enquiry, it is found that Aman Ullah Aman has acquired a six storied building in his own name at House No. 2, Road No. 21, Gulshan Model Town, Dhaka, and the area of land of the said building is six katha, eight chatak and twenty six square feet. The convict-appellant No. 1-Aman Ullah Aman has not shown in his wealth statement, the sources of acquiring this property. He has paid Tk. 33,44,867.00 as price of the land of the aforesaid house in favour of RAJUK. The construction cost of the said building has been assessed by the Engineer of the P.W.D, and according to such assessment report, the total construction cost of this building stands at Tk. 2,84,22,479.00. Thus, the total value of this building

including land stands at Tk. 3,17,67,446.00. The convict-appellant No. 1-Aman Ullah Aman took loan of Tk. 75,00,000.00 in connection with this building. After deduction of this loan of Tk. 75,00,000.00, the amount of his own pecuniary resource in this property stands at Tk. 2,42,67,446.00. The convict-appellant No. 1-Aman Ullah Aman has also a two storied house measuring of 2000 square feet on his paternal house at Keraniganj. He did not mention the construction cost of this two storied building in his wealth statement, the Commission, during enquiry got the valuation of the said building being assessed by the Engineer of PWD which valued at Tk. 33,96,133.00. Besides this, the convict-appellant No. 1-Aman Ullah Aman has shown in his wealth statement to

have purchased some 107 decimals land in his name, but he did not disclose the price of the value paid. The valuation of the said land has been found to be Tk. 4,63,667.00. The price of the car of Aman Ullah Aman is taka Ten lacs and the valuation of the furniture of his residence is taka five lacs. According to the wealth statement, the convict-appellant No. 1-Aman Ullah Aman has deposited Tk.5,59,034.00 in various bank. Before 1991, the convict-appellant No. 1-Aman Ullah Aman was a student leader and he had no mentionable sources of income. He also did not get any mentionable property by way of inheritance even. According to the income tax record, from 1991 to 2006, his total income is Tk.64,53,424.00. The total valuation of the properties acquired by the convict-appellant No.

1-Aman Ullah Aman in his own name is worth Tk. 3,01,86,280.00. Even, if it is taken that convict-appellant No. 1-Aman Ullah Aman has no family expenditure, the difference between his known income and the valuation of the properties acquired by himself in his own name stands at Tk.2,37,32,856.00, which he has acquired by improper means, and it is also disproportionate to his known sources of income. On the other hand, the convict-appellant No. 1-Aman Ullah Aman has shown in his wealth statement a big amount of properties acquired in the name of his wife, the convict-appellant No. 2-Mrs. Sabera Aman. According to the aforesaid wealth statement, convict-appellant No. 2-Mrs. Sabera Aman has a six storied building at Plot No.981/1, Monipur, Mirpur,

Dhaka upon 10 kathas of land. The aforesaid land has been claimed to have been acquired by Mrs. Sabera Aman by way of inheritance from her father and also by way of gift. According to the valuation report of the Engineers of PWD, the construction cost of this building is Tk. 2,69,49,571.00. After deduction of the bank loan of Tk. 70,00,000.00, the valuation of the property of the convict-appellant No. 1-Aman Ullah Aman and his wife convict-appellant No. 2-Mrs. Sabera Aman in the aforesaid building stands at Tk.1,99,49,571.00. The convict-appellant No. 2-Mrs. Sabera Aman has also another six storied building at Mouza Hazratpur, Keraniganj, Dhaka. As per the valuation report of the Engineers, the construction cost of the six storied building of Hazratpur Mouza during the construction period is

Tk. 2,19,45,383.00. Besides this, the convict-appellant No. 2-Mrs. Sabera Aman has two plots, the area of one is 12,000 square feet and another 6,000 square feet at BISIC Shilpa Nagari, Keraniganj, Dhaka for which she paid Tk. 4,68,000.00 and Tk. 2,34,000.00 respectively. She has purchased the House No. 44, Road No. 7, Block-F, Banani, Dhaka and its valuation as per deed is Tk. 49,35,000.00. Besides this, she has 660 decimals of land at Mouza Char Algi and the purchase value of the same is Tk. 51,67,000.00. Besides, there are 1101.25 decimals of land at Boilarpur Mouza and 161 decimals land at Kandi Boilarpur Mouza under Savar Upazilla in the name of the convict-appellant No. 2-Mrs. Sabera Aman and the purchase value of the same is

Tk.67,82,000.00. These lands have been purchased during 2002 to 2005. She has a Toyota car and its approximate price is Tk.5,00,000.00. She has deposits in various banks amounting to Tk.6,21,972.00; savings certificates of Tk.1,70,000.00 and cash of Tk.50,000.00. Thus, it appears that, the total valuation of the properties acquired in the name of Mrs. Sabera Aman stands at a tune of Tk.6,08,22,926.00. But, according to the income tax file of convict-appellant No. 2-Mrs. Sabera Aman, her total income from the year 1989 to 2006 is only Tk.17,08,050.00. Thus, the difference between her known source of income and the valuation of the properties acquired in her name stands at Tk.5,91,14,876.00 which is explicitly disproportionate to her known source of income.

Convict-appellant No. 1-Aman Ullah Aman has acquired these properties worth of Tk.8,28,47,232.00 through illegal and improper means in his name and in the name of his wife convict-appellant No. 2-Mrs. Sabera Aman which is inconsistent with her known source of income and to conceal the fact of acquiring such huge amount of properties, convict-appellant No. 1-Aman Ullah Aman has not mentioned the value of the properties and sources of acquiring them in the statement of wealth submitted by him. Thereafter, the Commission accorded sanction to lodge FIR against convict-appellants. On getting such sanction from the Commission, he lodged FIR against the convict-appellants under the said sections on 6.3.2007. He proved the sanction letter of the Commission to file

FIR as Exhibit-1 and the signature of the director of the Commission as Exhibit-1/1. He also proved the FIR lodged by him and his signature is Exhibit-2/1. He also identified both the convict-appellants on the dock in the Court.

In his cross-examination, he stated that he does not know whether any notice of the Commission was served upon convict-appellant No. 2-Mrs. Sabera Aman. In the FIR, it is mentioned that he verified the statement of assets vide Memo No.939 dated 18.02.2007. In fact, the aforesaid Memo No.939 would be dated 1.3.2007. The notice served upon convict-appellant No. 1-Aman Ullah Aman contained a direction to explain the source of the properties, but there was no direction to furnish price of the property. He denied that the

Commission did not give him any permission for lodging the FIR. He also denied that he lodged the FIR of this case being biased by the political opponents of Aman Ullah Aman. It was at his own initiative. It has not been stated in the FIR that the sanction letter of the Commission has been enclosed with the FIR. During inquiry, he has verified the means how Aman Ullah Aman earned money and acquired the properties. He also verified the lawful income of Aman Ullah Aman. He also made inquiry to ascertain what is the amount of lawful income of Aman Ullah Aman and whether the properties acquired by him are consistent with his known sources of income. He denied that the assessment of the value of 107 decimals of land of Aman Ullah Aman at Mouza of Keraniganj at Tk.4,63,667.00 is

not correct. He stated that he cannot say at the moment what is the valuation of the house of Gulshan and Keraniganj of Aman Ullah Aman and the house of Monipur, Mirpur and Hazratpur, Keraniganj of Mrs. Sabera Aman shown in their income tax files. He denied that the convict-appellant No. 1-Aman Ullah Aman had mentionable income before 1991. He cannot say whether the accused appellants have paid tax to the income tax department for their properties stated in the FIR. He denied that properties stated in the FIR in the name of the convict-appellants are not disproportionate to their sources of income. He also denied that not with a view to hiding the property owned by the convict-appellant No. 1-Aman Ullah Aman through improper means, these properties have been income

of Aman Ullah Aman and whether the properties acquired by him are consistent with his known source of income. He denied that the assessment of the value of 107 decimals of land of Aman Ullah Aman at Mouza of Keraniganj at Tk.4,63,667.00 is not correct. In his cross-examination, he further stated that he cannot say at the moment what is the valuation of the house of Gulshan and Keraniganj of Aman Ullah Aman and the house of Monipur, Mirpur and Hazaratpur, Keraniganj of Mrs. Sabera Aman shown in their income tax files. He denied that convict-appellant No. 1-Aman Ullah Aman had mentionable income before 1991. He cannot say whether the accused appellants have paid tax to the income tax department for their properties stated in the FIR. He denied that properties stated in the FIR

in the name of the accused appellants are not disproportionate to their sources of income. He also denied that not with a view to hiding the property owned by convict-appellant No. 1-Aman Ullah Aman through improper means, these properties have been shown to have been acquired by his wife convict-appellant No. 2-Mrs. Sabera Aman. He denied that these two accused persons have not committed any offence as alleged in the F.I.R. He has also denied that being illegally biased by the political opponent of Aman Ullah Aman, he has filed this false case implicating Aman Ullah Aman and his wife Mrs. Sabera Aman. He has also denied that he has deposed falsely. On being recalled by the prosecution, this P.W.1 also stated that he was appointed investigating officer of this case.

Thereafter, on receiving the aforesaid order on 21.03.2007, he started investigation of this case. During investigation, on perusal of the record he found that the Commission on 18.02.2007 directed the convict-appellant No.1 to submit statement of wealth and the appellant submitted the said wealth statement through representative on 25.02.2007. Thereafter, the Commission directed him to verify the aforesaid statement of wealth. He proved the aforesaid memo of the Commission as exhibit 42 and the signature of the Secretary of the Commission as Exhibit-42/1. Before this, the Commission vide Memo No.771 dated 22.02.2007 directed him to inquire the various allegations brought against the convict-appellant No. 1-Aman Ullah Aman. He proved the aforesaid memo of the

Commission as Exhibit-43 and the signature of the Secretary of the Commission as Exhibit 43/1. He stated that during investigation on 22.03.2007, he perused the income tax filed of accused appellants. He physically visited the present residence of Aman Ullah Aman. He also visited the other houses and buildings of convict-appellants at Gulshan, Banani and Keraniganj, Dhaka. He seized the income tax files of convict-appellants by two seizure lists (Exhibits 30 and 33). He also proved his signature on the aforesaid two seizure lists as Exhibit-30/3 and 33/3 respectively. He stated that, at the time of seizing these two files of income tax of Aman Ullah Aman and Mrs. Sabera Aman, Major Rezaul Karim of the Task Force was present with him. He also proved the signature of Major Rezaul Karim in the

aforesaid two seizure lists. He also identified the income tax files of Aman Ullah Aman (Exhibit-31-32) and Mrs. Sabera Aman (Exhibit-34). He examined accused Mrs. Sabera Aman and recorded her statement under section 161 of the Code of Criminal Procedure. During investigation, he examined the witnesses Mr. A.K.M. Morshed and Asker Ibne Islam and recorded their statement on 29.03..2007 under section 161 of the Code of Criminal Procedure and on the same day he seized three deeds from Mr. Askar Ibne Islam by preparing a seizure list. He proved the said seizure list (Exhibit-41) and his signature is Exhibit-41/3. He identified those three deeds which are material Exhibit-I, II, III. He received the inventory of the records and relevant papers prepared during the

inquiry from the coordinator of the Task Force-7 Major Rezaul Karim on 2.4.2007. He proved the said inventory as Exhibit-44 and his signature is Exhibit-44/1. He also identified the signature of Major Rezaul Karim on the said inventory as Exhibit-44/2. He examined convict-appellant No.1 in the Central Jail, Chittagong on 3.4.2007 and recorded his statement. Thereafter, the Commission changed the investigating officer of this case vide Memo No.1678 dated 3.4.2007. On receipt of the aforesaid order on 4.4.2007, he handed over the CD of this case including all the relevant papers, alamats, seizure lists. The valuation reports prepared by the Executive Engineer to the next investigating officer Mr. Jibon Krishna Roy. In cross-examination he stated that there are other Deputy Directors in the

Commission. He submitted the inquiry report to the Commission on 4.3.2007. No separate permission was given to verify the wealth statement of only Mrs. Sabera Aman. He was directed to submit the inquiry report within seven days by Memo No.771 dated 22.2.2007. The said inquiry report lies with their office. He was directed to verify the statement of assets submitted by convict-appellant No. 1- Aman Ullah Aman through his representative. This case was filed on 6.3.2007 and he was appointed investigating officer on 20.03.2007 and before that no investigating officer was appointed in this case. He stated that he seized the income tax file of both the accused persons during the investigation. The income tax file of convict-appellant No.1 shows that he submitted return in respect of his house of

Gulshan in the assessment year 2004-2005. This income tax file also shows that similar return was submitted for the assessment year of 2005-2006. But, he has no knowledge about all these things. The aforesaid assessment order 2004-2005 and 2005-2006 will be found at page No.171-172 and 167-168 of income tax file (Exhibits-31-32). The assessment regarding one storied house of Aman Ullah Aman at Keraniganj appears at page No.76 of the said income tax file. He took over the papers of the inventory from the Coordinator of the Task Force, Major Rezaul Karim as investigating officer on 2.4.2007. He was also one of the members of the aforesaid Task Force and, as such, he had opportunity to peruse those papers before his taking over the same. He did not seize those papers of

inventory, but he had perused those papers. He denied that he did not peruse those papers of the inventory. He does not know whether, these two accused persons have submitted revised tax return for the assessment year 2006-2007 in their income tax files. He denied that he did not seize all these papers regarding submission of the revised income tax return purposely. He denied that, the known income of these accused persons are much more than what have been stated in his charge-sheet. He denied that, he has suppressed the known source of income of the accused persons. He denied that, the procuring of the valuation report of the Engineers by influencing them. He denied that he himself took up the investigation of this case by forging influence. He denied that, the convict-appellant No. 1-Aman

Ullah Aman did not conceal anything in his statement of assets, and he is also not in possession of any property acquired by improper means. He denied that, convict-appellant No. 2-Mrs. Sabera Aman did not hide any property, and she has not acquired any property by improper means, and she has also not abetted convict-appellant No. 1-Aman Ullah Aman in the commission of any offence. He has denied that, being biased by any interested quarter with an ill-motive he has filed this false case against the convict-appellants.

P.W.-2, Bazlur Rashid, Senior Jail Super, Chittagong Central Jail, Chittagong, in his examination-in-chief, stated that on 20.02.2007, when he was posted in the Chittagong Central Jail in the same post, the accused appellant was denied in

Chittagong Central Jail. On that date, he received a notice from Durnity Daman Commission for service of the same upon convict-appellant No. 1-Aman Ullah Aman and he served the same on him. He proved the aforesaid notice as Exhibit-3 and his two signatures as Exhibits 3/1, 3/2. He further stated that, when Aman Ullah Aman was confined in Chittagong Central Jail, he appointed Advocate Mr. Kazi Sahaj Uddin as his agent to submit his statement of wealth. He proved the aforesaid lawyer's appointment letter as exhibit-4, and the signature of Aman Ullah Aman is Exhibit-4/1. He also proved his signature as Exhibit-4/2 and signature of Advocate Mr. Kazi Sahaj Uddin Mintu as Exhibits-4/3-4/3(kha).

In his cross-examination, he stated that, there was a direction in the notice to submit the statement

of wealth within 72 hours. Aman Ullah Aman appointed advocate on 22.02.2007.

P.W.-3, Advocate Kazi Sahaj Uddin Mintu,
in his examination-in-chief, stated that the accused appellant No.1 after receiving the notice of the Durnity Daman Commission appointed him on behalf of the accused appellant from the Chittagong Central Jail to submit statement of wealth. He further stated that, having been appointed as the agent of the accused appellant No.1, he submitted the statement of wealth in three pages. He proved the aforesaid statement of wealth as exhibit-5, and his three signatures as Exhibits 5/1, 5/2 and 5/3. He stated that, the convict-appellant No. 2 also put her signatures on the aforesaid statement of wealth. He identified the signatures of convict-appellant No. 2

on the aforesaid statement of wealth as Exhibits-5/4-5/6. Besides, the convict-appellant No. 2-Sabera Aman also submitted statement of wealth in her name through him. He proved the said statement of wealth submitted by the convict-appellant No. 2-Sabera Aman as exhibit-6, and his four signatures as Exhibit-6/1–6/4, He also identified the signatures of the convict-appellant No. 2-Sabera Aman as Exhibit-6/5-6/8. He stated that, he submitted this statement on 25.02.2007. He further stated that, on the same day, i.e., on 25.02.2007, he submitted another statement of wealth of the convict-appellant No. 2-Sabera Aman. He proved this statement of wealth as exhibit-7, and his signature as Exhibit-7/1. He also identified the signature of the convict-appellant No. 2-Sabera Aman as Exhibit-7/2. He

also identified the signature of the convict-appellant No. 2-Sabera Aman as Exhibit-7/2 He submitted the above statement of wealth by a forwarding letter. He proved this forwarding as exhibit-8, and his signature is Exhibit-8/1. He identified both the accused persons on the dock in the Court.

In his cross-examination, he stated that he got his appointment letter on 22.02.2007 at 5.00 p.m. from the convict-appellant No. 1-Aman Ullah Aman in the Chittagong Jail. Thereafter, on 25.02.2007 at 9.00 he submitted statement of wealth. He stated that, he could not show the source of the property in the statement for want of time. Besides, he could not consult the income tax lawyer of Aman Ullah Aman regarding the source of the wealth due to shortage of time. He obtained the signature of Sabera Aman on

the statement of wealth of Aman Ullah Aman on demand of Durnity Daman Commission.

P.W.-4, S.I., Md. Abdul Bashar, in his examination-in-chief, stated that at present he is posted at Shah Ali P.S., DMP, Dhaka as S.I. on 6.3.2007, he was attached to Kafrul P.S. as duty Officer. On 6.3.2007 at 16.15 hours on receipt of a type written F.I.R. from the informant of this case, Abdullah-al-Zahid, Deputy Director, Durnity Daman Commission, Head Office, Dhaka, he as a duty officer recorded Kafrul P.S. Case No.15 dated 6.3.2007. He duly filed up the F.I.R. form. He proved the F.I.R. form as Exhibit-9, and his signature as Exhibit 9/1. He identified the F.I.R (Exhibit-2), and his signature as Exhibit-2/2.

In his cross-examination, he stated that he recorded this case on receiving a type written F.I.R.

from the informant along with a Memo of Durnity Daman Commission. The number of the aforesaid memo of Durnity Daman Commission, Head Office, Dhaka is Dudak/73-2007(Anu-2)1057 dated 6.3.2007. He stated that, there is no mention about any such memo of Durnity Daman Commission in the column of the F.I.R. filed up by him. He denied that, the informant did not give any sanction letter bearing the memo of the Commission with the F.I.R. He denied that, such letter of sanction has been created subsequently.

P.W.-5, Nasrin Ara Surat Amin, in her examination-in-chief, stated that at present, she is posted in the Head Office of Durnity Daman Commission as Director (Inquiry). On 25.02.2007, she was posted in the same place in the same post.

