

CHAPTER—XLVI

MISCELLANEOUS

539. Courts and persons before whom affidavits may be sworn.—Affidavits and affirmations to be used before High Court Division or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the State or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in Bangladesh.

539A. Affidavit in proof of conduct of public servant.—
(1) When any application is made to any Court in the course of any inquiry, trial or other proceedings under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

An affidavit to be used before any Court other than High Court Division under this section may be sworn or affirmed in the manner prescribed in section 539, or before any Magistrate.

Affidavits under this section shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

(2) The Court may order any scandalous and irrelevant matter in an affidavit to be struck out or amended.

539B. Local inspection.—(1) Any Judge or Magistrate may at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case. If the Public Prosecutor, complainant or accused so desires, a copy of the memorandum shall be furnished to him free of cost.

Scope and application—The local inspection may be made for the purpose of properly appreciating the evidence given in the trial. Local inspection is really meant for the purpose of understanding the evidence in a case and the Magistrate can utilise the result of his local inspection in coming to conclusion from the evidence (AIR 1942 Pat. 150). The Magistrate should make a local inspection only after due notice to the parties in the case and he should incorporate his observations in a memorandum to be placed in the record.

14 DLR 741—Bazal Ahmed Sowdagar Vs. Noor Md. Sowdagar—A local inspection under section 539B of the Code is only permitted for proper appreciation of evidence but that cannot take the place of evidence.

8 DLR 718—A. Kadir Vs. K. Rahman—A Magistrate, cannot, without giving evidence as a witness, import into a case his knowledge of particular facts. Any importation of personal knowledge in the judgment by a Magistrate without being a witness, is illegal.

5 DLR 112—Bhubaneswar Mistri Vs. Udbigneswar Chakraborty—A Magistrate holding a local inquiry acts in contravention of the mandatory provisions of section 539B Cr.P.C if he makes no memorandum of the relevant facts he observed at the time of his inspection.

540. Power to summon material witness or examine person present.—Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

Scope and application—This section consists of two parts. The first part which is discretionary enables a court at

any stage (a) to summon any one as a witness, or (b) to examine any person present in court, or (c) to recall and re-examine any witness. The second part which is mandatory compels the court to take any of the above steps if the new evidence appears to be essential to the just decision of the case.

56 DLR 10—Shahinur Alam & Shahin Vs. State—It is only for the purpose of just decision of a case that the court can have resort to section 540.

9 MLR 82 (HC)—The State Vs. Nasiruddin—Where the court considers it essential for proper decision it may summon and examine any witness at any stage of the proceedings before pronouncement of judgment. There is nothing wrong in it where the accused is not prejudiced.

9 MLR 254—Kazi Ali Zahir alias Elin and others Vs. The State—Recalling prosecution witness for further examination—In the interest of justice prosecution witness may be re-called as provided under section 540 of the Code of Criminal Procedure, 1898 before conclusion of the trial.

46 DLR 186 (AD)—Hemayetuddin alias Aurango Vs. State—The section is expressed in the widest possible term—it cannot be said that the intention of the section is to limit its application to Court witnesses only. (14 BLD 9 (AD), 46 DLR 1; 1 BLT 37 (AD)).

43 DLR 413—Akther Jahan Vs. State—Court's power to examine witness not named in the FIR—The scope of the provision in Cr.P.C in this connection appears to be wide. It gives a discretion to the court to examine such witness at any stage. It is imperative for the court to examine such a witness if his evidence appears to be essential for a just decision.

12 BLD 454—Habibullah Vs. State—The implication of section 540 Cr.P.C is that a court is entitled to call for the additional evidence if it feels that the additional evidence will expand or clear up the evidence already produced but not where, on the evidence a conviction could not be sustained that the court should call evidence which may go to support

such a conviction. The Sessions Judge is the arbiter and the Judge. He is not a party nor an investigator. He is not expected to fill up the gaps left by the prosecution. The overriding consideration for him, while exercising power under section 540 Cr.P.C is the interest of justice. It is for the prosecution to have made out its case. Negligence on the part of the prosecution can never be a ground for taking additional evidence against the accused and by allowing such additional evidence surely justice will fail (Ref : 40 DLR 564, 8 DLR 277).

41 DLR 30—Jamil Siddique Vs. The State—The ends of justice have been negated by the trial Court by refusing to recall certain witnesses for cross examination by the appellant (Ref : 4 DLR 1 (WP)).

40 DLR 352—Helaluddin Vs. State—Examining prosecution witnesses as Court witnesses— Magistrate has power to summon material witness whose relevance is disclosed in evidence, but he cannot examine them as Court witness—Magistrate's order has been modified accordingly.

35 DLR 422—Joynal Gazi Vs. The State—Court's power to summon witnesses for examination under section 540 after the accused has been examined under section 342 and after the arguments of both the sides were heard—In other words, court's power to summon witnesses' at any stage of the trial"—Trial begins with the framing of the charge and ends with the passing of the judgment (Ref: 21 DLR 148).

20 DLR 315 (SC)—The State Vs. Mvi. Md. Jamil—New law does not interfere with the accused's right of cross examination. Accused is not entitled as of right to recall P. Ws.

16 BLD (AD) 108—Md. Abdul Khaleque Biswas and another Vs. The State— Power to examine and re-examine witnesses

Under Section 540 Cr. P.C. the Sessions Judge or any Court has the power to examine or re-examine a witness at any stage of the proceeding if the evidence of such a witness appears to him essential for the just decision of the case.

50 DLR (AD) 162— Nimar Ali Vs. Ramizuddin and another—There is absolutely no material to show that

accused Ramizuddin had any knowledge about the proceeding ever since it was started against him, as at all material times he was abroad. In that view the discretion exercised by the Additional Sessions Judge allowing the accused's application for cross-examination of PWs affirmed by the High Court Division calls for no interference.

20 BLD (HC) 531—Shamsul Hoque Ladu & anr. Vs. The State— From the conduct of the learned Advocate representing the accused-appellant's in the court below is full of negligence and that as he was not only absent in the Court on 25.10.99, the day on which the P.W.1 was examined. But on 3.1.2000 when his petition for recalling the said witness was taken up he merrily remained absent in the Court and thus allowed the application to be rejected on the ground that the engaged lawyer found absent on call. For the ends of justice a chance may be given to the accused appellants to get cross examination of the witnesses examined by the prosecution. [Ref. 8 BLT (HC) 297; 5 BLC 550].

4 BLC 272—Nazrul Islam alias Montu Vs. State—The trial Court after rejecting the first application for recalling a prosecution witness under section 540, Cr.P.C allowed the second application without recording any reason which is not proper when the prosecution evidence was closed. The purpose of section 540 is not to help any party to fill up lacuna by recalling a witness.

540A. Provision for inquiries and trial being held in the absence of accused in certain cases.—(1) At any stage of an inquiry or trial under this code, where two or more accused are before the Court, if the Judge or Magistrate is satisfied, for reasons to be recorded, that any one or more of such accused is or are incapable of remaining before the Court, he may, if such accused is represented by an advocate, dispenses with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by an advocate. or if the Judge or Magistrate considers his personal

attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

Scope and application—This section was enacted only to meet a special type of case under certain special circumstances: It was not intended that power, which the courts were already exercising of granting exemption in proper cases should be taken away and restricted to the provisions of section 540A only (AIR 1951 All. 864). This section was enacted not merely for the benefit of the accused who is incapable of remaining before the court. but also for the benefit of the other accused whose trial is likely to be delayed unnecessarily for no fault on their part. In trials involving a large number of accused, it often happens that one or more of them, either by chance or design, keep on absenting themselves in turn from the hearing on ground of ill health, etc. and the court finds it difficult to secure the presence of all of them together at the hearing thus resulting in inordinate delay in their joint trial. To grant or refuse to grant or refuse to grant exemption from appearance to an accused is in the discretion of the court, and where the discretion is properly exercised, a superior court should not interfere with it.

14 DLR 355—Nalini Kanta Sen Vs. M. Siddique— Court has the power to pass necessary orders for ends of justice (Ref : 46 DLR 186 (AD), 14 BLD 82).

4 DLR 429—Arshad Mridha Vs. Tansaruddin Molla— Accused whose presence in court dispensed with under section 540A must be present when required for examination under section 342.

541. Power to appoint place of imprisonment.—(1) Unless when otherwise provided by any law for the time being in force, the Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

(2) **Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their**

return to the civil jail. (2) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committed may direct that the person be removed to a criminal jail.

(3) When a person is removed to a criminal jail under sub section (2). he shall, on being released therefrom, be sent back to the civil jail unless either—

- (a) three years have elapsed since he has removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 58 of the Code of Civil Procedure, 1908: or
- (b) the Court which ordered his imprisonment in the civil jail has certified to the officer-in-charge of the criminal jail that he is entitled to be discharged under section 58 of the Code of Civil Procedure, 1908.

542. Repealed.

543. Interpreter to be bound to interpret truthfully.—

When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

544. Expenses of complainants and witnesses.—Subject to any rules made by the Government, any Criminal Court may, if it thinks fit, order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

Scope and application—By Establishment Division memo No. AD (IV)-25/81-277 dated 27.9.82 and Memo No. AD (VI) 25/81-280, dated 6.10.82. Government has enhanced rates of diet allowance of Tk. 20.00 (twenty) per day and hotel charges of Tk. 10.00 (ten) for each night hault for the prosecution witnesses attending trials in the criminal courts and enhancement of rate of T. A. of all categories of witnesses

attending trials in the criminal courts of Bangladesh at the following slab rates :—

- (a) Within 5 miles Tk. 5 for both ways.
- (b) Above 5 but not more than 10 miles Tk. 7·50 for both ways.
- (c) Above 10 but no more than 20 miles Tk. 12·50 for both ways.
- (d) Beyond 20 miles Tk. 15 for both ways.

545. Power of court to pay expenses or compensation out of fine.—(1) Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may when passing judgment, order the whole or any part of the fine recovered to be applied—

- (a) in defraying expenses properly incurred in the prosecution;
- (b) in the payment to any person of compensation for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court :
- (c) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of stolen property knowing or having reason to believe the same to be stolen, in compensating any bonafied purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

546. Payments to be taken into account in subsequent suit.—At the time of awarding compensation in any subsequent civil suit relating to the same matter, the

Court shall take into account any sum paid or recovered as compensation under section 545.

546A. Order of payment of certain fees paid by complainant in non-cognizable cases.—(1) Whenever any complaint of a non cognizable offence is made to a Court, the Court, if it convicts the accused, may in addition to the penalty imposed upon him, order him to pay to the complainant—

- (a) the fee (if any) paid on the petition of complaint or for the examination of the complainant, and
- (b) any fees paid by the complainant for serving processes on his witnesses or on the accused.

and may further order that, in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days.

(2) An order under this section may also be made by an appellate Court, or by the High Court Division, when exercising its power of revision.

547. Money ordered to be paid recoverable as fines.— Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for shall be recoverable as if it were a fine.

548. Copies of proceedings.— If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of any order or deposition or other part of the record he shall, on applying for such copy, be furnished therewith:

Provided that he pays for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

Decision

5 MLR (HC) 334—Mobarak Hossain (Md.) @ Jewel Vs. The State— Supply of Copy of Statement recorded u/s 164 before filing charge-sheet is not permissible—

Statement of accused recorded under section 164 Cr. P.C. by a Magistrate is a public document within the meaning of section 74 of the Evidence Act, 1872. An accused is not

entitled to get copy of such statement during investigation before filing charge-sheet under section 173 Cr. P.C.

549. Delivery to military authorities of person liable to be tried by Court martial.—(1) The Government may make rules consistent with this Code and the Bangladesh Army Act, 1952 (XXXIX of 1952), the Bangladesh Air Force Act, 1953 (VI of 1953), and the Bangladesh Navy Ordinance, 1961 (XXXV of 1961), and any similar law for the time being in force as to the cases in which persons subject to military, naval or air force law, shall be tried by a Court to which the Code applies, or by Court-martial, and when any person is brought before a Magistrate and charged with an offence for which he is liable, to be tried either by a Court to which this Code applies or by Court martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps, ship or detachment, to which he belongs, or to the commanding officer of the nearest military, naval or air force station, as the case may be, for the purpose of being tried by Court-martial.

(2) **Apprehension of such persons.** Every Magistrate shall on, receiving a written application for that purpose by the commanding officer of any body of soldiers, sailors or airman stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

Decision

8 DLR 128 (SC)—Sk. Ibrat Vs. Commander-in-Chief—Person triable as an offender by a Court martial oust the jurisdiction of the Magistrate for his trial. Bar stands to the Court of Session and High Court Division.

550. Power to police to seize property suspected to be stolen.—Any police-officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police-officer, if subordinate

to the officer-in-charge of a police station, shall forthwith report the seizure to that officer.

551. Powers of superior officers of police.—Police officers superior in rank to an officer-in-charge of a police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

552. Power to compel restoration of abducted females.—Upon complaint made to a Metropolitan Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of sixteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Scope and application—The legislature has given power under this section only to the District Magistrate and Metropolitan Magistrate with the object that this summary power is used by them in proper cases to secure the liberty and freedom of woman and female children when illegally or unlawfully detained within their jurisdiction. The Jurisdiction conferred by this section depends upon two factors. There must be in the first place an unlawful detention and secondly that unlawful detention must be for an unlawful purpose. Under this section the Magistrate should have taken the statement on oath of the complainant. Chapter XVI Cr.P.C deals with a complaint of an offence, while this section does not do so (AIR 1933 Nag 374). This section provides for an order of restoration.

Revision—An order under this section is revisable by Session Judge under section 439A Cr.P.C The High Court Division may in exceptional cases interfere under its inherent power under section 561A.

46 DLR 651—Fatema Begum Vs. Gageswar Nath—A Magistrate cannot detain a person unless he or she is an

accused in a criminal case. The petr. being above 16 cannot be a minor within the meaning of section 361 P. C and as such the Magistrate has no jurisdiction to keep her in custody or to deliver her to the custody of her father.

