

Right 3

In the Supreme Court of Bangladesh  
High Court Division  
(Criminal Appellate Jurisdiction)

Present:

Mr. Justice Md. Khasruzzaman

Criminal Appeal No. 2853 of 2025

Mrs. Zubaida Rahman Khan, wife of Mr. Tarique Rahman, of 6, Shahid Mainul Road, Dhaka Cantonment, Dhaka, at present House No.01, Road No.79, Gulshan-2, Dhaka.

...Convict-Appellant

-Versus-

The State and another

...Respondents

Mr. Md. Zainul Abedin, Senior Advocate with  
Mr. S.M. Shahjahan, Senior Advocate with  
Mr. A.M. Mahabub Uddin, Senior Advocate with  
Mr. Md. Ruhul Quddus, Advocate with  
Mr. Kayser Kamal, Advocate with  
Mr. Md. Zakir Hossain Bhuiyan, Advocate with  
Mr. S.M. Mahidul Islam Sajib, Advocate and  
Mr. Minhazur Rahman, Advocate and  
Mr. Sayful Aziz, Advocate

...For the convict-appellant

Mr. Mohammad Abdul Karim, D.A.G. with  
Mr. Md. Azgarul Islam, A.A.G. with  
Ms. Mahfuza Akhter, A.A.G. and  
Mr. Faruk Ahmed, A.A.G.

...For the State

Mr. Md. Ashif Hasan, Advocate

...For the respondent No. 2

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M. M. Mosarrat Hossain  
Asst. Bench Officer  
Bangladesh Supreme Court  
High Court Division, Dhaka

2/10/2025

**Judgment on 28.05.2025**

This criminal appeal at the instance of the convict-appellant has been preferred against the judgment and order of conviction and sentence dated 02.08.2023 passed by the learned Metropolitan Senior Special Judge, Dhaka in Metro. Special Case No. 341 of 2022 arising out of Kafrul Police Station Case No. 52 dated 26.09.2007 corresponding to ACC GR Case No. 108 of 2007 convicting the appellant under section 27(1) of the Anti-Corruption Commission Act, 2004 (in short, the ACC Act, 2004) read with section 109 of the Penal Code, 1860 and sentencing her to suffer imprisonment for 03(three) years and also to pay a fine of Tk.35,00,000.00 (thirty five lac) in default to suffer simple imprisonment for 01(one) month more.

The case was initiated by PW 1 Mohammad Zahirul Huda, Deputy Director, Anti-Corruption Commission, Head Office, Segunbagicha, Dhaka on lodging a first information report (in short, the FIR) with Kafrul Police Station, DMP, Dhaka on 26.09.2007 against three accused

namely (1) Mr. Tarique Rahman, son of Shaheed President Ziaur Rahman, (2) Dr. Zubaida Khan @ Zubaida Rahman, wife of Mr. Tarique Rahman and (3) Syeda Iqbal Mand Banu, wife of late Rear Admiral Mahbub Ali Khan under sections 26(2) and 27(1) of the ACC Act, 2004 read with section 109 of the Penal Code, 1860 and rule 15Gha (5) of the Emergency Power Rules, 2007 alleging *inter alia* that in response to the notice vide memo No. দুদক/১২৪-২০০৭(অনু:-২)/৩১৫৬ dated 29.05.2007 issued by the Anti-Corruption Commission (in short, the ACC), when Mr. Tarique Rahman was in Dhaka Central Jail, on 07.06.2007, in his statement of wealth, he stated that he owned immovable properties comprising a residential plot measuring 1 bigha 10 katha and 11 satak at Gulshan, Dhaka allotted by the government and by purchase 2.01 acres of land under Shailakandi Mouza, Police Station-Gabtoli, District- Bogura. He also stated that he owned movable properties including share capital in T.M. Enterprise worth Tk. 2,70,801.00, 50,000 shares in Dandi

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Dying Co. Ltd. worth Tk. 50,00,000.00, 18,500 shares in Rahman Group worth Tk. 18,50,000.00, savings certificate of Tk. 20,000.00, a fixed deposit of Tk. 1,00,000.00 in Rupali Bank, Tk. 28,162.00 and Tk. 6,290.00 in Dhaka Bank and AB Bank respectively, useable furniture worth Tk. 1,79,500.00, gold ornaments valued at Tk. 2,950.00 and cash in hand at Tk. 40,107.00.

Besides, Mr. Tarique Rahman in his statement of wealth also stated that his wife inherited immovable property of 2 bigha 12 katha and 3 sataks of land in 3 plots at Dhanmondi, 800 square yards at Mohakhali DOHS, 7.47 kathas of land at Motijheel and 1 bigha of land in Gazipur. She had movable property of 2 (two) FDRs worth Tk. 35,00,000.00 at Prime Bank Ltd., a deposit of Tk. 12,369.00 in IFIC Bank Ltd., electronics goods valued at Tk. 2,83,184.00 and 72 tolas of gold ornaments. He also made a fixed deposit of Tk. 20,00,000.00 in Dhaka Bank Ltd. in the name of his daughter Zaima Rahman.

It has been alleged by the ACC that in his statement of assets, Mr. Tarique Rahman concealed his ownership of

the Dainik Dinkal newspaper worth Tk. 4,15,24,564.11, 100 shares of Rahman Shippers (BD) Ltd. worth Tk. 1,00,000.00, 150 shares of Unitex Apparels Ltd. worth Tk. 1,50,000.00, 10 Kathas of land at Baridhara Project of Basundhara Group, 66 decimals and 12.5 decimals of land under Sadar Police Station of Gazipur District worth Tk. 37,62,000.00 and Tk. 8,28,700.00 respectively, and cash Tk. 47,237.00, Tk. 4,210.00 and Tk. 2549.42 in total Tk. 53,996.42 in AB Bank, Kawranbazar Branch, South East Bank, Principal Branch and AB Bank, Nawabpur Branch, Dhaka respectively.

The ACC held an inquiry and in the inquiry, it was found that Mr. Tarique Rahman, his wife (present appellant) and his mother-in-law acquired wealth worth Tk. 4,81,53,561.37 which was disproportionate to their known source of income. On these allegations, the FIR was lodged.

The ACC took up the case for investigation and after holding investigation submitted Charge Sheet No. 78 dated 31.03.2008 against the three accused including the present

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appellant under sections 26(2) and 27(1) of the ACC Act, 2004 read with section 109 of the Penal Code and rule 15 of the Emergency Power Rules, 2007.

Here it is pertinent to mention that after submission of the charge sheet, Mrs. Syeda Iqbal Mand Banu, mother-in-law of Mr. Tarique Rahman, filed Writ Petition No. 7084 of 2008 and the High Court Division quashed the proceedings in respect of Mrs. Syeda Iqbal Mand Banu.