She stated that, Durnity Daman Commission on 18.02.2007 directed the accused appellant No.1 to submit statement of assets, and the source of acquiring of the same in his name, and in the name of his wife, children and other members of his family. In obedience to the aforesaid order, the convict-appellant No.1 submitted the statement of assets in his name and in the name of his wife convict-appellant No.2 through his representative, Advocate Kazi Sahaj Uddin to Durnity Daman Commission on 25.02.2007, and she received the same. She proved the aforesaid wealth statement Exhibits-5-8. She also identified her signature as Exhibit-8/2. She further stated that, the convict-appellant No. 2-Sabera Aman did not appear before her at the time of submission of these wealth

statements. Besides, this Deputy Director of the Commission, Mr. Abdullah Al Zahid submitted inquiry report on 4.3.2007. On the recommendation the aforesaid inquiry report, she accorded sanction on behalf of the Commission on 6.3.2007 to file a regular case against accused appellants. She identified the aforesaid letter of sanction given by her on behalf of the Commission as Exhibit-1 and her signature is as Exhibit-1/1.

In her cross-examination, she stated that, the notice for submission of the wealth statement was issued by the Secretary of the Commission. She denied that, the Commission did not empower her to give any sanction to file this case against these accused persons.

P.W.-6, Abdul Karim Sarker, District Registrar, Dhaka, in his examination-in-chief, stated that on the requisition of Major Rezaul Karim, Coordinator inquiry team No.7, he, on perusal of the concerned volume of the District Record Room, Dhaka ascertained the deed, value of the properties transferred by three deeds bearing No.3198 dated 9.7.1991, 1631 dated 13.09.1997 and 5407 dated 2.9.1992 at Tk.70,000.00, 30,000.00 and 44,000.00 respectively. Thereafter, he submitted a report vide his office Memo No.1409 dated 18.03.2007 to Major Rezaul Karim, Co-ordinator, Inquiry Team No.7. He proved the aforesaid report as Exhibit-10 and his signature is as Exhibit 10/1.

In his cross-examination, he stated that the registration of these three deeds have not been

accomplished by him. He also stated that before the year of 2002, the Sub-Register used to accomplish the registration according to the valuation given in the deed placed before him. After the year of 2002, the registration is done according to the marked value. He has denied that in deed No. 1631 dated 13.9.1997 the deed value is less shown than the actual value.

P.W.-7, Md. Rezaul Karim, in his examination-in-chief, stated that at present he is posted in Keraniganj Upazilla as Sub-Registrar. He stated that vide D.O. No. 01/2007 dated 28.2.2007 Major Rezaul Karim, Commander, Dhalpur Camp and Coordinator Inquiry Team No. 7 sent him the numbers of some deeds and directed him to give information about those deeds including the value of

the same. In pursuance of the aforesaid order, he submitted a report stating, the deed value and the area of lands and the name of the recipients of the aforesaid deeds. According to his report, the convict-appellant No. 1-Aman Ullah Aman is the recipient of those two deeds, namely deed No. 10645 dated 1.10.2002 and deed No. 5326 dated 2.6.2004, both of Mouza-Hazratpur and area of lands is two decimals and 13 decimals, and value is Tk. 7,000.00 and Tk. 58,000.00 respectively. According to the statement of his witness, the recipients of other 37 kabala deeds, is Sabera Aman and the total area of land is 1182 decimals within Mouza Char Algi and Hazratpur Upazila Keraniganj, Dhaka. He proved the reports submitted by him about the aforesaid deeds as Exhibit-11 and

his signature is as Exhibit- 11/1-11/4. He also proved the forwarding bearing Memo No. 49 dated 11.3.2007 by which he sent the aforesaid report as exhibit-12 and his signature as Exhibit-12/1.

In his cross-examination, he stated that he has shown the value of these deeds on perusal of concerned volume and fee-register of the concerned office. He stated that, valuation of the deeds are correct.

P.W.-8, Abdul Jabbar Khan in his examination-in-chief, stated that at present he is posted at the office of the Sub- Register, Savar Upazila. On 28.2.2007, when he was posted at the same Place, Major Rezaul Karim, Commander, Dhalpur Army Camp and coordinator of the inquiry team sent him a letter asking him to give

information regarding value and area of land of the seven deeds. Thereafter, he submitted a report as per above direction, vide his office Memo No. 70 dated 1.3.2007. He proved the said report as Exhibit 13 and his signature is as Exhibit-13/1. He also proved his Memo No. 70 dated 1.3.2007 as exhibit 14 and his signature as Exhibit -14/1.

In his cross-examination, he stated that, he has shown the deed value in his report. He also stated that, the area of land of deed No. 18776 is 1101.25 decimals, and the aforesaid deed is a deed of gift and, as such, he could not show the value of the same.

P.W.-9, Md. Ismail Howlader, in his examination-in-chief, stated that at present he is posted at BRTA, Mymensingh on deputation as

Motor Vehicle Inspector. On 7.3.2007, he was attached to BRTA, Mirpur Circle on deputation as Motor vehicle Inspector. When he was attached to Mirpur circle as Motor vehicle Inspector, he ascertained the value of one Jeep bearing No. Dhaka Metro-Ga-11-4765 of Mr. Aman Ullah Aman. According to the L.C., the price of aforesaid Jeep of Aman Ullan Aman is 50,00,000.00 Japanese yen. He proved the aforesaid valuation report as Exhibit-15 and his signature as Exhibit 15/1. Besides, he also ascertained the value of a car of Sabera Aman bearing No. Dhaka Metro Ga-19-3661 (Model 2002) at Tk. 10,13,194.00 according to the sale receipt filed by Sabera Aman. He proved the aforesaid valuation report of car of Sabera Aman as Exhibit - 16 and his signature is as Exhibit-16/1.

In his cross-examination, he stated that on the verbal conversation of the I.O. of this case, he submitted these two valuation reports. He denied that he did not properly ascertain the price of two vehicles. He also denied that, the two valuation reports submitted by him are not true.

P.W.-10, Shariful Azam, in his examination-in-chief, stated that he is posted as the Executive Engineer, PWD-3, Segunbagicha, Dhaka. On 28.2.2007, when he was posted at the same place in the same post Major Rezaul Karim Commander, Dhalpur Army Camp and Co-ordinator, inquiry-3 asked him to ascertain the construction cost of two buildings at Mouza No. 370 Hazratpur, Keraniganj. In pursuance of the aforesaid order, he accompanied by some other employees of the PWD along with

the Army and police personnel visited the two storied residential building, and took measurement of the aforesaid building according to the information given by the Caretaker of the building Shahidul Islam on 3.3.2007. It was built in 1992. He, with the help of his other companions of the PWD ascertained the construction cost of the building as per government schedule of rates. The total construction cost was ascertained at Tk. 33,96,133.00. In the same way, he also ascertained the construction cost of other six-storied building, which was built in 2002 according to the information given by the Caretaker of that building, Md. Abdur Rashi. They ascertained the construction cost of the aforesaid six-stored commercial building situated at the market at Mouza Hazratpur according

to the schedule of rates of the PWD of the concerned year. The total construction cost of that building is ascertained at Tk. 2,19,45,383.00. He proved the reports of the construction cost of the aforesaid two buildings as exhibits 17-21.

In his cross-examination, he stated that he ascertained the construction cost of both the buildings on the same day. He visited the two buildings physically and took the note of measurement and other relevant information of these two buildings and thereafter according to the schedule rate of the PWD ascertained the construction cost of these two buildings. He denied that, he did not ascertain the cost of these two buildings according to the schedule of rate of the PWD. He denied that, the reports submitted by him

in respect of the cost of these two buildings are not true. He also denied that, he has submitted this report as per demand of the complainant side. He has also denied that, when they went to these two buildings for ascertaining construction cost, no caretaker of Aman Ullah Aman was present there.

P.W.-11, Md. Rafiqul Islam, Executive Engineer, in his examination-in-chief, stated that he is working in the PWD, Mirpur, Dhaka as Executive Engineer. The Chief Engineer of the PWD on the requisition of Anti-Corruption Commission directed him to ascertain the construction cost of two buildings, of which one is a commercial building at House No.2, Road No. 21, Gulshan-1, Dhaka, and the other one is a residential building named “Sabera Bhaban” at 981/1, East Monipur, Mirpur, Dhaka. In pursuance of the aforesaid order, he personally

visited the aforesaid two buildings and ascertained the construction cost of the two buildings as per the rate of the schedule of the P.W.D. with the help of the Executive Engineer Abdur Razzak and other staffs of the PWD. The total cost of construction of the six storied commercial building of Gulshan is Tk. 2,84,22,679.00. He proved the valuation report of this commercial building as Exhibit-24 and his signature as Exhibit-24/1. Besides, he also assessed the total construction cost of the residential building (named, Sabera Bhaban) of 981/1, East Monipur, Mirpur, Dhaka at Tk. 2,69,49,571.00. He has proved the valuation report of this six storied residential building as Exhibit-25 and his signature as Exhibit-25/1.

In his cross-examination, he stated that his area is Mirpur, Gulshan is not his area, he assessed the

cost of these two buildings on 1.3.2007 at the order of Chief Engineer of the PWD. He submitted report of the construction cost to Major Rezaul Karim, Co-Ordinator Special Task Force-7. He visited these two buildings along with the Task Force. He did not give any notice to the owner of these two buildings before assessment of the construction cost. But, at the time of assessment of the construction cost the representative of the owner was present. He denied that, the reports of the construction cost of these two buildings submitted by him are not true. He denied that, he assessed the construction cost of these two buildings perfunctorily. He denied that, being biased by the complainant side, he has submitted false report.

P.W.-12, Md. Mozammel Hossian, in his examination-in-chief, stated that he is the Manger of Prime Bank Ltd., Gulshan Branch, Dhaka. He stated that on 8.4.2007 Mr. Jibon Krishna Roy, Deputy Director, Anti Corruption Commission wrote a letter asking them to inform whether there is any account in their bank in the name of Aman Ullah Aman, his wife Sabera Aman and some other members of their family. In compliance with the aforesaid letter, they, on perusal of their offence record, have informed that, Aman Ullah Aman has a current account bearing No. 11009451 and there is a deposit of Tk. 27,881.00 as on 25.2.2007. Besides, this Aman Ullah Aman has a house building loan account No. 72400071, against which the bank granted loan of Tk. 75,00,000.00 for construction of a six storied

residential building on Plot No. 2, Road No. 21, Gulshan-1, Dhaka. The area of land of the aforesaid plot is 6.53 Katha. At present Tk. 6,31,673.21 remains unpaid in the aforesaid loan account of Aman Ullah Aman, and Sabera Aman has also current account No. 11012353, in which the balance was Tk. 36,566.00 as on 25.2.2007. Besides this, Sabera Aman has also a house building loan account No. 72400126, against which the bank sanctioned a loan of Tk. 70,00,000.00 in favor of Sabera Aman for finishing the incomplete work of building on 17.6 decimals of land at Mouza Senpara Parbota, Mirpur. She obtained aforesaid loan from the bank. The accused Sabera Aman is the owner of the aforesaid land. Tk. 67,28,632.37 remained unpaid out of the aforesaid loan up to 25.2.2007. He proved

the aforesaid bank statement in 35 pages as exhibit-27. He identified convict-appellant No. 1-Aman Ullah Aman and his wife convict-appellant No. 2-Sabera Aman on the dock of the court.

In his cross-examination, he stated that, Aman Ullah Aman took Tk. 65,00,000.00 out of the aforesaid sanctioned loan from their bank. Usually, money is disbursed and recovered through current account, but there is also provision for the disbursement of the loan through loan account.

P.W.-13, Md. Ehtesham-Ul-Haque Chowdhury in his examination-in-chief, stated that at present he is the Manger of Publai Bank, Gulshan Branch. He stated that Sabera Aman has a savings account No. 565-101-82759 with their bank. Sabera Aman transferred Tk. 11,00,000.00 on 31.3.2004

from her aforesaid savings account to the current account No. 565-901-21787 of Askar Ibne Islam. She also transferred Tk. 28,00,000.00, vide cheque No. 3152481 dated 04.04.2004 from her aforesaid savings account to the account of the said Askar Ibne Islam of their bank. Besides this, the accused Sabera Aman transferred Tk. 5,00,000.00 from her above savings account, vide cheque No. 8310795 on 7.12.2005. The senior Officer of the bank, Mr. Myen Uddin prepared the bank statement and sent the same to the Task Force. He proved the aforesaid bank statement as Exhibits 28 and 29. He proved the signature of the Senior Officer of the bank, Mr. Myedn Uddin on the computer print bank statement as exhibit-29/1.

In his cross-examination, he stated that, besides the aforesaid three transactions, Sabera Aman made many other transactions in the aforesaid savings account. The bank statement was prepared on 15.4.2007 from the computerized ledger for submission to Anti Corruption Commission.

P.W.-14, Md. Altaf Hossain was declared tendered and the cross was declined.

P.W.-15, Md. Faridur Rahman, in his examination-in-chief, stated that at present he is the Head Assistant of Circle-45, Income Tax Zone-4, Dhaka, and on 28.3.2007, he was also attached to the same place in the same post. On 28.3.2007, Mr. Abdullah Al Zahid, Deputy Director, Anti Corruption Commission seized income tax file of convict-appellant No. 1-Aman Ullah Aman from his custody, and after seizing of the same, he took

Jimma of the same by putting signature in the Jimmanama written on the bottom of the aforesaid seizure list. This income tax file was seized in presence of the Assistant Commissioner of Taxes who also put his signature on the seizure list. He proved the seizure list which is Exhibit-30 and the signature of Assistant Commissioner of Taxes is Exhibit-30/1. He also proved his signature on Jimmanama written at the bottom of the seizure list as Exhibit-30/2. He has produced the income tax file Nos. 1 and 2 of convict-appellant No. 1-Aman Ullah Aman and proved the same as Exhibit-31 and 32 respectively.

In his cross-examination, he stated that the income tax file of convict-appellant No.1, Aman Ullah Aman was opened for the assessment year of

1991-1992. But, it appears from income tax file No. 2 that the convict-appellant No. 1-Aman Ullah Aman has income tax file in another circle for the assessment year 1898-1990. He stated that, income tax file is divided into two parts, one is permanent part and the other is miscellaneous part. The seizing authority for the sake of convenience of their understanding marked the two seized files as file No. 1 and 2. The Anti Corruption Commission collected the shown income of Mr. Aman Ullah Aman from the income tax file preserved in their office. The matter relating to the revised income tax return of the assessment year 2006-2007 does not lie with this record. In the income tax return of Aman Ullah Aman for the year 1992-1993, and one storied house has been shown as before. In the statement of

assets submitted for the income assessment year 2004-2005 it has been stated that, the construction of a four storied building was started on a 314.12 square meter area on Plot No. 2, Road No. 21, Gulshan, and construction of the same upto four storied completed in the year 2004. The value of the furniture was shown at Tk. 1,50,000.00 according to the certified copy of the statement of assets dated 30.6.89. But, the original record in respect of the aforesaid certified copy does not lie with this file.

Aman Ullah Aman has shown in his return for the assessment year 2006-2007, that he has cash in hand Tk. 5,27,571.00, but the same has yet not been disposed of. He stated that, he received the revised income tax return submitted by Aman Ullah Aman on 26.2.2007. He proved the paper regarding the

submission of aforesaid revised return as Exhibit-A-A2. He said that, Aman Ullah Aman paid income tax in respect of his one storied building of Keraniganj on 4.3.2007. He identified the prayer of the assessee and acknowledgement receipt of their office regarding the payment of income tax of Aman Ullah Aman on 6.3.2007 in respect of his land cruiser Toyota bearing No. Dhaka Metro Kha-11-4765 as exhibit-D-D-2.

P.W.-16, Md. Abul Kashem in his examination-in-chief he stated that he is the Head Assistant of the office of the Deputy Commissioner of Taxes, Tax Zone-5, Dhaka. On 28.3.2007 when he was posted there Mr. Abdullah Al-Zahid, Deputy Director, Anti Corruption Commission seized the income tax file of Sabera Aman from him in

presence of their officer Md. Mohidul Islam, Assistant Commissioner of Taxes by preparing a seizure list. He proved the seizure list as Exhibit-33 and the signature of the officer Mr. Md. Mohidul Islam as Exhibit-33/1. He further stated that, the income tax file seized by the aforesaid seizure list was given in Jimma to him obtaining his signature in the Jimmanama written at the bottom of the seizure list. He proved his signature on the Jimmanama as Exhibit-33/2. He produced the aforesaid seized income tax file of Sabera Aman and identified the same as Exhibit-34.

In his cross-examination, he identified the revised return of the assessment year 2006-2007 submitted by Sabera Aman on 25.2.2007 as Exhibit-E and his signature is as Exhibit-E/1 and

acknowledgement receipt appearing therein as Exhibit-E/2. He stated that, accused Sabera Aman applied for payment of income tax in respect of 466.50 decimals of land of Keraniganj under section 19B on 6.3.2007. He identified the receipt of the copy of the aforesaid petition as Exhibit-F and his signature is Exhibit F/1 and receipt of the pay order as Exhibit-F/2 and Cash Memo Chalan of Bangladesh bank as Exhibit-F/3. He also identified the application for payment of income tax of 4th, 5th and 6th floor of the six storied building of Sabera Aman at Keraniganj as exhibit-G and his signature is as Exhibit-G/1, and the receipt of the pay order as Exhibit-G/2, and the Chalan of the Bangladesh Bank as Exhibit-G/3. He identified the copy of the application for payment of income tax under section

19B in respect of the 50% share of the property on Plot No. 44, Road No. 7, Block-f, Banani, Dhaka, the total area is six katha 13.5 chhatak which is Exhibit-H and his signature is Exhibit-H/I, receipt of pay order is Exhibit-H/2, and the chalan of the Bangladesh Bank is Exhibit-H/3. He identified the received copy of the petition praying for payment of income tax under section 19BB in respect of 456.50 decimals of land of Hazratpur Mouza as Exhibit-I and his signature is Exhibit I/1. The copy of pay order is Exhibit-I/2 and the chalan of the Bangladesh Bank as Exhibit-I/3. He identified the receipt of the copy of the petition applied or payment of income tax in respect of 660 decimals of land at Mouza Char Algi as Exhibit-J, and his signature is Exhibit-J/1, copy of pay order is Exhibit-J/2, and the chalan

of the Bangladesh Bank as Exhibit-J/3. He identified the received copy of the petition as Exhibit J/4. He identified the receipt of the petition applied for payment of income tax in respect of 161 decimals of land of Kandibilerpur Mouza, which is Exhibit-K and his signature is Exhibit-K/1, receipt of the pay order is Exhibit-K/2 and the chalan of the Bangladesh Bank is Exhibit-K/3. He identified the received copy of the petition praying for additional payment of income tax amounting to Tk. 21,525.00, and if there is any mistake in the assessment which as Exhibit-L and his signature as Exhibit-L/1, receipt of the pay order Exhibit-L/2 and chalan of the Bangladesh Bank as Exhibit-L/3. He has also identified the received copy of the petition filed by Sabera Aman praying for payment of tax in respect

of her Toyota car as Exhibit-M, and his signature is Exhibit-M/1, copy of the payment order is Exhibit-M/2. He stated that, the original copy of all these papers are lying in their office. He has again identified the received copy of the application filed by Sabera Aman for payment of tax after the assessment under section 19B in respect of the House No. 981/1, East Monipur, Mirpur as Exhibit-N and his signature is Exhibit-N/1 and the chalan of Bangladesh Bank is Exhibit-N/2. He stated that, all these petitions and papers have been filed before them after the completion of the assessment. These petitions have not been filed in due time. The assessment under sections 19B and 19BB have been completed long ago. The assessment of assessment year 2006-2007 has not yet been completed. He

identified that he has suppressed the fact in fear of the informant side. He identified that, all these applications are legally acceptable. He has denied that, these petitions have been filed in due time.