553. Repealed.

554. Power of chartered High Court Division to make rules for inspection of records of subordinate courts.—(1) With the previous sanction of the Government, the Supreme Court may, from time to time, make rules for the inspection of the records of subordinate Courts.

(2) **Power of the High Court Division to make rules for other purposes.** The Supreme Court may, from time to time and with the previous sanction of the Government—

- (a) make rules for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts;
- (b) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;
- (c) make rules for regulating its own practice and proceedings and the practice and proceedings of Criminal Courts subordinate to it: and
- (d) make rules for regulating the execution of warrants issued under this Code for the levy of fines:

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

(3) All rules made under this section shall be published in the official Gazette.

555. Forms.—Subject to the power conferred by section 554, and by article 107 of the constitution of the People's Republic of Bangladesh, the forms set forth in the fifth schedule, with such variation as the circumstances of each case require may be used for the respective purposes therein mentioned, and if used shall be sufficient.

556. Case in which Judge or Magistrate is personally interested.—No Judge or Magistrate shall, except with the permission of the Court of which an appeal lies from this Court, try any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Explanation—A Judge or Magistrate shall not be deemed a party, or personally interested, within the meaning of this section, to or in any case by reason only that he is a Municipal Commissioner or otherwise concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case.

ILLUSTRATION

A. as Collector, upon consideration of information furnished to him, directs the prosecution of B for a breach of the Excise Laws. A is disqualified from trying this case as a Magistrate.

Scope and application—The principle of this section is to promote feeling of confidence in the administration of justice. It applies not only to Magistrates and Judges under this Code, but to all persons acting in a judicial capacity. It is not only important that justice should be done but also that justice must appear to have done.

24 DLR 217—The State Vs. Lutor Fakir—Recording of the confessional statement and holding trial by the same Magistrate is not illegal (Ref: PLD 1952 Lah 282).

11 DLR 91 (SC)—Rafiq Ahmed Vs. The State—The fact that the Magistrate tendering pardon was a friend of the father of the accused. Pardoned does not for that reason disqualify the Magistrate.

7 DLR 211 (FC)—Anwar Vs. The Crown—No Judge can be a Judge in his own case, or in a case which he is personally interested. Instances of bias are recognised in section 556 (Ref: 25 DLR 216).

5 DLR 185 (FC)—*Khairdi Khan Vs. The Crown*—Once the mind of the trial Judge have been affected by any bias the proceedings in the court of such a Judge have no legal validity.

Revision—In every case where it is urged that there is disqualification in the Judge under this section, the circumstances creating the disqualification should be clearly specified in the petition for revision.

557. Practising advocate not to sit as Magistrate in certain Courts.—No advocate who practices in the Court of any Magistrate in a district shall sit as a Magistrate in such Court or in any Court within the jurisdiction of such Court.

558. Power to decide language of Courts.—The Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by it.

559. Provision for powers of Judges and Magistrate being exercised by their successors in office.—(1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor in office.

(2) When there is any doubt as to who is the successor in office any Magistrate, the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate, shall determine by order in writing the Magistrate who shall for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Magistrate.

(3) When there is any doubt as to who is the successor in office or any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Additional or Assistant Sessions Judge.

560. Officers concerned in sales not to purchase or bid for property.—A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

561. Special provision with respect to offence of rape by a husband.—(1) Notwithstanding anything in this Code, no Magistrate except the Chief Metropolitan Magistrate or a District Magistrate shall—

- (a) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or
- (b) send the man for trial for the offence.

(2) And, notwithstanding anything in this Code, if the Chief Metropolitan Magistrate or a District Magistrate deems it necessary to direct an investigation by police officer, with respect to such an offence as is referred to in sub-section (1), no police officer of a rank below that of police inspector shall be employed either to make, or to take part in the investigation.

561A. Saving of inherent power of High Court Division.—Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court Division to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of Justice.

Scope and application—This section corresponds to section 151 C.P.C is and proceeds on the same principle. This section emphasises that the Supreme Court in its High Court Division has the widest Jurisdiction to pass orders to secure ends of justice and for that purpose to entertain application not contemplated by the Code. The inherent power can be exercised only for either of the three purposes mentioned in the section. It cannot be invoked in respect of any matter covered by the specific provisions of the Code. The inherent power of the court is undefined and indefinable and must therefore be exercised with great caution. The paramount consideration in exercising the power under section 561A is that such an order would prevent the abuse of the process of any court or otherwise it would secure the ends of justice. The promulgation of Martial Law Regulation has not in any manner curbed the jurisdiction of the High Court Division. Therefore, the jurisdiction of the High Court Division to

entertain petitions under section 561A remain intact after the imposition of Martial Law and the extraordinary jurisdiction of the court can be invoked. Normally the inherent jurisdiction should not be invoked, because inherent powers are preserved in extraordinary cases in the interest of justice (1980 P. Cr. LJ 353). The expression "abusing the process of the court" is generally applied to a proceeding which is wanting in bonafide and is frivolous, vexatious or oppressive. The inherent jurisdiction of the High Court Division may be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice.

56 DLR 636—MA Mazid Vs. Md Abdul Motaleb(Cri.)—Admittedly, in the present case the cheque was presented to the bank after expiry of 6 months from the date of drawing of the cheque. So, obviously this case under section 138 of Negotiable Instruments Act is not maintainable in view of the restriction imposed by proviso (a) to the said section. So, the proceeding is liable to be quashed.

56 DLR 146 (AD)—Amir Hossain Vs. MA Malek and orthers—There is no bar for the complaint case against the respondent to proceed side with the winding up proceeding of the company owned by the complainant-petitioner and the convict-respondent.

56 DLR489—Ayub Ali Md Vs. Abdul Khaleque(Cri)—This court not being a court of appeal has hardly any scope to sift and assess the evidence like a court of appeal in its extraordinary jurisdiction.

56 DLR 516 (Cri)—MM Ishak Vs. State—There is vague and unspecific allegation of torture Mental of physical torture and causing hurt or injury are not the same at. The vague and unspecific allegation of torture made in the FIR does not attract an offence under section 11(Kha) of the Ain. Therefore, the proceeding should be quashed to prevent the abuse of process of the court and for ends of justice.

56 DLR 602—Azad Hossain Md Vs. State(Cri)—The order showing arrest of the present petitioner in connection with

Special Tribunal Case No. 41 of 1996 passed in NGR Case No. 124 of 2002 on 5-1-2003 and the custody warrant issued against him on 6-1-2003 having found to have been illegally the same are quashed.

56 DLR 119 (AD)—Bangladesh Vs. Md Amzad Ali Mridha and others (Civil)—Where the prosecution upon exhausting all processes to secure attendance of witness is not in a position to say if any witness will be available at all. In a case of such extraordinary kind the question of delay in considering the prayer for quashing of the proceeding may reasonably weigh with the Court.

56 DLR 59 (AD)—Shamsuddin alias Shamsuddin Vs. Mvi. Amjad Ali and others—The revisional jurisdiction at the instance of the second party respondents under section 561-A of the Code of Criminal Procedure does not lie as it is a device of invoking a second revision under the garb of an application under section 561-A of the Code of Criminal Procedure which is not maintainable. [Ref:- 9 MLR 32 (AD)]

55 DLR 5 (HC)—Delwar Hossain Sowdagor Vs. State—Since there is a claim and counter claim between the parties this criminal case should not be allowed to proceed and they be given an opportunity to sort out claims in the Civil Court.

55 DLR 393 (HC)—Yasinullah Vs. State—The second FIR lodged is still under investigation and no police report has yet been submitted and as such it is not a judicial proceeding pending before a court. Therefore, the same cannot be quashed under section 561A of the CrPC. It will be up to the court to decide which one of the police reports he would accept after considering the entire facts of the case.

55 DLR 19 (AD)—Islami Bank Bangladesh Ltd Vs. Md. Habib and others—There is no distinction between principal in the first degree and principal in the second degree under section 111 of the Penal Code an abettor is liable for a different act if that was probable consequence of the abetment. This is applicable to the accused guarantor.

55 DLR 492 (HC)—Amal Cabraal Vs. Golam Murtuza—Disputed facts cannot be decided when exercising a

Jurisdiction under section 561A of the Code. This is a function of the trial court which would decide appropriately those facts on the basis of the evidence which will be adduced by the parties in the case.

55 DLR 596 (HC)—Begum Khaleda Zia Vs. State—Criminal intention is sine qua non for an offence under section 5(1) of the Prevention of Corruption Act, 1947. When a decision is taken collectively or even individually by following the rules of procedure or the rules of business criminal intention behind such decision should not normally be inferred.

54 DLR 114 (HC)—Delower Hossain @ Ali Hossain Bhuiyan Vs. State—High Court Division cannot sift evidence like the court of appeal nor give benefit of doubt to an accused in exercise of power under section 561A of the Code.

53 DLR 64—As the order of the Civil Court is bound to obey the same even though he was not a party to that when it affects the result of the earlier order.

53 DLR (HC) 283—As same payments were made by the accused persons', it cannot be said that there was any initial deception on the part of the accused persons. Under such circumstances, we are of the view that there are no elements of the offence u/s 406 and 420 of the B.P.C and as such continuation of the proceedings will be an abuse of the process of the court.

53 DLR (AD) 11—Where a criminal proceeding has been initiated in a competent court and it cannot be shown that such proceeding continues in "abuse of process of court" dispensation of personal appearance of the accused before such court not fall within the meaning of section 561A Cr.P. C.

48 DLR 36—Khorshed Alam Vs. Azizur Rahman—In a rule for quashing the proceedings the court cannot enter into the merits of the allegations. Even if accounts of the company were audited and approved by the share-holders the same cannot exonerate the persons in charge of the management of the company from facing trial on the allegation of misappropriation of the fund (Ref: 44 DLR 107; 6 BLD 305 (AD)).

47 DLR 10 (AD)—Engr. Afsaruddin Ahmed Vs. State—That a Minister is personally interested in the case against the accused, though found to be true, by itself is not sufficient to conclude that the allegation against accused is false. The High Court Division observed rightly that the proceeding cannot be quashed as it remains for the prosecution to establish the allegation by adducing evidence in trial (Ref: 14 BLD 206 (AD), 42 DLR 62 (AD), 10 BLD 1 (AD)).

47 DLR 62 (AD)—Afia Khatun Vs. Mobaswir Ali—In view of the unusual facts and circumstances of the case i. e. re-investigation by the Criminal investigation Department to be a malafide act to create cleverly a plea of alibi for a particular accused, the order of the High Court Division allowing quashment need not be interfered with (Ref: 14 BLD 251 (AD), 40 DLR 69 (AD)).

46 DLR 180 (AD)—Arifur Rahman Vs. Santosh Kumar Sadhu—In view of the complainants' case that the delivered goods in good faith on the accused's inducement of part-payment and promise to pay the balance price within 3 days but subsequently betrayed, it cannot be said there is no prima facie case against him—the High Court Division rightly refused to quash the proceeding (Ref: 40 DLR 301, 14 BLD 78 (AD)).

46 DLR 67 (AD)—Sher Ali Md. Vs. State—The Sessions Judge's decision is not final in relation to a person who has not filed the revisional application to the Sessions Judge but he has been impleaded therein as opposite party. He is free to go to any appropriate forum to challenge the Sessions Judge's decision. But he cannot go to the High Court Division with another revisional application as such an application—better known as second revision—is expressly barred by section 439. The inherent jurisdiction of the High Court Division would be available even to a party who had lost in revision before the Sessions Judge. The inherent power under section 561A can be invoked at any stage of the proceeding, even after conclusion of trial, if it is necessary to prevent the abuse of the process of the Court or otherwise to secure the ends of justice. The inherent power may be invoked independent of powers conferred by any other provisions of the Code. This power is

neither appellate power, nor revisional power, nor power of review and it is to be invoked for the limited purposes. The idea of the High Court Division that both the courts—one under section 439 (4), the other under section 439A are equal in power and the judgment of one is the judgment of another, appears to be grotesque displaying perversity of thought. Section 561A has been put under Chapter XLVI of the Code as "Miscellaneous", so an application under this section must be registered as a miscellaneous case and not as a revision case under section 439 (1) or under both sections. The decision of the Judges that the application under section 561A is liable to be rejected for lack of jurisdiction is totally erroneous and it is held that the High Court Division has jurisdiction to entertain such an application but whether interference will be made in a particular case is altogether a different matter (Ref: 14 BLD 84 (AD), 35 DLR 127 (AD)).

45 DLR 9 (AD)—Aminul Islam Vs. Mujibur Rahman—Inherent jurisdiction whether available to one losing in revision—The inherent jurisdiction of the High Court Division will be available even to a party who has lost in revision before the Sessions Judge. But it must be clearly borne in mind that the powers under section 561A being extraordinary in nature, should be exercised sparingly and where such exercise is essential and justified by the tests specially laid down in the provision itself (Ref: 12 BLD 54 (AD)).

45 DLR 48 (AD)—Hossain Md. Ershad Vs. State—In a proceeding under this provision the court should not be drawn in an enquiry as to the truth or otherwise of the facts which are not in the prosecution case (Ref: 14 BLD 178 (AD), 38 DLR 18 (AD), 14 BLD 161 (AD)).

45 DLR 175 (AD)—Mofazzal Hossain Mollah Vs. State—The fact that the accused were tried and found guilty and then unsuccessfully filed an appeal and a revisional application cannot be a ground, in the facts of the present case (i, e, absence of any legal evidence), for refusing to exercise the Court's inherent power to secure the ends of justice by way of setting aside their conviction (Ref: 13 BLD 207 (AD)).

