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Criminal Cases of Bangladesh and its Undiscovered Shadow : A Statutory Review

—Sk M Tofayel Hasan*

1. Preface:

The Criminal Litigations are not impounded within any specific statutory or procedural law. Different offences have been defined and categorized in different Criminal laws. Some Codes relating criminal justice system have been introduced but were not complete and uniform. In 1898, the existing Code of Criminal Procedure was enacted. It is one of the oldest Code of this sub-continent as well as one of the best synchronized and systematic procedure. Before that the Penal Code was incorporated in 1960 to secure the definitions and punishment of different offences. There are some cohabitations between the Penal Code, 1860 and the Code of Criminal procedure, 1898 in respect of their operation. Side by side, some special laws relating to different offences have been focused due to the divergence of crimes and variations of criminals. The special criminal laws are typically introduced to address the vacuums of Penal Code and to supress the renovated crimes. Oftenly the procedure of those special criminal laws rely on the Code of Criminal Procedure and sometimes those are self contained. Each and every step of a criminal litigation is compact with the procedure described either in the Code or the laws. Now a days if we analyze the Code and the laws critically, it is noticed that unquestionably the Code or the laws themselves and those practitioners are lingering the process to dispense justice and to dispose litigations. On the other hand, the Code or the laws are not completely self-determining in their functions as because those have to depend on the procedure of other laws, e.g. The Evidence Act-1872, The Court fees Act-1870, The Criminal Rules and Orders-1935 and etc. In the present context of a criminal litigation, different laws themselves are facing some haziness and shortcomings. The procedural protractive system of a criminal litigation is not only creating a over burden to the shoulder of Judiciary but also creating sufferings to the litigant people. Thus the litigant fails all of their attention as the cases are connecting the generations together.

2. What is a Crime or Offence?

A crime or offence means any harmful act or omission against the public which the State wishes to prevent by imposing punishment. The Penal Code, 1860 provides the types of punishment which are of five kinds i.e. forfeiture of property, fine, life imprisonment, imprisonment for a term and capital punishment. Most importantly, no conduct constitutes a crime unless it is declared criminal in the laws (general or special) of the country.

The Penal Code 1860 affirmed the word "Offence" under section 40 as- Except in the chapters and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, Chapter VA and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216 and 441 the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

In the Code of Criminal Procedure, 1898 the word "Offence" has been defined under section 4(o) as- any act or omission made punishable by any law for the time being in force;

It also includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871.

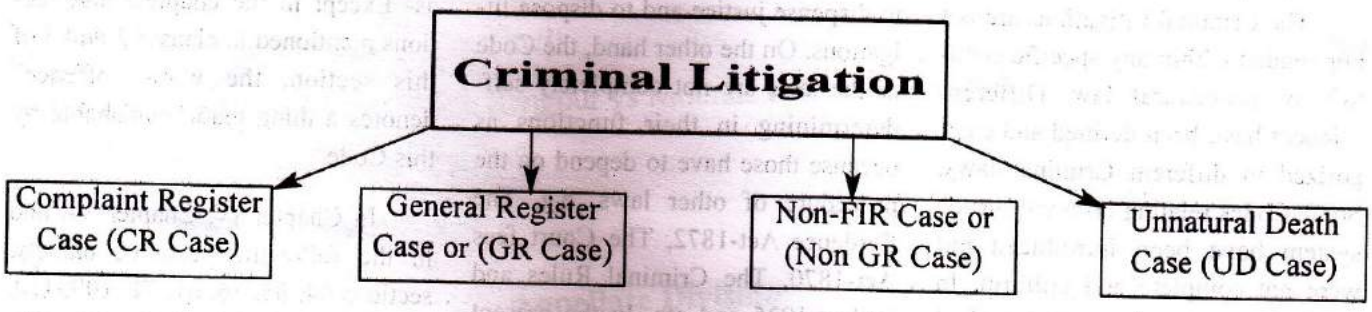
*Joint Metropolitan Session Judge, Chittagong.

The General Clauses Act, 1897 in section 3(37) defines offence as any act or omission made punishable by any law for the time being in force.

In contrast, the special laws are providing the definition of distinct special offences in the society according to their meaning, objectives, nature and character.

3. Types of Criminal Litigations in Bangladesh:

In Bangladesh, the Code of Criminal Procedure, 1898 is considered as the fundamental procedure of criminal litigation. Apart from the cases instituted in the Supreme Court or different Tribunals the criminal litigations are of 4 (four) categories. Those are—



i. Complaint Register Case:

When a case is initiated on the basis of a complaint, it is called complaint case and such a case is registered in the complaint register and for this reason such a case is also known as Complaint Register Case (CR Case). The Magistrate takes cognizance in a CR Case under section 190 of the Code of Criminal Procedure 1898.

ii. General Register Case (GR Case)/FIR Case:

When a case is lodged on the basis of an information of cognizable offence to the Police Station under section 154 of the Code of Criminal Procedure, 1898 it is called General Register Case (GR Case) or FIR Case. This is also called Police Case as it is to be filed in the Police Station through FIR(First Information Report)/Ejahar and such a case is registered in a General Register of Police Station.

iii. Non-GR Case/ Non-FIR Case:

A case is lodged on the basis of an information of non cognizable offence to the Police Station under section 155 of the Code of Criminal Procedure, 1898 is called Non-GR Case or Non- FIR Case. This is also a Police Case as it is to be filed in the Police Station through GD (General Diary)/Information and such a case is recorded in a Non-GR Register of Police Station. After that the Officer in Charge of the Police Station shall forward the information to the competent Magistrate for further necessary action.

iv. Unnatural Death Case/ UD Case:

When a first information is received by the Officer-in-charge of a Police station or such other officer empowered by the government about commission of suicide or someone has been killed by another or by an animal or by an accident or has died under circumstances raising reasonable suspicion that someone has committed an offence, that Police officer will record the information in the B.P Form No.48 and also proceed the Unnatural Death Case (UD Case) under section 174 of the Code of Criminal Procedure, 1898 and rule 299 of the Police Regulations of Bengal, 1943. After that the Officer in Charge of that Police Station shall forward the information to the nearest Executive Magistrate for further necessary legal action. The first information of an UD Case is not an FIR.

4. Litigations of Different Tribunals in Bangladesh:

Bangladesh legal system is also familiar with different tribunals established under diverse contents of special laws. There are some statutory distinct designations that exist between a court and a tribunal. Sometimes the tribunals hold trials

about rights and sometimes about the offences. Statutory tribunals deal the litigations of public concern e.g. Tax Appeal Tribunal tries the tax claims between the state and individual, Administrative Tribunal deals with the dispute relating to employment between the Government and its employees, Labour Appellate Tribunal is concerned with the industrial disputes. Only the Adminis-trative Tribunal and the Administrative Appellate Tribunals have the constitutional recognition. On the other hand, there are some other statutory tribunals which has no relation to public concern. They mainly relate to the offences against private personalities i.g. নারী ও শিশু নির্যাতন দমন ট্রাইব্যুনাল, দ্রুত বিচার ট্রাইব্যুনাল, জন নিরাপত্তা বিঘ্নকারী অপরাধ দমন ট্রাইব্যুনাল, পরিবেশ আপীলেট ট্রাইব্যুনাল, Special Tribunals established under section 26 of the Special Powers Act, 1974 and under Article 152(1) of the Constitution of Republic of Bangladesh,1972 etc. Except Special Tribunals established under section 26 of the Special Powers Act, 1974, other tribunals have their separate establishment and procedure. Sometime the offences have been defined both in the Penal Code and the Special Laws but the Special Laws preserve privileges due to its statutory supremacy and time of enactment. There are also some in-house (Domestic) tribunals that are constituted within the meaning of their delegated legislation i.e. The Bar Council, The Bangladesh Medical Association, BGMEA, Bank, Universities etc.

5. Stages of Different Criminal Litigations at a momentary look:

If we survey the flow chart of different criminal litigations then it will be easy to find out the procedural lengthiness and also to identify the mysterious causes of delay in criminal justice system.

CR Case	GR Case	Non-GR Case
Submission of Complaint	Lodging FIR	Lodging GD
Examination of the complainant	Investigation	Permission of Investigation
Investigation/Inquiry Report (If any)	Police Report	Police Report
Taking Cognizance by the Magistrate	Taking Cognizance by the Magistrate	Taking Cognizance by the Magistrate
Send for Trial	Send for Trial	Send for Trial
Taking cognizance by the Court of Session (if necessary)	Taking cognizance by the Court of Session (if necessary)	Charge hearing
Charge hearing	Charge hearing	Framing of Charge
Framing of Charge	Framing of Charge	
Examination and Cross Examination of Witnesses	Examination and Cross Examination of Witnesses	Examination and Cross Examination of Witnesses
Examination of the Accused	Examination of the Accused	Examination of the Accused
Defence Witnesses (if any)	Defence Witnesses (if any)	Defence Witnesses (if any)
Argument	Argument	Argument
Judgement	Judgement	Judgement

6. Main obstacles to dispose Criminal litigations:

Delay is the mother of all bottlenecks. Presently the most popular axiom of the law of equity "justice delayed justice denied" has become futile although the essential prerequisite of justice is that it should be dispensed with as quickly as possible. In different stages of a criminal litigation, both the parties try to take the privilege of adjournment on a fragile ground to linger the procedure and the Courts also usually allow the petitions of adjournment repeatedly without any reasonable excuse.

Despite that, the foremost causes of delay may be summed up as follows:

6.1 Legal Divergence and ambiguity:

a) There are some laws which define the same offence but prescribe different punishments and procedure. The laws certainly have the common characteristics and the supremacy of those laws are generally ignored. Though the common principale stands in favour of the supremacy of special laws but the divergence oftenly creates binary problems. Illustration by way of examples-

i. Section 2 of The Dowry Prohibition Act, 1980 and the section 2(j) of The নারী ও শিশু নির্যাতন দমন আইন, 2000 commonly recite the definition of 'dowry'.

ii. The Penal Code, 1860 provides the definition of 'wrongful confinement' and 'wrongful restrain' under section 341-348 and 'kidnapping' under sections 359, 360, 363, 364A, 366, 366A, 368, selling or buying a minor for the purpose of prostitution under sections 372, 373, unlawful compulsory labour under section 374. Simultaneously, the same has been delineated in the নারী ও শিশু নির্যাতন দমন আইন, ২০০০ ধারা ৫-৯ এবং ১০.

iii. The Penal Code and The আইন শৃঙ্খলা বিঘ্নকারী অপরাধ (দ্রুত বিচার) আইন, ২০০২ is concomitantly providing about the definition of rioting, extortion, robbery, deter public servant to discharge his duty, mischief by causing damage, criminal intimidation. There are some relation of the offences stated in Penal Code and মানি লন্ডারিং প্রতিরোধ অধ্যাদেশ, ২০০৮ ধারা ২(ন)।

iv. The offence of 'murder' has its diversified definition in the various laws according to its nature and character. Abatement of suicide has been stated both in section 305, 306 of the Penal Code 1860 and in section 9(G) of the নারী ও শিশু নির্যাতন দমন আইন, ২০০০.

v. The offence that has been stated in the নারী ও শিশু নির্যাতন দমন আইন, ২০০০ এর ধারা ৪ এবং এসিড অপরাধ দমন আইন, ২০০২ এর ৪-৬ ধারা is almost same in nature but the punishment is different in the laws.

vi. Giving false evidence in the legal proceedings and public nuisance has been concurrently stated in sections 191, 192, 268 of the Penal Code 1860 and in sections 195(c), 193 of the Code of Criminal Procedure 1898.

vii. Criminal Conspiracy commonly stated in The Penal Code 1860 under section 120A in the Code of Criminal procedure 1898 under section 196A and সন্ত্রাস বিরোধী অধ্যাদেশ, 2008 ধারা 10.

viii. The Explosive Substance Act, 1908 gives a definition of 'explosive substance' in section 2 and সন্ত্রাস বিরোধী অধ্যাদেশ, ২০০৮ ধারা 2(13) also provides the same in different mode.

ix. Some provisions have been recurred in The Penal Code 1860, দুর্নীতি দমন কমিশন আইন, 2004, and The Prevention of Corruption Act, 1947 about corruption.

x. The definition of 'public servants' has been repeatedly stated in The Prevention of the Corruption Act, 1947 in section 2, The Public Servants (Dismissal on Conviction) Ordinance, 1985 and also in section 21 of the Penal Code 1860.

xi. The offences stated in the Chapter IX of the Penal Code 1860 about public servants resemble with the different laws relating to the public servants etc.

b) Sometime the law itself entertains the extensive procedure by using some abstract word e.g. "reason to believe", "reasonable cause", "if it thinks fit", "sufficient ground", "satisfaction of the court", " reasonable suspicion", "without delay", "ends of justice" etc. These words purport some inherent power of the authorities to dispense with their duties through their own accord. On the other hand, sometime the Code itself encourage elongated procedure.

c) The concurrent power and jurisdiction to try the offences in the Mobile Court and the Judicial Magistrate Court is sometime shattering the harmony of legal proceedings.

d) If we sensibly analyze the primary law of criminal litigation i.e. The Code of Criminal Procedure 1898, we may find some huge vacuums that are lengthening the system and sometimes they are indistinct.

i. Section 32 of the Penal Code states about the sentences which a Magistrate may pass. In that consequence the Magistrate 1st class may pass sentence for 5 years imprisonment. Section 29C of the same Code vests power to the Chief Metropolitan Magistrate or Chief Judicial Magistrate to try all the offences except the offences punishable with death and Magistrate 1st class to try all the offences except the offences punishable with imprisonment for life or with imprisonment for a term not exceeding 10(ten) years. Section 347 inflicts the power to the Magistrate 1st class to try the offences beyond his jurisdiction. Section 35(1)(b) states that magistrate may aggregate the punishment which will not exceed twice the amount of his ordinary jurisdiction. So all the sections are inter- conflicting about the jurisdiction of various Magistrates.

ii. The argument against Section 54 is a widespread phenomena. This section offers ample power to the police to arrest any person without warrant. However the law enforcing agencies are under confusion whether the offence has been committed by the person or not but the provision secures the power of arrest. So there is a definite probability to persecute the innocent.

iii. Nowadays section 61 of the Code of Criminal procedure is highly criticized. The statute insists upon production of a person arrested or detained before the Magistrate Court within 24 (twenty four) hours. But the section is randomly violated by the law enforcing agencies as there is no accountability for non compliance. Sometimes the relatives of that detained person have to take recourse to the High Court Division through the Writ of Habeas Corpus.

iv. There is a massive gap concerning the system of proclamation and attachment of the property of person absconding under section 87 and 88 of The Code of Criminal Procedure 1898. The time to publish proclamation has been restricted within 30 (thirty days), but sometimes it take years together to execute. The system of paper circular is the another indefinite stage of criminal litigation though the sections have not uttered anything on it and sometimes the cost of paper publication for a private person is payed by the Government.

v. Section 164 is an important part of investigation though there is a legal embargo that the confession of the accused should be voluntary and should not be obtained by pressure or torture. But the provision is frequently violated as there is no accountability for non compliance and the Magistrates are slipshod about the provisional obligations.

vi. Section 167 of the Code of Criminal Procedure 1898 lays down the provision for passing an order of detention or remand of the accused by the Magistrate. And the tenure will not exceed 15 (fifteen) days in the whole. But the law enforcing agencies are utilizing the provision in a erroneous way by way of shown arrest of the accused in another cases and the term is certainly exceeding 15 (fifteen) days. It is to be noted that the provision of shown arrest has laid down in the Code of Criminal Procedure 1898.

vii. Though section 173 describes about police report but this section does not provide any of its types. The types have been stated in the PRB and which also provides for the legal obligation to submit every investigation report without unnecessary delay though section 167(5) affirms the time limit within 120 (one hundred and twenty) days. Na-raji is the common practice in all criminal litigations though the Code of Criminal Procedure 1898 does not recognize it. Na-raji is an application filed by the complainant for further investigation. It is now settled principle

of law that when a Na-raji petition is filed, the same shall be treated as a petition of complaint and the Magistrate shall proceed under sections 200-203 of the Code of Criminal Procedure 1898. The system has been adopted from the decision of the Apex Court but there is no such provision to file a Na-raji petition. So most of the reports of investigation/inquiry in a CR/GR case has to face suffering from a Na-raji petition.

viii. In section 227 the charge may be altered at any stage before pronouncement of judgement and fresh trial be held under 229 and the witness be recalled under section 231 if the accused is considered to be prejudiced. So after conclusion of a trial for long time, the fresh trial will start once again.

ix. The concept of the Code of Criminal Procedure 1898 assumed that all the accused will face all procedure and survive up to the conclusion of trial. But there is chance of death of the accused in between trial. Even the complainant may also die at any stage. Then what would be the procedure if the accused(s) or the complainant died has not been provided in the Code of Criminal Procedure 1898. However there is a provision of abatement states under section 431of the Code of Criminal Procedure 1898.

x. The Code provides provision for bail of the accused for the offence of non-bailable nature under section 497. It is certainly a discretion of the court to grant bail. So the power is exercised considering the circumstances of each case. More importantly some sections of The Penal Code 1860 and the special laws should be compoundable.

xi. Lastly, transfer of criminal cases has been stated in Chapter-XLIV, section 525A-528. The power has been conferred upon the Appellate Division or High Court Division or the Sessions Judge or to the Chief Metropolitan Magistrate/Chief Judicial Magistrate/District Magistrate. This privilege is used by the defence without any rational basis. Sometimes the judges are also granting the space to the defence counsel gratuitously, so the case get a chance to travel a long way.

6.2 Position of the Judges/Magistrates:

At present, number of Judges/ Magistrates are not too sufficient to meet the challenges of boost of crime because the litigations are scattered in a disorderly manner. It is a matter to look forward that now a days government is recruiting number of Judges/Magistrates and some are in a pipe line to be appointed. But the recruiting system of Bangladesh Judicial Service Commission is so extensive as because it has to search out for the approval of different Ministries of the Government. So the recruitment is not getting optimum consequences to face the current challenges.

6.3 Position of the Lawyers:

In the present day, Lawyers are incredible in a critical position. Different public and private universities and the Law colleges are producing law graduates in every year. Consequently the number of law graduates are increasing phenomenally in the country. Amongst them a significant number of law graduates are qualifying in Bar Council Exam and getting enrolment to practice in the lower court and thereafter in the Supreme Court after facing a further exam. At present the number of enrollment in the Supreme Court Bar and different Divisional Bar Associations are as follows—

Name of the Bar Association	Number of Advocates Enrolled
Supreme Court	3,407
Dhaka	12,425
Dhaka Metropolitan Bar Association	217
Chittagong	3,743
Rajshahi	736
Khulna	1,296
Sylhet	1344
Rangpur	437

[Source: Voter list of Bangladesh Bar Council, published on 30-7-2015]

A few of there Advocates are simultaneously practising both in the Supreme Court Bar and the Local Bar. Some of them are practicing tremendously on the basis of their knowledge, skill and quality and also earnest to their profession. Despite that, some are practising by their face

value, political position and seniority, some are practising only in the chamber, some are enjoying juniorship of a senior, some are practising in his ancestor's chamber and some are practising in some unusual ways. Most of them are facing challenges to survive and living hand to mouth from their beginning. Hence there is no alternative way to survive in profession but to linger the suit by causing delay. It is the only technique to make animate of a case not to go with the grasp of law and fact. At the moment, State is the biggest but weakest litigant of all criminal litigation in Bangladesh. The Public Prosecutors are appointed on behalf of State in a mammoth number but they do not handle the cases cautiously and therefore delay in the litigations taking place indiscriminately.

6.4 Position of the Litigant:

The general attitude of all the litigant people in our country is only to win by the shortest way in the quickest time. In that connection the wealthy people always try to squander their capital for the advocate with an impressive profile to deal their case successfully and the poor litigant always search for the advocates who's reputation is not so high to handle their case in some way. Some feels panic and fear by the name of any litigation due to ignorance of existing legal procedure. Side by side a number of people in our country is litigious in nature and always strive to create some litigation with his surroundings. This class of people is very treacherous and always try to make hindrance of the litigation to give a lesson to his opposite. Almost all of them are not aware of any legal knowledge.

6.5 Position of Infrastructure of the Criminal Courts:

The infrastructure of criminal courts in various districts of Bangladesh are indescribable as because the number of building has not been increased as per the number of Police Station or Upazilla. Consequentially, the Judges/ Magistrates have to share the Ejlash and they are not getting full opportunity to utilize their time. Utilizing Ejlash for half or quarter a day is not sufficient to meet the challenges of criminal administration of justice.

6.6 Position of Logistic Support of the Criminal Courts:

The modern world is a world of science and technology and Bangladesh in this view is not in reverse. The vision of the Government is to digitalize all the sectors. Almost all the private sectors have achieved it effectively but the public sectors have not yet been able to optimize the vision due to the lack of effective policy making and ignorance about the useful operation of technology. The Supreme Court of Bangladesh has recently introduced computerized cause list and archive system through LAN (Local Area Network) and web portal through WAN (Wide Area Network) but local courts are still in a super analogous system.

The scarcity for the Forms and Registers prescribed by the Government for the criminal courts are increasing progressively. Government prescribed Forms and Registers are not distributed towards the district magistracy regularly in each and every year. Due to the lack of information of those Registers, corruption is making progress and delay in dispensing with prompt justice is its ultimate consequences.

7. Recommendations:

◊ Legal mind of the Judges should be exalted and also have to be vigorous in their respective responsibilities. They have to be well-informed about the latest provisions of law and also to be prompt in taking their decisions. The Judges should have to follow all the provisions of the Code of Criminal procedure along with Criminal rules and Orders appropriately along with the general rules of Court-hours, Cause list.

◊ There should be harmonization between the Codes and the Special Laws to identify offences and the procedure should also be coordinating and definite. The obligation of sections 54, 61, 87, 88, 164, 167, 173, 442A, 497, 494, 526, 528 should be maintained and unified. Some provisions should be amended with reasonable explanations e.g. sections 32, 29C, 35, 347.

◊ The prosecution side will have to be strong in the sense of law. It is the responsibility of the Police-officer to ensure that the complainant or the witness shall be appeared before the court at the time of hearing of the case under section 171(2) of the Code and sections 485/485A in attesting the procedure for punishment for

non-attendance by a witness. These provisions should be applied to dispense the case promptly.

◊ Modern machinery of examining and cross-examining the witness should be adopted to adjudicate proper justice in the quickest way. On the other hand service of summon/warrant should be technology based to ensure transparency and velocity. The argument and judgement should be well shaped focusing on the legal point of view and marshalling of fact only.

◊ Technological evidences and expression of Forensic Medicine should be perused and considered because the man can often tell lie but the machine can't. On the other hand it saves a lot of time and certainly clears the root of dispute. Nowadays the court has considered the digital evidence in dispensing with justice like i) BDR Mob case in Pilkhana, Dhaka, ii) Biswajeet murder in Dhaka, iii) 10 truck arms case in Chittagong, iv) Rakib Murder case in Khulna, v) Rajon Murder case in Shylhet,vi) Vikarunnesa sex scandal case in Dhaka and vii) War crime cases etc.

◊ Official accountability and transparency of the court staff i.e. Bench Assistant, Process server, Office Peon, MLSS etc. should be ensured by the presiding Judge. Moreover each section of a court i.e. Nejarat, Record room, Accounts Section, Copying Section, Forms and Stationary Section etc, has a Judge-in-Charge and he also has to supervise his concerned section strictly, so unnecessary delay cannot create any phenomena to delivery services and to dispense with proper justice.

◊ Sufficient infrastructural and logistic support should be provided in each year as per necessity of the different criminal courts of Bangladesh to make the vision of digitalization possible.

◊ Satisfactory salary and privileges for the Judges should be provided by the Government in comparison with other countries of contemporary world so that family burden cannot make them anxious and tensed. Side by side the judges should be well trained up both in home and abroad. Research work from the Judicial Administration Training Institute (JATI) should be more updated and well cantoned.

◊ The lawyers should be well-versed in law and they have to supply the right suggestion to the client about the problems within the periphery of law. The lawyers have to render their best efforts in each and every case within the edge of law. The Lawyers will have to assist the court as they are the court officers but not by their influence or pursuance. Uniform remuneration for the lawyers as per their proficiency and tenure of practice should be introduced from the Government so that no one feels superior or inferior than others and abnormal fees cannot be charged from the clients.

◊ Attitude of the litigant should also be improved and they have to understand the situation of the Lawyers at the same time the position of the Judges concomitantly. They will not make a haste to met the litigation by an discriminatory and inequitable way. Moreover the litigious people should be punished for their uneven activities not only by fine but also by rigorous imprisonment for any term.

8. Concluding remarks:

Many people of our country now live in fear and panic of crime. Criminal laws and social definition of crime vary from place to place and from time to time so that apparently similar statistics of crime may be based on very different forms of behaviour though our system cannot enumerate all crimes of the society. It may be well argued that radical modification to the present criminal justice system of pre-trial procedures are essential to deal with crime efficiently. Someone may argue in favour of alternative dispute resolution or compound of crimes, some will argue for counseling or reformation of criminals and some for ensuring accountability of different institutions. But one may be the central argument that the balance of power amongst the system, accountability and transparency can produce the best outcome. Causes of crimes and reasons for backlogs from the root to the top should be discovered and addressed. Simultaneously, the traditional formalities of the procedure should trouble-free and easy-accessible for all otherwise it is not too far that the heart-breaking burden of criminal justice system will annihilate the civilization.

examination of the witnesses will not cast any doubt in the testimonies of the witnesses of this-case, as was available in that particular case", it has illegally discarded the FIR. The explanation given by PW 1, who was a responsible officer having no nexus with the four national leaders, the explanation is cogent, reasonable and satisfactory. More so, Exhibit 1 which was sized from the office of the Dhaka Central Jail, where the occurrence was committed and it is natural that the Central Jail authority had preserved a copy of it with a view to obviate any future controversy.

108. The High Court Division failed to consider another aspect while disbelieving the complicity of the respondents. Moslem Uddin could not alone have executed the killing by entering into a most secured place like the Dhaka Central Jail. Admittedly, huge number of security personnel with arms was deployed there for the security of the prisoners. It was not possible on his part to enter into the Dhaka Central Jail at dead of night unless the jail authority was compelled to allow him and his team. It is also not possible on his part to execute the killing in presence of IG (Prisons), DIG (Prisons) and other high officials unless they were compelled to allow them to enter into the Central Jail for implementing the killing.

109. This Moslem Uddin and the respondents were also in the company of the President's security team. The defence did not dispute this fact. If Moslem Uddin was staying in Bangabhaban with other conspirators, how a member of the conspiracy could alone be convicted excluding other conspirators? A conspirator is an agent of other conspirators and vice versa. In the premises, the conclusion arrived at by the High Court Division that Moslem Uddin was alone responsible in the killing is simply absurd and contrary to the provisions of law. It is also admitted fact that more than one army officers were involved in the killing in two groups. So naturally, the respondents cannot avoid their complicity in the conspiracy.

110. The High Court Division though noticed one important documentary evidence proved by PW 1, a report submitted by him to the IG (Prisons) on 5th November, 1975, Exhibit-2, did not, however, express any opinion with regard to this document. Both in the FIR and in this report, there are positive statements that captain Moslem Uddin led the killing squad to the Dhaka Central Jail, who came from Bangabhaban. In Exhibit-2, he stated that on the basis of intimation given by the Inspector General (Prisons), he reached the Dhaka Central Jail on the fateful night and at that time, he was asked by the latter to proceed towards the Dhaka Central Jail gate as directed from the Bangabhaban; that he witnessed the telephonic conversation between the President and the IG (prisons) and thereafter, the latter told him that one captain Moslem with some army personnel would come to the central jail; that it was directed from the Bangabhaban to comply with what he (captain Moslem) wanted to do and that the detenus Tajuddin Ahmed, Monsur Ali, Syed Nazrul Islam and M Kamruzzaman should be shown to him. The High Court Division failed to notice that PW 1 submitted the inquiry report as per direction of PW 3, who in turn forwarded the same along with his forwarding report, ext-6, to the Secretary, Ministry of Home Affairs. So, PW 3 also corroborated PW 1 and the defence did not challenge the same.

111. Thus, the trial Court and the High Court Division upon superficial consideration of the materials on record illegally discarded Exhibits-1 and 3. Had there been any interpolation in the contents of Exhibit-1 or Exhibit-3, the High Court Division would have been justified in discarding them, but in the absence of anything in this regard and in presence of uncontroverted evidence on record about seizure and collection of the true copies of the FIR, I find no cogent ground to disbelieve the claim of the prosecution that exts-1 and 3 are the true copies of the FIR lodged with the Lalbagh Police Station on the following

day of occurrence by PW 1 narrating the incident of killing and that after lodging the same, PW 1 kept a copy of the same in the Dhaka Central Jail and sent a copy to the Inspector General of Police. The trial Court also believed the claim of PW 1 that he lodged an FIR with Lalbagh police station over the killing of 4 leaders on 4th November, 1975 and that PW 64 investigated the case on the basis of the said FIR.

112. The above facts are so consistent to link the respondents in the killing of the four national leaders that in pursuance of a pre-planned conspiracy for the killing of the national leaders, the security team headed by Moslem Uddin implemented the killing. It is an admitted fact that most of the army officers and personnel were absorbed in the Ministry of Foreign Affairs and posted in different Embassies of Bangladesh abroad instead of putting them to justice. The above facts proved that the succeeding Government in power not only showed special favour to them but also rewarded them. This absorption of the known killers in the Ministry of Foreign Affairs and posting them in different Embassies of Bangladesh suggested that they had influence over the Government, even after Khandaker Mustaque was dethroned. This fact itself indicates a strong circumstance which the court can take judicial notice as a historical fact. These series of acts are considered cumulatively lead to the inference that there was common design of all accused persons to kill the leaders in the central jail and that in consequence of that design, the conspirators had executed the killing.

113. The High Court Division disbelieved the circumstantial evidence on the reasonings that there are missing links in the chain of events and that as no appeal was preferred against the charge of acquittal of criminal conspiracy, their conviction under sections 302/109 of the Penal Code is also not sustainable in law. True, no appeal was preferred against the order of acquittal of the accused persons on the charge of criminal conspiracy but, this itself is not a legal ground to shirk its responsibility even if there are sufficient evidence in support of the charge.

114. The High Court Division fell in an error in acquitting all the accused persons except one merely on the ground that the State did not take step against the order of acquittal.

115. This finding of the High Court Division is palpably illegal and against law. While administering justice it assigned a reason which has no sanction of law. There is no dispute that a heinous crime was committed on the night following 2nd November, 1975 in the Dhaka central Jail at prisoners cell in which the four national leaders were brutally murdered by armed army personnel. The question is whether the murders were perpetrated in pursuance of a conspiracy or in pursuance of a common intention of the accused respondents and others. To say otherwise, in which manner the murders were perpetrated. Both the trial Court and the High Court Division believed the prosecution case so far the place, the time and the murder is concerned. If on an analysis of the evidence on record if it is found that the prosecution has proved that there was conspiracy to kill the leaders and in pursuance thereof, the killing was perpetrated, all accused persons could not avoid criminal liability. If, however, the evidence of record proved that there was no conspiracy but, the killing was committed by several persons in furtherance of common intention of all, all the accused persons cannot be convicted because the common intention requires participation in the crime.

116. The High Court failed to notice that the acquittal was in respect of a charge on a misconception of law. If the material evidence on record are sufficient to come to the conclusion that the killing was perpetrated in consequence of a conspiracy, it has all the powers to award legal conviction altering the finding since the trial court

framed a charge of conspiracy against the accused persons and the accused persons have been afforded opportunity to defend the same. The High Court Division, under such circumstances, has power to alter the finding of the trial court under section 423(b)(2) of the Code of Criminal Procedure and award conviction in accordance with law. It is settled law that if a palpable illegality is apparent in the trial Court's judgment while hearing an appeal from conviction, the appellate court can pass appropriate conviction for ends of justice on reappraisal of the evidence on record.

117. Similarly, this Division has the power to alter the finding of the High Court Division and determine the offence committed by the respondents because the appellate court has the power to 'alter the finding maintaining the sentence' without an appeal being filed by the State on the charge of conspiracy. The only bar is, no alteration can be made to the detriment of the accused persons but in this case the accused persons will not be prejudiced thereby, since they have defended the charge. The fundamental principle underlying sections 221-223 of the Code of Criminal Procedure is that an accused person can be convicted of a particular offence only if he was charged with the same. Exceptions to this principle are laid down by sections 234-239 read with section 535, which empower the trial court, in cases specified, to convict an accused person with respect to an offence even though he was not changed with the same. The ordinary rule that the accused cannot be convicted of any offence with which he is not charged is circumscribed by exceptions. The power of the appellate court under section 423(b)(2) is, however, subject to the condition that the appellate court cannot enhance the sentence imposed by the trial court.

118. The appellate court has power to alter the finding of the trial court and convict the accused person on the basis of the evidence on record. Section 423(b)(2) enjoins the appellate court to find the proper offence of which the accused person could be held to be guilty. No restriction is placed on the power of the appellate court to alter the finding to any that it considers suitable to the purpose. The expression 'alter the finding' contemplates only an alteration of the finding of conviction which was appealed against and which was the subject matter of appeal.

119. In *Ramdeo Rai Yadav vs State of Bihar, AIR 1990 SC 1180*, Ramdeo Rai Yadeb and three others were charged under section 396, in the alternative under section 302 of the Indian Penal Code. The trial court convicted all accused under section 396. The High Court found Ramdeo Rai Yadav alone guilty of offence under section 302 by altering his conviction. The Supreme Court held that the appellant couldn't be said to have been prejudiced by the alteration of the conviction in view of the specific alternative charge. The argument advanced on behalf of the convicted accused that there was an acquittal was found of no merit at all.

120. In *Tilkeswor vs Bihar State, AIR 1956 SC 238*, the appellants were charged under section 302/34 and convicted of the said charge. On appeal the High Court converted the conviction to one under section 326/149. It was contended before the High Court that there was no power in the court to substitute section 149 for section 34. The Supreme Court repelled the contention observing that the law on the point was settled in *Willie Slancy vs State of MP, AIR 1956 SC 116*. In *Brathi vs State of Punjab, (1991) 1 SCC 519*, the appellant and his uncle were tried under section 302 of the Indian Penal Code. The trial court acquitted the appellant's uncle but convicted the appellant under section 302. The Order of acquittal became final because State did not choose to challenge it in appeal. The appellant, however, preferred an appeal against his conviction. The High Court on sifting the evidence held that the fatal blow was given by the appellant's uncle and

since the appellant was charged under section 302/34, he could not be convicted under section 302. However, the High Court held that the eye witnesses had given a truthful account of the occurrence and the appellant's uncle had actually participated in the commission of the crime along with the appellant. Since no appeal was filed by State against acquittal of appellant's uncle, High Court maintained the appellant's conviction under section 302/34. The Supreme Court held that in the matter of appreciation of evidence, the powers of the appellate court are as wide as that of the trial court and the High Court was, therefore, entitled in law to review the entire evidence and to arrive its own conclusion about the facts and circumstances emerging therefor. The Court further held that 'when several persons are alleged to have committed an offence in furtherance of their common intention and all except one are acquitted, it is open to the appellate court under sub-section(1)(b) of section 386 of the Code to find out on an appraisal of the evidence who were persons involved in the commission of the crime and although it could not interfere with the order of acquittal in the absence of a State appeal it was entitled to determine the actual offence committed by the convicted persons.'

121. Even where a charge was framed against an accused person in respect of an offence, he may be convicted for lesser offence provided the case attracts section 237 and 238 of the Code of Criminal Procedure. It is said, if the graver charge gives to the accused notice of all circumstances going to constitute the minor offence. In *GD Sharma vs State of UP, AIR 1960 SC 400*, three appellants who were tried separately. Two accused were convicted under section 467 and the other under section 467/471 of the Indian Penal Code and sentenced them accordingly. They preferred four appeals against their convictions in the High Court. The High Court by setting aside the conviction directed their retrial observing that at the trial a charge in the alternative under sections 467 and 477A should be framed against two accused and a charge of abetment in the alternative of offences under sections 467 and 477A should be framed against one namely OM Prakash. The High Court was of the opinion that the acquittal of accused under section 120B, was correct in the absence of sanction. Accused persons challenged the order of remand in the Supreme Court. The supreme Court set aside the order of remand and directed the High Court to rehear the appeals observing that "The provisions of Ss.236 and 237 are clear enough to enable a court to convict an accused person even of an offence with which he had not been charged if the court is of the opinion that the provisions of S.236 apply, that is to say, if a single act is or a series of acts are of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, then the accused can be charged with having committed all or any of such offences, and any number of such charges can be tried at once; or he may be charged in the alternative with having committed some one of the said offences and by virtue of the provisions of S.237 the accused although charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of section 236, can be convicted of the offence which he is shown to have committed, although he was not charged with it".

122. Admittedly, in this case except Resalder Mosleh Uddin, none of the prosecution witnesses has been able to recognize the respondents either in the Dhaka Central Jail gate or at the scene of occurrence. They were seen in the company of Resalder Mosleh Uddin in Bangabhaban on the fateful night and preceding to the date of occurrence when the conspiracy was afoot. We found that the respondents were parties to the criminal conspiracy hatched up at Bangabhaban for implementing the killing at Dhaka Central Jail. If the conspiracy is proved, there is no legal bar to

award a legal conviction to the accused-respondents. Even if no formal charge is framed or there is omission to frame a charge unaccompanied by any probable suggestion of any failure of justice having been thereby occasioned, is not enough to warrant the quashing of a conviction in view of section 535 of the Code of Criminal Procedure.

123. The object of framing a charge is to enable an accused person to known the substantive charge which he will have to meet at the trial. References in this connection are the case of V.M. *Abdul Rahman vs King Emperor, AIR 1927 PC 44 and BN Srikantiah vs Mysore State, AIR 1958 SC 672.* The Judicial Committee of the Privy Council held that 'the bare fact of such omission or irregularity as occurred in the case under appeal, unaccompanied by any probable suggestion of any failure of justice having been thereby occasioned, is not enough to warrant the quashing of a conviction, which in their Lordships view, may be supported by the creative provisions of Ss.535 and 537'.

124. It was urged on behalf of the appellant that even if no appeal was preferred against the acquittal of the charge of criminal conspiracy, this Division in exercise of its inherent power can convict the respondents. In this connection, it was submitted that this Division should take judicial notice of the adverse situation then prevailing during the relevant time in conducting and prosecuting the case the State was not interested to proceed with the case and its machinery did not cooperate with the special public prosecutor in conducting the case on behalf of the prosecution and under such circumstances, no appeal could be filed against the said charge as the State did not instruct the special prosecutor for filing appeal. In the premises, it is argued that it is a fit case in which this Division ought to have evaluated the evidence on the charge of criminal conspiracy in the interest of justice. In support of the contention, the learned Attorney-General has referred some decisions.

125. In view of the position of law discussed above, there is no legal bar to convict the accused respondents on the charge of conspiracy. However, since both the parties have argued at length on the question of invoking inherent powers and cited certain decisions, I feel it proper to address the question. The Constitution is a social document, and Article 104 is not meant for mere adorning the Constitution. The Constituent Assembly felt that a provision like the one should be kept in the Constitution so that in exceptional cases the highest court of the country could invoke its inherent powers. It is conceived to meet the situations which cannot be effectively and appropriately tackled by the existing provisions of law. Apart from the powers given to this Division by the Constitution, a Court of law always retains some inherent powers. It is, therefore, said, the Court is not powerless to undo any injustice caused to a party. Shutting of judicial eyes even after detection of palpable injustice is in one sense denial of justice. If the Judges do not rise to the occasion to which they are oath bound to do justice, they would commit the similar illegality as the one committed by a litigant. Court's practical approach would be towards doing justice without bothering too much about any one's perception. We should never compromise to do justice.

126. In this connection, I would like to quote an observation of *Benjamin Cardozo in People vs John Defore, 242 NY 13, 17-28.* 'The question is whether protection for the individual would not be gained at a disproportionate loss of protection for society. On the one side is the social need that crime shall be repressed. On the other, the social need the law shall not be flouted by the insolence of office'. The powers of this Division is to ensure due and proper administration of justice. There is, therefore, no denial of the fact that in appropriate cases ends of justice warrants the exercise of this power. If we do not invoke the inherent powers in appropriate cases, there is no need for keeping this provision in the Constitution.

127. In Mahmudul Islam's Constitutional Law of Bangladesh, Third Edition, it is stated in paragraph 5.196 under the heading "power to do complete justice", that this Division has the power to issue such orders or directions as may be necessary for doing complete justice in any cause or matters pending before it. The author on consideration of the observations made by this Division and the Supreme Court of India in *Khandaker Zillul Bari vs State, (2009) 17 BLT (AD) 28 = 13 BLC (AD) 97, Shahana Hossain vs Asaduzzaman, 47 DLR (AD) 155, Karnataka vs Andhra Pradesh, (2000) 9 SCC 572 and Abdul Malek vs Abdus Salam 61 DLR (AD) 124* stated that this conferment of power is under special circumstances and for special reasons having the concept of justice being the predominant factor behind the inclusion of such provision in the Constitution. This power can be exercised in a matter or cause in pending appeal when this Division finds that no remedy is available to the appellant though gross injustice has been done to him for no fault or laches of his own. This power is not circumscribed by any limiting words. This is an extraordinary power conferred by the Constitution and no attempt has been made to define or describe complete justice.

128. If a substantial justice under law and on undisputed facts can be made so that the parties may not be pushed to further litigation, a recourse to the provision of Article 104 may be justified. There are cases where the High Court Division did not take into consideration certain affidavits, this Division had considered them in exercise of its inherent powers for doing complete justice. *See [Ekushey Television vs Dr Chowdhury Mahmud Hasan, 55 DLR (AD) 26].* It was observed by this Division in National Board of *Revenue vs Nasrin Banu, 48 DLR (AD) 171*, that "Cases may vary, situations may vary and the scale and parameter of complete justice also vary. Sometimes it may be justice according to law, sometimes it may be justice according to fairness, equity and good conscience, sometimes it may be justice tempered with mercy, sometimes it may be pure commonsense, sometimes it may be the inference of an ordinary reasonable man and so on." Speaking about the extent of power to be exercised, this Division in *Naziruddin vs Hameeda Banu, 45 DLR (AD) 38*, observed- Considering the vagaries of legal proceedings and the technicalities involved in adjudication, article 104 of the Constitution has invested as a measure of abundant caution, the last Court of the country with wide power, so that it may forestall a failure of justice and to do complete justice in an appropriate case. It is an extraordinary procedure for doing justice for completion of or putting an end to a cause or matter pending before this Court. If a substantial justice under law and on undisputed facts can be made so that parties may not be pushed to further litigation then a recourse to the provision of article 104 may be justified. Complete justice may not be perfect justice, and any endeavour to attain the latter will be an act of vanity.

129. In *State vs Muhammad Nawaz, 18 DLR (SC) 503*, out of 28 accused persons tried by the Sessions Judge under sections 302/307/323/ 148 of the Penal Code, he acquitted 10 accused and convicted 18 for murder and other minor offences. It sentenced to death two accused persons while rest to imprisonment for life and also imprisonment for a shorter period against all the accused. The High Court upheld the conviction and sentence of seven accused and acquitted rest, of them, two were those who had been sentenced to death. The convicted seven filed leave petition in the Supreme Court. Supreme Court granted leave and by the said order leave was also granted to the State against the said order of acquittal of remaining eleven. Objection was raised on behalf of the accused persons in respect of the appeal by State on the ground that the leave petition by the State was barred by 76 days and they were not afforded any opportunity when the leave was granted. The Supreme Court observed that the State's appeal

was liable to be dismissed on the ground of limitation. It, however, noticed that the High Court illegally failed to convict three accused who had admittedly been present at the spot and two others who were assailants of a witness and convicted by the trial court. The Supreme Court suo moto issued notice against them who had secured order of acquittal in exercise of powers under Article 61 of the Constitution. It was observed that 'the error being patent on the record of this case' the respondents being represented by a lawyer, 'the case against these five respondents calls for consideration by us along with the appeal of the seven convicts' and sentenced two of them to life sentence and rest to one and half years. The Supreme Court passed the sentence in exercise of inherent powers.

130. In *Bangladesh vs Dhaka Lodge, 40 DLR (AD) 86*, some documents which were filed on behalf of the Government in the trial Court were not exhibited by it on the reasoning that they were filed after closure of the evidence. The trial Court dismissed the suit of the respondent but the High Court Division decreed the suit. This Division allowed the appeal for doing complete justice observing that "the constitutional obligation of this court is to do complete justice in the cause or matter and while doing so it has become imperative for giving due consideration to these annexures to clarify the factual position which in the final analysis can be given by the trial Court".

131. Similar views have been expressed in *Raziul Hasan vs Badiuzzaman Khan, 16 BLD (AD) 253 = 1 BLC (AD) 35;*. In that case appellant Raziul Hasan was in the Foreign Service, and before the Administrative Tribunal moved by the respondent Badiuzzaman, the appellant Raziul Hasan could not defend his case and that despite assurance given by Ministry of Foreign Affairs, his case was not placed before the Tribunal. The Administrative Tribunal gave relief in favour of the respondent No.1 and the Administrative Appellate Tribunal dismissed the appellant's appeal on the ground of limitation. This Division gave relief to the appellant on the reasonings as under:

> "We now find that no remedy is available to the appellant, though a gross injustice has been done to him for no fault or laches of his own. A valuable right accrued to the appellant in law and fact should not be lost. In that view of the matter we thought it to be a most appropriate case to exercise our jurisdiction under Article 104 of the Constitution. It will not be out of place to say that Article 32(2) of the Constitution of India invests the Supreme Court of India not only with the writ jurisdiction but also with the power to issue directions, orders or writs in any matter. Thus the Indian Supreme Court possesses original jurisdiction. But in the scheme of our Constitution we can only do complete justice under Article 104 of the Constitution in a matter or cause which is pending in appeal under Article 103 of the Constitution. A substantial injustice having been done to the appellant we feel that the jurisdiction under Article 104 of the Constitution should be exercised in the facts and circumstances of this case."