P.W.-17, Iktiar Uddin Mohammad Mamun, in his examination-in-chief he stated that he is a Deputy Director of Tax. At present he is attached to the Central Intelligence Cell of the National Board of Revenue (NBR) as Deputy Director and stated that the Anti-Corruption Commission asked him to furnish the statement of accounts with reference to the income tax file of Aman Ullah Aman. On such requisition, he prepared the year wise accounts of income, expenditure and savings of Aman Ullah Aman according to his income tax file bearing TIN No. 110-102-5295 for

the assessment year 1991-1992 to 2006-2007. He ascertained the income and tax from the assessment year 1991-1992 to 2005-2006. The income and tax of the assessee for the assessment year 2006-2007 have yet not been assessed. He stated that, according to the income tax file of Aman Ullah Aman his total income from the assessment year 1991-1992 to 2006-2007 is Tk. 1,08,14,740.00, and total expenditure is Tk. 47,36,450.00. He stated that, he has prepared this statement of accounts on perusal of the two income tax files (Exhibits-31 and 32) of Aman Ullah Aman. He proved the aforesaid statement prepared by him as Exhibit-35 and his signature is Exhibit-35/1. He has also stated in his evidence that, the Anti-Corruption Commission directed him to submit the year wise accounts of

income and expenditure of Sabera Aman on the basis of income tax return submitted by her and assessment order thereof. On such direction of Anti Corruption Commission, he prepared the aforesaid statement on the basis of the income tax file (Exhibit-34) of Sabera Aman. According to the income tax file of Sabera Aman bearing TIN No. 197-102-0149 the total income and expenditure of Aman Ullah Aman during the assessment year 1989-1990 to 2006-2007 are Tk. 19,68,560.00 and 5,91,000.00 respectively, and her total savings during such period is Tk. 13,77,560.00. He proved the aforesaid statement prepared by him as Exhibit-36 and his signature as Exhibit 36/1. He stated that, both the assessee, i.e., Aman Ullah Aman and his wife Sabera Aman submitted tax return for the

assessment year 2006-2007, but their assessment have yet not been completed. The income tax file of convict-appellant No. 1-Aman Ullah Aman and convict-appellant No. 2-Sabera Aman were opened on 5.8.1993 and 27.11.1989 respectively. He further stated that, after preparing the aforesaid two statements he submitted the same to Mr. Abdullah Al-Zahid, Deputy Director, Anti Corruption Commission. He stated that, the return of tax should be submitted within the respective assessment year. After the expiry of the stipulated time for submission of the tax return there is no scope to submit the same according to law.

In his cross-examination, he stated that, he is not the officer of the tax circle or region of which convict-appellant No. 1-Aman Ullah Aman and

convict-appellant No. 2-Sabera Aman are the assesseees. He prepared these two statements after consultation with concerned officer of the respective tax circle and region. He has prepared these statements on perusal of the concerned income tax files. The initial capital of the assesseees was not called for from him. Besides, there is no relationship between the initial capital and the income and expenditure of the tax payees. The closing capital has also no relations with income and expenditure of an assesseees, and that is why, he did not show any initial capital and closing capital of the assesseees in his statement. He denied that, he did not prepare the income and expenditure statements of these two accused persons properly.

P.W.-18, Md. Luthful Aziz, in his examination-in-chief, stated that at present, he is the

Executive Engineer of E/M, Division-7, PWD. At the relevant time, i.e., on 20.3.2007, he was attached to the Wood department of the PWD as the Executive Engineer. He stated that at the order of the Chief Engineer of the PWD, he assessed the valuation of the wooden furniture of House No. 260, Road No. 19, New DOHS, Mohakhali, Dhaka and submitted report. He has assessed total valuation of the various types of furniture of the aforesaid residence at Tk. 7,21,200.00. He proved the aforesaid valuation report of the furniture assessed by him as Exhibit-37 and his signature is Exhibit 37/1. He also stated that, the SDE Mr. Mamunur Rashid and Sub-Assistant Engineer Mr. Nazrul Islam also put the signature on this valuation report and he identified their signatures as Exhibit 37/2 and 37/3, respectively. He stated that, after preparing the

valuation report he forwarded the same to the Executive Engineer of PWD-2, Mirpur Division, Dhaka on 20.3.2007, who submitted the same to the Task force-7 vide Memo No. 454 dated 21.3.2007. He proved the aforesaid Memo No. 454 dated 21.3.2007 of the Executive Engineer, PWD, Mirpur, Division, Dhaka as Exhibit-38 and the signature of the aforesaid Executive Engineer as Exhibit-38/1.

In his cross-examination, he denied that his valuation is not correct, he also denied that, the valuation report of the furniture prepared by him has no connection with this case. He also denied that, the report submitted by him and the evidence adduced by him is not correct.

P.W.-19, Abdur Razzak Khan, in his examination-in-chief he stated that at present, he is

attached to the E/M Division 4, PWD, Dhaka as Executive Engineer. On 2.4.2007, he was attached to E/M Division-6, PWD, Dhaka. He stated that he was directed to ascertain the valuation of the electrical materials of House No. 260, Road No. 19 New DOHS, Mohakhali, Dhaka. Accordingly, he along with some other employees of his office physically visited the aforesaid house and ascertained the valuation of the electrical materials of the aforesaid house. According to his assessment, the total value of the electrical materials is Tk. 8,29,000.00. He proved the aforesaid valuation report of the electrical materials as Exhibit-39 and his signature is Exhibit-39/1. He further stated that besides this, he has also assessed the valuation of the electrical works of House No. 2, Road No. 21,

Gulshan-1 on 1.3.2007. He physically visited the aforesaid house and assessed the electrical works of the house as per schedule of the rate of PWD. The total valuation of the electrical works of the said house has been assessed at Tk. 85,82,000.00 (Eighty five lacs eighty two thousand taka). He stated that, the aforesaid house is a six storied building having an area of 2050 square meter. He identified the aforesaid valuation report of the electrical works (Exhibit-23) and his signature as Exhibit-23/2. He has also stated that they physically visited the House No. 2, Road No. 21, Gulshan-1, Dhaka on 1.3.2007 and assessed the overall valuation of the house. He helped in assessing the valuation of the electrical works of the house and he also put his signature on the valuation report. He identified his signature on

the overall valuation report as Exhibit-24 and his signature as Exhibit-24/2. He has further stated that, he has helped in assessing the valuation of the electrical works of House No. 981/1, East Monipur, Mirpur, Dhaka. He identified the valuation assessment report of the aforesaid house of East Monipur is Exhibit-25 and his signature as Exhibit 25/2.

In his cross-examination, he has denied that the report submitted by him does not relate to this case. He denied that, these electrical materials do not belong to these accused persons. He denied that, the report submitted by him is not true. He denied that, he prepared this report and submitted the same as per demand of the Task Force. He also denied that he deposed before the court falsely.

P.W.-20, Tanvir Hossain, in his examination-in-chief, stated that he is the General Manger of Ahmed Hossian Arms Company of 69 Baitul Mokarram, Dhaka. The Special Task force-7 directed him to ascertain the value of some fire arms vide D.O. No. 6/2007 dated 21.3.2007. In pursuance of the above direction he ascertained the value of four fire arms, namely one 12 bore shot gun No. SBBLPC 405849 one 12 bore shot gun No. D 609063-M, one .32 bore NPB Pistol and one .32 bore NPB Revolver at Tk. 40,000.00 10,000.00 12,000.00 and 10,000.00 respectively. He further stated that, after ascertaining the value of the aforesaid fire arms he submitted the report to the Task force-7 on 24.3.2007. He proved the aforesaid report as Exhibit-40 and his signature as Exhibit 40/1.

In his cross-examination, he denied the suggestion that the valuation report of the fire arms submitted by him is not true.

P.W.-21, Askar Ibne Islam, in his examination-in-chief, stated that convict-appellant No. 2-Mrs. Sabera Aman is his full younger sister and convict-appellant No. 1-Aman Ullah Aman is the husband of his aforesaid sister. On 29.3.2007, the investigating officer of this case seized three documents from him on the basis of a seizure list and thereafter gave the same in his Jimma. He proved the aforesaid seizure list as Exhibit-41. He further stated that, these seized deeds were given in his Jimma by a Jimmanama written at the bottom of the seizure list. He also put his signature on the seizure list acknowledging the receipt of the copy of

the same. He proved his signature on the seizure list as Exhibit-41/1. He also proved his signature in the Jimmanama written on the seizure list as Exhibit-41/2. He proved the seized deed No. 2282 dated 9.2.2003 as material Exhibit-I. The recipient of this deed is his elder brother A.K.M. Morshed and the executant of it is one Md. Mahin and the total lands of this deed is 1133.25 decimals and the deed value is Tk. 58,7000/-. He proved the another deed bearing No. 18736 dated 9.8.2005 as Exhibit-II. The recipient of this deed is Sabera Aman and the executant of it is A.K.M. Morshed and the area of lands transferred by this deed is 1101.25 decimals and the deed value is Tk. 1,12,73,000/-. Material Exhibit-II is the certified copy of the aforesaid deed. The other seized deed is deed No. 22854 and the

amount of land transferred by this deed is six katha 13.50 chhatak and the deed value is Tk. 98,70,000.00. The executant of this deed is M. A. Zaman and the recipient are Sabera Aman and Alhaj Mohammad Abdullah. He proved the certified copy of the aforesaid deed as material Exhibit-III. He further stated, he has a current account with Pubali Bank, Gulshan Branch. His sister Sabera Aman has also an account with the said bank. He also stated that, he took a loan of Tk. 44,00,000.00 from the account of his sister in the aforesaid bank on the basis of three cheques on three different dated, i.e., on 31.03.2004, Tk. 11,00,000.00, on 04.04.2004, Tk. 28,00,000.00 and on 7.12.2005 Tk. 5,00,000.00. He identified his sister convict-appellant No. 2-

Sabera Aman and brother in law convict-appellant No. 1-Aman Ullah Aman on the dock of the court.

In his cross-examination, he stated that he lives at the residence of 981 Monipur, Mirpur which he got by way of inheritance in his share from his father. His brother, A.K.M. Morshed also lives in this house which he got by way of inheritance in his share. His elder brother, A.K.M. Morshed and sister Hazera Ahmed gifted their share, which they got by way of inheritance in the aforesaid house, to Sabera Aman. Besides this, convict-appellant No. 2-Sabera Aman also got share by way of inheritance. He also stated that, the deed No. 18736 is a Heba deed. AKM Morshed purchased 1133.25 decimals of land by the deed No. 2282. Convict-appellant No. 2-Sabera Aman is the owner of 50% land of the deed

No. 22854. He also stated that, he paid back the loan worth Tk. 44,00,000.00 to his sister Sabera Aman in the same assessment year.

P.W.-22, A.K.M. Morshed in his examination-in-chief, stated that convict-appellant No. 1-Aman Ullah Aman is his brother in law and convict-appellant No. 2-Sabera Aman is his full sister. He is the recipient of the deed No. 2282 dated 9.2.2003 and on the basis of this registered deed he has acquired 1133.25 decimals of land at a cost of Tk. 58,07,000.00, Subsequently, he has transferred 1101.25 decimals of lands out of the aforesaid 1133.25 decimals of land to his younger sister Sabera Aman by a registered deed No. 18736 dated 9.8.2005 and the price of the aforesaid lands has been stated in the deed as Tk. 1,12,73,000.00. He further stated that he purchased the aforesaid

1133.25 decimals of land by the deed No. 2282 dated 9.2.2003 taking Tk. 58,07,000.00 from Aman Ullah Aman as loan. He denied that Aman Ullah Aman purchased this land by his own money in benami. He stated that, he himself purchased these lands taking money from him as loan. At this stage, the prosecution was declared tendered and cross-examination him.

In his cross-examination, he denied that the real owner of the aforesaid 1133.25 decimals of lands is convict-appellant No. 1-Aman Ullah Aman and that he is only a benamder. He stated that he did not show in his income tax file the alleged purchase of this property in his name in the assessment year 2002-2003. He also did not mention anything about the purchase of this property in his income tax

return in the assessment year 2003-2004. He also did not pay the tax or purchased this property worth of Tk. 58,07,000.00. He stated that the aforesaid Tk. 58,07,000.00 does not belong to him and that the same belongs to Aman Ullah Aman. He denied that as Aman Ullah Aman purchased this property in benami. Subsequently, he has been compelled to transfer the same in the name of Aman Ullah Aman's wife Sabera Aman by a deed of Heba. He denied that he was simply a benamder of convict-appellant No. 1-Aman Ullah Aman in respect of these 1133.25 decimals of lands. He denied that he has manufactured the story of taking loan from Aman Ullah Aman with a view to save his sister and brother in law. He has also denied that, as the accused persons are his sister and brother-in-law he

has deposed falsely suppressing the truth to protect them. The Defence also cross-examined these witnesses. In such cross-examination, he stated that, he paid back the entire loan money obtained from Aman Ullah Amun in the same assessment year. He applied for showing this land, subsequently, in his income tax file. He is a Marine Engineer and he served in foreign ship. He could not show this property in his income tax file in time as his income tax adviser did not give him advice to do so.

P.W.-23, Jibon Krishna Roy, in his examination-in-chief, stated that at present, he is posted as the Deputy Director, Anti Corruption Commission, Head Office, Dhaka. He stated that having been appointed as investigation officer of this case, vide Memo No. C-04-2007(Inquiry-

2)/1678 dated 3.4.2007 of Anti Corruption Commission, he took over the CD and alamats of the case on 4.4.2007. After taking up the investigation on perusal of the CD of the case, he found that, the valuation reports of the buildings, lands, furniture, electrical materials two car and four fire arms, which have been shown in the wealth statement of the accused persons, are lying with the CD. During investigation, he visited the six storied building of Sabera Aman at 981/1, East Monipur, Mirpur on 7.4.2007. He also visited the dwelling house of accused persons at 1/E, House No. 260, Lane- 19, Lake Road, New DOHS, Mohakhali, Dhaka. On the same day, he also visited the House of Plot No. 44, Road No. 7, Banani, Dhaka. He also visited convict-appellant No. 1-Aman Ullah Aman's

House No. 2 Road No. 21, Gulshan Model Town, Dhaka, which is a six storied building on 8.4.2007. He visited the concerned income tax offices and verified the seizure list of the income tax files of accused appellants. He also examined two Assistants namely-Md. Abul Kashem and Faridur Rahman of the concerned offices, who took jimma of the two income tax files of the accused persons. He visited the Prime Bank, Gulshan Model Town Branch are requested the authority to give information about the loan sanctioned against accused persons. He visited the six stored building of Sabera Aman and two storied building of Aman Ullah Aman at Hazratpur, Keraniganj. He collected the bank loan accounts of the accused persons containing 35 pages, which is Exhibit-27. He

examined the witness and the officials, who submitted the valuation reports of the buildings, cars and lands of the accused persons. He examined convict-appellant No. 1-Aman Ullah Aman in Dhaka Central Jail and he also examined accused Sabera Aman and her brother Asker Ibne Islam and recorded their statements. He obtained statements of bank accounts of Sabera Aman and her brother Asker Ibne Islam from Pubali Bank, Gulshan Model Town Branch. He proved these two statements of Bank accounts which are Exhibits-28 and 29. He perused the records prepared by the officer of NBR regarding the property of convict-appellant No. 1-Aman Ullah Aman and convict-appellant No. 2-Sabera Aman and compared the same with the income, expenditure and savings of them with

reference to their income tax files, and found the same correct. On perusal of the evidence, alamats and other materials on record and the CD of the case, the prima-facie case being made out against both the accused persons, he submitted memo of evidence to the higher authority seeking permission to submit charge sheet. Thereafter, he submitted charge sheet bearing No. 144 dated 29.4.2007 against convict-appellant No. 1-Aman Ullah Aman under sections 26 and 27 of the Anti Corruption Commission Act, 2004 and Rule 15 Gha (5) of the Emergency Power Rules, 2007 and Section 5(2) of the Prevention of Corruption Act, 1947, and against convict-appellant No. 1-Sabera Aman under sections 26 and 27 of the Anti Corruption Commission Act, 2004 and Rule 15(Gha) (5) of the Emergency Power

Rules, 2007 and section 109 of the Penal Code, 1860. Convict-appellant No. 1-Aman Ullah Aman and convict-appellant No. 2-Sabera Aman by abusing the power have acquired the properties worth of Tk. 9,84,63,741.00 which are disproportionate to the known sources of their income through unfair means. He identified both the accused persons on the dock in the court.

In his cross-examination, he stated that during investigation, he did not visit the offices of the Ministry of which Aman Ullah Aman was the State Minister. He does not know whether there was any case against Aman Ullah Aman during his tenure of office as the State Minister for the Ministry of Education, Health and Labour and Employment. He does not know whether the income is not shown in

the income tax file, is lawful income. The Anti Corruption Commission did not serve any separate notice upon convict-appellant No. 2-Sabera Aman to submit wealth statement. He stated that, during investigation, he himself did not seize any paper. He did not issue any notice to convict-appellant No. 1-Aman Ullah Aman and his wife convict-appellant No. 2-Sabera Aman before his physical visit to the houses and buildings owned by them. He perused the income tax return of Aman Ullah Aman for the assessment year 1991-1992 to 2006-2007. Convict-appellant No. 1-Aman Ullah Aman was the State Minister of the Ministry of Labour and Employment. Convict-appellant No. 2-Sabera Aman had served in a bank before her marriage. After marriage she did not do any job. He denied that he intentionally did

not seize some papers of the accused persons from the income tax department. He also denied that with an ill-motive, he did not seize the statement of assets and the income tax return of the assessment year 2006-2007 filed by the accused persons under sections 19B, 19BB and 19BBB of the Income Tax Ordinance 1984. He denied that the assessment of the value of the properties in the name of Aman Ullah Aman at Tk. 3,31,75,000.00, and the assessment of the properties in the name of Sabera Aman at Tk. 6,62,88,732.00, are not true. He denied that convict-appellant No. 1-Aman Ullah Aman did not acquire any property through improper means which is disproportionate to his known source of income. He denied that, Aman Ullah Aman is not the owner of 11-1.25 decimals of lands of Mouza

Boilarpur and that Sabera Aman is the owner of the same on the basis of a deed of Heba. He denied that convict-appellant No. 2-Sabera Aman did not give Tk. 44,00,000.00 to his brother Asker Ibne Islam. He stated that convict-appellant No. 1-Aman Ullah Aman and convict-appellant No. 2-Sabera Aman opened income tax file from the assessment year of 1991-1992 and 1989-1990, respectively. He denied that convict-appellant No. 1-Aman Ullah Aman paid tax from the assessment year 1989-1990. He denied that, Aman Ullah Aman is the son of a rich man. He denied that convict-appellant No. 1-Aman Ullah Aman did not hide anything about his assets in his wealth statement. He denied that he did not give the accused any opportunity of being heard during investigation of the case. He denied that the

statement of wealth has been properly furnished in the income tax file of convict-appellant No. 2-Sabera Aman. He denied that convict-appellant No. 2-Sabera Aman has not abetted any offence alleged to have been committed by her husband convict-appellant No. 1-Aman Ullah Aman. He denied that being biased by the political opponents of convict-appellant No. 1-Aman Ullah Aman, he has filed this charge sheet against these accused persons; he denied that, he did not investigate this case properly.