43 DLR 50 (AD)—Hussain Mohammad Ershad Vs. State—It has been asserted that the FIR itself was lodged by the complainant after receiving an order from the Home Ministry and not on his own. A prosecution cannot be quashed just because it was initiated at the instance of the Home Ministry. The question of possession can only be decided on evidence and not on submission on law as to what constitutes possession. The question whether the proceeding should be quashed or not should be decided on facts alleged in the FIR and charge-sheet. The accused's general denial that the facts disclosed in the FIR are not true will not do. To succeed the accused must show that the facts alleged by the prosecution do not constitute any offence or that prosecution is otherwise barred by law.

24 BLD 183 (HC)—Rezia Khatun Vs. State—Where there is specific provision in the Code in sections 435/439, the inherent power of this court under section 561A cannot be invoked in the instant case, as this extraordinary power is neither appellate power, nor revisional power, nor a power of review.

24 BLD 230 (AD)—Shamsuddin Vs. Mvi. Amjad Ali—It cannot be accepted that a party who has been unsuccessful in revision before the Sessions Judge under section 439A is totally debarred from invoking the jurisdiction of the High Court Division under section 561A of the Code. A revisional application cannot be brought before the High Court Division under the camouflage of a petition under section 561A of the Code.

24 BLD 18 (HC)—Md. Golam Sarwar Babul, Son of Alhaj ATM Abdul Hye Vs. The State—The accused petitioner issued the Cheque with intent to deceive which *prima facie* attracts section 420 of the Penal code. The Contention of the accused petitioner that it was merely a business transaction between the parties and the liability, if any, is of a civil nature, falls through.

23 BLD 634 (HC)—Dewan Mominul Mouzdin Vs. The State—The accused petitioner filed an application under section 241A of the Code of Criminal Procedure & before passing of any order moved this court under section 561A. An application under section 561A of the code can be maintained at any stage of hearing of the proceeding as the allegation against the accused in the FIR & charge sheet do not constitute the offence alleged & prolongation of the prosecution would amount to abase of the process of the court.

15 BLD 115 (AD)—Syed Mohammad Hashem Vs. State—The usual and well-settled practice is that a criminal proceeding can only be quashed after cognizance has been taken and process issued thereupon to prevent the abuse of the process of the Court but there may be a rare case where the High Court Division may be justified in interfering even at the initial stage before taking of cognizance. The view expressed by the High Court Division that an application under section 561A Cr.P.C will be pre-mature unless the accused petitioner had gone through the stages under section 241A or 265C of the Code is not consistent with the principles of law already settled.

14 BLD 131 (AD)—Abdul Khaleque Vs. State—The evidence on record having been properly assessed by the Trial Court and independently re-assessed by the Appellate Court and both the Courts found it reliable, no case of interference is made for the court of Revision of the High Court Division acting under section 561A Cr. P. C.

12 BLD 130 (AD)—Abdur Rahim Vs. Enamul Huq—Section 415, cheating—Code of Criminal Procedure, Section 561A, quashing of Criminal proceedings—Prosecution for cheating plea of Civil Liability—In petition of complaint, accused totally denied receipt of any sum from the complainant. The High Court Division has rightly held that these facts are to be placed before the trial Court for consideration. The last point that the liability if any was of a civil nature, way not considered. since the accused denied the receipt of any sum

from the complt. The Court also disapproved the manner in which the Ld. Judges of the High Court Division described the prosecution case in Bengali observing that we like to nip this unhealthy trend in the bud. The petition is dismissed.

44 DLR 56 (AD)—Aminul Islam Vs. Mujibur Rahman—Revisional jurisdiction of the High Court Division—Revision in the case arising out of section 145 Cr.P.C A party who has been unsuccessful in revision under section 439A Cr.P.C is not totally debarred from invoking the jurisdiction of the High Court Division under section 561A. The opening words of this latter section—"Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court Division" repels any contention of such debarment.

7 BLD 32 (AD)—Radhaballav Sarker Vs. Pijush Kanti Chakravorty—Quashment of proceedings—Mere making of false or untrue statement in a document does not constitute an offence of forgery where the document is executed by a person who purports to execute it—Then the ingredients of the offence of cheating are not at all attracted upon the facts alleged in instant case—We are satisfied that upon the facts alleged there ought not to be a criminal proceeding for the alleged offences and the case should accordingly be quashed.

24 BCR 277 (HC)—Tofail Ahmed Alias Joseph Vs. The State—The power u/s 540 can be invoked at any stage of inquiry trial or other proceedings before pronouncement of Judgment. In order to exercise this power the court shall summon and examine such witness if it appears to essential to the just decision of the case.

7 BCR 60 (AD)—Md. Khorshed Ali. Vs. The State—Abuse of the process of the Court—Continuance of the proceeding against the appellants over the self-same occurrence—When the same facts are the subject-matter of a previous trial in which police action was held to be justified and 16 persons were held guilty and convicted for attacking the police force, the instant proceeding on a compliant petition against the Police personnel and those who helped them are wholly without jurisdiction.

37 DLR 59—Abul Hossain Vs. The State—High Court Division's jurisdiction to interfere with the Tribunal's judgment or order under section 561A Cr.P.C to prevent abuse of process of court. In the case of Bangladesh Vs. Shajahan Seraj reported in (1980) 32 DLR (AD) 1, by a majority decision it has been held that although this court has no power to revise any order, judgment or sentence passed under the Special Powers Act but this Court has jurisdiction under section 561A Cr.P.C in an appropriate case under the Special Power Act to prevent the abuse of the process of any Court to secure the ends of justice.

7 BCR 181 (AD)—Jobed Ali Vs. The State—Whether the High Court Division can review, recall or alter its earlier decision in a Criminal Revision as the High Court Division discharged the Rule without having any opportunity of hearing the accused petitioner. Section 561A Cr.P.C gives ample jurisdiction for re-hearing of a case which has been dismissed in limine. It is well-settled that section 369 Cr.P.C operates in full force and applies to all judgment of Criminal Courts including the High Court. The question of resorting to section 561A does not arise because inherent power is merely a legislative recognition.

5 DLR 71 (WP)—The Crown Vs. Habibullah—Clerical errors be corrected by High Court under section 561A (Ref: 12 DLR 73).

49 DLR (AD) 132—Khondaker Mahatabuddin Ahmed and other Vs. State—There is nothing in law precluding a criminal case on account of a civil suit pending against the petitioners on the same facts. The criminal case stands for the offence, while the civil suit is for realisation of money, both can stand together.

49 DLR (AD) 106—Noor Jahan Begum and another Vs. State, being represented by the Deputy Commissioner and another—The complainant has the option to activate prosecution of the petitioners under the Immigration Act, 1982 as well, but if the allegations contain ingredients under the Penal Code, the complainant's case before the Magistrate cannot be stified by quashing.

49 DLR (AD) 107—Ashraf Ali @ Asraf Ali Vs State—The Drug Control Ordinance is an additional forum for trying drug offences. Taking of cognisance and framing of charge by the Tribunal under the Special Powers Act in respect of offences relating to possession of spurious medicine, are not illegal and the prosecuting thereof are liable to be quashed.

Ordinance No.VIII of 1982 has been promulgated not with a view to excluding all other trials on the same offence but as an additional forum for trying drug offences. If the same offence can be tried by a Special Tribunal under the Special Powers Act it cannot be said that the accused petitioner has an exclusive right to be tried by a Drug Court only. As on the petitioner's own showing he has been charged only under section 25C (d) of the Special Powers Act by the Senior Special Tribunal, we do not find any illegality in the proceedings.

49 DLR (AD) 145—Ansarul Haque Vs. Abdur Rahim and 4 others—It cannot be said that the Court was wrong in holding and acting on the premises that the dispute between the parties arising out of a joint stock should be settled in the Civil Court and the criminal proceeding be quashed.

48 DLR 36—Khorshed Alam Vs. Azizur Rahman & another—In a rule for quashing the proceeding the court cannot enter into the merits of the allegations.

48 DLR 36—Khorshed Alam Vs Azizur Rahman & another—Even if accounts of the company were audited and approved by the share-holders the same cannot exonerate the persons in charge of the management of the company from facing trial on the allegation of misappropriation of the fund.

48 DLR 87—Adhir Kr. Shaha Vs. State—Fresh trial of the petitioner for the negligence of the Presiding officer concerned would be an unnecessary harassment to him and an abuse of the process of the court.

Question is whether for such negligence of the Presiding officer concerned petitioner should suffer a fresh trial for no fault of his own and procedural technicalities should be allowed to prevail over the ends of justice. In this connection, we like to mention that no complaint was made by the Public

Prosecutor, before the said Tribunal before passing of the said order that no trial was held culminating in pronouncement of judgment on 25-1-89 in open court acquitting the accused petitioner. In the above facts and circumstances we are of the view that the petitioner should not face any fresh trial for the negligence of the presiding officer.

48 DLR 102—Liton Vs. State and others—In view of existing legal position owing to the enactment of sections 265C & 241A Cr.P.C an accused can prefer an application under section 561A if he became unsuccessful in his application either under section 265C or section 241A. Otherwise his application under section 561A would be premature.

48 DLR 108—Moudud Ahmed Vs. State—Even when the seized documents placed before the Court were seized illegally the Court cannot but consider those as relevant to the matter in issue and no inherent jurisdiction of the Court could be exercised for a discussion on evidence.

48 DLR 178—Shahidullah Kazi, Amjad Hossain Vs. State, Abul Kasem—Submission of charge-sheet beyond the specified time of 30 days under the Anti-Terrorism Act is illegal and as such the proceeding cannot proceed in the Anti-Terrorism Tribunal.

48 DLR 578—Jasimuddin (Md) and 2 Others Vs. Md. Humayun Kabir—Since the jurisdiction of the Criminal Court to draw up proceedings under section 145 of the Code is ousted as the Civil Court is in seisin of the subject matter of the dispute the entire proceeding in question appears to be without jurisdiction.

48 DLR (AD) 42—Moudud Ahmed Vs. State—Examination of the existing materials on record taking into account the defences that the petitioner might offer at the trial, whatever be the merit of such an exercise, is certainly not the method of disposal of an application under section 561A moved after framing of charge in the case.

After framing a charge, an application under section 561A Cr.P.C to quash the proceeding is still available to the accused

petitioner on the ground that the allegation of facts even if true do not support the accusation or any other offence against him. The charge itself may be impugned but it is not the function of the trial Court while framing charge or the Court exercising jurisdiction under section 561A Cr.P.C to examine the admissibility, relevance, propriety or sufficiency of materials. For, all these questions, specially in a criminal trial, are mixed questions of fact and law which cannot be resolved in an abstract manner without the facts surfacing at the trial.

48 DLR (AD) 42—Moudud Ahmed Vs. State—A wide conclusion that after framing of charge no application under sections 561A Cr.P.C lies should be read in the observation of the High Court Division—"I do not agree with the learned Counsel of the petitioner that at this stage, after framing of charge, the proceedings cannot be proceeded with."

48 DLR (AD) 87—Syed Mohammad Hashem Vs. State—There may be cases where allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged, and in such cases it would be legitimate for the High Court Division to hold that it would be manifestly unjust to allow process of the Criminal Court to be issued against an accused person.

The High Court Division may interfere under section 561A even during Police investigation cognizable offence is disclosed and still more if no offence of any kind is disclosed because in that case the Police would have no authority to undertake an investigation. But the usual and well-settled practice is that a criminal proceeding can only be quashed after cognizance has been taken and process issued thereupon subject to the fundamental principle that the power of quashing is and should be very sparingly exercised and only to prevent the abuse of the process of the Court.

48 DLR (AD) 213—Rahela Khatun Vs. Abul Hassan and others—A Criminal Proceeding cannot be quashed on the basis of defence materials which are still not part of the materials for prosecution. The High Court Division deviated from a well-known norm of disposal of an application for

quashing criminal proceeding by taking into account the defence version of the Case. [Ref : 1 BLC (AD) 176 1MLR (AD) 366].

49 DLR 16—Syed Khalilulla Salik alias Juned Vs. Haji Md. Rahmat Ullah 2. State—A careful reading of sections 29, 463 and 464 of the Penal Code together would clearly show that a false document must have been actually made and that mere taking of a signature on a blank paper without writing anything on that paper does not make it a document. Since the complainant petitioner did not disclose the nature of the document allegedly created the allegations made do not constitute the offence under section 465 of the Penal Code and as such the impugned proceeding is liable to be quashed.

49 DLR 133—Shahriar Rashid Khan Vs. Bangladesh—Rejection of writ petitions against criminal proceedings on grounds of availability of alternative remedy by way of quashing of the proceeding cannot be a bar against further writ petitions against the same criminal proceedings when the very legality of the institution of the proceedings have been challenged.

49 DLR 95—Golam (Md) Abdul Awal Sarker and others Vs. State—The present case under sections 4(2) and 5(2) of Act II of 1947 initiated by the Bureau of Anti-Corruption involving only private individuals is not maintainable in law and is therefore, liable to be quashed.

49 DLR 100—Dr. Ahmed Sharif Vs. State and another—In the circumstances that the petitioner has all along flouted summons and warrant and never asked for bail even in the High Court Division, it is difficult to entertain his application for quashing of proceeding before he surrenders to the Court.

We have also seen from the affidavit and submission that the petitioner is an old man and Professor of University suffering from ailments and is not able to go to Gopalganj. Considering the nature of the case, we direct that the case may be withdrawn from the Magistrate Court Gopalganj to the Court of Chief Metropolitan Magistrate, Dhaka where the petitioner must surrender and obtain bail.

49 DLR 258—Kamrul Islam (Md) Vs. Atikuzzaman—Where a prima facie case of criminal offence has been clearly made out, the High Court Division in a proceeding under section 561A Cr.P.C has little scope to scrutinise the truth or otherwise of any document or other evidence, which may be used as a defence in a criminal proceeding.

49 DLR 464—Nurul Islam Vs. State and another—Institution of a money suit for recovery of the money will not stop prosecution for an offence committed in the eye of law.