132. It is to be noted that judiciary works to maintain social justice and fairness in accordance with law. In doing justice-judiciary does not believe in misplaced sympathy. The above views have been correctly explained in *Balaram Prashed Agarwal vs State of Bihar, (1997) 9 SCC 338*. Facts in that case are that one Kiron Devi committed suicide. According to the prosecution, Kiron Devi's in-laws and her husband forced her to commit suicide by jumping in a well. Police eventually submitted charge-sheet under sections 498A, 302/34 and 120B of the Indian Penal Code against her husband and in-laws. The trial Court framed charge under sections 302/34 of the Penal Code against the accused persons. It acquitted the accused persons although it held that there was

evidence on record that the members of the family of the accused used to assault the victim; that they also used to demand dowry from her; that threats were given by the accused to the victim that they would kill her and get her husband married to another woman, but since in the meantime seven years elapsed it held that Kiron Devi might have been killed for the sake of dowry cannot be raised. The Supreme Court after appraisal of the evidence came to the conclusion that though the accused persons were rightly found not guilty of the charge of murder, there were sufficient evidence on record in support of the charge under section 498A for the offence of cruelty by husband or relatives of husband of the woman; that despite no charge was framed against them on that count, in exercise of power under Article 142 of the Constitution it might itself examine the question of culpability of the accused for the said offence in the light of the evidence on record so as to obviate protraction of trial and multiplicity of the proceedings. "It is now well settled that in exercise of powers under Article 142, appropriate orders can be passed *[See EK Chandrasenan vs State of Kerala, (1995) 2 SCC 99]* in the interest of justice in cases which brought before this court. We have been taken through the relevant evidence on record we find that the prosecution has been able to bring home the guilt of the accused under section 498A I PC" the court observed.

133. In *Chandrakant Patil vs State, (1998) 3 SCC 38*, four accused persons were found guilty under section 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) and sentenced to five years rigorous imprisonment. In an appeal from conviction, the Supreme Court of India issued notice upon the convicted persons for enhancement of sentence. On behalf of the accused persons it was contended that in view of section 377(3) of the Code of Criminal Procedure 1973, the High Court could not enhance the sentence without affording the accused a reasonable opportunity of showing cause and in which case, the accused might plead for his acquittal and for reduction of the sentence and in that view of the matter, the court had no power to enhance the sentence. It was held that the Supreme Court has power to pass any order and this power is not circumscribed by any restriction such as section 19 of TADA "no enactment made by the Central Act or State Legislation can limit or restrict the power of this court under Article 142, though while exercising it the court may have regard to statutory provisions" and enhanced the sentence to ten years imprisonment.

134. In *Mohd. Anis vs Union of India, 1994 Supp (1) SCC 145* it was observed that "This power has been conferred on the Apex Court only and the exercise of that power is not dependent or conditioned by any statutory provision. The constitutional plenitude of the powers of the apex Court is to ensure due and proper administration of justice and is intended to be co-extensive in each case with the needs of justice of a given case and to meet any exigency. Very wide powers have been conferred on this Court for due and proper administration of justice and whenever the Court sees that the demand of justice warrants exercise of such powers, it will reach out to ensure that justice is done by resorting to this extraordinary power conferred to meet precisely such a situation."

135. On an analysis of the above cases, we find that in Balaram Prashad Agarwal *(supra)*, the accused persons who were not even charged under section 498A were found guilty of the said offence by the Supreme Court after having noticed from the materials on record that there was grave error in not convicting them under section 498A on the reasoning that the power of the highest court was not circumscribed by any statutory limitation; that a remand order would defeat the ends of justice, and that would foster the multiplicity of proceedings. In Muhammad Nawaz *(Supra)*, the Supreme Court of Pakistan convicted five accused persons

who were acquitted by the High Court, although State did not file appeal. While convicting them, the Supreme Court issued notice upon them and heard their counsel. The statements of law argued in those cases are sound, cogent, in conformity with law and I find no reason to take a different view. State is not required to file an appeal against the acquittal on the charge of conspiracy.

136. The evidence on record proved beyond doubt that the killing was perpetrated in pursuance of a conspiracy and therefore, it is consonance to law and justice that the respondents should be awarded a legal conviction of an offence on the basis of the evidence on record. If a graver sentence is provided for murder in pursuance of conspiracy, the question of prejudice would have arisen. Here the respondents have not acquired any right against the acquittal on the charge of conspiracy. So, even without exercise of inherent power, this Division can alter the conviction of the respondents to one of murder in pursuance of the criminal conspiracy. The appellant has taken ground Nos.II and IV in its concise statement for convicting the accused on the charge of conspiracy. In view of rule 13 of Order XXIII, rule 5 of Order XX of the Appellate Division's Rules are applicable to criminal appeals, and there is no legal bar to convict them even if no leave was granted on this point. This is a settled point and I need not make any observation on this question. In support of the charge, the prosecution has adduced evidence and the accused persons have defended the same. The trial court as well as the High Court Division discussed the evidence in support of this charge but disbelieved the charge on perfunctory grounds. Therefore, there is no legal bar to convict the respondents on the basis of the evidence on record.

137. The gist of the offence of criminal conspiracy being an agreement to break the law, it is found from the evidence that the army personnel deputed in the Bangabhaban convened meetings several times for executing the killing. Some of them visited the Dhaka Central Jail and then chalked out the plan and design, and constituted two killing squads for the purpose. They compelled the jail authority to allow the killing squad to enter into the Dhaka Central Jail with arms. They had compelled the jail authority to segregate the four leaders and keep them in one cell. It is also on record that two groups executed the killing-the first group headed by the Moslem Uddin shot at the four prisoners from short range with the arms carried by them and some time thereafter, the second group entered into the Dhaka Central Jail and in order to ensure the death of the leaders, charged bayonets upon them. The respondents being party to the conspiracy, they are agents in the objects of conspiracy, the identification of Moslem Uddin at the jail gate before shooting at the political prisoners should be taken as done by all the respondents as well. It is immaterial whether the respondents were not recognized at the Dhaka Central Jail. It also makes no difference as to their non-identification. They monitored everything over telephone from Bangabhaban. The acts which followed the killing i.e. fleeing away of the killers with their family members to Bangkok by arranging a special flight, are strong circumstances to link them in the killing. Therefore, all elements to constitute criminal conspiracy to kill the leaders in the Dhaka Central Jail are present in this case. The prosecution has been able to prove the charge of conspiracy by direct as well as circumstantial evidence beyond reasonable doubt against the respondents.

138. This case is standing on a better footing in view of the fact that a proper charge of criminal conspiracy was framed by the trial court and the accused respondents had defended the charge. In this Division as well as in the High Court Division, they were represented by a lawyer and the point in question was raised and heard. The commission of the offence is same and therefore, there is no need for alteration of the charge. It is

found from the appraisal of the evidence that the accused persons perpetrated the killing in pursuance of conspiracy and since conspiracy has been proved, the same set of accused persons cannot be legally convicted for an offence of sharing the common intention of all in respect of the same incident. The High Court Division on a misconception of law held that the prosecution has failed to prove the conspiracy. From the evidence as discussed above, if there be any doubt about the conspiracy, it would be difficult to find out a suitable case to prove such charge. The facts found from the materials on record, the barbarity revealed in the commission of the crime and the seriousness of nature of the offence perpetrated by the accused, it would be a travesty irony if the accused persons are not convicted on the charge of conspiracy. With due respect I am unable to endorse the majority opinion that the accused-respondents cannot be convicted on the charge of criminal conspiracy. The question of the benefit of law does not arise at all for simple reason that they were charged with and defended of the charge of criminal conspiracy. If that being the position, the sentence being the same, the question of injustice or prejudice does not arise at all. The respondents cannot be fastened with vicarious criminal liability within the meaning of section 34 of the Penal Code but their conviction would be one under sections 120B read with 302, not under sections 302/34 of the Penal Code. It should be borne in mind that the definition of the words used in the Penal Code in sections 6 to 52A is one of the most important things. It defines with almost punctilious precision the meaning of various terms which are then used as terms of art everywhere in the Code, both in defining the offences as well as in describing their inter-relations and differences. The object of the definitions is to avoid the perplexing variety of senses. Where the enactment itself provides a definition of the offence, the court should look into the meaning of the offence assigned to the term by the statute itself for interpreting that offence used in the statute. Section 2 of the Penal Code asserts that every person shall be liable to punishment under the Code for every act or omission contrary to the provisions of the Code and of which he shall be guilty within Bangladesh. The object of this section is to declare the liability of every person, irrespective of rank, nationality, caste or creed, to be punished under its provisions. Therefore, all infractions of law as laid down in the Penal Code shall only be punished in the manner therein laid down. An offence is what the Legislature classes as punishable. Any act or omission can be classed as an offence is in itself an offence within the meaning of section 40. There are three elements of an offence; first, the act; secondly, the mens rea; and thirdly, the harmful social consequences of the act which is why the law makes it culpable. As criminal justice requires clear demonstration of facts, it requires also clear enunciation of law, for no one can be convicted of a doubtful offence. Therefore, I fail to understand how the act of the accused which falls under one definition of offence can be taken as another offence under different definition, and the accused persons be convicted for the offence which does not cover definition of such offence. It is illegal and not permissible in law. A court of law cannot convict an accused in respect of an offence which he has not committed.

139. Before concluding, I would like to say that the basic fundamentals of administration of justice are that no man should suffer because of the mistake of the court. No man should suffer by technical procedure of irregularities. Rules or procedure are handmaids of justice and not the mistress of the justice. If a man is wronged, so long it lies within the human machinery of administration of justice, that wrong must be remedied. An irregular order of a court of unlimited jurisdiction can be set aside by it on the application either under the rules of court dealing expressly with setting aside orders for irregularity or ex debitio justitiae if the circumstances warrant. Judicial

vacillations undermine respect of the judiciary and judicial institutions, denuding thereby respect for law and the confidence in the even-handedness in the administration of justice. *(AR Antulay vs RS Nayak, (1988) 2SCC 602.*

140. For the reasons stated above, conviction of the respondent passed by the trial court is altered to one of section 120B read with section 302 of the Penal Code. The sentence of death awarded to the respondents by the trial Court is restored.

Md Abdul Wahhab Miah J: I have gone through the separate judgments prepared by Surendra Kumar Sinha, J. and Nazmun Ara Sultana, J. I agree with the reasoning and findings given by Nazmun Ara Sultana, J.

Nazmun Ara Sultana J: This criminal appeal by leave, at the instance of the State, has been filed against the judgment and order dated 28-8-2008 passed by a Division Bench of the High Court Division in Death Reference No.150 of 2004 heard together with 4 other criminal appeals filed by the convicted accused persons accepting the death reference in part and rejecting the same with respect to the present accused-respondents Dafader Marfoth Ali Shah and LD (Dafader) Md Abul Hashem Mridha and thereby acquitting them from the charges levelled against them and allowing all the 4 appeals.

143. The prosecution case, in short, was that on 3rd November, 1975, at about 3-00 AM the then Inspector General of Prisons Mr Nuruzzaman Howlader received several telephone calls from army personnel at Bangabhaban who told him that some armed miscreants might enter the jail and take away some prisoners forcibly and asked him to go to Dhaka Central Jail immediately. IG (Prisons) then informed DIG (Prisons) Mr Kazi Abdul Awal about those telephonic messages over telephone and asked him to go to Central Jail immediately and he himself also went to Central Jail, Dhaka. Upon arrival at the Jail IG (Prisons) Mr Nuruzzaman and DIG (Prisons) Kazi Abdul Awal took seat in the office of DIG (Prisons). There also IG (Prisons) received various telephone calls; sometimes thereafter accused Captain Muslem Uddin along with 4 other armed personnel arrived at the Jail Gate, but they did not disclose their names to the persons attending the Jail Gate; DIG (Prisons) Kazi Abdul Awal asked those army personnel to put their signatures in the register maintained for the purpose at the Jail Gate; those army personnel then put their signatures in the register at Jail Gate and then entered into the Jail; they wanted to know who Mr. Nuruzzaman was, Mr Nuruzzaman-the IG (Prisons) disclosed his identity and those armed personnel then inquired as to whether they had kept aside those persons who were asked to be kept segregated. Mr Nuruzzaman wanted to know the purpose of such segregation of those persons and the armed personnel then disclosed that they would be done to death; hearing such reply the IG (Prisons) Mr. Nuruzzaman wanted to have a telephone call to the President; at that time the jailor also received a telephone call from President Mostaq Ahmed who desired to have a talk to IG (Prisons) Mr Nuruzzaman and ultimately there was talk between the President Mostaq Ahmed and IG(Prisons) Mr Nuruzzaman over telephone; that President Mostaq Ahmed ordered IG (Prisons) over telephone to allow those 5 army personnel to do whatever they wanted to do; thereafter the second gate inside the jail was opened and the said 5 army personnel along with Mr. Nuruzzaman entered inside the jail; the DIG (Prisons) Kazi Abdul Awal also followed Mr Nuruzzaman and those army personnel. Having entered inside the jail those 5 armed personnel enquired as to why there was delay; immediately thereafter the Deputy Jailor, Habilder and some wardens had informed that those persons had been segregated. The accused Muslem Uddin and his 4 other armed companions then went to the spot

where those 4 persons namely, Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and AHM Kamruzzaman-the four leaders-were brought as ordered and a few minutes hereafter the IG (Prisons), DIG (Prisons) and others heard sounds of opening shots from firearms; some time thereafter the assailants decamped from the scene in a hurry; thereafter, Mr Nuruzzaman and Kazi Abdul Awal returned to office and offered Fazar prayer there; at that time they came to know that another group of armed personnel had arrived at the scene of occurrence to ensure the death of those four leaders and seeing that out of those four leaders two were still alive they caused their death by bayonet charges; that the IG (Prisons) and the DIG (Prisons) being puzzled and knowing not what to do left the office for their respective residence and again returned at 8/9 AM to the Jail Gate. DIG (Prisons) Kazi Abdul Awal then talked with Colonel Rashid over telephone to know the course of action at that situation and Major Rashid ordered not to move the dead bodies; at around mid-day on the same day the IG (Prisons) along with DIG (Prisons) went to the Secretary, Ministry of Home Affairs and apprised him of the incident but he also failed to give any satisfactory solution, rather he asked to hand over the dead bodies to their respective relations after concluding post mortem examination; that at that time the Secretary, Ministry of Home Affairs had telephonic calls with the Superintendent of Police, Deputy Commissioner, Civil Surgeon and others over the incident; that the dead bodies of four slain leaders Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and AKM Kamruzzaman were handed over to their relatives after holding of postmortem examination and thereafter DIG (Prisons) Kazi Abdul Awal, as the informant, lodged the FIR with Lalbagh Police Station on 4-11-1975 stating the fact of killing of four leaders inside Dhaka Central Jail by armed personnel; that on 5-11-1975 the informant submitted a detailed report also about that jail killing addressing the Inspector General of Prison.

144. On the basis of the FIR lodged by the DIG (Prisons) Kazi Abdul Awal, Lalbagh Police Station Case No.11 dated 4-11-1975 was registered, but the investigation of that case remained suspended for many years till 17-8-1996. Subsequently on the order of the Government, investigation of that case was started on 18-8-1996. The investigating officer-PW 64 Abdul Kaher Akand, the Assistant Superintendent of Police, CID Bangladesh took over the charge of investigation on that day. He found record of the corresponding GR case No.10698 of 1975 missing and the original FIR was not found. The record of GR case, however, was subsequently reconstructed. After completion of investigation the investigating officer submitted charge sheet being No.370 dated 15-10-1998 under sections 120B/302/448/109 and 34 of the Penal Code against 21 accused persons including the present accused respondents Dafader Marfoth Ali Shah and LD (Dafader) Md Abul Hashem Mridha.

145. The case was ultimately taken up for trial in the court of Metropolitan Sessions Judge, Dhaka. Charge under section 120B of the Penal Code was framed against 20 accused persons since one accused Aziz Pasha died in the meantime and charge under sections 302/109 of the Penal Code was framed against 19 accused persons except accused Risalder Moslem Uddin who was charged under section 302 of the Penal code. The charges so framed were read over to the accused persons who were present in the court. These accused persons pleaded not guilty and claimed to be tried.

146. The prosecution examined as many as 64 witnesses to prove the charges framed against the accused persons. The defence examined none. The accused persons present on dock were examined under section 342 of the Code of Criminal Procedure.

147. The defence case, as it appears from the trend of cross-examination of the prosecution wit-

nesses and also from the statements made by the accused persons under section 342 of the Code of Criminal Procedure, was that at about 12 midnight to 1-00 AM of 3-11-1975 Khaled Mosharaff proclaimed a coup d' etat and thereby he along with PW 29 Colonel Safayet Jamil withdrew the Tanks Regiment from Bangabhaban at 12 to 1-00 AM on 3-11-1975 and that it was the four leaders of Awami League who were the legitimate successors to the Government after killing of Bangabandhu Sheikh Mujibur Rahman and therefore Khaled Mosharaff and his partymen with a view to serving their peaceful tenure of office, had killed the four leaders inside the Central Jail and that the innocent accused persons were falsely implicated in this case.

148. However, the trial court, on consideration of evidence adduced by the prosecution and the facts and circumstances, convicted the present accused respondents Dafader Marfoth Ali Shah and LD (Dafader) Md Abul Hashem Mridha and Risalder Moslem Uddin @ Muslem Uddin @ Hiron Khan @ Muslem Uddin Khan under sections 302/34 of the Penal Code and sentenced all of them to death with fine by the judgment and order dated 20-10-2004. The trial court convicted these 3 accused persons along with 12 others under sections 302/109 of the Penal Code also and sentenced them to imprisonment for life with fine of Taka10,000 (ten thousand) each. The trial court found accused Major Md Khairuzzaman, AKM Obaidur Rahman, Shah Moazzem Hossain, Nurul Islam Monzur and Taher Uddin Thakur not guilty of the charge under sections 302/109 of the Penal Code and acquitted them of the said charge. The trial court found all the accused persons not guilty of the charge under section 120B of the Penal Code and acquitted them of the said charge.

149. This judgment and order of conviction and sentence of the trial was sent to the High Court Division under section 374 of the Code of Criminal Procedure for confirmation of the death sentences and accordingly Death Reference No.150 of 2004 was registered. The other convicted accused namely, Lieutenant Colonel (released) Syed Faruk Rahman, Lieutenant Colonel (released) Sultan Shahriar Rashid Khan, Major (retd.) Bazlul Huda and Major, (Retd.) AKM Mohiuddin preferred Criminal Appeal Nos.4739 of 2004, 4740 of 2004 and Jail Appeal Nos.118 of 2006 and 597 of 2007 respectively.

150. The State or none from the deceased's family preferred any appeal against the judgment and order of acquittal of all the accused persons from the charge under section 120B of the Penal Code or against the order of acquittal of the aforesaid 5 accused persons from the charge under sections 302/109 of the Penal code.

151. However, the High Court Division heard the death reference along with aforesaid 4 appeals together and by its impugned judgment and order dated 28-8-2008 rejected the death reference so far as it relates to the present accused respondents Dafader Marfoth Ali Shah and LD (Dafader) Md Abul Hashem Mridha and acquitted them of the charges levelled against them. The High Court Division allowed the 4 appeals also preferred by Lieutenant Colonel (released) Syed Faruk Rahman, Lieutenant Colonel (released) Sultan Shahriar Rashid Khan, Major (retd.) Bazlul Huda and Major, (Retd.) AKM Mohiuddin and acquitted all of them from the charges levelled against them. The High Court Division accepted the death reference in part and confirmed the conviction and sentence of death imposed upon the accused Risalder Moslem Uddin.

152. The state has filed this present criminal appeal challenging the acquittal of the accused respondents Dafader Marfoth Ali Shah and LD (Dafader) Md Abul Hashem Mridha only. It should be mentioned here that the State though filed criminal petition for leave to appeal against the order of acquittal of Lieutenant Colonel (released) Syed Faruk Rahman, Lieutenant Colonel (released) Sultan Shahriar Rashid Khan,

Major (retd.) Bazlul Huda and Major, (Retd.) AKM Mohiuddin passed by the High Court Division by the same impugned judgment but these 4 accused having been convicted and sentenced to death in the Bangabandhu murder case being already hanged to death on 28-1-2010 upon confirmation of their death sentence by the Appellate Division those Criminal Petitions for leave to Appeal abated.

153. However, leave for filing this present appeal was granted by this Division by the order dated 11-1-2011 in Criminal Petition for Leave to Appeal No.316 of 2009 to consider the grounds agitated from the side of the leave petitioner-State which are quoted below:-

I. Because the High Court Division delivered its judgment by misreading, misquoting and misunderstanding the evidence on record especially that of PW 29 and PW 52 as such the judgment is perverse;

II. Because the High Court Division erred in law by not properly applying the well settled principles of law regarding circumstantial evidence and arrived at a wrong conclusion;

III. Because the High Court Division failed to appreciate the abundance of evidence on record proving the circumstances and establishing a chain between them and arrived at a wrong conclusion causing serious miscarriage of justice;

(IV) Because the prosecution case that:—

(a) In order to kill the four national leaders in Dhaka Central Jail a killing squad was formed under the leadership of Risalder Moslemuddin with Dafader Marfoth Ali and Lance Dafader Abul Hashem Mridha amongst others as its members in pursuance to the said motive;

(b) The information that a squad had been sent to kill was communicated by the accused persons to the Dhaka Central Jail authority over telephone; having been proved by evidence of the witnesses a clear chain of circumstances was established to prove the guilt of the accused persons which was unfairly and injudiciously disregarded by the High Court Division.

V. Because there are serious points of law involved in this case mostly relating to the law of evidence which need to be considered and examined by the highest court of judicature to secure the ends of justice.

154. The learned Attorney-General, Mr Mahbubey Alam and the learned Senior Counsel Mr Anisul Huq have made lengthy submissions before us on behalf of the State-appellant while Mr Abdullah-Al Mamun, the learned Advocate appointed by the Court as State Counsel to defend the accused-respondents has made elaborate submission on behalf of both the absconding accused-respondents.

155. The learned Attorney-General has placed before us the impugned judgment of the High Court Division, that of the trial court and also the evidence on record and has argued that in this case there is abundance of evidence to prove the charges against the present two accused-respondents. The learned Attorney-General has referred to the relevant portion of the evidence of PWs 1, 2, 3, 11, 13, 16, 17, 18, 21, 26, 28, 29, 33 and 34 and has argued that these evidence, if considered together, prove sufficiently that these two accused-respondents Dafader Marfoth Ali Shah and LD (Dafader) Md Abul Hashem Mridha were involved in the killing of four national leaders inside the Dhaka Central Jail, but the High Court Division on misreading and mis-appreciation of these evidence and without having taken the attending facts and circumstances into consideration passed the impugned judgment of acquittal

most erroneously and unjustly. The learned Counsel has argued that the reasons which the High Court Division assigned for rejecting the evidence of above prosecution witnesses and for not finding the prosecution witnesses trustworthy-were not cogent at all and, as such, not acceptable. The learned Counsel has submitted more specifically that the High Court Division disbelieved the telephonic conversations between Khandaker Mustaque Ahmed-the then President and Colonel Rashid and PW 3 IG (Prisons) Mr Nuruzzaman on mis-appreciation of evidence of PW 29 Colonel Shafayeth Jamil and PW 46 Lieutenant Colonel (Retd.) Anwaruzzaman and thus failed to arrive at a correct decision; that the telephonic conversations between the IG (Prisons) and the president Khandaker Mustaque Ahmed and Colonel Rashid on that fateful night was most vital part of evidence for deciding the guilt of the accused, but the High Court Division disbelieving the telephonic conversation has committed serious error in coming to the decision. The learned Counsel has argued also that the High Court Division discarded the evidence of PWs 1, 2, 3, 11, 13, 16, 17 and 18 for minor discrepancies and also for the absence of some registers from both the Dhaka Central Jail and Bangabhaban without considering at all the fact that the investigation of this case started long 21 years after the incident of jail killing and after such a long period it was not possible on the part of the investigating officer and the prosecution to get those registers. The learned Counsel has argued also that the High Court Division made self contradictions by believing the evidence of some prosecution witnesses while affirming the conviction of accused Moslem Uddin and by disbelieving the same evidence of the same PWs in acquitting the present accused-respondents Dafader Marfoth Ali Shah and LD (Dafader) Md Abul Hashem Mridha. The learned Attorney-General has argued that the evidence of the prosecution witnesses have proved a strong circumstance which is consistent with the guilt of the accused-respondents and are wholly inconsistent with their innocence, but the High Court Division has totally ignored all the circumstantial evidence and also the legal aspect relating to circumstantial evidence and thus illegally acquitted the accused-respondents.

156. Mr Anisul Huq, the learned Government Chief Prosecutor has made submission on the charge of criminal conspiracy brought against all the 20 accused persons in this case. It has already been mentioned before that the trial court found this charge of criminal conspiracy under section 120B of the Penal Code not substantiated and therefore, acquitted all the 20 accused persons from that charge, but the Government did not file any appeal against that order of acquittal of the accused persons from the charge under section 120B of the Penal Code. Before the High Court Division also, as it appears, no submission was made from the State-respondents on this charge of criminal conspiracy. However, before this Division the learned Counsel for the State-appellant has made a lengthy submission on the charge of criminal conspiracy contending that this Division, exercising its power of doing complete justice under Article 104 of the Constitution, can consider now whether the charge of criminal conspiracy was proved and if this Division finds that in this case there are sufficient evidence to prove the charge of criminal conspiracy then this Division can pass appropriate order at this stage also. Both Mr Anisul Huq and the learned Attorney-General, after making elaborate discussion on evidence on record, have argued that these evidence have proved sufficiently that there was a criminal conspiracy to kill the four leaders inside the jail and that all the 21 charge sheeted accused persons were involved in that criminal conspiracy, but the trial court most erroneously found that the charge of criminal conspiracy was not proved. The learned Counsel for the State-appellant has pointed out the relevant portion of evidence of some PWs before us and argued that there are overwhelming evidence on record to prove that

the accused persons made the criminal conspiracy to kill the four national leaders inside the jail. Mr Anisul Huq has contended that in the circumstances where there are overwhelming evidence on record to prove the charge of criminal conspiracy for killing the four national leaders inside the jail this Division-the apex court of the country-cannot refuse to consider these evidence and to make a correct decision as regards this charge of criminal conspiracy-only for the reason that there was no appeal against the order of acquittal from this charge of criminal conspiracy-specially in this very case of gruesome, barbaric and heinous killing of four national leaders inside the jail. By citing several decisions of the apex court of this region Mr Anisul Huq has argued that it is a most appropriate case where this Division can exercise its power of doing complete justice by convicting the accused involved in this criminal conspiracy and sentencing them appropriately.

157. The learned Attorney-General also has submitted that this Division in exercising its power under Article 104 of the Constitution can, after issuing a notice against the absconding accused, consider now whether the charge of criminal conspiracy was proved by the evidence on record and can pass appropriate order. The learned Attorney-General has made submission to the effect also that if this Division is reluctant to convict the accused persons for the charge of criminal conspiracy under section 120B of the Penal Code for the reason that no appeal was filed against the order of acquittal of the accused from this charge of criminal conspiracy this Division can discuss and consider the evidence on record in support of the charge of criminal conspiracy and can make correct observations and findings as to this charge of criminal conspiracy-at least. The learned Attorney-General also has made submission to the effect that considering the very nature of the offence of gruesome and barbaric killing of four national leaders inside the jail this Division-the apex court of the country cannot be reluctant to make correct observations and findings as regards the charge of criminal conspiracy for the reason only that the State did not file any appeal against the order of acquittal from the charge of criminal conspiracy in time.

158. Mr Abdullah-al-Mamun, the learned State Counsel appointed by the court to defend the absconding accused-respondents also has made very lengthy submissions supporting the impugned judgment of the High Court Division and also trying to controvert the submissions of the learned counsel for the State appellant. The learned state Counsel for the accused respondents has argued that in this case there is, practically, no cogent evidence to prove the involvement of the accused-respondents Dafader Marfoth Ali Shah and LD (Dafader) Md Abul Hashem Mridha in the incident of killing of four leaders inside jail and, as such, the High Court Division rightly acquitted these two accused-respondents. The learned Counsel has contended that the evidence produced by the prosecution before the trial court were not at all cogent and reliable; that the witnesses whom the prosecution relied on for proving the charge against the accused-appellants were not trustworthy at all; that the High Court Division rightly found that the prosecution witnesses were not trustworthy and their evidence, as such, could not be relied on. The learned Counsel for accused-respondents has pointed out that the trial court also in the first part of its judgment stated that the PWs on whom the prosecution relied on to prove the charges against the accused persons, were not trustworthy at all. Mr Abdullah-Al Mamun has argued much on some alleged discrepant and contradictory statements of the prosecution witnesses. He has pointed out some alleged discrepant statements of the prosecution witnesses from the Dhaka Central Jail as to the colour of the uniform of the assailants and also as to the weapons the assailants carried and also as to putting of their signatures in the jail register and argued that these discrepant and contradictory

statements of the PWs reasonably raise suspicion about the trustworthiness of these prosecution witnesses. The learned Counsel has questioned also the competency of the prosecution witnesses who claimed themselves to be the employees of Bangabhaban at that relevant time pointing out some alleged discrepancies in the statements of PWs 11, 13, 16, 17, 18, 21 and 34 and also pointing out the fact that the prosecution could not bring any written document to prove that these PWs were employees of Bangabhaban at that relevant time. The learned Advocate has argued that these PWs were not at all employees of Bangabhaban and, as such, are not competent and reliable at all and their evidence cannot be considered for proving the charges against the accused-respondents. The learned Counsel has argued that the High Court Division duly weighed and sifted the evidence of prosecution witnesses and there is no misreading, misquoting and is interpretation of the evidence on record by the High Court Division; that the High Court Division committed no illegality in discarding the evidence of PWs 1-3 and PWs 11, 13, 16, 17, 18 ,21 and 34 as unworthy of credence; The learned Counsel for the accused-respondents has argued that there is no cogent evidence at all on record to prove the presence of these two accused respondents in the place of occurrence or to prove that these accused-respondents in any way were involved in the incident of jail killing of four leaders and in the circumstances the High Court Division rightly acquitted these two accused-respondents of the charges levelled against them.

159. As against the submissions of the learned Counsel for the State-appellant as to the charge of criminal conspiracy the learned State Counsel for the accused respondents has submitted that since the State did not file any appeal against the order of acquittal of the accused persons from the charge of criminal conspiracy passed by the trial court and since in this appeal also no such ground was taken and since in the leave granting order also there is nothing as regards the charge of criminal conspiracy this Appellate Division now cannot look into this charge of criminal conspiracy and cannot make any order as to this charge. The learned Counsel has argued that the trial court, on elaborate discussion and consideration of the evidence adduced by the prosecution, clearly found that the charge of criminal conspiracy was not proved at all and accordingly acquitted all the accused persons of the charge under section 120B of the Penal Code but the State or anybody else did not raise any question as to these findings and decision of the trial court regarding the charge of criminal conspiracy at any stage before and, as such, at this stage, in the absence of the accused persons, this Division cannot entertain this plea of the State appellant that the charge of criminal conspiracy was proved in this case. Mr Abdullah-al-Mamun has contended that in the above facts and circumstances there is no scope now for this Division to entertain the argument of the learned Counsel for the State appellant for making observations and decisions as to the charge of criminal conspiracy and for making order convicting and sentencing the accused persons on this charge of criminal conspiracy.

160. Before considering the submissions of the learned Counsel of both the sides we need to State the material portion of the evidence of some of the prosecution witnesses. It has already been mentioned above that in this case the prosecution has examined as many as 64 witnesses. Out of these 64 witnesses the PWs 1 to 9 and 12 are the IG(Prisons), DIG (Prisons) (the informant), Jailor, Deputy Jailors and other the then employees of Dhaka Central Jail. The PWs 10,19 and 20 are three detenues who were in Dhaka Central Jail in that fateful night of killing of four leaders inside Dhaka Central Jail. The PWs 11, 13, 16, 17, 18, 21 and 34 are the witnesses from Bangabhaban. The PWs 14,15,30,31,35,36 and 38 are relations of slain leaders and some are the then state ministers

and member of Parliament-whose evidence are not important for this present appeal. The PWs 26,28 and 33 have deposed as regards the fleeing away of the accused persons abroad on the next day of jail killing. The evidence of PW 29 Colonel Shafayet Jamil and PW 46 Colonel Anwar ruzzaman will have to be discussed and considered as the High Court Division has relied on the evidence of these witnesses for disbelieving the credibility of other prosecution witnesses. The rest of the witnesses are mainly police and formal witnesses-the evidence of whom are not required to be stated in this judgment. So, in this judgment we shall discuss the relevant portion of the evidence of PWs 1 to 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 26, 28, 33, 34 and PWs 29 and 46 only.

161. PW 1, Kazi Abdul Awal-the informant of this case has deposed before court to the effect that he has retired from service as IG (Prisons) and that in November, 1975 he was posted at Dhaka Central Jail as Deputy Inspector General of Prisons. That in the night following 2nd November, 1975, at dawn of 3rd November he came to jail gate by the car of IG (Prisons) Mr Nuruzzaman Howlader. That after arriving at jail while he was sitting with IG (Prisons), IG (Prisons) received several telephone calls and talked over telephone. That thereafter Captain Muslem Uddin with other four sepoys came to jail gate and after writing their names in the jail gate as per his asking they entered inside the jail and asked who Mr Nuruzzaman was. Mr Nuruzzaman disclosed his identity and then those army personnel asked Mr Nuruzzaman whether those persons-who were told to be kept segregated-had been segregated or not. Mr Nuruzzaman enquired them for what purpose those persons were to be segregated and those army personnel told that they would be shot to death. Mr Nuruzzaman then told that he would talk to President over telephone and accordingly a telephone call was made to President from the office of DIG (Prisons). After a while another telephone call came from President Khandaker Mustaque Ahmed to the office of jailor for Mr Nuruzzaman and Mr Nuruzzaman then went to that office room of the jailor and received that phone call and talked to President over telephone and thereafter, on his asking Mr Nuruzzaman told him that the President directed him to allow those army personnel to do what they wanted to do. That thereafter the 2nd gate of the jail was opened and those army personnel went inside the jail and Mr Nuruzzaman and he himself (the witness) also went inside the jail with those army personnel. That those army personnel at that time enquired why so much time was being taken and told also that they finished within three minutes at the house of Sheikh Mujib. That at that time he (the witness) wanted to come out of the jail, but Mr Nuruzzaman prevented him from coming back. That at that time deputy jailor, Habilder and some wardens informed that those persons were kept aside and then Muslem Uddin and his four accomplices went to that place where those four national leaders were kept. Thereafter they heard the sounds of firing and then Muslem Uddin and his other accomplices hurriedly went out of the jail. The witness then went to his office and after offering Fajar prayer he heard that some other army personnel also came to see whether those four leaders were alive still then and seeing 2 of them alive they caused their death by Bayonet charges. That he (the witness) being bewildered could not decide what to do and he and the IG (Prisons) then went away from the jail and subsequently at about 8/9 AM they again came back to jail and after consultation with each other he talked to Major Abdur Rashid over telephone who told him not to move the dead bodies of those four slain national leaders which remained lying there. Thereafter at noon, on that day, he and IG (Prisons) went to Home Secretary and told him about the incident but Home Secretary also could not give any advice. But on the next date Home Secretary told them to hand over those dead bodies to their respective relatives after concluding post mortem

examination of those. Thereafter the Home Secretary himself contacted with the Deputy Commissioner, Civil Surgeon and others and all of them extended all co-operations and the dead bodies were then handed over to their relatives after postmortem examinations. That Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and AHM Kamruzzaman were those four national leaders who were killed inside the jail in that fateful night.

162. PW 1 deposed further to the effect that on the next date, on 4th November, he lodged the ejhar with Lalbagh Police Station. That he sent the copies of that ejhar to different places one of which was kept in the jail. This witness has identified the copy of that ejhar kept in the jail which was marked as Exhibit-1 and his signature thereon was marked as Exhibit-1/1 as per his identification. This witness deposed also that on the next dated on 5-11-1975 he submitted a detailed report to IG (Prisons) about that occurrence and as per identification of the witness the said report has been marked as Exhibit-2 and his signature thereon as Exhibit-2/1. This witness has identified another copy of the FIR which was kept in the judicial record of the case and that copy has been marked as Exhibit-3.

163. This witness has been cross-examined at length on behalf of the accused persons, but from the very lengthy cross-examination of this witness nothing material came out to raise any suspicion as to the truth of what he stated in his examination-in-chief about the killing of four national leaders inside Dhaka Central Jail in the night following 2nd November, 1975, at dawn of 3rd November, 1975 by some army personnel including accused Resalder Moslem Uddin.

164. PW 2 is Md Aminur Rahman. This witness has deposed to the effect that he has retired from service as DIG (Prisons). He was posted at Dhaka Central Jail as jailor from 2nd February, 1975 to 10th January, 1976. That in the later part of August 1975 four leaders of Awami League namely, Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and AHM Kamruzzaman along with some other leaders and workers of Awami League were sent to Dhaka Central Jail by the then Government. They were under detention order of the Government. That Major Dalim, Major Rashid, Major Shahriar and Major Faruque on behalf of the then President Khandaker Mustaque Ahmed used to take information of those arrested political leaders very often from Bangabhaban. That in the afternoon of 2nd November, 1975 while he was working in his office room Major Dalim with arms came to jail and threatened him and compelled him to allow him to enter inside the jail. That Major Dalim wanted to see the Awami League leaders who were confined in the jail at that time and he then took Major Dalim to cell No.15 and Major Dalim visited that place. That during that visit, at one stage, Major Dalim met the former police super of Dhaka District Mr Shahabuddin and talked to him and thereafter he went out of the jail. That on that very date, in the night, Major Faruque from Bangabhaban telephoned him to know about the Awami League leaders who were inside the jail. That thereafter at dawn of 3rd November at about 3 AM the jail guard informed him over telephone that the IG (Prisons) asked him to come to jail gate immediately and also ordered for strengthening the security of the jail. That he then hurriedly came to jail gate at about 3-15 AM and knew from the jail guard that the IG (Prisons) had already arrived at jail gate. He then went to jail gate and received IG (Prisons) and took him to the office room of DIG (Prisons). That IG (Prisons) at that time informed him that he received a telephone call from Bangabhaban that some miscreants from outside might take away some prisoners from the jail forcibly. The IG (Prisons) told the witness to make all the officers and employees of the jail alert and told also that the DIG (Prisons) Kazi Abdul Awal had already been informed who would come to the jail gate within a while. That

the DIG (Prisons) Kazi Abdul Awal then arrived at jail gate and went to his office room where IG (Prisons) also was sitting; that as per instruction of IG (Prisons) the witness made all the officers and employees of the jail alert by ringing alarm bell and then Deputy Jailors Abdul Zahid, Md Tayeb Ali Mollah, Md Abdur Rouf, Md Amanullah and Md Iqbal Hossain came to jail gate. Dr Rafiq Ahmed, the Assistant Surgeon of Dhaka Central Jail along with two other doctors also came to jail gate. Some other employees and guards also came to jail gate. That at that time the IG (Prisons) received telephone call from Bangabhaban. IG (Prisons), after receiving that telephone call, told them that one Captain Moslem along with other army personnel would come to jail gate and instructed them to take those army personnel to the office room of DIG (Prisons). That thereafter at about 4-00 AM Captain Moslem along with four other armed army personnel came to jail gate and the witness received them at jail gate and took the signatures of all those army personnel in the gate register and thereafter took them to office room of the DIG (Prisons) where IG (Prisons) was sitting. That at that time IG (Prisons) was talking over telephone. The witness then went to his own office room and at that time he received a telephone call from Major Rashid from Bangabhaban who wanted IG (Prisons) to talk and he then informed the IG (Prisons) about that telephone call and IG (Prisons) came to his room and received that telephone call. IG (Prisons) wanted to talk to President Khandaker Mustaque Ahmed over telephone and talked to President also addressing him "Sir". After that telephone call IG (Prisons) told them that President Khandaker Mustaque Ahmed directed him to do as per instructions of those army personnel. That at that time Captain Muslem threatened IG (Prisons) and DIG (Prisons) and ordered them to go inside the jail and accordingly they all went inside the jail. That Captain Muslem and the other four army personnel were wearing "khaki" and black uniforms and none of them had any batch on their shoulders. That entering inside the jail Captain Muslem ordered to bring four Awami League leaders Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and AHM Kamruzzaman in one room and accordingly IG (Prisons) instructed him (the witness) to bring all those four leaders in one room. Thereafter he (witness) with the help of other jail employees brought all those four leaders from different rooms to the room No.1 to the east of cell No.15 and then informed the IG (Prisons) about the segregation of those leaders and hearing that news Captain Muslem and the other army personnel went to that room No.1 hurriedly and murdered all those four leaders Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and AHM Kamruzzaman by firing indiscriminately and thereafter ran away to jail gate and then went out of the jail. This witness deposed further to the effect that after a while when he was preparing for Fazar prayer one jail guard informed him that four other armed army personnel came to jail gate. He then went to jail gate and those army personnel ordered him to take them inside the jail to see whether those leaders died or not. That out of fear the guard opened the jail gate and those army personnel went to the place of occurrence and struck the dead bodies with bayonet in presence of him (witness) and other employees and thereafter those army personnel ran away from the jail. This witness deposed also that this incident of jail killing was written in the report book of the jail on 3-11-1975. That on 3-11-1975 at about 11 AM he (the witness) himself along with Subader Abdul Wahid Mridha went to room No. 1 where dead bodies of four leaders were lying and they then kept all those dead bodies facing north with the help of other jail employees and kept the wrist watches, rings, handkerchiefs of slain leaders in his office room. That on 4-11-1975, after lodging of the FIR by DIG (Prisons) Kazi Abdul Awal, 2 magistrates went to the jail at evening time and held inquest of the dead bodies and thereafter in the night of 4-11-1975 the postmortem examina-

tions also of those four dead bodies were held by civil surgeon, Dhaka along with other doctors. Thereafter on 5-11-1975 the dead bodies were handed over to their respective relatives as per instruction of the Government.

165. This PW 2 also was cross-examined at length by the learned advocates of the accused persons, but from the lengthy cross-examination of this witness also nothing came out to make the above evidence of this witness unbelievable or false.

166. PW 3, ATM Nuruzzaman has deposed to the effect that on 3-11-1975 he was posted at Dhaka as IG (Prisons). That after the murder of Bangabandhu and his other relations in 1975 some political leaders were kept detained inside the Dhaka Central Jail and during that period Major Farooque, Major Rashid, Major Dalim, Major Shahriar, on behalf of the then President Khandaker Mustaque Ahmed, used to take information about those detained political leaders from Bangabhaban. That in the night following 2nd November, 1975 at about 3 AM he received a telephone call from Major Rashid from Bangabhaban who wanted to know from him whether there was any problem with Dhaka Central Jail and also informed him that they had information that some armed miscreants might take away some prisoners forcibly showing arms and also asked him to make the jail alert immediately. That the witness then telephoned to the jail gate and informed the warden on duty about that telephone call and told him also to inform that to the jailor immediately. That 3/4 minutes later he received another telephone call from another army personnel from Bangabhaban who enquired as to whether he made the Dhaka Central Jail alert about security and told him also to go to the jail to see its security; that he then informed the DIG (Prisons) Kazi Abdul Awal about that telephonic massages and asked him to go to jail gate immediately. Thereafter he went to Dhaka Central Jail and saw that jailor Aminur Rahman also reached there who told him that he had already made all alert about security of the jail. In the meantime DIG (Prisons) Kazi Abul Awal also reached there. That he (the witness), DIG (Prisons) Kazi Abdul Awal and jailor Aminur Rahman then went to the office room of DIG (Prisons) where he told them about the massages he received from Bangabhaban over telephone. That in the meantime telephone call from Bangabhaban again came and Major Rashid informed him over telephone that one Captain Muslem would go to Central Jail and he would talk to him and asked him also to allow Captain Muslem to talk to Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and AHM Kamruzzaman. He (the witness) then wanted to talk to President Khandaker Mustaque Ahmed and Major Rashid then gave the telephone to President Khandaker Mustaque Ahmed and President Khandaker Mustaque Ahmed told him to do what Major Rashid asked him to do. That thereafter Captain Muslem reached the office of DIG and enquired about him and getting his identity Captain Muslem asked whether the persons-the names of whom were supplied from Bangabhaban had been kept aside. That on his asking Captain Muslem told that he would shoot them. That he, (the witness), DIG (Prisons) Kazi Abdul Awal and jailor Aminur Rahman got puzzled and nervous. DIG (Prisons) Kazi Abdul Awal started trying to contact President Khandaker Mustaque Ahmed over telephone, but in the meantime someone informed the witness that Major Rashid had telephoned in the telephone of the room of jailor and wanted to talk with IG(Prisons) and the witness then went to the office room of jailor and Captain Muslem and his other four armed companions also went to that room of the jailor. That Major Rashid from Bangabhaban asked him (the witness) over telephone whether Captain Muslem reached at jail and he then told Major Rashid that he could not understand what Captain Muslem was telling and he wanted to talk to President and Major Rashid then gave the receiver to President Khandaker

Mustaque Ahmed and he then told President Khandaker Mustaque Ahmed that Captain Muslem was telling that he would kill Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and AHM Kamruzzaman by shooting. That in reply President Khandaker Mustaque Ahmed told him that what Muslem Uddin told would have to be done. That the witness then told DIG (Prisons) and jailor Aminur Rahman what President told. That all of them then got puzzled and bewildered and could not understand what had to be done. That in the meantime Captain Muslem and his other companions cordoned them and ordered them to take them where those persons were kept. That Captain Muslem and his four companions were then taken to the place where those four leaders were kept. That he (the witness) heard Captain Muslem shouting and saying "hurry up." That the jailor then, at gun point, brought those four leaders to one room and the witness then heard the firing sounds and also sound of crying. That Captain Muslem and his other companions had sten gun, SLR etc. with them. That after firing, Captain Muslem and his four companions went away to jail gate hurriedly without telling anything to the witness or others. He (the witness) and DIG (Prisons) then went to the office room of DIG (Prisons) and stayed there bewildered, speechless for about one hour. That in the meantime one of the jail staff came to them and informed them that one Nayak A Ali by name with 4/5 other armed personnel went to the place inside the jail where four leaders were shot and struck four leaders with bayonet and thereafter left the jail. He (the witness) thereafter, with the help of one prison warden, went to his government quarter.

