

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Refaat Ahmed, CJ
Mr. Justice Md. Ashfaquul Islam
Mr. Justice Zubayer Rahman Chowdhury
Mr. Justice Md. Rezaul Haque

CRIMINAL PETITION FOR LEAVE TO APPEAL NO.1914 OF 2024
(From the judgment and order dated 21.07.2016 passed by the High Court Division in Criminal Appeal No. 7469 of 2013)

Md. Gias Uddin Al-Mamun ... Petitioner

= Versus =

The State and another ... Respondents

For the Petitioner : Mr. Sheikh Mohammad Zakir Hossain, Senior Advocate with Mr. Kayser Kamal, Advocate instructed by Md. Khabir Uddin Bhuiyan, Advocate-on-Record.

For the Respondent No. 1 : Not represented.

For the Respondent No. 2 : Mr. Md. Ashif Hasan, Senior Advocate instructed by Ms. Sufia Khatun, Advocate-on-Record.

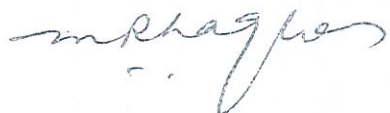
Date of hearing and order : The 10th December, 2024

O R D E R

Md. Rezaul Haque, J:

The delay of 3049 days in filing this Criminal Petition for Leave to Appeal No. 1914 of 2024 is condoned.

This Criminal Petition for Leave to Appeal is directed against the judgment and order dated



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21.07.2016 passed by the High Court Division in Criminal Appeal No. 7469 of 2013 dismissing the Appeal.

The prosecution case, in short, is that one Md. Ibrahim, Assistant Director, Durnity Daman Commission, in short 'the Commission', lodged a First Information Report, in short the 'FIR', with Cantonment Police Station on 26.10.2009, alleging, *inter alia*, that the convict-petitioner Md. Gias Uddin Al-Mamun demanded money from Begum Khadija Islam, Chairman of the Nirman Construction Company, with the assurance that a work order would be allocated to her company for construction of an 80(eighty) MW capacity power station in Tongi BISIC Industrial Area through his close friend and business partner Md. Tarique Rahman. Being induced by such assurance, Begum Khadija Islam on 01.08.2003 transferred USD 7,50,000 (seven lac fifty thousand) from her account maintained with the Overseas Chinese Banking Corporation Limited in Singapore to the account of the convict-Md. Gias Uddin Al-Mamun, being No. 158052 maintained with the City Bank in Singapore. The accused persons in collusion with each other having earned directly in illegal manner an amount of



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Tk.20,41,25,843 secretly deposited the same in the said account No. 158052 in the City Bank, Singapore. The convict-petitioner by using City Bank International Gold Visa Card No. 4568-8170-0006-4124 and convict Md. Tarique Rahman, by using Supplementary International Gold Visa Card No. 4568-8170-1006-4122, in collusion with each other, spent US\$ 79,542.78 and US\$ 54,982.42 respectively from the said account in different countries. Subsequently, in pursuance of three foreign demand drafts, on 11.06.2007 Taka 20,41,25,843 was transferred from the account of the convict-petitioner being No. 158052 with the City Bank, Singapore to his account maintained with the Sonali Bank, Cantonment Branch, Dhaka.

Thereafter, on 31.07.2007, Taka 20,41,25,613.28 was deposited in Bangladesh Bank vide Pay Order No. 6295121 in favor of the Government of Bangladesh. The convict-petitioner opened two accounts bearing Nos. 85184201 and 96893281 with Natwest Bank, Aldwych Branch, London wherein he deposited 2,08,564.64 pound and 2,43,750.43 pound respectively, which was illegally transferred by laundering of money.

The various incidents of offences were alleged

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to have been committed by the accused from 01.01.2003 to 31.05.2007. Hence, the case.

The Investigating Officer, after investigation, submitted charge sheet against the convict-petitioner and convict-Md. Tarique Rahman under sections 2(ট) (আ) (ই) and 4(2) of the Money Laundering Protirodh Ain, 2009.