49 DLR 630—Alamgir Hossain (Md) alias Alamgir Vs. State—When in the FIR and before the Court the informant stated that the petitioner had illicit intercourse with her against her will and the evidence disclosed a case against, the Court cannot shift the evidence adduced from the side of the prosecution.

50 DLR 146—Sabdul Ali Vs. Md Mabed Ali Sarker—The criminal proceeding in the instant case is required to be quashed to secure the ends of justice so that title may be set at right once and for all by the Civil Court.

50 DLR 265—AKM Rafiqul Alam Vs State—The notice for talak was issued on 26-6-95, but the petitioner took the second wife on 29-5-95, about a month before the service of the notice, not to speak of expiry of 90 days as provided for under section 7 of Muslim Family Laws Ordinance to make the pronouncement of talak effective. As such the application for quashment of proceedings for punishment of the petitioner is summarily rejected.

50 DLR 283—Major (Retd) M. Khairuzzaman Vs. State—The Chief Metropolitan Magistrate has avoided passing of orders on flimsy grounds and as such the questions of approval of the District Magistrate for such permission does not arise. In such a case, the under-trial prisoner could invoke the inherent jurisdiction of the court for ends of justice. The under-trial prisoner in this case is entitled to Class I status in the jail under the provisions of Paragraph 910 of the Jail Code and the authority is directed to allow the status due to him.

50 DLR 301—Rustom Ali Matubbar alias Alam Vs. Mohammad Salahuddin and another—Taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings.

On a reading of the petition of complaint it is difficult to hold that the allegation and the complaint do not disclose any offence and the continuance of the proceeding will be a flagrant abuse of the process of the court and the same is to be buried before trial and the inherent power which are in the nature of extraordinary power has to be passed in aid.

50 DLR 551—Abdul Hai Vs. State—From the petition of complaint we find no allegation of initial deception on the part of the accused petitioner or entrustment of any property. Ingredients of the offence of cheating and criminal breach of trust having not been disclosed in the petition, of complaint the same is liable to be quashed.

50 DLR (AD) 186—Mokaddesh Mondal and others Vs. State and others—Whether in the facts of a particular case a higher section is attracted can be considered at the time of framing of charge. It is not necessary to amend the charge-sheet to include a higher offence.

50 DLR 163 (AD) —Rafique (Md) Vs. Syed Morshed Hossain and another—Nothing was stated in the FIR that the accused denied that he would not pay the balance amount. No allegation of initial deception has also been alleged. The High Court Division rightly quashed the proceeding.

51 DLR 218 (AD) —SM Anwar Hossain Vs. Md Shafiul Alam (Chand) and another—Subsequent allegations will not save limitation for prosecution—The requirement under the law is that the complaint against non-payment of money has to be filed within one month of the date on which the cause of action arises—The High Court Division wrongly rejected the application for quashing.

51 DLR 222—Shahidul Vs. State—A convict may invoke the inherent jurisdiction of the Court if he can make out a case of coram non iudice of the trial Court or that the facts

alleged do not constitute any offence or that the conviction has been based on no legal evidence or otherwise for securing the ends of justice.

51 DLR 338—Shamsur Rahman alias Shamsu Moral and another Vs. State—A person having had prayed for rejection of his petition or appeal cannot be given such latitude as to invoke the aid of section 561A Cr.P.C

49 DLR 485—Mozaffar Ahmed Vs. State and others—Though two civil suits, instituted before the drawing up of the proceeding under section 145 Cr.P.C, are pending, the civil Court has not passed any order regulating possession of the case land, nor a decree for possession or permanent injunction has been granted. In this view of the matter, the jurisdiction of the Magistrate to act under section 145 Cr.P.C is not ousted.

51 DLR 14 (AD)—Abul Bashar & another Vs. Hasan Uddin Ahmed & others—When the Civil Court is already seized with the question of regulating possession of the land between the same parties, the Magistrate acted without jurisdiction in initiating the impugned proceeding under section 145 Cr.P.C

51 DLR 287—Abdul Majd Mondal Vs. State and another—When the Civil Court is already seized with the question of regulating possession of the land between the same parties the Magistrate acted without jurisdiction in initiating the proceeding under section 145 Cr.P.C

48 DLR 286—Wahida Khan Vs Shakar Banoo Ziwari Sultan and State—In a proceeding where a forged document has been used the Court concerned should make the complaint. The criminal court should not take cognizance on a private complaint. The want of complaint under section 195 is incurable and the lack of it vitiates the whole trial.

51 DLR 299—Salahuddin (Md) and others Vs State—We do not find any reason to quash the instant criminal case by involving our inherent jurisdiction under section 561A Cr.P.C as the Code under section 256C provides for an alternative remedy.

16 BLD 200 (HC) — Golam Md. Abdul Awal Sarker and others Vs. The State—Prevention of Corruption Act, 1947 (II of 1947) has applicable only to public servants allegedly committing offences in discharge of their public duties and as such a case involving only private individuals cannot be tried under the said Act.

16 BLD 36 (HC) — Moudud Ahmed Vs. The State—Whether the charge framed against the accused petitioner shall be proved or not is a matter for the trial court to decide on taking evidence. The High Court Division in exercising power u/s 561A can not embark upon an enquiry to ascertain the sufficiency or reliability of the evidence that may be forthcoming at the trial.

16 BLD 27 (AD) — Mr. Moudud Ahmed Vs. The State—In exercising power under section 561A the High Court Division will only see if there are prima facie allegations disclosing criminal offences against the accused persons.

16 BLD 51 (AD) — Dr. M. Faruq Vs. The State — When there are allegations of conspiracy, forgery and abetment against the accused persons, the truth or otherwise of which can only be decided at the trial on evidence, there is no scope to quash the proceedings under Section 561A Cr.P.C.

16 BLD 206 (AD) — Tamizul Haque Vs. Anisul Haque— Mens Rea or guilty intention as an ingredient of a criminal offence can be proved only by adducing evidence at the trial. The question of mens rea cannot be a consideration for quashing a criminal proceeding at the early stage of the case. [Ref : 1 BLC (AD) 169]

16 BLD 290 (AD) — Kabir alias Bakiruddin and others Vs. The State—When allegations made in the F.I.R. or petition of complaint disclose any criminal offence and charge has already been framed against the accused the High Court Division was right in refusing to quash the proceedings on possible defence pleas.

16 BLD 59 (AD) — Hazi Oziullah and another Vs. The State—In consideration of the fact that the appellants applied for registration of their Trade Mark and manufactured goods

under a bonafide belief that their application would be allowed the Appellate Division modified the sentence to the period already undergone.

✓16 BLD 45 (AD) — Harun-ur-Rashid and others Vs. The State—The suo motu cancellation of bail of the accused-petitioners, who were not before the court and nobody prayed for cancellation of their bail, is not sustainable in law.

✓17 BLD 4 (AD) — Ali Akkas Vs. Enayet Hossain and ors.—The settled law is that for quashing a criminal proceeding it must come under any of the following categories; (1) where facts are so preposterous that even on admitted facts no criminal case stands against the accused; (2) where the institution and continuation of the impugned proceeding amounts to an abuse of the process of the Court; (3) where there is a legal bar against the initiation and continuation of the proceeding; (4) where the allegations in the F.I.R. or the petition of complaint, even if taken at their face value and accepted in their entirety, do not constitute any offence and (5) where there is no legal evidence adduced in the case or the evidence adduced clearly and manifestly fails to sustain the charge.

17 BLD 14 (AD) — Ansarul Haque Vs. Abdur Rahim and 4 others—When it appears to the High Court Division that the dispute between the parties is of civil nature and it should be decided by the Civil Court and the contending parties have already filed civil suits for adjudication of their respective claims, the criminal Court should not take cognizance of such a dispute.

17 BLD 20 (AD) — Moqbul Ahmed and another Vs. The State and another—When a single judge of the High Court Division exercises revisional power under section 439 Cr.P.C and affirms the order of conviction and sentence passed against the petitioners a Division Bench has no jurisdiction to sit over the said judgment in exercise of power under Section 561A. Cr.P.C.

17 BLD 265 (HC)—Monotosh Dewan Vs. The State—The High Court Division may interfere under section 561A of the

Code even during the police investigation if no cognizable offence is disclosed.

17 BLD 235 (HC) — Dr. Ahmed Sharif Vs. The State and another—The power under section 561A Cr.P.C is highly discretionary. Such an extraordinary and discretionary power cannot be exercised in favour of the persons who have themselves disrespected the Court complained of.

17 BLD 478 (HC) — Md. Alamgir Hossain alis Alamgir Vs. The State—A convict may seek relief under section 561A Cr.P.C if he can make out a case of coram-nonjudice of the trial Court or that the facts alleged do not constitute any criminal offence or that the conviction has been based on no legal evidence.

17 BLD 66 (HC) — Md. Manik alias Md. Akkash Khan (Manik) Vs. The State and another—Since the age of the victim was mentioned as 18 years in the F.I.R. and the registration Card issued by the Board of Secondary and Higher Secondary, Rajshahi shows that she is above 18 years, the High Court Division held that victim Kabita Banu Shaki is prima facie a major and she of her free will married accused Manik by a registered Kabinnama, no ingredients of any criminal offence were disclosed and were quashed the proceedings.

17 BLD (HC) 198—A.K.M. Rafiqul Islam Vs. The State—The allegations made in the F.I.R even taken as it is, do not disclose any offence under section 409 of the Penal Code and Section 5(2) of Act II of 1947 and there is nothing on record to show that the petitioner was entrusted with the money in question or he had any domain over it. In the circumstances, continuation of the impugned proceeding amounts to an abuse of the process of the Court and as such it is liable to be quashed.

18 BLD (HC) 663—Md. Arzoo Mia Vs. The State—Since a prima facie case has been made out in the petition of complaint and the trial had already been commenced and evidence of P.W. I had been recorded and as such the proceeding cannot be quashed.

19 BLD (AD) 166—S.M. Anwar Hossain Vs. Md. Shafiqul Alam (Chand) & anr.—The cheque in question was issued by the appellant on 21.12.1995 which was presented for encashment on 23.12.1995 but it was dishonoured on the same day whereupon the complainant issued notice to the appellant on 24.12.1995 for payment of money for which the cheque was issued following the clause (b) to the proviso to section 138 of the Act. On receipt of the said notice the appellant in order to avoid payment fraudulently informed the complainant through a lawyer on 4.1.1996 that he had lost the cheque written in the complainants name and made a GD Entry in that behalf. The cause of action for prosecution will arise under clause (c) of the proviso to Section 138 on the failure of the appellant to pay the amount within 15 days of the receipt of the notice of the complainant. Relying on the complainant's own case it is contended on behalf of the appellant the accused appellant must be fixed with notice for payment at least from 4.1.1996 and after the expiry of 15 days from that date i.e; from 19.1.1996 the cause of action should be taken to have arisen due to non-payment within the said period and complaint was required to be filed within one month from 19.1.1996 in compliance with clause (b) of section 141 of the Act. Admittedly the petition of complainant was filed long after that date i.e. on 18.4.1996 and thus cognizance could not be taken upon such complaint. The subsequent allegations will not save the limitation because the requirement under the law is that the complaint has to be filed within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138 of the Act and hence the impugned proceeding is quashed.

19 BLD (AD) 288—S. M. Abdul Khaleque Vs. The State and another—From the petition of complaint it appears that accused-petitioners prima facie dishonestly induced the complaint to part with the informants money and thereafter misappropriated the sum and as such the question of quashing the proceeding does not arise at all.

19 BLD (AD) 290—Mawlana Abdul Hoque Vs. Md. Shakhwat Hossain and another—It appeared to the Sessions

Judge that the petitioner was deposing falsely by suppressing certain material facts and as such the complaint was made to the Magistrate. The Magistrate took cognizance. The matter will be investigated as to whether the accused-petitioner deposed falsely or not before the Court. The matter will be decided on merit and as such the question of previous false statement on record is wholly irrelevant.

19 BLD (HC) 461—Md. Asaduzzaman Vs. Md. Salamatullah—From the petition of complaint it appears that the transaction in question was normal and routine transaction and as such the liability of the accused persons, if any, is civil liability. As there are no ingredients of the offences under section 406 or 420 of the Penal Code in the petition of complaint, continuation of the proceeding will be an abuse of the process of the Court and as such the proceedings is liable to be quashed.

19 BLD (HC) 517—Md. Ali Asgar Vs. Md. Esrail and others—Inherent power may be invoked independent of any power conferred by any other provision of the Code of Criminal Procedure.

48 DLR 295—Anower Hossain and others Vs. Md. Idrish Miah—As there is nothing in the impugned order requiring to prevent abuse of the process of the Court or to secure the ends of justice, the revisional application is barred under the amended provision of section 439 (4) of the Cr.P.C

9 MLR 232-235—Rezia Khatun Vs. The State—Order of acquittal cannot be quashed under section 561A Cr.P.C—High Court Division in exercise of powers under section 435 and 439 Cr.P.C. can examine the legality of an order of acquittal but it cannot quash order of acquittal under section 561A Cr.P.C.

9 MLR 238-240—Alhaj Moulana M. A. Mannan Vs. The State—Quashment of proceeding on ground of abuse of the process of court—Statement of an accused made to the police is not evidence against the co-accused. Proceedings based on such statement being abuse of the process of the Court are liable to be quashed.

6 MLR (HC) 39-40—Setting aside charge—Where the acts of a person constitute both civil and criminal offence, there is no legal bar to prosecute both civil and criminal proceedings against him. To stay the criminal proceedings till disposal of the civil suit will frustrate the purpose of the proceedings and defeat the intention of the law. And as such the High Court Division declined to interfere with the framing of the charge u/s 406 and 420 of the Penal Code.