167. This witness further deposed to the effect that subsequently he went to his office and discussed the incident with DIG (Prisons) Kazi Abdul Awal and also talked to Major Rashid over telephone. At about 10-30 AM he along with DIG (Prisons) Kazi Abdul Awal went to the Home Ministry and met Home Secretary and informed him about the incident in detail. On 5-11-1975 he submitted a written report about the incident to Home Secretary. On04-11-1975 he, on consultation with DIG (Prisons) Kazi Abdul Awal, decided to file a case and asked DIG (Prisons) to lodge ejahar with Lalbagh PS and accordingly on 4-11-1975 DIG (Prisons) lodged ejahar with Lalbagh PS. This witness deposed further to the effect that on 5-11-1975 Brigadier Khaled Mosharaff called him and DIG (Prisons) at Bangabhaban and accordingly he and DIG (Prisons) went to Bangabhaban at 10-00 PM at night on that very date and they narrated the occurrence to Khaled Mosharaff and also the Air force Chief and Navel Chief and two other Colonels. Those army personnel asked them to submit written reports about that incident and they submitted written reports accordingly. Those army personnel recorded their oral version about that incident also. As per identification of this witness the written report which this witness submitted to the Home Secretary on 5-11-1975 has been marked as Exhibit-6 and his signature thereon as Exhibit-6/1.

168. This PW 3-the then IG (Prisons) also has been cross-examined at length on behalf of the accused persons. But from the lengthy cross-examination of this witness also nothing material came out to raise any suspicion about the truth of the evidence of this witness.

169. PWs 4, 5, 6, 9 and 12 were jail guards while PWs 7 and 8 were Deputy Jailors of Dhaka Central Jail at that relevant time of jail killing. All these witnesses also have deposed stating the incident of jail killing corroborating the evidence of PWs 1, 2 and 3. PW 4, Mahabbat Ali has deposed to the effect that in the night following 2nd November, 1975 he was on duty as jail guard in the jail gate of Dhaka Central Jail from 3-00 AM to 6-00 AM. That at about 3-00 AM jailer Aminur Rahman came out of his government residence within jail premises and told them that IG

(Prisons) and DIG (Prisons) also were coming to jail and subsequently IG (Prisons) also came to jail. That jailor Aminur Rahman told him that 4/5 armed army personnel would come to jail from Bangabhaban and ordered him to open the jail gate when they came. That sometime after that 5 armed army personnel wearing black uniforms came to jail gate and asked to open the gate and he then opened the gate as per order of jailor. That those army personnel had Sten gun, Chinese rifles in their hands. That subsequently he as per order of the jailor opened the 2nd gate also of the jail and IG (Prisons), DIG (Prisons) and jailer Aminur Rahman with those armed army personnel entered inside the jail and after a while thereafter they heard sounds of firing and then those armed army personnel went away from jail hurriedly; that he then came to know that four Awami League leaders Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and AHM Kamruzzaman died. That sometimes after this occurrence four other persons wearing black uniforms came to jail gate and asked for opening the gate and the witness then with the permission of jailor Aminur Rahman opened the gate and those persons entered inside the jail and 5/7 minutes thereafter they came out of jail and ran away from the jail. That at that time he informed jailor Aminur Rahman that the names of the persons who entered inside the jail were not written and jailor shaheb then told him to write the names of Captain Muslem in the register and he accordingly wrote the name of Captain Muslem in the register of the jail gate. As per identification of this witness the said register of the jail gate has been marked as Exhibit-7.

170. The PW 5, Alauddin Sikder deposed to the effect that on 3rd November, 1975 from 2-00 AM to 4-00 AM he was on duty in the main gate of Central Jail as gate sentry and at about 3-00 AM IG(Prisons) Mr Nuruzzaman, DIG (Prisons) Kazi Abdul Awal and jailor Aminur Rahman came to main gate of the jail and then went to the office and sometimes thereafter five army personnel wearing khaki and black uniforms came to the jail gate by jeep and they entered inside the jail. That in the meantime since his duty period was over he was handing over the charge to the sentry Kazi Abdul Alim and at that time they heard firing sounds from inside the jail; within a short time thereafter those armed army personnel came out from inside the jail and left the jail through main gate. That he then came to know that those armed army personnel murdered four Awami League leaders Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and AHM Kamruzzaman by firing. That subsequently he knew also from Habilder Nayeb Ali that other four armed army personnel came to jail and caused the death of those four leaders by bayonet charges. That he also knew from other officers that one army officer Captain Muslem by name with his other army companions committed that killing.

171. PW 6 Md Ismail Hossain deposed to the effect that on 2nd November, 1975 he was posted at Dhaka Central Jail as jail guard. On that day he was on duty from 6-00 AM to 12-00 PM in the main gate of the jail and subsequently he again was on duty in the main gate from 9-00 PM to 11-00 PM on the same date and after the duty hour he went back to his house and fall asleep. At about 4/4.15 AM in that very night following 2nd November, he heard ringing sound of alarm bell from Dhaka Central Jail and he then hurriedly came to the main gate of Dhaka Central Jail and knew from jail guard Mahabbat Ali that 5 armed army personnel from Bangabhaban came to jail and entering inside the jail murdered Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and AHM Kamruzzaman by firing shots and then left the jail. That thereafter at about 4-30/4-45 AM while he was still at jail gate four other army personnel wearing khaki uniforms came to the jail gate and one of them put his signature in the In-Out Register as K Ali and thereafter those four army personnel went inside the jail and made bayonet charges on those four leaders and there-

after went away. That he knew also that one of the five army personnel who came to the jail was Captain Muslem Uddin. This witness deposed also that on 4th November in the evening while he was on duty at jail the dead bodies of three leaders were handed over to their respective relatives and the dead body of Kamruzzaman was handed over to his relative on 5th November, in the morning. This witness has identified the gate register of the Dhaka Central Jail which has been marked as Exhibit-8. On the identification of this witness the signatures of "K. Ali" appeared at pages-144 and 145 of this register have been marked as Exhibits-8/1 and 8/2. From the cross-examination of this witness also nothing material came out to make the evidence of this witness unbelievable.

172. PW 7 Md Abdur Rouf was posted as Dhaka Central Jail from April 1973 to September 1976 as Deputy Jailor. This witness deposed to the effect that in the night following 2nd November 1975 at about 3-00 AM one jail guard came to his government residence and awoke him from sleep and told him that IG (Prisons) Nuruzzaman Howlader, DIG (Prisons) Kazi Abdul Awal and Jailor Aminur Rahman had come to jail and they told him and other Deputy Jailors to go to jail gate. He then hurriedly came to the jail gate and on his asking one of the jail guard on duty told him that IG (Prisons), DIG (Prisons), Jailor and some army personnel wearing khaki uniforms were sitting in the office room of DIG (Prisons). He then went to the office room of Deputy Jailor and saw there Deputy Jailor Abdul Zahid, Tayeb Ali Mollah, Amanullah Sarker and Iqbal Hossain sitting. 5/10 minutes thereafter one jail guard told them that IG (Prisons), DIG (Prisons) and Jailor with those persons wearing khaki uniforms went inside the jail and they asked them also to go inside the jail. That they-the 5 Deputy Jailors also then went inside the Central Jail. That entering new jail they saw the other officers there. 2/3 minutes thereafter they heard firing sounds from the room where Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and AKM Kamruzzaman were kept. Sometimes thereafter they saw 4 persons wearing khaki uniforms came out of that room and running away towards the jail gate and thereafter they left. That on the next morning at about 8-00 AM while he came to office he knew from his colleagues that those 4 leaders were shot dead. That on 4-11-1975 in the evening time he heard from the Jailor and Deputy Jailors that Captain Muslem Uddin along with four other army personnel, at the instruction from Bangabhaban, came to the jail in the night following 2-11-1975. From the cross-examination of this witness also nothing material came out.

173. PW 8 Md Abdul Zahir-another the then Deputy Jailor of Dhaka Central Jail has deposed to the effect that he was posted at Dhaka Central Jail as Deputy Jailor from 1974 to 1977. That on 2nd November, 1975 in evening he went back to his residence from the jail. At about 4-00 AM in that night jail guard awoke him from sleep and told him that IG (Prisons), DIG (Prisons) and Jailor were at office and they told him to go there. That at that time he heard also alarm sound from the jail. He then came to the jail and was informed by the orderly of DIG that IG(Prisons) and DIG (Prisons) were talking with some army personnel in the office room of DIG He then went to his office and saw there some of his colleagues sitting. That 15/20 minutes thereafter one jail guard informed him that jailor shaheb was sitting in his office room. He then went to the office room of jailor and jailor informed him that 5 army personnel came and they told IG (Prisons) and DIG (Prisons) that they would talk with some prisoners. That 15/20 Minutes thereafter they were informed by one jail guard that those 5 army personnel along with IG (Prisons), DIG (Prisons) and Jailor went inside the jail. That he along with his other colleagues also then entered inside the jail and saw that those 5 army personnel with IG (Prisons), DIG (Prisons) and Jailor were going to new jail. He followed them. As soon as he reached

the gate of the new jail area he heard sounds of firing from Division-I of new jail and after a little time those 5 army personnel came out of the new jail and went out of the jail. That he then went to the office room of the jailor and wanted to know what happened and the jailor told him that Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and AHM Kamruzzaman were shot dead. He then came back to this office and sometimes later he again went to the office room of the jailor who informed him then that four other army personnel also came to the jail and went inside the jail to be sure about death of those four leaders and thereafter they went away. That at that time jailor shaheb informed him also that IG (Prisons) had talked with President Mustaque Ahmed and other senior army officers over telephone several times. That he stayed at jail upto 7-00 AM and thereafter came back to his house. That subsequently he came to his office and knew from jailor that the dead bodies of those four leaders were still lying in that condition. At about 4-00 PM the inquest and postmortem examination of those four dead bodies were held inside the jail. On 5-11-1975 the dead bodies of those 4 leaders were handed over to their relatives.

174. PW 9 Md Nayeb Ali was the chief jail guard of Dhaka Central Jail at that relevant time. This witness deposed to the effect that in the night following 2-11-1975 from 3-00 A.M to 6-00 AM he was on duty at Dhaka Central Jail. That 4/5 other sepoys also were on duty along with him during that time. That while they were deputed on duty after signing in the duty book they heard alarm bell ringing and he then made all the sepoys on duty alert. That at that time he saw IG, DIG, Jailor, Deputy Jailors and four other armed persons wearing black and khaki uniforms entering inside the new jail. That jailor shaheb at that time asked him to open ward No.1 but he told that he had 200/300 keys with him and did not know which was the right one. That "subader shaheb" then took the bag containing those keys from him and opened the ward No.1 as per instruction of jailor shaheb. At that time Syed Nazrul Islam and Tajuddin Ahmed were in that ward No.1. As per direction of jailor shaheb, "subader shaheb" brought Kamruzzaman shaheb from ward No.2 and Mansur shaheb from ward No.3 to that ward No.1 and made them all sit in one cot where Syed Nazrul Islam used to sleep. That as soon as all those 4 leaders sat on that cot the armed personnel opened brush fire on them and thereafter they left the jail. That seeing that scene of brush firing and blood he went to the verandah of the new jail and remained sitting there. That a few minutes thereafter "subader shaheb" came to room No.1 and stayed there 1/2/1 minute and thereafter went away. 10/15 minutes thereafter 4 other army personnel with bayonets came to the new jail and entered inside the room No.1 and started striking those 4 leaders with bayonets and thereafter they left that place.

175. The PW 10 Abdus Samad Azad was in Dhaka Central Jail as a detenue in that fateful night. This witness has deposed to the effect that in 1971, after formation of Mujibnagar Government, he worked as a moving Ambassador with the rank and status of a Minister and also as Advisor to Mujibnagar Government.

176. That before declaration of Mujibnagar Government there were difference of opinion between Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and Kamruzzaman and Khandaker Mustaque Ahmed, Mahbub Alam Chashi and Taher Uddin Thakur. That in 1973 he was in charge of Ministry of Agriculture as Minister. After the incident of 15th August, 1975 he was confined in house arrest. On August 23, 1975 he along with those 4 leaders was brought to police control room where they found Major Rashid with movie camera. That Major Rashid told them that they would be put to firing squad. Thereafter at about 12-30 AM they were shifted to Dhaka Central Jail. At that time Aminur Rahman was the

jailor and MA Awal was the DIG (Prisons). That he was shifted to new jail cell in room No.1. Syed Nazrul Islam, Tajuddin Ahmed, Korban Ali, Sheikh Abdul Aziz along with 4 others were confined in room No. 2. Secretary Asaduzzaman, Mofazzal Hossain Maya, Kamruzzaman and others were also confined in room No. 2. He himself, Captain M. Mansur Ali, Amir Hossain Amu, Syed Hossain, Abdul Quddus Makhan and others were kept in room No.3 of new cell. That on November-1, 1975 they heard from the jail people that some of them would be released and some would be transferred elsewhere. In the morning of 2nd November the jail authority informed them that after evening, on that day, some army officer would come to jail and would visit the place where they were kept and actually in that evening they saw some army officers visiting the jail. In the later part of the night following 2nd November at about 3-00/4-00 AM the alarm (পাগলা ঘন্টা) rang and thereafter they saw the IG (Prisons), DIG (Prisons) and Jailor with some Military Officers. That the jail authority took Captain Monsur Ali from room No.3 to room No.2 and Sheikh Abdul Aziz from room No.1 to room No.3 and thereafter they heard sounds of brush firing, In the morning, at the time of serving breakfast, the sepoys informed them that the army personnel killed the four leaders Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and Kamruzzaman inside the room No.1 by brush firing. That on 3rd November, 1975 they were under lock-up the whole day and night. That they were not allowed to see the dead bodies of four leaders. The dead bodies of four leaders were lying inside the jail the whole day of 4th November.

177. From the cross-examination of this witness also nothing material came out. The PW 11 Mokhlesur Rahman Bhuiyan is the Personal Assistant to Joint Secretary (Admn) of the Ministry of Chittagong Hill Tract Affairs. This witness deposed to the effect that in 1972, he was appointed as typist in the President Secretariat. In 1975 he was posted as P/A of the Military Secretary to the President namely Brigadier Masrurul Haque. That on 15th August, 1975 at about 3-00 PM entering Bangabhaban he found Khandaker Mustaque Ahmed as President. At that time he saw Taher Uddin Thakur, AKM Obaidur Rahman, Shah Moazzaman Hossain, Mahbub Alam Chasi, Major Farooque, Major Rashid, Major Dalim, Major Bazlul Huda, Major Noor, Major Aziz Pasha, Major Rashed Chowdhury, Major Shahriar, Resalder Moslem and some others present at Bangabhaban; since then those army officers had been living in Bangabhaban. That on November 2nd, 1975 at about 7-30 PM he was brought to the 1st floor of Bangabhaban by Captain Muslem Uddin. He saw Major Farooque, Major Rashid, Major Dalim, Major Noor, Major Bazlul Huda, Major Aziz Pasha, Major Mohiuddin, Major Sharful Hossain, Captain Mazed, Captain Khairuzzaman, Lieutenant Kismat, Lieutenant Nazmul, Dafader Marfat Ali, Office Assistant Abul Hashem Mridha, Major Shahriar and many others in that room. That they were talking about Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and Kamruzzaman who were confined in Dhaka Central Jail at that time; that Major Dalim and Major Rashid enquired him whether he had any telephone number of Dhaka Central Jail and he replied that he had. That he was then asked to supply the telephone numbers of both residence and office of IG (Prison), DIG (Prison) and Jailor of Dhaka Central Jail quickly and accordingly he supplied those telephone numbers to Major Shahriar. That at that time he heard discussion about Dhaka Central Jail in that room and also heard to tell that the task of Dhaka Central Jail would have to be completed within that very night; that he also heard Major Farooque talk over telephone to Dhaka Central Jail, that Major Farooque was asking where the detenues were kept inside the jail. At that time Major Shahriar told him to go back to his office room and also told not to leave the office without their permission. He then came to his office. Thereafter

at about 9-00 PM in that very night the Military Secretary to President called him to his office room. Reaching that office room of the Military Secretary to the President he saw there Taher Uddin Thakur, AKM Obaidur Rahman, Shah Muazzem and Nurul Islam Mansur sitting. That thereafter the Military Secretary talked to President over telephone and then told those four persons to go to the bed room of the President. That at about 11-00 PM in that very night he went away to his quarter within Bangabhaban. On 3rd November, 1975 he heard that Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and Kamruzzaman were killed inside the Dhaka Central Jail. Thereafter in the night of that very day the army officers who were residing at Bangabhaban went away abroad.

178. This PW 11 was cross-examined on behalf of almost all the accused persons extensively. From the side of the accused persons repeated suggestions were put to this witness to the effect that in that night following 2nd November, 1975 after 6-00 PM he was not at all present in Bangabhaban and that he was not at all asked by any of the accused persons to supply the telephone numbers of the IG (Prisons), DIG (Prisons) and jailor since there was separate section with sufficient employees including several telephone operators who used to deal with the telephone numbers etc. However this PW 11, in course of cross-examination, has stated that he was posted in Bangabhaban from 1972-1998 and that though his office hours usually was upto 6-00 PM, he had to stay in Bangabhaban long after that time also when required. In course of cross-examination this witness has stated also that Resalder Muslem was not staff of Bangabhaban. This witness denied the defence suggestion that that he did not know Resalder Muslem Uddin, Dafader Marfoth Ali Shah and LD (Dafader) Md Abul Hashem Mridha since before and that he did not see those accused persons in Bangabhaban in the night following 2nd November, 1975.

179. The PW 12 Kazi Abdul Alim was another jail guard of Dhaka Central Jail at that relevant time of occurrence. This witness also has deposed to the effect that on 2nd November, 1975 from 4-00 PM to 6-00 PM he was on duty at the outer gate of Dhaka Central Jail and after completion of his duty he went back to the barrack. That he was scheduled to resume his duty at 4-00 AM of 3rd November, 1975, but before that at about 3-00 AM he heard alarm bell (পাগলা ঘন্টা) from the jail and then rushed to the jail gate and saw there IG (Prisons) Mr Nuruzzaman, DIG (Prisons) Kazi Abdul Awal and Jailor Aminur Rahman and other officers. Jailor Aminur Rahman instructed him to inform them immediately if any outsider came. After a while five army personnel wearing black khaki uniform came to jail gate by a open jeep and being informed about that the IG (Prisons), DIG (Prisons) and Jailor ordered to open the gate and those five army personnel entered inside the jail. Sometimes after that they heard firing sounds from inside the jail and subsequently those army personnel went away from the jail. That sometimes after that four other armed army personnel came to the jail and entered inside the jail and later they came out of the jail and went away; that he then heard that four Awami League leaders Syed Nazrul Islam, Tajuddin Ahmed, Captain Mansur Ali and Kamruzzaman were killed.

180. From the cross-examination of this PW 12 also nothing material came out in favour of the defence.

181. The PW 13 Md Shawkat Hossain deposed to the effect that he was appointed as "Khedmatgar" in the Ganabhaban in 1973 and after 15th August, 1975 after the killing of Bangabandhu Sheikh Mujibur Rahman and his other family members he along with some others were transferred to Bangabhaban. That on 20th August 1975 he and other "khedmatgar" Manik were engaged on duty of the president Khandaker Mustaque Ahmed. That during his such duty he

knew Major Rashid, Major Farooque Rahman, Major Shahriar, Major Dalim, Major Noor, Major Bazlul Huda, Major Mohiuddin, Major Sharful, Major Rashed Chowdhury, Captain Mazed, Captain Muslem Uddin, Dafader Marfat Ali, LD Abul Hashem Mridha. That during his duty in Bangabhaban he knew Taher Uddin Thakur and Mahbub Alam Chashi also.

182. That on 2nd November 1975 at 2-00 P.M he went to Bangabhaban for performing his duty and at that time he saw the army personnel whom he named before and some other army personnel in Bangabhaban in busy condition. That at about 7-00/7-30 PM he saw Major Rashid, Major Farooque Rahman, Major Shahriar, Major Dalim, Major Noor, Major Mohiuddin, Major Rashed Chowdhury, Major Sharful, Captain Mazed and Captain Muslem Uddin holding meeting in the room of Major Rashid. Thereafter at about 12/12-30 AM in that very night he saw Major Rashid, Major Farooque Rahman, Major Shahriar, Major Bazlul Huda, Major Rashed Chowdhury, Major Sharful, Major Mohiuddin, Major Aziz Pasha, Captain Mazed, Taher Uddin Thakur and Mahbub Alam Chashi holding meeting in the meeting room of President Khandaker Mustaque Ahmed in the 3rd floor. That he himself and "khedmatgar" Manik went inside that meeting room for serving tea. At that time President Khandaker Mustaque Ahmed asked Major Rashid who would go to jail and in reply Major Rashid told that Captain Muslem Uddin and his men would go there. That Major Rashid told him (the witness) then to serve the meal to Muslem. The witness then came to the ground floor and took meal from pantry room and went to the room of Captain Muslem Uddin. But Captain Muslem Uddin told that he would not take meal; Captain Muslem Uddin then brought out a bottle of wine from the almirah and he (the witness) took a glass from almirah and pour wine in that glass; that there were two other army personnel of lower rank also present in that room and they all drank wine with Muslem Uddin. That he (the witness) thereafter went away to the meeting room of 3rd floor. That after the end of the meeting President Khandaker Mustaque Ahmed went away to his bed room along with Major Rashid, Major Farooque, Taher Uddin Thakur and Mahbub Alam Chashi and he (the witness) then came away to the ground floor; that at about 3-00 AM in that night he saw Captain Muslemuddin, Dafader Marfat Ali, LD Abul Hashem Mridha and 2/3 other army personnel of lower rank going out of Bangabhaban by army jeep. Sometimes thereafter Major Bazlul Huda and Major Shahriar also went out of Bangabhaban by another army jeep. The witness and "khedmatgar" Manik then fell asleep in the dining room. At about 6-00 AM Major Bazlul Huda awoke him from sleep and told him to serve breakfast to all in the second floor. The witness then went to the room of Captain Muslem Uddin with breakfast and saw there Major Rashid, Major Farooque Rahman, Major Dalim, Major Shahriar, Major Rashed Chowdhury, Major Mohiuddin, Captain Mazed and Captain Muslem Uddin gossiping; that while he was serving breakfast to them, he heard Major Rashid asking about the big 4 of jail and in reply Captain Muslem Uddin telling that all were finished in jail. That he (witness) then went away from there and came to pantry in the ground floor; on that very day they were not released from duty. This witness has further stated to the effect that subsequently from the conversations of the army officers he could know and also heard that four national leaders Syed Nazrul Islam, Tajuddin Ahmed, Mansur Ali, and Kamruzzaman were killed by Captain Muslem Uddin and his other men by shooting inside the jail. That at 7-00/7-30 PM on 3rd November Major Rashid, Major Farooque Rahman, Major Shahriar, Major Dalim, Major Bazlul Huda, Major Mohiuddin, Captain Mazed and some other army personnel went away from Bangabhaban and thereafter at about 9-00 PM, in that night, he (the witness) also went away from Bangabhaban after finishing his duty and on the next day on 4th November at 2-00 PM the wit-

ness again came to Bangabhaban and heard that the said army officers and their companions went away abroad.

183. This witness also has been cross-examined on behalf of the all the accused persons thoroughly.

During cross-examination suggestions were put to this witness to the effect that he did not know any of the army officers whom he named in his examination-in-chief and that what he deposed in his examination-in-chief were all false and that he was not on duty at all in Bangabhaban on 2nd/3rd November, 1975. This witness denied all these defence suggestions. From the lengthy cross-examination of this witness nothing material came out to prove the evidence of this witness false or to prove this witness not trustworthy.

184. The PW 16 Abdul Quiyum Choudhury was a receptionist-cum-PA to the President in 1975. This witness has deposed to the effect that in Bangabhaban he was assigned with the job of connecting personal telephone of the President. That during his duty in Bangabhaban he saw Major Dalim, Major Rashid, Major Aziz Pasha, Major Rashed Chowdhury, Major Mohiuddin, Major Ahmed Sharful Hossain, Major Shahriar, Major Farooque, Captain Mazed, Lieutenant Kismat, Lieutenant Nazmul Hossain, Resalder Muslem Uddin, Dafader Marfoth Ali Shah and LD Abul Hashem Mridha and others roaming in Bangabhaban with pomp and power. That Taher Uddin Thakur and Mahbub Alam Chasi also used to come to Bangabhaban frequently and they used to telephone to different places from Bangabhaban and also give different instructions and orders sitting in the room of President at Bangabhaban; that in the later part of October, 1975 there was prevailing an unusual situation in Bangabhaban; on 2nd November, 1975 his duty in Bangabhaban was from 7-30 AM to 2-00 PM; that after performing his duty on that day he went away from Bangabhaban. Thereafter on the next day on 3rd November he came to Bangabhaban at 2-00 P.M and heard from Yakub that in the previous night four Awami League leaders Syed Nazrul Islam, Tajuddin Ahmed, Captain Mansur Ali and Kamruzzaman were killed inside the jail and that Major Dalim, Major Farooque and Major Rashid group had committed that killing. That Khan Mohammad Ali Olock told Yakub about this fact in the morning at the time of change of duty. That Khan Mohammad Olock told Yakub that president Mustaque and Major Rashid had talked to IG (Prisons) at jail in that night and they were seen very busy and atn the dawn Major Rashid and the other men of their party were seen entering Bangabhaban in sweating condition. That Yakub told him also that he himself also could know from the conversation of Major Dalim, Major Rashid and Major Farooque and others that they committed the killing incident inside the jail. This PW 16 deposed also that he himself also could know from the conversation of the said army personnel that they committed the jail killing in the previous night. That on that day President Mustaque Ahmed, Taher Uddin Thakur also were seen anxious. That though his duty period was upto 8-00 PM he had to remain on duty till 11-00 PM in that night.

185. This witness also has been cross-examined at length on behalf of the accused persons, but nothing material came out from his cross-examination to make his evidence false or to support the defence suggestion that he is a tutored witness and has deposed falsely as per the instruction of the prosecution.

186. The PW 17 Khan Mohammad Ali Olock deposed to the effect that in 1972 while he was a student of Dhaka University he was appointed as LD Assistant in the President Secretariat and was assigned with the duty of personal assistant of Mohammad Hanif-the personal assistant of President Bangabandhu Sheikh Mujibur Rahman. In 1975 he along with three others was posted as receptionist-cum-P.A. and

they worked as such in the Ganabhaban. After 15th August 1975 he was posted in Bangabhaban. That at that time Major Farooque, Major Rashid, Major Shahriar, Major Dalim, Major Bazlul Huda, Major Rashed Chowdhury, Major Aziz Pasha, Captain Muslem Uddin would reside in Bangabhaban in different VIP rooms. That Taher Uddin Thakur and Mahbub Alam Chashi also used to stay with Khandaker Mustaque Ahmed in Bangabhaban all the time. That in the night following 2nd November, 1975 he had telephone duty at Bangabhaban. In that night at 3-00 AM he was asked to connect the IG (Prisons) by telephone and when IG (Prisons) was connected he asked IG (Prisons) to talk with Major Rashid and they had talked for few moments. After sometimes Major Rashid again asked him to give telephone connection to IG (Prisons) and he then phoned to the residence of the IG (Prisons) but he was informed that IG (Prisons) went to jail. Thereafter he gave telephone connection to the phone of DIG (Prisons) and Major Rashid then talked. Sometimes thereafter Major Rashid, Major Farooque, Major Dalim, Major Bazlul Huda, Major Rashed Chowdhury, Major Aziz Pasha came to his room in armed condition and told him to connect IG (Prisons) by telephone. The witness then tried to connect IG (Prisons) but could not get line and then he connected the phone of jailor and told him that Major Rashid would talk to IG (Prisons). IG (Prisons) then talked to Major Rashid over telephone and Major Rashid wanted to know whether Captain Muslem Uddin reached the jail. Thereafter Major Rashid told him (the witness) to give connection to President Mustaque Ahmed and accordingly he gave telephone connection to President Mustaque Ahmed and President Mustaque Ahmed talked to IG (Prisons). As soon as President Mustaque Ahmed finished his talk Major Rashid and others went away inside Bangabhaban. That sometimes thereafter Pritom Barua informed him that Major Farooque, Major Dalim, Major Rashid and others were going outside Bangabhaban. He (the witness) also then saw the going out of those army personnel from Bangabhaban. That subsequently at about 6-00 AM Major Rashid, Major Dalim, Major Farooque, Major Bazlul Huda, Major Shahriar, Major Rashed Chowdhury, Major Aziz Pasha, Major Ahmed Sharful, Captain Mazed, Captain Muslem, Lieutenant Kismat, Lieutenant Nazmul, Abul Hashem Mridha, Dafader Marfoth Ali came back to Bangabhaban in very tired condition. At about 8-00 AM he handed over his duty to Yakub Uddin Khan and at that time he narrated the whole occurrence to Yakub Khan; that on the next day he knew that Tajuddin Ahmed, Syed Nazrul Islam, Captain Mansur Ali and Kamruzzaman were killed inside the jail by those army personnel and they also fled away abroad.

187. From the lengthy cross-examination of this witness also nothing material came out to make the evidence of the witness false or to support the defence case. This witness has denied the defence suggestion that he has deposed falsely at the instruction of others and that he was not on duty in Bangabhaban on 2-11-1975.

188. The PW 18 Md Manik Meah deposed to the effect that he was a "khedmatgar" in Ganabhaban in 1973 and after the assassination of Bangabandhu he was posted at Bangabhaban as "khedmatgar" of President Khandaker Mustaque Ahmed. That during his tenure in Bangabhaban he saw Major Rashid, Major Farooque, Major Shahriar, Major Dalim, Major Mohiuddin, Major Bazlul Huda, Major Ahmed Sharful, Captain Mazed, Captain Muslem Uddin, Abul Hashem Mridha, Marfat Ali Shah and some other officers in Bangabhaban. Mahbub Alam Chashi and Taher Uddin Thakur also used to stay in Bangabhaban with President Khandaker Mustaque Ahmed. That on 2nd November, 1975 at 2-00 PM he came to duty at Bangabhaban; Shawkat Hossain also was with him on duty at that time. At about 7-00/7-30 PM he saw Major Rashid, Major Farooque, Major Bazlul Huda, Major Shahriar, Major Dalim, Major Mohiuddin, Captain Muslem Uddin sitting

in the room of Major Rashid. At about 12-00/12-30 AM in that very night there was an urgent meeting in the meeting room of President Khandaker Mustaque Ahmed. That in that meeting all those army personnel and Mahbub Alam Chashi and Taher Uddin Thakur also were present. In that meeting all were seen agitated. President Khandaker Mustaque Ahmed asked Major Rashid who would go to jail and Major Rashid replied that Captain Muslem and his men would go inside the jail. Major Rashid then told him (the witness) to serve meal to Captain Muslem and Shawkat went to serve meal; that at about 1-00/1-30 AM he (witness) saw Major Rashid, Major Farooque, Mahbub Alam Chasi and Taher Uddin Thakur to go to the bed room of President Khandaker Mustaque Ahmed. That at about 3-00 AM in that very night Captain Muslem Uddin, Marfat Ali Shah, Abul Hashem Mridha and two other army personnel and one men in civil dress went out of Bangabhaban by a army jeep. By another jeep Major Bazlul Huda and Shahriar shaheb also went out of Bangabhaban. Thereafter at about 6-00 AM Major Bazlul Huda awoke them from sleep and told them to serve breakfast to Captain Muslem Uddin. The witness and Shawkat then made breakfast ready and took that to the room of Muslem Uddin and saw there Major Rashid, Major Farooque, Major Shahriar, Major Bazlul Huda, Major Dalim, Major Mohiuddin and some other army officers gossiping with Captain Muslem. Major Rashid asked Captain Muslem "জেল থানায় কি বড় চারটা শেষ।" In reply Captain Muslem told "স্যার সব শেষ"; that he then came out of that room after they finished their breakfast; that on that day he (the witness) was not released from duty. That from the conversation of army officers he knew that the four Awami League leaders Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and Kamruzzaman were killed inside the jail by shooting and he then realized clearly that the said army officers along with Mahbub Alam Chashi and Taher Uddin Thakur made conspiracy with President Khandaker Mustaque Ahmed to kill those four leaders. That on that evening at about 7-00/7-30 PM some of those army officers with their families left Bangabhaban. On the next day coming to duty at Bangabhaban he heard that those army officers left the country and went away abroad.

189. This PW 18 also has been cross-examination at length on behalf of the accused persons. But from the lengthy cross-examination of this witness also nothing material came out to make the evidence of this witness unbelievable.

190. The PW 19 Khandaker Asaduzzaman was the secretary of Jute Ministry in 1975. After 15th August, 1975 he was arrested along with others and was detained in Dhaka Central Jail. This witness deposed to the effect that he was kept in room No.2 of Dhaka Central Jail along with Mr AHM Kamruzzaman, Mr Mofazzal Hossain Chowdhury Maya, Bir Bikram Mr Mohiuddin Ahmed and in room No.1 Syed Nazrul Islam, Mr Tajuddin Ahmed, Mr Korban Ali, Mr Abdul Quddus Makhan and Sheikh Abdul Aziz were kept while in room No.3 Captain Mansur Ali, Mr Abdus Samad Azad, Mr Shamsuzoha and some others were kept. That during the period from 31st October, 1975 to 2nd November, 1975 he saw Major Dalim inside the jail. That in the night following 2nd November, 1975 he heard alarm bell (পাগলা ঘন্টা) and he woke up from sleep. Thereafter jailor came to their room and called away Kamruzzaman from that room to room No.1. After a while they heard firing sounds which continued for 4/5 minutes. Thereafter the assailant party went away; they heard groaning sounds from room No.1. After a while they again heard sounds of somebodies' entering in room No.1 and could know later that there were bayonet charges to ensure the death. That on the next day on 3rd November, 1975 they were kept confined inside the cell the whole day. On 4th November, 1975 they were allowed to come out of the cell and could know from guards that the dead bodies of

Syed Nazrul Islam, Tajuddin Ahmed, Captain Mansur Ali, and AHM Kamruzzaman were taken out of jail gate. That he could know also that Captain Muslem was the leader of the assailant party. From the cross-examination of this witness also nothing material came out.

191. The PW 20 Mahbubuddin Ahmed, Bir Bikram was a police superintendent in 1975. This witness also was arrested after assassination of Bangabandhu Sheikh Mujibur Rahman and his other family members and was kept in the central jail in cell No.15. This witness deposed to the effect that on 2nd November, 1975 before lock up Major Dalim came in front of his cell and he (the witness) asked him why did he come there and Major Dalim replied that he came there to see whether the lights were in order or not. This witness stated also that in 1971 he fought together with Major Dalim in sector No.2. That in the night following 2nd November, 1975 at about 3-00 AM the alarm ring (পাগলা ঘন্টা) of the jail rang and he (the witness) woke up from sleep; that he then heard firing sounds and also sound of groaning. That sometimes thereafter he heard sounds of bayonet charges also. After "fazar azan" somebody told them that four persons were killed. On 3rd November, 1975 he was called to jail gate to meet some visitors and at the time of going to jail gate he saw four dead bodies of Syed Nazrul Islam, Tajuddin Ahmed, Captain Mansur Ali, and Kamruzzaman lying. Next day, after evening, they heard that the dead bodies were taken away. From the cross-examination of this witness also nothing material came out.

192. The PW 21 Commodore Golam Rabbani was the ADC to the President at Banga-bhaban during that relevant time. This witness has deposed to the effect that he served as ADC to the President at Bangabhaban since December, 1974 for a period of 2 years 7 months and during that period he used to reside at Bangabhaban; that after the killing of Bangabandhu and his family members Major Farooque, Major Rashid, Major Dalim, Major Shahriar, Major Noor, Major Mohiuddin, Major Aziz Pasha, Captain Mazed, Nazmul, Kismat, Hashem, Resalder Muslem Uddin, Dafader Marfoth Ali and Dafader Abul Hashem Mridha and many others used to reside at Bangabhaban. That 2/1 days after the killing of Bangabandhu President Mustaque Ahmed sent a letter to Captain Mansur Ali and he (the witness) himself and Major Shahriar took that letter to Captain Mansur Ali.

193. That 2/1 days thereafter they came to know that four Awami League leaders Captain Mansur Ali, Syed Nazrul Islam, Tajuddin Ahmed, and Kamruzzaman were sent to jail. This witness deposed to the effect also that the army officers who used to reside at Bangabhaban by- passing army command were being tried to be taken back to barrack by army head quarter and in the later part of October, 1975 there was a hint that the army head quarters would take action against those army personnel. That during that time Resalder Muslem Uddin, Dafader Marfoth Ali and Dafader Mridha and their other companions used to stay armed all the time. They used to stay in Bangabhaban as the personal guards of President Mustaque Ahmed. That in the night following 2nd November, 1975 at 11-00 PM he fell asleep in his bed room at 1st floor of Bangabhaban. At about 2-00 AM in that night one messenger of President Mustaque Ahmed awoke him from sleep and told him that President Mustaque had called him. He then was going to the room of President Mustaque at 4th floor by lift and coming out of the lift he saw 2 armed army personnel who challenged him and getting his identity allowed him to go; he then went to the room of President and saw there Major Rashid and Major Dalim who were busy with making telephone calls to different places. The President then asked him about the guards and he replied that he did not know whether the guards went out of the Bangabhaban. That sometimes thereafter he

(the witness) went to his office room to enquire about the guards and at that time he saw Resalder Muslem Uddin, Dafader Marfoth Ali Shah and Abul Hashem Mridha along with others in a very restive condition. Sometimes thereafter Muslem Uddin, Marfoth Ali Shah and Abul Hashem Mridha along with some others were found going out of Bangabhaban. Subsequently other officers also went out of Bangabhaban. At 6-00 AM, in the morning, he (the witness) saw those officers and others came back to Bangabhaban. That in the meantime they knew that four leaders Captain Mansur Ali, Syed Nazrul Islam, Tajuddin Ahmed and Kamruzzaman were killed inside the jail and that Resalder Muslem Uddin, Dafader Marfoth Ali Shah and Abul Hashem Mridha and some others killed them. That the officers and others who were involved in the killing of 15th August, 1975 and 3rd November, 1975 went abroad on 3rd November.

194. This witness also has been cross-examined at length on behalf of the accused persons. During cross-examination this witness has denied the defence suggestion that he did not see Resalder Muslem Uddin, Dafader Marfoth Ali Shah and LD (Dafader) Md Abul Hashem Mridha in Bangabhaban on that day and that they never resided at Bangabhaban and never came out of Bangabhaban and then went back to Bangabhaban.

195. This witness, the ADC to President denied the defence suggestion also to the effect that Khaled Mosharaff, with a view to capture power, killed the leaders inside jail.

196. The PW 26 Captain AMM. Saifuddin is a retired pilot of Bangladesh Biman. This witness has deposed to the effect that on 3rd November, 1975 at 11-00 AM he was informed that he would have to take some army officers to Bangkok by a special flight as safety pilot and subsequently at 9-30/10-00 PM, on that very date, they went to Chittagong from Dhaka with some passengers by plane and from Chittagong they flew for Bangkok and reached Bangkok on 4th November. On 6th November he came back to Dhaka and after reaching Dhaka he came to know that the passengers whom they took to Bangkok were involved in the killing of Bangabandhu and his family members and also in the killing of four leaders Syed Nazrul Islam, Tajuddin Ahmed, Captain Mansur Ali and Kamruzzaman. That about 30/35 passengers were in that plane.

197. PW 28 Mr Waliur Rahman was a director of Foreign Ministry. The materials part of his evidence is that on 3rd November, 1975 at about 5-00 PM acting Secretary of Foreign Ministry Mr Nazrul Islam informed him that Lieutenant Colonel Rashid and some other persons of his group would go out of the country by a special flight on that day and asked him to take necessary permission from Burma and Thailand Embassy and accordingly he and Shamsher Mobin Chowdhury did all the needful and then at 10-00 PM, in that very night he went to old airport and saw there Lieutenant Colonel Rashid, Lieutenant Colonel Shahriar, Lieutenant Colonel Bazlul Huda, Lieutenant Colonel Nur Chowdhury, Major Ahmed Sharful Hussain, Captain Marfat Ali, Kismat, Hashem, Nazmul Hussain Ansar, Lieutenant Colonel Pasha, Moslem, Mridha and Lieutenant Colonel Farooque who left the country by the special flight. On the next morning he heard about the killing of four leaders inside the jail.

198. The PW 33 Mr Shamsher Mubin Chowdhury, the Secretary, Foreign Ministry, deposed to the effect that at the time of occurrence he was working as Deputy Chief of Protocol in the Foreign Ministry. That on 3rd November, 1975 at 9-30 AM he was called to Bangabhaban by the Foreign Secretary Nazrul Islam and there he was given a list of army officers by Mahbub Alam Chashi and told to arrange their going away abroad and accordingly he did all needful. That he

also went to the airport and learnt that all the army officers who prepared for going abroad already crossed the immigration area and entered inside. That thereafter in 1976, in the month of April he went to different countries and handed over some appointment letters to those army officers who left the country for their appointments in different Embassies of Bangladesh in different countries as per direction of the then Foreign Secretary.

199. The PW 34 Md Yeakub Khan has deposed to the effect that he was working as a receptionist at Bangabhaban at the time of occurrence. That he was given duty to operate the personal telephone of the President Khandaker Mustaque Ahmed. That during his tenure at Bangabhaban he found Major Rashid, Major Dalim, Major Noor, Aziz Pasha, Captain Moslem and other army officers residing at Bangabhaban. That on 3rd November, 1975 his duty period at Bangabhaban was from 8-00 AM to 2-00 PM and while he took over his duty from Khan Mohammad Ali Olock (PW 17) the later informed him that in the previous night at about 3-00 AM, major Rashid from President's room told him to give telephone connection to IG (Prisons) and he gave telephone connection at the residence of IG (Prisons) and Major Rashid then talked to IG (Prisons) and sometimes thereafter Major Rashid, Major Dalim, Major Aziz Pasha, Major Noor, Major Mazed came to the room of Khan Mohammad Ali Olock in armed condition and told him to connect IG (Prisons) over telephone again and accordingly Khan Mohammad Ali Olock again telephoned in the residence of IG (Prisons) but IG (Prisons) was not at home at that time and Khan Mohammad Ali Olock was informed that IG (Prisons) went to jail; that as per direction Khan Mohammad Ali Olock then gave telephone connection to jail and Major Rashid then asked IG (Prisons) whether Captain Muslem went to jail; Major Rashid told also IG (Prisons) to talk to President Mustaque Ahmed and accordingly IG (Prisons) talked to President Mustaque Ahmed when he was given telephone connection to President Mustaque Ahmed. That thereafter Major Rashid and others went away. This PW 34 deposed also that Khan Mohammad Ali Olock told him also that at dawn he saw Major Rashid and his other party men to return to Bangabhaban. This witness has stated further to the effect that he himself also could gather from the conversations of Major Rashid, Major Dalim, Aziz Pasha, Major Noor, Captain Muslem that those army personnel, in conspiracy with President Khandaker Mustaque Ahmed, killed four leaders Tajuddin Ahmed, Syed Nazrul Islam, Kamruzzaman and Captain Mansur Ali and that on the next day while he came to duty he knew that the said army personnel went abroad. During cross-examination this witness has denied the defence suggestion that he is a tutored witness.

200. These are the evidence which the prosecution has relied on to prove its case that all the accused persons made a criminal conspiracy to kill four Awami League leaders Syed Nazrul Islam, Tajuddin Ahmed, Captain Mansur Ali and Kamruzzaman inside the Dhaka Central Jail and in pursuance to this conspiracy a killing squad was formed under the leadership of Risalder Muslem Uddin with Dafader Marfoth Ali and Lance Dafader Abul Hashem Mridha and others and in the night following 2nd November, 1975 at about 4 AM the said killing squad entered inside Dhaka Central Jail and committed murder of the said four Awami League leaders by shooting with fire arms and subsequently another team of army personnel also went inside Dhaka Central Jail and made the death of those 4 leaders confirmed by inflicting bayonet charges on their bodies.

201. From the above discussion of evidence of the prosecution witnesses it appears that the PWs 1 to 9, 10, 12, 19 and 20 have deposed corroborating this prosecution case to the extent that in that fateful night of the occurrence accused Resalder Muslem Uddin along with four other

army personnel entered into Dhaka Central Jail and killed four Awami League leaders by shooting with fire arms and subsequently another team of army personnel made the death of those four Awami League leaders confirmed by inflicting bayonet charges on their bodies. The PW 1-the then DIG (Prisons), the PW 2-the then Jailor of Dhaka Central Jail and the PW 3-the then IG (Prisons) deposed to the effect also that in that fateful night of occurrence, before the incident of killing of 4 leaders, there were several telephonic conversations between IG (Prisons) and accused Major Rashid and President Khandaker Mustaque Ahmed from Bangabhaban. The PW 3 IG (Prisons) deposed to the effect also that accused Major Rashid informed him over telephone that Captain Muslem Uddin would go to jail and instructed him to allow Captain Muslem Uddin to talk to 4 leaders Syed Nazrul Islam, Captain Monsur Ali, Tajuddin Ahmed and AHM Kamruzzaman inside jail. The PWs 1-3 deposed to the effect that after his arrival at jail Captain Muslem Uddin, on their asking, told that they would kill the four leaders and that IG (Prisons) informed this very statement of accused Captain Muslem Uddin to Major Rashid and also President Khandaker Mustaque Ahmed over telephone and being thus informed even about this statement of accused Captain Muslem Uddin, Major Rashid and President Mustaque Ahmed instructed IG (Prisons) to allow Captain Muslem Uddin to do what he wanted to do. These evidence of the PWs 1, 2 and 3 have been corroborated by the evidence of PW 17 Khan Mohammad Ali Olok-a receptionist-cum-telephone operator of Bangabhaban. The PW 17 deposed to the effect that in the night following 2nd November, 1975 he had telephone duty at Bangabhaban and in that night, at 3-00 PM he was asked from President's room to give telephone line to IG (Prisons) and accordingly he gave telephone line to IG (Prisons) at his residence and IG (Prisons) talked to Major Rashid for sometime and thereafter also Major Rashid again talked to IG (Prisons) over telephone and this time since IG (Prisons) was not at his residence he gave telephone connection to the phone of DIG (Prisons). That sometimes thereafter Major Rashid, Major Farooque, Major Dalim, Major Bazlul Huda, Major Rashed Chowdhury, Major Aziz Pasha came to his room in armed condition and told him to connect IG (Prisons) through telephone; that he then tried to connect IG (Prisons) but getting no line he ultimately gave line to the phone of jailor and Major Rashid then talked to IG (Prisons) through the telephone of jailor and Major Rashid at that time wanted to know whether Captain Muslem Uddin reached the jail; that thereafter Major Rashid told him (PW 17) to give telephone connection to President Mustaque Ahmed and accordingly PW 17 gave telephone connection to President Mustaque Ahmed and President Mustaque Ahmed then talked to IG (Prisons). The PW 17 deposed also that sometimes thereafter he saw Major Rashid, Major Dalim, Major Farooque going out of Bangabhaban and later at about 6-00 AM he saw those army personnel and Risalder Muslem Uddin, Dafader Marfat Ali, Abul Hashem Mridha and others come back to Bangabhaban in very tired condition. This PW 17 stated also that on the next morning, while he handed over duty to PW 34 Yakub Hussain Khan he informed him about this telephonic conversations of President Mustaque Ahmed and Major Rashid with IG (Prisons). PW 34 has corroborated the PW 17 mentioning that he heard about these telephonic conversations from PW 17. PW 16 also has deposed to the effect that he heard about these telephonic conversations between Bangabhaban and Dhaka Central Jail from PW 34 Yakub Hussain Khan who heard about that from PW 17 Khan Md Ali Olok.