The learned Special Judge, Court No.1, Dhaka after hearing the parties and proper assessment of evidence convicted the convict-appellant No. 1-Aman Ullah Aman under section 26(2) of the Durnity Daman Commission Ain, 2004 and Rule 15 Gha (5) of the Emergency Power Rules, 2007 and

sentenced him under section 26(2) of the Durnity Daman Commission Ain, 2004 to suffer simple imprisonment for 3 (three) years and the convict-appellant No. 1-Aman Ullah Aman is also found guilty of the charge under section 27(1) of the Durnity Daman Commission Ain, 2004 read with section 5(2) of the Prevention of Corruption Act, 1947 and he is convicted and sentenced thereunder to suffer rigorous imprisonment for 10(ten) years and also to pay a fine of Tk.10,00,000/- (Taka ten lac), in default of payment of fine, to suffer rigorous imprisonment for 1(one) year more. The properties of the convict-appellant No. 1, Aman Ullah Aman acquired through improper means in his own name and in the name of his wife convict-appellant No. 2- Mrs. Sabera Aman disproportionate to lawful known

sources of income be confiscated to the State. Both the sentences of convict-appellant No. 1-Aman Ullah Aman shall run consecutively. The convict-appellant No. 2-Mrs. Sabera Aman is found guilty of the offence under section 27(1) of the Durnity Daman Commission, 2004 read with section 109 of the Penal Code, 1860 and she is convicted and sentenced thereunder to suffer simple imprisonment for 3(here) years. Convict-appellant No. 1-Mrs. Sabera Aman is found not guilty of the charge under section 26(2) of the Durnity Daman Commission Ain, 2004 and Rule 15Gha(5) of the Emergency Power Rules, 2007 read with section 109 of the Penal Code, 1860 and she is acquitted thereof. The total period of custody of the convict-appellants served in the meantime in connection with this case,

shall be deducted from the sentence under section 35A of the Code of Criminal Procedure, 1898 by the judgment and order of conviction and sentence dated 21.06.2007 in ACC G.R. No.12/2007 arising out of Kafrul P.S. Case No.15(3)2007.

It is stated that against the said judgment and order of conviction and sentence dated 21.06.2007 passed by the learned Special Judge, Court No.1, Dhaka, the convict- appellants preferred Criminal Appeal No. 3990 of 2007 before the High Court Division.

It is further stated that the said criminal appeal was heard and disposed of on 16.08.2010 before the Division Bench of the High Court Division. The High Court Division after hearing the parties allowed the appeal on the following observations:

“ The initiation of the proceeding is not in accordance with law. The income tax return was filed but it was not considered, through the case was disposed of by the income tax authority. Further income tax return was not considered while disposing of this case by the tribunal. The assessment made by the engineer is not supported by the documentary evidence. Engineer was not declared as an expert. Considering those aspects we find substance in this appeal. Accordingly the judgment and order of conviction and sentence dated 21.06.2007 passed by the Special Judge, Special Court No.1, Dhaka in Special Case No.01 of 2007 arising out of Kafrul P.S. Case No.15(3)2007 (corresponding to ACC G.R. No.12 of 2007) convicting the accused appellant No.1 under section

26(2) of the Anti Corruption Commission Act, 2004 and Rule 15Gha(5) of the Emergency Power Rules, 2007 and sentencing him to suffer rigorous imprisonment for 3(here) years and also convicting the appellant No.1 under section 27(1) of the Anti Corruption Act, 2004 read with section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him to suffer rigorous imprisonment for 10(ten) years with fine of Tk.10,00,000.00 (ten lac) only, in default to suffer rigorous imprisonment for 1(one) year more and both the sentences would run consecutively and convicting the convict-appellant No. 2-Sabera Aman under section 27(1) of the Anti Corruption Commission Act, 2004 read with section 109 of the Penal Code and sentencing her to suffer rigorous imprisonment for 3(three) years and

further more properties of the appellants mentioned in the case be confiscated to the State is hereby set aside.

Since the appellants are on bail, let them be released from their respective bail bond.”

Against the aforesaid judgment and order of acquittal dated 16.08.2010 passed by the High Court Division in Criminal Appeal No. 3990 of 2007, the Respondent No. 2-Durnity Daman Commission preferred Criminal Petition For Leave To Appeal No. 428 of 2013 before the Hon'ble Appellate Division. The Hon'ble Appellate Division after hearing the parties set aside the judgment and order of the High Court Division so far as it relates to conviction and sentence of the appellants under section 27(1) of the Durnity Daman Commission

Ain, 2004 read with section 5(2) of the Prevention of Corruption Act, 1947. The matter is remanded to the High Court Division to dispose of the appeal on merit afresh by judgment and order dated 26.05.2014 with the following observations reported in 19 BLC (AD) 239 in paragraph Nos.3-6;

“The High Court Division by the impugned judgment and order allowed the appeal and set-aside the judgment and order of conviction and sentences as well as the order of the confiscation of the properties passed by the trial Court mainly on the reasoning that commission was not properly constituted in accordance with law from 7th February 2007 to 25th February 2007 and in view of non-constitution of the Commission the notice issued and served upon the respondents on

18.02.2007 under the signature of the Secretary of the Commission to submit wealth statement was without jurisdiction. The High Court Division relied upon the decision of this Division passed in Criminal Petition for Leave to Appeal No. 398 of 2009 and Civil Petition For Leave to Appeal Nos. 1658 and 1659 of 2008.

The learned Counsel appearing on behalf of the petitioner, submits that besides section 26 of the Ain, the respondents were also convicted under section 27(1) of the Ain as well, which is an independent penal provision having no nexus with section 26 of the Ain and therefore the High Court Division erred in law in setting aside the judgment and order of conviction under section 27(1) of the Ain read with section 5(2) of the Act II of 1947. The

learned Advocate for the petitioner relied on the latest decision of this Division in Criminal Petition For Leave to Appeal No. 537 of 2011 Anti Corruption Commission Vs. Iqbal Hasan Mahmood alias Iqbal Hasan Mahmood Tuku and another reported in 66 DLR (AD) 185. In the cited case, this Division, in an identical circumstance, has observed:

“On perusal of the impugned judgment we noticed that the High Court Davison did not at all enter into the merit of the matter and set-aside the conviction mainly on the ground that no Commission was properly constituted when the accused-respondent was served with the notice to submit his wealth statement. Section 26(1) empowers the Commission to issue notice upon any

person who appears to have acquired property which are beyond his known source of income and if the statement submitted by him is found to be false, he will be liable to conviction. Section 27 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 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).

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 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 II 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 II 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 II of 1947. the impugned judgment is not legally sustainable in law and the same is liable to be interfered with.”

In view of the decision of this Division in identical circumstances, the judgment and order of the High Court Division so far as it relates to setting aside the conviction and sentence of the respondents under section 27(1) of the Durnity Daman Commission Ain, 2004 read with section 5(2) of the Ain II 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 accordingly disposed of.

It is stated that against the aforesaid judgment of the Appellate Division reported in 19 BLC (AD) (2014) 239, the appellants preferred Criminal

Review Petition Nos. 53-54 of 2015 before the Hon'ble Appellate Division. The said review petitions were dismissed on 13.04.2016.

As per judgment and order dated 26.05.2014 passed by the Appellate Division, the Respondent No.2-Durnity Daman Commission fixed the Criminal Appeal No. 3990 of 2007 before this court for hearing and disposal of the same.

At the very outset, Mr. A.M. Mahbub Uddin, the learned Senior Advocate with Mr. Md. Nazmul Huda, the learned Advocate and Mr. Sanjit Siddique, the learned Advocate appearing for the convict-appellant, submits that the notice under section 26(1) of the Anti-Corruption Commission Act, 2004 was served upon the appellant No.1 on 18.02.2007 whereas the Anti-Corruption Commission Rules, 2007 came into force on

29.03.2007; it is pertinent to state that the Anti-Corruption Commission Rules, 2007 contains a prescribed form, specifically 'Form-6' which is a table for submission of wealth statement and it requires 12(twelve) particular information to be filled up, including “জমির মূল্য” and “জমিতে অবস্থিত ভবনাদি, কাঠামো এবং সাজ-সরঞ্জামের মূল্য।” given that there was no such prescribed 'form-6' for wealth statement when the appellant No. 01 furnished his statements of assets, there can be no allegation of suppression of price of the properties and as such the finding of the trial court that the appellant's suppression of the price of properties rendered him guilty under section 26(2) of the ACC Act, 2004, is erroneous and misconceived; it is further submitted that the decision laid down in 68 DLR(AD)118 did not discuss this issue.

He next submits that the learned judge of the trial court has passed the conviction and sentence under sections 26(2) of the ACC Act, 2004 by giving retrospective effect of the Anti-Corruption Commission Rules, 2007 having failed to appreciate that there was no existence of 'form-6' containing provision for mentioning the price of assets when the appellant No.1 submitted his statement of assets through his lawyer.

He further submits that the oral and documentary evidence adduced by the prosecution if considered in its entirety does not prove that the appellants had acquired the assets by dishonest means; it is an essential element for prosecuting under Section 27(1) of the ACC Act, 2004 that the ACC shall have sufficient reason to believe that properties of the accused which are disproportionate

to his known sources of income have been acquired by ‘dishonest means; the said provision has been quoted below:

জ্ঞাত আয়ের উৎস বহির্ভূত সম্পত্তির দখল

২৭।(১) কোন ব্যক্তি তাহার নিজ নামে বা তাহার পক্ষে অন্য কোন ব্যক্তির নামে, এমন কোন স্থাবর বা অস্থাবর সম্পত্তির দখলে রহিয়াছেন বা মালিকানা অর্জন করিয়াছেন, যাহা অসাধু উপায়ে অর্জিত হইয়াছে এবং তাহার জ্ঞাত আয়ের উৎসের সহিত অসংগতিপূর্ণ বলিয়া মনে করিবার যথেষ্ট কারণ রহিয়াছে এবং তিনি উক্ত রূপ সম্পত্তি দখল সম্পর্কে আদালতের নিকট বিচারে সন্তোষজনক ব্যাখ্যা প্রদান করিতে ব্যর্থ হইলে উক্ত ব্যক্তি অনূর্ধ্ব ১০(দশ) বৎসর এবং অনূন্য ০৩(তিন) বৎসর পর্যন্ত যেকোন মেয়াদে কারাদন্ডে দন্ডনীয় হইবেন এবং তদুপরি অর্থ দন্ডেও দন্ডনীয় হইবেন; এবং উক্ত রূপ সম্পত্তিসমূহ বাজেয়াপ্ত যোগ্য হইবে।; but none of the prosecution witnesses in their depositions have stated about any “dishonest means” that was involved in acquiring the concerned assets; even the prosecution witnesses did not state what sufficient reason they had to believe that the assets of the appellants were acquired by dishonest means; this evidential burden must be discharged, in other words, the issue of

acquiring of assets by dishonest means shall be raised before the trial court by adducing evidence in order to shift the burden on to the accused to rebut the presumption or prove that it was not so acquired, i.e. reverse burden of proof, under section 27(2) of the Act.

He strenuously submits that the appellants have declared the assets owned by them in their income tax returns and have paid income tax on the money with which the said assets have been acquired; the value of the assets has been mentioned in the income tax returns and no objection was raised by the income tax authority regarding computation of income or tax in the said returns; the Hon'ble Appellate Division in the case of State v Faisal Morshed Khan, reported in 66 DLR(AD) (2014)236, enunciated the law as follows-

“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 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.”

He candidly submits that in the light of the decision reported in 66 DLR(AD) (2014)236, it is now a settled principle of law that if one department of the Government accepts the valuation given by the accused, no question can be asked or explanation can be sought by any other government department regarding it.

He emphetically submits that the appellants have paid tax by availing the special tax treatment provisions under sections 19B, 19BB and 19BBB of the Income Tax Ordinance, 1984 and the legislature expressly provided therein that no question as to the source of any sum invested by any person on the assets shall be raised if tax is paid following the said provision; the Income Tax Ordinance, 1984 is a fiscal law and takes precedence over any statues

including the Anti-Corruption Commission Act, 2004.

He vigorously submits that the appellant No.2 pays her tax independently and no notice was served upon her to submit statement of assets under section 26(1) of the Anti-Corruption Commission Act, 2004 and hence, the conviction under section 27(1) of the Act against the appellant No.2 is not tenable in law.

He lastly submits that the Public Works Department did not serve any notice upon the appellants while assessing the value of the land and building owned by the appellants; thus, the valuation of assets was done unilaterally without conducting joint-survey and by providing exaggerating figures by the PWD and the rates followed by the PWD in conducting assessment were of 2006-2007 whereas the properties were acquired much earlier.

Mr. Mahbub Uddin, the learned Senior Advocate for the convict-appellants, has produced many legal decisions taken in the cases of ACC Vs. Faisal Morshed Khan, reported in 66DLR(AD)236, Mofazzal Hossain Chowdhury Maya Vs. The State and another passed in Criminal Appeal No. 3536 of 2009, Md. Hafiz Ibrahim Vs. the State and another passed in Criminal Appeal No. 5310 of 2008, Engineer Monjurul Ahsan Munshi v. the State and another, reported in 2019BLD(HCD)39.

On the other hand, Mr. Khurshid Alam Khan, the learned Senior Advocate appearing on behalf of the Anti-Corruption Commission, submits that the offences 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 (II of 1947) have been duly proved by the oral and

documentary evidence against the appellants and hence, the learned judge of the trial Court rightly convicted the appellants and as such, considering the same, the instant appeal is liable to be dismissed.

He next submits that the offence under section 27(1) of the Durnity Daman Commission Ain, 2004 has been duly proved by the oral and documentary evidence against the appellants and, hence, the learned judge of the trial Court rightly convicted and sentenced the appellants and, as such, considering the same, the instant appeal is liable to be dismissed.

He then submits that the offence under section 5(2) of the Prevention of Corruption Act, 1947 has been duly proved by the oral and documentary evidence against the appellants and hence, the learned judge of the trial Court rightly convicted and

sentenced the appellants and as such, considering the same, the instant appeal is liable to be dismissed.

He categorically submits that Article 20 of the Constitution deals with work as right and duty. Sub-section (2) of Article 20 of the Constitution provides that: *“(2) The State shall endeavour to create conditions in which, as a general principle, persons shall not be able to enjoy unearned incomes, and in which human labour in every form, intellectual and physical, shall become a fuller expression of creative endeavour and of the human personality.”*; and

in the instant case, from the evidence of oral and documentary, it is clearly found that the appellants have in their possession and acquired title of the property in movable and immovable either in their own name or in the name of any other persons

and from the evidence, it is clear that there are sufficient reasons to believe that the convict-appellants have been acquired the properties by dishonest means and the same are disproportionate to their known sources of income and they failed to furnish proper explanation for such possession to the satisfaction of the Court in the trial and as such, they have been rightly convicted and sentenced by the learned Special Judge 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.

He candidly submits that a notice under section 26 is a mere notice to submit a statement of assets and liabilities for the purpose of preliminary enquiry for ascertaining as to whether there is a prima facie case against the recipient of the notice; the appellant

No. 1 having received the notice, filed statement of his wealth and liabilities upon which investigation was held finding materials resulting in submission of charge-sheet and putting him on trial while giving him opportunity to refute the charge at the time of trial; so for non-divulging the preliminary injury or for not enclosing such report with the case record does not affect the prosecution case, and hence, the learned judge of the trial Court rightly convicted and sentenced the appellants and, as such, considering the same, the instant appeal is liable to be dismissed.

He vigorously submits that the offence of any failure of submitting asset statement by a person being asked thereof or furnishing false and baseless information in the asset declaration, which is very much alike with the provision of section 26(2) of the Durnity Daman Commission Ain, 2004 and, hence,

the learned judge of the trial Court rightly convicted and sentenced the appellants and as such, considering the same, the instant appeal is liable to be dismissed.

He strenuously submits that most of the properties of the appellant No. 1 and in his wife's name (appellant No. 2) found by the investigating officer and proved by the prosecution witnesses to be the property acquired by the appellants by illegal means beyond their known and legal sources of income; convict Sabera Aman being a house wife cannot be the owner of the wealth as described, found and proved by the witnesses and as such, the huge wealth which is beyond the legal source of income must be confiscated in favour of the State; the learned judge of the trial Court confiscated the property relying on the evidence and materials on

record and as such, the trial judge did not commit any illegality in confiscation of the properties is in question.

He emphatically submits that the appellant No. 1 failed to make out a believable case that the wealth in the name of his wife was obtained from her father and other relatives; the above defence has been proved false by the evidence of prosecution witnesses; the explanation given in the statement and the suggestions offered to the prosecution witnesses during cross-examination do not show that it was proportionate to his lawful source of income and as such, the appellant Aman Ullah Aman committed offence under section 27(1) of the Ain, 2004; in the above premises prosecution witnesses by oral and documentary evidence successfully proved that the wealth acquired by the appellants

was quite disproportionate to his lawful and known source of income.

Mr. Khan points out that in the case of Osman Gani Vs. State and another reported in 25 BLC (AD) 264, the learned Judge of the Appellate Division held that in order to convict a person under section 27(1) of the Ain, possessing or keeping property beyond known or legal source of income and at the time of trial, failure to give satisfactory and acceptable explanation beyond such possession is sufficient to convict a person under the provision of the law.

He then makes out that in view of section 18(2) of the Anti Corruption Commission Act, 2004, notice issued by the secretary of the Commission was given *ex-post facto* approval on satisfaction of the new Commission as validated by the *ex-post*

facto approval being amended by the Ordinance VII of 2007; the statements of assets and liabilities are *ex-facie* false showing false declaration by not making full information of all the assets and liabilities as revealed from legal evidence of the case.

He seriously submits that the appellant No. 1 is to prove that the wealth possessed by him are legitimate earnings but he failed to rebut the trial court's presumption of guilt on fact under special rules of evidence as set out in section 27(2) Anti-Corruption Commission Act, 2004, section 7(1) Criminal Law Amendment Act, 1958 and section 5(3) Prevention of Corruption Act, 1947; presumption of guilt must be rebutted by the appellants by producing cogent evidence to prove that the assets were earned through legal sources and

the onus lies on the convict-appellants; in the absence of such rebuttal by the appellants, the findings and judgment and order of the trial court do not suffer from any illegality.

He then points out that sections 26 and 27 of the Anti Corruption Commission Ain, 2004 are independent from each other and there is no nexus between these two sections and the filing of the case punishable under section 27 is not dependent upon issuance of notice under section 26(1) of the Ain; in this respect by referring section 27 of the Anti-Corruption Commission Ain, 2004, it may be said that if the prosecution case establishes that any person has acquired or amassed wealth which is beyond his known source of income, he may be prosecuted and convicted and in that case, no notice is required by the Commission for prosecution of the

offence punishable under section 27 of the ACC Act before instituting criminal proceeding against him; this court ought to have considered that the offence for possessing assets disproportionate to his legitimate source of income stands proved under section 27(1) of the Anti Corruption Commission Ain, which got nothing to do with the notice dated 18.02.2007 under section 26(1) of the Anti Corruption Commission Ain issued by the secretary of the Commission.