4 MLR (AD) 187—Latifa Akhter and others Vs. The State and another—Section 241A operates in respect of court of Magistrate and section 265C operates in respect of court of Sessions. When the civil court is in seisin of the matter, the parties cannot be directed to lodge complaint before the Magistrate in respect of offence relating to civil court proceedings. High Court Division can quash such proceedings under section 561A Cr.P.C.

4 MLR (AD) 257—Dewan Obaidur Rahman Vs. The State—No criminal proceedings lie on contractual dispute of civil nature—

When the accused was acquitted under section 247 Cr.P.C. second complaint on the self same allegations is not entertainable in view of the bar under section 403 Cr.P.C. Moreover no criminal proceedings lie in respect of civil dispute arising out of business contractual obligations. Such proceedings are liable to be quashed under section 561A Cr.P.C being abuse of the process of law.

4 MLR (HC) 179—Lailun Nahar Ekram Vs. The State—Unless there are ingredients of misappropriation and criminal misconduct, no offence under section 409 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947 are committed. Consultant charging additional amount for additional work cannot be liable for criminal prosecution. Proceedings being illegal and abuse of the process of law are quashed.

4 MLR (HC) 327—Md. Nazrul Islam alias Amirul Islam Vs. The State—Inherent power of the High Court Division under section 561A Cr.P.C is extra-ordinary power which should be

exercised very sparingly with caution for preventing abuse of the process of the court or otherwise to secure the ends of justice. Question of insufficiency of evidence does not fall within the purview of scrutiny under section 561A Cr.P.C. When the tribunal did not lack in jurisdiction and the case was not one of no evidence, conviction and sentence awarded by the tribunal therein cannot be quashed.

4 MLR (HC) 334—Mohammad Habib and another Vs. The State—Quashment of proceedings under section 406, 420 and 109 of the Penal Code against Bank guarantor—A request is not false representation or inducement on the part of the guarantor with the Bank missing of certain quantity of imported goods during the process of delivery does not constitute offence under section 406, 420 and 109 of the Penal Code against the accused guarantor with the Bank. When the proceedings tantamount to abuse of the process of the Court, the High Court Division in exercise of its inherent power under section 561A Cr.P.C can quash the proceedings without compelling the accused to wait till hearing under section 241A Cr.P.C for the remedy.

1 MLR (HC) 29—Sekander Ali Vs. The State—The exemption of loan granted by Board does not constitute offence under section 406/409 of Penal Code read with section 5(2) of Act II of 1947 against the Managing Director. The proceedings being illegal are quashed under section 561A Cr.P.C

1 MLR (AD) 411—Khondaker Mahtabuddin Ahmed and others Vs. The State—Quashment of proceedings on ground of civil suit on same fact is not permissible in law. Both the civil suit and criminal case can stand together.

1 MLR (AD) 446—Naziur Rahman Vs. The State—When allegations constituting offence under section 406 and 420 of the Penal Code are there, the proceeding of the court of Metropolitan Magistrate cannot be quashed on the plea that the offence being one under section 23 of the Immigration Ordinance, 1982 is exclusively triable by the special court. The complainant can also initiate prosecution against the accused under the Immigration Ordinance as well.

1 MLR (HC) 96—Adhir Kumar Shaha Vs. The State—Quashment of proceedings—Accused who faced trial and was acquitted by judgment which was not signed but was subsequently set aside by the successor presiding judge can not be subjected to fresh trial for ends of justice due to negligence of the presiding judge. The subsequent proceedings are quashed under section 561A with a view to preventing abuses of the process of law.

1 MLR (HC) 140—Shahadat Chowdhury Vs. Md. Aatur Rahman—Code of Criminal Procedure, 1898 (Act V of 1898)—Section 561A—Quashment of proceedings under section 500 of the Penal Code—Although freedom of press has been guaranteed under article 39 of the constitution subject to certain restrictions, a journalist can not take shelter under the clock of freedom of press after committing offence of defamation. Before lodging complaint under section 500 of the Penal Code, the complainant should send a rejoinder denying the truth of the contents of the publications. If the rejoinder is not published, it can be said that the publication was made without good faith and for public good.

1 MLR (AD) 362—Abu Yahaya Nurul Anowar @ Anowar Vs. The State and another—Ordinarily court will never allow prayer for re-hearing when the matter has already been disposed of on merit. But the court may allow rehearing in rare case by exercise of its inherent power to prevent miscarriage of justice apparent on the face of the record.

1 MLR (AD) 363—Md. Abdus Sabur Khan & another Vs. Md. Nurul Islam Shah & another—The order of the Sessions Judge directing further enquiry when validly made on setting aside the order of the Magistrate accepting final report on discussion of merit in a case not triable by him cannot be interfered with and the further proceedings initiated pursuant thereto cannot be quashed under the inherent power of the court.

3 MLR (HC) 96—Shamsur Rahman alias Shamsu Moral and another Vs. The State—Order of dismissal of appeal on the own seeking of the appellant is not liable to be quashed as the same does not amount to abuse of the process of the

court. The convict-petitioner can get the benefit of the decision in the other appeal brought by the co-convict.

3 MLR (HC) 210—Khairuzzman (Major Retd.) Vs. The State—Paragraph 910—Grant of Division—I status to under trial prisoners—To allow Division-1 status to under trial prisoner is within the authority of the trial court subject to the approval of the District Magistrate. When by reason of superior mode of living and high social status the under trial prisoner deserves the Division I, there can be no reason to deny him such status on flimsy grounds. In such a situation the High Court Division can interfere in exercise of its inherent power.

2 MLR (HC) 98—Md. Manik @ Akkash Khan Vs. The State—Quashment of proceedings—In order to bring the offence punishable under section 366 of the Penal Code or within the mischief of the Nari-O-Shishu Nirjatan (Bishesh Babstha) Ain, 1995 the ingredients constituting such offence must be present. When a girl above 18 years of age in her own accord went out of the custody of her father and married the accused without any inticement such an act does not come within the mischief of the Nari-o-Shishu Nirjatan (Bishesh Babstha) Ain, 1995. The case so started being abuse of the process of law can well be quashed by exercise of the inherent jurisdiction of the High Court Division under section 561A Cr.P.C.

2 MLR (AD) 125—Ansarul Hoque Vs. Abdur Rahman & 4 others—The criminal proceedings as well as the civil proceeding cannot lie simultaneously in respect of the same dispute arising out of contractual work and a criminal proceedings in such case being abuse of the process of law are liable to be quashed.

2 MLR (AD) 166—Ali Akkas Vs. Enayet Hossain and others—When the allegations are preposterous, the proceedings are abuse of the process of the court, and are opposed to law, and the allegations do not constitute an offence or there is no proof or evidence in support of the charge, such proceedings can well be quashed under section 561A and not otherwise.

2 MLR (AD) 253—Ansar Ali (Md) Vs. Manager, Sonali Bank—Quashment of Criminal Proceedings—When mortgaged property is removed or sold collusively in breach of the trust with a view to defrauding the loan giving Bank, proceeding under section 406/420/418 of the Penal Code are competent both against the loanee and the guarantor and as such the said proceedings cannot be quashed.

2 MLR (AD) 87—Morshed Ali and others Vs. The State—Quashment of judgment—The order of the Sessions Judge setting aside the order of discharge under section 241A Cr.P.C passed in exercise of his power under section 439 of the Code upon consideration of the materials on record, is not liable to be interfered with because such order suffers neither from any illegality nor from any legal infirmity.

2 MLR (AD) 251—M.A. Mottalib Vs. Narayan Kumar Agarwala—Quashment of Proceedings—An application under section 561A Cr.P.C for quashment of proceeding after the propriety of the order of the Magistrate has been decided by the Sessions Judge in revisional jurisdiction, his not maintainable. Although Customs Authority can proceed departmentally for realising customs duties on imported goods, but it can not seek to seize the goods in a criminal proceedings instituted by private parties.

52 DLR (HC) 105—Habib (Md) and another Vs. State represented by the Deputy Commissioner (Criminal)—When the allegations made the First Information Report or petition of complaint do not disclose any offence, an accused should not be compelled to wait till the stage of hearing under section 241A.

20 BLD (HC) 341—Major General (Rt.) Mahmudul Hasan Vs. The State—Allegation of giving instruction over telephone cannot be the basis of proceeding against the petitioner under section 186 of the Penal Code. Even if there is any statement of the Superintendent of Police to the effect that he received a telephonic call from the petitioner such evidence can not be basis of implicating the petitioner in the case because the identity of the caller cannot be proved and as such the same

cannot proceed against the petitioner and continuation of the proceeding shall be abuse of the process of the Court. [Ref. 52 DLR (HC) 612].

52 DLR (HC) 576—Azibor Mollick Vs. State (Criminal)—When the petitioner's conviction is not based on any legal evidence and it is based only on the statement of the victim made under section 164 Cr.P.C the judgment under Nari-o-Shishu Nirjatan Ain is quashed.

20 BLD (HC) 234—Monir Hossain Vs. The State—Mere admission of another petition under section 561A of the Code challenging the same judgment cannot be a ground for admission of the subsequent petition under the same provisions of law by another convict unless he satisfies the Court that he had cogent reason for not preferring any appeal under section 561A of the Code as early as possible and that the impugned judgment suffers from inherent illegality.

20 BLD (HC) 148—Shaheb Ali Munshi and another Vs The State—From the judgment of the trial Court it is found that the learned Sessions Judge has not properly assessed the evidence of the case and failed to consider the gross discrepancies, contradictions and omissions as well as admissions of the PWs on vital points and as such it is not safe to maintain the order of conviction and sentence on the evidence on record of the case.

20 BLD (HC) 550—Gulzar Biswas & ors. Vs. The State—From the evidence of PW4 and the inquest report it appears that Biswajit did not commit suicide rather somebody killed him and then tried to hang the dead body in the cowshed in a sitting position.

5 MLR (AD) 320—Ruhul Amin Vs. Nazrul Islam and another—Quashment of proceedings under section 406 of the Penal Code—A truck purchased with loan money taken from Bank against agreement and subsequently it was sold in violation of agreement and by errasing registration number and Chesis number. These allegations prima facie constitute offence under section 406 of the Penal Code and as such the proceedings can not be quashed.

5 MLR (AD) 62—Shahiduddin (Md.) Vs. Md. Rahatullah and others—Section 561A and 369—Quashment of proceedings and correction of clerical error—two different aspects—Proceedings of a Criminal Case can be quashed under section 561A while mere clerical error may be corrected under section 369 Cr.P.C Judgment cannot be set aside under section 369 Cr.P.C. for rehearing.

5 MLR (HC) 50—Rustom Ali Matubbar (Md.) @ Alam Vs. Mohammad Salahuddin and another—Section 561A—Quashment of proceedings—In certain cases breach of contract may constitute criminal liability. Where there are prima facie criminal ingredients in connection with the breach of contract, the proceedings in a criminal case cannot be quashed under section 561A Cr.P.C.

7 BLT (AD) 232—Md. Abul Hossain Vs. The State—The investigation by an Assistant Inspector does not per se become without jurisdiction and a proceeding cannot also be quashed merely because there is irregularity. If any, in the investigation.

7 BLT (AD) 305—Gazi Mozibul Huq & Ors. Vs. Abid Hossain Babu & Ors—The prosecution case as set out in the petition of complaint has got prima facie ingredients of the offences alleged. The exact nature of the offence against the accused petitioners can only be thrashed out upon a trial. The prosecution should not be stifled when there is a prima facie case.

7 BLT (AD) 282—Latifa Akhter & Ors. Vs. The State & Ors—Section-265C or 241A Cr.P.C have nothing to do with Quashing of a proceeding. Section 561A is an independent inherent power of the High Court Division of the Supreme Court and this Power can be exercised in case of abuse of process of Court and for securing the ends of justice and or to give effect to any order under the code- the learned Judges ought to have entered into the merit of the case before refusing to quash the Proceeding.

7 BLT (AD) 245—Khalil Miah Vs. The State—Principle—Imposition of sentence—Condemned Prisoner's participation in the criminal act has been proved by circumstantial evidence

and his own confession but since his own involvement in the actual commission of the criminal act is not definitely established by evidence it is not prudent to award him the maximum sentence of death.

7 BLT (AD) 316—Miah Ahmed Kibria Vs. Govt. of Bangladesh & Ors—Awarding a cost—Principle of—We find that for 5 months after the arrival of the goods at Chittagong port on 27.2.97, the shipper, its agent, the petitioner, the carrier and consignee have maintained a stony silence. There is no correspondence during this period. The petitioner started moving under the instructions of the shipper long after the auction was held. Before taking steps for re-export the petitioner could have discovered with a little effort that the goods have already been auction-sold. Instead the petitioner started a parallel proceeding resulting in a loss of time to respondent No. 4 in getting delivery of the auctioned goods. The costs have been rightly awarded.

7 BLT (AD) 286—Hussain Md. Ershad Vs. The State—Same footing—Although the High Court Division itself found that the co-accused Air Chiefs and the appellant were on the same footing as accused, the appellant was denied bail because his responsibility in the matter as President was found to be higher. This was hardly a good judgment because it should have been realized that the President was not making a household purchase for himself but approving the purchase of Radar for the Air Force as recommended by the Air Chiefs. The President's decision may have been wrong or motivated which is to be decided at the trial but for the purpose of bail there was no reason to discriminate between them.

7 BLT (AD) 286—Hussain Md. Ershad Vs. The State—Influential Person—It was wrong on the part of the High Court Division to assume that the appellant who was an influential person was likely to tamper with the evidence, particularly when the charge-sheet was already submitted and the evidence which was mostly documentary lay with the Government. The apprehension has now been proved to be unfounded as the learned Deputy Attorney General has not come up with any such allegation or any allegation of abuse of

the privilege of bail even though the appellant has been at large for nearly two years.

7 BLT (AD) 10—Md. Nazrul Islam Mollick Vs. Md. Khowaj Ali Biswas & Anr—Allegation against a mutwalli about breach of trust.