202. All the witnesses from Bangabhaban also, namely, the PW 11 Mokhlesur Rahman Bhuiyan, PW 13 Md Shawkat Hossain, PW 16 Abdul Quiyum Choudhury, PW 17 Khan Mohammad Ali Olok. PW 18 Md Manik Meah,

PW 21 Commodore Golam Rabbani and PW 34 Md Yeakub Hussain Khan deposed in support of the prosecution case to the extent that all the accused persons made conspiracy to kill the four leaders inside the jail and in pursuance of that conspiracy Resalder Muslem Uddin, the present accused-respondents Dafader Marfoth Ali Shah and LD (Dafader) Md Abul Hashem Mridha and some other army personnel were sent to Dhaka Central Jail at about 3-00 AM in the night following 2nd November, 1975. The PW 11 deposed that in the fateful night of jail killing, at about 7-30 PM, he saw all the accused persons including accused Resalder Muslem Uddin, accused-respondents Dafader Marfoth Ali Shah and LD (Dafader) Md Abul Hashem Mridha on the 1st floor of Bangabhaban talking about Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and Kamruzzaman who were confined in Dhaka Central Jail at that time and that at that time, at the asking of Major Dalim and Major Rashid he supplied them with the telephone numbers of both the residence and office of IG (Prisons), DIG (Prisons) and Jailor of Dhaka Central Jail. This witness deposed to the effect also that at that time he heard the accused persons to discuss about Dhaka Central Jail and also to tell that the task of Dhaka Central Jail would have to be completed within that very night and also heard Major Farooque to talk over telephone to Dhaka Central Jail and to ask where the detenues were kept inside the jail. The PW 13 deposed to the effect that in the fateful night of occurrence at about 7-00/7-30 PM he saw Major Rashid, Major Farooque Rahman, Major Shahriar, Major Dalim, major Noor, Major Mohiuddin, Major Rashed Chowdhury, Major Sharful, Captain Mazed and Captain Muslem Uddin holding meeting in the room of Major Rashid and thereafter at about 12-00/12-30 AM in that very night he saw those army personnel and also Taher Uddin Thakur and Mahbub Alam Chashi holding meeting in the meeting room of President Khandaker Mustaque Ahmed in the 3rd floor of Bangabhaban and that in that meeting he himself and other "khedmat-gar" Manik while were serving tea he heard Khandaker Mustaque Ahmed asking Major Rashid who would go to jail and in reply Major Rashid to tell that Captain Muslem Uddin and his men would go there. This PW 13 deposed also that at about 3-00 AM in that very night he saw Captain Muslemuddin, Dafader Marfoth Ali. LD Abul Hashem Mridha and 2/3 other army personnel of lower rank going out of Bangabhaban by a army jeep and sometimes thereafter Major Bazlul Huda and Major Shahriar also went out of Bangabhaban by another army jeep and thereafter at about 6-00 AM Major Bazlul Huda awoke him from sleep and told him to serve breakfast to all in the 2nd floor. That he then went to the room of Captain Muslem Uddin with breakfast and saw there Major Rashid, Major Farooque Rahman, Major Dalim, Major Shahriar, Major Rashed Chowdhury, Major Mohiuddin, Captain Mazed and Captain Muslem Uddin and heard Major Rashid asking about the "big four" in the jail and in reply Captain Muslem Uddin telling that all were finished in jail. The PW 16 deposed to the effect that during his duty in Bangabhaban he saw all the accused persons roaming in Bangabhaban with pomp and power and that in the later part of October, 1975 there was prevailing an unusual situation in Bangabhaban; that on 2nd November, 1975 after performing his duty he went away from Bangabhaban at 2-00 PM and thereafter on the next day he came to Bangabhaban at 2-00 PM and heard from Yakub about the killing of four leaders inside the jail and heard also that Major Dalim, Major Farooque and Major Rashid group had committed that killing. This PW 16 has corroborated also the evidence of PW 17 mentioning that PW 17 Khan Mohammad Ali Olok narrated those to PW 34 and PW 34 subsequently told him about that. The evidence of PW 17 has already been stated above. The PW 18 deposed to the effect that during his tenure in Bangabhaban he saw Major Rashid, Major Farooque, Major Shahriar, Major Dalim, Major Mohiuddin, Major Bazlul Huda,

Major Ahmed Sharful, Captain Mazed, Captain Muslem Uddin, Abul Hashem Mridha, Marfat Ali Shah and some other officers to stay in Bangabhaban; that in the night following 2nd November, 1975 at about 7-00/7-30 PM he saw Major Rashid, Major Farooque, Major Bazlul Huda, Major Shahriar, Major Dalim, Major Mohiuddin, Captain Muslem Uddin sitting in the room of Major Rashid and subsequently in that very night at about 12-00/12-30 AM he saw those army personnel holding a meeting in the meeting room of President Khandaker Mustaque Ahmed and in that meeting all of those army personnel were found agitated and at that time President Khandaker Mustaque Ahmed asked Major Rashid who would go to jail and Major Rashid replied that Captain Muslem and his men would go inside the jail and that subsequently at about 3-00 AM, in that very night, he saw Captain Muslem Uddin, Marfoth Ali Shah, Abul Hashem Mridha and two other army personnel to go out of Bangabhaban by a army jeep and later by another jeep Major Bazlul Huda and Major Shahriar also went out of Bangabhaban. Thereafter at about 6-00 AM Major Bazlul Huda awoke them from sleep and told them to serve breakfast and while he and PW 13 Shawkat was serving breakfast in the room of Muslem Uddin they saw there Major Rashid, Major Farooque, Major Shahriar, Major Bazlul Huda, Major Dalim, Major Mohiuddin and some other army officers and at that time Major Rashid asked Captain Muslem whether "the big four" in the jail were finished and in reply Captain Muslem Uddin told all were finished. The PW 21 Commodore Golam Rabbani the ADC to the President deposed to the effect that after the killing of Bangabandhu and his family members Major Farooque, Major Rashid, Major Dalim, Major Shahriar, Major Noor, Major Mohiuddin, Major Aziz Pasha, Captain Mazed, Nazmul, Kismat, Hashem, Resalder Muslem Uddin, Dafader Marfoth Ali and Dafader Hashem Mridha and many others used to reside at Bangabhaban. This witness deposed also that the army officers-who used to reside in Bangabhaban bypassing army command-were being tried to be taken back to barrack by army head quarter and in the later part of October, 1975 there was a hint that the army head quarter would take action against that army personnel. That during that period Resalder Muslem Uddin, Dafader Marfoth Ali and Dafader Mridha and their other companions used to keep armed all the time and they used to stay in Bangabhaban as the personal guards of President Mustaque Ahmed. This PW 21 deposed further that in the night following 2nd November, 1975 at about 2-00 AM one messenger of President Mustaque Ahmed awoke him from sleep and told him that President Mustaque had called him and he then went to the room of President Mustaque and saw there Major Rashid and Major Dalim who were busy making telephone calls and that the President asked him about the guards and he replied that he did not know whether the guards went out of Bangabhaban. That sometimes thereafter he went to his office room and at that time he saw Resalder Muslem Uddin, Dafader Marfoth Ali Shah and Abul Hashem Mridha along with others in a very restive condition and a little time thereafter he saw Resalder Muslem Uddin, Marfoth Ali Shah and Abul Hashem Mridha along with some others going out of Bangabhaban and subsequently he saw some other officers also going out of Bangabhaban and later at about 6-00 AM, in the morning, he saw all those army personnel to come back to Bangabhaban. This witness deposed also that in the meantime they could know that Resalder Muslem Uddin, Dafader Marfoth Ali Shah and Abul Hashem Mridha and some others killed the four leaders inside the jail. This witness deposed also that the army personnel and others who were involved in the killing of 15th August, 1975 and 3rd November, 1975 went abroad on 3rd November. The PW 34 deposed to the effect that during his tenure at Bangabhaban he found Major Rashid, Major Dalim, Major Noor, Major Aziz Pasha, Captain Muslem and other army officers residing at Bangabhaban and

that on 3rd November, 1975 at 8-00 AM while he took over his duty from PW 17 Khan Mohammad Ali Olok the later informed him about the telephonic conversations of President Mustaque Ahmed and Major Rashid with IG (Prisons) in the previous night.

203. The above narrated evidence of PWs 11, 13, 16, 17, 18, 21 and 34 coupled with the evidence of PWs 1 to 9, 10, 12, 19 and 20-as narrated above-support the prosecution case strongly that the accused persons made a conspiracy to kill the four Awami League leaders inside the jail and in pursuance of that conspiracy accused Resalder Muslem Uddin, the present accused-respondents Dafader Marfoth Ali Shah and LD (Dafader) Abul Hashem Mridha along with two other army personnel were sent to Dhaka Central Jail in the night following 2nd November, 1975 at about 4-00 PM and all these five members of this killing squad entered inside the jail and killed the four Awami League leaders Syed Nazrul Islam, Tajuddin Ahmed, Captain Mansur Ali and Kamruzzaman by shooting with fire arms and subsequently, within a short time, another team of army personnel entered the Dhaka Central Jail and inflicted bayonet charges on the bodies of slain leaders to ensure their death.

204. The trial court though appears to have raised some questions in the first part of his judgment about the credibility of the above mentioned prosecution witnesses but ultimately believed the above narrated evidence of these PWs and relying on these evidence convicted and sentenced 15 accused persons including the present accused-respondents-as already mentioned above. But the High Court Division-the appellate court-did not believe the PWs 1 to 3 and the other prosecution witnesses from Bangabhaban. The High Court Division though has accepted the prosecution case that the accused Resalder Muslem Uddin along with some other army personnel murdered four Awami League leaders inside the jail at about 4-00 AM in the night following 2nd November, 1975 as true and therefore confirmed the conviction and sentence of the accused Resalder Muslem Uddin, but has disbelieved almost all the above mentioned prosecution witnesses.

205. The High Court Division has disbelieved the PW 1the informant and also an eye witnesses of the occurrence of jail killing mainly on the ground that "he (PW 1) had disclosed many a thing before the court which were not there in the purported FIR"

206. It should be mentioned here that in the FIR-the PW 1 stated thus:

> "on 3-11-1975 at about 4-00 AM one army officer wearing khaki uniform giving his identify as Captain Muslem Uddin attached to Bangabhaban accompanied by four army personnel wearing khaki uniforms came to the jail. They were armed with Sten gun and SLR etc. They entered into the jail and killed four persons, namely, Mr Tajuddin Ahmed, Mr Monsur Ali, Mr Syed Nazrul Islam and Mr AHM Kamruzzaman. More details about the incident will be furnished in due course. The incident has been reported verbally by the Inspector General of Prisons to the Secretary of the Ministry of Home Affairs yesterday (3-11-1975). The dead bodies of four persons are still lying in the jail, necessary action may kindly be taken in the matter."

207. During examination before the court this PW 1 has proved that detailed report mentioned in the FIR which he submitted on 5-11-1975 to the Inspector General of Police narrating about the telephonic conversations between IG (Prisons) and accused Major Rashid and President Khandaker Mustaque Ahmed in that fateful night of occurrence and also narrating the occurrence of jail killing in details-which has been marked as Exhibit 2.

208. However, the High Court Division did not place reliance on the evidence of PW 1 for the reason also that the FIR did not contain name of the accused persons except Captain Muslem Uddin. These reasons assigned by the High Court Division for disbelieving the evidence of PW 1 cannot be accepted in the given facts and circumstances of the case. It is a settled position of law that an FIR does not require to contain all the details about the occurrence. The FIR generally is lodged immediate after an occurrence to start the investigation in the matter, the details of the occurrence may be disclosed at a later stage during investigation. However, in this particular case considering the very nature of the occurrence of jail killing we are of the view that the non-mentioning of the fact of telephonic conversations between accused Major Rashid and President Mustaque Ahmed from Bangabhaban and the PW 3 IG (Prisons) in that fateful night of occurrence cannot be a reason for not believing the PW 1-who lodged the FIR within a short time of the occurrence of jail killing mentioning that he would submit a detailed report about that incident afterwards. This PW 1, in his deposition before the court, did not name any other accused persons except accused Muslem Uddin. He named accused captain Muslem Uddin only stating that Captain Muslem Uddin himself disclosed his identity as Captain Muslem Uddin. This PW 1 though stated also that Captain Muslem Uddin and his other companions put their signatures in the Gate register, but it cannot be expected that seeing the signatures (which might be initials only) the names and other identities of the signatories could be ascertained. In the circumstances how the High Court Division could say that this PW 1 cannot be believed for the reason also that the FIR did not contain the name of other accused persons except accused Captain Muslem Uddin.

209. The High Court Division has disbelieved the PW 2the then jailor of Dhaka Central Jail Md Aminur Rahman also, but we fail to find out from the impugned judgment of the High Court Division any reason for which the High Court Division disbelieved this PW 2.

210. The High Court Division stated thus:—

> "We do not find this witness (PW 2) a trustworthy one because his disclosure amounts to travesty of truth."

211. We have examined the evidence of this PW 2 minutely. We do not find anything to say that this PW 2 is not trustworthy. We don't understand why the High Court Division made this comment that the evidence of PW 2 "amounts to travesty of truth."

212. The High Court Division disbelieved the PW 3 the then Inspector General of Prisons also stating to the effect that the FIR did not disclose any reference whatsoever about the telephonic conversation from Bangabhaban with him at the Central Jail and that the alleged detailed report submitted by him one day after on 5-11-1975-the Exhibit 6 containing details about the telephonic conversation of the accused persons from Bangabhaban with this PW 3 and others at the central jail was fabricated one-created subsequently for the purpose of this case. The High Court Division disbelieved this Exhibit 6 for the reason only that in the FIR there was no disclosure about the telephonic conversation between the accused persons from Bangabhaban and this PW 3. We cannot agree with the High Court Division on this point also. The only fact of non-disclosure about the telephonic conversation in the FIR cannot prove this Exhibit 6 false and fabricated. In this case, in the very FIR, it was stated clearly that a detailed report about the occurrence would be submitted afterwards. Moreover this fact of telephonic conversations between the accused persons from Bangabhaban and the IG (Prisons) have been corroborated by the PW 17-the then telephone operator of Bangabhaban-a most competent witness. The High Court Division

disbelieved this PW 17 Khan Mohammad Ali Olock also on the contention that there was no proof to prove that this PW 17 actually was an employee of Bangabhaban at that relevant time. The High Court Division pointed out that the attendance register for the employees of Bangabhaban of that relevant time was not produced by the prosecution before the court to prove that this PW 17 was actually an employee of Bangabhaban at that relevant time. The High Court Division, obviously, did not take into consideration at all the fact that the investigation of this case started long 21 years after the alleged occurrence and in that circumstances it might not be possible for the prosecution to find out the relevant attendance registers of the employees of Bangabhaban. In this connection it is also mentioned here that the High Court Division has commented that the non-production of gate register of the Dhaka Central Jail containing the signatures of the assailants warranted an adverse presumption under section 114(g) of the Evidence Act. The High Court Division has stated that according to the PW 1 all the 5 assailants who committed murder of four leaders put their signatures in the gate register before their entrance inside the jail and in the circumstances those gate registers could have been most vital document to connect all the 5 assailants in this case. This time also the High Court Division did not take into consideration at all the fact that the investigation of this case started long 21 years after the occurrence and in the circumstances it might not be possible on the part of the prosecution to find out that gate register of Dhaka Central Jail. The High Court Division, obviously, did not consider also that the signatures or initials only of the assailants in the gate register might not be sufficient for ascertaining the name and identity of those assailants and in that circumstances the non-production of gate register was not fatal at all-specially where neither the FIR nor any of witnesses from jail named any accused person excepting accused Risalder Muslem Uddin only.

213. It appears that the High Court Division has disbelieved the evidence of the prosecution witnesses from Bangabhaban, namely, PWs 11, 13, 16, 17, 18, 21 and 34 relying on some statements of PWs 21, 29 and 46 also. Taking into consideration some statements of these PWs 21, 29, and 46 the High Court Division arrived at the findings that in the very night of occurrence there was no telephone connection at Bangabhaban as that was snapped by the rebel group of brigadier Khaled Mosharraf and that brigadier Khaled Mosharraf proclaimed coup in the night following 2nd November, 1975 and withdrew two Infantry company from Bangabhaban at about 1-00 AM of that very night and the inmates of Bangabhaban having received a message of the coup by their rival party was not in a position to move outside Bangabhaban after 1-00 AM in that night following 2nd November, 1975. On these findings and observations the High Court Division disbelieved all the evidence regarding telephonic conversations between IG (Prisons) and Major Rashid and President Khandaker Mustaque Ahmed and also regarding going out of army personnel including the present accused-respondents from Bangabhaban in that fateful night of occurrence. Before weighing these findings and observations of the High Court Division we require to state the relevant portion of the evidence of PWs 29 and 46 here.

214. PW 29 Colonel Safayet Jamil (Retd.) who was posted at Dhaka as 46 Brigade Commander at the time of occurrence-deposed to the effect that after 15th August, 1975 Khandaker Mustaque Ahmed became the President of Bangladesh and Khandaker Mustaque Ahmed and his associates-the assailants Major Rashid, Major Farooque Rahman, Major Dalim, Major Shahriar, Major Noor Chowdhury, Major Rashed Chowdhury, Major Huda, Major Ahmed Sharful Hossain, Major Aziz Pasha, Lieutenant Kismot, Lieutenant Ansar, Resalder Muslem and others used to reside at Bangabhaban. That on 1st

November, 1975 Khaled Mosharaff, Brig. Nuruzzaman and he (the witness) himself had a meeting at the office of the Chief of General Staff where they decided that in the night following 2nd November, 1975 at 12-00 hours two Infantry company under him would be withdrawn from Bangabhaban and taken to the Cantonment and that it was the hint or proclamation of the coup.

215. That subsequently in the night following 2nd November, 1975 at 12-00/1-00 AM two Infantry company from Bangabhaban were withdrawn; that in order to disconnect the rebels staying at Bangabhaban one battalion of soldiers was sent to Bangabhaban under the leadership of Captain Hafizulla. Captain Hafizulla snapped the telephone connection for disconnecting Khandaker Mustaque from the rebel officers. This PW 29 deposed also that at dawn of 3rd November, 1975 there started oral fight (বাকযুদ্ধ) between them and the rebel group residing at Bangabhaban over telephone, but all the attempts for negotiation failed and they then gave intimation of Air Strike and then Khandaker Mustaque Ahmed demanded safe passage of rebels through General Osmani and they agreed to avoid further bloodshed as they knew that subsequently the rebels could be brought back to country through Interpol; that the rebels were then sent to Bangkok with the help of Chief of Air force A.B.M. Toab. That Major Rashid, Major Farooque Rahman, Major Shahriar, Major Dalim, Major Noor, Major Huda, Major Rashed Chowdhury, Major Ahmed Sharful Hossain, Captain Mazed, Lieutenant Ansar, Lieutenant Kismot, Resalder Muslem and Sarwaer and Captain Zaman left the country. During cross-examination this witness denied the defence suggestion to the effect that he himself and Khaled Mosharaff committed that jail killing with a view to capturing power.

216. The PW 46 Lieutenant Colonel (Retd.) Anwaruzzaman deposed to the effect that in 1975 he, as a Major, was posted at Reverine Support Unit at Sadarghat, Dhaka. That the then Vice President Syed Nazrul Islam was his "Fufa". That on 3-11-1975 at 10-00/11-00 AM he was informed by his paternal uncle late Asaduzzaman over telephone that in the night following 2-11-1975 there was firing inside Dhaka Central Jail and asked to take information about that, but as he was busy, he sent one Habilder to take information; but that Habilder could not get any information. That on 3-11-1975 Khaled Mosharaff proclaimed coup and, as such, he (the witness) himself could not come out of his unit. That on 04-11-1975 he again sent another person to Dhaka Central Jail but that person informed him that his "Fufa" and other leaders were well. Thereafter he was called to Dhaka Cantonment and at the time of his return in the evening, he went to jail and could know that in the night following 2-11-1975 the four leaders were killed inside jail. In course of cross-examination this witness stated that on 2-11-1975 Khaled Mosharaff proclaimed coup, but they could not capture Bangabhaban; that on 3-11-1975 Khandaker Mustaque Ahmed was compelled to give up power and that on 2-11-1975 the situation of Dhaka town was such that it was not possible on his part to collect information from central jail for the sake of his personal security.

217. From the above narrated evidence of PW 29 Colonel Safayet Jamil it is evident that this PW 29 did not state at all that the telephone connections of Bangabhaban were snapped in the night following 2nd November, 1975, rather this witness by deposing that at dawn of 3rd November, 1975 they had oral fight (বাকযুদ্ধ) with rebel group residing at Bangabhaban over telephone has confirmed that in the night following 2nd November, 1975 the telephone connections of Bangabhaban were intact. Obviously the High Court Division ignored this very clear statement of PW 29 that in the dawn of 3rd November, 1975 they talked to the inmates of Bangabhaban over telephone. It appears that the High Court Division has relied on the evidence of PW 21 Commodore

Golam Rabbani also to come to the finding that in the fateful night of occurrence there was no telephone connections in Bangabhaban. This PW 21-the ADC to the President Khandaker Mustaque Ahmed-deposed to the effect that in the fateful night of occurrence, at about 2-00 AM one messenger of President Mustaque Ahmed awoke him from sleep and informed him that he was called by the President. The High Court Division inferred that the President could talk to his ADC the PW 21-over telephone and since the President did not do that, rather sent a messenger to call ADC it indicated that the telephones of Bangabhaban were not in operation in that night following 2nd November, 1975. But we are unable to accept this inference arrived at by the High Court Division. It cannot be accepted that the President had to communicate with his ADC through telephone all the time and he was not supposed to call his ADC by sending a messenger. The calling of his ADC by the President by sending a messenger is no proof of disconnection of telephone lines of Bangabhaban in that fateful night of occurrence. Moreover, as we have already pointed out above, the evidence of PW 29-whom the High Court Division has relied on-has proved sufficiently that in the night of occurrence i.e. in the night following 2nd November, 1975 the telephone connections of Bangabhaban were intact.

218. Relying on the evidence of PWs 29 and 46 the High Court Division came to the findings also that in the night following 2nd November, 1975 brigadier Khaled Mosharaff proclaimed coup and withdrew two Infantry company from Bangabhaban and thus the inmates of Bangabhaban received a message of coup by their rival party in that very night and in that circumstances it was not possible on the part of the inmates of Bangabhaban to go out of Bangabhaban in that night following 2nd November, 1975 and then again to return to Bangabhaban in the early morning of 3rd November, 1975. The High Court Division thus disbelieved the evidence of the PWs regarding going out of army personnel including accused Resalder Muslem Uddin and the present accused-respondents Dafader Marfoth Ali Shah and LD (Dafader) Abul Hashem Mridha from Bangabhaban in that night following 2nd November, 1975 and also their subsequent coming back to Bangabhaban in the dawn of 3rd November, 1975. But on scrutiny of the evidence of PWs 29 and 46 we are unable to agree with these findings also of the High Court Division. The PW 29 though stated to the effect that in the mid night following 2nd November, 1975 two Infantry company from Bangabhaban were withdrawn, but this statement does not prove that the control of Bangabhaban was taken over by the group of brigadier Khaled Mosharraf in that very night and that the withdrawal of two Infantry company only from Bangabhaban was sufficient to give a message of coup by the rival party to the inmate of Bangabhaban. Rather, the clear statement of PW 46 in his examination-in-chief to the effect that on 3-11-1975 Khaled Mosharraf proclaimed coup suggests that in the night following 2nd November, 1975 there was not prevailing any such situation in Bangabhaban for which the army personnel residing at Bangabhaban did not dare to go out of Bangabhaban. This PW 46, in course of cross-examination, though stated that on 2-11-1975 Khaled Mosharaff proclaimed coup, but they could not capture Bangabhaban and that on 2-11-1975 the situation of Dhaka town was such that it was not possible on his part to collect information from central jail for the sake of his personal security, but considering the other statements made by this PW 46 himself in his examination-in-chief we are unable to accept these very statements of PW 46 made in course of cross-examination as correct. In his examination-in-chief the PW 46 stated that in the morning of 3rd November, 1975 he was informed by his relative that in the previous night there was firing inside Dhaka Central Jail and was asked to take information about that, but as he was busy he sent one

Habilder to take information. In view of these statements of this PW 46 it is evident that the question of taking information of Dhaka Central Jail on 2nd November, 1975 did no arise at all and, as such, the statement of this PW 46 that on 2-11-1975 the situation of Dhaka town was such that it was not possible on his part to collect information from Dhaka Central Jail for the sake of his personal security-which he made in course of cross-examination-is not acceptable at all.

219. The High Court Division though has drawn some adverse inference taking into consideration some particular statements of PWs 29 and 46 and thus disbelieved the prosecution witnesses but it did not consider why so many witnesses including very responsible witness like PW 21 Commodore Golam Rabbani-the then ADC to the President-would depose lie against the accused persons. This PW 21, on taking oath, deposed to the effect that in the night following 2nd November, 1975 at about 3-00 AM he saw Resalder Muslem Uddin, Dafader Marfoth Ali Shah and LD (Dafader) Abul Hashem Mridha (the present 2 accused-respondents) and other army personnel to go out of Bangabhaban and subsequently to come back to Bangabhaban. We find no reason to disbelieve these evidence of this PW 21 Commodore Golam Rabbani. We do not find any reason to disbelieve the other PWs also of whom PWs 1 to 3 also were responsible officers of Government. None of the above mentioned prosecution witnesses could have been shown by the defence to have any enmity or ill feelings with any of the accused persons or to have any other reason for deposing falsely against the accused persons. However, we are unable to accept the reasonings the High Court Division has assigned in its impugned judgment for disbelieving the prosecution witness-as cogent or convincing.

220. It appears that the High Court Division has dwelt much on the FIR and ultimately has concluded thus:

> "..... neither Exhibit 1 nor Exhibit 3 can be treated as FIR in this case though these two papers, as it could be gathered from attending circumstances, undoubtedly contains the contents of the report made by PW 1 first in point of time with Lalbagh Police Station on 4-11-1975."

221. Obviously the High Court Division has committed a mistake here. In this case it was stated by the prosecution itself that the original FIR which was lodged by the PW 1 with Lalbagh Police Station on 4-11-1975 was found missing from the record of the GR case concerned while the case was taken up for investigation after a long period of 21 years and that the Exhibit 1 and Exhibit 3 were two copies only of the said FIR procured from two different places. The High Court Division believed that these Exhibit 1 and Exhibit 3 "undoubtedly contains the contents" of the original FIR lodged by the PW 1 and also has taken into consideration the contents of these Exhibit 1 and Exhibit 3. We fail to understand why the High Court Division then wrote so many pages on these Exhibit 1 and Exhibit 3 where the prosecution itself made these two papers Exhibited as the copies only of the original FIR The Exhibit 1 and Exhibit 3, admittedly, are the copies only of the original FIR and these were never tried to be put as the FIR The High Court Division, however, has appreciated the correct legal position that where there is no FIR or where the FIR cannot be proved in accordance with law in that case also the court will not detract the testimony of the witnesses which will have to be assessed on its own merits and the case is to be assessed on merit on the basis of the evidence adduced before it.

222. Mr Abdullah-al-Mamun, the learned defence Counsel has tried much before us to discredit the prosecution witnesses by pointing out some alleged contradictory or discrepant statements of these witnesses. The learned Counsel has

pointed out that the PWs 1 to 9 and 12 made some discrepant statements regarding colour of the wearing uniforms of the assailants and also regarding the kind of the weapons they carried. The learned Counsel has contended that these contradictory statements of these PWs reasonably make these witnesses untrustworthy. But we are unable to accept this argument of the learned Counsel in this present case. Considering the very facts and circumstances of this case we rather, are of the view that it was very much natural on the part of the witnesses to make discrepant statements regarding colour of the wearing clothes and the weapons of the assailants and that these discrepant or contradictory statements of the PWs are so trifling in nature that these cannot raise any suspicion about the truthfulness of the witness or about the occurrence they narrated. The learned Counsel for the accused respondents has pointed out some other alleged minor discrepant or contradictory statements also in the evidence of the prosecution witnesses, but we do not find any of these alleged discrepant or contradictory statements of the prosecution witnesses fatal at all to raise any suspicion about the truthfulness of these witnesses. Discrepancy always occurs even in the evidence of the truthful witnesses. It is also settled that one part of evidence of a witness even if is rejected the other part of the evidence of the same witness may be accepted.

223. Mr Abdullah-al-Mamun has tried to discredit the PW 17 making argument to the effect that from the evidence of the PW 3 it is evident that all the telephonic conversations between Major Rashid and IG (Prisons) were made through direct telephones, but PW 17 claimed that all the telephonic conversations between Bangabhaban and Central Jail were made through PBX number operated by him. But we are unable to accept this argument also of the learned Counsel. We do not find that the evidence of PW 3 prove conclusively that the telephonic conversations between him and the accused Major Rashid and President Khandaker Mustaque Ahmed were made directly and not through P.B.X number.

224. Mr Abdullah-al-Mamun has given much importance on the fact that PWs 11 and 17 could not say the name of the then military secretary to the President correctly and has argued that this fact also suggests that these two PWs 11 and 17 were not employees of Bangabhaban. But we are unable to accept this argument also of the learned Counsel for the defence. These two PWs were employees of Bangabhaban long 21 years before. So, it was not unnatural at all that they might not recollect the name of military secretary to the President correctly. Mr Abdullah-al-Mamun has argued to the effect also that the evidence of PWs 16 and 34 if considered together will show that the PW 17 was not on duty in the Bangabhaban in the night of occurrence. But we find this argument also of the learned Counsel of the accused-respondents not correct. We have minutely examined the evidence of PWs 16, 17 and 34 the 3 receptionists-cum-PA and found that it was clearly proved that the PW 17 Khan Md Ali Olok was on duty in Bangabhaban in the night following 2nd November, 1975 and on the next morning at about 8-00 am he handed over his duty to PW 34 Yakub Hossain Khan.

225. The learned Counsel for the accused-respondents has argued also that the defence case has been supported by the evidence of the own witness of the prosecution and in the circumstances, according to settled principle of law the accused persons are entitled to get benefit of doubt. In support of this argument the learned Counsel has cited several decisions also. The learned Counsel has referred to certain portion of the evidence of the PW 52 Syed Mahbub-al-Karim, Special Officer to slain leader Syed Nazrul Islam which is quoted below:—

"মোশতাফ সরকারের বিরুদ্ধে অভ্যুত্থান ঘটানো পরে, জিয়াউল রহমানকে বন্দী করার পরে, খালেদ মোশারফ গংরা

অভ্যুত্থানের মাধ্যমে প্রাপ্ত ক্ষমতা নিরঙ্কুশভাবে ধরিয়া রাখার জন্য সেই মুহূর্তে প্রাপ্ত ক্ষমতায় বৈধ দাবীদর জেল থানায় থাকা নজরুল ইসলাম সাহেবদের হত্যার ষড়যন্ত্র করা হয় বলিয়া আমার ধারনা।"

226. Mr Abdullah-al-Mamun has argued that this very statement of the own witness of the prosecution has strongly supported the defence case that Khaled Mosharraf and his partymen proclaimed a coup and that it was the four leaders of Awami League who were the legitimate successors to the government after killing of Bangabandhu and, therefore, Khaled Mosharaff and his partymen, with a view to securing their peaceful tenure of office, had killed those 4 leaders inside the Central Jail and the innocent accused persons have been falsely implicated in this case. But we are unable to accept this argument also of the learned Counsel in view of this very statement itself of PW 52. The above quoted statement of PW 52, evidently, was a mere assumption of the witness himself-it was neither from his knowledge nor he was a witness of any such occurrence; this witness did not or could not say anything else also to show that his such assumption was correct. Moreover, the above quoted statement of the PW 52 itself shows that it does not at all support the defence case, because in the above quoted statement of PW 52 it was clearly told that it was the assumption of witness that after materializing the coup against Mustaque Government and after arresting Ziaur Rahman, Khaled Mosharraf and others, with a view to securing their power which they captured through coup, made conspiracy to kill Syed Nazrul Islam and others inside the jail-who were legitimate claimants of the power. Evidently, according to this statement of PW 52 the conspiracy to kill the four leaders inside the jail was hatched by Khaled Mosharaff and his partymen after they materialized the coup against Mustaque Government and arrested Ziaur Rahman. But undisputedly the four leaders were killed inside the jail in the night following 2nd November, 1975 before the coup by Khaled Mosharraf was materialized and also before the arrest of Ziaur Rahman. So, evidently, the above quoted statement of PW 52 does not support the defence case at all and also is of no help for the defence.

227. The other points raised by the learned State Counsel for the accused-respondents have already been answered before while discussing about the impugned judgment of the High Court Division.

228. However, in view of the above discussion it is evident that in this case it has been proved by sufficient evidence that in the night following 2nd November, 1975 at about 4-00 PM the accused Resalder Muslem Uddin along with the present accused respondents Dafader Marfoth Ali Shah and LD (Dafader) Abul Hashem Mridha and two other army personnel entered inside the Dhaka Central Jail and there they killed four Awami League leaders by shooting with fire arms. The evidence of PWs 1-10, 12, 19 and 20 to the effect that in the night following 2nd November, 1975 at 4-00 AM accused Risalder Muslem Uddin along with 4 other army personnel entered inside Dhaka Central Jail and killed 4 leaders Syed Nazrul Islam, Captain Mansur Ali, Tajuddin Ahmed and AHM Kamruzzaman by shooting with fire arms-coupled with the evidence of PWs 13, 17, 18 and 21 to the effect that in that fateful night of occurrence at about 3-00 AM they saw accused Risalder Muslem Uddin and the present 2 accused respondents Dafader Marfoth Ali Shah and LD (Dafader) Abul Hashem Mridha along with 2 other army personnel to got out of Bangabhaban by a army jeep and subsequently at 6-00 AM they saw those army personnel to come back to Bangabhaban prove sufficiently that the present 2 accused-respondents Dafader Marfoth Ali Shah and LD (Dafader) Abul Hashem Mridha also were with accused Risalder Muslem Uddin at the time of alleged occurrence and were actively

involved in the murder of 4 leaders inside the jail. These 2 accused-respondents remained absconding all through till date and their such absconsion also very reasonably tells in favour of their guilt. The trial court, therefore, rightly convicted and sentenced the present accused respondents Dafader Marfoth Ali Shah and LD (Dafader) Abul Hashem Mridha. The High Court Division, evidently, has committed wrong and in juscitce in finding these two accused-respondents not guilty and thereby in acquitting them of the charges levelled against them.

229. Before parting with this judgment we shall have to deal with another important question as agitated from the side of the State-appellant. It has already been stated above that in this case though charge under section 120B of the Penal Code was framed against all the accused persons by the trial court, but the trial court found this charge not proved and consequently acquitted all the accused persons of the charge of criminal conspiracy. Against this order of the trial court acquitting the accused persons of the charge of criminal conspiracy neither the State preferred any appeal nor any relatives of the four slain leaders preferred any revision. At the time of hearing of the death reference and appeals filed by some of the convicted accused persons before the High Court Division the State-respondents though appeared and contested, but this time also the State did not raise any question even against the acquittal of the accused persons from the charge of criminal conspiracy. Before this Division also, at the time of seeking leave to appeal against the acquittal of the present two accused respondents Dafader Marfoth Ali Shah and LD (Dafader) Abul Hashem Mridha-the Sate-petitioner did not raise any question against the acquittal of the accused persons from the charge of criminal conspiracy. But at the time of hearing of this appeal, for the first time, the learned Counsel for the State appellant have made submission regarding the charge of criminal conspiracy and have also prayed for conviction of the accused persons on the charge of criminal conspiracy also. Both Mr Anisul Huq and the learned Attorney-General Mr Mahbubey Alam have made elaborate submissions to the effect that in this case there are overwhelming evidence on record to prove the charge of criminal conspiracy against the accused persons and in the circumstances, considering the very nature of the offence of gruesome and barbaric killing of 4 national leaders inside jail, this Division-the apex court of the country, by exercising its power of doing complete justice under Article 104 of the Constitution, can now consider whether the charge of criminal conspiracy was proved and if finds this charge of criminal conspiracy proved then can pass appropriate order at this stage also.

230. Criminal conspiracy has been defined in section 120A of the Penal Code as under—

"When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."

231. In this present case, from the evidence narrated above, we, in agreement with the learned Counsel for the State-appellant, find that there are sufficient evidence to prove that there was a criminal conspiracy to kill the 4 leaders inside jail. The evidence of the PWs 1-3 and 17-whom we have found trustworthy-have proved sufficiently that in the fateful night of occurrence, before the assailants accused Risalder Muslem Uddin and others came to the jail, several telephone calls from Major Rashid and others from Bangabhaban

came to IG (Prisons) and that Major Rashid informed IG (Prisons) over telephone that Risalder Muslem Uddin would go to jail and asked IG (Prisons) to allow him to talk to 4 leaders and later Major Rashid asked IG (prisons) whether Risalder Muslem Uddin reached to the jail and asked IG (Prisons) to allow them to talk to 4 leaders and that after the arrival of accused Risalder Muslem Uddin and his accomplices to jail Major Rashid and President Khandaker Mustaque Ahmed, being informed by the IG (Prisons) that Risalder Muslem Uddin wanted to kill the 4 leaders, told IG (Prisons) to allow Risalder Muslem Uddin to do what he wanted to do. These evidence of the PWs 1-3 and 17 lead to the only inference that there was a criminal conspiracy to kill 4 leaders inside the jail. The evidence of PW 11, PW 13 and PW 18 to the effect that in the fateful night of occurrence they saw the accused persons holding meeting and discussing about the 4 leaders confined in the jail and also heard President Khandaker Mustaque Ahmed to ask who would go to jail and in reply Major Rashid to tell that Risalder Muslem Uddin and his men would go to jail-also, coupled with the other evidence, support the charge of criminal conspiracy. The evidence of PW 17 to the effect that in the night of occurrence, sometime after 3-00 AM, Major Rashid, Major Farooque, Major Dalim, Major Bazlul Huda, Major Rashed Chowdhury and Major Aziz Pasha came to his (PW 17's) room in armed condition and told him to connect IG (Prisons) by telephone and while got telephone connection Major Rashid asked the IG (Prisons) whether Captain Muslem Uddin reached to the jail-coupled with the other evidence mentioned above-strongly supports the prosecution case that there was an agreement among the accused persons to kill the 4 leaders inside the jail by sending the killing squad of Risalder Muslem Uddin and his men. The evidence of PWs 26, 28, 29 and 33 narrated above have proved that the accused persons left the country together on the very next day of the occurrence. This fact of fleeing away of the accused persons together on the very next day of the occurrence also supports the prosecution case that the accused persons together hatched criminal conspiracy to kill the 4 leaders inside the jail.

232. Considering all these evidence and facts and circumstances we are of the opinion that in this case there are sufficient evidence-both direct and circumstantial-to prove the charge of criminal conspiracy.

233. Now the pertinent question is whether at this stage, this Division can make any order convicting and sentencing the accused persons or any of them on the charge of criminal conspiracy by exercising its power of doing complete justice under Article 104 of the Constitution.

234. Article 104 of the Constitution Provides:

> "The Appellate Division shall have power to issue such directions, orders, decrees or writs as may be necessary for doing complete justice in any cause or matter pending before it, including orders for the purpose of securing the attendance of any persons or the discovery or production of any document."

235. This article of the Constitution has invested the last court of the country with wide power of issuing necessary directions, orders etc. for doing complete justice in appropriate cases. The exercise of this power, however, "is circumscribed only by two conditions, first is, that it can be exercised only when Supreme Court otherwise exercises its jurisdiction and the other is that the order which Supreme Court passes must be necessary for doing 'complete justice in the cause or matter pending before it." *[vide Chandrakant Patil vs State, (1998) 3 SCC 38].* 'Complete justice, however, has not been defined or described in this article of the Constitution. Mr Mahmudul Islam in his "Constitutional Law of Bangladesh"

(First Edition) at page-536 para:5.200 has stated thus:-

> "Power to do 'complete justice' is an extraordinary power given to the highest tribunal of the land and the power is to be exercised sparingly and in exceptional circumstances to remove manifest and undoubted injustice. Facts may be of such varied pattern, that it is difficult to lay down any fixed principles for doing 'complete justice'. All that can be said is that 'complete justice' should be done not according to the personal views of the judges, but in exceptional circumstances on clear showing of injustice for the removal of which the existing laws have not made any provision."

236. In the case of *AFM Naziruddin vs Hameeda Banu* reported in *45 DLR (AD) 38* this Division observed :—

> "It is an extraordinary procedure for doing justice for completion of or putting an end to a cause or matter pending before this Court. If a substantial justice under law and on undisputed facts can be made so that parties may not be pushed to further litigation then a recourse to the provision of article 104 may be justified."

237. In *Prem Chand Garg vs Excise Commissioner (AIR 1963 SC 996)* the Indian Supreme Court held:—

> "an order which this Court can make in order to do 'complete justice' between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws."

238. In a subsequent case of *Union Carbide Corp. vs Union of India (AIR 1992 SC 248)* the Indian Supreme Court observed that in order to preclude the exercise of this constitutional power the prohibition of the statutory law must be

> "shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that powers under article 142 are subject to such express statutory prohibitions. That would convey the idea that statutory prohibitions override a constitutional provisions. Perhaps, the proper way of expressing the idea is that in exercising powers under article 142 and in assessing the needs of 'complete justice' of a cause or matter, the apex court will take note of the express provisions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly".

239. Doing 'complete justice' does not contemplate doing justice to one party by ignoring statutory provisions and thereby doing injustice to the other party by depriving him of the benefit of law. If a valuable right is accrued to the other side this fact should not be ignored in exercising the power of doing 'complete justice.

240. In the present case, as it has already been mentioned above, the trial court acquitted all the accused persons of the charge of criminal conspiracy. Against this order of acquittal from the charge of criminal conspiracy the State had a right to seek remedy in appeal as per statutory provisions or by filing a revision by any of the relatives of the slain leaders. But none of the aggrieved parties including the State-informant filed any appeal or revision against that order of acquittal from the charge of criminal conspiracy within the statutory period of limitation or even beyond the statutory period of limitation. Even before the appellate court-which heard the death reference and some appeals filed by the convicted accused persons against the judgment of the trial court the State-respondents, though contested, but did not raise

any objection against the order of acquittal from the charge of criminal conspiracy. Even at the time of seeking leave to appeal before this Division against the judgment of the appellate court the State-leave petitioner did not raise any question against that order of acquittal from the charge of criminal conspiracy. Leave to appeal was granted only to examine whether the order of acquittal of present two accused-respondents Dafader Marfoth Ali Shah and LD (Dafader) Abul Hashem Mridha from the charges under sections 302/34 and 302/109 of the Penal Code passed by the High Court Division was correct and justified. In the present appeal, therefore, the only matter for our consideration is the propriety of the impugned acquittal of these two accused-respondents of the charges under sections 302/34 and 302/109 of the Penal Code only. But at the time of hearing of this appeal, for the first time, the learned Counsel for the State appellant have questioned the acquittal of all the accused persons from the charge of criminal conspiracy by the trial court and submitted that by exercising the power under article 104 of the Constitution this Division now, considering the overwhelming evidence on record, can convict and sentence the accused persons on the charge of criminal conspiracy.

241. But it has already been pointed out above that the exercise of the power of doing 'complete justice' under article 104 is circumscribed by two conditions, (i)that it can be exercised only when Supreme Court otherwise exercises its jurisdiction and (ii) that the order which Supreme Court passes must be necessary for doing "complete justice" in the cause or matter pending before it. Obviously the matter pending before us in this appeal is the acquittal of two accused respondents Dafader Marfoth Ali Shah and LD (Dafader) Abul Hashem Mridha of the charges under sections 302/34 and 302/109 of the Penal Code. Leave to file this appeal was granted to consider only whether the acquittal of the present two accused respondents from the charges under sections 302/34 and 302/109 of the Penal Code was correct and justified. So, obviously, the question whether the acquittal of all the accused persons from the charge of criminal conspiracy is not at all a matter pending before us. It has already been pointed out above that the present State-appellant or any other aggrieved person had opportunity to challenge the acquittal of accused persons from the charge of criminal conspiracy as per statutory provisions, but they did not avail that opportunity and allowed a long period to be elapsed rendering that opportunity to appeal time barred and conferring the accused persons a right to be treated acquitted from the charge of criminal conspiracy as ordered by a court of law. In the name of doing 'complete justice' this right of the accused persons now cannot be ignored.

242. In the case of *AFM Naziruddin vs Mrs Hameeda Banu [45 DLR (AD) 38]* this Division has cautioned the exercise of power of doing complete justice thus:

> "In the name of 'complete justice' if a frequent recourse is made to article 104 then this Court will be exposed to the opprobrium of purveyor of "palmtree justice".

243. In that case this Division observed also thus:

> "in the name of complete justice the Appellate Division may not grant relief which the Court of first instance will not be able under the law to grant, otherwise no litigant, in search of complete justice will rest till he reaches the end of the long tunnel of litigation in this Court."

244. The learned Counsel for the State-appellant have cited several cases of the apex courts of this region where the apex courts exercised the power of doing 'complete justice' by issuing necessary orders. The learned Counsel have cited the cases of *DM Prem Kumari vs Divisional Commissioner, Mysore, (2009) 12 SCC*

267, Gannysons Ltd. vs Sonali Bank, 37 DLR (AD) 42, Balram Prasad Agarwal vs State of Bihar, (1997) 9 SCC 338), Raziul Hasan vs Badiuzzaman Khan, 48 DLR (AD) 71, AFM Naziruddin vs Mrs. Hameeda Banu, (45 DLR (AD) 38, Bangladesh vs Mashiur Rahman, 50 DLR (AD) 205, State vs Muhammad Nawaz, 18 DLR (SC) 503 and Chandrakant Patil vs State, ((1998) 3 SCC 38.