In due course, the case was transmitted to the Court of Senior Metropolitan Special Judge, Dhaka for trial and the same was registered as Metro Special Case No. 341 of 2022.

The learned Senior Metropolitan Special Judge, Dhaka framed charges against the appellant in her absence under sections 26(2) and 27(1) of the ACC Act, 2004 read with section 109 of the Penal Code, 1860 and also framed charges against the principal accused Mr. Tarique Rahman under sections 26(2) and 27(1) of the ACC Act, 2004.

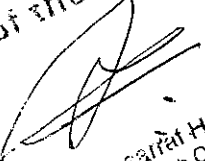
In order to prove the charges prosecution examined 42 witnesses. Since the trial was held in absentia, the defence could not examine any witness.

The statements of the witnesses are summarised below:

PW-1 Md. Zahirul Huda, Deputy Director of the ACC, was the informant of the case. In his examination-in-chief, he stated that he conducted an inquiry on the wealth statement submitted by Mr. Tarique Rahman. In his deposition he reproduced the wealth statement. He claimed that Mr. Tarique Rahman concealed the wealth of Tk. 4,23,08,561.37. He concluded that Mr. Tarique Rahman, Dr. Zubaida Rahman Khan and Syeda Iqbal Mand Banu acquired properties of Tk. 4,81,53,561.17 which was disproportionate to their known source of income and as such, he lodged the FIR.

PW-2 Md. Emraj Ali Shikder was an Accountant of the Daily Dinkal and a seizure list witness. In his examination-in-chief, he stated that the investigating officer, Mr Toufikul Islam, Assistant Director, ACC, came

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to their office on 07.10.2007 and seized debit and credit vouchers, also seized voucher Nos. 50 and 51 by two separate seizure lists. He was a witness in the seizure lists. He proved the seizure lists which were marked as exhibits-4 and 5. The investigating officer again came to their office at about 4:30 p.m. on 29.10.2007 and seized 6(six) audit reports and prepared a seizure list. He signed the seizure list and proved it before the Court. The seizure list was marked as exhibit-6.

PW-3 Syed Azad Islam was a Cashier of the Daily Dinkal newspaper. In his examination-in-chief, he stated that the investigating officer seized two vouchers, being Nos. 50 and 51 showing Tk. 7,33,000.00 and Tk. 49,350.00 respectively in his presence at about 7:00 p.m. on 07.10.2007. He proved his signature on the seizure list.

PW-4 S.M. Musa Karim, Assistant Vice President, AB Bank Limited, is a seizure list witness. In his examination-in-chief, he stated that the investigating officer seized the account opening form, specimen signature card and other papers relating to account No.

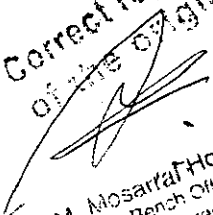
4002 109711300 on 22.10.2007. The investigating officer prepared a seizure list. He signed the seizure list which was marked as exhibit No. 7. He also took the seized papers in his *jimma*. He signed the *Jimmanama* (exhibit-8). He proved the seized papers before the Court (exhibit-I series).

PW-5 Obaidur Rashid Khan, Senior Officer of AB Bank Limited, stated that the investigating officer seized papers and prepared a seizure list on 22.10.2007. He signed the seizure list.

PW-6 Imran Ahmed, Officer, AB Bank Limited, is also a witness to the seizure list. He stated that the investigating officer seized some papers and prepared a seizure list. He signed the seizure list (exhibit-7).

PW-7 A.K.M. Abdul Matin is a Chartered Accountant. He stated that in his capacity as a chartered accountant, he conducted audits of the financial transactions of the Daily Dinkal for the period from July 1999 to June 2001. He also conducted an audit of the Rahman Shippers (BD) Limited and Rahman Navigation

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Limited. After completion of the audits, he submitted 3 (three) separate reports. He proved the reports before the Court, which were marked as exhibit Nos. 9 to 11 and 12-14.

PW-8 Md. Shah Alam is the Deputy Administrative Officer in the office of the Deputy Commissioner, Dhaka. At the relevant time, he was an Office Assistant. In his examination-in-chief, he stated that the investigating officer seized papers in respect of the ownership of the Dainik Dinkal on 08.11.2007. He was a witness to the seizure and signed the seizure list. He proved the seizure list which was marked as exhibit-15.

PW-9 Md. Golam Kibria, Senior Executive Officer of Sundarban Air Travels deposed that the investigating officer came to their office and seized some documents relating to the air ticket of Mr. Tarique Rahman issued from 09.05.2002 to 16.06.2006. He proved the seizure list and it was marked as exhibit-16.

PW-10 Sheikh Muzibur Rahman, Accountant of Sundarban Air Travels deposed that the investigating

officer came to their office and seized some papers and prepared a seizure list (exhibit No. 16) on 29.11.2007. He was recalled. In re-examination, he stated that the seized documents were given in the *jimma* of the then General Manager Sanaul Haque. He put his signature on the *jimmanama* and it was marked as exhibit-17.

PW-11 Salim Bhuiyan is the Chairman of International Travels Corporation. He in his examination-in-chief stated that the investigating officer seized some documents and prepared a seizure list on 12.11.2007. He was a witness to the seizure list and he proved the seizure list which was marked as exhibit-18.

PW-12 Md. Sahidul Islam, Manager (Allowance and Administration) of International Travels Corporation stated that the investigating officer came to their office on 12.11.2007. He seized some documents relating to the foreign trips of Mr. Tarique Rahman and his daughter from 09.06.2003 to 11.05.2005, including bills/invoices for purchasing tickets of Singapore Airlines, British Airways and Biman Bangladesh Airlines. He witnessed

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the seizure and signed it. He proved the seizure lists which were marked as exhibit Nos. 18 and 19. He also proved the seized documents which were marked as exhibit-II series.

PW-13 A.K.M. Hamidur Rahman, Sales Manager of International Travels Corporation, is a witness to a seizure list and he proved his signature on the seizure list.

PW-14 Khandaker Saidur Rahman, Branch Manager, Sonali Bank, Banani Branch, Dhaka, deposed that the investigating officer came to their office and seized some documents relating to the loan obtained by the accused, Syeda Iqbal Mand Banu. He proved the seizure list (exhibit-21). The seized documents were given in his *jimma*.

PW-15 Jesmin Akter, Assistant Commissioner of District Collectorate, Dhaka, in her examination-in-chief stated that the investigating officer seized the records relating to ownership of the Dainik Dinkal on 08.11.2007. She signed the seizure list (exhibit-15). She took the seized papers in her *jimma*. The *Jimmanama* was marked as exhibit-22.