Allegation against a mutwalli about breach of trust is subject to the scrutiny under section 52 of the Wakf Ordinance and since the legislature has set up a special forum for the determination of any matter connected with the audit and accounts of a wakf estate have been submitted to the proper authority all allegation including that of breach of trust must thereafter pass the initial scrutiny of the auditor under section 53 of the Wakf Ordinance before it can be even held prima facie that a Mutwalli is guilty of breach of trust unless the auditor held so and that vague allegations against the Mutwalli as to his failure to disburse dues to the beneficiaries or other act of misappropriation by him do not make out a case of breach of trust. [Ref : 4 BLC (AD) 239].

7 BLT (AD) 132—Md. Rustam Ali Mataubbar @ Alam. Vs. Md. Salauddin & Ors—Charged under sections 406 and 420 of the Penal Code—in the instant Case. The complainant has specifically alleged that the accused had fraudulently deceived him and thereby misappropriated Tk. 5,00,000. Which was clear from the conduct of the accused. It will be for the complainant to prove his allegations by evidence at the trial. He cannot be shut out at this stage by telling him that his remedy lay in a suit for specific performance of contract.

7 BLT (AD) 221—Jitesh Chandra Sarker Vs. The State—The Principal of a private college could not be prosecuted without the concurrence of the Governing Body and that the investigation against him having been done by a police officer of the rank of a sub-inspector was not competent as contended by the petitioners Counsel.

7 BLT (AD) 227—Dewan Obaidur Rahman Vs. The State—Offence under section 420 Penal Code—The alleged transaction in between the complainant and the appellant is clearly and admittedly a business transaction. The appellant

had already paid a part of the money under the contract to the complainant. The failure on the part of the appellant to pay the complainant the balance amount under the bill does not warrant any criminal proceeding as the obligation under the contract is of civil nature. The learned Judges of the High Court Division were not justified in holding that the petition of complaint having disclosed an initial element of cheating, the case in question can not be quashed.

7 BLT (AD) 232—A Proceeding cannot be quashed—The High Court Division observed that as the involvement of the petitioner transpired during the investigation stage the proceeding could not be quashed on the ground that his name was not mentioned in the FIR or, we add, on the ground his name was included in the charge sheet on the recommendation of the public prosecutor.

5 BLT (AD) 57—Md. Rafique Vs. Syed Morshed Hossain & Anr—Charge under sections 406/420 of the Penal Code—In the first information report the Petitioner clearly stated that for business purpose he had paid Tk. 5,50,000/- to the accused and he get back Tk. 1,02,628/- nothing was stated in the F.I.R. that the accused respondent denied that he would not pay the balance amount to the Petitioner. No allegation of initial deception has also been alleged in the F.I.R. the learned Judges of the High Court Division rightly quashed the Proceeding.

5 BLT (AD) 118—Ansarul Haque Vs. Abdur Rahim & Ors—The Petitioner lodged the FIR alleging Misappropriation of property by the respondents—Metropolitan Magistrate framed charge against all the respondents under section 408 of the Penal Code and under section 411 against respondent no. 2—The Petitioner also filed a money suit against respondent no. 2—There has been claim and counter claim between the Parties and admittedly money suits have been filed by each of them which are Pending. It can not be said therefore, that the High Court Division was wrong in holding and acting on the Premise that the disputes between the Parties origing out of a joint work should be settled in the Civil Court and the Criminal Court should not take cognizence of such a

dispute—the quashing of the Criminal Proceeding, in our opinion has not caused any miscarriage of justice in the special circumstances of this particular case.

5 BLT (AD) 207—Champak Ranjan Saha Vs. Khulna Development Authority & Ors—Whether the learned Judge's of the High Court Division in disposing of the Rule, issued under section 561-A of the Code of Criminal Procedure acted with their legal authority to issue direction upon the Authorized officer of Khulna Development Authority to demolish the unauthorized construction in question although the mater is pending before the Chief Metropolitan Magistrate Khulna and awaiting decision in that regard.

Held : In criminal Revision No. 972 of 1990 dismentelment of the alleged unauthorized construction of building was not the subject matter for consideration. But the learned Judges of the High Court Division upon taking an erroneous view of the matter clearly misdirected themselves in issuing the impugned unwarranted direction in the disposal of the said revision case touching upon the very merit of a pending Proceeding of an inferior court and as such the impugned direction should have been expunged in the interest of justice, from the aforesaid judgment in question.

5 BLT (AD) 22—Most. Rahela Khatun Vs. Md. Abul Hossain & Ors—A Criminal Proceeding Cannot be quashed on the basis of defence materials which are still not Part of the materials for the Prosecution.

5 BLT (AD) 204—Md. Abdul Khaleq Master Vs. Ahmed Ali & Ors—Whether the case being already under further investigation by the C.I.D the naraji petition is tenable.

That was precisely the prayer of the informant-petitioner in his naraji petition dated 23-10-93 in which he prayed for judicial inquiry by a Magistrate, but the learned Magistrate accepting the naraji petition, by his order dated 27-4-94 directed further investigation by a Senior C.I.D. Officer. If it is the grievance of the informant-petitioner that the further investigation will be carried out by an investigation agency which has already taken a view in the matter, he ought to

nave filed a revisional application against the learned Magistrate's order dated 27-4-94. Instead he waited for 8 months and filed another naraji petition making the same prayer for judicial inquiry on 4-12-94 and the learned Sessions Judge and the High Court Division were both correct in finding that under the circumstances the second naraji petition was not tenable.

5-BLT (AD) 206—Ranjit Vs. The State—Both the trial Court and the High Court Division considered the circumstantial evidence against the petitioner in details and found that the circumstances are such that no other hypothesis other than the guilt of the petitioner can be derived therefrom. Although the accused petitioner was also injured in the bomb explosion there is absolutely no suggestion to the prosecution witnesses that the bomb was placed in the Beauty parlour before the arrival of the petitioner and that the petitioner was in no way involved with the possession of the bomb. On the contrary the state of the accused-petitioner's trouser which was made a material exhibit evidently showed that the explosion ripped through his trouser, thereby making the circumstantial evidence even more compelling against the petitioner.

5 BLT (AD) 227—State Vs. Abdul Khaleque—It is necessary to consider the whole evidence and then to assess the worth of the witnesses as a whole.

5 BLT (AD) 259—S.M. Jillur Rahman Vs. Bangladesh & Ors—Whether for the sake of a fair trial the Government should appoint a special Public Prosecutor from outside the Panel of the incumbent Public Prosecutor.

The accused made a representation to the government for withdrawing the Pending cases on charge of murder where upon the government referred the matter to the Public Prosecutor for his opinion and the public prosecutor gave opinion for withdrawal of the case on the ground that there was little chance of success for the Prosecution. The case was not, however, withdrawn. In this situation the petitioner who claimed to be an informant in the case and the wife of the victim filed an application before the government for

appointment of a special public prosecutor at their cost—Held: we think that it would be fair and reasonable, in the interest of justice, for the Government to appoint a Special Public Prosecutor for this particular case and not leave the matter in the hands of the incumbent Public Prosecutor or his deputies.

4 BLT (AD) 154—M.S.B. Ziwar Sultan Beyed Vs. M. W. Khan & Anr—Quashed the proceeding—Kotwali P.S. Case, under section 420/471/109 of the Penal Code pending then in the court of a Magistrate, 1st class—police upon investigation submitted charge-sheet under the aforesaid sections against the respondent No. 1 and others. The High Court Division held that since the offence is related to forgery of a document which has been given in evidence in the Civil Court cognizance of the offences alleged could not be taken except on the complaint of that court under section 195 (1) (C) Cr.P.C and accordingly quashed the proceeding—petition is dismissed.

4 BLT (AD) 182—A. N. Emdaduddin Chowdhury Vs. Waysur Rahman & Ors—Commission of offence by the respondent under Section 406 and 420 of the Penal Code—The case of the Petitioner has been based upon a contract, mere breach of which could not give rise to a criminal Prosecution. The fact that the respondent subsequently did not abide by his commitment to pay the balance amount of the money might create civil liability for him, but this fact will not fasten criminal liability on the respondent for the alleged offence under sections 406 and 420 of the Penal Code.

4 BLT (AD) 231—S.B. Zaman Vs. Delip Kr. Shaha—Allegation under Sections 406/420 of the Penal Code—The learned Judges of the High Court Division upon reading the petition of complaint rightly held that the petitioner could not impute any mens rea in the conduct of the respondents for refusing to pay money on the basis of alleged agreement and as such the alleged dispute being of civil nature no criminal proceedings lies thereupon—High Court Division rightly quashed the proceedings.

4 BLT (AD) 187—Mr. Abdur Rahim Vs. The State—Appellant filed a petition of complaint before the learned

senior special judge against the Deputy Commissioner, Superintendent of Police, and some other local officials alleging offences under sections 166/217/114 of the Penal Code and section 5(2) of the Prevention of Corruption Act, 1947—Complainant was examined on oath and the A.S.P. was asked to submit a report upon holding an inquire into the complaint made—the grievance of the appellant is that the learned Special Judge committed a two fold wrong (1) in not having acted in terms of the proviso to section 6(5) of the Act and (2) having called for a report, of all persons, from the A.S.P. when senior officers above him were complained against—Held : In the present case it cannot be said that the learned Special Judge has acted with sound discretion in asking the A.S.P to hold an inquire when admittedly officers much above him have been made accused in the case—The order passed by the learned Senior Special Judge is found to be wholly unsustainable in that he has failed to comply with the proviso to section 6(5) of the Act which. On all accounts, was a first step that was required to be taken by him, on receipt of the complaint.

7 BLT (HC) 48—Younus Ali & Ors. Vs. The State—Nari-O-Shishu Case—In the Present Case, the facts that have been alleged in the F.I.R. and in the Police report i. e. charge-sheed might have committed an offence under some other Penal Law but not has committed any offence either under Section 9 (Kha) or Section 14 of the Act framing of charge against the Petitioner under section 9(Kha) and 14 of the Act is not legal and as such the continuation of the proceedings of Nari-O-Shishu Case would amount to harassment to the Petitioners and that also would amount to an abuse of the Process of Court.

7 BLT (HC) 142—Shahidul Vs. The State—A convict may invoke the jurisdiction of the High Court Division under Section 561A Cr.P.C if he can make out a case of Corum non Judice of the trial court or that the facts alleged do not constitute any Criminal offence or that the conviction has been based on no legal Evidence or otherwise for securing the ends of justice.

7 BLT (HC) 206—Md. Mozammel Haque Vs. The State—In the instant case the question is resorting to 561A Cr.P.C does not arise because the Division Bench by the judgment and order dated 27.11.97 passed the order of discharge of the rule after considering the facts and circumstances in the rule. Whether there was enough consideration of the facts and circumstances of the case and whether there was really any substance in the rule is a matter for the court of appeal or the Appellant Division to consider.

7 BLT (HC) 232—Mizan & Ors. Vs. The State—Mizan and Sadek appeared before the Magistrate and after getting bail they absconded. Shahidullah faced the trial but he had not preferred any appeal under the statutory provision. So they cannot invoke the jurisdiction under section 561A of the Code of Criminal Procedure.

7 BLT (HC) 3—Md. Gholam Rabbani Vs. The State—In the present case none of the alleged fictitious loanees examined in the case specifically stated before the Court that the signature or L.T.I. appearing in the loan bond in his name is not his signature or L.T.I. Under such circumstances, mere casual denial by a witness that he did not take any loan by executing the loan bond is not sufficient to hold that he did not actually take any loan executing the loan bond in the face of the clear assertion by the defence that the loanees are real persons who actually received the loans on executing loan bonds. In the circumstances, what is apparent in the face of the record has to be taken as real unless the contrary is proved by convincing evidence. Thus it is difficult to conclude with any amount of certainty that the loanees of the disputed loan bonds are fictitious persons.

7 BLT (HC) 3—Md. Gholam Rabbani Vs. The State—If in a particular case it appears from the evidence and the attending circumstances of the case that the defence put forward by the accused may be reasonably true, even though in reality it may not be true, it reacts upon the entire prosecution case, the accused becomes entitled to benefit of doubt not as a matter of grace but as a matter of right.

7 BLT (HC) 310—Abdur Rouf Morol & Ors Vs. The State—The occurrence from evening to midnight and continued upto following day, in the meantime the informant sent two letters to the Sub-Inspector of Police without mentioning any name of the accused create doubt upon the prosecution story.

7 BLT (HC) 317—Md. Akbor Ali & Ors Vs. The State—It appears from the confessional statement that there is a reference of one Haider son of Jonab Ali but the present accused appellant at serial No. 2 is the son of Johur Ali and not Jonab Ali. So there is a great doubt as to whether the accused Haider Ali son of Johur Ali is the same person as referred to on Ext. 7 who took part in the occurrence and benefit of this defect would go to the accused.

7 BLT (HC) 59—Pear Ali Khan Vs. The State—Doubtful—The evidence of P. Ws. are full of contradictions, inconsistencies and omissions and there is a departure from the fact as stated in written ejahar, Moreover it appears that all the P. Ws. are brothers, sisters and brother in law. Not a single unrelated disinterested witness has been examined in the case. so, No examination of disinterested and vital witness makes the prosecution case doubtful.

7 BLT (HC) 59—Pear Ali Khan Vs. The State—Doubtful by a perusal of the impugned judgment. It appears that the learned Assistant Sessions Judge has observed that this appellant Pear Ali could not produce any receipt showing his purchasing this Camera as found in his possession. But the fact remains that the informant party also could not produce any receipt showing that they have purchased this camera nor did they describe the nature and feature of the Camera in the list of stolen articles enclosed with the ejahar. In such a position and in the absence of identifying witness, we find that the Assistant Sessions Judge is not justified in convicting and sentencing the accused appellant Pear Ali only on the ground that he could not show any receipt.