245. We have gone through all these judgments and found that the facts and circumstances of all these cited cases were completely different from the facts and circumstances of the present case. In all those cases the Supreme Court exercised the power of doing 'complete justice' in the matters which were pending before the Supreme Court for decision.

246. In *DM Prem Kumari vs Divisional Commissioner,* Mysore, the Supreme Court, considering the peculiar facts and circumstances of the case, instead of deciding the matter on merits which might have gone against appellant Prem Kumari, directed the respondent authorities to save appellant's wrong appointment as primary school teacher, without treating it as a precedent in order to do complete justice. In that case the matter for decision of the court was whether the writ petitioner-appellant's appointment as a primary school teacher was lawful.

247. In *Gannysons vs Sonali Bank,* Sonali Bank obtained a decree in a suit for foreclosure of mortgage of the property of Gannysons (which was being treated as an abandoned property) and levied execution of the decree. Gannysons filed objection against the decree under section 47 of the Code of Civil Procedure and the matter came up before the Appellate Division which decided the dispute in favour of Gannysons. But Gannysons filed a review petition on the ground that the order of the court was not fully in conformity with the decision. In allowing the review, the court in exercise of the power under article 104 gave relief to Gannysons declaring that the property of Gannysons was not an abandoned property against the fundamental principle of our legal system of granting relief only to the person approaching the court seeking it. The court exercised this power saying that Gannysons had already suffered and to compel it to further litigation in the form of a suit for declaring that the properties in question were not abandoned property would result not only in further harassment but also long delay and deprivation of the enjoyment of the property.

248. In *Balaram Prasad Agarwal vs State of Bihar,* the accused persons were charge-sheeted under sections 498A, 302 and 120B of Indian Penal Code. But the trial court framed charge only under section 302 of IPC which was not found proved on trial by the trial court and the trial court acquitted the accused persons from that charge under section 302 of IPC, but the trial court, in its judgment made some observations to the effect that the evidence on record showed that the accused persons used to torture the victim wife in various way. The complainant, the father of the victim filed revision against the acquittal of the accused persons which ultimately came before the Supreme Court of India. Considering the facts and circumstances and evidence on record, the Supreme Court, instead of remanding the case for retrial, itself framed charge against the accused persons under section 498A and on consideration of the evidence on record found the accused persons guilty under the said section and accordingly convicted and sentenced them. In that case it was held that in the circumstances of the case, the Supreme Court can itself examine the question of culpability of the accused for offence under the said section so as to obviate protraction of trial and multiplicity of proceedings against the accused.

249. In *Raziul Hasan vs Badiuzzaman Khan,* the respondent Badiuzzaman Khan filed a case

before the Administrative Tribunal praying for a declaration that he had been the Director/Deputy Secretary with effect from 18-04-[illegible] or in the alternative from 29-06-1981 and also for a declaration that the placement of Raziul Hasan and another above him in the seniority list was illegal and void. The Administrative Tribunal allowed that case. After disposal of that administrative tribunal case Raziul Hasan, being informed about that judgment of the Administrative Tribunal, filed an appeal before the Administrative Appellate Tribunal which was dismissed as time barred. Thereafter, Raziul Hasan came to this Division with a petition for leave to appeal and leave was granted to consider the case of the appellant Raziul Hasan for doing complete justice under article 104 of the Constitution. Ultimately this Division, on hearing both the parties, found that the appellant Raziul Hansal was senior to respondent and that a gross injustice had been done to him for no fault or latches of his own and held that since a valuable right accrued to the appellant in law and fact it was the most appropriate case to exercise the jurisdiction under article 104 of the Constitution and consequently remanded the case to the Administrative Tribunal to reconsider its order as to the gradation list only.

250. In *AFM Naziruddin vs Mrs Hameeda Banu*, the appellant during the subsistence of his marriage with the defendant built at his cost a house on the land belonging to the defendant. Subsequently the relationship became strained and ended in dissolution. The appellant filed a suit for declaration that he is the irrevocable licensee of his wife and the real owner of the suit house. The suit was decreed by the trial court, but was dismissed by the High Court Division. This Division, considering the facts and circumstances of the case, made a rough and ready adjustment of the claims of the parties and ordered that the appellant will retain his possession in that floor of the suit building where he was then residing with no right to transfer his possession, the respondent may recover possession thereof any time within one year from date on payment of Tk.6,00,000 (the construction cost of the building) in default of which the appellant would have only right to live in that floor of the building where he was then residing during his life time.

251. In *Bangladesh vs Mashiur Rahman,* an *ex-parte* decree was challenged on the ground of being obtained by fraud by filing miscellaneous case under Order IX, rule 13 of the Code of Civil Procedure. The trial court dismissed that miscellaneous case though found that fraud seemed to have been practised. The High Court Division also dismissed the miscellaneous appeal filed against the judgment of the trial court. The case ultimately came up before this Division. This Division having found that fraud was practised upon court in obtaining that *ex-parte* decree set aside that *ex-parte* decree though the application for setting aside that *ex-parte* decree was barred by limitation for doing complete justice by preventing abuse of the process of law.

252. In the case of *State vs Muhammad Nawaz* the Supreme Court, issued suo moto notices to the accused persons who were improperly acquitted by the High Court and ultimately, after hearing, convicted and sentenced some of those accused persons exercising its power under article 104 of the Constitution. In that case 28 persons were tried for offences under sections 148, 333, 307 and 302 of the Penal Code read with section 140 of the Penal Code by the trial court. The trial court acquitted 10 persons and convicted 18 of the accused. Muhammad Nawaz and Fazal Ilahi-the two accused persons were sentenced to death while the rest were awarded sentences of transportation for life. On appeal the High Court upheld the convictions and sentences of 7 of the convicts and acquitted the rest. The two accused who were awarded death sentences were also among those acquitted. The 7 persons whose appeal was dismissed by the High Court were

granted special leave to appeal and by the same order, leave was also granted to the State to appeal against the acquittal of the remaining 11 persons by the High Court. Ultimately the Supreme Court, on objection raised from the accused persons rejected the appeal preferred by the State on the ground that it was barred by limitation. However, the Supreme Court found out that "the High Court purported to adopt two criteria for convicting some of the accused persons. They held that 6 of the accused who had admitted their presence during the occurrence and had raised the plea of self-defence, should be convicted along with those who were named by the injured PWs as their own assailants. While giving effect to these findings, however, the High Court committed an error in so far as, inadvertently, it failed to record convictions against three of those 6 who had admittedly been present at the spot at the relevant time and 2 others who had been named by Raja PW as his own assailants, those 5 being included among those who were convicted by the trial judge." On such findings the Supreme Court held, "the error being patent on the record in this case, this Court should have suo motu issued notices to those of the respondents who had secured an acquittal from the High Court as the result of the above mentioned error." The Supreme Court ultimately, after hearing the learned Counsel for those acquitted accused persons convicted and sentenced some of them.

253. In the case of *Chandra Kant Patil vs State [(1998) 3 SCC 38]* the Supreme Court of India, considering the very grave nature of the offence committed, enhanced the sentences of the accused appellants by exercising its power of doing complete justice.

254. Obviously in all these above cited cases, excepting the case of *State vs Muhammad Nawaz*, the apex courts exercised the power of doing complete justice in the matters pending before the court and in very exceptional circumstances. In the case of *State vs Muhammad Nawaz* the Supreme Court exercised the power of doing complete justice to rectify the patent error made inadvertently by the High Court. So none of these cited cases is of any help for the learned Counsel of the State-appellant to support their argument that in the present appeal filed challenging the acquittal of two accused-respondents from the charges under sections 302/34 and 302/109 of the Penal Code the other accused persons-who were acquitted by the trial court from the charge of criminal conspiracy-can be convicted now on the charge of criminal conspiracy.

255. However, considering the above stated facts and circumstances and the legal position we do not find that there is any scope now to convict the accused persons or any of them on the charge of criminal conspiracy by exercising the inherent power of this Division under article 104 of the Constitution.

256. However, this appeal is allowed. The impugned judgment of the High Court Division, so far as it relates to the accused-respondents Dafader Marfoth Ali Shah and LD (Dafader) Abul Hashem Mridha is set aside. The order of conviction and sentence of these two accused-respondents passed by the trial court is maintained.

Syed Mahmud Hossain J : I have gone through the separate judgments prepared by Surendra Kumar Sinha, J. and Nazmun Ara Sultana, J. I agree with the reasoning and findings given by Nazmun Ara Sultana, J.

Muhammad Imman Ali J : I have gone through the separate judgments prepared by Surendra Kumar Sinha, J. and Nazmun Ara Sultana, J. I agree with the reasoning and findings given by Nazmun Ara Sultana, J.

Ed.

APPELLATE DIVISION
(Civil)

Surendra Kumar Sinha CJ
Nazmun Ara Sultana J
Syed Mahmud Hossain J
Hasan Foez Siddique J

Judgment
November 5th, 2015.

Chief Executive Officer, Axiata (Bangladesh) Ltd.....Petitioner

vs

Kalipada Mridha and others...Respondents*

Nationnal Anthem Rules, 1978
Rule 5

National anthem can be played only at the places and on the occasion specified in the Rules. Singing of national anthem should not be restricted in respect of the occasions and places specified in the Rules.

It is not possible to give an exhaustive list of occasions, on which, singing (as distinct from playing) of the national anthem can be permitted. But there is no objection to the singing of the national anthem accompanied by mass singing so long as it is done with due respect as a salutation to the motherland and proper decorum is maintained. .....(12 & 13)

Nationnal Anthem Rules, 1978
Rule 5

Singing of national anthem should not be restricted only in respect of the occasions specified in the Rules only.

In the earlier judgment, we have held that there is no scope for commercial use of national anthem and such commercial use of national anthem shows utter disrespect to the national anthem. As regards passing the judgment behind the back of the leave-petitioner, we are of the view that as soon as the leave-petition was filed the leave-petitioner has the option to assail the judgment on merit. .....(16 & 14)

Sara Hossain, Advocate, instructed by Md Zahirul Islam, Advocate-on-Record—For the Petitioner.

None Represented—Respondents.

Judgment

Syed Mahmud Hossain J : This civil petition for leave to appeal is directed against the judgment and order dated 5-8-2010 passed by the High Court Division in Writ Petition No. 8493 of 2006 making the Rule absolute with directions.

2. The facts, leading to the filing of this civil petition for leave to appeal, in a nutshell, are:

The writ petition is premised on an advertisement published in a comic magazine named "Bicchu" dated 6-8-2006 which was circulated as a magazine of a national daily "The Daily Jugantor". The advertisement was published for the subscribers of Grameen Phone, Bangla Link and Aktel (presently, Robi) for the downloading of Ringtone to be played in their respective mobile phones. The said advertisement contained an assortment of songs, both folk and modern, in Bangla and Hindi as well as some English songs to be played in the mobile phone of any individual subscriber as a Ringtone captioned under the heading 'বাংলা সিনেমা', 'থিম', 'দেশাত্ববোধক', 'পল্লীগীতি' ও 'লোকগীতি', 'বাংলা আধুনিক' etc. In the list of 'দেশাত্ববোধক', songs, the first item appearing therein is the National Anthem of Bangladesh.

3. Upon publication of the aforesaid advertisement, the writ-petitioner, as a patriotic citizen of the country, issued a notice demanding justice on 17-8-2006 addressed to the concerned Ministries for withdrawal, cancellation, revocation of the advertisement, so far as it relates to the downloading of the National Anthem as a Ringtone.

*Civil Petition for Leave to Appeal No. 626 of 2011.

(From the judgment and order dated 5-8-2010 passed by the High Court Division in Writ Petition No.8493 of 2006)

Editors Note: Case reported in 67 DLR (AD) 292 has been modified with observations

4. Being aggrieved by and dissatisfied with the failure of the writ-respondents to withdraw public offer published in the Daily Jugantor's comic magazine 'Bicchu' dated 6-8-2006 so far as it relates to downloading option for the National Anthem of Bangladesh as Ringtone, the petitioner filed a writ petition before the High Court Division and obtained Rule Nisi in Writ Petition No. 8493 of 2006.

5. The writ-respondent Nos. 6 and 7 filed separate powers but no affidavit-in-opposition was filed controverting the material statements made in the writ petition.

6. The learned Judges of the High Court Division upon hearing both the sides by the judgment and order dated 5-8-2010 made the Rule absolute with directions.

7. Feeling aggrieved by and dissatisfied with the judgment and order of the High Court Division, proforma-respondent No. 10 as the leave-petitioner has filed this civil petitions for leave to appeal before this Division.

8. Ms Sara Hossain, learned Advocate, appearing on behalf of the leave petitioner, submits that the High Court Division committed illegality in directing the leave-petitioner to donate a sum of Taka 50,00,000 (fifty lakh) to the National Institute of Cancer Research Institute and Hospital, Mohakhali, Dhaka, without issuing any Rule on it and as such, the aforesaid direction should be set aside. She further submits that in the judgment delivered in Civil Petition for Leave to Appeal Nos. 342 and 327 of 2011 arising out of the same impugned judgment this Division directed that national anthem could be played only at the places and on the occasions specified in the Rules and that such restriction should be removed and that national anthem may be sung so long as it is done with due respect as a salutation to the motherland and proper decorum is maintained.

9. We have considered the submissions of the learned Advocate of the leave-petitioner, perused the impugned judgment and the materials on record.

10. Admittedly, from the same impugned judgment, Civil Petition for Leave to Appeal Nos. 342 and 327 of 2011 were filed and those civil petitions were disposed of by the judgment dated 11-5-2015.

11. In the earlier judgment, we have held that the national anthem is the nation's cherished property. We protect the national anthem because it is an important song of national unity. Bangladeshis regard the national anthem with an almost mystical reverence regardless of what sort of social, political or philosophical beliefs they may have. Commercial use of national anthem amounts to its desecration.

12. There is no gainsaying the fact that the leave-petitioner has been charging revenue for playing the national anthem on the mobile phones. On consideration of the relevant provision of National Anthem Rules,1978, we have held that national anthem can be played only at the places and on the occasion specified in the Rules. We are, however, of the view that singing of national anthem should not be restricted in respect of the occasions and places specified in the Rules.

13. It is not possible to give an exhaustive list of occasions, on which, singing (as distinct from playing) of the national anthem can be permitted. But there is no objection to the singing of the national anthem accompanied by mass singing so long as it is done with due respect as a salutation to the motherland and proper decorum is maintained. Similar view has also been expressed in "the orders relating to national anthem of India."

14. In the earlier judgment, we have held that there is no scope for commercial use of national anthem and such commercial use of national anthem shows utter disrespect to the national anthem. As regards passing the judgment behind the back of the leave-petitioner, we are of the view that as soon as the leave-petition was filed the leave-petitioner has the option to assail the judgment on merit.

15. Ms Sara Hossain, however, could not assail the impugned judgment on merit.

16. In the light of the findings made above, we are of the view that the High Court Division was justified in making the Rule absolute. We are, however, of the view that singing of national anthem should not be restricted only in respect of the occasions specified in the Rules only. We have already modified the restriction of the singing of national anthem in the body of the judgment.

17. The donation to be paid by the leave-petitioner is reduced to Taka 30,00,000 (thirty lakh) and the amount shall have to be paid to the National Institute of Cancer Research Institute and Hospital, Mohakhali, Dhaka.

Accordingly, this civil petition is disposed of with the observations made above.

Ed.

APPELLATE DIVISION
(Civil)

Md Muzammel Hossain CJ SK Sinha CJ Md Abdul Wahhab Miah J Hasan Foez Siddique AHM Shamsuddin Chowdhury J **Judgment** November 25th, 2014.	Hossain Shahid Chinu.....Petitioner vs Abdul Wahab and others..... .....Respondents* (in both the Petitions)

Partition Act (IV of 1893)
Section 4

The suit land is not an undivided dwelling house rather it is admittedly a commercial place on which petitioners and other co-sharers have been conducting their business treating the suit land as commercial premises. Since the suit land is not a undivided dwelling house but a commercial place an application under section 4 of the Partition Act cannot be invoked to buy out the share of a stranger purchaser in the suit land. .....(19)

SJ Kishori Sarker vs Azizur Rahman, 40 DLR (AD) 150 and Sayesta Bibi vs Juma Sha, 42 DLR (AD) 53 ref.

AJ Mohammad Ali, Senior Advocate, instructed by Zainul Abedin, Advocate, Advocate-on-Record—For the Petitioner.

Mahbubey Alam, Senior Advocate, with Abdul Quiyum, Senior Advocate, instructed by Syed Mahbubur Rahman, Advocate-on-Record—For the Respondents (In both the Petitions).

Judgment

Md Muzammel Hossain CJ : This civil petition for leave to appeal is directed against the impugned judgment and order dated 2-8-2012 passed by the High Court Division in Civil Revision No. 5786 of 2000 discharging the Rule.

2. The facts relevant for disposal of the Rule are that the respondent No. 1 Abdul Wahab as plaintiff on 29-1-1975 filed Title Suit No. 17 of 1975 in the 3rd Court of the then sub-ordinate Judge, (presently Joint District Judge) Dhaka for partition of his purchased land mentioned in the schedule B to the plaint out of Schedule A to the plaint stating inter-alia, that the CS Plot Nos. 16 and 17 under Khatian No. 842 "Dha" of Mouza Shahar Dhaka belonged to Sonabi Bewa in rayati jote right and in the column her name was shown as tenant as Dhakhalker korfa tenant; that after CS operation, the Korfader left the plot and went away to some other village and Sonabi Bewa brought the plot to her khas possession and continued her possession; that CS plot No.19 was Baganbari which is adjacent to Plot No. 17; that Sonabi Bewa began to possess about 08 decimals of land of CS Plot No.19; that while Sonabi Bewa was in possession of the said plots by erecting huts and letting out those to tenants, she died leav-

*Civil Petition for Leave to Appeal No. 270 of 2013.
(From the judgment and order dated 2-8-2012 passed by the High Court Division in Civil Revision No. 5786 of 2000)

ing behind a son, salam and a daughter, Akhtbi Bibi who inherited the property; that in course of time Salam died leaving only son, Rahim, who got his father's share; that Rahim and his aunt Akhtbi Bibi sold their shares to one Ram Charan Femari by registered deed dated 20-12-1946 and delivered possession; that while in possession of the purchased land, Ram Charan Femari sold .262 ajutangsha of land from CS Plot No. 16 to one Nagar Bashi Gope and delivered possession to him; that Ram Charan Femari subsequently sold the rest from plot No.16 along with the land of Plot No. 17 quite openly and exclusively to Mvi Mohammad Elahadad by registered deed dated 22-3-1947 and delivered possession to the purchaser; that Mvi Elahadad while in such possession adversely to all others died leaving 2 sons, namely, Mohd. Khaleque Newaj and Mohd. Rahim Newaj and 3 daughters, namely, Begum Raushan Akhtar Khatun, Begum Ayesha Akhter Khatoon and Begum Nasima Akhtar Khatoon who inherited their father's entire share and while they were in possession at a time found it difficult to manage the same personally and thus the son Rahim Newaj and his mother and sisters appointed Md Khaleque Newaj as their constituted Attorney to manage the same and to transfer if required; that Md Khaleque Newaj while in such possession transferred .2125 ajutangsha of land from CS plot No. 17 appertaining to Khatian No. 842 "DA" of Mouza Shahar Dhaka for self and Attorney of others to defendant No.1 by registered deed Nos.139, and 140 dated 4-1-54 and 5-1-54 respectively; that the transferee went into possession and by erecting structures thereon had been possessing personally in some portion and letting out the same to different persons; that the heirs of Md Elahabad transferred some land to defendant Nos.1 and 3 and thus they acquired .3000 ajutangsha of land in plot No.17 and .3100 ajutangsha of land in plot No.16 by registered deed and .0800 ajutansha of land in CS Plot No. 19 which their predecessors were in adverse possession from long before; that the said land correctly recorded in SA plot No.1162 under SA Khatian No. 174 in the name of defendant No.1 to 3; that the defendant No.2 while in possession in ejmali with other brothers sold the land mentioned in the schedule B to the plaint by two registered deeds dated 5-2-1974 and the defendant Nos. 1 to 3 sold their share to defendant Nos. 4 and 5 which was later on acquired by DIT; (presently RAJUK); that the suit land never partitioned and the plaintiff in January 1975 requested to make partition but the defendant did not comply with the request, hence the suit.

3. The defendant No. 1 along with his wife contested the Title Suit No. 17 of 1975 by filing a joint written statement. Upon consideration of the cases of both the parties the then sub-ordinate Judge, Dhaka decreed the suit in preliminary form and allotted a saham to the plaintiff in respect of .1100 ajutangsha of land, on partition of the suit property described in the Schedule A to the plaint.

4. Thereafter, the trial court appointed an Advocate Commissioner to make the preliminary decree final. In this state of affairs the plaintiff decree-holder started taking preparation to enter into the suit land with undesirable elements in the name of the Commissioners of work for repayment of suit land etc. The defendant has been living in the suit property jointly with some other defendants and to save his undivided dwelling house from the stranger-purchaser preferred an application under section 4 of the Partition Act to purchase the share of the plaintiff in the undivided dwelling house property in suit at a price to be determined by the court and the said application was registered as Miscellaneous Case No. 725 of 1989.

5. The predecessor of the present petitioner No.1 filed Miscellaneous Case No. 725 of 1989 on 4-8-1989 before the learned sub-ordinate Judge, (presently Joint District Judge) 3rd Court, Dhaka under section 4 of the Partition Act arising out of the original Title Suit No. 17 of 1975 filed

by respondent No. 1 for partition.

6. The Title Suit No. 17 of 1975 was decreed in preliminary form by the learned subordinate Judge on 23-6-1979 and the plaintiff-respondent No.1 got saham in respect of 0.11 acre of land. Thereafter an Advocate Commissioner was appointed on 5-9-1979. Against the said decree dated 23-6-1979 the defendant-petitioner unsuccessfully preferred First Appeal No. 1 of 1980 before the High Court Division and the preliminary decree was affirmed on 22-3-1984 with modification in holding that the plaintiff-respondent No.1 would get a saham of $0.1062^{1}/_{2}$ acre of land instead of 0.11 acre. Being aggrieved by the impugned judgment and decree passed by the High Court Division in FA No. 1 of 1980 the predecessor of the petitioner preferred the Civil Appeal No. 2 of 1985 before the Appellate Division which was dismissed affirming the judgment and decree passed in FA No. 1 of 1980 by the High Court Division.

7. While the position was such the instant Miscellaneous Case No. 725 of 1989 was filed by Waliullah the predecessor of the petitioner stating, *inter alia*, that the said Waliullah and the opposite party Nos. 2-8 of the original application being Miscellaneous Case No. 725 of 1989 are members of the dwelling house of the joint undivided family. The present opposite party No. 1 has constructed a one-storied building at the east side of the suit plot and the building is a commercial concern and a restaurant. The petitioner also made other 11 semi-pucca rooms which were let out to different commercial units including, SWASH Corporation and Abul Watch. The opposite party Nos. 3-8 of the original application have constructed semi-pucca homestead adjacent to Sadar Road which were let out to defendant Nos. 7 to 17 of the original Title Suit No.17 of 1975. The opposite party No.1 claimed that he had purchased about 0.11 acre of land from opposite party No. 2 by two deeds of sale dated 25-2-1974 and 5-2-1974 and opposite party No. 1 had no construction in his purchased land in the suit plot. In the suit plot No.1162 there were 4 semi-pucca rooms up to 1966 and after 1966 the petitioner constructed buildings at his own cost having approved plan from DIT. The opposite party Nos. 1 is a stranger purchaser and not a member of the undivided family. The possession of the opposite party No.1 would be a threat to the privacy of the members of the family in respect of their prestige, life, privacy, pardah and peaceful possession. In order to prevent the unexpected illegal trespass of opposite party No. 1 the petitioner filed the instant miscellaneous case under section 4 of the Partition Act.

8. The opposite party- respondent No.1 contested the case by filing a written objection denying all material allegations made in the application contending, *inter alia*, that to delay and frustrate the decree upheld upto the Appellate Division the petitioner filed the instant case. The instant case is not maintainable without a specific undivided family dwelling house. The land earlier was vacant land in which later on many constructions were made and gradually became a commercial area. Admittedly the said area is a commercial area and not a dwelling house and has been let out to different persons including defendant Nos. 7-17 of the original suit. The petitioner himself has also started a hotel business in the name of 'Aloka Hotel'. The original partition suit was long ago decreed on 23-6-1979 which was affirmed by the Appellate Division. The opposite party never intended to harass the members of the family of the petitioner. The suit land is not a dwelling house rather it is a commercial area which is let out to different persons and it also includes a hotel and different kinds of shops and there is no legal reason to claim the commercial area as a dwelling house belonging to the members of an individed family. The opposite party No. 1 has got a shop and some show rooms in a part of suit land which are let out to the tenants. The case is liable to be dismissed.

9. The trial court found that the suit land

adjoining to the North South Road is a commercial area and there is no reason to apprehend about destruction of privacy and pardah of the family members of the petitioner, specially when there is a restaurant business conducted by the son of the petitioner and there is no legal reason to invoke section 4 of the Act in the given circumstances.

10. There were series of litigations mostly regarding interlocutory matters and ultimately, the learned sub-ordinate Judge, 3rd Court, Dhaka dismissed the Miscellaneous Case under section 4 of the Partition Act by judgment and order dated 5-9-2000.

11. Bing aggrieved by the impugned judgment and order dated 5-9-2000 passed by the learned sub-ordinate Judge, the petitioner preferred the revisional application being Civil Revision No. 5786 of 2000 before the High Court Division and obtained the Rule on 14-12-2000. A Single Bench of the High Court Division by the impugned judgment and order dated 2-8-2012 discharged the Rule and thereby affirmed the judgment and order dated 5-9-2000 passed by the learned sub-ordinate Judge (Presently Joint District Judge). The opposite party No.1 petitioner being aggrieved by the impugned judgment and order dated 2-8-2012 passed by a Single Bench of the High Court Division preferred the instant civil petition for leave to appeal before this Division.

12. Mr AJ Mohammad Ali, the learned Senior Advocate, appearing for the petitioner submits that the High court Division without considering the provisions of section 4 of the Partition Act and the facts of the present case regarding undivided Muslim family dwelling house property discharged the Rule by the impugned judgment and order which is liable to be set-aside.

13. Mr Mahbubey Alam, the learned Senior Advocate, appearing for the respondents submits that there is no illegality in the impugned judgment and order passed by the High Court Division and, as such, there is no scope for interference by this Division. He then submits that the High Court Division rightly found that the trial court upon proper appreciation of evidence, particularly the evidence of PW 3 and other materials on record dismissed the Miscellaneous Case because the subject matter of the dispute not being a dwelling house belonging to an undivided family is nothing but a commercial place upon which the son of the petitioner has been running restaurant business. Mr Alam then submits that the petitioner failed to prove that the suit property is an undivided homestead and, as such, the Miscellaneous Case filled under section 4 of the Partition Act is misconceived in law. The learned Senior Advocate contends that admittedly in paragraphs 3 and 5 of the plaint of the Miscellaneous Case the petitioner stated that the opposite party No.1 has got no construction in the suit plot inasmuch as the plaint does not disclose definite identification of the dwelling house as to the quantum of land covering the same. Mr Mahabubey Alam finally submits that the essential ingredients of section 4 of the Partition Act having not been proved and established by the petitioner the Miscellaneous Case is not tenable in law which has been rightly found by the High Court Division in passing the impugned judgment and order in discharging the Rule and affirming the order passed by the learned sub-ordinate Judge (presently Joint District Judge) and, as such, the leave petition is liable to be dismissed.

14. We have heard the learned Senior Advocates for both the parties and perused the leave petition, impugned judgment and order passed by the High Court Division in Civil Revision No. 5786 of 2000 and other materials on record.

15. In the instant case, Waliullah, the predecessor of the petitioner Hossain Shahid Chinu was the defendant No. 1 in Title Suit No. 17 of 1975 which was a suit for partition filed by Abdul Wahab as the plaintiff. The Title Suit No. 17 of 1975 was decreed in preliminary form by the

learned sub-ordinate Judge (present Joint District Judge), Dhaka on 23-6-1979 and the plaintiff-opposite party got saham in respect of 0.11 acres of land. An Advocate commissioner was appointed on 5-9-1979. Being aggrieved by the aforesaid judgment and decree the defendant No. 1-petitioner preferred First Appeal No.1 of 1980 before the High Court Division which was dismissed affirming the preliminary decree on 22-3-1984 with modification; that the plaintiff-opposite party No.1 would get a saham of $0.1062^{1}/_{2}$ acre of the suit land instead of 0.11 acre of land. Being aggrieved by the judgment and order passed in FA 1 of 1980 the defendant-appellant preferred Civil Appeal No. 2 of 1985 by leave of this Division. The Civil Appeal No. 2 of 1985 was dismissed affirming the judgment and decree passed by the High Court Division in First Appeal No. 01 of 1980.

16. On perusal of the facts of the case and the evidence of witnesses it appears that the petitioner filed the Miscellaneous case under section 4 of Partition Act in order to delay the decree passed in Title Suit No. 17 of 1975 which was decreed in preliminary form against the predecessor of the present petitioner wherein a saham of 0.11 acre of land was granted in favour of the plaintiff-respondent which was affirmed with modification of the quantity of saham from 0.11 acre to $0.1062^{1}/_{2}$ acre. The High Court Division having considered the facts and circumstances of the case and the evidence of witnesses rightly found that according to the evidence of PW 1 the defendant Nos. 2-17 of the original suit are admittedly the tenants of shops under the petitioner and according to the evidence of PW 2 the suit land is situated adjacent to the pavement of the North South Road and according to PW 3 the petitioner re-sides in a separate building with his family. From the evidence of the witnesses it appears that the suit land is not a homestead or a dwelling house but is a commercial place. Moreover, in paragraph 2 of the Miscellaneous case petitioner admitted that he has constructed many shops in the suit land in which his son has been running a restaurant business under the name and style "Chinu Curry House" and he rented all other shops to different tenants including Swash Corporation and Abul Watch for running their business. The petitioner filed the application under section 4 of Partition Act being Miscellaneous Case No. 725 of 1985 to purchase through court the share which was purchased earlier by the stranger purchaser of the commercial place under the guise of an undivided homestead or dwelling house. The object of legislation is to preserve the sanctity of an undivided dwelling house against the intrusion of a stranger on the basis of purchase of a portion of such a dwelling house from some other co-sharers. In the case of *SJ Kishori Sarker vs Azizur Rahman* reported in *40 DLR (AD) 150* this Division held that "the purpose of section 4 is to see that a transferee out sider does not force his way into a dwelling house in which other members of the tranferor's family have a right to live. Once the partition decree is made in preliminary form the rest is for the Commissioner, but the Court at that stage is not concerned as to what direction should be given to the Commissioner for completing the partition." In the instant case the High Court Division having considered the facts and circumstances of the case and the object of the legislation rightly observed as under: "The object of this legislation is reasonable and it is quite consonance with the principle of equity, justice and good conscience. Since in the instant case the plaintiff-petitioner opted to purchase the share of the purchaser in the undivided homestead in question immediately after the purchase of the same by the stranger defendant, we are of the view that the proper question to determine whether the property is a dwelling hut or not when the petitioner plaintiff ostensibly opted to buy up the share of the stranger purchaser in the undivided dwelling house but it appears that the property in question is not a dwelling house belonging to an undivided family. The prin-

ciple of law enunciated by their Lordships in the case of *Sayesta Bibi vs Juma Sha* reported in *42 DLR (AD) 53* applies to the facts and circumstances of the present case and we are bound to be in respectful agreement with the view taken therein.

17. Proper safeguard have been provided for the exercise of the statutory discretion. The partition Act also confers the valuable right of the pre-emption on co-shares. Besides, under its provisions, a stranger who has purchased a share in an unclaimed dwelling house and seeks partition, can be compelled to sell his share to the members of the family who are the owners of the rest of the house, and this prevents the instruction of the stranger into the circle of the co-owners and thus preserves the sanctity of the family dwelling house."

18. The High Court Division further observed as under:

> "Dwelling house in section 4 includes the land and appurtenances which are ordinarily and reasonably necessary for its enjoyment and thus it includes garden, courtyard, orchard but a commercial public area cannot became a part of the dwelling house, The expression 'dwelling house belonging to an undivided family' appearing in section 4 has been borrowed from section 4 of the Transfer of Property Act and bears the same meaning, a commercial business place cannot be termed as a dwelling house under section 4 of the Partition Act." From the materials evidence on record the High Court Division found that the suit land is not a dwelling house but it is a commercial business place which includes restaurant and hotel run by the petitioner and many shops rented to different shop keepers for running business as commercial place. The High Court Division also found that the application under section 4 of the Partition Act does not show any specific identification of the dwelling house that cover the specific area of the suit land. From a clear reading of the plaint of the Miscellaneous case it does not appear that a specific and definite case on dwelling house has been made out. The High Court Division rightly found that there are many shops and restaurant in the suit plot and that the petitioners failed to prove that the suit land is a dwelling house. Considering the facts and circumstances of the case, the High Court Division rightly held that one cannot invoke section 4 of the Partition Act to buy the share of a stranger purchaser in the undivided commercial place under the guise of undivided dwelling house. Accordingly, the High Court Division rightly found that "The trial court has arrived at a correct decision upon proper appreciation of pleading and evidence that the case of dwelling house is not proved in evidence and the property is a commercial one. Thus, there is nothing to interfere with the impugned order."

19. In view of the foregoing discussions, observations and findings we are of the view that the High Court Division rightly found that the suit land is not an undivided dwelling house rather it is admittedly a commercial place on which petitioners and other co-sharers have been conducting their business treating the suit land as commercial premises. Since the suit land is not a undivided dwelling house but a commercial place an application under section 4 of the Partition Act cannot be invoked to buy out the share of a stranger purchaser in the suit land.

20. For the aforesaid reasons we do not find any illegality in the impugned judgment and order passed by the High Court Division and, as such, no interference is called for by this Division.

21. In the result, the leave petition is dismissed and the impugned judgment and order passed by the High Court Division is affirmed.

Ed.

APPELLATE DIVISION
(Criminal)

Surendra Kumar Sinha J
Nazmun Ara Sultana J
Syed Mahmud Hossain J
Hasan Foez Siddique J

Judgment
July 30th, 2015.

Yunus (Md).....
.....Petitioner
(In CrlP No. 297 of 2015)
vs
State and another
.....Respondents*
(In CrlP No. 297 of 2015)

Anti-Corruption Commission Act (V of 2004)
Section 17(Ka)

Anti-Corruption Commission Act (amendment) (LX of 2013)
Section 15

Schedule offences—Offences punishable under sections 420, 462A, 462B, 466, 467, 468, 469 and 471 of the Penal Code have been inserted in the schedule for the first time as offences triable by the Special Judge under the Durnity Daman Commission Ain without specifying as to whether those offences are connected with the offences mentioned under the Prevention of Corruption Act and offences punishable under sections 161, 162, 163, 164, 165, 166, 167, 168, 169, 217, 218, 409 and 477A of the Penal Code have been arrayed as offences triable by the Special Judge. By reason of this insertion of those offences, the investigations and trials of the proceedings under the said offence have been postponed and thereby administration of criminal justice is being hampered.

We also find no cogent ground for inclusion of those offences in the schedule to the Durnity Daman Commission Ain unless and until those offences are related to or connected with the offences described in the schedule to the Durnity Daman Commission Ain. If the cases in respect of those offences are investigated by the police officers who have power to investigate those offences and the Judicial Magistrates who have power to inquire and try in respect of those offences, should inquire and try those offence and if the ordinary criminal courts are allowed to proceed with the trial of those offences, the ends of justice will be defeated. .....(11 &12)

Code of Criminal Procedure (V of 1898)
Section 205C

Police have already submitted charge-sheet against the accused and therefore, no further investigation is necessary into the allegations made in the FIR. We direct the Commission to transmit the record if the record has not been transmitted in the meantime along with the police report to the court of Chief Metropolitan Magistrate for passing necessary orders in accordance with law. The learned Magistrate shall examine the record of the case and if he finds that a *prima facie* offence is disclosed, he shall proceed with the case in accordance with section 205C of the Code. .....(15)

Abdus Salam Mamun, Advocate, instructed by Mohammad Abdul Hai, Advocate-on-Record—For the Petitioner (In CrlP No. 297 of 2015).

Momtazuddin Fakir, Additional Attorney-General, (with Khurshid Alam Khan, Advocate), instructed by Sufia

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*Criminal Petition for Leave to Appeal Nos. 297 and 345 of 2015

(From the judgment and order dated 13-8-2014 passed by the High Court Division in Criminal Miscellaneous Case No. 5827 of 2008.)

*Criminal Petition for Leave to Appeal No. 538 of 2014

(From the judgment and order dated 10-9-2007 passed by the High Court Division in Criminal Miscellaneous Case No. 9804 of 2014.)

Editor's Note: The case reported in 20 BLC 298 has been reversal and the case reported in 67 DLR 97 has beeen affirmed by the above judgment)

Khatun, Advocate-on-Record—For the Petitioner (In CrlP Nos. 538 of 2011 & 345 of 2015).

None Represented—For the Respondents (In CrlP Nos. 538 of 2014 & 345 of 2015).

Judgment

Surendra Kumar Sinha CJ : The delay in filing these leave petitions are condoned. In these petitions common question of law is involved and accordingly these petitions are disposed of by this order.

2. In Criminal Petition No. 297 of 2015 the petitioner Al-haj Md Younus has been facing trial before the Divisional Special Judge, Chittagong for an offence punishable under sections 409/109 of the Penal Code for causing loss of Taka 76,00,000 by misuse of power in constructing the Sarak Bhaban at Gashbaria under Police Station Chandnaliash, Chittagong.

3. In Criminal Petition No. 538 of 2014, the respondent No.1 was being prosecuted before the Divisional Special Judge, Chittagong for an offence punishable under sections 409/109 of the Penal Code read with section 5(2) of Act II of 1947 for alleged misappropriation of Taka 40,38,779 on the allegation that the contractor without completing the works withdrew the said amount.

4. In Criminal Petition No.345 of 2014, the respondent No. 1 was being prosecuted for an offence punishable under section 420/109 of the Penal Code read with section 5(2) of Act II of 1947 for selling the disputed land to one Md Masudur Rahman in 2011 suppressing the fact of mortgaging the same with the Agrani Bank Head Office.

5. Common question of law raised in the High Court Division is that the proceedings before the Special Judges were abuse of the process of the court, inasmuch as, the Special Judges had no jurisdiction to hold the trial of the cases. In two cases the accused persons being not public servants, it was argued that their trials under the Criminal Law Amendment Act were without jurisdiction. In other case, it was argued that the Special Judge had no jurisdiction, inasmuch as, the allegations made in the FIR are of civil nature.

6. The High Court Division did not quash the proceedings in Special Case No.13 of 2002 against Al-Haj Md Younus, but quashed the proceedings in Special Case No. 13 of 2002 pending in the Court of Divisional Special Judge, Chittagong and GR Case No.158 of 2011 pending in the Court of Metropolitan Magistrate, Dhaka against Md Altaf Hossain.

7. In respect of proceedings in Special Case No. 13 of 2002, besides Al-Haj Younus Mia, the police report was submitted against two other persons Col. Rtd. Oli Ahmed, then Communication Minister and Md Nurul Anwar, Chairman of Harala Union Parishad. So far accused Al-Haj Md Younus is concerned, the High Court Division was of the view that withdrawal of the case in favour of accused No. 1 Col. Oli Ahmed is not a legal ground to hold the view that the Special Judge has no jurisdiction to hold the trial, inasmuch as, the other two accused are public servants and that there are allegations of misappropriation of public money. In respect of the proceedings against Md Nurul Alam though over the same incident one Division Bench refused to quash the proceedings and another Division Bench quashed the proceedings on the reasoning that Md Nurul Alam had acted in his private capacity not in the capacity of Chairman of the Union Parishad. In respect of other proceedings, another Division Bench held that the learned Special Judge had no jurisdiction, inasmuch as, whatever allegations were made against the accused which were not triable under the Durnity Daman Commission Ain, and therefore, the ordinary criminal court had jurisdiction to hold the trial of the case.

8. Common questions of law raised in these petitions are that the High Court Division erred in law in refusing to quash the proceedings, inasmuch as, the petitioners not being public servants, the Special Judge has no jurisdiction to hold trial of the cases and that since the case against Col. Rtd. Oli Ahmed has been withdrawn from the prosecution, the prosecution of the petitioner Al-Haj Md Younus under sections 409/109 of the Penal Code by the Special Judge is without jurisdiction.

9. 'Public Servant' under the Prevention of Corruption Act, 1947 denotes those mentioned in section 21 of the Penal Code including an employee of any Corporation or other body or organization set by the government and includes a Chairman, Vice Chairman, Member, Officer or other employee of a local authority or a Chairman or other employee of any Corporation or other body or organization constituted or established under any law. So a wider definition has been given in respect of public servants. In the said Act the offences punishable under sections 161, 162, 163, 164, 165 and 165A of the Penal Code have been taken as cognizable offences to constitute an offence of misconduct by a public servant if he dishonestly or fraudulently misappropriates or otherwise converse to his own use any property and trusted to him or under his control as a public servant or allows any other person to do so. Besides other acts, it also included offences mentioned in clauses (a) , (b) , (c) , (d) and (e) of subsection (1) of section 5 as offences of criminal misconduct.

10. All offences punishable under the Prevention of Corruption Act, 1947; offences punishable under sections 161-169, 217, 218, 408, 409 and 477A of the Penal Code; abetment described in section 109 including conspiracies described in section 120B and attempts described in section 511 of the Penal Code related to or connected with the offences in the former provisions and offences punishable under Durnity Daman Commission Ain, 2004 are triable by the Special Judge. Under this provision an abetment by any person of those offences with a public servant has been given jurisdiction to a Special Judge to hold trial, section 17 of the Durnity Daman Commission Ain authorizes the Durnity Daman Commission to direct investigation or inquire and institute and conduct cases in respect of offences described in section 17 Ka. In the schedule, besides the offences mentioned in the said Ain, the offences punishable under the Prevention of Corruption Act, 1947, sections 161-169, 217, 218, 409 and 477A of the Penal Code and abetment described in section 109 including conspiracy described in section 120B and attempts described in section 511 of Penal Code have been made cognizable by the Special Judge. This Ain has been amended by Ain, LX of 2013, amongst others by substituting the schedule in respect of offences punishable under sections 161, 162, 163, 164, 165, 166, 167, 168, 169, 217, 218, 408, 409, 420, 462A, 462B, 466, 467, 468, 469, 471 and 477A of the Penal Code; offences punishable under the Prevention Corruption Act; Money Laundering Ain, 2012 and abetment described in section 109 including conspiracy described in section 120B and attempts described in section 511 of the Penal Code.

11. We notice the offences punishable under sections 420, 462A, 462B, 466, 467, 468, 469 and 471 of the Penal Code have been inserted in the schedule for the first time as offences triable by the Special Judge under the Durnity Daman Commission Ain without specifying as to whether those offences are connected with the offences mentioned under the Prevention of Corruption Act and offences punishable under sections 161, 162, 163, 164, 165, 166, 167, 168, 169, 217, 218, 409 and 477A of the Penal Code have been arrayed as offences triable by the Special Judge. By reason of this insertion of those offences, the investigations and trials of the proceedings under the said

offence have been postponed and thereby administration of criminal justice is being hampered.

12. We also find no cogent ground for inclusion of those offences in the schedule to the Durnity Daman Commission Ain unless and until those offences are related to or connected with the offences described in the schedule to the Durnity Daman Commission Ain. If the cases in respect of those offences are investigated by the police officers who have power to investigate those offences and the Judicial Magistrates who have power to inquire and try in respect of those offence, should inquire and try those offence and if the ordinary criminal courts are allowed to proceed with the trial of those offences, the ends of justice will be defeated.

13. In course of hearing Mr Khurshid Alam Khan, learned Counsel appearing for the Durnity Daman Commission has frankly conceded that the Durnity Daman Commission has no sufficient officers to hold investigation in respect of commission of those offences by the officers now working with it and about 4,258 cases are pending before it. He has contended that by reason of inclusion of those offences without consultation with the Durnity Daman Commission a deadlock has been created over the investigation of those offences. In view of the above, it is submitted that those offences which are not related to or connected with the offences mentioned in the schedule in the Durnity Daman Commission Ain prior to the amendment by Ain LX of 2013 should be allowed to be investigated by the police and tried by the ordinary criminal courts for ends of justice.

14. In respect of Special Case No.13 of 2002, one former Minister and some public servants within the meaning of the Prevention of Corruption Act have been arraigned and therefore, there is no legal bar to holding trial of the case by the Special Judge because if there is abetment of offence by any person other than public servants-the Special Judge has power to hold trial against him. In respect of GR Case No.158 of 2011 which arose out of Turag Police Station Case No. 13(12)2011 dated 30th December, 2011, though the offence is not related to or connected with offences punishable under the Prevention of Corruption Ain or other offences punishable under the Criminal Law Amendment Act, the FIR and police report disclose offences under the Penal Code. The case was initially started before the amendment and accordingly the High Court Division has rightly held that the ordinary criminal court is competent to hold the trial of the case. We direct the court below to transmit the record of the case to the competent court for trial. The High Court Division, however, directed the learned Magistrate to transmit the record of the case to the Special Judge with a further direction to the learned Special Judge to direct the Commission to investigate into the allegations as to whether it has power to take cognizance of the offence or not .

15. It is on record that the police have already submitted charge-sheet against the accused and therefore, no further investigation is necessary into the allegations made in the FIR. We direct the Commission to transmit the record if the record has not been transmitted in the mean time along with the police report to the court of Chief Metropolitan Magistrate for passing necessary orders in accordance with law. The learned Magistrate shall examine the record of the case and if he finds that a *prima facie* offence is disclosed, he shall proceed with the case in accordance with section 205C of the Code of Criminal Procedure.