PW-16 Mahmud Hossain, Director of Eastern Housing Limited, in his examination-in-chief stated that the investigating officer came to his office and seized some *alamats*, including some receipts and credit vouchers of Bengal Development Corporation Ltd. of Islam Group. The credit vouchers were voucher Nos. 5667 dated 03.05.2006, 5670 dated 02.07.2006, 5673 dated 09.08.2006 and 5675 dated 12.09.2006. The cash book and ledger were also seized. The investigating officer prepared a seizure list. He, being a witness to the seizure, signed it and the seizure list was marked as exhibit-24.

PW-17 Mahbub Morshed Hasan was the Vice Chairman of Bashundhara Group. He stated that at the relevant time, he was a Director of East West Property Development (Private) Limited and they transferred two plots of 10 kathas each in favour of Zaima Rahman, daughter of Mr. Tarique Rahman, and Fabia Mim Mamun, daughter of Mr. Giasuddin Al Mamun, through registered deed No. 2471 dated 28.02.2005. He produced the certified copy of the deed and it was marked as exhibit-25.

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PW-18 Md. Showkat Ali Khan, Senior Assistant Vice President, Retail Banking Division, Dhaka Bank Limited, in his examination-in-chief, stated that the investigating officer seized the application of Mr. Tarique Rahman for a gold credit card, his bank statement, etc. The investigating officer prepared a seizure list. He, being a witness, signed it and it was marked as exhibit-26 and seized papers were given in his *jimma*.

PW-19 Sajjad Mahmud Sabuj, Sales Manager, Retail Banking Division, Dhaka Bank Limited, was a witness in the seizure list prepared on 11.11.2007 and he proved his signature on the seizure list.

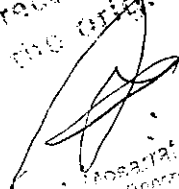
PW-20 Md. Rezwanul Haque, at the relevant time, was a Senior Principal Officer, Card Division, National Bank Limited. In his examination-in-chief, he stated that the investigating officer came to their office on 11.11.2007, and the then principal officer, Matin Ahammed, produced an application for foreign and local credit cards of Mr. Tarique Rahman and a statement of the accounts and other related papers before the investigating

officer, who seized those by preparing a seizure list. He was a witness to the seizure list. He proved the seizure list (exhibit-28) and his signature there on (exhibit-28/1).

PW-21 Kazi Mainuddin Chisty, at the relevant time was a Principal Officer, Credit Card Division of National Bank Limited, Head Office. He was also a witness in the seizure list (exhibit-28) and he proved his signature there on (exhibit-28/3).

PW-22 Md. Mohidul Islam was a Deputy Commissioner of Taxes, Taxes Zone-6, Companies Circle-18, Dhaka. In his examination-in-chief, he stated that the investigating officer came to his office on 09.03.2008 and seized the income tax related file of Mr. Tarique Rahman, maintained in connection with TIN No. 177-100-4696 and prepared a seizure list. He (this witness) was present and signed the seizure list. He proved the seizure list and his signature thereon, and those were marked as exhibits-30 and 30/1. He took the seized papers in his *jimma*. *Jimmanama* and his signature were marked as exhibit Nos. 31 and 31/1 respectively.

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Assistant Commissioner  
Taxes Zone-6, Companies Circle-18  
Dhaka

PW-23 Nafis Ahmed Akter was also an Inspector of Tax, Tax Zone-6, Companies Circle-18, Dhaka. In his examination-in-chief, he stated that the investigating officer seized tax related papers of Mr. Tarique Rahman on 09.03.2008 and he was a witness to the seizure list, and he proved his signature in the seizure list (exhibit-30/2).

PW-24 Md. Mostafizur Rahman, Head Assistant, Taxes Zone-6, Companies Circle-18, Dhaka, deposed that the investigating officer seized some papers on 09.06.2008 and the papers were produced by Mr. Md. Mahidul Islam. He was a witness to the seizure list (exhibit-30) and he proved his signature (exhibit-30/3).

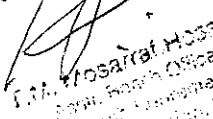
PW-25 Md. Humayan Kabir, Executive Officer of Prime Bank Limited, Banani Branch, Dhaka, in his examination-in-chief, stated that the investigating officer came to their office on 22.10.2007 and seized two FDR forms and statement of accounts of FDR and prepared a seizure list. He was present and signed the seizure list and he proved the seizure list, which was marked as exhibit-32. After the seizure, the investigating officer gave the seized

documents in his *jimma*. *Jimmanama* was marked as exhibit-33 and *alamat* were marked as material exhibit-VII series.

PW-26 Md. Abdullah Al Hasan and PW-27 Sheikh Ashraful Islam were Senior Officer and Officer of Prime Bank Limited, Banani Branch, Dhaka respectively. In their examination-in-chief, they stated that the investigating officer came to their office on 22.10.2007 and seized two FDRs and statements of account of the FDRs under the name of Mrs. Zubaida Rahman. He prepared a seizure list and they were witnesses in the seizure list, which was marked as exhibit-32 and they proved their signatures on the seizure lists (exhibit-32/2 and 32/3).

PW-28 Monzurul Islam was the Chairman of Islam Group. In his examination-in-chief, he stated that they constructed a duplex house at 6, Shahid Moinul Road, Dhaka Cantonment, on a request of Mr. Tarique Rahman and they spent Tk. 2,50,00,000.00 for the construction but Mr. Tarique Rahman paid only Tk. 55,00,000.00.

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Criminal Investigation Division  
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PW-29 Md. Abdur Rahim Chowdhury was a Director of Bengal Group Development Corporation, a sister concern of Islam Group Limited. In his examination-in-chief, he stated that the investigating officer came to their office on 13.01.2008 and seized some receipts, credit vouchers, bills, and a ledger book. He prepared a seizure list. He proved the seizure list which was marked as exhibit-24, and his signature was marked as exhibit-24/2. He took the seized papers in his *jimma* (exhibit-34). He also proved the seized papers, which were marked as exhibit-VII series. He further stated that at the directive of their Chairman, they constructed a house at 6, Shahid Mainul Road, which cost Tk. 2,46,69,637.00 out of which Mr. Tarique Rahman paid Tk. 55,00,000.00 in four installments.

PW-30 Aftab Ahmed Chowdhury was an Operation Manager, Dhaka Bank Limited, Banani Branch, Dhaka and PW-31 Laila Zakaria was Senior Principal Officer of the same Bank on 11.10.2007. In their examination-in-chief they stated that the investigating officer came to their

Bank on 11.10.2007 and seized the application for opening an FDR account and the statement of accounts maintained by Zaima Rahman, daughter of Mr. Tarique Rahman, and prepared a seizure list in their presence, and they signed the seizure list which was marked as exhibit-35.