5 MLR (HC) P 239—Golam Rahman Vs. The State and another—Quashment of proceedings—There is nothing wrong in sending the complaint to the Police for investigation after

examination of the complainant under section 200 of the Code of Criminal Procedure where cognizance can not be taken except upon a police report as required by section 27 of the Special Powers Act, 1974. It is not correct that only the Magistrate competent to take cognizance can send such complaint to the police for investigation.

3 BLT (AD) 74—Afia Khatun Vs. Mobasswir Ali & Ors—Although quashing of a criminal proceeding at the stage of submission of charge-sheet should not be generally permitted but in case of unusual facts and circumstances of the case, question of u/s 561/A can be allowed.

3 BLT (AD) 121—Yakub Ali Vs. The State—Without examining the complainant the Magistrate directed the O.C to investigate the case treating the petition of complaint as F.I.R and the police submitted charge-sheet after investigation. The case not being proceeded with as a complaint case and charge sheet being submitted by the police on the basis of F.I.R, it cannot be said to be illegal or without jurisdiction and question of quashment of proceeding for non examination of the complainant under section 200 Cr.P.C does not arise.

5 MLR (HC) 287—Golam Sarwar Vs. The State—The non-payment of customs duties for purchase of used car in Bangladesh does not constitute offence under section 420, 406 of the Penal Code read with section 156(8) of the Customs Act, 1969 and as such the proceedings being abuse of the process of the Court are quashed.

3 BLT (AD) 224—Moudud Ahmed Vs. The State—(a) The F.I.R. the statements recorded under section 161 Cr.P.C the charge sheet and the charge are not evidence. No comment on those materials is desirable. The court will only see if there are allegations of facts in those materials to connect the accused petitioner with the offence alleged or any offence.

(b) Under Article 58 (2) (now repealed) of the Constitution, 'The question whether any and if so what, advice was tendered by the Council of Ministers or a Minister to the President shall not be inquired into in any Court' as contended by the learned counsel for the petitioner.

Held : In our view in this particular case it is premature to invoke Article 58(2) (now repealed) at this stage--- being in the facts of the case a mixed question of fact and law, it is not time yet to consider this constitutional question while the document is still not ready for observation with all its factual clothings--- we therefore see no reason to grant leave to consider a question of constitutional importance when the occasion for such consideration has not arisen.

3 BLT (AD) 205—Md. Abdus Sabur Khan & anr. Vs. Mr. Nurul Islam shen & anr—Respondent No. 1 lodged an F.I. R. against petitioner No. 1 who was Station Master of Naugaon Railway Station and others alleging, inter alia, that his niece, age about 12/13 years was kept confined at that aforesaid Railway Station and that after committing rape on her, she had been case away with the intention of killing her. The officer-in charge of the Railway Police submitted final report whereupon the Upazila Magistrate by his order accepted the same and discharged the accused--- The informant being aggrieved by the said order took a revision to the Sessions Judge, why by his order directed by Magistrate to make further enquiry in to the matter. The accused then filed an application 4/S-561A Cr.P.C in the High Court Division and a Division Bench by its impugned order discharged that Rule upon observing that the learned Sessions Judge had correctly set aside the order of the Magistrate wrongly discharging the accused---- Held: We are satisfied that the learned Sessions Judge has rightly made the order for further enquiry in the case. His order could not, in any view, be said to be an order without jurisdiction. That being so, it must be said that the application of the petitioners before the High Court Division under section 561A of the Code of Criminal Procedure was wholly misconceived.

3 BLT (HC) 71—Maulana M.A. Mannan & Ors Vs. The State—Anti-corruption officer lodged an F.I. R. with Gulshan P.S. on 27.9. 88. inspite of several dates fixed for police report and Sanction order, the Government decided not to proceed further against the accused Petitioners and accordingly the accused Petitioners were discharged on 12. 6. 90---- on 26. 12.

90 the I/O submitted a charge-sheet along with a Sanction order and accordingly the learned Magistrate under his order of the same day accepted the charge sheet and issued warrants of arrest against the petitioners along with proclamation and attachment of their properties treating the petitioners absconder from the case--- when there was no proceedings pending, no ground for invocation of Section 87 or Section 88 of Code of Criminal Procedure against the accused petitioners--- proceeding against the accused petitioner are without jurisdiction and should be quashed.

3 BLT (HC) 102—Tarini Mohon Ghosh Vs. Gobinda Prashad Das—A person accused in a Criminal case can only prefer an application under-Section 561A, for quashing the said proceeding if he becomes previously unsuccessful in his application either under section 265C or 241A, Otherwise his application under section 561A shall be premature.

5 BLT (HC) 155—Abdul Khaleque @ Mona Vs. The State—Remand—Held: We are of the view that the trial with respect to the Petitioners is vitiated for non-compliance of the mandatory provision of law and it should go back on remand to the trial court for giving an opportunity to the Petitioner to cross-examine the P.Ws. and to try the case with respect to the Petitioner only in accordance with law.

5 BLT (HC) 101—Md. Ali Haider & Anr Vs. The State—Without finding of guilt, absconsion can not be the only basis of conviction.

5 BLT (HC) 133—Abu Bakker & Ors. Vs. The State—Recognition by torch and hurricane at the dead of night is doubtful.

5 BLT (HC) 155—Abdul Khaleque @ Mona Vs. The State—The accused Petitioner along with other absconding accused were sentenced under section 4 (c) of the cruelty to women (Deterrent Punishment) Ordinance, 1983, to take effect from the date of his arrest by the Trial Court. Three years there after the accused Petitioner was apprehended, who then submitted an application under section 561-A of the Code of Criminal Procedure—Held: We are of the view as soon as the Petitioner

apprehended to serve out the order of conviction and sentence imposed upon him by the Trial Court he cannot be termed as a fugitive and there is no bar for challenging the judgment and order on any point of illegality and legal bar.

5 MLR (HC) 107—Shahidul Vs. The State—Explosive Substance Act, 1908—Possession of explosive substance must be exclusive and not constructive—

In order to sustain a conviction of possession for explosive substance, the possession must be exclusive. No conviction can be based on constructive possession of explosive substance.

Proceedings in a criminal case or a sentence may be quashed when the offence alleged does not constitute any offence or on ground of coram-non-judice or otherwise for securing the ends of justice.

5 MLR (HC) 131—A Rouf and others Vs. The State & another—Section 561A—Quashment of proceeding—

The law is well settled that a Sessions Judge can not in exercise of his revisional power direct a Magistrate to take cognizance of any offence. In appropriate case he can direct further enquiry by the Magistrate. Direction of the Sessions Judge to the Magistrate to take cognizance being illegal is set aside.

8 BLT (HC) 256—Shajedul Alam Chowdhury Vs. The State—Whether High Court Division can record an order of compounding the offence which is non-compoundable, for securing ends of justice.

Held : The case was registered under Section-366A of the Penal Code, a non-compoundable offence. We have noticed that in the F.I.R. the informant stated that his daughter was 17 years old and was a student of second year of Higher Secondary Certificate. In Course of investigation of the case, the victim made a statement under Section -164 of the Code of Criminal Procedure wherein she stated that she was 18 years old. In the Kabinnama, her age has been mentioned as 19 years old. The occurrence took place of 16.11.93 and at present, the victim is about 25 years old. Considering all these

aspects, we are of the opinion that victim Nasima Aktar was not below 18 years old at the time of occurrence and therefore, the allegations made in the F.I.R do not attract Section-366A of the Penal Code.

8 BLT (HC) 303—A Rouf & Ors. Vs. The State & Anr—Complainant's case under Section 313/109—complainant made an application to the Magistrate for taking cognizance but the Magistrate rejected that prayer—the learned Sessions Judge allowing the criminal revision setting aside the order of the Magistrate and directed to take cognizance against the accused petitioners—Held : The order of the Sessions Judge directing to take cognizance is not correct one and this portion of the order is liable to be set aside and quashed.

8 BLT (HC) 258—Gholam Rahman Vs. Md. Bazlur Rahman & Ors—In the instant case on receipt of the petition of complaint the learned Magistrate examined the complainant on oath under Section 200 of the Cr.P.C and thereafter in exercise of his powers under Section-202 of the Code directed an investigation by the police. Only on receipt of the report by the police he came to the conclusion that the offence as alleged in the petition of complaint is triable by the Special Tribunal under the Special Powers Act—Held: In this case there was no illegality or irregularity on the part of the learned Magistrate in taking steps under Sections 200/202/190 of the Code on receipt of the petition of complaint and since he sent the records of the case along with the police report to the Special Tribunal, the Special Tribunal also rightly took cognizance of the offence under Section-27(1) (2) of the Special Powers Act—the petition under Section-561A of the Code of Criminal Procedure is misconceived.

8 BLT (HC) 262—Saidur Rahman Khan Mohon Vs. The State—Representation of the People's Order, 1972 Article-74 read with General Clause Act, 1897 Section-6(c)

It is on record that the election was held on 27.2.1991. The time limit for submission of the return was within 65 days from the date of publication of the result of the said election which the petitioner did not comply. But by subsequent

amendment the time limit or submission of the return of election expenditure was made 15 days in place of 65 days and punishment was also enhanced to seven years of imprisonment giving effect to the said amendment on and from 6th of January, 1991 although the amendment has been made much later by the Act No. 10 of 1991—Held: In our view of the issuance of the notice and service the same upon the petitioner for submitting the report and directing to show cause was redundant when the law itself very specifically provides time limit for submission of report is within 65 days—the petitioner should be tried under the law which was prevalent at the time of commission of the alleged offence but not under the amended law.

8 BLT (AD) 69—The State Vs. Seemazahur & Another—Directing holding of Judicial inquiry—From the materials on record it appears that the First Information Report alleged that the occurrence took place inside the police control-room where rape was allegedly committed by police personnel which part was not investigated by the Investigating Officer and it appears that two witnesses were kept under the control of the police and were produced from their custody. In this case there is specific allegation that the alleged offence of rape was committed by a police personnel. But in the charge-sheet police personnel who allegedly committed rape was let off and respondent No. 2 has been charge sheeted. It is a case of public interest where there is allegation of overt act against the police personnel posted in the Court of the Chief Metropolitan Magistrate and in the interest of transparency and visible administration of justice there is no impediment to a judicial inquiry as ordered by the High Court Division. The High Court Division has not committed any wrong in directing holding of judicial inquiry which will be in addition to the police report already submitted.

8 BLT (HC) 115—Golam Sarwar Vs. The State—Case under sections 406/420 of the Penal Code and read with section 156(8) of the Customs Act—allegation that the petitioner purchased a car from the embassy of South Korea but without paying the Government duty and taxes, he using the car—

Held: If any provision is therein the Customs Act for levying any tax or customs duty upon the petitioner for purchasing the car that may be brought into action under that Act and not under the Criminal Law or Penal Code, either under section 420 or 406 of the Penal Code.

8 BLT (HC) 207—Moulana Abdul Hakim @ Abdul Makim & Ors. Vs. Md. Siddiqur Rahman Advocate & Anr.—C. R. case under Sections-467/468/471—the complaint disclose that the accused-petitioners have obtained the disputed document in the year 1978, as stated above and they have also got a deed of rectification of the original sale deed in the year, 1990 and in the said Civil Suit the complainant tried to become a party. But after failure to do so, he did not take any further step whatsoever in the higher of forum to get him added in the Civil Suit. Another very important aspect of the case is that the complainant himself has obtained a document of purchase in respect of some portion of the case land on 11.2.1990. So he is a later purchaser and the document of the accused persons being of 1978, it is an earlier one—Held: Under the aforesaid circumstances as we understand, only civil suit can resolve this legal conflict finally and effectively and we find prima facie that the criminal liability cannot be pushed upon the accused-petitioners and consequently, trial if held against the accused-petitioners it will be an abuse of process of law and Court.

8 BLT (HC) 299—Md. Shokrana Vs. The State—In a criminal case firstly, any allegation whether in the FIR or in the charge sheet, must constitute an offence within the meaning of Code of Criminal Procedure, secondly, the allegation must be based on materials on record and not on mere surmises or suppositions. The process of law must not be used as the engine of harassment. If it is found to be so abused, it will be imperative on the part of the High Court Division to interfere and quash such proceedings in exercise of its inherent jurisdiction.

8 BLT (AD) 90—S. M. Anwar Hossain Vs. Md. Shafiul Alam and Anr—Complainant filed a petition of complaint against

the accused appellant under Section-138 of the Negotiable Instruments (Amendment) Act, 1994—the subsequent allegations will not save the limitation—the requirement under the law is that the complaint has to be filed within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138—impugned proceeding is quashed.

8 BLT (AD) 176—Atiār Rahman Vs. The State—Petitioner has been implicated on the basis of the confession of a co-accused—In the supplementary charge sheet complicity of the petitioner along with principal offenders was found and consequently charge was framed by the Tribunal Judge for abetment of the offence, It is only at the trial stage the value of the materials on record could be considered.

6 MLR (HC) 60-70—Shamim Hossain (Group Captain Retd) Vs. State and another—Quashment of proceedings—Amendment of procedural law unless contrary intention is expressly provided takes retrospective effect— Unless there is apparently non-disclosure of any offence from the F.I.R. charge sheet and other materials on record or any legal bar against such proceedings or continuance of such proceedings is an abuse of the process of court, inherent jurisdiction under section 561A Cr.P.C for quashing the proceedings cannot be invoked. When prima-facie offence is disclosed from the records there cannot be quashment of the proceedings. The court while exercising power under section 561A Cr.P.C cannot weigh the evidence which can only be done during trial by the trial court.

6 MLR (HC) 37-38—Abdur Roof alias Nayan (Md.) Vs. The State—Quashment of proceedings—Failure of the accused to pay the price of goods does not constitute criminal offence— In a business transaction where the accused failed to pay the price of potato supplied on credit it is a civil liability and as such the criminal proceedings instituted therefor under section 406 and 420 of the Penal Code being the abuse of the process of the court is quashed.