16. In respect of Special Case No.13 of 2002, there is no legal bar to holding the trial by the Special Judge since there are allegations that the accused respondents along with two others had withdrawn money without completing construction works of a three storey building. There are allegations that the accused respondent and another have derived pecuniary benefit out of the construction. The High Court Division erred in law in

than one month at such convenient place as he may determine informing the persons concerned about the last date of filing objections under rule 30. Rule 30 prescribes procedure for making or giving objection in respect of draft publication of record-of-rights; whereas rule 31 provides the forum for preferring appeal against the order passed under rule 30. Before passing the final order on such an appeal the contending parties shall be afforded the opportunity to present their part of the case. After disposal of appeal under rule 31, the Revenue Officer shall have to take initiative for final publication of the record-of-rights on obtaining necessary permission from the Government to be issued by general or special order for the purpose of printing of the same in manuscript according to rule 32. Under rule 33 the Revenue Officer shall publish the final record-of-rights within 30(thirty) days from the date of receipt of the general or special order of the Government. Rule 34 provides procedure for issuing certificate stating the facts of such final publication. The Government is empowered by sub-rule (2) of Rule 34 to declare notification in the official Gazette that the record-of-rights has been finally published with regard to an specific area for every village and such notification shall be conclusive proof of such publication. Rule 35 speaks about presumption as to the correctness of the record-of-rights. When a record-of-rights is finally published under rule 33, the publication shall be conclusive evidence that the record has been duly revised under section 144 of the SAT Act. Every entry in a record-of-rights finally published shall be presumed to be correct until it is rebutted on taking evidence before the appropriate civil court.

15. Chapter VIII of the Rules, 1955 deals with the power of the Settlement Officer in revising record-of-rights under section 144 of the SAT Act. In accordance with rule 36, a Revenue Officer appointed with or without additional designation of the Settlement Officer or Assistant Settlement Officer for Revision of a record-of-rights under Chapter XVII of the Act within any district, part of a district or local area, shall have the power to revise the same upon following the procedure as laid down in the Code of Civil Procedure, 1908 for the trial of suit; and to enter upon any land included within the area in respect of which an order under section 144 of the Act has been made to survey, demarcate and prepare a map of the same. Rule 40 empowers the Settlement Officer to initiate proceedings relating to objections under rule 30 and appeals under rule 31 for disposal by any Assistant Settlement Officer subordinate to him. Rule 41 empowers the Settlement Officer to withdraw cases from the file of any Assistant Settlement Officer or Revenue Officer subordinate to him relating to any of the proceedings under Chapter VII and to dispose of the same by himself or by transfering them to any other Assistant Settlement Officer or Revenue Officer subordinate to him for disposal. However, rule 42 provides special power to the Revenue Officer appointed with the additional designation of the Settlement Officer who may at any time before publication of the final record-of-rights direct that any portion of proceedings referred to in rules 28 to 32 in respect of any district, part of a district or local area shall be cancelled and to take up the proceeding afresh from such stage as he may direct. Pursuant to a complaint or on receipt of an official report the Revenue Officer with the additional Designation of Settlement Officer has jurisdiction to correct a fraudulent entry in the record-of-rights upon consulting the relevant records and making other inquiries as he may deem necessary and direct excision of the fraudulent entry as per the provision of rule 42A. However, before such excision the contending parties shall be notified giving opportunities of personal hearing. Under rule 42B the Revenue Officer shall make correction of obvious errors i.e. arithmetical or clerical before final publication of the record-of-rights. Rule 44 empowers the Director of Land Records and Surveys to discharge all the aforesaid functions of a Revenue Officer as empowered under

the aforesaid Rules including rules 40 to 42.

16. The provisions of rules 42 and 42A are reproduced below for ready reference:

> 42. "Special power of Revenue-officer appointed with the additional designation of Settlement Officer: A Revenue-officer appointed with the additional designation of 'settlement officer' may, at any time before the publication of final record-of-rights, direct that any portion of the proceedings referred to in rules 28 to 32 in respect of any district, part of a district, or local area, shall be cancelled and that the proceedings shall be taken up fresh from such stage as he may direct."
>
> 42A. Correction of fraudulent entry before final publication of record-of-rights- The Revenue-officer, with the additional designation of 'Settlement Officer' shall, on receipt of an application or on receipt of an official report for the correction of an entry that has been procured by fraud in record-of-rights before final publication thereof, after consulting relevant records and making such other enquiries as he deems necessary, direct excision of the fraudulent entry and his act in doing so shall not be open to appeal, at the same time, the Revenue-officer shall make the correct entry after giving the parties concerned a hearing and recording his finding in a formal proceeding for the purpose of future reference.

17. On a perusal of both the provisions it appears that rule 42 grants special power to the Revenue Officer to cancel any portion of the proceedings referred to in rules 28 to 32 in respect of any district, any part of a district or local area, and direct the proceedings to be taken up afresh from such stage as he may direct. The word "proceedings" as appearing in rule 42 is to be understood considering the context of each case. In the instant case, after disposal of the appeal under rule 31 of the Rules, 1955 an application was filed before the Settlement Officer at Dhaka mentioning rule 42A of the Rules, 1955 at the instance of the respondent No. 5 praying for hearing of the four appeal cases or taking a decision afresh as mentioned above. Rule 42A of the Rules, 1955 grants power to the Revenue Officer with the additional designation of the Settlement Officer to hear and dispose of any application filed alleging fraud. In the instant case the application as has been filed by the respondent No. 5 mentioning rule 42A is a misconceived one. The Revenue Officer after disposal of the appeal under rule 31 may at any time before final publication of the record-of-rights initiate a proceeding afresh at the stage he may direct. That power of the Revenue Officer has been given under rule 42 of the Rules, 1955. In the instant case, we hold that the application as has been filed by the respondent No. 5 should not be treated as an application under rule 42A of the Rules, 1955 rather it should be considered as an application under rule 42 thereof. It is to be noted here that misquoting of rule or non-mentioning of a particular section in the concerned application does not preclude the Settlement Officer to act under applicable provision of the SAT Act and Rules thereof for the purpose of arriving at a correct decision with regard to the final publication of the record-of- rights.

18. The contention of the learned Advocate for the petitioners to the effect that final publication of the record-of-rights was made in the name of the petitioners under Khatian No. 1645 under section 144(7) of the Act read with rules 31 and 32 of the Rules, 1955 has been controverted by the learned Deputy Attorney General (DAG) Mr Sashanka Shekhar Sarker. He produced a letter dated 27-4-2015 under the signature of the Zonal Settlement Officer, Dhaka, on behalf of the respondent No. 2 by way of an affidavit-in-reply dated 9-4-2015, which is reproduced below.

"The Government of the People's Republic of Bangladesh"

Zonal Settlement Office, Dhaka
28 Shahid Tejuddin Ahmed Sarani
Tejgaon, Dhaka- 1208.

Memo No 31.8.2692022.44.00 1.14-217
dt. 27-4-15

Sub: An official report in respect of City Jarip Khatian No-1645 belong to Mouza Tejgaon Industrial Area, JL No. 6, Police Station-Tejgaon, District Dhaka.

Ref: 1. A letter from the office of the Attorney General for Bangladesh under the signature of assistant attorney General Mr Arobinda Kumar Roy.

2. Instruction of Director General, Department of Land Records and Surveys.

Following the above mentioned letter it is stated that Khatian No-1645 belong to Mouza Tejgaon Industrial Area, JL No. 6, Police Station-Tejgaon, district-Dhaka has not yet been finally published and notified by Gazette under section 32, 33 and 34 of the East Bengal Tenancy Rules, 1955 due to pending Civil Suit No. 211/2001 and Writ Petition No. 4912 of 2003.

Signed illegible
27-4-15
Zonal Settlement
Officer, Dhaka
Phone : 913-1573

Mr Arobinda Kumar Roy
Assistant Attorney-General
Office of the Attorney-General for
Bangladesh

19. On a perusal of the aforesaid letter as produced by the learned DAG before this Court, it appears that in fact no final record-of-rights has been prepared under Khatian No. 1645 in the name of the petitioners having regard to the provisions of rules 32, 33 and 34 of the Rules, 1955. It cannot, therefore, be said that the record-of-rights had been finally published in the name of the petitioners as contended by the learned Advocate for the petitioners. Moreover, from Annexure-2, Gazette Notification dated 12th April, 2009, it appears that final publication of the record-of-rights had been made except DP Khatian No. 1645 along with some other Khatians in respect of Mouza Tejgaon Industrial Area. This being so, for the purpose of arriving at a correct decision about the final publication of the record-of-rights we can easily infer that the final publication of the record-of-rights has not been published in the name of the petitioners with regard to the draft Khatian No. 1645 in compliance with rules 32 and 33 of the Rules, 1955. The draft record-of-rights shall accordingly not be conclusive evidence of its publication under section 144 of the Act, 1950. We should however refrain from making any observations in respect of title of the property in question inasmuch as the First Appeal is awaiting disposal before this Court on a similar point. Moreover, the record-of-rights neither creates nor destroys title. It is merely a record of physical possession at the time when it is prepared. With regard to the decisions as referred to by the learned Advocate for the petitioners we find the same not applicable in the context of the present facts and circumstances of the case and accordingly the same are not discussed.

20. In view of what has been stated above and considering the relevant provisions of law are of the view that the Settlement Officer appointed with the additional designation of Assistant Settlement Officer may at any time before final publication of the record-of-rights exercise his jurisdiction under rule 42 of the Rules, 1955. Having regard to the observations and decisions, we find no merit in this Rule.

21. Accordingly, the Rule is discharged, however, there will be no order as to costs.

22. The order of stay granted at the time of issuance of the Rule stands vacated.

23. The Revenue Officer appointed with the additional designation of Settlement Officer may take a decision afresh about the disputed publication of the concerned record-of-rights in view of the provisions of rule 42 of the Rules 1955.

In doing so, the respondent No. 4 is directed to dispose of the matter pending before him in accordance with the relevant provisions of laws within the shortest possible amount of time preferably within 3(three) months from the date of receipt of the judgment of this court.

Ed.

HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

SM Emdadul Huque J

Judgment
June 29th, 2015.

Torab Ali and another
Defendant-Respondent
.....Petitioners
vs
Madris Ali Saha and others.....Opposite
.....Parties*

Code of Civil Procedure (V of 1908)
Order IX, rule 13
Order XVII, rule 1(3)(4)(7)

If any case decreed *ex-parte* on failure of the parties for non complaince of the procedure of sub-rules 3 or 4 of rule 1 of Order XVII only then the question of setting aside the *ex-parte* decree under sub-rule 7 of rule 1 of Order XVII is applicable. .....(13)

Md Khaled Ahmed, Advocate—For the Petitioners.

Mohammad Noor Hossain, Advocate—For Opposite Party Nos. 1 and 2.

*Civil Revision No. 4994 of 2005.

Judgment

On an application of the petitioner Torab Ali and another under section 115(4) of the Code of Civil Procedure without granting leave this court issued Rule calling upon the opposite party Nos. 1 and 2 to show cause as to why the impugned judgment and order dated 15-9-2005 passed by the learned District Judge, Moulvibazar in Civil Revision No. 34 of 2005 affirming the Order dated 24-5-2005 Passed by the Senior Assistant Judge, Kulaura, Moulvibazar in Miscellaneous case No. 10 of 2005 arising out of Title Suit No. 153 of 2003 rejecting the Miscellaneous case should not be set-aside.

2. Facts necessary for disposal of the Rule, in short, are that the opposite party Nos. 1 and 2 as plaintiffs instituted Title Suit No. 153 of 2003 in the court of Senior assistant Judge, Kulaura, Moulvibazar for declaration of title and , partition. The summons were duly served upon the defendant Nos. 1 and 2 who subsequently appeared before the court and prayed time for filing written statement which was allowed. But ultimately they did not file written statement and also did not appear before the court. The trial court took up the case for hearing and decreed the suit *ex-parte* on 8-2-2005.

3. Against the said *ex-parte* decree the defendant Nos. 1 and 2 filed application under Order IX, rule 13 of the Code of Civil Procedure for setting-aside the *ex-parte* decree and thus Miscellaneous Case No. 10 of 2005 was started. The trial court after hearing the parties and considering the facts and circumstances of the case rejected the said application on the ground that the petitioner failed to deposit Taka 2,000 provided under rule 7 of Order 17 of the Code of Civil Procedure while filing the application against the judgment and Order dated 24-5-2005.

4. Against the said judgment and order of the trial court the defendant Nos. 1 and 2 filed Revisional application No. 34 of 2005 under sec-

tion 115(2) of the Code of Civil Procedure before the learned District Judge, Moulvibazar. Who after hearing the parties and considering the relevant law rejecting the revisional application on the ground that the petitioner did not fulfill the provision of rule 7 of Order 17 of the Code of Civil Procedure by its judgment and order dated 15-9-2005.

5. Being aggrieved by and dissatisfied with the impugned judgment and order of the courts below the petitioner filed this revisional application under section 115(4) of the Code of Civil Procedure and according by the Rule was issued.

6. Mr Mohammad Noor Hossain, the learned Advocate enter appeared on behalf of the opposite party Nos. 1 and 2 through Vokalatnama to oppose the Rule.

7. Mr Md Khaled Ahmed, the learned Advocate appearing on behalf of the petitioners argued that both the courts on misconception of the provision of law erroneously rejected the application of the petitioner. He argued that the trial court rejecting the application on the ground that the plaintiff did not deposit Taka 2,000 as per provision of sub-rule 7 of rule 1 of Order XVII of the Code of Civil Procedure without considering that the petitioner did not file application under sub-rule 7 of rule 1 of Order XVII or Order IX, rule 13(a) rather he filed application under Order IX, rule 13 of the Code of Civil Procedure. The learned Advocate further argued that the learned District Judge also committed error in law while rejecting the revisional application on misconception of provision of law since in the instant case the amendment provision of sub-rule 7 of rule 1 of Order XVII of the Code of Civil Procedure is not at all applicable in the instant case since the trial court did not avail the procedure of sub-rule 3 and 4 of rule 1 of Order XVII so the judgment of the courts below is eroneous one which should be interferred with. He prayed for making the Rule absolute.

8. On the contrary Mr Mohammad Noor Hossain, the learned Advocate appearing on behalf of the opposite party Nos. 1 and 2 argued that the petitioners as defendants though appeared but without filing written statement trying to delay to proceed the suit even did not take any step for adjornment of the matter thus the trial court rightly took up the case for *ex-parte* hearing and decreed the suit ex- parte in such a case the newly amendment provision of the Code of Civil Procedure is very much applicable in the instant case and the courts below rightly passed the impugned which should not be interferred with. However, lastly he argued that this court may send back the matter to the trial court to consider the application on merit.

9. I have heard the learned Advocates of both the sides, perused the impugned judgment of the courts below, the papers and documents as available on the records. It appears that the opposite party Nos. 1 and 2 as plaintiffs filed Title Suit No. 153 of 2003 before the Assistant Judge, Kulawara, Moulvibazar for declaration of title and partition. The defendant Nos. 1 and 2 appeared before the court and obtained time for filing written statement but ultimately did not file written statement and also did not take any steps to contest the suit and the trial court took up the case for *ex-parte* hearing and decreed the suit *ex-parte* on 8-2-2005 without availing the procedure of rule 1 of order XVII of the Code of Civil Procedure. Against the said *ex-parte* decree of the trial court the defendant Nos. 1 and 2 filed application under Order IX, rule 13 of the Code of Civil Procedure for setting-aside the *ex-parte* decree. Which was heard by the trial court and the trial court without going to merit of the case of the petitioners only considering the amendment provision of rule 1 of order XVII the Code of Civil Procedure opined that since the petitioners without depositing Taka 2,000 as provided under sub-rule 7 of rule 1 of order XVII filed the application which is against the provision of law and rejecting the application. Against which the petitioners filed revisional

application before the District Judge, Moulvibazar under section 115(2) of the Code of Civil Procedure, who after hearing the parties and considering the procedure of law also rejected the revisional application considering the same view as taken by the trial Court. The appellate court opined to the effect:—

"উল্লেখিত বক্তব্যের পরিপ্রেক্ষিতে আমি The Code of Civil Procedure 3rd Amendment, 2003 :এর ১৭ নং আদেশের ৭ নং বিধিটি যত্ন সহকারে পাঠ করিলাম, যাহা নিম্নরূপঃ—

"(7)suit dismissed or disposed of *ex-parte* under sub-rule (3) or (4) shall not be revived for hearing unless the party for whose noncompliance the suit was dismissed or disposed of *ex-parte*, makes within thirty days of such dismissal or *ex-parte* disposal, non-application together with cost of two thousand taka into Court for such revival, and upon such application being made, the suit shall be revived for hearing without any further proceeding, and cost deposited into Court shall be paid to the other party."

10. বর্ণিত আইনের উল্লেখিত বিধি পর্যালোচনা করিয়া দেখা যায় যে, বিবাদী-প্রার্থী পক্ষ আদালতের আদেশ অনুসারে লিখিত জবাব দাখিল করিয়াছিলেন না এবং সেই কারণে বিজ্ঞ নিম্ন আদালত একরতফাভাবে মূল মোকদ্দমাটি নিষ্পত্তি করিয়াছিলেন। সেহেতু বিবাদী প্রার্থীপক্ষ উক্ত আদেশের দ্বারা ক্ষুব্ধ হইয়া দেওয়ানী কার্যবিধির ১৭ আদেশের সংশোধিত ৭ নং বিধির বিধান অনুসারে ২০০০ টাকা খরচে মূল মোকদ্দমা পুনরুজীবিত করার প্রার্থনা দাখিল করিলে বিজ্ঞ নিম্ন আদালত উক্ত প্রার্থনা মঞ্জুর করিয়া মূল মোকদ্দমাটি বিধি মোতাবেক পুনরুজীবিত করিতেন। কিন্তু বিবাদী-প্রার্থীপক্ষ আইনের উল্লেখিত বিধিসমূহ অবলোকন না করিয়া দেওয়ানী কার্যবিধির ৯ নং আদেশের ১৩ নং বিধির বিধানানুসারে একতরফা ডিক্রি রদ ও রহিতের প্রার্থনা করিয়া ১০/২০০৫ নং বিবিধ মোকদ্দমা আনয়ন করিয়াছিলেন এবং সেই কারণেই বিজ্ঞ নিম্ন আদালত সঠিকভাবে উক্ত বিবিধ মোকদ্দমাটি রক্ষণীয় নয় বলিয়া উল্লেখক্রমে আদেশ প্রদান করিয়াছিলেন।

বিজ্ঞ নিম্ন আদালতের তর্কিত আদেশের উপরে হস্তকেপ করার আদৌ কোন কারণ আছে বলিয়া আমি মনে করি না।"

11. I have considered the impugned Judgment and the aforesaid provision of law. It appears that the courts below considering the procedure of rule 1(7) of order XVII of the of the Code of Civil Procedure passed the impugned Judgment but the trial Court without exhausting the procedure of rule 1(3) and 1(4) of Order XVII of new amendment law decreed the suit ex-part.

12. The trial court also without considering the procedure as laid down in the amendment order 17 of the Code of Civil Procedure passed the order. The rule 1 of order XVII of the Code of Civil Procedure reproduced as under:

Order XVII

1.—(1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

(2) In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

(3) Notwithstanding anything contained in sub-rules (1) and (2), the Court shall not grant more than six adjournments in a suit before peremptory hearing at the instance of either party to the suit, and any adjournment granted to a party beyond the aforesaid limit shall make such party liable to pay a cost of not less that two hundred taka and not more than one thousand taka to the other party, within time to be specified by it; noncompliance with which, by the plaintiff shall render the suit liable to be dismissed and, by the

defendant shall render the suit liable to be dismissed of *ex-parte*: provided that the Court shall not grant more than three adjournments to a party even with cost under this rule.

(4) Notwithstanding anything contained in the Code, the Court shall not grant any adjournment at the peremptory hearing stage and thereafter in a suit at the instance of either party to the suit:

Provided that if for ends of justice any adjournment is granted to a party under this sub-rule, the Court shall direct that party to pay a cost of not less than two hundred taka and not more than one thousand taka to the other party, within time to be specified by it, noncompliance with which, by the plaintiff shall render the suit liable to be dismissed and, by the defendant shall render the suit liable to disposed of *ex-parte*: Provided further that the Court shall not grant more than three adjournments to a party even with cost under the above proviso.

(5) Where applications are made by both the parties for any adjournment under sub-rule (3) or (4) and the applications are allowed with costs, the Court shall direct each party to pay such cost as revenue to the State.

(6) The Court shall not, of its own, order any adjournment under this rule without recording reasons therefor.

(7) A suit dismissed or disposed of *ex-parte* under sub-rule (3) or (4) shall not be revived for hearing unless the party, for whose noncompliance the suit was dismissed or disposed of *ex-parte*, makes within thirty of such dismissal of *ex-parte* disposal, an application together with cost of two thousand taka into Court for such revival; and upon such application being make, the suit shall be revived for hearing without any further proceeding; and cost deposited into Court shall be paid to the other party.

13. In the aforesaid procedure it is clearly provides that if any case decreed *ex-parte* on failure of the parties for non complaince of the procedure of sub-rule 3 or 4 of rule 1 of order XVII only then the question of setting aside the *ex-parte* decree under sub-rule 7 of rule 1 of order XVII is applicable. But it appears that without prevailing the aforesaid procedure the trial court decreed the suit *ex-parte*. In such a case no scope to file application under sub-rule 7 of rule 1 of order XVII and the defendants Tightly filed the application under rule 13 of order IX of the code of civil procedure, as such the findings of the courts below is erroneous one. Even the procedure of Order IX, rule 13 of the Code of Civil Procedure has not been repealed, so, the Petitioner has every right to invoke the said jurisdiction.

14. Order IX, rule 13 provides that if he satisfies the Court that the Summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing the Court shall, make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit. So in such a case the Court shall consider the application of the petitioner as provided under the provision of Order IX, rule 13 of the Code of Civil Procedure but errneously passed the impugned Judgment considering the procedure of rule 1 of order XVII of the Code of Civil Procedure which they committed serious error in law resulting in an error in the decision occasioning failure of Justice.

15. Considering the aforesaid facts and circumstances of the case and the discussions made above I find merit in the Rule.

16. Accordingly, the Leave is granted and the Rule is made absolute. The impugned judgment and order dated 15-9-2005 passed by the learned District Judge, Moulvibazar in Civil Revision No. 34 of 2005 affirming the Judgment and order dated 24-5-2005 passed by the Senior Assistant Judge, Kulaura, Moulvibazar in Miscellaneous case No. 10 of 2005 arising out of Title Suit No.

153 of 2003 are hereby set-aside, however, without any order as to cost.

17. The trial court is directed to dispose of the Miscellaneous Case No. 10 of 2005 filed under Order IX, rule 13 of the Code of Civil Procedure on merit considering the discussions as made above.

18. Since this is a long pending case, the trial court is directed to dispose of the Miscellaneous case No-10 of 2005 as early as possible preferable within 4 (four) months from the date of receipt of the judgment.

19. The order of stay granted earlier by this court is hereby recalled and vacated.

Send down the Lower Court's Records at once.

Ed.

HIGH COURT DIVISION
(Civil Appellate Jurisdiction)

Sharif Uddin Chaklader J
AKM Shahidul Huq J

Judgment
June 12th, 2013.

BRAC Bank Ltd.....
.....Appellant
vs
Multimode Ltd.....
.....Respondent*

Principles of Natural Justice

The principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial or quasi-judicial authority while making an order affecting those rights. .....(19)

Kanchan Mala Bepari vs Ananta Kumar Bepari, 6 DLR 254; Government of Bangladesh vs Md Tajul Islam, 49 DLR (AD) 177; Mozibar Rahman vs Chairman, Dhaka Improvement Trust DIT building, Dhaka, 41 DLR (AD) 131; D Wren International Ltd vs Engineers India Ltd, AIR 1996 Calcutta 424; Desai and Co. vs Hindustan Petroleum Corporation Limited, AIR 1987 Guj 19; Jamuna Oil Company Limited vs SK Dey, 44 DLR (AD) 104 and Rex vs Sussex Justice Exparte Meeonly, 1924. QB 256 ref.

Asaduzzaman, Advocate—For the Appellant.

Raghib Rouf Chowdhury, Advocate with Khondaker Ahsan Habib, Advocate—For the Respondent.

Judgment

Sharif Uddin Chaklader J : This appeal, at the instance of the defendant, directed against judgment and decree dated 25-9-2011 passed by the learned Joint District Judge, 1st Court, Dhaka decreeing Title Suit No. 6726 of 2008.

2. Plaintiff instituted the aforesaid suit praying for decree as:

(a) for a decree of Taka 6,90,13,116.90 (six crore ninety lac thirteen thousand one hundred sixteen and paisa ninety) only as on 31-10-2008 in favour of plaintiff and against the defendant;

(b) A decree for interest @ 16% on suit value wef 1-6-2007 to till realization in full; with some other prayers including interest at the rate of 16% with effect from 1-6-2007.

3. Learned Judge decreed the suit as:

"অত্র মোকদ্দমাটি বিবাদী পক্ষের বিরুদ্ধে দো-তরফা সূত্রে করচাসহ ডিক্রি হয়। এতদ্বারা বিবাদীপক্ষ কর্তৃক বাদীপক্ষের প্রতি ইস্যুকৃত বিগত ইং ৩১-৫-২০০৭ এবং ১০-৬-২০০৭ তারিখের পত্রদ্বয় বে-আইনী, অসৎউদ্দেশ্য প্রণোদিত এবং বাদীপক্ষের উপর বাধ্যকর নহে মর্মে ঘোষিত হয়।

বাদীপক্ষের প্রার্থনা মোতাবেক ইং ১-৬-২০০৭ তারিখ হইতে ৩১-১০-২০০৮ ইং তারিখ পর্যন্ত প্রাপ্য কমিশন বাবদ ৬,৯০,১৩,১১৬.৯০ (ছয় কোটি নব্বই লক্ষ তের হাজার

*First Appeal No.62 of 2012.

একশত ষোল ঠাকা নব্বই পয়সা) টাকা, অত্রাদেশের ৬০ (ষাট) দিবসের মধ্যে বিবাদীপক্ষ তাহার ব্যাংক এ আমানত-কারীকে তাহার স্থায়ী জামানতের উপর যে হারে (%) অর্থাৎ বিবাদী ব্যাংকের স্থায়ী জামানতের উপর প্রদেয় সুদের হারে (%), সুদসহ ; পরিশোধ করিতে বিবাদীপক্ষের প্রতি নির্দেশ দেওয়া গেল।

১-৬-২০০৭ ইং তারিখ হইতে প্রতি মাসে বিবাদী ব্যাংক কর্তৃক Western Union হইতে প্রাপ্ত কমিশন হইতে বাদীপক্ষের প্রাপ্য ২১% হারে কমিশন বিষয়ে মাসিক বিবরণী, চুক্তিপত্রের শর্ত মোতাবেক বাদীপক্ষকে প্রদানের জন্য এবং বাদী ও বিবাদী পক্ষের মধ্যে সম্পাদিত বিগত ২০-১০-২০০৩ ইং তারিখের চুক্তিপত্র মোতাবেক বিবাদী ব্যাংক ও Western Union এর মধ্যে Money transfer ব্যবসা চলমান ও বলৎ থাকাকালীন পর্যন্ত বিবাদী ব্যাংক কর্তৃক অর্জিত কমিশনের ২১% হারে টাকা বাদীপক্ষকে চুক্তি পত্রের শর্ত মোতাবেক যথাসময়ে পরিশোধ করার জন্য বিবাদীপক্ষের প্রতি Mandatory Injunction এর ডিক্রি প্রদান করা হইল।"

4. It is the plaint case that plaintiff is a Private Limited Company and defendant is Public Limited Company incorporated under the Companies Act, 1913. Defendant Bank as a schedule Bank, under the supervision and monitoring of Bangladesh Bank participates in various service such as, keeping deposit of money, providing loan facilities for multipurpose, monitory transactions of share business, open L/C for export and import business and of its clients. Western Union Financial Services International referred to as Western Union, a USA based internationally reputed money transferring company from one country to another. Defendant was intended to participate in money transfer business with Western Union but a scheduled bank does not have sufficient manpower and logistic and technical software support required for execution and performance for agency agreement with Western Union which is involved in money transferring business from about 160 countries of the world, to Bangladesh. Defendant also required no objection letter from National Bank Ltd., as there was an exclusive agency agreement executed between Western Union and National Bank Ltd., since 1993. Subsequently on the basis of a decision of the Board meeting of the directors of the defendant, the defendant agreed to approach the plaintiff to pursue Western Union on its behalf to enter into an agency business in Bangladesh with Western Union engaged in money transfer business from one country to another. Plaintiff being the expert of technical software service and other relevant functions relating to the money transfer business and having well connection and business relation with Western Union agreed to provide its active assistance to finalize and execute a formal agency agreement between the defendant and Western Union. The plaintiff provided its utmost sincere effort including monitory support to pursue Western Union to execute a formal agency agreement with the defendant. Moreover, plaintiff managed no objection letter from National Bank Ltd., since there was an exclusive agency agreement executed for unspecified period of time between National Bank Ltd., and Western Union from 1993. Consequently, the formal agency agreement was executed on 5th November, 2003 in pursuance of deed of agreement between plaintiff and defendant dated 20th October, 2003. Under section 18A of the Foreign Exchange Regulations Act, 1947, defendant required permission from Bangladesh Bank to be an agent of a foreign company. Plaintiff accordingly managed the permission letter from Bangladesh Bank. Plaintiff as per terms of the agreement dated 20-10-2003 introduced, arranged, involved, negotiated and made all other necessary arrangement and convinced Western Union to deposit more or less US $ 75,000 within 15 days of the execution of the said agency agreement and accordingly, Western Union did the same. The deposit of the said amount was with a condition imposed on the defendant by Bangladesh Bank through permission letter. Plaintiff and defendant discharged the responsibility of promoting the business of Western Union in Bangladesh by way of advertisement and also developed the market for service and enhancing the customer interest through its service. Plaintiff and defendant agree to carry

but joint marketing programme amongst the Bangladeshi origin. The cost of such programme have been mutually agreed to bear by the parties on case to case basis. It was further agreed if Western Union fails to remit the required remittances according to the payment made by defendant time to time and such cannot be restored by the deposited amount held in the designated Bank account, plaintiff was committed to help the defendant to realize the shortage amount along with interest. Moreover, when the agency agreement will be terminated or suspended, the security deposit will not be released till the outstanding dues of the defendant are settled by the Western Union and the plaintiff was under obligation to cooperate in such situation to solve the problem. Plaintiff discharged all the responsibilities and obligations imposed upon by virtue of contract dated 20-10-2003 confirmed in clause 12 that the plaintiff and the defendant were intended to carry out the contract most lawful way and they were committed to change any unlawful or unenforceable provisions which might put the party in the condition of economic loss. This means that the plaintiff and defendant were committed to perform the contract overcoming any interventions of law or person. Plaintiff is entitled to be paid for their service by the defendant 21% of commission which the defendant earned thought remittance and foreign exchange gains from Western Union. The share of commission and foreign exchange gain agreed to settle between the plaintiff and the defendant within 5 working days upon receipt of the same from Western Union as per clause No.6 dated 20th October, 2003. The share of commission and foreign exchange gain agreed to settle between the plaintiff and the defendant. Defendant in compliance with the aforesaid agreement continued to pay the commission to the plaintiff from 5th November, 2003 to May, 2007 without any interruption and complain. Plaintiff agreed with defendant to maintain very cordial business relationship so that both parties of the aforesaid agreement cold retain the business interest as long as the monitory transaction business of the defendant and Western Union. Defendant suddenly on 31-5-2007 sent a letter purporting to terminate the aforesaid agreement dated 20-10-2003 with effect from dated 1-7-2007 of 30 days notice and stopped releasing of the commission since June, 2007, hence the suit.

5. Defendant contested the suit by filing written statement thereafter amended the written statement in which defendant did not deny the agreement dated 20-10-2003 and also that defendant did not deny that plaintiff was expending the business with the defendant and for running the business of the defendant, defendant took several time and as per terms of the agreement since plaintiff was not acted enough the defendant cancel the agreement dated 20-10-2003.

6. On these pleadings of the parties learned judge framed issues as to maintainability of the suit, whether there was agreement on 20-10-2003 in between plaintiff and defendant, whether as per terms of the agreement the termination letter is illegal and what other relief or reliefs plaintiff was entitled.

7. Learned Judge decreed the suit as aforesaid.

8. Mr Asaduzzaman, learned Advocate, appearing for the defendant-appellant, submits that, the impugned judgment is totally a wrong judgment as the learned Judge failed to consider that it is cardial principal of law that plaintiff is to prove his case but learned Judge did not at all considered the plaint case or deposition of the plaintiff, rather the learned judge found fault with defendant's case. Learned Advocate further submits that there being no clause in the agreement for prior notice for cancellation of the contract, cancellation having been done in accordance with the terms of the agreement and being in exclusive jurisdiction of the defendant, as such termination cannot be called in question. Learned Advocate

further submits that in the termination letter plaintiff was not given any stigma, it is simply a termination simplicitor letter by which plaintiff as per terms of the agreement has no legal right to file the suit. Learned Advocate further submits that the decision relied by the learned Judge in arriving at the decision have no mariner of application on the facts of the given case.

9. Mr Raghib Rouf Chowdhury, learned Advocate, appearing for the plaintiff-respondent, on the other hand submits that, before issuing termination letter, plaintiff was not given any chance to explain its conduct as to whether plaintiff committed any wrong with the contract/agreement as such learned Judge committed no illegality in decreeing the suit. Learned Advocate relied on the case of *Kanchan Mala Bepari vs Ananta Kumar Bepari, 6 DLR 254*, wherein it is held as 'Mere unilateral repudiation in pais of contract does not rescind the contract. Court's decree necessary.'

10. Learned Advocate next relied on the case of *Government of Bangladesh vs Md Tajul Islam, 49 DLR (AD) 177*, wherein on the question natural of justice, the Appellate Division held as 'it is well settled that a show cause notice is not a technical requirement or an idle ceremony. The notice must not be vague or in bare language merely repeating the language of the statute.'

11. Learned Advocate next relied on the case of *Mozibar Rahman vs The Chairman, Dhaka Improvement Trust DIT Building, Dhaka, 41 DLR (AD) 131* wherein it is held as 'allegation of bias and malafide cannot be allowed as the Chief Engineer against whom the same was made was not even made a party in the writ petition.'

12. Learned Advocate next relied on the case of *D Wren International Ltd vs Engineers India Ltd, AIR 1996 Calcutta 424*, wherein it is held as 'challenge to cancellation of contract on ground that it does not contain reasons- Cannot be made because authority can produce its records to show that such reasons are available on records.'

13. Learned Advocate further relied on the case of *Desai and Co. vs Hindustan Petroleum Corporation Limited, AIR 1987 (Guj) 19*, wherein it is held as 'challenge to termination of dealership for sale of petroleum products by instrumentality of State, Allegations that binding executive instructions of Govt. not followed and that termination is arbitrary-challenge not raising question purely of breach of contract.'

14. Learned Advocate relied on the case of *Jamuna Oil Company Limited vs SK Dey, 44 DLR (AD) 104*, natural justice wherein it is held as 'natural justice in a case of disciplinary proceeding. In a case of disciplinary proceeding against an employee, in the absence of statutory rules, the employee must be given prior notice of the proceeding so that he gets an adequate opportunity to defend himself.'

15. Let us proceed with our judgment .

16. The case is that under contract plaintiff was appointed to facilities the defendant to have business with Western Union Financial Services International, a USA based internationally reputed money transferring company. As per terms of the contract, it is admitted fact that, plaintiff's performed obligations i.e. plaintiff obtained no objection certificate from National Bank and also plaintiff provided, including monitory support, to pursue Western Union to execute a formal agency agreement with the defendant, plaintiff obtained permission from Bangladesh Bank to be agent of foreign company, plaintiff under take extensive marketing programme all over the world, USA, United Kingdom, Italy, France, Portugal, Spain, Saudi Arabia, Malaysia, Brunei, Darussalam, Kuwai, UAE, Oman, Bahrain, Libya, Iraq, Japan, Australia, Canada, South Korea, Germany, Sweden and many other countries. Defendant as it appears did not deny the performances of plaintiff. Defendant's case is that he made simply agreement or contract and for that reason contract does not specify any prior notice for termination.

We have considered the deed of agreement, exhibit-2, wherein clause 11 regarding notice which runs as any notice provided for in this agreement shall be in written and shall be fist transmitted by facsimile transmission and then confirmed postage, prepaid registered mail or by a recognized courier service, in the manner as elected by the party giving such notice.

17. In the matter of termination, clause 4, i.e. in the event of termination or suspension of the said agency agreement mentioned herein above at any stage, the security deposit shall not be released till all the outstanding claim of BBL from Western Union are settled by Western Union. First Party shall use its good offices and extend co-operation in settlement of outstanding issue of BBL with Western Union and its agents as and when required.

18. It is argued that agreement does not say any prior notice for termination but when there is termination itself gives a stigma which affect the business of the terminated company or person as such law requires prior notice. It is the case of the defendant that plaintiff acted negligence with the contract. In that case, it is defendant who requires to justify termination letter and from that angle learned judge considered defendant's case. It appears that learned Judge extensively considered the case of natural justice upon referring to various decisions of the apex court of this country and on relying section 73 of the Contact Act, held that 'defendant acted malafide in terminating the agreement or contract with the plaintiff.'

19. Natural Justice has no definition. It is to be inferred. It must be without bias and should render the decision in a judicial spirit and in accordance with the principles of substantial justice and fair play in action. The principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial or quasi-judicial authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice. These principles are now well settled and are four in number:—

(1) That every person whose civil rights are affected must have a reasonable notice of the case he has to meet.

(2) That he must have reasonable opportunity of being heard in his defence.

(3) That the hearing must be by an impartial tribunal, i.e. a person who is neither directly nor indirectly a party to the case or is already biased against the party concerned.

(4) That the authority must act in good faith, and not arbitrarily but reasonably.

20. In the case of *Rex vs Sussex Justice Exparte Meeonly, 1924 QB 256 at page 259*, Lord Hewart CJ laid down the eternal principle of natural justice as ".....That it is merely of some importance but is a fundamental importance that justice should not only be done, but should manifestly ad undoubtedly be seen to be done."

21. On a reading of the contract itself it is our considered view that when there is no clause given prior notice before termination of the contract defendant should act within the boundary of principal of natural justice so that plaintiff could not take shelter before law on the ground of violation of natural justice.

22. We find no substance in this appeal.

In the result, this appeal is dismissed. No costs.

Connected Civil Rule No.395(f) of 2012 is accordingly discharged .

Ed.

HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Sheikh Abdul Awal J
FRM Nazmul Ahasan J

Judgment
February 9th, 2011.

Promoda Sundari Sen Kalyan Trust, Rangpur
.....Plaintiff
-Appellant-Petitioner

vs

Momtaz Zafar Ahmed and others.....
Defendant-Respondent-Opposite Parties*

Artha Rin Adalat Ain (VIII of 2003)
Section 32

The 3rd party had enough scope to file an application before the Adalat by way of filing an objection under section 32 of the Ain, against the execution of a decree passed by the Adalat relating to the property. .....(38)

Burmah Eastern Ltd. vs Burmah Eastern Employees Union, 18 DLR 709 ref.

Abdul Quayum with HS Deb Brahman , Advocates—For the Petitioner.

Zafarullah Chowdhury, Advocate—For the Opposite Party Nos.1-3.

Shamim Khaled Ahmed, Advocate—For the Opposite Party No. 7.

Judgment

Sheikh Abdul Awal J : This Rule was issued on an application under section 115 of the Code of Civil Procedure calling upon the opposite party Nos.1-7 to show cause as to why the impugned judgment and order dated 12-5-2010 passed by the learned District Judge, Rangpur in Other Appeal No. 49 of 2010 dismissing the appeal summarily and affirming the Judgment and decree dated 29-4-2010 (decree signed on 5-5-2010) passed by the learned Senior Assistant Judge, Sadar, Rangpur in Other Suit No.238 of 2009 rejecting the plaint should not be set-aside.

2. The material facts as necessary for disposal of this Rule are that the present petitioner as plaintiff brought a suit being Other Suit No. 238 of 2009 on 29-8-2009 in the Court of Senior Assistant Judge, Sadar, Rangpur impleading the present defendant-opposite parties praying for permanent injunction in respect of the suit land as described in the schedule of the plaint . The plaintiff's case in short is that Shib Krishna Sen and Monikrishna Sen were the original owner of the suit land as described in the 'Ka' schedule of the plaint. Shib Krishna Sen executed a registered will in favour of his brother Monikrishna Sen, who obtained probate from the District Judge vide Probate Case No. 14 of 1971 and has been owing and possessing the suit land; that Monikrishna Sen executed a will on 8-4-1991 in favour of Shankar Basu, who obtained probate vide Probate Case No. 43 of 1992 wherein, it has been stated that the executor of will is not entitled to sell the schedule property but to enjoy the same; that Shankar Basu established Monikrishna Sen Decree College and after the death of Shankar Basu the suit land came under Monikrishna Sen Trust; that one NGO namely Grameen Samaj Kendra took loan from the Agrani Bank, Tejgaon Industrial Area Branch, Dhaka mortgaging the schedule property as security of loan but the said NGO failed to liquidate the loan and thereupon, the Bank instituted a suit for realization of its outstanding dues against the authority of Grameen Samaj Kendra and the said suit was decreed *ex-parte* beyond the knowledge of the trust authority; that Shankar Basu was not empowered to mortgage the suit and as per will, the defendant Nos .1-3 in connivance with each other created a kabala vide its No.9685 dated 22-7-1990 in the name of Ranjit Basu in order to grab the suit property with an ulterior motive; that after creating kabala deed the defendants with the help of bad people attempted to dispossess the plaintiff from the suit

*Civil Revision No. 2689 of 2010

land on 15-9-2009 and thereafter, the defendant Nos.1-3 in connivance with the defendant Nos. 4-6 on 26-7-2009 at 9-10 AM illegally entered into the suit land and also tried to evict the employees of Monikrishna Sen Trust. Hence, the suit.

3. After institution of the suit the plaintiff f.i1ed an application under Order XXXIX, rule 1 and 2 read with section 151 of the Code of Civil Procedure for restraining the defendants from evicting the plaintiff of the suit land.

4. Decree holder, Agrani Bank Ltd. Tejgaon Industrial Area Branch, Dhaka on knowing about the said suit filed an application for addition of party which was allowed resulting which Agrani Bank Ltd. became party as defendant No.7 in the suit.

5. The defendant No. 7 thereafter, on 15-10-2009 filed an application under order 7, Rule 11 of the Code of Civil Procedure for rejection of the plaint stating, *inter-alia*, that the defendant No.7 as plaintiff instituted Artha Rin Suit 771 of 2004 before the Artha Rin Adalat No.1, Dhaka for recovery of its outstanding dues amounting to Taka 60,61,540 against the Grameen Samaj Kendra which was decreed vide *ex-parte* judgment and decree dated 2-9-2004 and thereafter, the defendant No.7 as decree-holder Bank put the decree into execution filing Artha in Execution Case No. 638 of 2004 on 30-11-2004 in which the decree-holder-Bank after exhausting all the legal formalities executed a sale deed in respect of the suit land as described in the 'Ka' schedule of the plaint in favour of the highest bidder namely, (1) Momtaz, Jafar Ahmed, (2) Md Ashif Wahed and (3) Md Rashidul Alam and as such the suit is impliedly barred by section 20 of the Artha Rin Adalat Ain, 2003.

6. The learned Senior Assistant Judge upon hearing the application under Order VII, rule 11 of the Code of Civil Procedure and on considering the contents of the plaint was pleased to reject the plaint by his judgment and decree dated 29-4-2010 holding that the suit property was mortgaged to bank against loan and the Bank for recovery of its loan amount instituted a suit being Artha Rin Suit No. 638 of 2004 and the Artha Rin Adalat decreed the suit as prayed for and as such the suit is impliedly barred by section 20 of the Artha Rin Adalat Ain, 2003.

7. The unsuccessful plaintiff, thereupon as plaintiff-appellant took an appeal being Other Appeal No. 49 of 2010 before the learned District Judge, Rangpur, who upon hearing the plaintiff appellant by his judgment and order dated 12-5-2010 dismissed the appeal summarily along with an application under Order XXXIX, rules 1 and 2 of the Code of Civil Procedure for temporary injunction holding that the suit is barred by section 20 of the Artha Rin Adalat Ain, 2003 inasmuch as earlier over the self-same suit land the Artha Rin Adalat passed a decree in Artha Rin Case No. 771 of 2004 and thereafter, the suit property was sold in auction in Artha Rin Execution Case No. 638 of 2004 in accordance with law.

8. Being aggrieved by the aforesaid judgment and decree of two Courts below the present plaintiff-appellant-petitioner has come before this Court and obtained the present Rule.

9. Mr Abdul Quayum, the learned Advocate appearing for the petitioner submits that both the Courts below under misconception of law and facts most erroneously arrived at a finding that the suit is impliedly barred by section 20 of the Artha Rin Adalat Ain, 2003 inasmuch as it is apparent from the plaint of the suit that no relief was sought for against the judgment and decree passed by the Artha Rin Adalat in Artha Rin Case No.638 of 2004

10. Mr Abdul Quayum, the learned Advocate further submits that the plaintiff-petitioner is in exclusive physical possession over the suit land and admittedly he did not hand over delivery of possession in favour of the defendant-opposite

party Nos. 1-3 and, as such, both the Courts below in rejecting the plaint of the suit committed an error of law resulting in an error in the decision occasioning failure of just . He further submits both the Courts below having failed to consider that the mortgage deed dated 26-5-1996 (Annexure X-1) allegedly executed by Shankar Basu is contrary to the provisions of the Succession Act as well as Hindu law.

11. Referring to the plaint of the suit Mr. Abdul Quayum, the learned Advocate further argues that the plaintiff-petitioner did not mention any case being Artha Rin Case No. 771 of 2004 in the body of the plaint and no relief was sought for against the judgment and decree of the Artha Rin case and as such without taking evidence there is no legal scope at all to decide the question whether the suit is barred by section 20 of the Artha Rin Adalat Ain, 2003 or not. He adds that the proposition of law is well settled that in deciding the question as to whether the plaint should be rejected the Court may look into the averments made in the plaint and cannot go beyond the same to find whether the plaint is rejected or not and in this case both the Courts committed a serious error in taking into consideration the application of the defendant-bank and as such at any rate the judgment of two Courts below are liable to be set-aside.