PW-32 Mohammad Yeakub, retired District Registrar, who in his examination-in-chief stated that when he was a Sub-registrar, he sent a certified copy of deed No. 2471 dated 28.02.2005 to the investigating office as per his requisition under his office memo No. 1366 dated 11.11.2007. The certified copy of the deed was earlier marked as exhibit No. 25. He proved his office memo and it was marked as exhibit-37.

PW-33 Md. Aftab Uddin, retired District Registrar, in his examination-in-chief, stated that he was a Sub-registrar at Gabtoli, Bogura on 31.10.2007 and received a requisition from the Assistant Director of the ACC. As per requisition, he sent a certified copy of deed No. 3772/03 dated 25.05.2003 to the Assistant Director of the ACC. He

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proved the certified copy of the deed which was marked as exhibit-38.

PW-34 Md. Abu Sufian, at the relevant time, was the Director of East West Property Development Ltd. In his examination-in-chief, he stated that at the instruction of the Chairman of the company, two plots each measuring 10 kathas were transferred in favour of the daughters of Mr. Tarique Rahman and Mr. Giasuddin Al Mamun. He and Mahbub Morshed, Vice Chairman, executed the deed on behalf of the company.

PW-35 Md. Redwanul Haque, Executive Officer of Rahman Group, who in his examination-in-chief stated that the investigating officer came to their office on 13.11.2007 and seized some official documents relating to the audit report submitted by A Matin and Company and other relevant papers and prepared a seizure list. He was a witness to the seizure list and he proved the seizure list, which was marked as exhibit-40.

PW-36 Md. Shahadat Hossain was an Executive Officer of the Rahman Navigation. The investigating

officer came to their office on 13.11.2007 and seized some papers from their office and prepared seizure list. He was a witness in the seizure list (exhibit-40) and he proved his signature on the seizure list (exhibit-40/2).

PW-37 Parimolendu Bhattacharyia, at the relevant time, was an examiner in the office of the Joint Stock Companies and Firms, who, in his examination-in-chief, stated that the investigating officer seized some documents relating to Rahman Shippers (BD) Limited and Unitex Apparels Limited and prepared a seizure list. He was a witness to the seizure and he proved the seizure list and it was marked as exhibit-41.

PW-38 Shamsuzzoha Farhad, Businessman, in his examination-in-chief stated that he had 2.01 acres of land at Shaulkandi Mouza, Police Station: Gabtali, District: Bogura. He sold the land to Mr. Tarique Rahman, valued at Tk. 3,00,000.00 by a registered deed being No. 3772 of 2003.

PW-39 Ramendra Nath Bosak, Chartered Accountant, in his examination-in-chief stated that he

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conducted audit of the Dainik Dinkal for the period from 2001-2002 and 2005-2006. A. Matin and Company conducted the earlier audit. He submitted audit reports and he proved the reports, which were marked as exhibits-47 to 51.

PW-40 Abdul Mannan was the Deputy Registrar of Joint Stock Companies and Firms, who, in his examination-in-chief stated that the investigating officer came to their office on 11.10.2007 and seized some documents relating to Rahman Shippers (BD) Limited and Unitex Apparels Limited and prepared a seizure list. He, being a witness, signed it. The documents were marked as exhibit-41. After making a seizure, the investigating officer gave the seized documents in his *jimma*. He proved the *jimmanama*, which was marked as exhibit-42.

PW-41 Md. Hamidur Rahman, Executive Officer of Dhaka Cantonment, in his examination-in-chief stated that as per requisition of the investigating officer, he transmitted the approved plan for construction of a house on 6, Shahid Moinul Road, Dhaka Cantonment, and other

related papers to him on 07.01.2008. The plan and other papers were marked as exhibits-52 and 53.

PW-42 Md. Taufiqul Islam was the Investigating Officer. He stated that he took charge of the investigation on 30.09.2007. He sent requisitions to different offices for supplying relevant papers. He visited the office of the Dainik Dinkal and seized papers by preparing seizure lists (exhibit-4). He proved his signatures on those seizure lists (exhibit-4/2). He went to the office of the Mannan Group and seized papers. He also went to the office of the Joint Stock Companies and Firms and seized some papers. He also went to Dhaka Bank Limited, Banani Branch, Dhaka, Kawranbazar branch, Dhaka, and Prime Bank Limited, Banani Branch, Dhaka. He seized the account related papers from there. He again visited the office of the Dainik Dinkal and seized some more papers. He went to the office of the International Travel Corporation and seized the travel documents of Mr. Tarique Rahman. He also seized numerous other documents from different offices. He perused all the documents and found that Mr. Tarique

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Bangladesh Supreme Court  
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Rahman did not disclose all his wealth in his statement. He concealed the wealth worth Tk. 2,16,48,087.84. During the investigation, he did not find any supporting papers with respect to the realization of rent of Tk. 35,00,000.00 by Mrs. Syeda Iqbal Mand Banu. He finally concluded that Mr. Tarique Rahman concealed the wealth in total Tk. 2,74,93,087.00, which was disproportionate to his known source of income. Mrs. Zubaida Rahman Khan and Mrs. Syeda Iqbal Mand Banu were liable for abetment. He received the sanction from the ACC and submitted a charge sheet against the convict appellant and two others.

The trial was held in absentia. The witnesses were not cross-examined. The defence case is also not disclosed. The accused were not examined under section 342 of the Code of Criminal Procedure. After recording the evidences, the learned Senior Metropolitan Special Judge, Dhaka convicted the appellant under section 27(1) of the ACC Act, 2004 read with section 109 of the Penal Code, 1860 and sentenced her to suffer imprisonment for 03 (three) years and also to pay a fine of Tk. 35,00,000.00

(thirty five lac) in default to suffer simple imprisonment for 01(one) month more.


Mr. Tarique Rahman was also convicted under sections 26(2) and 27(1) of the ACC Act, 2004 and sentenced to suffer imprisonment for 3 (three) years under section 26(2) of the ACC Act, 2004 and 6 (six) years under section 27(1) of the ACC Act, 2004 and also to pay a fine of Tk. 3,00,00,000.00 (three crore) in default to suffer simple imprisonment for 3 (three) months more with a direction to run both the sentences concurrently.

Afterwards, an application on behalf of the appellant was filed in the Ministry of Home Affairs for suspending the operation of the execution of the sentence. The Ministry of Home Affairs, having considered the prayer, suspended the execution of her sentence vide Notification No. 58.00.0000.08504.002.24-338 dated 04.11.2024.

Accordingly, she was permitted to file the appeal.