With respect to income tax issue, Mr. Khan categorically submits that 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; in the case of *Mirza Abbas Uddin Ahmed Vs. State and another* in Criminal Revision

No. 3497 of 2018 (unreported), it has been held by this Division that:

“...If any person makes a false statement in any verification in any return or in any other document in order to evade income tax, he will be guilty of an offence under Section 164 of the Income Tax Ordinance Act, 1984 and if any person makes 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. 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. Section 26 of the Anti-Corruption Commission Act, 2004 provides for the provision for issuance of notice in order to ascertain the property/wealth of a person to determine as to whether possession of those properties was disproportionate to his known sources of income. Section 27 of the Anti-Corruption Commission Act, 2004 contemplates that if any person obtains/ acquires property which is disproportionate to his known sources of income, he will be liable for an offence under Section 27(1) of the Anti-Corruption Commission Act, 2004.”

The above judgment of the High Court Division was affirmed by the Appellate Division on 25.10.2022 in Criminal Petition For Leave to Appeal No. 793 of 2019 in the case of **Mirza Abbas Uddin Ahmed Vs. State and another.**

Mr. Khan with reference to the case of Anti-Corruption Commission vs Faisal Morshed Khan and another reported in 66 DLR (AD) 236, submits that the instant legal decision taken in the case reported in **66 DLR (AD) 236** is not applicable in the instant case because the trial of Faisal Morshed Khan has been ended in absentia, but in the instant case, the convict-appellants faced the trial and they cross-examined all the witnesses i.e. 23 PWs. and nothing has been discarded by the convict-appellants in cross-examination; in a series of exhibited documents it has been clearly proved by the

prosecution that the properties of the appellants are disproportionate to their known source of income and as such, the evidence of PWs. can easily be relied upon, particularly the evidence of income tax officials, PWD officials and PW-22 A. K. M. Morshed.

With reference to the valuation reports of the properties of the appellants by the PWD Engineers, Mr. Khan very strongly submits that the prosecution has reiterated its valuation of the assets and has reconciled to the quantification made by the trial judge; it has reiterated that the valuation of the constructions had been made by the qualified PWD Engineers and that the findings are elaborately contained in the valuation reports, based on exhaustive inspection of all necessary components of the buildings surveyed; hence, the argument made

by the appellant relied upon in the case of *State Vs. Faysal Morshed Khan*, reported in 66 DLR (AD) 236 has no manner of application in the instant case and as such, the evidence of PWD Engineers can be relied upon.

Mr. Khan with reference to the case of State of Karnataka v. J. Jayalalitha reported in (2017) 6 Supreme Court Cases 263, submits that payment of taxes against the properties does not verify the genuineness, authenticity and lawfulness of the source of properties thereof or of the transactions relating thereto and as such, by giving belated taxes beyond the relevant assessment years, it cannot be said that the convict-appellants acquired the properties by their legal and valid sources of incomes unless the sources of acquiring the

properties are explained and proved by evidence and materials.

With reference to the loan matters, Mr. Khan submits that loan is money, property, or other material goods given to another party in exchange for future repayment of the loan value or principal amount, along with interest or finance charges; a loan may be for a specific, one-time amount or can be available as an open-ended line of credit up to a specified limit or ceiling amount; on the other hand, embezzlement is an example of fraud, a white-collar crime which consists of a theft by a person who is responsible for the assets of another person or entity; the crime is more common in banking or retail industries, but employees in any type of business can misappropriate money; hence, the convict appellant No. 01 cannot escape his liability being a

public servant and as such, the learned trial judge rightly convicted him under section 5(2) of the Prevention of Corruption Act, 1947 (II of 1947).

With regard to mere declaration of the properties in the income tax return, Mr. Khan points out that mere declaration of property in the income tax returns does not ipso facto connote that the same had been acquired from the known lawful sources of income.

Mr. Khan in support of his contentions has referred to a legal decision taken in the case of *State of Karnataka Vs. Jaylalitha* reported in (2017) 6 SCC 263, wherein it has been held by the Indian Supreme Court that:

“Para-577. The attendant facts and circumstances encountered as above,

demonstrate a deep-rooted conspiratorial design to amass vast assets without any compunction and hold the same through shell entities to cover up the sinister trail of such illicit acquisitions and deceive and delude the process of law. Novelty in the outrages and the magnitude of the nefarious gains as demonstrated by the revelations in the case are, to say the least, startling.

Para-578. *A growing impression in contemporary existence seems to acknowledge, the all-pervading pestilent presence of corruption almost in every walk of life, as if to rest reconciled to the octopoid stranglehold of this malaise with helpless awe. The common day experiences indeed to introduce one with unfailing regularity, the variegated cancerous*

concoctions of corruption with fearless impunity gnawing into the frame and fabric of the nation's essential. Emboldened by the lucrative yields of such malignant materialism, the perpetrators of this malady have tightened their noose on the societal psyche. Individual and collective pursuits with curative interventions at all levels are thus indispensable to deliver the civil order from the asphyxiating snare of this escalating venality.

***Para-579.** In the above alarming backdrop of coeval actuality, judicial adjudication of a charge based on an anti-corruption law motivate by the impelling necessities of time, has to be informed with the desired responsibility and the legislative*

vision therefore. Any interpretation of the provisions of such law to be essential purposive, in furtherance of its mission and not in retrogression thereof. Innovative nuances of evidential inadequacies, processual infirmities and interpretational subtleties, artfully advanced in defence, otherwise intangible and inconsequential, ought to be conscientiously cast aside with moral maturity and singular sensitivity to uphold the statutory sanctity, lest the coveted cause of justice is a causality.

Para-580. *Corruption is a vice of insatiable avarice for self-aggrandisement by the unscrupulous, taking unfair advantage of their power and authority and those in public office also, in breach of the institutional norms,*

mostly backed by minatory loyalists. Both the corrupt and the corrupter are indictable and answerable to the society and the country as a whole. This is more particularly in re the peoples' representatives in public life committed by the oath of the office to dedicate oneself to the unqualified welfare of the laity, by faithfully and conscientiously discharging their duties attached thereto in accordance with the Constitution, free from fear or favour or affection or ill-will. A self-serving conduct in defiance of such solemn undertaking in infringement of the community's confidence reposed in them is therefore a betrayal of the promise of allegiance to the Constitution and a condemnable sacrilege. Not only such a

character is an anathema to preambular promise of justice, liberty, equality, fraternal dignity, unity and integrity of the country, which expectantly ought to animate the life and spirit of every citizen of this country, but also is an unpardonable onslaught on the constitutional religion that forms the bedrock of our democratic polity.

Para-581. This pernicious menace stemming from moral debasement of the culpables, apart from destroying the sinews of the nation's structural and moral set-up, forges an unfair advantage of the dishonest over the principled, widening as well the divide between the haves and the have-nots. Not only this has a demoralizing bearing on those who are

ethical, honest, upright and enterprising, it is visibly antithetical to the quintessential sprit of the fundamental duty of every citizen to strive towards excellence in all spheres of individual and collective activity to raise the nation to higher levels of endeavour and achievement. This virulent affliction triggers an imbalance in the society's existential strata and stalls constructive progress in the overall well-being of the nation, besides disrupting its dynamics of fiscal governance. It encourages defiance of the rule of law and the propensities for easy materialistic harvests, whereby the society's soul stands defiled, devalued and denigrated.

Para-582. *Such is the militant dominance of this sprawling evil, that majority of the*

sensible, rational and discreet constituents of the society imbued with moral values and groomed with disciplinal ethos find themselves in minority, besides estranged and resigned by practical compulsions and are left dejected and disillusioned. A collective, committed and courageous turnaround is thus the present day imperative to free the civil order from the suffocative throttle of this deadly affliction.

Para-583. *Every citizen has to be a partner in this sacrosanct mission, if we aspire for a stable, just and ideal social order as envisioned by our forefathers and fondly cherished by the numerous self-effacing crusaders of a free and independent Bharat,*

pledging their countless sacrifices and selfless commitments for such cause.”

Mr. Khan in support of his submissions has referred to many legal decisions in the cases of Moudud Ahmed Vs. State and another, reported in 68DLR(AD)118, ACC Vs. Dr. Mohiuddin Khan Alamgir, reported in 62DLR(AD)290, Iqbal Hasan Mahmood Vs. ACC, reported in 70DLR (AD)109, ACC Vs. Iqbal Hasan Mahmodd, reported in 66DLR(AD)185, Osman Gani Vs. State and another, reported in 25BLC(AD)64, Osman Gani Vs. State and another, reported in 21BLC786, Mir Mohammad Helal Uddin Vs. State and another, reported in 72 DLR(HCD)471, ATM Nazimullah Chowdhury Vs. State and another, reported in 69DLR(AD)344, ATM Nazimullah Chowdhury Vs. State and another, reported in 65DLR500, Sirajul

Islam Vs. State and another, reported in 55 DLR 536, ACC Vs. Aman Ullah Aman, reported in 19BLC(AD) 239, ACC Vs. Md. Shahidul Islam@Mufti Shahidul Islam and others, reported in 68DLR(AD) 242, Zamir Ahmed Vs. Government of Bangladesh and others, reported in 21BLC (HD)200 and State of Karnataka Vs. Jaylalitha reported in (2017) 6 SCC 263.

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 23 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.

The learned Attorney-General has also taken us through the legal decisions taken in the cases of Moudud Ahmed Vs. State and another, reported in 68DLR(AD)118, ACC Vs. Dr. Mohiuddin Khan Alamgir, reported in 62DLR(AD)290, Iqbal Hasan Mahmood Vs. ACC, reported in 70DLR (AD)109, ACC Vs. Iqbal Hasan Mahmood, reported in 66DLR(AD)185, Osman Gani Vs. State and another, reported in 25BLC(AD)64, Osman Gani Vs. State and another, reported in 21BLC786, Mir Mohammad Helal Uddin Vs. State and another, reported in 72 DLR(HCD)471, ATM Nazimullah Chowdhury Vs. State and another, reported in

69DLR(AD)344, ATM Nazimullah Chowdhury Vs. State and another, reported in 65DLR500, Sirajul Islam Vs. State and another, reported in 55 DLR 536, ACC Vs. Aman Ullah Aman, reported in 19BLC(AD) 239, ACC Vs. Md. Shahidul Islam@Mufti Shahidul Islam and others, reported in 68DLR(AD) 242, Zamir Ahmed Vs. Government of Bangladesh and others, reported in 21BLC (HD)200 and State of Karnataka Vs. Jaylalitha reported in (2017) 6 SCC 263 and very strongly submits that the prosecution has proved the prosecution case against the convict-appellants by adducing reliable, satisfactory, trustworthy, flawless and faultless evidence and that there is no scope to interfere with

the impugned judgment and order delivered by the learned trial judge.

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 record and 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. A.M Mahbub Uddin, 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 26.05.2014 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 Commission Act,

2004 only, not the conviction and sentence awarded under Section 26(2) of the ACC Act, 2004.

According to Mr. A.M Mahbub Uddin, the learned trial judge convicted the convict-appellant No.1 under Section 26(2) of the ACC Act, 2004 and sentencing him there under to suffer simple imprisonment for 03 years and also convicting the convict-appellant under Section 27(1) the ACC Act, 2004 and sentencing him there under to suffer rigorous for 10 years along with a fine of Tk.50,00,000/-, in default, to suffer rigorous imprisonment for 01 year more and also convicting and sentencing the convict-appellant No. 2 under Section 27(1) of the ACC Act, 2004 read with Section 109 of the Penal Code.

Being aggrieved by the aforesaid judgment and order, the convict-appellant preferred Criminal No.3990 of 2007 before the High Court Division and the learned Judges of the High Court Division upon hearing the parties and considering the evidence on 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.428 of 2013 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 read with Section 5(2) of the Prevention of Corruption Act, 1947 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. A.M. Mahbub Uddin 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.

Mr. Khan points out that at the time of hearing of the Criminal Petition For Leave To Appeal No. 428 of 2013, the learned Advocate for the appellant submitted before the Appellate Division that the conviction and sentence awarded on the convict-appellant No. 01 under Section 26(2) of the ACC Act, 2004 is maintainable and sustainable since the notice for submitting wealth statement was issued by the Secretary, not by the Commission as it was not in existence at that time and considering that aspect of the case, the learned judges of the Appellate Division set aside the conviction and

sentence under section 27(1) of the ACC Act, 2004 holding the view that even if the conviction and sentence under section 26(2) of the ACC Act, 2004 is not maintainable and sustainable, the conviction and sentence under section 27(1) is very much maintainable and sustainable and in that view of the matter, the judgment and order of acquittal with respect to conviction and sentence under section 27(1) of the ACC Act, 2004 was set aside but no order was passed with regard to conviction and sentence under section 26(2) of the ACC Act, 2004 was passed and that subsequently the issue of notice issued by the Secretary of the Commission has been elaborately explained and decided 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/ত্রোকবদ্ধ 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, submitted 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.428 of 2013 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-appellants 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-appellants are that they concealed the information in respect of price and acquisition of the properties in question in the wealth statement and the income tax returns and those properties, according to the prosecution, were

disproportionate to their known sources of income. In order to prove the prosecution case, the prosecution examined as many as 23 PWs and disclosed the case of nondisclosure of price and acquisition of properties in wealth statement and in the income tax returns in relevant assessment years 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.

Section 5(3) of the Prevention of Corruption Act, 1947 contemplates that in any trial of an offence punishable under sub-section (2), the fact that the accused-person or any other person on his behalf is in possession, for which the accused-person cannot satisfactorily account, of pecuniary

resources or property disproportionate to his known sources of income may be proved, and on such proof the court shall presume, unless the contrary is proved, that the accused-person is guilty of criminal misconduct and his conviction therefore shall not be invalid by reason only that it is based solely on such presumption.

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.

It may be noted that the payment of taxes only against the income originated from properties does not verify the genuineness, authenticity and lawfulness of the source of income and properties thereon or of the transactions relating thereto.

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.

We have gone through the petition of appeal, the F.I.R, charge-sheet, the materials and evidence on record and perused and examined the same meticulously. We have also heard the submissions advanced by the learned Advocates for the respective parties and considered them to the best of our wit and wisdom.

It appears from the materials and evidence on record that having received the information to the effect that the convict-appellant No.1, Aman Ullah Aman, Ex- M.P and Ex-State Minister, Ministry of Labour and Employment is in possession of a huge properties which are disproportionate to his known source of income, the Anti-Corruption Commission (hereinafter referred to as the Commission) issued notice on 18.02.2007 (Exhibit-3) upon convict-appellant No.1, Aman Ullah Aman directing him to

submit wealth statement in his name and in the name of other members of his family. The aforesaid notice (Exhibit-3) has been served upon the convict-appellant Aman Ullah Aman in the Chittagong Central Jail on 20.02.2007. The service of notice upon the convict-appellant No.1, Aman Ullah Aman has been proved by PW-2 Mr. Bazlur Rashid, Senior Superintendent, Central Jail, Chittagong.

Having received the aforesaid notice, the convict-appellant Aman Ullah Aman appointed Advocate Mr. Kazi Sahaj Uddin Mintu (PW-3) as his representative to submit wealth statement of his name and in the name of his wife the convict-appellant No.2, Mrs. Sabera Aman. The appointment letter of Advocate Kazi Sahaj Uddin Mintu has been marked as Exhibit-4 and the veracity of the same has been proved by PW-2. Advocate

Mr. Kazi Sahaj Uddin Mintu having received the appointment letter (Exhibit-4) submitted the wealth statement in the name of the convict-appellant No.1, Aman Ullah Aman (Exhibit-5) to the Commission on 25.02.2007. On our examination and perusal of the Exhibit-5, it indicates that the above mentioned wealth statement was submitted under the joint signature of the representative Advocate Mr. Kazi Sahaj Uddin Mintu and Mrs. Sabera Aman, the wife of the convict-appellant No.1, Aman Ullah Aman. The convict-appellant No.2, Mrs. Sabera Aman also submitted wealth statement in her name through the said Advocate Kazi Sahaj Uddin Mintu. The said statements of wealth have been marked as Exhibit-6 and 7. Advocate Kazi Sahaj Uddin Mintu being PW-3 deposed before the trial court and admitted about the submission of the aforesaid statements of wealth

(Exhibit-5,6 and 7) by a forwarding letter (Exhibit-8) on 25.02.2007 to the Commission.

The prosecution case is that the convict-appellants at the time of submitting wealth statements before the Commission did not disclose about the valuations of the properties and the sources of incomes for acquiring the properties in their names. According to the prosecution, the description of the properties as alleged to have been acquired by the convict-appellant No. 1-Aman Ullah Aman in his own name, is as follows:-

- (a) A six storied building on Road No.21 at Plot No.2 in Gulshan Model Town, Dhaka. The valuation of which is (after deduction of loan money of Tk. 65,00,000.00) stood at Tk. 2,56,64,473.00; (b) A two storied

building measuring two thousand square feet at his paternal house at Village: Bayati Kandi, Hazratpur, Keraniganj, Dhaka, worth Tk.2,05,169.00; (c) A Motor Car worth Tk.17,00,000.00; (d) Furniture at the residence of New DOHS worth Tk.15,50,200.00; (e) Two fire arms worth of Tk.50,000.00; (f) Bank deposit of Tk. 5,59,034.00 and (g) Cash Tk.50,000.00. Thus, the grand total amount of the value of such properties stands at Tk.3,31,75,009.00 (Taka three crore thirty-one lac Seventy-five thousand and nine).

Besides, the description of the properties of the convict-appellant No. 1-Aman Ullah Aman shown to have been acquired in the name of his wife

convict-appellant No. 2, Mrs. Sabera Aman is as follows:-

- (a) A six storied building at 98/1, Monipur, Mirpur, Dhaka (after deduction house loan of Tk. 68,00,000.00) worth Tk. 2,01,49,570.00;
- (b) 50% ownership of the house on Plot No.44, Road No.7, at Banani worth Tk. 55,27,220.00;
- (c) A six storied commercial building at Mouza Keraniganj worth of Tk. 2,06,76,766.00;
- (d) 508.5 decimals of land at Hazratpur Mouza, Keraniganj worth Tk. 22,39,000.00;
- (e) 60 decimals of land at Mourza Char Algi worth Tk. 29,28,000.00;
- (f) 1101.25 decimals of

land at Mouza Boilarpur, Savar worth Tk.58,07,000.00; (g) 1.51 decimals of land at Mouza Kandi Boilarpur, Savar worth Tk.9,82,000.00; (h) Three commercial Plots at Shilpa Nagari, Keraniganj where he (convict-appellant No. 2-Aman Ullah Aman) paid Tk.7,02,00.00; (i) A motor car worth Tk.10,13,194.00; (j) Bank deposit of Tk.6,21,972.00; (k) Cash in hand at Tk.50,000.00; (l) Savings certificate valued at Tk.1,70,000.00; (m) Two fire arms worth Tk.22,000.00 and (n) Tk.44,00,000.00 given to her brother Askar Ibne Islam as loan. The value of the grand total properties in the name of

convict-appellant No. 2-Mrs. Sabera Aman, thus, stands at Tk.6,52,88,732.00 (Taka six crore fifty-two lac eighty-eight thousand seven hundred and thirty-two).