12. Mr Abdul Quayum, the Learned Advocate to fortify his submission has relied on the decision reported in *7 ADC 291, 56 DLR (AD) 22, 10 BLC (AD) 8* and section 307 of the Indian Succession Act, 1925.

13. On the other hand, Mr Shamim Khaled Ahmed, the learned Advocate appearing for the opposite party No. 7, Agrani Rank Ltd. supports the judgments of two Courts below, which were according to him just, correct and proper. He in the course of his argument upon placing the plaint of the suit submits that the plaintiff through a clever device under the camouflage of a suit for permanent injunction challenged the judgment and decree of the Artha Rin Adalat, Dhaka passed in Artha Rin Case No. 771 of 2004 stating in the plaint that he came to know Shankar Basu and others took loan in the name of Grameen Samaj Kendro (NGO) from Agrani Bank mortgaging the suit land and since the loan amount was not paid and the Bank filed a suit and obtained a decree in respect of the suit t land from the Artha Rin Adalat.

14. He further submits that the present plaintiff-petitioner with an ulterior motive in order to frustrate the decree of the Artha Rin Adalat filed the present suit for permanent injunction in respect of the suit property as described in the schedule of the plaint; which already have been sold in auction in the proceedings of the Execution Case No 368 of 2004 and in that view of the matter both the Courts below rightly arrived at a concurrent finding that the suit is impliedly barred by section 20 of the Artha Rin Adalat Ain, 2003 and, as such, question of interference by this Court sitting under revisional jurisdiction does not arise at all .

15. Mr Shamim Khaled Ahmed, the learned Advocate finally relying on the decision reported in *15 BLT 425 = 12 BLC 723* submits that in this case it is apparent from the materials on record that the delivery of possession of the suit property has not yet been handed over to the auction purchasers and thus, it cannot be said that the execution case has been disposed of in accordance with law and in such situation the present petitioner's door is still open to ventilate his grievance, if any, as per the provisions of section 32 of the Artha Rin Adalat Ain, 2003.

16. Zafarullah Chowdhury, the learned Advocate appearing for the opposite party Nos.1-3, auction purchasers submits that the present defendant-opposite party No. 7 as plaintiff filed Artha Rin Suit No. 771 of 2004 in the Artha Rin Adalat. 1, Dhaka and obtained a decree for recov-

ery of Taka 60,31,540 with interest till realization of the same by selling the mortgaged property as described in the schedule of the plaint and thereafter, in the execution proceeding the mortgaged property was sold in auction to the opposite party Nos.1-3 in accordance with law. He next submits that plaintiff- petitioner deliberately with malafide intention in a cunning manner filed other Suit No. 238 of 2009, seeking permanent injunction in respect of the property which is subject matter of judgment and decree passed in Artha Rin Suit No. 771 of 2004 as well as Execution case No. 368 of 2004 and both the Courts below on consideration of the materials on record together with section 20 of the Artha Rin Adalat Ain, 2003 correctly allowed the application for rejection of the plaint holding that the suit is barred by section 20 of the Artha Rin Adalat Ain, 2003 which does not call for any interference .

17. Mr Zafarullah Chowdhury, finally relying on a number of decisions namely the decisions reported in *49 DLR (AD) 135, 8 BLC 411, 59 DLR 695, 51 DLR (AD) 221* and in an unreported judgment passed in Writ Petition No. 2046 of 2006 submits that the proposition of law is by now well settled that no separate suit lies against the judgment and decree passed by the Artha Rin Adalat even on the allegation of fraud and in the present case from a plain reading of the plaint it is apparent that the plaintiff-petitioner very technically challenges the judgment and decree of the Artha Rin Adalat as such both the Courts below acted legally in rejecting the plaint of the suit.

18. We have heard the learned Advocates of both the sides at length and perused the revisional application, affidavit-in-reply dated 27-1-2011, counter affidavits, judgments of two Courts below along with other connected documents as filed therewith. Now, to deal with the submissions of the learned Advocates, let us examine first whether the petitioner as plaintiff filed other Suit No. 238 of 2009, seeking permanent injunction in respect of the property which is subject matter of the judgment and decree of the Artha Rin Adalat passed in Artha Rin Suit No. 771 of 2004 as well as Artha Rin Execution Case No. 638 of 2004.

19. To resolve this dispute, we in it necessary to quote hereunder a portion of the plaint which reads as foll ows :

"মনিকৃষ্ণ সেন উক্ত শংকর বসুকে ট্রাষ্টের চেয়ারম্যান মনোনীত করিয়া ছিলেন। বিগত ২৮-২-১৯৮৫ইং তারিখে অকস্মাৎ মস্তিস্কে রক্ত ক্ষরন হইয়া শংকর বসু মৃত্যুবরণ করেন এবং উইলের মর্মানুযায়ী নালিশী সম্পত্তি সহ অপরাপর সম্পত্তি ট্রাষ্টের মালিকানায় চলিয়া আসে। তদন্তর ট্রাষ্টের কার্য্যক্রম উক্ত সম্পত্তির আয় দ্বারা পরিচালিত হইয়া আসিতেছে। সম্প্রতি জানা যায় যে, শংকর বসু এবং আরো অন্যান্য ব্যক্তিবর্গ "গ্রামীন সমাজ কেন্দ্র" নামক একটি এন,জি,ও জন্য অগ্রনী ব্যাংক শিল্প এলাকা শাখা, ঢাকা হইতে নালিশী তপশীল বর্নিত সম্পত্তি বন্দক রাখিয়া ঋণ করিয়াছিলেন এবং উক্ত অর্থ পরিশোধিত না হওয়ায় ব্যাংক কর্তৃপক্ষ ঢাকায় মাননীয় অর্থ ঋণ আদালতে মোকদ্দমা দায়ের করিয়া ডিক্রী পাইয়াছেন। এই বিষয়টি ট্রাষ্ট কর্তৃপক্ষ সহ এলাকার কেহই জানিতে পারেন নাই। শংক বসু নালিশী সম্পত্তি কোন ভাবেই হস্তান্তর করার অধিকারী ছিলেন না। বাদী ট্রাষ্ট আশংকা করিতেছে যে, একটি ভুমি লোলুপ কিছু ব্যক্তিবর্গ ব্যাংকের সহিত যোগসাজস করিয় বেআইনী কাগজ পত্র সৃষ্টি করিয়া উক্ত সম্পত্তি আত্বসাৎ করার একটি হীন অপচেষ্টা চালাইতেছে।"

20. From a reading of the above quoted averments of the plaint, it transpires that the property as described in the schedule of the plaint is subject matter of the judgment and decree of the Artha Rin Adalat

21. Now, let us see the plaint of the Artha Rin Suit No. 771 of 2004 and other connected documents including the judgment and decree of the said Artha Rin Suit as well as orders of Executing Adalat passed in Artha Rin Execution Case No. 638 of 2004. It is found that Agrani Bank, Tejgaon Industrial Area Branch, Dhaka as plaintiff instituted Artha Rin Suit No. 771 of 2004 for realization of its outstanding dues amounting to Taka 60,31,540 as stood on 28-4-2004 against Managing Director of Grameen Samaj Kendra

and others. The suit was decreed *ex-parte* vide *ex-parte* judgment and decree dated 2-9-2004 by the Artha Rin Adalat and thereafter, the decree-holder-Bank put the decree into execution by filing Execution Case No 368 of 2004 in which the mortgaged property was sold in auction to the present opposite party Nos.1-3 in accordance with law.

22. It is found that the said mortgaged property is the suit property of the present suit of permanent injunction. Now, let us look at the relevant provisions of both the old and new Artha Rin Adalat Ain .

23. Section 6 of the Artha Rin Adalat Ain, 1990 reads as follows:

"৬। অর্থ ঋণ আদালতের সিদ্ধান্ত চূড়ান্ত। (১) ধারা ৭ এর বিধান সাপেক্ষে অর্থ ঋণ আদালতের কার্য্যধারা, আদেশ, রায় ও ডিক্রী সম্পর্কে কোন আদালত বা অন্য কোন কর্তৃপক্ষের নিকট উত্থাপন করা যাইবে না।"

(২) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, কোন অর্থ ঋণ আদালত কর্তৃক বিবাদীর বিরুদ্ধে প্রদত্ত কোন একতরফা ডিক্রী রদ করার জন্য বিবাদী Code of Civil Procedure, 1908 (Act V of 1903) এর Order IX এর rule 13 এর বিধান মোতাবেক আদালতে দরখাস্ত করিতে চাহিলে তাহাকে তাহার বিরুদ্ধে ডিক্রীকৃত অর্থের অন্ততঃ অর্ধেক অর্থ বা উহার সমপরিমান অর্থের ব্যাংক জামানত দরখাস্তের সহিত আদালতে জমা করিতে হইবে, এবং উক্তরূপ জমা করা না হইলে তাহার দরখাস্ত গ্রহন যোগ্য হইবে না।"

24. Similar provision has been provided in section 20 of the Artha Rin Adalat Ain, 2003 which reads as follows:

"২০। অর্থ ঋণ আদালতের আদেশের চূড়ান্ততা।-এই আইনের বিধান ব্যতিরেকে, কোন আদালত বা কর্তৃপক্ষের নিকট অর্থ ঋণ আদালতে বিচারাধীন কোন কার্যধারা বা উহার কোন আদেশ, রায় বা ডিক্রীর বিষয়ে কোন প্রশ্ন উত্থাপন করা যাইবে না, এবং এই আইনের বিধানকে উপেক্ষা করিয়া কোন আদালত বা কর্তৃপক্ষের নিকট আবেদন করিয়া কোন প্রতিকার দাবী বা প্রার্থনা করা হইলে, ঐরুপ আবেদন কোন আদালত বা কর্তৃপক্ষ গ্রাহ্য করিবে না।"

25. From a plain reading of the above quoted provisions of the Artha Rin Adalat Ain, 1990/2003 it appears that except the provisions of this Act, no question shall be raised before any Court or authority about any pending proceeding in the Artha Rin Adalat, or its order, judgment or decree, and if any relief is claimed or prayed before any Court or authority ignoring the provisions of this Act, no Court or authority shall accept any such prayer, the judgment or decree of the Artha Rin Adalat is final and the same cannot be questioned in any other Court under any separate proceeding. In the connection it must bear in mind that the Artha Rin Adalat Ain, 2003 is special law and the provision provided therein prevails over the general law.

26. Now, the only question for consideration is, whether the trial Court and the lower Appellate Court correctly held that the suit is impliedly barred by section 20 of the Artha Rin Adalat Ain, 2003.

27. It appears that the trial Court below on consideration of the materials on record allowed the application for rejection of the plaint stating as follows :

"ইহার পর বন্ধকী তপশীল বর্নিত জমি নিলাম কার্য ধারা অর্থঋণ জারী ৬৩৮/০৪ নং মামলার মাধ্যমে চলিতে থাকা অবস্থায় "প্রমোদ সুন্দরী সেন কল্যান ষ্ট্রাষ্টে রংপুর" এর পক্ষে নির্বাহী পরিচালক মোঃ আঃ রহমান বাদী হইয়া ডিক্রীকৃত জমিতে নিজের স্বত্ব দখল জারী করিয়া অর্থ ঋণ আদালতের ডিক্রীকে challenge করিয়া চিরস্থায়ী নিষেধাজ্ঞার প্রার্থনায় অত্র অন্য ২৩৮/০৯নং মোকদ্দমা আনায়ন করেন। যাহ অর্থ ঋণ আদালত আইন, ২০০৩ এর ২০ ধারা অনুযায়ী বারিত। কাজেই তৎকারনে বাদীর আরজী নাকচ হইবে।"

28. The lower Appellate Court in its turn affirmed the above findings of the trial Court.

29. As already noticed that admittedly the property as described in the schedule of the plaint was sold in auction pursuant to the judgment and decree passed by the Artha Rin Adalat in Artha

Rin Suit No. 771 of 2004. Therefore, it is very difficult on our part to interfere with such concurrent findings sitting under revisional jurisdiction.

30. To meet the main argument of Mr Abdul Quayum, the learned Advocate for the petitioner that the plaintiff-petitioner in his plaint did not mention any case being Artha Rin Suit No. 771 of 2004, no relief was sought for against the judgment and decree of the Artha Rin Suit and as such the findings of the trial Court is perverse being contrary to law and facts, we have carefully examined the entire averments of the plaint together with the connected materials on record.

31. We agree with the submission of Mr. Quayum that in deciding the question as to whether the plaint should be rejected the Court may look into the averments made in the plaint and cannot go beyond the same to find whether the plaint is rejected or not. In this case on a close perusal of the averments of the plaint together with the other materials on record, it appears to us that the plaintiff-petitioner in a very cunning manner disputing the judgment and decree of the Artha Rin Adalat under the camouflage of the present suit for permanent injunction being Other Suit No.238 of 2009 seeking permanent injunction in respect of the property which is subject matter of the judgment and decree of Artha Rin Adalat passed in Artha Rin Suit No.771 of 2004. In view of this, we do not find any possible reason to differ with the view taken by the two Courts below.

32. In this connection we may refer to the view of Mr Murshed, CJ as given in the case of *Burmah Eastern Ltd. vs Burmah Eastern Employees Union*reported in *18 DLR 709* which reads as follows:

> "Turning, now, to the plaint in the present suit, it is obvious, from a mere perusal of the plaint itself, that it must be held the suit is prohibited under, if not by law. This being the position, even if the case does not come, literally and strictly, within the letter of Order 7, rule 11 the Code of Civil Procedure, there cannot be any manner of doubt that the suit is prohibited under the law in the sense that is barred under legal provisions. The Court should, therefore, have rejected the plaint in limine because the suit itself is barred under our legal system. If Order 7, rule 11 of the Code of Civil Procedure cannot be prayed in aid, the inherent power of the Court should be invoked."

33. In support of that view Mr Murshed, CJ referred to various decisions and discussed them elaborately.

34. Now, it remains for us to consider the cases cited by Mr Abdul Quayum. On reading of the decisions reported in *7 ADC 291, 56 DLR (AD) 22, 10 BLC (AD) 8* and section 307 of the Indian Succession Act, 1925, it seems to us that the principles as enunciated in those decisions as well as the provision of section 307 of the Indian Succession Act, 1925 have no manner of application in the facts and circumstances of the present case.

35. Mr Abdul Quayum, the learned Advocate at the fag end of the hearing has repeatedly argued before us that after disposing of the execution case the present auction purchasers (opposite party Nos.1-3) threatened the plaintiff-petitioner to vacate the suit property and thereby finding no other way the plaintiff-petitioner in order to save his property filed the present suit.

36. To this, Mr Shamim Khaled Ahmed, the learned Advocate relying on the decision reported in *15 BLT 425 = 12 BLC 723* submits that subsection 7 of section 33 of the Ain, 2003 envisages vesting of ownership of the property of the judgment-debtor upon the decree-holder and the said vesting of ownership includes delivery of possession of the property, without the delivery of possession, the execution case cannot be disposed of

and admittedly, in this case the possession of the suit property has not yet been handed over to the auction on purchasers and as such it cannot be said that the execution case has already been disposed of.

37. To appreciate this last branch of argument, we have carefully examined the provisions of section 33 of the Artha Rin Adalat Ain, 2003 together with the decision reported in *15 BLT 425 = 12 BLC 723,* it appears to us that unless the possession of the property is handed over to the auction on purchasers, the execution case may not be finally disposed of. Therefore, we find no substance in either of the contentions as raised by the learned Advocate for the petitioner.

38. It is an admitted proposition that the present plaintiff-petitioner did not file any application before the executing Adalat under section 32 of the Ain, 2003 but he has filed the present suit without even approaching before the executing Adalat. The 3rd party petitioners have/had enough scope to file an application before the Artha Rin Adalat by way of filing an objection under section 32 of the Ain, 2003 against the execution of a decree passed by the Artha Rin Adalat relating to the property. Therefore, it is clearly found that the plaintiff-petitioner took a wrong way to ventilate his grievances, other than the recourse prescribed by specific provisions governing the issue.

39. The submission made by the learned Advocate for the opposite party Nos. 1-3 that the instant suit is misconceived in law and designed to frustrate the execution of the decree appears to have substance.

40. Hence for all these reasons above, the impugned judgments of both the Courts below does not call for any interference. The Rule is, therefore, discharged without any order as to cost

Let a copy of the Judgment along with lower Court's record be sent down at once.

Ed.

HIGH COURT DIVISION
(Criminal Miscellaneous Jurisdiction)

M Enayetur Rahim J
Amir Hossain J

Judgment
December 14th, 2015.

Salina Islam Beauty.....
.....Informant-Petitioner

vs

State.....Opposite Party*

Code of Criminal Procedure (V of 1898)
Section 173(3B)

Section 173 (3B) of the Code has given power to the police to submit supplementary charge sheet on further investigation against any person/persons, even who has earlier discharged on final report, if it obtains further evidence. .....(35)

Code of Criminal Procedure (V of 1898)
Section 120A

The criminal conspiracy doctrine only require overlapping chains of agreement that link the physical perpetrator to the accused. However, the lack of a direct agreement between the defendant and the physical perpetrator is no bar to applying the conspiracy doctrine as long as the chain of overlapping agreements connects them. .....(31)

Abdus Sabur vs State, 8 BLC (AD) 166; Abdus Salam vs State, 36 DLR (AD) 58; Syed Azharul Kabir vs Syed Ehsan Kabir, 4 MLR (AD) 343 = 5 BLC (AD) 20; Major Bazlul Huda vs State [Popularly known as Bangabandhu murder case] 62 DLR (AD) 1; para 173] ref.

Abdul Baset Mazumder with Subrata Chowdhury, and Mantu Chandra Ghosh, Advocates—For the Informant-Petitioner.

Sheikh AKM Monir-uz-zaman, DAG With Md

*Criminal Miscellaneous No. 51347 of 2015.

Shahidul Islam Khan, AAG Md Miah Sirajul Islam, AAG—For the State.

Judgment

M Enayetur Rahim J : The informant petitioner has preferred this application under section 561A of the Code of Criminal Procedure for quashing/setting aside the judgment and order dated 9-11-2015 passed by the learned Sessions Judge, Narayanganj in Criminal Revision No.150 of 2015 disallowing the same and thereby affirming the order dated 8-7-2015 passed by the learned Judicial Magistrate in Fatullah Police Station Case No.74 dated 28-4-2014 corresponding to GR Case No.328 of 2014 rejecting the Naraji petition.

2. The informant petitioner on 28-4-2014 lodged a First Information Report with the Fatullah Model Police Station implicating 6(six) persons and 5/6 unknown persons alleging, inter alia, that on 27-4-2014 at about 1-30 pm her husband Nazrul Islam, Panel Chairman of Narayanganj City Corporation, along with Tajul, Liton and Shawpan after giving hajira in a case in Narayanganj Court started for Dhaka by his own car and when the said car reached near the Khan Shaheb Osman Ali Stadium near Dhaka Narayanganj Link road two microbuses intercepted the car of her husband and 15/20 persons identifying themselves as the RAB personnel forcibly took her husband and his companions to the said microbuses. It was further alleged that there was longstanding enmity between the husband of the informant and councillor Noor Hossain regarding the various affairs of Narayanganj City Corporation and local politics and the informant suspected that accused Noor Hossain might have abducted her husband and his companions as on 2-2-2014 accused Noor Hossain and other FIR named accused persons openly threatened her husband to kill him in an another incident. The informant and her relatives made search in different places to find out his husband but they failed to trace him out and she informed the said fact to the different law enforcing agencies including Rapid Action Battalion [RAB].

3. On the basis of the said First Information Report Fatullah Model Police Station Case No.74 dated 28-4-2014 under sections 170/341/365/34 of the Penal Code was started.

4. Eventually, on 30-4-2014, 07 [seven] dead bodies including the dead bodies of Nazrul Islam, Shawpan, Tajul and Liton were found floating on the river Sitallakha.

5. The police after completing the investigation of the case submitted charge sheet on 8-4-2015 under sections 364/302/201/109/114/34 of the Penal Code against 35 persons including FIR named accused Noor Hossain and in the said charge sheet 15 persons including 5 FIR named accused persons were recommended for discharged.

6. Being dissatisfied with the said police report [charge sheet] the informant petitioner filed a Naraji petition before the learned Judicial Magistrate, Narayanganj stating that the police did not send up 5 [five] persons whose name were mentioned in the First Information Report and the persons whose names were disclosed by one of the accused [Ali Mohammad] in his statement under section 164 of the Code of Criminal Procedure.

7. The learned Judicial Magistrate after receiving the said Naraji petition examined the informant in compliance with the provision of section 200 of the Code of Criminal Procedure. Thereafter, the learned Magistrate by its order dated 8-7-2015 rejecting the Naraji petition accepted the charge sheet and took cognizance of the offences under sections 364/302/201/109/114

read with section 34 of the Penal Code against all the 35 accused persons who were recommended for prosecution.

8. Felling aggrieved by the said order the informant petitioner preferred Criminal Revision No. 150 of 2015 before the Sessions Judge, Narayanganj, who having heard the said revision application by the impugned judgment and order dated 9-11-2015 disallowed the same and affirmed the order dated 8-7-2015 passed by the learned Judicial Magistrate rejecting the Naraji petition.

9. Hence, the informant petitioner has preferred this application.

10. Mr Abdul Baset Mazumder, the learned Advocate for the informant petitioner having placed the application and the Annexures thereto submits that the learned Judicial Magistrate acted illegally in rejecting the Naraji petition without considering the grounds taken in it. He further submits that the informant in the First Information Report categorically mentioned some names as suspecting accused but the police did not make recommendation for their prosecution and one of the co-accused in his statement under section 164 of the Code of Criminal Procedure disclosed the name of some persons with the commission of the offence, despite those persons were also left out from the charge sheet. He further submits that accused Noor Hossain the main architect of the abduction and murder has recently been brought from India to Bangladesh and for the interest of justice, he should be taken on remand for interrogation by the investigating agency in order to collect more evidence and, as such, an order of further investigation is necessary, otherwise justice will be defeated.

11. Mr Majumder referring to the cases of *Abdus Sabur vs State,* reported in *8 BLC (AD) 166, Abdus Salam vs State,* reported in *36 DLR (AD) 58 and Syed Azharul Kabir vs Syed Ehsan Kabir,* repoted in *4 MLR (AD) 343 = 5 BLC (AD) 20* submits that Naraji petition is in substance a complaint and thus the Magistrate has to deal with it according to law. But in the instant case the learned Magistrate without following the provision of section 202 of the code of Criminal Procedure that is without holding any inquiry rejected the Naraji petition and thereby, occasioned failure of justice.

12. However, Mr Sheikh AKM Monir-uz-zaman, the learned Deputy Attorney General appearing for the State opposite party supported the impugned judgment and orders passed by the Courts below.

13. Heard the learned Advocate for the respective parties, perused the application under section 561A of the Code of Criminal Procedure, the supplementary affidavit and the Annexures thereto.

14. On perusal of the impugned judgment and order passed by the learned Judicial Magistrate and the learned Sessions Judge respectively, it appears to us that both the courts below categorically addressed the grievances/protest made by the informant petitioner in the Naraji petition.

15. The learned Sessions Judge in maintaining the order of the learned Judicial Magistrate categorically held to the effect :

> "That I have gone through the recorded statements of accused-persons under section 164 of the Criminal Procedure Code and the statements of witnesses recorded under section 161 of the Criminal Procedure Code very carefully and that on careful scrutiny at this stage it made me well cognitive of that from alleged offence for causing abduction to killing in question exclusively operated by highly trained defense personnel's and that behind the scenes was mastermind of the

allege abduction and killing accused namely Md Noor Hossain.....

That as all 'Ezahar' named accused are not sent up accused so, all sent up accused persons are not Ezahar named and that in senting up accused irrefutable evidence is to be accumulated. That therefore senting up defended upon strong corroborative evidence. That in the instant case as there appeared every corroborating and reasonable evince so, 35 accused-persons treated as sent up accused persons and that investigating as there appeared no irrefutable and tangible evidence against the not sent up accused so, proposed for not senting up in the charge-sheet. That having careful scrutiny as I hold opinion that the police report of the investigation officer caused nothing perfunctory and that petitioners above noticed 2(two) folded pleas are not sustainable and that therefore considering all these I hold opinion that the impugned order of the Id. Court below warrants no interference.....

That as 'Ezahar' named 6 (six) persons were suspected and it was fully under comprehension and that as such conceived matter corroborated with nothing tangible except one so, only 1 (one) out of 6 (six) accused persons was duly sent-up and that therefore investigation officer senting up 1 (one) out of 6 (six) commuted no wrong and that has such the impugned order warrants no interference.....

That the investigation as corroborating evidence sent up all these persons as accused-persons in the instant case except Raiz (with reasons stated therein}. That as investigation officer through corroborating evidence filed charge-sheet against said persons except Raiz so, the investigation officer submitting the charge-sheet committed no wrong and that therefore petitioners plea with senting up Nurul Islam, Noor Salam, Jaj Miah, Nuruddin, Nurul Haque and Badal appeared unreasonable and not supported by any tangible evidence causing for alleged abduction and killing and that therefore considering all these the impugned order of the Id. Court below warrants no interference."

16. The above well reasoned findings of the learned Sessions Judge appear to be based on proper appreciations and consideration of the materials on record.

17. Thus, we do not find any legal infirmity or illegality with the impugned judgment and order and, as such, we are not inclined to interfere with the Same invoking the power of section 561A of the cods of Criminal Procedure.

18. Further, the informant petitioner at the time of examination under section 200 of the Code of Criminal Procedure stated to the effect:

"..... । পুনরায় সি.আই.ডি-র মাধ্যমে যথাযথ তদন্তের জন্য আমি নারাজী দাখিল করেছি।"

And in the Naraji Petition the informant prayed to the effect:

".....অত্র মামলার তদন্তকারী কর্মকর্তা কর্তৃক দাখিলকৃত অভিযোগপত্র নং-২৩২ তারিখ-৮-৪-২০১৫ইং অভিযোগপত্রটির বিরুদ্ধে এজাহারকারীনর অত্র না-রাজী দরখাস্ত গ্রহণ করিয়া অত্র মোকদ্দমাটি সি.আই.ডি অথবা অন্যকোন সংস্থার মাধ্যমে তদন্ত করিতে নির্দেশ দানে সুবিচার করিতে আজ্ঞা হয়।" *[underlines supplied]*

19. The above assertions of the informant petitioner clearly indicate that, in fact, the informant by filing the Naraji petition sought for re-investigation [পুনঃ তদন্ত] of the case.

20. It is well settled proposition of law that there can not be any re-investigation [পুনঃ তদন্ত

into a case where once police has submitted charge sheet . Further, there is no scope to re-open the investigation of the case in the name of re-investigation.

21. It was argued by Mr. Majumder that the learned Judicial Magistrate ought to have followed the provision of section 202 of the Code of Criminal Procedure after examination of the informant as per provision of section 200 of the said Code.

22. It is evident from the materials placed before us that the learned Judicial Magistrate upon receiving the Naraji Petition examined the informant under section 200 of the Code of Criminal Procedure and having not satisfied with the allegations/protest made in the Naraji Petition rejected the same assigning cogent reasons.

23. To hold an inquiry by the police or judicial inquiry as provided in section 202 of the Code of Criminal Procedure is not a routine procedure. Such procedure depends on the satisfaction of the concerned Magistrate. After examination of the complainant or informant, as the case may be, if the concerned Magistrate is not satisfied to proceed further with the complaint or Naraji petition considering the statements made under section 200 of the Code of Criminal Procedure before it and the allegations made in the complaint or the grounds taken in Naraji petition, he has the power to reject the same in limine.

24. Thus, the learned Judicial Magistrate did not commit any error of law in not sending the Naraji Petition to the police for holding any inquiry or to proceed further for a judicial inquiry as provided in section 202 of the Code of Criminal Procedure.

25. It is pertinent to mention here that the informant petitioner in the Naraji petition did not make any allegation that the investigating officer did not record the statements of her witnesses under section 161 of the Code of Criminal Procedure properly or correctly.

26. It was also argued by Mr. Majumder that for the interest of justice accused Noor Hossain, against whom charge sheet has already been submitted, is required to be taken on remand for interrogation with a view to collecting more evidence and information regarding the occurrences, because at the time of investigation he was in jail in India and investigating officer could not interrogate him. However, in support of the above argument Mr. Majumder has failed to show us any specific law or judicial Pronouncement to the effect that after acceptance of the charge sheet an accused can be taken on remand.

27. On perusal of the materials placed before us particularly, the charge sheet and the statements 164 of the Code of Criminal Procedure of some of the accused persons, it has revealed that the abduction and murder was taken place pursuant to an organized scheme and/or agreement . In the charge sheet it has been disclosed to the effect that:

> পূর্বে দাখিলকৃত আবেদনমতে গ্রামীণ ফোন, বাংলালিক, এয়ারটেল হইতে আসামী নূর হোসেন ও র‍্যাব কর্মকর্তাদের মধ্যে মোবাইল ফোন কথোপকথন, এসএমএস-এর; বিবরণী প্রাপ্ত হইয়া পর্যালোচনায় দেখা যায় যে, আসামী লেঃ কর্ণেল (অবঃ) তারেক সাঈদ মোহাম্মদ এর মোবাইল নাম্বার ০১৭৭৭-৭১১১০০ হতে আরিফ হোসেনের মোবাইল নাম্বার ০১৭৫২-৪৬০০৬৪ ও আসামী লেঃ কমান্ডার (অব্যাহতি প্রাপ্ত) মাসুদ রানার মোবাইল নাম্বার ০১৭৭৭-১১১১১ নাম্বারে এসএমএস পাঠায়। (১) Don't CARRY YOUR OFFICIAL MOBILE, (2) REMOVE TOPLATE BEFORE DROP আসামী নূর হোসেন কাউন্সিলর (৫০) এর মোবাইল-০১৬৮৪-৩৭৬৫৬ হইতে আসামী আরিফ হোসেনের মোবাইল-০১৭৮২-৪৬০০৬৪ নাম্বারে ঘটনার ধারাবাহিকতায় গত ৬-৪-২০১৪ তারিখ হইতে ২৭-৪-২০১৪ তারিখ ২২.৫৫ ঘটিকা পর্যন্ত আসামী আরিফ হোসেন ২৪ বার

নূর হোসেন ১২ বার কথার মধ্যে গত ২৭-৪-২০১৪ তারিখ সকাল ১০.৩৩ হতে রাত ২২.৫৫ পর্যন্ত আসামী নূর হোসেন ৫ বার ও মেজর আরিফ ৫ বার কথা বলেন। আসামী মেজর (অবঃ) আরিফ হোসেনের মোবাইল-০১৭৮২-৪৬০০৬৪ হইতে আসামী লেঃ কর্ণেল (অবঃ) তারেক সাঈদ মোহাম্মদ এর অফিসের সরকারী টেলিফোন ০৭৬৯৪৪৩৩, ৭৬৯১৪৭৭ নাম্বার গত ২৭-৪-২০১৪ তারিখ ১৩.৫৬ হতে রাত ০২.১১ পর্যন্ত তার মোবাইল হতে টেলিফোন নাম্বারে ৪ বার, আসামী তারেক সাঈদ মোহাম্মদ এর মোবাইল-০১৯১৪-৪০২২২৫ হতে আসামী মেজর (অবঃ) আরিফ হোসেনের মোবাইলে ২ বার এসএমএস পাঠায়। আসামী লেঃ কমান্ডার (অব্যাহতি প্রাপ্ত) মাসুদ রানা এর মোবাইল নাম্বার-০১৭৭৭-৭১১১১১ হতে লেঃ কর্ণেল (অবঃ) তারেক সাঈদ মোহাম্মদ এর সরকারী মোবাইল নাম্বার ০১৭৭-৭১১১১০০ নাম্বারে গত ২৭-৪-২০১৪ তারিখ ১২.২২ হতে রাত ২.০০ টা পর্যন্ত ২ বার এসএমএস, আসামী মাসুদ রানা ৬ বার ও আসামী তারেক সাঈদ মোহাম্মদ ৬ বার। গত ইং ২৭-৪-২০১৪ তারিখ রাত ২২.৫০ মিনিট আসামী তারেক সাঈদ মোহাম্মদ এর মোবাইল নাম্বার-০১৭৭৭-১১১০০ হতে এডিজি অপস কর্ণেল জিয়াউল আহসান, র‍্যাব হেডকোয়ার্টাস ঢাকা এর মোবাইল নাম্বার-০১৭৭৭-৭২০০০১ মোবাইল এসএমএস এর মাধ্যমে ২৪ ঘন্টার র‍্যাব-১১ হতে কোন গ্রেফতার, আটক, দুর্ঘানা বদলী, অভিযান সংক্রান্ত শূন্য প্রতিবেদন পাঠাইয়াছে।.....
.....।

ঘটনার ৫/৭ মাস পূর্বে আসামী মেজর আরিফ হোসেন নারায়ণগঞ্জ আদমজীনগর, র‍্যাব ক্যাম্পে কমান্ডার হওয়ায় আসামী নূর হোসেনের অফিসে প্রতি মাসে ৮/১০ বার যাতায়াত করিত, সেই সুবাদে মেজর আরিফ অনৈতিক ভাবে আর্থিক লাভবান হওয়ার সুবাদে আসামী নূর হোসেন মেজর (আবঃ) আরিফ ও সিও লেঃ (অবঃ) কর্ণেল তারেক সাঈদ মোহাম্মদের অফিসে আসা-যাওয়ার অন্তরালে কাউন্সিলর নজরুলকে টাকার বিনিময়ে অপহরণ, হত্যা গুমের প্রস্তাব আসামী মেজর (অবঃ) আরিফের মোবাইল ফোনের সাংকেতিক কথা বার্তা আলোচনা তথ্য প্রযুক্তির মাধ্যমে প্রমাণ পাওয়া গিয়াছে। ঢাকা ফ্ল্যাট ক্রয় করার বিষয়ে নূর হোসেনের মাধ্যমে টাকা দেওয়া হয়েছে। আসামী নূর হোসেন প্যানেল মেয়র নজরুলকে হত্যার উদ্দেশ্যে র‍্যাব-১১ আদমজীনগর, নারায়ণগঞ্জ এর শীর্ষ কর্মকর্তাদেরকে প্রচুর অর্থ ও সম্পদের বিনিময়ে ম্যানেজ এক পর্যায়ে প্যানেল মেয়র নজরুল, তাজুল, লিটন, স্বপন, ড্রাইভার জাহাঙ্গীর সিদ্দিরগঞ্জ থানার মামলা নং-০১(২) ১৪ সংক্রান্ত নারায়ণগঞ্জ কোর্টে হাজিরা দেওয়ার দিন ২৭-৪-২০১৪ তারিখ ধার্য থাকায় আদালতে হাজির থাকার বিষয় নিশ্চিত হইয়া আসামী নূর হোসেন মেজর আরিফকে নিশ্চিত করিলে পূর্ব পরিকল্পনা অনুযায়ী আসামী লেঃ কর্ণেল (অবঃ) তারেক সাঈদ মোহাম্মদ এর অনুমতিক্রমে সাদা পোশাকে র‍্যাব সদস্যদের লইয়া নাম্বার বিহীন ব্লু কালারের হাইচ মাইক্রো লইয়া ইং ২৭-৪-২০১৪ তারিখ সকাল ১০.৩০ মিনিটে আদমজীনগর র‍্যাব ক্যাম্প থেকে বাহির হয়। লেঃ কমান্ডার মাসুদ রানা সাদা পোশাকে ৬(ছয়) জন র‍্যাব সদস্য সহ একটি নাম্বার বিহীন সিলভার কালারের হাইচ মাক্রো করিয়া বেলা ১১.০০ টার সময় আসামী মেজর আরিফের নিকট নারায়ণগঞ্জ নতুন কোর্টের সামনে রাস্তায় পাঠায়। কিছু সময় পরে সে নিজে কনষ্টেবল হাবিবকে লইয়া অন্য গাড়িতে মেজর আরিফের গাড়িতে উঠে। তাহার কোম্পানীর ২(দুই) টি টইল পার্টির মাধ্যমে চেক পোস্ট বসায়।
.....। প্রাপ্ত তথ্য মোতাবেক আসামী লেঃ কমান্ডার মাসুদ রানা নারায়ণগঞ্জ সিটি কর্পোরেশনের গেইটের সামনে ফাকা জায়গায় চেকপোস্ট বসাইয়া ২(দুই) টি প্রাইভেটকারের নাম্বার টহল দলের কমান্ডার সাক্ষী ডিএডি পুলিশ পরিদর্শক আব্দুস সালাম শিকদার বিপিএম কে প্রাইভেটকার থামাইতে বলেন। গাড়ীর পেছনে মেজর আরিফ ও লেঃ কমান্ডার রানা আছে বলিয়া তাহাকে আশ্বস্ত করেন। টহল পার্টি র‍্যাবের নিয়ম মোতাবেক ২(দুই) টি টহল গাড়ী দিয়া ১০০ গজের মধ্যে ২(দুই)টি চেক পোস্ট বসাইলে ভিকটিম নজরুলের প্রাইভেটকার নাম্বার ঢাকা মেট্রো-গ-৩১-৯১৩৬ আসামী মেজর আরিফ ও লেঃ কমান্ডার মাসুদ রানা তাহাদের ২(দুই)টি নাম্বার বিহীন হাইচ মাইক্রোবাস নিয়া প্রাইভেটকার ২(দুই)টি সামনে গিয়া প্রাইভেটকার ২(দুই)টি সামনে ও পেছনে দাঁড় করায়। তাহাদের নির্দেশে সাদা পোশাকের র‍্যাব সদস্য এস.আই/পুর্নেন্দু বালা, আরজিও-১ মোঃ আরিফ হোসেন, ল্যান্স নায়েক মোঃ হীরা মিয়া, সৈনিক আলামিন শরীফ, সৈনিক মোঃ আব্দুল আলিম, সৈনিক মোঃ মুন্সি, কং/মোঃ সিহাব উদ্দীন, সিপাহী আবু তৈয়ব, কর্পোঃ মোঃ মোখলেছুর রহমান, ল্যান্স কর্পোঃ মোঃ রুহুল আমিন, এ.এস.আই/মোঃ আবুল কালাম আজাদ, এএসআই/মোঃ কামাল হোসেন, কং/মোঃ বাবু হাসান, সৈনিক মোঃ নুরুজ্জামান, কং/মোঃ হাবিবুর রহমান @ হাবিব ভিকটিম

অন্য কোনো কারণে চেয়ারপারসন তাহার দায়িত্ব পালনে অসমর্থ হইলে, নবনিযুক্ত চেয়ারপারসন উক্ত শূন্য পদে যোগদান না করা পর্যন্ত অথবা চেয়ারপারসন পুনরায় স্বীয় দায়িত্ব পালনে সমর্থ না হওয়া পর্যন্ত, বোর্ডের ভাইস চেয়ারপারসন সাময়িকভাবে চেয়ারপারসনের দায়িত্ব পালন করিবেন।

১৭। **ট্রাস্টের কার্যাবলী**।—এই আইনের উদ্দেশ্য পূরণকল্পে, ট্রাস্টের কার্যাবলী হইবে নিম্নরূপ, যথাঃ—

(ক) নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তি শনাক্তকরণ ও উক্তরূপ প্রতিবন্ধিতার মাত্রা নিরূপণের উদ্যোগ গ্রহণ;

(খ) নিজ পরিবারের সহিত নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির বসবাস নিশ্চিত করিবার লক্ষ্যে প্রয়োজনীয় সহায়তা প্রদান;

(গ) নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তি বা তাহার পরিবারের সংকটকালে প্রয়োজনীয় সেবা প্রদানের জন্য নিবন্ধিত সংগঠনকে সহায়তা প্রদান;

(ঘ) পারিবারিক সুবিধাবঞ্চিত নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির সমস্যা সমাধানের সহায়তা প্রদান এবং, ক্ষেত্রমত, তাহার জীবনব্যাপী যত্নপরিচর্যা ও অধিকার সুরক্ষা নিশ্চিত করিবার লক্ষ্যে তাহার পরিবার বা অভিভাবককে সম্ভাব্য সকল ধরনের সহায়তা প্রদান;

(ঙ) নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির মাতা-পিতা বা অভিভাবকের মৃত্যুতে তাহার জীবনব্যাপী যত্নপরিচর্যা ও অধিকার সুরক্ষা এবং প্রয়োজনীয় নিরাপত্তা ও পুনর্বাসনের ব্যবস্থা গ্রহণ;

(চ) নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির অস্বাভাবিক মৃত্যুতে তাহার পরিবারকে, প্রযোজ্য ক্ষেত্রে, প্রয়োজনীয় সহায়তা প্রদান;

(ছ) নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির অধিকার সুরক্ষা এবং সমাজে অন্যদের সহিত সমতার ভিত্তিতে তাহার পূর্ণ ও কার্যকর অংশগ্রহণ নিশ্চিত করিবার নিমিত্ত সহায়তা প্রদান;

(জ) সার্বিকভাবে নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তি ও তাহার পরিবারের কল্যাণ সাধন;

(ঝ) নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তিদের জন্য কল্যাণমূলক কার্যক্রমে সরকারি ও বেসরকারি সংস্থা এবং সমাজের বিত্তশালীদের সম্পৃক্তকরণ;

(ঞ) নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তিদের মেধা ও প্রতিভা বিকাশের জন্য তাহাদের উপযোগী শিক্ষা ও প্রশিক্ষণ প্রতিষ্ঠান স্থাপন, বা স্থাপনে ব্যক্তি ও সংস্থাকে উৎসাহ প্রদান এবং এতদ্‌সংশ্লিষ্ট প্রতিষ্ঠানের শিক্ষক নির্বাচনের মানদণ্ড নির্ধারণ ও পাঠক্রম প্রণয়ন;

(ট) প্রতিবন্ধিতার ধরন ও মাত্রার আলোকে নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তিদের জন্য একীভূত শিক্ষা কিংবা বিশেষ শিক্ষার ব্যবস্থা গ্রহণ এবং এতদুদ্দেশ্যে বিশেষ শিক্ষা প্রতিষ্ঠান স্থাপন, বা স্থাপনে ব্যক্তি বা সংস্থাকে উৎসাহ প্রদান;

(ঠ) গুরুতর যে সকল নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তিকে মূলধারার শিক্ষা প্রতিষ্ঠানে শিক্ষা প্রদান করা সম্ভব হইবে না, তাহাদের জন্য বিশেষ শিক্ষা প্রতিষ্ঠান স্থাপন, বা স্থাপনে ব্যক্তি বা সংস্থাকে উৎসাহ প্রদান;

(ড) প্রতিবন্ধিতা বিষয়ক গবেষণা প্রতিবেদন, বুলেটিন, জার্নাল, সাময়িকী ও বই-পুস্তক প্রকাশ;

(ঢ) দীর্ঘমেয়াদি অসুস্থ নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তিদের জন্য চিকিৎসা সেবা ও সহায়ক উপকরণের ব্যবস্থা গ্রহণ;

(ণ) দেশের হাসপাতালসমূহে নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তিদের যথাযথ চিকিৎসার নিমিত্ত একটি পৃথক ইউনিট বা ওয়ার্ড নির্দিষ্টকরণের জন্য উদ্যোগ গ্রহণ;

(ত) দুঃস্থ নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তিদের খাদ্য নিরাপত্তা ও পুষ্টি চাহিদা নিশ্চিতকল্পে যথাযথ পদক্ষেপ গ্রহণ;

(থ) নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তিদের শিল্পীসত্তা ও সাংস্কৃতিক প্রতিভা বিকাশের ব্যবস্থা এবং উক্তরূপ প্রতিভার তথ্য প্রিন্ট ও ইলেকট্রনিক মিডিয়ায় প্রচারের উদ্দেশ্যে যথাযথ ব্যবস্থা গ্রহণ;

(দ) ক্রীড়া ও শরীরচর্চা বিষয়ক কর্মকাণ্ডে নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তিদের অংশগ্রহণ নিশ্চিত করিবার উদ্দেশ্যে কার্যকর পদক্ষেপ গ্রহণ;

(ধ) নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তিদের কর্মসংস্থান ও আত্মকর্মসংস্থানের লক্ষ্যে আর্থিক ও কারিগরি সহায়তা নিশ্চিতপূর্বক তাহাদের উপযোগী কর্মক্ষেত্র চিহ্নিতকরণ ও কর্মে সম্পৃক্তকরণ;

(ন) উত্তরাধিকারপ্রাপ্তি এবং উত্তরাধিকারসূত্রে প্রাপ্ত

সম্পত্তিসহ সকল প্রকার সম্পত্তি নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তি কর্তৃক ভোগ-দখল নিশ্চিত করিবার নিমিত্ত যথাযথ পদক্ষেপ গ্রহণ;

(প) নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তিদের জন্য আবাসিক হোস্টেল বা আশ্রয়কেন্দ্র স্থাপন;

(ফ) নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির মাতা-পিতা বা অভিভাবকের মৃত্যুতে অভিভাবক ও ট্রাস্টি মনোনয়নের জন্য নীতিমালা প্রণয়ন;

(ব) তহবিল হইতে দুঃস্থ নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তিদের অনুকূলে আর্থিক সহায়তা প্রদানের জন্য প্রয়োজনীয় নীতিমালা প্রণয়ন;

(ভ) সরকার ও উপদেষ্টা পরিষদ কর্তৃক, সময় সময়, প্রদত্ত দিক্-নির্দেশনা অনুযায়ী প্রাসঙ্গিক অন্য যে কোনো কার্য সম্পাদন।

১৮। **বোর্ডের সভা**।—(১)এই ধারার অন্যান্য বিধান সাপেক্ষে, বোর্ড উহার সভার কার্যপদ্ধতি নির্ধারণ করিতে পারিবে।

(২) সভার আলোচ্যসূচি, তারিখ, সময় ও স্থান চেয়ারপারসন কর্তৃক নির্ধারিত হইবে এবং চেয়ারপারসনের অনুমোদনক্রমে বোর্ডের সদস্য-সচিব এইরূপ সভা আহবান করিবেনঃ

তবে শর্ত থাকে যে, প্রতি ৪ (চার) মাসে বোর্ডের কমপক্ষে একটি সভা অনুষ্ঠিত হইবে।

(৩) চেয়ারপারসন বোর্ডের সকল সভায় সভাপতিত্ব করিবেন, তবে তাহার অনুপস্থিতিতে বোর্ডের ভাইস চেয়ারপারসন সভায় সভাপতিত্ব করিবেন।