Mr. S. M. Shahjahan, the learned Advocate for the appellant, submits that the impugned judgment and order of conviction and sentence handed down against the

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appellant is against the evidence and materials on record. The learned Advocate submits that this is a case of concealment and accumulation of wealth of one's known source of income, but no such allegation is raised against the convict appellant. She was only indicted for abetment. He continues to argue that the very allegation of concealment of property and amassing wealth from the known source of income, as alleged against the principal accused even is not established, the very charge of abetment has no leg to stand on. He further submits that the assessment of the value of the property made by the Anti-Corruption Commission is not correct. The assessment of the value of the property has not been made in accordance with the Rules and has been made in conjectures and surmises. Therefore, the allegation of concealment of wealth or acquiring wealth allegedly disproportionate to one's known source of income is not acceptable. He next submits that though the appellant was convicted under section 27(1) of the ACC Act read with section 109 of the Penal Code but no charge of abetment

was framed against her. The trial was held as if she were the principal accused. As such, her conviction and sentence is liable to be set aside. He also submits that no separate notice as contemplated under section 26(1) of the ACC Act, 2004 was served upon the appellant. So, the subsequent trial of the appellant has been vitiated in law.

He contends that the appellant and others were regular taxpayers with having tax identification number (TIN). They submitted a wealth description in their tax return. The income tax authority also assessed their return and did not find any fault therein. The assessment made by the income tax department should not be questioned by another department. It is the income tax department that could only review its assessment. The Anti-Corruption Commission, in violation of law and the principle laid down by this Court, in fact reviewed and questioned the assessment which had already been made by the income tax department, which is out and out illegal and beyond their authority. In this regard, the learned Advocate has relied upon the cases of *the Anti-Corruption Commission*

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Member, Supreme Court  
of India, New Delhi

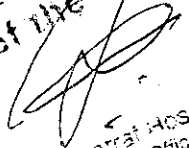
*represented by its Chairman Vs. Nargis Banu and others, 62 DLR (AD) (2010) 279; Anti-Corruption Commission represented by its Chairman Vs. Faisal Morshed Khan and others, XI ADC (2014) 700 and Syeda Iqbal Mand Banu Vs. Anti-Corruption Commission represented by its Chairman and others (unreported judgment and order dated 13.10.2010 passed in Writ Petition No. 7084 of 2008).* He further contends that the initiation and continuation of the proceedings against Mrs. Syeda Iqbal Mand Banu were declared without lawful authority, and the proceeding against her was quashed in Writ Petition No. 7084 of 2008. The appellant also stands on the same footing and as such, she is also entitled to get the benefit of that judgment. The learned Advocate also concludes that the appellant never stood in second position in her academic career, and she is a doctor by profession, and she has never been involved in politics, but she has been politically victimized in this case. Considering the facts and circumstances of the case, the learned Advocate submits that the appeal may kindly be allowed and the

appellant may kindly be acquitted of the charge leveled against her.

Mr. S. M. Shahjahan, the learned Advocate in respect of the non-appealing convict, submits that mere allegation is not enough to prove the case of concealment of wealth and acquiring property disproportionate to the known source of income unless the allegation is substantiated by legal evidence. The prosecution has miserably failed to prove the case against the non-appealing convict and as such, the conviction and sentence of the non-appealing convict under sections 26(1) and 27(1) of the ACC Act, 2004 is illegal and liable to be set aside. Besides, the entire proceeding suffers from gross legal infirmity on account of malicious prosecution, political persecution, defective charge, and lack of legal evidence.

The learned Advocate pulls out all the stops and submits that the Court has ample power to set aside the judgment and order of conviction and sentence in respect of the non-appealing convict as well. He adds that both the

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Asst. Bench Officer  
Bangladesh Supreme Court  
High Court Division, Dhaka.

Appellate Division and the High Court Division in numerous reported and unreported cases have already settled that the High Court Division, in exercising its criminal appellate jurisdiction, has the power to set aside the conviction and sentence passed against the non-appealing convict. In support of his submissions, the learned Advocate relied on the cases of *Begum Khaleda Zia alias Khaleda Zia and others Vs. Durnity Daman Commission represented by its Chairman and another* (judgment and order dated 15.01.2025 passed by the Appellate Division in Criminal Appeal Nos 64 of 2024, 63 of 2024, 42 of 2024 and 39 of 2024), *State Vs. Mawlana Sheikh Abdus Salam and others* (judgment and order dated 01.12.2024 passed by this Division in Death Reference No. 145 of 2018 heard along with other criminal appeals); *Zaimul Abedin and others Vs. The State*, 3 BLD 108; *Abdul Hafez Sarder Vs. The State*, 28 DLR 253; *Arzan @ Iman Ali Vs. The State*, 48 DLR 287; *State Vs. Kajal Ahmed Jalali*, 59 DLR 345 and *Suresh Chaudhary Vs. State of Bihar* 4 SCC (2003) 128.

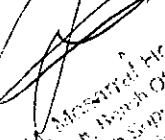
On the other hand, Mr. Mohammad Abdul Karim, the learned Deputy Attorney General on behalf of the respondent No. 1 finds it difficult to support the impugned judgment and order of conviction and sentence and submits that this Court has got authority to assess the evidence on record afresh and to consider the relevant laws in disposing of the appeal.

Mr. Md. Ashif Hassan, the learned Advocate appearing for the respondent No. 2 Anti Anti-Corruption Commission, has also found difficulty to controvert the submissions advanced by the learned Advocate for the appellant. He does not raise any argument on the point of law.

I have considered the submissions of both parties, perused the records, including the judgment and order of conviction and sentence, and the decisions referred to by the learned Advocate for the appellant.

The sum and substance of the submissions of the learned Advocate for the convict appellant is that the judgment and order of conviction and sentence against the

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Bangladesh Supreme Court  
High Court Division, Dhaka

appellant are against the law and the evidence on record, and as such, it is illegal to be set aside.

In this case, the occurrence was shown to have taken place during the period from 1982 to 2007, and the FIR was lodged on 26.09.2007. It is alleged that in response to the notice dated 29.05.2007, the principal accused submitted his wealth statement on 07.06.2007. In the statement, he declared his wealth valued at Taka 58,45,000.00. The ACC, after inquiry, held that he had concealed wealth to the value of Tk. 4,23,08,561.37 and he had accumulated wealth in total Tk. 4,81,53,561.37, which was disproportionate to his known source of income. It is also alleged that the appellant and her mother had facilitated the principal accused in the process of accumulating wealth.