The prosecution submitted the following papers by way of exhibits before the trial court, which are as follows:-

Exhibit-1:Sanction of Charge-Sheet, Exhibit-2: Ejahar, Exhibit-3: Notice for submitting Statements of Wealth, Exhibit-4: Appointment of Lawyer to submit Statements of Wealth, Exhibit-5/1-5/3: Statements of Wealth of Aman Ullah Aman, Exhibit-6: Statements of Wealth of Sabera Aman, Exhibit-7: Additional Statements of Wealth of Sabera Aman, Exhibit-8: Forwarding for submitting Statements of Wealth, Exhibit-9: FIR

Form, Exhibit-10: Valuation Report, Exhibit-11: Report, Exhibit-12: Forwarding, Exhibit-13: Report, Exhibit-14: Forwarding, Exhibit-15: Valuation Report of Car of Aman Ullah Aman, Exhibit-16: Valuation Report of Car of Sabera Aman, Exhibit-17-18: Electrical Expenditure Certificate, Exhibit-19: Valuation Report, Exhibit-20: Valuation Report of Civil Construction Work, Exhibit-21: Valuation Report of Building construction, Exhibit-22: Forwarding of Valuation Report, Exhibit-23: Electrical Construction Expenditure Report, Exhibit-24: Valuation Report of Commercial Building Construction, Exhibit-25: Valuation Report of Construction of Sabera Bhaban at Monipur, Mirpur, Exhibit-26: Forwarding, Exhibit-27: Account Statement of Aman Ullah Aman in Prime Bank, Bank loan of Sabera Aman, Exhibit-28: Account

Statement of Sabera Aman in Pubali Bank, Exhibit-29: Account Statement of Asker Ibne Islam, Exhibit-30: Seizure List, Exhibit-31: Income Tax Assessment File-1 of Aman Ullah Aman, Exhibit-32: Income Tax Assessment File-2 of Aman Ullah Aman, Exhibit-33: Seizure List, Exhibit-34: Income Tax Assessment file of Sabera Aman, Exhibit-35: Statement of Income and mExpendiute of Aman Ullah Aman, Exhibit-36: Statement of Income and Expenditure of Sabera Aman, Exhibit-37: Valuation Report of Furniture, Exhibit-38: Forwarding of Valuation Report, Exhibit-39: Valuation report of Electrical installation, Exhibit-40: Report, Exhibit-41: Seizure list dated 06.03.07, Exhibit-42: Wealth Statement Forwarding, Exhibit-43: Power of Attorney, Exhibit-44: Inventory, Exhibit-i: Deed No. 2282, dated 09.02.2003, Exhibit-ii: Deed No. 18736

dated 07.08.2005, Exhibit-iii: Deed No. 22854 dated 10.10.2006

On the other hand, the defence submitted the following papers by way of exhibits before the trial court, which are as follows:-

Exhibit-A: Receipt copy of application income Tax revised return of Aman Ullah Aman, Exhibit-B: Receipt copy of application US 19B of Income Tax Ordinance, Exhibit-B/2, Acknowledgement, Exhibit-C, Receipt copy of application US 19B of Income Tax Ordinance, Exhibit-C/2, Acknowledgment Receipt, Exhibit-D: Copy of application US 19BBB of Income Tax Ordinance, Exhibit-E: Revised returns of Sabera Aman, Exhibit-E/2: Acknowledgment Receipt, Exhibit-F: Application to deposit Tax, Exhibit-F/2: Acknowledgement Receipt, Exhibit-F/3: Receipt of Bangladesh Bank, Exhibit-G: Application to deposit Tax, Exhibit-G/2: Acknowledgment Receipt, Exhibit-

G/3: Receipt of Bangladesh Bank, Exhibit-H: Application to deposit Tax, Exhibit-H/2: Acknowledgment Receipt, Exhibit-H/3: Receipt of Bangladesh Bank, Exhibit-I: Application to deposit Tax, Exhibit-I/2: Acknowledgment Receipt, Exhibit-I/3: Receipt of Bangladesh Bank, Exhibit-J: Application to deposit Tax, Exhibit-J/2: Acknowledgment Receipt, Exhibit-J/3: Receipt of Bangladesh Bank, Exhibit-K: Application to deposit Tax, Exhibit-K/2, Acknowledgment Receipt, Exhibit-K/3: Receipt of Bangladesh Bank, Exhibit-L: Application to deposit Tax u/s 19BB Sabera Aman, Exhibit-L/2: Acknowledgment Receipt, Exhibit-L/3: Receipt of Bangladesh Bank, Exhibit-M: Application to deposit Tax u/s 19BBB Sabera Aman, Exhibit-M/2: Acknowledgment Receipt, Exhibit-N: Application to deposit Tax, Exhibit-N/2: Acknowledgment Receipt, Exhibit-N/3: Receipt of Bangladesh Bank.

Mr. A.M. Mahbub Uddin, the Senior Advocate for the convict-appellants for quick understanding of the case have submitted concise statement mentioning the properties of the convict-appellants, in the following manner:-

	Content	Amount	Exhibit
<u>A.</u>	Assets of Appellant No.1: Gulshan House:		Exhibit-5
<u>1.</u>	a. Appellant No. 1 did not disclose the value of Gulshan house as he was not asked to disclose the value of the building.		
	b. P W 1 admits that the appellant No. 1 obtained loan for construction of this house.	Tk. 70,00,000.00	
	c. The income tax record discloses loan of the appellant No. 1.	Tk. 1,13,88,655.00	Exhibit-31
	d. Appellant No. 1 declared in the income tax returns as to the construction up to 3 rd floor.	<u>Land-</u> Tk. 33,34,965.00 + <u>Construction Cost-</u> Tk. 95,38,655.00 =Tk. 1,28,43,622.00	Exhibit-31
	e. Adjudication by income tax authority by adjudication order dated 28.06.2006 on the basis of PWD rate up to 3 rd floor.	<u>Tk. 1,28,43,622.00</u>	Exhibit-31
	f. Appellant No. 1 declared the construction upto 4 th to 5 th floor under Section 19B of the Income Tax Ordinance, 1984.	<u>Tk. 37,39,036.00</u> <u>Source of income not subject to be questioned.</u>	Exhibit-31
	g. Adjudicationm by income tax authority.		Exhibit-31
	h. Total declared value to the	<u>Tk. 37,39,036.00</u>	

	<p>house with the income tax department.</p> <p>i. Valuation by PWD engineer.</p> <p>Special Note Anti-Corruption Commission charged the appellant- a. Land-Tk. 33,44,967.00 b. Value assessed by PWD- <u>Tk. 2,84,22,479.00</u> Total Tk. 3,17,67,446.00 c. Appellant disclosed Tk. 75,00,000.00 as loan. d. Concealed amount Tk. 3,17,67,446.00/- <u>Tk. 75,00,000.00/-</u> Tk. 24,26,7446.00</p>	<p>a. upto 3rd floor- Tk. 1,28,43,622/- + b. upto 4th to 5th floor- <u>Tk. 37,39,036.00</u> = Tk. 1,65,82,658.00</p> <p><u>Tk. 2,84,22,479.00</u></p>	<p>Exhibit-31</p> <p>Exhibit-24</p>
2.	<p>Ejmali property in Kewranigonj.</p> <p>a. Appellant No. 1 disclosed the building in the wealth statement but not the value thereof. b. PW 1 admits the asset as ancestral property. c. Appellant No. 1 delared 1 (one) storied building in keranigonj in his income tax returns. d. The appellant No. 1 declared 1st (first) floor of the building under Section 19B of the Income Tax Ordinance. e. PWD officers assessed the building at. f. trial court convicted the appellant for</p>	<p>Tk. 9,00,000.00</p> <p>Tk.24,24,549.00</p> <p>Tk. 33,96,133.00</p>	<p>Exhibit-5</p> <p>Exhibit-31</p> <p>Exhibit-B Source of income not subject to be questioned.</p>
3.	<p><u>107 Decimal land in Keranigonj.</u></p> <p>a. Appellant No. 1 disclosed in the wealth statement. b. Appellant disclosed in the income tax under Section 19BB. c. Trial court convicted the appellant No. 1 for.</p>	<p>TK. 2,09,000/-</p> <p>TK. 2,05,169/-</p>	<p>Exhibit-5</p> <p>Exhibit-C Source cannot be questioned.</p>

4.	<p><u>Motor Car.</u></p> <p>a. Disclosed in wealth statement.</p> <p>b. Appellant No. 1 disclosed under Section 19BBB.</p> <p>c. Trial court convicted the appellant No. 1 for.</p>	<p>TK. 27,00,000.00</p> <p>TK. 17,00,000.00</p>	<p>Exhibit-5</p> <p>Exhibit-D Sources cannot be questioned.</p>
5.	<p><u>Furniture.</u></p> <p>a. Disclosed in the wealth statement.</p> <p>b. The PWD officers assessed the value of furniture and electrical goods.</p> <p>c. Appellant No.1 disclosed in the income tax returns.</p> <p>d. Trial court convicted the appellant No. 1 for.</p>	<p>TK. 7,21,200.00</p> <p>TK. 1,50,000.00</p> <p>TK. 15,50,200.00</p>	<p>Exhibit-5</p> <p>Exhibit-37(PW18)</p> <p>Exhibit-31</p>
6.	<p><u>Bank Balance:</u></p> <p>a. Disclosed in the wealth statement.</p> <p>b. Appellant No. 1 disclosed in income tax returns.</p> <p>c. Trial court convicted the appellant No. 1 for.</p>	<p>TK. 5,59,034.00</p> <p>Tk. 13,16,260.00</p> <p>Tk. 5,59,034.00</p>	<p>Exhibit-5</p> <p>Exhibit-31</p>
7.	<p><u>Cash:</u></p> <p>a. The appellant No. 1 disclosed in the income tax returns cash of.</p> <p>b. The trial court convicted the appellant for.</p>	<p>Tk. 4,20,940.00</p> <p>Tk.50,000.00</p>	<p>Exhibit-31</p>
B.	<p><u>Asset of appellant No.2.</u></p>		
1.	<p><u>Six storied building at 981/1, Monipur, Mirpur, Dhaka.</u></p> <p>a. Disclosed in the wealth statement</p> <p>b. Appellant No. 2 declared the building with income tax authority under Section 19BB of the Income Tax Ordinance, 1984.</p> <p>c. Valuation of PWD officers.</p> <p>d. Trial court convicted the appellant No. 2 for.</p>	<p>Tk.2, 69,49,570.00</p> <p>Tk.2, 01,49,570.00</p>	<p>Exhibit-6</p> <p>Exhibit-N</p> <p>Exhibit-25</p>
2.	<p><u>Building at Banana, Plot No. 44, Road No.7</u></p> <p>a. The appellant No. 1 disclosed this building.</p>		<p>Exhibit-6</p>

	<p>b. Appellant No. 2 declared the value under Section 19B of the Income Tax Ordinance.</p> <p>c. The trial court convicted the appellants for.</p>	<p>Tk.49,35,400.00 Source cannot be questioned.</p> <p>Tk.55,27,220.00</p>	<p>Exhibit-H</p>
<u>3.</u>	<p><u>Commercial building at hazratpur, Keranigoni</u></p> <p>a. Appellant No. 1 disclosed in the wealth statement.</p> <p>b. Appellant No. 2 declared the value under Section 19B of the Income Tax Ordinance with the income tax authority.</p> <p>c. The PWD officers assess the value</p> <p>d. The trial court convicted the appellants</p>	<p>Tk. 70,84,800.00+ Tk. 73,08,000.00</p> <p>Tk.2,25,76,691.00</p> <p>Tk.2,06,76,776.00</p>	<p>Exhibit-6</p> <p>Exhibit-F & G</p> <p>Exhibit-20 (PW10)</p>
<u>4.</u>	<p><u>508 decimals of land at Hazratpur mouza-Keranigoni</u></p> <p>a. Appellant No. 1 disclosed in the wealth statement</p> <p>b. Appellant No. 2 declared the value under Section 19BB of the Income Tax Ordinance with the income tax authority.</p> <p>c. Trial court convicted the appellants for</p>	<p>Tk.19,04,000.00</p> <p>Tk.22,39,000.00</p>	<p>Exhibit-6</p> <p>Exhibit-I PW 16</p>
<u>5.</u>	<p><u>660 decimals of land at Mouza Chor Algi.</u></p> <p>a. The appellant No. 1 disclosed in the wealth statement</p> <p>b. The appellant No. 2 declared in income tax department under Section 19BB of Income Tax Ordinance.</p> <p>c. Trial court convicted the appellant for</p>	<p>Tk.25,47,000.00</p> <p>Tk.29,28,000.00</p>	<p>Exhibit-6</p> <p>Exhibit-J</p> <p>Source cannot be questioned.</p>
<u>6.</u>	<p><u>1101.25 decimals of land at Mouza Bailapur, Savar.</u></p> <p>a. The appellant No. 1 declared in the wealth statement</p> <p>b. The appellant No. 2 acquired by way of gift from brother</p> <p>c. PW 22 admits that he gifted the land to his sister</p> <p>d. Trial court convicted the appellants for</p>	<p>Tk.1,12,73,000.00</p> <p>Tk.58,07,000.00</p>	<p>Exhibit-6</p> <p>Exhibit-ii</p>
<u>7.</u>	<p><u>151 decimals of land at Mouza Kandhi, Bailapur, Savar</u></p> <p>a. The appellant No. 1 disclosed the asset in his wealth statement in the name of his wife.</p> <p>b. The appellant No.2 declared the value with the income tax authority under Section 19BB of the Income Tax Ordinance.</p> <p>c. Trial court convicted the appellant for</p>	<p>Tk.11,52,000.00</p> <p>Tk.9,82,000.00</p>	<p>Exhibit-6</p> <p>Exhibit-K</p> <p>Source cannot be questioned</p>

<u>8.</u>	<p><u>3 (three) commercial plots at Shilponogori, Keranigoni</u></p> <p>a. Appellant No. 1 disclosed in the wealth statement that his wife paid 1st installment against land.</p> <p>b. The trial court convicted the appellants for</p>	<p>Tk.7,02,000.00</p> <p>Tk.7,02,000.00</p>	Exhibit-6
<u>9.</u>	<p><u>Motor Car.</u></p> <p>a. The appellant No. 1 disclosed in the wealth statement in the name of wife.</p> <p>b. The appellant No. 2 declared in the income tax under Section 19BBB of the Income tax ordinance</p> <p>c. The trial court convicted the appellant for.</p>	<p>Tk.1050,000.00</p> <p>Tk.10,13,194.00</p>	<p>Exhibit-6</p> <p>Exhibit-M (PW 16) Source cannot be questioned</p>
<u>10.</u>	<p><u>Bank Balance, Cash and saving certificate.</u></p> <p>a. The appellant No. 1 disclosed bank balance, cash and shonchoy-potro in the name of his wife in the wealth statement.</p> <p>b. The appellant No. 2 declared in her income tax returns.</p> <p>c. The trial cour convicted the appellants for</p>	<p>Tk.6,21,972.00 Bank balanace Tk.50,000.00 Cash Tk. 1,70,000.00 shonchoy-potro</p> <p>Tk. 95,2970.00</p> <p>Tk. 6,21,972.00 Bank balance Tk. 50,000.00 Cash Tk. 1,70,000.00 Shonchoy-potro</p>	<p>Exhibit-6</p> <p>Exhibit-34</p>
<u>11.</u>	<p><u>Fire Arms.</u></p> <p>a. The appellant No.1 disclosed in his wealth statement</p> <p>b. The trial court convicted the appellants for</p>	<p>Tk. 22,000.00</p>	Exhibit-6
<u>12.</u>	<p><u>Loan.</u></p> <p>a. The PW 21 stated that the appellant No. 2 gave a loan to him</p> <p>b. PW 21 stated that he paid back the loan of</p> <p>c. Trial court the convicted-appellants</p> <p>SPECIAL NOTE: The trial court convicted the appellants for Tk. 9,84,63,741.00</p>	<p>Tk. 44,00,000.00</p> <p>Tk. 44,00,000.00</p> <p>Tk. 44,00,000.00</p>	

It may be mentioned that at the time of submitting wealth statement, the value of the

properties and the source of acquiring the same has not been disclosed in the wealth statements (Exhibit-5-8) as a result of which the value of the properties has been assessed and ascertained during inquiry and investigation of the case.

PW-01, Abdullah-Al-Zahid, Deputy Director, Anti-Corruption Commission, has stated in his evidence to the effect that Aman Ullah Aman has acquired a six storied building in his own name at House No. 2, Road No. 21, Gulshan Model Town, Dhaka, and the area of land of the said building is six katha, eight chatak and twenty six square feet. The convict-appellant No. 1-Aman Ullah Aman has not shown in his wealth statement, the sources of acquiring this property. He has paid Tk. 33,44,867.00 as price of the land of the aforesaid house in favour of RAJUK. The construction cost of

the said building has been assessed by the Engineer of the P.W.D, and according to such assessment report the total construction cost of this building stands at Tk. 2,84,22,479.00. Thus, the total value of this building including land stands at Tk. 3,17,67,446.00. The convict-appellant No. 1-Aman Ullah Aman took loan of Tk. 75,00000.00 in connection with this building. After deduction of this loan of Tk. 75,00,000.00, the amount of his own pecuniary resource in this property stands at Tk. 2,42,67,446.00. The convict-appellant No. 1-Aman Ullah Aman has also a two storied house measuring of 2000 square feet on his paternal house at Keraniganj. He did not mention the construction cost of this two storied building in his wealth statement, the Commission, during enquiry got the valuation of the said building being assessed by the

Engineer of PWD which valued at Tk. 33,96,133.00. Besides this, the convict-appellant No. 1-Aman Ullah Aman has shown in his wealth statement to have purchased some 107 decimals land in his name, but he did not disclose the price of the value paid. The valuation of the said land has been found to be Tk. 4,63,667.00. The price of the car of Aman Ullah Aman is taka Ten lacs and the valuation of the furniture of his residence is taka five lacs. According to the wealth statement, the convict-appellant No. 1-Aman Ullah Aman has deposited Tk.5,59,034.00 in various bank. Before 1991, the convict-appellant No. 1-Aman Ullah Aman was a student leader and he had no mentionable sources of income. He also did not get any mentionable property by way of inheritance even. According to the income tax record, from 1991 to 2006, his total

income is Tk.64,53,424.00. The total valuation of the properties acquired by the convict-appellant No. 1-Aman Ullah Aman in his own name is worth Tk. 3,01,86,280.00. Even, if it is taken that convict-appellant No. 1-Aman Ullah Aman has no family expenditure, the difference between his known income and the valuation of the properties acquired by himself in his own name stands at Tk.2,37,32,856.00, which he has acquired by improper means, and it is also disproportionate to his known sources of income. On the other hand, the convict-appellant No. 1-Aman Ullah Aman has shown in his wealth statement a big amount of properties acquired in the name of his wife, the convict-appellant No. 2-Mrs. Sabera Aman. According to the aforesaid wealth statement, convict-appellant No. 2-Mrs. Sabera Aman has a six

storied building at Plot No.981/1, Monipur, Mirpur, Dhaka upon 10 kathas of land. The aforesaid land has been claimed to have been acquired by Mrs. Sabera Aman by way of inheritance from her father and also by way of gift. According to the valuation report of the Engineers of PWD, the construction cost of this building is Tk. 2,69,49,571.00. After deduction of the bank loan of Tk. 70,00,000.00, the valuation of the property of the convict-appellant No. 1-Aman Ullah Aman and his wife convict-appellant No. 2-Mrs. Sabera Aman in the aforesaid building stands at Tk.1,99,49,571.00. The convict-appellant No. 2-Mrs. Sabera Aman has also another six storied building at Mouza Hazratpur, Keraniganj, Dhaka. As per the valuation report of the Engineers, the construction cost of the six storied building of Hazaratpur Mouza during the construction period is

Tk. 2,19,45,383.00. Besides this, the convict-appellant No. 2-Mrs. Sabera Aman has two plots, the area of one is 12,000 square feet and another 6,000 square feet at BISIC Shilpa Nagari, Keraniganj, Dhaka for which she paid Tk. 4,68,000.00 and Tk. 2,34,000.00 respectively. She has purchased the House No. 44, Road No. 7, Block-F, Banani, Dhaka and its valuation as per deed is Tk. 49,35,000.00. Besides this, she has 660 decimals of land at Mouza Char Algi and the purchase value of the same is Tk. 51,67,000.00. Besides, there are 1101.25 decimals of land at Boilarpur Mouza and 161 decimals land at Kandi Boilarpur Mouza under Savar Upazilla in the name of the convict-appellant No. 2-Mrs. Sabera Aman and the purchase value of the same is Tk.67,82,000.00. These lands have been purchased

during 2002 to 2005. She has a Toyota car and its approximate price is Tk.5,00,000.00. She has deposits in various banks amounting to Tk.6,21,972.00; savings certificates of Tk.1,70,000.00 and cash of Tk.50,000.00. Thus, it appears that, the total valuation of the properties acquired in the name of Mrs. Sabera Aman stands at a tune of Tk.6,08,22,926.00. But, according to the income tax file of convict-appellant No. 2-Mrs. Sabera Aman, her total income from the year 1989 to 2006 is only Tk.17,08,050.00. Thus, the difference between her known source of income and the valuation of the properties acquired in her name stands at Tk.5,91,14,876.00 which is explicitly disproportionate to her known source of income. Convict-appellant No. 1-Aman Ullah Aman has acquired these properties worth of

Tk.8,28,47,232.00 through illegal and improper means in his name and in the name of his wife convict-appellant No. 2-Mrs. Sabera Aman which is inconsistent with her known source of income and to conceal the fact of acquiring such huge amount of properties, convict-appellant No. 1-Aman Ullah Aman has not mentioned the value of the properties and sources of acquiring them in the statement of wealth submitted by him.