The case was transferred to the learned Metropolitan Senior Special Judge, Dhaka who took cognizance of offence against the convict-petitioner and convict-Md. Tarique Rahman instead under sections 2(ঠ) (অ) (আ) and 13 of the Money Laundering Protirodh Ain, 2002 and transferred the case to learned Special Judge, Court No. 03, Dhaka, for holding trial, wherein the case was registered as Special Case No. 17 of 2011.

Thereafter, the learned Special Judge, Court No. 3, Dhaka framed charge against the convict-petitioner and convict-Md. Tarique Rahman under sections 2(ঠ) (অ) (আ) and 13 of the Money Laundering Protirodh Ain, 2002.

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During the course of trial, the prosecution examined as many as 13 (thirteen) witnesses and the convict-petitioner examined 05 witnesses.

The learned Special Judge, Court No. 3, Dhaka, after conclusion of the trial, vide judgment and order dated 17.11.2013, convicted the petitioner under section 13(2) of the Money Laundering Protirodh Ain, 2002 and sentenced him to suffer imprisonment for a period of 07 (seven) years and to pay a fine of Tk. 40 (forty) crore and also confiscated the laundered Taka 20,41,25,613.28 in favour of the state and acquitted co-accused Md. Tarique Rahman of the charges leveled against him.

Being aggrieved, the convict-petitioner preferred Criminal Appeal No. 7469 of 2013 before the High Court Division.

On the other hand, the Commission, being aggrieved by the aforesaid judgment and order, so far as it relates to the acquittal of co-accused Md. Tarique Rahman, filed Criminal Appeal No. 7225 of 2013 before the High Court Division.

Thereafter, the High Court Division, having heard both the appeals, vide the judgment and

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order dated 21.07.2016, dismissed the Criminal Appeal No. 7469 of 2013 affirming the sentence of imprisonment and reducing the fine of Tk. 40 (forty) crore to Tk. 20 (twenty) crore. However, the High Court Division allowed Criminal Appeal No. 7225 of 2013 and convicted accused Md. Tarique Rahman under section 13(2) of the Money Laundering Prohibition Act, 2002 and sentenced him to suffer imprisonment for a period of 07 (seven) years and to pay a fine of Tk. 20 (twenty) crore.

Being dissatisfied with the judgment and order dated 21.07.2016, passed by the High Court Division in Criminal Appeal No. 7469 of 2013, the convict-petitioner filed this Criminal Petition for Leave to Appeal.

Mr. Sheikh Mohammad Zakir Hossain, learned Senior Advocate along with Mr. Kayser Kamal, learned Advocate, appearing for the petitioner, made submissions relying mainly on the following grounds:

- I. Because Ordinance Nos. VII of 2007 and XVII of 2007 both dated 30.07.2007 were passed under the authority of the then President of Bangladesh pursuant to the



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provisions of Article 93(1) of The Constitution of the People's Republic of Bangladesh (hereinafter referred to as the Constitution) which had the effect of introducing 'Money Laundering' as an offence in the schedule of the Anti-Corruption Commission Act, 2004 and inserting section 3(Ka) of the Money Laundering Act, 2002 respectively and after promulgation of the aforesaid Ordinances of 2007, the Parliament had its first meeting on 25.01.2009 and after expiry of 30 (thirty) days, the aforesaid Ordinances of 2007 were admittedly not placed for approval of the Parliament and therefore, the aforesaid Ordinances of 2007 ceased to have effect from 24.02.2009 (i.e. after expiry of the 30 days period from the date of holding the first meeting of the Parliament), as per the provisions of Article 93(2) of the Constitution and hence, initiation of the instant criminal proceedings under the Anti-Corruption Commission Act, 2004, at the instance of the Anti-Corruption Commission is itself-void ab initio and therefore, all outcome deriving out of such patent illegality is a nullity in the eye of law including the judgments

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passed by both the trial court as well as the High Court Division.