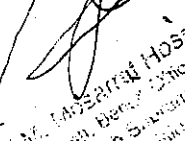
After holding investigation, the Anti-Corruption Commission submitted Charge Sheet No. 78 dated 31.03.2008 against 3 (three) accused including the present appellant under sections 26(2) and 27(1) of the ACC Act, 2004 read with section 109 of the Penal Code and rule 15

of the Emergency Power Rules, 2007. In due course the case was transmitted to the Court of Senior Metropolitan Special Judge, Dhaka for trial and renumbered as Metro Special Case No. 341 of 2022, and charges were framed against the appellant in her absence under sections 26(2) and 27(1) of the ACC Act, 2004 read with section 109 of the Penal Code, 1860, and the principal accused, Mr. Tarique Rahman, was also charged under sections 26(2) and 27(1) of the ACC Act, 2004.

It appears from the records that the testimonies of 42 witnesses were recorded within 2 (two) months and 4 (four) days, and the judgment was pronounced immediately after 8 (eight) days of the completion of recording depositions. The progress and conclusion of the trial at such a high speed created a widespread belief that it was not held impartially.

After the judgment and order of conviction and sentence, on an application on behalf of the appellant, the Government, in exercise of its power under section 401(1) of the Code of Criminal Procedure, suspended the

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Md. Mozammel Hossain  
J. Secy. Bench Officer  
Criminal Justice Department  
High Court Building, Dhaka.

execution of the sentence against the appellant for 1 (one) year. She was also permitted to prefer an appeal and to take other steps. The Gazette Notification of the Ministry of Home Affairs is quoted below:

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার  
 স্বরাষ্ট্র মন্ত্রণালয়  
 সুরক্ষা সেবা বিভাগ  
 কারা-২ শাখা

নং- ৫৮.০০.০০০০.০৮৫.০৪.০০২.২৪-৩৩৮ তারিখ: ১৯ কার্তিক ১৪৩১ বঙ্গাব্দ  
 ০৪ নভেম্বর ২০২৪ খ্রিষ্টাব্দ

'প্রজ্ঞাপন'

জনাবা ডা: জুবাইদা রহমান, স্বামী জনাব তারেক রহমান এর সাজা স্থগিতের বিষয়ে দাখিলকৃত আবেদন এবং এ আবেদনের পরিপ্রেক্ষিতে আইন ও বিচার বিভাগ এর মতামতের আলোকে ২২ সেপ্টেম্বর, ২০২৪ ইং তারিখের ৫৮.০০.০০০০.০৫৮.০৪.০০২.২৪-৩১৫ সংখ্যক প্রজ্ঞাপন (১০ অক্টোবর, ২০২৪ ইং তারিখের বাংলাদেশ গেজেটে প্রকাশিত) সংশোধনপূর্বক The Code of Criminal Procedure, 1898 (Act No.V of 1898) এর ধারা ৪০১(১) এ প্রদত্ত ক্ষমতাবলে মহানগর সিনিয়র স্পেশাল জজ আদালত, ঢাকা এর মেট্রো বিশেষ মামলা নং-৩৪১/২০২২ [কাফরুল থানার মামলা নং-৫২, তারিখ- ২৬-০৯-২০০৭] এ তাঁর বিরুদ্ধে প্রদত্ত দণ্ডদেশ বিজ্ঞ আদালতে আপিল দায়েরের নিমিত্ত বিনাশর্তে ০১(এক) বছরের জন্য নির্দেশক্রমে স্থগিত করা হলো।

২। উপরোক্ত আদেশের প্রেক্ষিতে জনাবা ডা: জুবাইদা রহমান, স্বামী: জনাব তারেক রহমান বিজ্ঞ আইনজীবীর মাধ্যমে আপিল দায়ের ও আনুষঙ্গিক কার্য সম্পাদন করতে পারবেন।

রাষ্ট্রপতির আদেশক্রমে,  
স্বাক্ষর  
(মোহাম্মদ আবু সাঈদ মোল্লা)  
উপসচিব

On perusal of the gazette notification as quoted above, it appears that the Government, in exercise of power given in section 401 of the Code of Criminal Procedure, suspended the execution of the sentence handed down upon the convict appellant with opportunity to prefer appeal in accordance with law. What the law has said in this regard. Chapter XXIX of the Code of Criminal Procedure is pertaining to the power of the Government with regard to suspensions, remissions and commutations of sentences. This chapter starts with section 401 and ends by section 402A. Power to suspend sentences or to remit of sentences has been provided in section 401 of the Code of Criminal Procedure. In sub-section (1) of section 401, it has been provided that when any person has been

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sentenced to punishment for an offence, the Government may at any time without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced. So, this section of law has given discretion to the Government to suspend or remit sentences with or without any conditions and the condition(s) must be accepted by the person sentenced. In other sub-sections the process of seeking suspension or remission of sentence has been outlined. In exercise of such discretion, the Government may also seek opinion of the Presiding Judge of the Court convicting the accused. In sub-section (6) it has been provided that the Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with. In the present case, the Government by publishing gazette notification issued direction as to the suspension of sentence of the convict appellant giving opportunity to prefer appeal which is in accordance with

law. The convict appellant in compliance of the direction issued by the Government by gazette notification has preferred this appeal before this Court. Thus, there is no illegality in preferring the appeal.

The appellant was charged under sections 26(2) and 27(1) of the ACC Act, 2004 read with section 109 of the Penal Code. For better appreciation, sections 26 and 27 of the ACC Act, 2004 are quoted below:

"২৬।সহায় সম্পত্তির ঘোষণা।-(১) কমিশন কোন তথ্যের ভিত্তিতে এবং উহার বিবেচনায় প্রয়োজনীয় তদন্ত পরিচালনার পর যদি এই মর্মে সন্তুষ্ট হয় যে, কোন ব্যক্তি, বা তাহার পক্ষে অন্য কোন ব্যক্তি, বৈধ উৎসের সহিত অসঙ্গতিপূর্ণ সম্পত্তির দখলে রহিয়াছেন বা মালিকানা অর্জন করিয়াছেন, তাহা হইলে কমিশন, লিখিত আদেশ দ্বারা, উক্ত ব্যক্তিকে কমিশন কর্তৃক নির্ধারিত পদ্ধতিতে দায়-দায়িত্বের বিবরণ দাখিলসহ উক্ত আদেশে নির্ধারিত অন্য যে কোন তথ্য দাখিলের নির্দেশ দিতে পারিবে।

(২) যদি কোন ব্যক্তি-

(ক) উপ-ধারা (১) এ উল্লিখিত আদেশ প্রাপ্তির পর তদনুযায়ী লিখিত বিবৃতি বা তথ্য প্রদানে ব্যর্থ হন বা এমন কোন লিখিত বিবৃতি বা তথ্য

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For: Mr. Justice  
Md. Rafiqul Islam  
Member, Supreme Court  
Criminal Division, Dhaka.