The evidence of the prosecution witnesses contemplates that the valuation of the four buildings i.e a two storied building at Mouza Hazratpur, Keraniganj, a six storied building at Hazratpur Keraniganj, a six-storied commercial building at House No.2, Road No.21, Gulshan-1, Dhaka and a six-storied residential building (Sabera Bhaban) at 981/1, East Monipur, Mirpur, Dhaka have been

assessed by the specialist Engineers of the PWD. In order to prove the correctness of the assessment of the valuation of the above four buildings, the prosecution has examined a number of the specialist Engineers namely Mr. Shariful Azam, Executive Engineer, PWD-3, Segunbagicha, Dhaka, Mr. Md. Rafiqul Islam, Executive Engineer, PWD, Mirpur, Dhaka and Mr. Abdur Razzak Khan, Executive Engineer, E M. division-4, PWD, Dhaka as PWs-10, 11 and 19. The Engineer witnesses appearing before the trial court adduced evidence to the effect that they have assessed the valuation of such buildings as per schedules of rate of the PWD and they have also proved the valuation reports submitted by them as Exhibits-17-26. The Exhibits-17-22 show that the valuation of the two-storied residential building at Mouza Hazratpur, Keraniganj, Dhaka has been

assessed at Tk.33,96,133/- (Thirty three lakh ninety six thousand one hundred thirty three taka) and the valuation of the non-residential six-storied building (market) situated at the same Mouza has been assessed and determined at Tk.2,06,76,776/-(Two crore six lacs seventy six thousand seven hundred seventy six taka). Besides, Exhibits-24 and 25 indicate that the valuation of six-storied commercial building at house No.2, Road No.21, Gulshan-1, Dhaka and six storied residential building (Sabera Bhaban) at 981/1 East Manipur, Mirpur, Dhaka has been assessed at Tk.2,84,22,479/- (Two crore eighty four lacs twenty two thousand four hundred seventy nine taka) (Exhibit-24) and Tk.2,69,49,570 (Two crore sixty nine lacs forty nine thousand five hundred seventy taka) (Exhibit-25) respectively.

Mr. A.M Mahbub Uddin, appearing for the convict-appellants has pointed out that the Engineer witnesses have assessed the valuation of the above four buildings on a very high rates. Mr. Mahbub has given emphasis to the effect that the valuation of the same would be more less if the value of the same is taken into consideration when the properties in questions were acquired. Mr. Mahbub has argued that at the time of submitting wealth statement, there was no space in the prescribed form for submitting wealth statement to show the prices of the properties and the provision of showing price of the properties came into force on 29.03.2007 and under such circumstances, there is no scope to say that the convict-appellants concealed the information with regard to price and valuation of the properties. Mr. Mahbub Uddin very strongly points out that the

convict-appellants have shown the price and valuation of the properties in the income tax returns subsequently and as such it cannot be said that the convict-appellants concealed the price and valuation of the properties in the wealth statement and in the income tax returns. Mr. Khurshid Alam Khan for the ACC opposing the submissions of the learned Advocate for the convict-appellant, submits that the convict-appellant did not raise this issue before the trial court and that as per section 26 of the ACC Act, 2004, the convict-appellants have to submit information with regard to book, accounts, record, declaration, return or any document under subsection(1) of section 26 of ACC Act, 2004 and that at the time of submitting wealth statement, the convict-appellants have to submit details of their assets which include price and valuation of the

properties and that they have cross-examined the concerned witnesses who assessed and ascertained the value, price and valuation of the properties and as such this sort of submissions is not acceptable at the present moment. The allegation of the defence with regard to non consideration of proper valuation of the assets has been denied by the Engineer witnesses. The defence could not make any dispute in respect of the experience and expertise of the PWs-10, 11 and 19 in the field of construction of building and other related matters. They have been holding the responsible post of the Executive Engineer of the Public Works Department of the government and in that view of the matter they are the most competent, impartial and independent witnesses. In that view of the matter, their credibility cannot be questioned without any tangible material

to show that they are otherwise biased. Mere suggestion put forward by the defence can never be considered sufficient to disbelieve the evidence of these expert witnesses. It appears from the evidence that before 1991, the convict-appellant No. 01 was the student leader and he had no mentionable sources of income and he did not get mentionable property by way of inheritance even. Similarly, it appears from the evidence that the convict-appellant No.2 is the housewife and she had no business to earn money and she also did not get mentionable property by way of inheritance as well. The convict-appellants have failed to prove that the properties in question are not disproportionate to their known sources of income following the provision of Section 27(2) of the Anti-Corruption Commission Act, 2004, Section 5(3) of the Prevention of

Corruption Act, 1947 and Section 7 of the Criminal Law Amendment Act, 1958.

The evidence of the prosecution stipulates that the valuation of the land acquired by the convict-appellant No.1 Aman Ullah Aman in his name and in the name of his wife the convict-appellant No.2 Mrs. Sabera Aman has been ascertained by the concerned District Registrar and the Sub-Registrars. In order prove the same, the prosecution has examined those officials of the registration department as PWs-6, 7 and 8 who adduced evidence in support of the reports submitted by them regarding the valuation of the land and prove the same as Exhibits-10-14.

From the evidence on record, it is evident that the price of the two motor vehicles have been ascertained by the Inspector of the BRTA. In order

to prove the same, the BRTA witness Md. Ismail Howlader, Motor vehicle Inspector, BRTA as PW-9 has clearly stated in his evidence that he has ascertained the price of the two motor vehicles of Aman Ullah Aman and his wife Mrs. Sabera Aman with reference to the concerned office record. He appearing before the trial court not only adduced evidence in this regard but also proved the valuation reports submitted by him as Exhibits-15-16.

From the evidence adduced by the prosecution witnesses, it also appears that the valuation of the four firearms of the convict-appellant No.1 has been ascertained by PW-20 Tanvir Hossain, who is the Managing Director of the Ahmed Hossain Arms Company, 69, Baitul Mokkaam, Dhaka. Furthermore, he adduced evidence in support of the

valuation report of the firearms and also proved the valuation report of the firearms as Exhibit-40.

The officials of Prime Bank Ltd. Gulshan Branch and the Pubali Bank Ltd. Gulshan Branch, Dhaka as PWs-12 and 13, adduced evidence before the trial court stating, inter-alia, that the various financial transactions of the convict-appellant No.1 Aman Ullah Aman and his wife the convict-appellant No.2 Mrs. Sabera Aman were transacted and maintained by them with the above branches of the two banks. The aforesaid banker witnesses have adduced evidence in this regard before the trial court and proved the statements of bank accounts of the convict-appellants and their relative Asker Ibne Islam as Exhibits-27, 28 and 29.

The evidence of PW-13 Md. Ehtesham UI Haque Chowdhury, Manager (AGM), Pubali Bank

Ltd. Gulshan Branch, Dhaka suggest about the transfer of an amount of Tk.44,00,000/- (Forty four lacs) by the convict-appellant No.2 Mrs. Sabera Aman from her savings account No.565-101-82759 with the aforesaid Gulshan Branch of the Pubali Bank Ltd. by three cheques to the account of her brother Asker Ibne Islam. The aforesaid fact has been admitted and corroborated by PW-21 Mr. Asker Ibne Islam, the brother of the convict-appellant No.2.

It is argued on behalf of the defence that the convict-appellant No.2 Mrs. Sabera Aman got 1101.25 decimals of land by way of gift from her brother AKM Morshed on the basis of a registered deed No.18736 dated 09.08.2005 but the aforesaid Mr. AKM Morshed being PW-21 adduced evidence before the trial court stating that he has purchased

1133.25 decimals land by the deed No.2282 dated 09.02.2003 for a consideration of Tk.58,07,000/- (Fifty eight lac seven thousand taka) and subsequently, he gifted 1101.25 decimals of land out of the aforesaid purchased 1133.25 decimals in favour of his sister Mrs. Sabera Aman. He has admitted that he has purchased the aforesaid 1133.25 decimals land of the deed No.2282 dated 09.02.2003 by taking an amount of Tk.58,07,000/- (Fifty eight lakh seven thousand taka) from his brother-in-law the convict-appellant No.1 Aman Ullah Aman. The prosecution, of course, has declared this PW-22 hostile and cross-examined him. During such cross-examination the prosecution has put forward the suggestion that the real owner of the aforesaid 1133.25 decimals of land of deed No.2282 dated 09.02.2003 is accused Aman Ullah

Aman and PW-22 Mr. AKM Morshed is, simply, a benamder of accused Aman Ullah Aman.

The evidence of PW-22 indicates about taking the purchase money of Tk.58,07,000/- (Fifty eight lac seven thousand taka) by PW-22 AKM Morshed from the convict-appellant No.1 Aman Ullah Aman and subsequent transfer of the same to the convict-appellant No.2 Mrs. Sabera Aman by a deed of gift shows that the transaction in question was out and out a benami transaction.

The provision of section 5(3) of the Prevention of Corruption Act, 2004 and section 27(2) of the Anti-Corruption Commission Act, 2004, provides that the onus of proof heavily lies on the defence to show that this was not a benami transaction. But no effort, whatsoever, has been made on behalf of the defence to discharge such onus.

The evidence of PW-15 Md. Faridur Rahman and PW-16 Md. Abul Kashem are the dealing assistants of the concerned offices of the Income Tax Department in respect of the income tax files of the convict-appellant No.1 Aman Ullah Aman and the convict-appellant No.2 Mrs. Sabera Aman. These income tax witnesses have proved the two seizure lists regarding seizing of the income tax files of the convict-appellant No.1 Aman Ullah Aman and the convict-appellant No.2 Mrs. Sabera Aman as Exhibits-30 and 33, respectively. They have also proved the income tax files of the convict-appellants as Exhibits-31, 32 and 34. During cross-examination of these two income tax witnesses namely PWs-15 and 16, the defence has filed some documents which have been marked as Exhibits “A to N series.”

It is evident from the record that Exhibit-A is the revised Income Tax return of the convict-appellant No.1 Aman Ullah Aman for the assessment year 2006-2007 submitted on 26.02.2007. Exhibits B-D are the copies of the applications filed by the Advocate and authorized representative of the convict-appellant No.1 Aman Ullah Aman on 04.03.2007, 14.03.2007 and 06.03.2007 respectively, praying for accepting the Income Tax with explanation about the source in respect of the properties which include a two-storied building at village boiatikandhi, Keraniganj, Dhaka, 107 decimals of land of Keraganj and one Toyota Landcruiser motor vehicle under Sections 19B, 19BB and 19BBB of the Income Tax Ordinance, 1984. It further appears that Exhibit-E, the revised income tax return was filed on 25.02.2007 by the

convict-appellant No.2 Mrs. Sabera Aman. Exhibits-F to N are the copies of the applications filed by the convict-appellant No.2 Mrs. Sabera Aman on 06.03.2007, 14.03.2007, 14.03.2007, 06.03.2007, 06.03.2007, 06.03.2007, 14.03.2007 and 14.03.2007 respectively, praying for accepting the Income Tax with explanation about the source of the properties which include a six storied building at Mouza Hazratpur, Keraniganj, Dhaka, a house on six katha 13.50 chattak land at Plot NO.44, Road No.7, Block-F, Banani, Dhaka (50% share), 456.50 decimals of land of Mouza Hazratpur, Keraniganj, Dhaka, 660 decimals of land of Mouza Char Algi, Keraniganj, Dhaka, 161 decimals of land of Mouza Kandhi Boilarpur, Savar, Dhaka, a Toyata Premio car and a six-storied building at 981/1, Monipur, Dhaka.

We have seen, perused and examined the Exhibits A-N which are available with the record. It appears therefrom that the convict-appellant No.1 Aman Ullah Aman and the convict-appellant No.2 Mrs. Sabera Aman, after receiving the notice of the Anti-Corruption Commission (Exhibit-3) to submit the statements of assets in this case, have tried to pay the income tax in respect of the properties acquired in their name. It further appears that they have not filed these applications for payment of Income Tax in time. PW-16 has clearly stated in cross-examination that these applications and papers have been submitted after the completion of the assessment years. These petitions have not been filed in due time during the relevant assessment years. He further stated that the assessment under Sections 19B and 19BB of the Income Tax

Ordinance, 1984 have been completed long ago. PW-16 in this regard has stated in his evidence as follows:-

“এই সব আবেদনপত্রসমূহ ও কাগজপত্র (প্রদ: E-N) assessment সম্পন্ন হওয়ার পর আমাদের কাছে দেওয়া হইয়াছে। এই সব আবেদন due time এ করা হয় নাই। ১৯বি এবং ১৯বিধি ধারার assessment অনেক আগেই সম্পন্ন হইয়াছে।”

Mr. A.M Mahbub Uddin, the learned Adovocate for the convict-appellants with reference to the Exhibits A-N and sections-19B, 19BB and 19BBB of the Income Tax Ordinance, 1984, has argued that the proceeding initiated by the Anti-Corruption Commission against the convict-appellant No.1 Aman Ullah Aman directing him to submit the wealth statement and the source of acquisition thereof is not at all lawful because of the fact that the Income Tax of the properties and the explanation about the source of the same have

already been submitted to the Income Tax authority and the same have been duly accepted.

Mr. A.M. Mahbub Uddin, the learned Advocate for the convict-appellants has taken us through the Exhibits A-N and the relevant laws of the income tax ordinance and has insisted on giving understanding that since the valuation of the properties have already been submitted before the income tax authority, the reassessment and revaluation of the same by the officials of the Registration Department, BRTA and Engineer's of PWD is illegal.

Mr. A. M. Mahbub Uddin, in support of his contentions, has referred to a legal decision taken in the case of **ACC Vs Faisal Morshed Khan, reported in 66DLR(AD) 236** wherein it has been held that "There may be a situation when there is no

assessment of valuation by any competent authority of the Government exercising power in that behalf and in such a case, the Anti-Corruption Commission has no other option but to take the assistance of the PWD officials in making assessment of the valuation of any property. Therefore, it cannot be said that the assessment of valuation made by the PWD officials does not have any evidentiary value in all situations.

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 Incoem Tax Department is allowed to be questioned then the very sanctity of such assessment will be at stake and this may cause of overlapping exercise of jurisdiction between the two independent departments of the Government.”

On the contrary, Mr. Khurshid Alam Khan, the learned Senior Advocate for the Anti-Corruption Commission has pointed out that Exhibits A-N have got no evidentiary value as those are nothing but the copies showing filing of the applications by the convict-appellants on several dates, long after the expiry of the due time, specially, on 26.02.2007, 06.03.2007, 14.03.2007 and 14.05.2007 praying for acceptance of the tax in respect of the properties acquired by the convict-appellants. They have not paid the Income Tax in time. They have also not submitted any return in time in respect of these

properties to the Income Tax authority. The accused persons have taken such steps with reference to Exhibits A-N after receiving the notice (Exhibit-3) from the Commission only with a view to saving their skin from the liability of this case long after the expiry of the due time and therefore, such steps cannot help the accused persons regarding their acquisition of the property through improper means, which are disproportionate to known source of income. Mr. Md. Khurshid Alam Khan points out that this is not a case under the provision of the Income Tax Ordinance, 1984 rather this is a case under the Provision of the Anti-Corruption Commission Act, 2004, the Prevention of Corruption Act, 1947 and the Emergency Power Rules, 2007. According to Mr. Khan, the revised returns submitted under Section 78 of the Income

Tax Ordinance, 1984 by the convict-appellants are not acceptable since those were not filed following the requirements of law.

It goes without saying that the present case is a case of acquisition of wealth disproportionate to known source of income and concealment of wealth or furnishing false statement thereof in the wealth statement. This is not a tax case. There is a difference of substance between the assessment of wealth for the purpose of submission of returns and payment of taxes as contemplated under the provision of the Income Tax Ordinance, 1984 and assessment of the valuation of the properties allegedly acquired by improper means which are disproportionate to known source of income as contemplated under the provision of the Anti-Corruption Commission Act, 2004 and the

Prevention of Corruption Act, 1947. Under the provision of the Income Tax Ordinance, 1984, generally, an assessee submits self-assessed Income Tax Return for the purpose of payment of Tax. Income Tax cases are for the purpose of collection of Tax, while the purpose of wealth case is to ensure punishment for the offence of concealment of wealth as well as for acquisition of the wealth through improper means disproportionate to known source of income. In other words, the object of the enactment of the Prevention of Corruption Act, 1947 and the Anti-Corruption Commission Act, 2004 is to combat and eliminate bribery and corruption from all levels of the society including the public servants effectively while the object of enacting the Income Tax Ordinance, 1984 is to collect taxes and to prevent evading payment of taxes. In this regard, the

decision taken in the case of **Mirza Abbas Uddin Ahmed Vs. State and another in Criminal Revision No. 3497 of 2018** may be taken into consideration. In the aforesaid decision, it has been held that the purpose and object of enactment of the Anti-Corruption Commission Act, 2004 is quite different and distinguishable from the purpose and object of enactment of the Income Tax Ordinance, 1984. The aforesaid view has been affirmed by the Appellate Division in **Criminal Petition for Leave To Appeal No. 793 of 2019 in the case of Mirza Uddin Ahmed Vs. State and another**. In the given facts and circumstances, we are led to hold the view that there is a considerable amount of force in the above submissions of the learned Advocate for the Anti-Corruption Commission in this regard.