(৪) বোর্ডের সভার কোরামের জন্য উহার মোট সদস্য সংখ্যার সংখ্যাগরিষ্ঠ সদস্যের উপস্থিতির প্রয়োজন হইবে, তবে মুলতবি সভার ক্ষেত্রে কোনো কোরামের প্রয়োজন হইবে না।

(৫) সভার উপস্থিত সদস্যগণের সংখ্যাগরিষ্ঠ ভোটে সভার সিদ্ধান্ত গৃহীত হইবে, তবে ভোটের সমতার ক্ষেত্রে সভায় সভাপতিত্বকারী চেয়ারপারসন বা, ক্ষেত্রমত, ভাইস চেয়ারপারসনের দ্বিতীয় বা নির্ণায়ক ভোট প্রদানের কক্ষমতা থাকিবে।

(৬) চেয়ারপারসন, সদস্যগণের সহিত আলোচনাক্রমে, প্রয়োজনে, সভার আলোচ্যসূচির সহিত সংশ্লিষ্টতা রহিয়াছে এইরূপ যে কোনো ব্যক্তিকে সভায় আমন্ত্রণ জানাইতে পারিবেন, তবে সিদ্ধান্ত গ্রহণের ক্ষেত্রে উক্ত ব্যক্তির ভোট প্রদানের অধিকার থাকিবে না।

১৯। **বোর্ডের দায়িত্ব**।—ধারা ১২ এর সামগ্রিকতাকে ক্ষুণ্ন না করিয়া, বোর্ড, অন্যান্যের মধ্যে, নিম্নরূপ দায়িত্বও পালন করিবে, যথাঃ—

(ক) ট্রাস্টের কার্যক্রম পরিচালনা ও নিয়ন্ত্রণ;

(খ) ট্রাস্টের তহবিলের জন্য অর্থ সংগ্রহ, সংরক্ষণ ও বিনিয়োগ;

(গ) ট্রাস্টের উদ্দেশ্য পূরণকল্পে কার্যক্রম গ্রহণের জন্য বার্ষিক কর্মপরিকল্পনা প্রণয়ন এবং প্রয়োজনীয় ক্ষেত্রে অর্থায়ন;

(ঘ) ট্রাস্টের সকল স্থাবর ও অস্থাবর সম্পত্তি রক্ষণাবেক্ষণ ও হেফাজতকরণ;

(ঙ) সরকারি উৎস ছাড়াও অন্যান্য উৎস হইতে অর্থ সংগ্রহের উদ্দেশ্যে, সরকারের অনুমোদন সাপেক্ষে, বিভিন্ন সংস্থার সহিত যোগাযোগ, অর্থপ্রাপ্তির উদ্যোগ ও পদক্ষেপ গ্রহণ;

(চ) নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তিদের অভিভাবকত্ব অনুমোদন এবং তদ্‌লক্ষ্যে জেলা কমিটি গঠন, নিয়ন্ত্রণ ও তদারকি;

(ছ) ট্রাস্টের লক্ষ্য ও উদ্দেশ্য বাস্তবায়নের নিমিত্ত উন্নয়ন প্রকল্প গ্রহণসহ আনুষঙ্গিক কার্যক্রম গ্রহণ;

(জ) ট্রাস্টের উদ্দেশ্যকে সম্প্রসারণের লক্ষ্যে স্থানীয় সরকার কর্তৃপক্ষসহ যে কোনো সরকারি-বেসরকারি, দেশী-বিদেশী ও আন্তর্জাতিক সংস্থা বা সংগঠনের সহিত চুক্তি সম্পাদন ও সমন্বিত কর্মসূচি পরিচালনা;

(ঝ) ট্রাস্টের তহবিল বৃদ্ধির নিমিত্ত বিনিয়োগ এবং আয়বর্ধনমূলক কর্মকাণ্ড পরিচালনা; এবং

(ঞ) উপরি-উক্ত দায়িত্ব সম্পাদনের প্রয়োজনে আনুষঙ্গিক অন্যান্য ব্যবস্থা গ্রহণ।

২০। **জেলা ও অন্যান্য কমিটি**।—(১) বোর্ড, এই আইনের উদ্দেশ্যপূরণকল্পে, প্রত্যেক জেলায় নিম্নবর্ণিত সদস্য সমন্বয়ে একটি কমিটি গঠন করিবে, যথাঃ—

(ক) জেলা প্রশাসক, যিনি ইহার সভাপতিও হইবেন;

(খ) জেলা সমাজকল্যাণ পরিষদের সহ-সভাপতি;

(গ) জেলার সিভিল সার্জন;

(ঘ) জেলার শিক্ষা কর্মকর্তা;

(ঙ) জেলা প্রাথমিক শিক্ষা কর্মকর্তা;

(চ) জেলা মহিলা বিষয়ক কর্মকর্তা;

(ছ) প্রতিবন্ধী সেবা ও সাহায্য কেন্দ্রের প্রতিবন্ধী বিষয়ক কর্মকর্তা;

(জ) জেলা আইনগত সহায়তা প্রদান সংস্থার সাধারণ সম্পাদক;

(ঝ) জেলা প্রশাসক কর্তৃক মনোনীত নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী বা তাহাদের মাতা, পিতা বা অভিভাবকগণের মধ্য হইতে ২ (দুই) জন প্রতিনিধি;

(ঞ) জেলা প্রশাসক কর্তৃক মনোনীত সংশ্লিষ্ট জেলার একজন গণ্যমান্য ব্যক্তি ও নিবন্ধিত সংগঠনের একজন প্রতিনিধি; এবং

(ট) জেলা সমাজসেবা কার্যালয়ের উপ-পরিচালক, যিনি উহার সদস্য-সচিবও হইবেন।

(২) জেলা কমিটির সভার কার্যপদ্ধতি এবং দায়িত্ব ও কার্যাবলী বিধি দ্বারা নির্ধারিত হইবে।

(৩) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, বোর্ড ট্রাস্টের কার্যাবলী সুষ্ঠুভাবে সম্পাদন ও পরিচালনায় সহায়তার জন্য, দায়িত্ব ও কার্যাবলী নির্ধারণপূর্বক, এক বা একাধিক অন্যান্য কমিটি গঠন করিতে পারিবে।

চতুর্থ অধ্যায়

সংগঠন প্রতিষ্ঠা, নিবন্ধন, অভিভাবক নিয়োগ, ইত্যাদি

২১। সংগঠন, নিবন্ধন, ইত্যাদি।—(১)আপাততঃ বলবৎ অন্য কোনো আইনে যাহা কিছুই থাকুক না কেন, নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তিদের কল্যাণে উক্তরূপ প্রতিবন্ধী ব্যক্তিদের সংগঠন বা তাহাদের অভিভাবকদের সংগঠন গঠন করা যাইবেঃ

তবে শর্ত থাকে যে, এই আইনের অধীন নিবন্ধিত না হইলে, উক্ত সংগঠন এই আইনের অধীন কোনো সুবিধা লাভের যোগ্য হইবে না।

(২) উপ-ধারা (১) এর উদ্দেশ্য পূরণকল্পে, উক্ত উপ-ধারায় উল্লিখিত সংগঠনকে বিধি দ্বারা নির্ধারিত পদ্ধতিতে, ফরম পূরণ ও ফি প্রদান সাপেক্ষে, নিবন্ধনের জন্য বোর্ডের নিকট আবেদন করিতে হইবেঃ

তবে শর্ত থাকে যে, এই আইন কার্যকর হইবার পূর্বে কোনো সংগঠন প্রতিষ্ঠিত হইয়া থাকিলে উহাকে বিধি দ্বারা নির্ধারিত সময়ের মধ্যে উহাতে উল্লিখিত পদ্ধতিতে ফরম পূরণ ও ফি প্রদান সাপেক্ষে নিবন্ধনের জন্য আবেদন করিতে হইবে।

(৩) বোর্ড, উহার সন্তুষ্টি সাপেক্ষে, নিবন্ধনের যে কোনো আবেদন মঞ্জুর করিতে পারিবে, অথবা, কারণ লিপিবদ্ধপূর্বক, প্রত্যাখ্যান করিতে পারিবে।

(৪) উপ-ধারা (৩) এর অধীন কোনো আবেদন প্রত্যাখ্যাত হইলে সংক্ষুব্ধ ব্যক্তি বা সংগঠন নির্ধারিত পদ্ধতিতে সরকারের নিকট আপিল করিতে পারিবে।

(৫) আবেদনপত্র যাচাই-বাছাই, অনুসন্ধান, নিবন্ধন এবং আপীল নিষ্পত্তিসহ আনুষঙ্গিক প্রক্রিয়া ও পদ্ধতি বিধি দ্বারা নির্ধারিত হইবে।

২২। নিবন্ধিত সংগঠন বরাবরে সহায়তা প্রদান, ইত্যাদি।—(১) কোনো নিবন্ধিত সংগঠন উপ-ধারা (৩) এ উল্লিখিত কর্মসূচি বাস্তবায়নের জন্য আর্থিক সহায়তা যাচনা করিয়া বোর্ডের নিকট আবেদন করিতে পারিবে।

(২) বোর্ড, নির্ধারিত পদ্ধতিতে, উপ-ধারা (১) এর অধীন প্রাপ্ত আবেদন যাচাই-বাছাই এবং সংশ্লিষ্ট সংগঠনের প্রাক-অর্থ সহায়তা অবস্থা যাচাইপূর্বক যাচিত আর্থিক সহায়তা মঞ্জুর করিতে পারিবে।

(৩) নিম্নরূপ কোনো কর্মসূচির জন্য আর্থিক সহায়তার আবেদন করা যাইবে, যথাঃ—

(ক) সমাজে নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির জন্য সম্মানজনক বসবাসের পরিবেশ ও সুযোগ সৃষ্টি;

(খ) নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির পরিবারের সদস্যবৃন্দকে কাউন্সেলিং ও প্রশিক্ষণ প্রদান;

তবে শর্ত থাকে যে, কাউন্সেলিং ও প্রশিক্ষণ প্রদানের ক্ষেত্রে মহিলা, শিশু, ৬৫ বৎসর বা তদূর্ধ্ব বৎসর বয়সী বয়স্ক বা গুরুতর নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির পরিবারের সদস্যদের অগ্রাধিকার প্রদান করিতে হইবেঃ

(গ) নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির জন্য অবকাশকালীন যত্ন, ফস্টার ফ্যামিলি কেয়ার বা দিবাযত্ন সেবা প্রদান এবং উৎসাহিতকরণ;

(ঘ) নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির জন্য আবাসিক হোস্টেল বা আবাসিক আশ্রয়কেন্দ্র স্থাপন ও পরিচালনা; এবং

(ঙ) নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তিদের অধিকার সম্পর্কে সচেতনতা বৃদ্ধির জন্য স্বনির্ভর দল গঠন।

(৪) বোর্ড, সময় সময়, আর্থিক সহায়তাপ্রাপ্ত নিবন্ধিত সংগঠনের কর্মকাণ্ড পরিবীক্ষণ, তদারকি ও মূল্যায়ন করিতে পারিবে।

(৫) বোর্ড যে কোনো নিবন্ধিত সংগঠনের নথিপত্র, দলিল-দস্তাবেজ, প্রকাশনা বা কর্মসূচি পরিদর্শনের লক্ষ্যে উক্ত নথিপত্র, দলিল-দস্তাবেজ বা প্রকাশনা বোর্ডের নিকট উপস্থাপনের জন্য সংশ্লিষ্ট সংগঠনকে নির্দেশ প্রদান করিতে পারিবে এবং উক্ত সংগঠন তদনুযায়ী সংশ্লিষ্ট নথিপত্র, দলিল-দস্তাবেজ বা প্রকাশনা বোর্ডের নিকট উপস্থাপন করিতে বাধ্য থাকিবে।

(৬) নিবন্ধিত সংগঠনকে, প্রতি বৎসর, বার্ষিক সাধারণ সভা অনুষ্ঠানসহ উহার বার্ষিক আয়-ব্যয়ের হিসাব বিবরণী প্রকাশ করিতে হইবে, যাহার কপি বোর্ডের নিকট দাখিল করিতে হইবে।

২৩। অভিভাবকত্বের জন্য আবেদন, অভিভাবক নিয়োগ, ইত্যাদি।—(১) আপাততঃ বলবৎ অন্য কোনো আইনে যাহা কিছুই থাকুক না কেন, যে কোনো প্রতিবন্ধীবান্ধব ব্যক্তি বা নিবন্ধিত সংগঠন, এই ধারার বিধান সাপেক্ষে, অভিভাবক হিসাবে যে কোনো নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির দায়িত্ব গ্রহণ করিতে পারিবে।

(২) কোনো প্রতিবন্ধীবান্ধব ব্যক্তি বা নিবন্ধিত সংগঠন নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির অভিভাবকত্ব গ্রহণে আগ্রহী হইলে তাহাকে জেলা কমিটি বরাবরে, নির্ধারিত পদ্ধতিতে, আবেদন করিতে হইবেঃ

তবে শর্ত থাকে যে, সংশ্লিষ্ট নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির মাতা, পিতা বা অভিভাবকের লিখিত সম্মতি ব্যতীত কোনো আবেদন গ্রহণযোগ্য হইবে না।

(৩) উপ-ধারা (১) এর অধীন আবেদন প্রাপ্তির পর জেলা কমিটি সংশ্লিষ্ট অভিভাবকত্ব নিয়োগের প্রয়োজনীয়তা, দায়িত্ব গ্রহণের যথার্থতা, সামর্থ্য ও উদ্দেশ্য যথাযথভাবে বিবেচনা করিবে।

(৪) জেলা, কমিটি, নির্ধারিত পদ্ধতিতে, অভিভাবকত্বের জন্য দাখিলকৃত আবেদনপত্র যাচাই-বাছাইপূর্বক সংশ্লিষ্ট অভিভাবকের দায়িত্ব সুনির্দিষ্টকরতঃ বোর্ডের অনুমোদনের জন্য বোর্ড বরাবর উহার সুপারিশ পেশ করিবে।

(৫) বোর্ড, উপ-ধারা (৪) এর অধীন সুপারিশ প্রাপ্তির পর বিষয়টি যাচাই-বাছাইপূর্বক উহা অনুমোদন করিতে পারিবে।

(৬) বোর্ডের অনুমোদন সাপেক্ষে, জেলা কমিটি, নির্ধারিত পদ্ধতিতে, চুক্তিনামা সম্পাদনপূর্বক অভিভাবক নিয়োগ করিবেঃ

তবে শর্ত থাকে যে, নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির যত্নপরিচর্যা, সম্পত্তি রক্ষণাবেক্ষণ এবং লালনপালনের জন্য দায়-দায়িত্বের বিষয় চুক্তিনামা দ্বারা নির্ধারিত করিতে হইবে।

(৭) উপ-ধারা (৬) এর অধীন অভিভাবক নিয়োগের তারিখ হইতে ৬ (ছয়) মাসের মধ্যে নিয়োগপ্রাপ্ত অভিভাবক নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির দায়-দেনার, যদি থাকে, প্রতিবেদনসহ সকল স্থাবর ও অস্থাবর সম্পত্তির পরিসংখ্যান বোর্ড এবং জেলা কমিটির নিকট দাখিল করিবেন।

(৮) নিয়োগপ্রাপ্ত অভিভাবক প্রত্যেক অর্থ-বৎসর শেষ হইবার অনধিক ৩ (তিন) মাসের মধ্যে সংশ্লিষ্ট নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির সম্পত্তির আয়-ব্যয় এবং উদ্বৃত্তপত্রসহ তাহার অধীন ন্যস্ত সকল সম্পদ ও সম্পত্তির হিসাব বিবরণী বোর্ডের এবং, ক্ষেত্রমত, জেলা কমিটির নিকটি দাখিল করিবেন।

২৪। সাক্ষাৎকার, পরিদর্শন, ইত্যাদি।—ধারা ২৩ এর অধীন নিয়োগপ্রাপ্ত অভিভাবকের তত্ত্বাবধানে রহিয়াছেন এমন নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির মাতা-পিতা, অভিভাবক, নিবন্ধিত সংগঠন বা বোর্ডের কোনো সদস্য সংশ্লিষ্ট নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির সহিত সাক্ষাৎ এবং তাহার সার্বিক অবস্থা পরিদর্শন করিতে পারিবেন।

২৫। নিয়োগপ্রাপ্ত অভিভাবককে অব্যাহতি, ইত্যাদি।—(১) ধারা ২৪ এর অধীন পরিদর্শনকালে নিয়োগপ্রাপ্ত অভিভাবক কর্তৃক নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির প্রতি অবহেলা, নির্যাতন, সম্পত্তি আত্মসাৎ, অপব্যবহার বা অপব্যয় সংক্রান্ত কোনো ধরনের আচরণ বা কর্মকাণ্ড পরিলক্ষিত হইলে পরিদর্শনকারী ব্যক্তি উক্ত নিয়োগপ্রাপ্ত অভিভাবককে অব্যাহতি প্রদানের নিমিত্ত জেলা কমিটি বরাবর অভিযোগ উত্থাপন করিতে পারিবেন।

(২) উপ-ধারা (১) এর অধীন কোনো অভিযোগ প্রাপ্ত হইলে জেলা কমিটি, নির্ধারিত পদ্ধতিতে অনুসন্ধান এবং, প্রয়োজনে, শুনানী গ্রহণ করিয়া বিষয়টির সত্যতা যাচাই করিবে।

(৩) নিয়োগপ্রাপ্ত অভিভাবককে অব্যাহতি প্রদানের কোনো সঙ্গত কারণ থাকিলে জেলা কমিটি, বোর্ডের অনুমোদনক্রমে, কারণ লিপিবদ্ধ করিয়া নিয়োগপ্রাপ্ত অভিভাবককে অব্যাহতি প্রদানসহ সংশ্লিষ্ট নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির জন্য ধারা ২৩ এর বিধান অনুসরণপূর্বক নূতন অভিভাবক নিয়োগ করিতে পারিবে অথবা নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির যত্নপরিচর্যা ও সুরক্ষার নিমিত্ত সরকারি বা বেসরকারিভাবে অন্য যে কোনো যথাযথ ব্যবস্থা গ্রহণ করিতে পারিবে।

(৪) উপ-ধারা (৩) অনুসারে অব্যাহতিপ্রাপ্ত অভিভাবক জেলা কমিটির মাধ্যমে নবনিয়োগপ্রাপ্ত অভিভাবকের নিকট বা বোর্ড কর্তৃক নির্ধারিত সংস্থা, সংগঠন বা ব্যক্তির নিকট তদকর্তৃক গ্রহীত ও ব্যয়িত অর্থের হিসাবসহ নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির সমুদয়

সম্পত্তি ও দায়-দেনার হিসাব হস্তান্তর করিতে বাধ্য থাকিবেন।

(৫) এই ধারার অধীন অব্যাহতিপ্রাপ্ত অভিভাবক নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির প্রতি অবহেলা, অযত্ন বা নির্যাতন করিলে অথবা তাহার সম্পত্তি আত্মসাৎ, অপব্যবহার বা অপব্যয় করিলে অথবা উপ-ধারা (৪) এর অধীন হিসাব হস্তান্তর করিতে ব্যর্থ হইলে বা অপারগতা প্রকাশ করিলে উক্তরূপ কর্মকাণ্ড, ব্যর্থতা বা অপরাগতার জন্য তাহার বিরুদ্ধে আইনানুগ ব্যবস্থা গ্রহণ করিতে হইবে।

পঞ্চম অধ্যায়

ট্রাস্টের তহবিল, ইত্যাদি

২৬। ট্রাস্টের তহবিল।—(১) ট্রাস্টের একটি তহবিল থাকিবে যাহা নিম্নরূপ দুইটি অংশে বিভক্ত থাকিবে, যথাঃ—

(ক) স্থায়ী তহবিল; এবং

(খ) চলতি তহবিল ।

(২) এই আইনের অধীন ট্রাস্ট স্থাপনের পর সরকার, যতশীঘ্র সম্ভব, ট্রাস্টের উদ্দেশ্য বাস্তবায়নকল্পে উহার অনুকূলে একটি নির্দিষ্ট পরিমাণ অর্থ অনুদান হিসাবে প্রদান করিবে।

(৩) উপ-ধারা (১) এর দফা (ক) এর অধীন গঠিত স্থায়ী তহবিলে নিম্নবর্ণিত অর্থ জমা হইবে, যথাঃ—

(ক) সরকার বা কোনো ব্যক্তি বা সংস্থা কর্তৃক প্রদত্ত এককালীন দান বা অনুদান; এবং

(খ) উক্তরূপে জমাকৃত অর্থ হইতে প্রাপ্ত লভ্যাংশ।

(৪) স্থায়ী তহবিলের অর্থ কোনো রাষ্ট্রায়ত্ত ব্যাংকে স্থায়ী আমানত হিসাবে জমা রাখিতে হইবে এবং ট্রাস্টের কোনো দৈনন্দিন কার্য সম্পাদনের উদ্দেশ্যে উক্ত তহবিলের অর্থ ব্যয় করা যাইবে নাঃ

তবে শর্ত থাকে যে, বোর্ডের পূর্বানুমোদনক্রমে, স্থায়ী আমানতের লভ্যাংশ হইতে সর্বোচ্চ শতকরা ৫০ ভাগ অর্থ দরিদ্র, মেধাবী নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ছাত্র-ছাত্রীদের বৃত্তি বা উপবৃত্তি এবং দুঃস্থ নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির চিকিৎসায় সহায়তা প্রদানের লক্ষ্যে ব্যয় করা যাইবে।

(৫) উপ-ধারা (১) এর দফা (খ) এর অধীন চলতি তহবিলে নিম্নবর্ণিত অর্থ জমা হইবে, যথাঃ—

(ক) সরকার কর্তৃক প্রদত্ত বরাদ্দ;

(খ) স্থানীয় কর্তৃপক্ষ কর্তৃক প্রদত্ত দান বা অনুদান;

(গ) আর্থিক বা বাণিজ্যিক প্রতিষ্ঠানের আর্থিক সহায়তা;

(ঘ) সরকারের অনুমোদন সাপেক্ষে লটারি পরিচালনার মাধ্যমে প্রাপ্ত অর্থ;

(ঙ) সমাজের বিত্তবান, শিল্পপতি ও ব্যবসায়ীসহ যে কোনো ব্যক্তির নিকট হইতে প্রাপ্ত অনুদান;

(চ) সরকারের অনুমোদনক্রমে বিদেশী কোনো সংস্থা, সংগঠন, ব্যক্তি বা অন্য কোনো উৎস হইতে প্রাপ্ত দান বা অনুদান; এবং

(ছ) সরকারের অনুমোদনক্রমে অন্য কোনো উৎস হইতে প্রাপ্ত অর্থ।

(৬) ট্রাস্টের উদ্দেশ্য পূরণকল্পে যে কোনো নির্দিষ্ট নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির কল্যাণে যে কোনো ব্যক্তি বা সংগঠন ট্রাস্টের অনুকূলে স্থাবর-অস্থাবর সম্পত্তি দান করিতে পারিবেঃ

তবে শর্ত থাকে যে, দানপত্রে নির্দিষ্ট কোনো নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির নাম উল্লেখ থাকিলে, তাহার জীবনযাত্রার মান এবং অন্য যে সকল কারণ উল্লেখপূর্বক সম্পত্তি দান করা হইবে, সেই সকল বিষয়সমূহ বোর্ড কর্তৃক নিশ্চিত হইতে হইবেঃ

আরও শর্ত থাকে যে, উক্ত দানকৃত সম্পত্তি হইতে সংশ্লিষ্ট নিউরো-ডেভেলপমেন্টাল প্রতিবন্ধী ব্যক্তির প্রয়োজন মিটাইবার পর উদ্বৃত্ত অর্থ, এই আইনের উদ্দেশ্য পূরণকল্পে, অন্যান্য কল্যাণমূলক কাজে ব্যয় করা যাইবে।

(৭) উপ-ধারা (৫) এ উল্লিখিত চলতি তহবিলের অর্থ কোনো রাষ্ট্রায়ত্ত ব্যাংকে জমা রাখিতে হইবে এবং উক্তরূপ অর্থ হইতে ট্রাস্টের দৈনন্দিন ব্যয়সহ অন্যান্য কার্য সম্পাদনের উদ্দেশ্যে যাবতীয় ব্যয় নির্বাহ করা যাইবে।

(৮) তহবিলের ব্যাংক হিসাব বোর্ড কর্তৃক, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, পরিচালিত হইবে।

(৯) তহবিলের অর্থ সরকার কর্তৃক অনুমোদিত যে কোনো খাতে বিনিয়োগ করা যাইবে।

২৭। বাজেট।—ট্রাস্ট প্রতি বৎসর সরকার কর্তৃক নির্দিষ্ট সময়ের মধ্যে, পরবর্তী অর্থ-বৎসরের বার্ষিক বাজেট বিবরণী সরকারের নিকট পেশ করিবে এবং উহাতে উক্ত অর্থ বৎসরে সরকারের নিকট হইতে ট্রাস্টের কী পরিমাণ অর্থের প্রয়োজন হইবে উহার উল্লেখ থাকিবে।

২৮। হিসাব রক্ষণ ও নিরীক্ষা।—(১) ট্রাস্ট যথাযথভাবে উহার হিসাব রক্ষণ এবং হিসাবের বার্ষিক বিবরণী প্রস্তুত করিবে।

(২) বাংলাদেশের মহাহিসাব নিরীক্ষক ও নিয়ন্ত্রক, অতঃপর মহাহিসাব নিরীক্ষক নামে অভিহিত, প্রতি বৎসর ট্রাস্টের হিসাব নিরীক্ষা করিবেন এবং নিরীক্ষা রিপোর্টের একটি করিয়া অনুলিপি সরকার ও ট্রাস্টের নিকট পেশ করিবেন।

(৩) উপ-ধারা (২) উল্লিখিত নিরীক্ষা ছাড়াও Bangladesh Chartered Accountants Order, 1973 (PO No. 2 of 1973) Article 2(1)(b)-তে সংজ্ঞায়িত চার্টার্ড একাউন্টেন্ট দ্বারা ট্রাস্টের হিসাব নিরীক্ষা করা যাইবে এবং এতদুদ্দেশ্যে ট্রাস্ট এক বা একাধিক চার্টার্ড একাউন্টেন্ট নিয়োগ করিতে পারিবে।

(৪) উপ-ধারা (৩) এর অধীন নিয়োগকৃত চার্টার্ড একাউন্টেন্ট এতদুদ্দেশ্যে সরকার কর্তৃক নির্দিষ্টকৃত পারিতোষিক প্রাপ্য হইবেন।

(৫) উপ-ধারা (২) বা (৩) এর বিধান অনুসারে হিসাব নিরীক্ষার উদ্দেশ্যে মহাহিসাব নিরীক্ষক কিংবা তদ্‌কর্তৃক এতদুদ্দেশ্যে ক্ষমতাপ্রাপ্ত কোনো ব্যক্তি অথবা, ক্ষেত্রমত, চার্টার্ড একাউন্টেন্ট ট্রাস্টের সকল রেকর্ড, দলিল-দস্তাবেজ, নগদ বা ব্যাংকে রক্ষিত অর্থ, জামানত, ভাণ্ডার এবং অন্যবিধ সম্পত্তি পরীক্ষা করিয়া দেখিতে পারিবেন এবং যে কোনো সদস্য এবং ট্রাস্টের কর্মকর্তা বা কর্মচারীকে জিজ্ঞাসাবাদ করিতে পারিবেন।

ষষ্ঠ অধ্যায়

কর্মকর্তা-কর্মচারী

২৯। ট্রাস্টের কর্মকর্তা ও কর্মচারী।—ট্রাস্ট উহার কার্যাবলী সুষ্ঠুভাবে সম্পাদনের উদ্দেশ্যে সরকার কর্তৃক অনুমোদিত সাংগঠনিক কাঠামো অনুযায়ী প্রয়োজনীয় সংখ্যক কর্মকর্তা ও কর্মচারী নিয়োগ করিতে পারিবে এবং তাহাদের চাকুরীর শর্তাবলী প্রবিধান দ্বারা নির্ধারিত হইবে।

৩০। ব্যবস্থাপনা পরিচালক।—(১) ট্রাস্টের একজন ব্যবস্থাপনা পরিচালক থাকিবেন।

(২) সরকারের অন্যূন যুগ্ম-সচিব পদমর্যাদার কর্মকর্তাগণের মধ্য হইতে, সরকার কর্তৃক, ব্যবস্থাপনা পরিচালক নিযুক্ত হইবেন।

(৩) ব্যবস্থাপনা পরিচালক ট্রাস্টের সার্বক্ষণিক মুখ্য নির্বাহী কর্মকর্তা হইবেন এবং তিনি-

(ক) বোর্ডের সিদ্ধান্ত বাস্তবায়নের জন্য দায়ী থাকিবেন;

(খ) বোর্ড কর্তৃক প্রদত্ত দায়িত্ব ও কার্য সম্পাদন করিবেন; এবং

(গ) ট্রাস্টের প্রশাসন পরিচালনা করিবেন।

সপ্তম অধ্যায়

বিবিধ

৩১। প্রতিবেদন।—(১) প্রতি অর্থ বৎসরে ট্রাস্ট কর্তৃক সম্পাদিত কার্যাবলীর বিবরণ সম্বলিত একটি বার্ষিক প্রতিবেদন ট্রাস্ট পরবর্তী বৎসরের ৩০ জুনের মধ্যে সরকারের নিকট পেশ করিবে।

(২) সরকার, প্রয়োজনে যে কোনো সময়, ট্রাস্ট এর নিকট হইতে যে কোনো বিষয়ের উপর প্রতিবেদন বা বিবরণী তলব করিতে পারিবে এবং ট্রাস্ট সরকারের নিকট উহা সরবরাহ করিতে বাধ্য থাকিবে।

৩২। ক্ষমতা অর্পণ।—বোর্ড উহার যে কোন ক্ষমতা চেয়ারপারসন, ভাইস চেয়ারপারসন বা অন্য কোনো সদস্য, ব্যবস্থাপনা পরিচালক বা অন্য কোন কর্মকর্তার নিকট অর্পণ করিতে পারিবে।

৩৩। বিধি প্রণয়নের ক্ষমতা।—সরকার, এই আইনের উদ্দেশ্য পূরণকল্পে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, বিধি প্রণয়ন করিতে পারিবে।

৩৪। প্রবিধান প্রণয়নের ক্ষমতা।—বোর্ড, সরকারের পূর্বানুমোদনক্রমে এবং সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইন বা বিধির সহিত অসামঞ্জস্যপূর্ণ নহে এইরূপ প্রবিধান প্রণয়ন করিতে পারিবে।

৩৫। অস্পষ্টতা।—এই আইনের কোন বিধান কার্যকর করিবার ক্ষেত্রে কোনো অস্পষ্টতা দেখা দিলে সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইনের বিধানাবলীর সহিত সঙ্গতিপূর্ণ হওয়া সাপেক্ষে, উক্তরূপ অস্পষ্টতা দূর করিতে পারিবে।

৩৬। ইংরেজিতে অনূদিত পাঠ প্রকাশ।—এই আইন কার্যকর হইবার পর সরকার, প্রয়োজনবোধে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইনের ইংরেজিতে অনূদিত একটি নির্ভরযোগ্য পাঠ (Authentic English Text) প্রকাশ করিতে পারিবেঃ

তবে শর্ত থাকে যে, বাংলা ও ইংরেজি পাঠের মধ্যে বিরোধের ক্ষেত্রে বাংলা পাঠ প্রাধান্য পাইবে।

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পটুয়াখালী জেলার কলাপাড়া উপজেলার রাবনাবাদ চ্যানেলে অবস্থিত পায়রা বন্দরের জন্য পায়রা বন্দর কর্তৃপক্ষ প্রতিষ্ঠাকল্পে প্রণীত আইন

যেহেতু পটুয়াখালী জেলার কলাপাড়া উপজেলার রাবনাবাদ চ্যানেলে অবস্থিত পায়রা বন্দর পরিচালনা, ব্যবস্থাপনা, উন্নয়ন, সম্প্রসারণ ও রক্ষণাবেক্ষণের জন্য পায়রা বন্দর কর্তৃপক্ষ নামে একটি বন্দর কর্তৃপক্ষ প্রতিষ্ঠা এবং আনুঙ্গিক বিষয়াদি সম্পর্কে বিধান প্রণয়ন করা সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদদ্বারা নিম্নরূপ আইন করা হইল ঃ—

প্রথম অধ্যায়

প্রারম্ভিক

১। **সংক্ষিপ্ত শিরোনাম ও প্রবর্তন**।—(১) এই আইন পায়রা বন্দর কর্তৃপক্ষ আইন, ২০১৩ নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। **সংজ্ঞা**।—বিষয় ও প্রসঙ্গের পরিপন্থী কোন কিছু না থাকিলে, এই আইনে—

(১) "অভ্যন্তরীণ নৌ-যান" অর্থে বাষ্প, তেল, বিদ্যুৎ অথবা অন্য কোন যান্ত্রিক পদ্ধতিতে অভ্যন্তরীণ জলপথে পরিবাহিত এবং পরিচালিত জাহাজও অন্তভুক্ত হইবে;

(২) "কর্তৃপক্ষ" অর্থ ধারা ৪ এর অধীন প্রতিষ্ঠিত পায়রা বন্দর কর্তৃপক্ষ;

(৩) "চেয়ারম্যান" অর্থ বোর্ডের চেয়ারম্যান;

(৪) "জাহাজ" অর্থ যে কোন জাহাজ, বার্জ, নৌকা, র‍্যাফট বা ক্রাফট অথবা নৌ-পথে যাত্রী বা পণ্য পরিবহনের জন্য ব্যবহৃত বা নকশাকৃত অন্য যে কোন ধরনের নৌ-যান;

(৫) "ডক" অর্থে বেসিন, কপাটকল (locks), খাল (cuts), ঘাট (wharf), পণ্যাগার, রেলপথ এবং ডক সংশ্লিষ্ট অন্যান্য কার্যক্রম ও স্থাপনাও অন্তর্ভুক্ত হইবে;

(৬) "নোঙর স্থান (mooring)" অর্থ কোন জাহাজ নোঙ্গর করিবার স্থান যেখানে জাহাজ হইতে পণ্য খালাস বা জাহাজে পণ্য বোঝাই করা হয় অথবা জাহাজ অবস্থান করে;

(৭) "নির্ধারিত" অর্থ বিধি দ্বারা নির্ধারিত;

(৮) "পণ্য" অর্থে যে কোন ধরনের সামগ্রী, পণ্যদ্রব্য এবং কন্টেইনারও অন্তর্ভুক্ত হইবে;

(৯) "পিয়ার" অর্থে সমুদ্র সংলগ্ন যে কোন ধাপ, সিঁড়ি, অবতরণ স্থল, জেটি, ভাসমান বার্জ বা পন্টুন এবং যে কোন সেতু বা সেতু সংলগ্ন স্থাপনাও অন্তর্ভুক্ত হইবে;

(১০) "প্রবিধান" অর্থ এই আইনের অধীন প্রণীত প্রবিধান;

(১১) "বন্দর পরিচালনা" অর্থ পণ্য ওঠা-নামা, পণ্য গ্রহণ ও হস্তান্তর, জাহাজ নিয়ন্ত্রণ, জাহাজ পরিদর্শন এবং বন্দর চ্যানেল বা বন্দর এলাকার মধ্যে সংশ্লিষ্ট কর্মকাণ্ড;

(১২) "বোর্ড"অর্থ ধারা ৭ এর অধীন গঠিত বোর্ড;

(১৩) "বিধি" অর্থ এই আইনের অধীন প্রণীত বিধি;

(১৪) "ভূমি" অর্থে মাটিতে স্থাপিত দালান বা তৎসংলগ্ন স্থাপনা, নদীর চরসহ সর্বোচ্চ জোয়াররেখার নিম্নের নদীর তলদেশও অন্তর্ভুক্ত হইবে;

(১৫) "মাষ্টার" অর্থ জাহাজের ক্ষেত্রে, পাইলট বা পোতাশ্রয় মাষ্টার ব্যতীত, জাহাজ পরিচালনার জন্য দায়িত্বপ্রাপ্ত বা জাহাজ নিয়ন্ত্রণকারী ব্যক্তি;

(১৬) "মালিক" অর্থে পণ্যের ক্ষেত্রে, কনসাইনার, কনসাইনি, জাহাজীকারক (shipper) এবং বিক্রয়, সংরক্ষণ, জাহাজীকরণ, খালাস বা অপসারণ কাজে নিয়োজিত ব্যক্তি বা প্রতিষ্ঠান এবং জাহাজের ক্ষেত্রে, জাহাজের আংশিক মালিক, চার্টারার, কনসাইনি ও বন্ধকগ্রহীতাও অন্তর্ভুক্ত হইবে;

(১৭) "সদস্য" অর্থ বোর্ডের সদস্য;

(১৮) "সর্বোচ্চ জোয়ার রেখা (high watermark)" অর্থ বৎসরের যে কোন মৌসুমে বা ঋতুতে ভরা জোয়ারের সময় সাধারণতঃ ব্যাংক লাইন হিসেবে স্বীকৃত পানির সর্বোচ্চ অবস্থানের চিহ্নিত বা অংকিত লাইন।

৩। **বন্দর সীমানা**।—(১) এই আইনের উদ্দেশ্য পূরণকল্পে, সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, বন্দরের সীমানা নির্ধারণ করিতে পারিবে, এবং সময় সময়, অনুরূপ প্রজ্ঞাপন দ্বারা, উক্ত সীমা

পরিবর্তন বা পরিবর্ধন করিতে পারিবে।

(২) এই সীমানা (Port Limit) বন্দরের জাহাজ চলাচল পথের যে কোন অংশে বর্ধিত করিতে পারিবে এবং বহির্নোঙ্গর অথবা সমুদ্রের যে কোন অংশে, নদী, নদী-তীর, নদীর পাড় অথবা সংলগ্ন ভূমি এবং যে কোন ধরনের ডক, পিয়ার, শেড অথবা অন্যান্য কাজ-সমূহ যাহা জনস্বার্থে জাহাজ চলাচল, নৌ-পরিবহন, পণ্য উঠানামা, জাহাজের নিরাপত্তা অথবা উন্নয়ন, সংরক্ষণ অথবা বন্দরের সুশাসন অথবা নদী এবং নিরাপদ নৌ-চলাচলের জন্য হাই ওয়াটার মার্কের মধ্যে বন্দরের অধিকার সংরক্ষিত থাকিবে এবং হাই ওয়াটার মার্কের ৫০ মিটারের মধ্যে থাকা ব্যক্তি মালিকানাধীন সম্পত্তি, তীর, পাড় অথবা ভূমির যে কোন অংশে বন্দরের নিয়ন্ত্রণ থাকিবে।

দ্বিতীয় অধ্যায়

কর্তৃপক্ষ প্রতিষ্ঠা, কমিটি, ইত্যাদি

৪। কর্তৃপক্ষ প্রতিষ্ঠা।—(১) সরকার, এই আইন কার্যকর হইবার পর, যথাশীঘ্র সম্ভব, এই আইনের উদ্দেশ্য পূরণকল্পে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, পায়রা বন্দর কর্তৃপক্ষ নামে একটি কর্তৃপক্ষ প্রতিষ্ঠা করিবে।

(২) কর্তৃপক্ষ একটি সংবিধিবদ্ধ সংস্থা হইবে এবং ইহার স্থায়ী ধারাবাহিকতা ও একটি সাধারণ সীলমোহর থাকিবে এবং সরকারের পূর্বানুমোদনক্রমে ইহার স্থাবর ও অস্থাবর উভয় প্রকার সম্পত্তি অর্জন করিবার, অধিকারে রাখিবার ও হস্তান্তর করিবার ক্ষমতা থাকিবে এবং কর্তৃপক্ষের পক্ষে বা উহার বিরুদ্ধে মামলা দায়ের করা যাইবে।

৫। কর্তৃপক্ষের কার্যালয়।—কর্তৃপক্ষের প্রধান কার্যালয় পটুয়াখালী জেলায় অবস্থিত হইবে।

৬। পরিচালনা ও প্রশাসন।—(১) কর্তৃপক্ষের পরিচালনা ও প্রশাসন একটি বোর্ডের উপর ন্যস্ত থাকিবে এবং কর্তৃপক্ষ যে সকল ক্ষমতা প্রয়োগ ও কার্য সম্পাদন করিতে পারিবে বোর্ডও সেই সকল ক্ষমতা প্রয়োগ ও কার্য সম্পাদন করিতে পারিবে।

(২) বোর্ড উহার ক্ষমতা প্রয়োগ ও কার্যাবলী সম্পাদনের ক্ষেত্রে সরকার কর্তৃক সময় সময় প্রদত্ত নির্দেশনা অনুসরণ করিবে।

৭। বোর্ড গঠন, ইত্যাদি।—(১) বোর্ড নিম্নবর্ণিত সদস্য সমন্বয়ে গঠিত হইবে, যথাঃ—

(ক) একজন চেয়ারম্যান;

(খ) তিনজন সার্বক্ষণিক সদস্য; এবং

(গ) তিনজন খণ্ডকালীন সদস্য।

(২) চেয়ারম্যান ও সার্বক্ষণিক সদস্যগণ সরকার কর্তৃক নির্ধারিত মেয়াদে ও শর্তাধীনে নিযুক্ত হইবেন ও কর্তৃপক্ষের সার্বক্ষণিক কর্মকর্তা হইবেন।

(৩) খণ্ডকালীন সদস্যগণ, ক্ষেত্রমত—

(ক) অর্থ মন্ত্রণালয়, নৌ-পরিবহন মন্ত্রণালয়, বাণিজ্য মন্ত্রণালয়, স্বরাষ্ট্র মন্ত্রণালয় এবং প্রতিরক্ষা মন্ত্রণালয় হইতে যুগ্ম-সচিব পদমর্যাদার নিম্নে নহেন এমন কর্মকর্তাদের মধ্য হইতে সরকার কর্তৃক নিযুক্ত হইবেন;

(খ) নিয়োগের তারিখ হইতে দুই বৎসরের মেয়াদে স্বীয় পদে বহাল থাকিবেন; এবং

(গ) পুনরায় নিয়োগ লাভের যোগ্য হইবেন।

(৪) খণ্ডকালীন সদস্যগণের সম্মানী ও অন্যান্য বিষয়াদি সরকার কর্তৃক স্থিরীকৃত হইবে।

(৫) চেয়ারম্যান কর্তৃপক্ষের প্রধান নির্বাহী হইবেন।

(৬) চেয়ারম্যানের পদ শূন্য হইলে বা অনুপস্থিতি, অসুস্থতা বা অন্য কোন কারণে চেয়ারম্যান দায়িত্ব পালনে অসমর্থ হইলে, শূন্য পদে নবনিযুক্ত চেয়ারম্যান কার্যভার গ্রহণ না করা পর্যন্ত বা চেয়ারম্যান পুনরায় স্বীয় দায়িত্ব পালনে সমর্থ না হওয়া পর্যন্ত জ্যেষ্ঠ সার্বক্ষণিক সদস্য চেয়ারম্যানের দায়িত্ব পালন করিবেন।

৮। বোর্ডের সভা।—(১) এই ধারার অন্যান্য বিধানাবলী সাপেক্ষে, বোর্ড উহার সভার কার্যপদ্ধতি নির্ধারণ করিতে পারিবে।

(২) বোর্ডের সভা চেয়ারম্যান কর্তৃক নির্ধারিত স্থান ও সময়ে অনুষ্ঠিত হইবেঃ

তবে শর্ত থাকে যে, প্রতি দুই মাসে বোর্ডের কমপক্ষে একটি সভা অনুষ্ঠিত হইবে।

(৩) বোর্ডের সভায় কোরামের জন্য একজন সার্বক্ষণিক সদস্য-সহ অন্যূন তিনজন সদস্যের উপস্থিতির প্রয়োজন হইবে।

(৪) বোর্ডের সভায় প্রত্যেক সদস্যের একটি করিয়া ভোট থাকিবে এবং ভোটের সমতার ক্ষেত্রে সভায় সভাপতিত্বকারী ব্যক্তির একটি দ্বিতীয় বা নির্ণায়ক ভোট প্রদানের ক্ষমতা থাকিবে।

(৫) চেয়ারম্যান বোর্ডের সকল সভায় সভাপতিত্ব করিবেন এবং তাহার অনুপস্থিতিতে জ্যেষ্ঠ সার্বক্ষণিক সদস্য উক্ত সভায় সভাপতিত্ব করিবেন।

(৬) বোর্ডের কোন কার্য বা কার্যধারা কেবলমাত্র বোর্ডের কোন

Partition Act (IV of 1893)

Section 4—The suit land is not an undivided dwelling house rather it is admittedly a commercial place on which petitioners and other co-sharers have been conducting their business treating the suit land as commercial premises. Since the suit land is not a undivided dwelling house but a commercial place an application under section 4 of the Partition Act cannot be invoked to buy out the share of a stranger purchaser in the suit land.*Hossain Shahid Chinu vs Abdul Wahab (Civil)* 103

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Artha Rin Adalat Ain (VIII of 2003)

Section 32—The 3rd party had enough scope to file an application before the Adalat by way of filing an objection under section 32 of the Ain, against the execution of a decree passed by the Adalat relating to the property. *Promoda Sundari Sen Kalyan Trust, Rangpur vs Momtaz Zafar Ahmed (Civil)* ... 53

Code of Civil Procedure (V of 1908)

Order IX, rule 13

Order XVII, rule 1(3)(4)(7)—If any case decreed *ex-parte* on failure of the parties for non complaince of the procedure of sub-rules 3 or 4 of rule 1 of Order XVII only then the question of setting aside the *ex-parte* decree under sub-rule 7 of rule 1 of Order XVII is applicable. *Torab Ali vs Madris Ali Saha (Civil)* 44

Code of Criminal Procedure (V of 1898)

Section 173(3B)—Section 173 (3B) of the Code has given power to the police to submit supplementary charge sheet on further investigation against any person/persons, even who has earlier discharged on final report, if it obtains further evidence. *Salina Islam Beauty vs State (Criminal)* 59

Code of Criminal Procedure (V of 1898)

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Principles of Natural Justice—The principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial or quasi-judicial authority while making an order affecting those rights. *BRAC Bank Ltd vs Multimode Ltd (Civil)* 48

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