প্রদান করেন যাহা ভিত্তিহীন বা মিথ্যা বলিয়া মনে করিবার যথার্থ কারণ থাকে, অথবা

(খ) কোন বই, হিসাব, রেকর্ড, ঘোষণা পত্র, রিটার্ন বা উপ-ধারা(১) এর অধীন কোন দলিল পত্র দাখিল করেন বা এমন কোন বিবৃতি প্রদান করেন যাহা ভিত্তিহীন বা মিথ্যা বলিয়া মনে করিবার যথার্থ কারণ থাকে, তাহা হইলে উক্ত ব্যক্তি ৩ (তিন) বৎসর পর্যন্ত কারাদন্ড বা অর্থদন্ড বা উভয়বিধ দন্ডে দন্ডনীয় হইবেন।

২৭। জ্ঞাত আয়ের উৎস বহির্ভূত সম্পত্তির দখল-(১) কোন ব্যক্তি তাহার নিজ নামে বা তাহার পক্ষে অন্য কোন ব্যক্তির নামে, এমন কোন স্থাবর বা অস্থাবর সম্পত্তির দখলে রাখিয়াছেন বা মালিকানা অর্জন করিয়াছেন, যাহা অসাধু উপায়ে অর্জিত হইয়াছে এবং তাহার জ্ঞাত আয়ের উৎসের সহিত অসঙ্গতিপূর্ণ বলিয়া মনে করিবার যথেষ্ট কারণ রাখিয়াছে এবং তিনি উক্তরূপ সম্পত্তি দখল সম্পর্কে আদালতের নিকট বিচারে সন্তোষজনক ব্যাখ্যা প্রদান করিতে ব্যর্থ হইলে উক্ত ব্যক্তি অনূর্ধ্ব ১০(দশ) বৎসর এবং অনূন ৩(তিন) বৎসর পর্যন্ত যে কোন মেয়াদে কারাদন্ডে দন্ডনীয় হইবেন এবং তদুপরি অর্থ দন্ডেও দন্ডনীয় হইবেন; এবং উক্তরূপ সম্পত্তিসমূহ বাজেয়াপ্ত হইবে।”

It is an admitted fact that no notice under section 26(1) of the ACC Act, 2004 was served upon the

appellant. In the circumstances, a separate notice under section 26(1) of the ACC Act, 2004 is necessary for initiating a proceeding against her. In absence of such notice, there is no scope for anyone to give an explanation on his/her wealth. No citizen can be arraigned for such an offence in absence of service of any notice as contemplated in section 26(1) of the ACC Act, 2004. The offence of abetment under section 109 of the Penal Code could not also be conceived with regard to such an offence.

In the case of Anti-Corruption Commission Vs. Nargis Begum and others, 62 DLR (AD) 279, similar question of service of notice was raised. In that case, it has been held:

*"It appears from the record that the petitioners are individual tax-papers under separate tax identification numbers. No order was admittedly served upon any of them under section 26(1) of the ACC Act, 2004 asking any of them to submit statement of assets, movable*

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*and immovable acquired illegally and/or disproportionate to known source of income. Commission of an offence under section 26(2) is disclosed only when any person after receipt of an order under section 26(1) would not file statement of assets or submit false or fraudulent statement of assets. In the commission of such offence, there is no scope for anybody to abet. Similarly, offence under section 27(1) of the ACC Act, 2004 is an aggravated form of the offence under section 26(2) for acquisition of assets movable and immovable in the name of person or others dependent on him when he fails to explain such acquisition. This person is definitely a person who was asked under section 26(1) of the ACC Act, 2004 to submit statement of assets. In the absence of any statement of assets; there was no scope for him to submit any explanation for acquisition of assets. No citizen could be*

*arraigned for such a severe offence in the absence of service of any notice or order for explaining the source of income. Offence of abetment under section 109 equally could not be conceived of with regard to such an offence."*

In the case of Mrs. Syeda Iqbal Mand Banu Vs. The Government of Bangladesh and others (judgment and order dated 13.10.2010 passed in Writ Petition No. 7084 of 2008) this Division held:

*"We have perused the entire FIR but no where we found that the notice under section 26(1) of the Anti-Corruption Commission Act, 2004 ever been served upon the petitioner. So, initiation of the proceedings under section 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004 as well as section 109 of the Penal Code against the petitioner does not sustain since the petitioner was not asked to submit statements of her assets under*

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Act. Sec. 109/110/111  
10/10/2010/2008/2010  
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*section 26(1) of the Anti-Corruption Commission Act, 2004.”*

In the subsequent case of ACC Vs. Iqbal Hasan Mahmud, 66 DLR (AD) 185, the Appellate Division held that notice is not required for prosecution of a person under section 27(1) of the ACC Act, 2004.

In the instant case, the appellant was charged and tried under section 26(2) and 27(1) of the ACC Act, 2004, with the aid of section 109 of the Penal Code. Therefore, notice was necessary. Since no notice was issued and served upon the appellant, her conviction and sentence is not sustainable in law and liable to be set aside.


The charge framed against the convict appellant was very much defective. The provisions of section 221 of the Code of Criminal Procedure have not been complied with. Therefore, the conviction and sentence cannot be sustained on such a defective charge.

The appellant was convicted mainly for her two FDRs amounting to Tk. 35,00,000.00 issued by the Prime Bank Ltd. In the wealth statement, the principal accused

stated that the appellant had received the amount from her mother, Syeda Iqbal Mand Banu, and her mother endorsed it while she was making a statement to the investigating officer. Her mother also stated that she gave the money to her daughter from the rent she received from her house situated at Mohakhali and Motijheel. But the investigating officer discarded her assertion on the reason that the money was deposited into the Bank by one Eneyetur Bari Jewel. It appears from the records that said Eneyetur Bari Jewel was not produced before the Court to prove it. So, in view of section 114(g) of the Evidence Act, an adverse presumption can be drawn that if he had been produced before the Court, his evidence would be unfavourable to the Anti-Corruption Commission. This view finds support in the case of *State Vs. Fazal and others*, 39 DLR (AD) 166, and *Anaddi @ Ayenuddin and others Vs. State*, 6 BLC 310.

It is also an admitted fact that the appellant is an individual taxpayer having an independent tax identification number. When assessment of the valuation

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Asst. Bench Officer  
Bangladesh Supreme Court  
High Court Division, Dhaka

of any property has been made by the income tax department under a statute and accepted as correct then the same cannot be put into question because in that case 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. Reference may be made to the case of *State Vs. Faisal Morshed Khan*, 66 DLR (AD) 236. So, in the case at hand, the Anti-Corruption Commission, in flagrant violation of the law, made the whimsical assessment of its own, which cannot be maintained in law.