Mr. A.M Mahbub Uddin, the learned Advocate for the convict-appellants, has pointed out that the notice has not been served upon the convict-appellant No.1 Aman Ullah Aman following the provisions of law. Mr. Mahbub very strenuously submits that according to rule 17(1) of the Anti-Corruption Commission Rules, 2007, the notice should have been served in the prescribed form appended to the schedule of the said Rules.

It is now well settled that it is the statutory right and authority of the Commission to issue notice upon any person directing that person to submit wealth statement under Section 26(1) of the Anti-Corruption Commission Act, 2004. It is evident from the record that the Anti-Corruption Commission in exercise of the power conferred on it under Sections 18 and 26(1) of the Anti-Corruption

Commission Act, 2004 and Rules 15 Gha(1)/15 Gha(2) of the Emergency Power Rules, 2007 issued the aforesaid notice on 18.02.2007 and the same was served upon the convict-appellant No.1 Aman Ullah Aman in the Chittagong Central Jail on 20.02.2007 at 8.15 am. PW-2 Mr. Bazlur Rashed, Senior Jail Super, Chittagong Central Jail, Chittagong has proved the service of the aforesaid notice (Exhibit-3) upon the convict-appellant No.1 Aman Ullah Aman in the Chittagong Central Jail on 20.02.2007.

Apart from the above, it appears that the Anti-Corruption Commission Rules, 2007 (hereinafter to as the Rules) that the said Rules have been framed and published in the Bangladesh Gazette on the 29th March, 2007. Thus, it appears that the aforesaid notice has been served upon convict-appellant No.1 Aman Ullah Aman before the framing of the Rules.

Since at the time of issuance of the notice no such Rules were in existence, the question of issuing the same in the prescribed form as provided by Rule 17(1) does not arise. Accordingly, the Commission has issued the notice according to its own method under signature of the Secretary of the Commission. Section 34 of the Anti-Corruption Commission Act, 2004 provides that with a view to giving effect to the object of this Act, the Commission with the previous sanction of the President can frame Rules by notification in the official Gazette but nowhere in the four corners of the Anti-Corruption Commission Act, it is stated that notice under Section 26(1) of the Act cannot be issued before framing such Rules. It is very pertinent to note here that on receiving the notice (Exhibit-3) convict-appellant No.1 Aman Ullah Aman appointed Advocate Mr. Kazi Sahaj

Uddin Mintu his representative to submit the statement of assets. PW-2 Md. Bazlur Rashid, Senior Jail Super, Chittagong Central Jail has proved the above appointment of the Advocate (Exhibit-4) stating that when convict-appellant No.1 Aman Ullah Aman was confined in Chittagong Central Jail he appointed Advocate Mr. Kazi Sahaj Uddin to submit his statement of wealth. Advocate Mr. Kazi Sahaj Uddin Mintu has also admitted the same as PW-3. He also proved the statement of wealth submitted by him on behalf of convict-appellant No.1 Aman Ullah Aman as Exhibit-5. He further stated that convict-appellant No.2 Mrs. Sabera Aman also filed separate statement of wealth in her name through him. He has proved such statement of wealth in the name of convict-appellant No.2 Mrs. Sabera Aman as Exhibit-6-7. He has

proved the forwarding by which he submitted the above statements of wealth in the name of convict-appellant No.1 Aman Ullah Aman and convict-appellant No.2 Mrs. Sabera Aman as Exhibit-8. Moreover, in view of Section 18(2) of the ACC Act, 2004, the notice issued by the Secretary of the Commission was given *ex-post facto* approval on satisfaction of the new Commission. Under the circumstances, the notice in question issued under section 26(1) of the ACC Act, 2004 is not defective in view of the decision taken in the case of **Moudud Ahmed Vs. State reported in 68DLR(AD)118**. Moreover, the convict-appellants submitted wealth statement before the Commission following the notice without challenging the same. For the reasons stated above, we are of the view that the issuance of

the notice was lawful and the same was duly served upon convict-appellant No.1 Aman Ullah Aman.

Mr. A. AM Mahabub Uddin, the learned Advocate for the convict-appellant has pointed out that no prior sanction of the Commission was obtained in this case by the informant. Mr. AM Mahabub Uddin, the learned Advocate convict-appellants, contends that according to Section 32 of the Anti-Corruption Commission Act, 2004, it is mandatory to obtain prior sanction of the Commission before lodging any case and the copy of the sanction letter must be filed to the Court at the time of filing of the case.

There is nothing to gainsay that prior sanction of the Commission is necessary under Section 32 of the Anti-Corruption Commission Act, 2004 for taking cognizance and copy of the sanction letter

must be filed to the Court at the time of filing charge-sheet. In the instant case we have already found that such sanction was given by the Commission. The aforesaid sanction letter and the copy of the aforesaid sanction letter have been marked as Exhibit-1, PW-5 Nasrin Ara Surat Amin, Director, Anti-Corruption Commission has clearly stated that on the recommendation of the inquiry report she on behalf of the Commission accorded permission to file a charge-sheet against convict-appellant No.1 Aman Ullah Aman and convict-appellant No.2 Mrs. Sabera Aman vide Memo No.Dudak/37-2007(Anu:2)/1057 dated 06/3/2007. The informant Abdullah Al Zahid, Deputy Director, Anti-Corruption Commission has also affirmed the same as PW-1. The informant has also proved the aforesaid sanction letter as Exhibit-1.PW-5 has

proved the genuineness of the said sanction letter (Exhibit-1). Thus, it becomes clear that in the instant case, the informant has duly obtained sanction of the Commission as contemplated under Section 32 of the Anti-Corruption Commission Act, 2004. In the case of **ACC Vs. Dr. Mohiuddin Khan Alamgir reported in 62DLR(AD)(2010)290**, it was held that no sanction is required to file a complaint and the unamended as well as the amended section 32 requires only one sanction from the Commission and sanction from the Commission will be required when the charge-sheet is filed under sub-section (2) of Section 32 of the ACC Act, 2004. In the instant case, the requirements of law has been complied with. Therefore, the submissions of the learned Advocate for the convict-appellants in this regard have no leg to stand on.

In order to prove the total income, expenditure and savings of convict-appellant No.1 Aman Ullah Aman and convict-appellant No.2 Mrs. Sabera Aman from 1991 to 2006 with reference to their Income Tax files, the Prosecution has examined PW-17 Iktiar Uddin Mohammad Mamun, Deputy Director, Central Intelligence Cell, National Board of Revenue (NBR), who categorically stated in his evidence that being asked by the Commission he submitted reports in respect of income, expenditure and savings of convict-appellant No.1 Aman Ullah Aman and convict-appellant No.2 Mrs. Sabera Aman as per their Income tax files. He has also proved the aforesaid two reports as Exhibits-35 & 36, respectively. Exhibit-35 shows that the total income of convict-appellant No.1 Aman Ullah Aman from 1991-2006 is Tk. 1,08.14740.00 (one

crore eight lacs fourteen thousand seven hundred forty) and his total expenditure during such period is Tk.37,36,455,00(Thirty seven lacs thirty six thousand four hundred fifty five taka). Thus, his total savings during such period stands at Tk. 74,74,458.00 (Seventy four lacs seventy four thousand four hundred fifty eight taka). On the other hand, Exhibit-36 shows that the total income of convict-appellant No.2 Mrs. Sabera Aman from 1989 to 2006 is Tk. 19,68,560.00 (Nineteen lacs sixty eight thousand five hundred sixty taka) and the total expenditure is Tk.5,91,000.00 (Five lacs ninety one thousand taka). During such period the total savings of Mrs. Sabera Aman is Tk. 13.77,560.00 (Thirteen lacs seventy seven thousand five hundred sixty taka). Thus, it is found that the total savings of convict-appellant No.1 Aman Ullah Aman and his

wife convict-appellant No.2 Mrs. Sabera Aman from 1991-2006 is Tk. (74,74,458.00+13.77,560.00) = 88,52,018.00 (Eighty eight lacs fifty two thousand eighteen taka).

From the evidence of banker witness PW-12 and from exhibit -27, it is evident that convict-appellant No.1 Aman Ullah Aman and convict-appellant No.2 Mrs. Sabera Aman applied for loan for the construction of the houses of Gulshan and Mirpur respectively, to the Prime Bank Ltd. Gulshan Branch, Dhaka. Thereafter, an amount of Tk. 75,00,000.00 (Seventy five lacs) was granted in favour of appellant Aman Ullah Aman for construction of the house of Gulshan and an amount of Tk. 70,00,000.00 (Seventy lacs) was granted in favour of appellant Mrs. Sabera Aman for construction of the house of Mirpur. Exhibit-27

indicates that the Prime Bank Ltd. Gulshan Branch, Dhaka recovered an amount of Tk.58,68,826.79 (Fifty eight lacs sixty eight thousand eight hundred twenty six taka seventy nine paisa) as principal amount and an amount of Tk.26,13,956.21 (Twenty six lacs thirteen thousand nine hundred fifty six taka twenty one paisa) as interest from convict-appellant No.1 Aman Ulah Aman. Thus, it appears that convict-appellant No.1 Aman Ullah Aman for the purpose of paying back his loan with interest deposited an amount of Tk. 84,82,783.00(Eighty four lacs eighty two thousand seven hundred eighty three taka) in favour of his loan account of the Prime Bank Ltd. Gulshan Breanch. The said Exhibit-27 further indicates that convict-appellant No.2 Mrs. Sabera Aman also deposited an amount of Tk.18,00,000.00 (Eighteen lakh taka) with her

loan account of the said branch of the Prime Bank to pay back the arrear of loan with interest. Thus, we find that convict-appellant No.1 Aman Ullah Aman and convict-appellant No.2 Mrs. Sabera Aman jointly spent an amount of Tk.(84,82,783.00+18,00,000.00)=1,02,82,783.00 (One crore two lacs eighty two thousand seven hundred eighty three taka) for the purpose of paying back their loan money with interest. Thus, it appears that the total amount spent for the purpose of paying back the loan money with interest is higher than the total savings of the convict-appellants. They have invested Tk.1,02,82,783,00 (One crore two lacs eighty two thousand seven hundred eighty three taka) for the purpose of paying back the loan with interest. But during the relevant period, their savings is Tk. 88,52,018.00 (Eighty eight lacs fifty two

thousand eighteen taka) Thus, it is evident that during such period the investment of the convict-appellants respecting only payment of bank loan with interest is more than their savings.

The evidence of the prosecution witnesses tends to show that the convict-appellant No.1 Aman Ullah Aman in his own name and in the name of his wife convict-appellant No.2 Mrs. Sabera Aman has acquired assets worth Tk. 9,84,63,741.00 (Nine crore eighty four lacs sixty three thousand seven hundred forty one taka) through improper means, which are not consistent with his lawful known sources of income.

In view above discussions made in the light of evidence of the prosecution witnesses, the total value of the property acquired by convict-appellant No.1 Aman Ullah Aman in his own name and in the

name of his wife convict-appellant No.2 Mrs. Sabera Aman through improper means which are disproportionate to his lawful known source of income stands at a tune of Tk. 9,84,63,741.00 (Nine crore eighty four lacs sixty three thousand seven hundred forty one taka). The convict-appellant No.1 Aman Ullah Aman has not mentioned the value of these properties and source of acquisition of them in the wealth statement to conceal the fact of acquiring such huge amount of properties through improper means, which are also disproportionate to his lawful known source of income.

It is worthwhile to mention that it is the common practice of law that the prosecution will prove it's case beyond doubt by adducing reliable and satisfactory evidence. In the instant case, the prosecution has established by evidence that the

convict-appellants did not disclose the valuation and source of acquisition of properties in the wealth statement. Once the prosecution discharged its onus to prove the case, the liabilities under the special law to disprove the prosecution case are cast upon the defence.

It is important to note that in case of acquisition of wealth allegedly through improper and illegal means, which are disproportionate to known source of income, the owner in possession of such wealth must prove that he has not acquired the same through improper and illegal means and that the same are not disproportionate to his lawful known source of income.

Section 27(2) of the Anti-Corruption Commission Act, 2004 reads as under:-

“(২) উপ-ধারা (১) এ উল্লিখিত কোন অপরাধের বিচার চলাকালীন যদি প্রমাণিত হয় যে, অভিযুক্ত ব্যক্তি নিজ নামে, বা তাহার পক্ষে অপর কোন ব্যক্তির নামে, তাহার জ্ঞাত আয়ের উৎসের সহিত অসংগতিপূর্ণ স্থাবর বা অস্থাবর সম্পত্তির মালিকানা অর্জন করিয়াছেন বা অনুরূপ সম্পত্তির দখলে রহিয়াছেন, তাহা হইলে আদালত অনুমান করিবে (shall presume) যে, অভিযুক্ত ব্যক্তি উক্ত অপরাধে দোষী, যদি অভিযুক্ত ব্যক্তি আদালতে উক্ত অনুমান খণ্ডন (rebut) করিতে না পারেন; এবং কেবল উক্তরূপ অনুমানের উপর ভিত্তি করিয়া প্রদত্ত কোন দণ্ড অবৈধ হইবে না।”

So, as per Provision of Section 27 (2) of the Anti-Corruption Commission Act, 2004, the convict-appellants must show that the properties in question have not been acquired by improper and illegal means and the same are not inconsistent with their known sources of income and for that purpose, the convict-appellants must show the sources of acquiring the same. The above mentioned two sections have laid down the rule of evidence

enabling the court to raise a presumption of guilt in certain circumstances, which is a complete departure from the established principle of criminal jurisprudence that the burden always lies on the prosecution to prove all the ingredients of the offence charged and that the burden never shifts on to the convict-appellant to disprove the charge framed against him.

Section 5(3) of the Prevention of Corruption Act, 1947 runs as under:-

“In any trial of an offence punishable under Sub-section (2) the fact that the accused person or any other person on his behalf is in possession for which the accused person cannot satisfactorily account, of pecuniary resources of property disproportionate to his known sources of income may be proved, and on such proof the Court shall

presume, unless the contrary is proved, that the accused person is guilty of criminal misconduct and his conviction therefore shall not be invalid by reason only that it is based solely on such presumption.”

Similarly, by section 5(3) of the Prevention of Corruption Act, 1947, the legislature has deliberately cast a burden on the convict-appellant not only to offer a plausible explanation as to how he earns his large wealth, but also to satisfy the court that his explanation is worthy of acceptance. Similar burden unlike Section 27(2) of the Anti-Corruption Commission Act, 2004, has also been cast on the accused.

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.

It is argued by the learned Advocates for the convict-appellants that non-disclosure of assets including the valuation of the same 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-appellants did not pay income tax

making any concealment of income and deliberately furnish inaccurate particular of his income, they 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-appellants did not submit income tax returns in the relevant assessment years though they were supposed to submit the same in the relevant assessment years. It is argued on behalf the convict-appellants 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-appellants have 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-appellants 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 subsection 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-appellants have to satisfactorily account for pecuniary sources or properties which are claimed to be disproportionate to their known sources of income. In the instant case, the convict-appellants

have 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 are specific allegations of concealment of information of valuation of the properties and acquisition of the properties and the same are deemed to be disproportionate to their known source of income and the convict-appellants are liable to be responsible for that offences.

On top of everything else, we have convincingly found from the evidence on record that the acquisition of the incriminating properties worth Tk. 9,84,63,741.00 (Nine crore eighty four lacs sixty three thousand seven hundred forty one taka) by convict-appellant No.1 Aman Ullah Aman in his name and in the name of this wife convict-appellant

No.2 Mrs. Sabea Aman from 1991 to 2006, when he was a Member of Parliament and a State Minister, is admitted and as such the burden of proof heavily lies on the convict-appellants to prove that these properties are not disproportionate to their lawful known source of income and that they have not acquired these through improper and illegal means. But in the instant case, the convict-appellants have hopelessly failed to discharge such onus. The convict-appellants could not show the lawful known sources of their income by which they have amassed such huge amount of wealth worth Tk. 9,84,63,741.00 (Nine crore eighty four lacs sixty three thousand seven hundred forty one taka). The convict-appellants did not adduce any acceptable and reliable evidence to prove the acquisition of such property through lawful means. Under such

circumstances, the irresistible conclusion is that the charges framed against the convict-appellants have been proved beyond all reasonable doubt and suspicion.

In view of the above findings and discussion and on consideration of the evidence both oral and documentary on record and also regard being had to the Provision of Section 27(2) of the Anti-Corruption Commission Act, 2004 and section 5(3) of the Prevention of Corruption Act, 1947, we are of the clearly of opinion that the convict-appellants must be presumed guilty of the offence of acquiring properties which are clearly disproportionate to their known source of income as those were acquired by improper and illegal means.

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 gains. 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 politics cannot be a tool to make money and amass properties and being protectors, the politicians cannot be predators.

We, the people of this country got the independence of Bangladesh at the cost of lives of 3 million martyrs and supreme sacrifices of 2 lacs heroic women. It is the pious wish and key expectation of the

court that our country will be ruled by the law and our country would be free from all sorts of exploitation and the country would be ruled by the people who are out and out honest having highest level of integrity, not by the corrupt people.

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.

We cannot really beat big money with more money. We 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 socialize them to be otherwise. The children must be taught to differentiate between the honesty and dishonesty from the very childhood. 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 21.06.2007 passed by the learned Special Judge, Court No.01, Dhaka in Special Case No.01 of 2007 arising out of Kafrul Police Station Case No.15(3)2007 (corresponding to ACC G.R. No.12 of 2007) convicting the accused-appellant No.1

under Section 26(2) of the Anti-Corruption Commission Act, 2004 and Rule 15Gha(5) of the Emergency Power Rules, 2007 and sentencing him to suffer rigorous imprisonment for 3(three) years and also convicting the appellant No.1 under Section 27(1) of Anti Corruption Commission Act, 2004 read with Section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him to suffer rigorous imprisonment for 10(ten) years with fine of Tk.10,00,000/00 (ten lac) only, in default to suffer rigorous imprisonment for 1(one) year more and both the sentences will run consecutively and further convicting the accused appellant No.2 Sabera Aman under sections 27(1) of the Anti-Corruption Commission Act, 2004 read with Section 109 of the

Penal Code and sentencing her to suffer rigorous imprisonment for 3(three) years and further more properties of the appellants mentioned in the case be confiscated to the State, is affirmed.

The convict-appellants are 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 serve out the remaining sentences 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-appellants for

accepting Annexure-Y series as additional evidence,
is rejected.

Let a copy of the this judgment and order be
communicated to the learned Special Judge, Court
No.01, Dhaka, the Chairman, Anti-Corruption
Commission, and the Registrar General, Supreme
Court of Bangladesh, Dhaka, at once.

Khizir Hayat, J:

I agree.