II. Because both the trial court as well as the High Court Division failed to appreciate the well settled principle of 'Double Jeopardy', as the instant case involves laundering of a total Tk. 20,41,25,843 (twenty crore forty-one lakh twenty-five thousand eight hundred forty-three Taka) at the instance of the convict-petitioner, whereas he had already been adjudicated guilty over the self-same amount by another court in Special Case No. 01 of 2008 [arising out of Cantonment Police Station Case No. 02(05) 2007, under Section 27(1) of the Anti-Corruption Commission Act, 2004] vide its judgment and order of conviction dated 27.03.2008 for a period of 10 (ten) years rigorous imprisonment along with a fine of Tk. 10,00,000.00 (ten lakh Taka), in default, to suffer rigorous imprisonment for a period of 01 (one) year and as such, the instant case is barred not only under Article 35(2) of the Constitution but also under section 403 of the Code of Criminal Procedure, 1898.

III. Because the case in hand had been lodged against the convict-

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petitioner under the Money Laundering Prevention Act, 2002 (the Act, 2002) and section 6 of the said Act, 2002 dictates that the proceedings under the said Act is to be tried by the Sessions Judges only, whereas the instant case was heard and judgment was passed against the convict-petitioner by the Special Judge and therefore, the same suffers from 'coram non iudice' and as such, upholding such defective judgment by the High Court Division also suffers from a material defect warranting interference by this Hon'ble Court.

IV. Because the P.W.6 namely, Khadiza Islam, in her deposition categorically asserted that she being the local agent of the Chinese company called M/S. Harbin Power Engineering had paid the disputed amount of \$7,50,000.00 (seven lac fifty thousand U.S. Dollars) [equivalent to the then Tk. 05.00 (five) crore)] in favour of the convict-petitioner as a 'consultancy fee', which had been deposited directly into a bank account in Singapore, maintained under the name of the convict-petitioner, and since required income tax had been paid against

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the said amount coupled with the fact that the said witness was not treated as hostile and based on such deposition of the prosecution witness itself, the prosecution had clearly failed to discharge its burden of proof even beyond the balance of probabilities and as such, no judgment and order of conviction and sentence could be passed, let alone be sustained against the convict-petitioner.

- V. Because the High Court Division misdirected itself to reach the wrong finding to the effect that a private person or a businessman like the convict-petitioner is not permitted or allowed under any existing law, regulation or rules of the country to do such an act in the name of consultancy, whereas the provisions of Rule 112 of The Public Procurement Rules, 2008 (the Rules, 2008) (corresponding to Section 38 of The Public Procurement Act, 2006) as well as Rule 116 of the Rules, 2008 clearly prescribes involving consultant in a project for negotiation of contract and therefore, the analogous judgment and order dated 21.07.2016 passed by the High Court Division in Criminal Appeal No. 7225 of 2013 with Criminal Appeal

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No.7469 of 2013 is required to be set aside.

On the other hand, none appears on behalf of the respondent No. 1-State to oppose the instant leave petition.

Mr. Md. Ashif Hasan, learned Senior Advocate, appearing on behalf of the respondent No. 2-the Commission, made submission in support of the impugned judgment and order dated 21.07.2016 passed by the High Court Division in Criminal Appeal No. 7469 of 2013.

We have heard the submissions of the learned Advocates appearing for the respective parties and perused the impugned judgment and order of the High Court Division along with other connected papers on record. In our view, the grounds raised by the learned Counsels appearing on behalf of the convict-petitioner have merit to be considered.

Accordingly, leave is granted to consider the same.

Preparation of the paper book is dispensed with, as prayed for.

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The operation of the impugned judgment and order dated 21.07.2016 passed by the High Court Division in Criminal Appeal No. 7469 of 2013 is, hereby, stayed till disposal of the appeal.

The petitioner is directed to submit the concise statement within 31.12.2024 and the respondents are also directed to submit concise statements within 01(one) week thereafter.

Sd/- Syed Rebaat Ahmed, CJ.
Sd/- Md. Ashfaque Islam, J.
Sd/- Z. R. Chowdhury, J.
Sd/- Md. Rezaur Haque, J.

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N. Sultana
05.02.25

Superintendent
Appellate Division
Supreme Court of Bangladesh

for

05-02-2025

The 10th December, 2024
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