The date of occurrence was shown to have been set about from 1982. It appears from the records that the appellant and her husband were minors in the year 1982. If they were minors, how they amass wealth. It is not comprehensible. Thus, it suggests that the ACC either conducted an inquiry, investigation, and trial in a very slipshod manner or acted at the behest of an interested party.

It further appears from the records that the mother of the present appellant challenged the proceedings of the instant case by filing Writ Petition No. 7084 of 2008. The Rule was made absolute declaring the proceeding in respect of her mother was initiated without lawful authority, and the proceeding was quashed vide judgment and order dated 13.10.2010. This appellant stands on the same footing and as such, she is also entitled to be treated like her mother.

It also appears from the records that the evidence adduced in the case is so insufficient that it is not possible for a prudent man either to believe it or to act upon the supposition that the charges brought against the convict appellant have been proved. The learned Metropolitan Senior Special Judge has committed a wrong in convicting the appellant. As such, her conviction and sentence is liable to be set aside.

Let us consider the submissions advanced by Mr. S. M. Shahjahan for the non-appealing convict. It is true that the non appealing convict is the principal accused. The

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M. M. Hossain  
Additional Officer  
Bangladesh Supreme Court  
High Court Division, Dhaka

allegation against him is that he had concealed wealth in his wealth statement, and he had amassed wealth disproportionate to his known source of income. The prosecution in order to bring home the charge led evidences mainly with a view to making the FDR in the name of his daughter, the construction of a house at 6, Shahid Mainul Road, the purchase of land in Bogura and Bashundhara, and his travel expenditures. The witnesses, except the informant and the investigating officer, deposed only in respect of the seizure of papers. It is only the investigating officer who claimed the fact of concealment of wealth and acquisition of wealth by the non-appealing convict, which was found disproportionate to his known source of income. Mere assertion of the investigating officer is not enough to find a person guilty unless it is established by legal evidence. The prosecution has miserably failed to bring cogent and reliable legal evidence to prove the charge. Apart from the merit, other legal infirmities found in respect of the convict appellant are equally applicable in favor of the non appealing

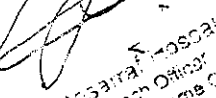
convict. He is also entitled to get the same benefit as has been given to the convict appellant.

Usually, the Court does not interfere with the judgment and order of conviction and sentence in respect of a non-appealing convict. But where the Court finds a flagrant violation of law, it is for the ends of justice, the Court may interfere with the judgment and order of conviction and sentence of the non-appealing convict as well.

In the case of Begum Khaleda Zia alias Khaleda Zia and others Vs. Durnity Daman Commission represented by its Chairman and others (judgment and order dated 15.01.2025 passed by the Appellate Division in Criminal Appeal No. 64 of 2024 heard with Criminal Appeal Nos. 63, 42, and 39 of 2024) wherein it has been held:

*"All the appeals are hereby allowed by this Division's unanimous decision. Accordingly, the judgments of both the High Court Division and the trial Court are hereby set aside. Consequently, all the appellants having not*

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*been found guilty of the charges leveled against them stand fully acquitted. The proceedings constituting the subject matter of these appeals are found to be a manifest contrived misapplication of the law as tantamount to malicious prosecution. This judgment shall also extend to other convicted persons who, however did not prefer any appeal."*

In the case of the State Vs. Mawlana Sheikh Abdus Salam and others (judgment and order dated 01.12.2024 passed by this Division in Death Reference No.145 of 2018 heard along with other appeals and jail appeals), it has been held:

*"In any view of the matter, we are of the view that in the absence of any legal and tangible evidence as well as legal basis, the impugned conviction cannot stand, accordingly the Death Reference under section 374 of the Code of Criminal Procedure is hereby rejected and the*

*appeal filed by the appellants are hereby allowed and the Rules are made absolute. The conviction and sentence awarded to the accused appellants is hereby set aside and all the appeals and jail appeals are allowed. This judgment also will apply to non-appealing convict, since the impugned conviction is found to be illegal and not sustainable in law."*

In the case of Zainul Abedin and others Vs. The State, 3 BLD 108, similar point was raised wherein it has been held (paragraph 40):

*"We are of the view that in the stated circumstances we can suo motu take cognizance of the matter and set aside the conviction and sentence of accused Raisuddin even though he did not prefer any appeal. Similar view was also taken earlier in the case of Abdul Hafez Sarder Vs. The State reported in 23 DLR 253."*

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In the case of Arzan @ Iman Ali Vs. State, 48 DLR 287, a similar point was dealt with and it has been held:

*"The murder was not committed in course of committing dacoity. To convict the accused Meshbauddin or Arzan or Fazlul Huq under section 396 or 302 of the Penal Code would be a clear illegality. So, all of them are entitled to be acquitted. Accused Meshbauddin has filed a jail appeal while accused Arzan has filed a regular criminal appeal but accused Fazlul Huq has not filed any appeal and he is still at large. In the face of clear illegality committed by the learned Additional Sessions Judge in convicting all these accused of the offence under section 396 of the Penal Code, if we do not record an order of acquittal in favour of accused Fazlul Huq the non appealing accused, it means that we are allowing an illegal order to perpetuate. The fountain of justice must not be stopped to the deprivation*

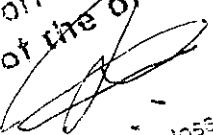
*of any and its flow be allowed to continue so that everybody may share justice equally. In that view of the matter, we hold that the entire order of conviction and sentence be set aside and the absenting accused Fazlul Huq is also entitled to get the benefit of this order."*

On foregoing discussions and consideration of the above cited case laws, I do find substance in the submissions of the learned Advocate for the appellant as well as merit of the appeal. Moreover, co-convict Mr. Tarique Rahman is also entitled to get benefit of this judgment although he did not prefer any appeal.

In the result, the appeal is allowed.

Thus, the judgment and order of conviction and sentence dated 02.08.2023 passed by the learned Metropolitan Senior Special Judge, Dhaka in Metro. Special Case No. 341 of 2022 arising out of Kafrul Police Station Case No. 52 dated 26.09.2007 corresponding to ACC GR Case No. 108 of 2007 is hereby set aside.

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The convict appellant is acquitted of the charges levelled against her.

This judgment also applies to co-convict Mr. Tarique Rahman who did not prefer any appeal. He is also acquitted of the charges levelled against him.

The Trial Court is directed to release the confiscated property valued at Tk. 2,74,93,087.00 to Mr. Tarique Rahman at once.

The appellant is relieved of her bail bond.

Recall the committal warrant issued against Mr. Tarique Rahman at once.

Send down the records.

Communicate the judgment.

**(Md. Khasruzzaman, J.)**