6 MLR (SC) 390-394—Abdul Manna Sarker Vs. Abdul Khaleque and another—Sections 561A and section 439—Second revision does not lie against decision of the 1st revision- In appropriate case second revisional application may be converted into one under section 561A Cr.P.C.

No Naraji Petition lies against charge-sheet already filed. Person who is neither an informant nor a witness nor a person interested in the criminal proceeding has no locus standi to file naraji petition. No Naraji petition is maintainable seeking reinvestigation which is not permissible in law.

6 MLR (SC) 168-171—Motaleb Hassain (Md) Vs. The State & another—Quashment of proceeding under section 406 and 420 of the Penal Code when no offence is disclosed-Request does not constitute false representation- Supply of wheat on request on credit is a business transaction and the dispute arising there from is a civil liability. Unless there is initial deception, inducement on false representation, the delivery of wheats on credit and mere issue of a cheque therefor which is dishonoured for want of sufficient fund do not constitute offence under section 406 and 420 of the Penal Code. When the allegations made in the complaint do not disclose any offence the proceedings being abuse of the process of the court is liable to be quashed.

6 MLR (SC) 180-184—Shokrana (Md.) Vs. The State—Quashment of proceeding for preventing abuse of the process of court-

Allegation made in the F.I.R and charge-sheet having disclosed no offence the proceedings under section 490 read with section 5(2) of the Prevention of Corruption Act, 1947 are quashed with a view to preventing the abuse of the process of Court.

6 MLR (SC) 279-280—Abdul Mannan Sarker (Md.) Vs. The State—Quashment of proceedings to prevent the abuse of the process of court—Loan money does not constitute offence—

Unless there is inducement and entrustment loan taken for business purpose and failure or refusal to repay the same is a civil liability and does not constitute offence punishable

under section 406 and 420 of the Penal Code. Therefore the proceedings being abuse of the process of Court are quashed.

9 BLC 121 (AD)—Hafizur Rahman Biswas Vs. State—It appears that no illegality has been committed by the Tribunal regarding section 17(1) of the Nari-o-shishu Nirjatan Daman Ordinance, 1995, as the proviso to the section allows the Court to take cognisance of the offence against a person when cognisance is not taken by the authorised person on the basis of complaint. As to the absence of elements of section 10(2), the Appellate Division has expressed its view that this will be decided on the basis of evidence. Since there is a prima facie case the High Court Division was right to discharge the Rule and refuse to quash the proceeding.

9 BLC 585 —Masud Dewan Vs. State—Under Arms Rules no licence is required for keeping a disco razor. Therefore, mere keeping of disco razor is not an offence punishable under section 19 (f) of the Arms Act. On careful scrutiny it appears that there is not an iota of evidence that any arms was recovered from the possession of the petitioner. Hence, it is a clear case of no evidence. The petitioner was convicted without any legal evidence and, as such, the judgment and order of conviction and sentence is a sheer abuse of the process of the Court so far it relates to petitioner and it is quashed.

8 BLC 729 (HC)—Sheikh Ali Asgar & ors Vs. State—When the matter is within the domain of the investigation agency it will be improper for the court to express its view on the point inasmuch as court process will commence after submission of police report under section 173 of the code. Section 561A of the code will not apply when the matter is under investigation. Pending investigation by CID police the prayer for quashment of the matter under section 561A of the code is impermissible.

8 BLC 50 (HC)—Alauddin Md. Vs. State—Section 19A—As no arms was recovered from the possession of the convict petitioner besides this fact that there was also no evidence against the convict-petitioner warranting conviction under section 19A of the Arms Act, the impugned Judgment and order of conviction and sentence so far it relates to convict petitioner is quashed.

6 BLC (HC) 251—Abul Kashem Talukder Vs. State (Criminal)—The accused petitioner did not directly induce the informant to give the money but he helped the other accused and realise the money from the informar and misappropriated the same and hence there are ingredients of section 420/109 the Penal Code instead of sections 406-420 of Penal Code against the accused petitioner, the proceeding cannot be quashed.

6 BLC (HC) 299—A Jabbar (Md) Vs. Sukkur Ali and 5 others (Criminal)—The trial Court without exhausting all the process to get the medical officer and Investigating Officer as prosecution witnesses closed the proceeding and fixed a date for examination of the accused persons under section 342 of the Code which was set aside and directed the trial Court to exhaust all the process within 90 days failing which the trial Court will be a liberty to dispose of the case in accordance with law.

6 BLC (HC) 450—Abdul Mannan Sarker (Md) Vs. another (Criminal)—The accused-petitioner took Taka one lac sixty-four thousand from the informant in three instalments as loan for his business purpose. In the absence of any promise to repay the loan money to the complainant within a specific period of time and in the absence of any allegation of inducement for getting the loan money from the complainant, mere failure or refusal to repay the said loan money shall not constitute the offence under sections 406/420 of the Code and hence the proceeding is and

6 BLC (HC) 117—Mohiuddin (Md) Abdul Kadaer Vs State and another (Criminal)—Disburing of 3 cheques-Effect of-In any specific date no promise for paymeention for deception on existence of initiused petitioner is proved. the part of thse of normal and regular for due ansaction no ciriminal action lies business action lies and hence the proceeding but sections 420/406 of the Penal Code against the petitioner is an abuse of the process of the Court nd it is quashed.

6 BLC (HC) 749—Khurshid Alam Vs. Fatema Jahan (Criminal)—As there is a specific allegation of making a

demand of dowry to the complainant by the petitioner amounting to taka ten lac it cannot be said that no offence is disclosed under section 4 of the Dowry Prohibition Act when such demand was made before effecting the Talaq. Neither any payment was made on the basis of award given by the Arbitrator nor any suit was filed for making the award a Rule of the Court so as to enforce it and hence the proceeding cannot be quashed.

6 BLC (HC) 750—Zahangir Vs. State (Criminal)—As the PWs have proved the prosecution case against the convict-petitioner for the offence committed by him, it is not a case of no evidence and hence the judgment and order of conviction and sentence passed by the Jana Nirapatta Tribunal cannot be quashed. Since the petitioner abated the commission of offence his sentence to run consecutively is modified to run concurrently.

7 BLC (AD) 43—Khurshida Begum and another Vs. Golam Mostafa and others (Criminal)—The High Court Division without considering the important aspect and without applying its judicial mind that exhumation because of lapse of 4 years 4 months and 19 days from the date of death of Ahmed Chowdhury would serve no purpose summarily made direction to the Magistrate to exhume the dead body without issuing Rule and without hearing the other side granted entire relief which has been disapproved and deprecated by the Appellate Division on a number of occasions since such action of the court is violative of the principle of natural justice.

7 BLC (HC) 325—Abdus Sattar Vs. Kashem Jamal and another (Criminal)—As the allegations made in the petition of complaint prima facie disclose initial intention to cheat the proceeding cannot be quashed.

53 DLR 114—Bibhu Ranjan Das Vs. Hakim Ali and others (Criminal)—The High Court Division as the Court of revision must be deemed to have power to see that a court below does not unjustly take away the character of a party or of a witness or a counsel before it.

53 DLR 155—Daily Star and Protham Alo Patrika Vs. State (Criminal)—Normally the Court does not interfere with the task

of a public prosecutor as to how he conducts the prosecution but this court cannot overlook his functions even after publication of repeated articles in newspapers alleging serious allegations against him.

53 DLR 198—Motaleb Hossain (Md) Vs. State and another (Criminal)—Wheat was supplied by the complainant on credit on the request of the petitioner who is close relation of the complainant. Under such circumstances a request cannot be considered as 'false representation' or 'inducement'. The criminal proceeding is therefore quashed.

53 DLR 403—Satya Narayan Poddar Vs. State and another (Criminal)—Even though the case is premature and it was filed before the expiry of 15 days from the date of receipt of the notice, the proceeding is not liable to be quashed.

53 DLR 410—Abdul Bari and others Vs. State and others (Criminal)—When allegations show that the accused had initial intention to deceive, criminal case should not be quashed on the plea of pendency of civil suit for realised of the money in question.

53 DLR 565—Abdul Mannan Sarker (Md) Vs. State and others (Criminal)—In the absence of definite allegation if cannot be held that taking of money as loan and subsequent failure or refusal by itself shall constitute criminal offence. The continuation of the present proceeding will be an abuse of process of court and harassment to the petitioner. The proceeding is thus liable to be quashed.

6 MLR (AD) 297-298—Ahmed Mollique and others Vs. The State—Quashment of proceedings—Section 247—Acquittal of accused and subsequent fresh case on self-same allegations—Subsequent fresh case upon an F.I.R. lodged after the acquittal of the accused under section 247 Cr.P.C in a complaint case is not barred. When prima-facie offence is disclosed in the F.I.R the proceedings started thereon can not be quashed merely on the ground that the accused was acquitted under section 247 Cr.P.C in the previous complaint case.

6 MLR (AD) 237-239—Abul Kashem Vs. Md. Mofizuddin being dead his heirs Halimannessa and others—Proceedings which are based on materials on record cannot be quashed—Section 145(4)-Restoration of possession—Proceedings under section 145 of the Code of Criminal Procedure after two months of dispossession is incompetent and as such the Magistrate can not direct restoration of possession which is the well settled position of law.

6 MLR (AD) 259-260—Abdullah-Al-Mahmud@ Ripon Vs. The State—Section 561A-Quashment of conviction and sentence—Charge of extortion-Proof thereof—Charge of extortion against the convict-petitioner was proved by satisfactory evidence. The convict-petitioner remained absconding during the whole trial after his release on bail. The contention that the neighbours were not examined is no ground for quashment of the conviction and sentence.

54 DLR (HC) 234—Abdus Salam Vs. Md. Munshi Rashed Kamal and anr (Criminal)—Admittedly there was a transaction between the parties and the petitioner issued the cheque in question but the law of limitation stands as an impediment to proceed further with the case in view of clause (b) of section 138 and clause (b) to section 141 of the Act. Time is a great factor of human life specially when it comes into play for legal purpose. The proceeding of the CR case is quashed.

21 BLD (HC) 296—Md. Shokrana Vs. The State—Under section 561A of the Code this Court can examine the admitted documents of the accused. The extra-ordinary power of this Court under section 561A of the Code may be exercised for the purpose specified therein, namely, (a) to give effect to any order under the Code, (b) to prevent an abuse of the process of any court of and (c) otherwise to secure the ends of justice.

The process of law must not be used as the engine of harassment. If is found to be so abused, it will be imperative on the part of the High Court Division to interfere and quash such proceedings in exercise of its inherent jurisdiction.

21 BLD (HC) 255—Md. Abdul Rouf @ Nayan Vs. State—The deal in question being part of a normal business transaction

and the accused having admittedly received goods on credit on payment of a portion of the price thereof, the non-payment of the balance does not constitute a criminal liability. The liability is purely of a civil nature.

21 BLD (AD) 123—*Islami Bank Bangladesh Ltd. Vs. Muhammad Habib and others*—It is a well-settled principle that a person who abets the actual perpetration of the crime at the very time when it is committed is a 'principal of the second degree' under section 109 of the Penal Code. There is no distinction between 'principal in the first degree' and 'principal in the second degree.' Under section 111 of the Penal Code an abettor is liable for a different act if that was the probable consequence of the abetment. This is applicable to the accused guarantor.

4 BLC (AD) 106—*SM Anwar Hossain Vs. Shafiqul Alam (Chand) & another*—The cause of action for prosecution will arise under clause (c) of the proviso to section 138 of the Negotiable Instrument Act on the failure of the appellant to pay the amount within 15 days of the receipt of the notice of the complainant. In the present case, the cause of action arose on 19-1-96 and the petition of complaint was required to be filed within one month from 19-1-96 in compliance with clause (b) of section 141 of the Act which having not been done by the complainant the cognizance of the offence cannot be taken upon such complaint and hence the impugned proceeding is quashed.

4 BLC (AD) 122—*Abdul Hossain (Md) Vs. State*—In view of the provisions of section 3 of the Anti-Corruption Act, 1947 and paragraph 59 of the Anti-corruption Manual the investigation held by an Assistant Inspector of the Bureau of the Anti-corruption was not illegal and without jurisdiction as has been rightly found by the High Court Division as the investigation by an Assistant inspector does not per se become without jurisdiction and a proceeding cannot also be quashed.

4 BLC (AD) 255—*International Finance Investment and Commerce Bank Ltd Vs. Abdul Quayum and another*—Section

110 of Banking Companies Act, 1991 also provides that a Manager, officer and other functionaries of the Banking Company are deemed to be public servants under section 21 of the Penal Code and hence the appellant and the respondent are public servants and the case has been rightly instituted in the Court of Special Judge against the respondent. Moreso, section 5 of Act II of 1947 speaks of the offences as mentioned on the schedule of the Act to be tried by Special Judges and in the schedule there are sections 403 and 477A of the Penal Code with which the accused has been charged for committing misconduct as a public servant.

4 BLC 39—Arzoo Mia (Md) Vs. State and another—As in the petition of complaint it has been categorically stated that by deceitful means the accused induced a belief in the mind of the complainant that she is lawfully married to him by exchanging garlands and developed carnal relationship with her disclosing a prima facie case of an offence under section 493 of the Penal Code and the trial had already commenced and recorded the evidence of PW 1 and as such the proceeding cannot be quashed at this stage.

Section 3(2) of the Anti-corruption Act, 1957 provides that subject to any order of the Government officers of the Bureau of Anti-corruption shall have power to enquire or hold investigation throughout Bangladesh and shall have such powers which the police officers are empowered in connection with investigation and further the paragraph 59 of the Anti-corruption Manual expresses that the investigation held by an Assistant Inspector was not such the proceeding cannot be quashed. *Abu Sufian Mia Vs. State* 4 BLC 193.

4 BLC 241— State Vs. Md Zillur Rahman and others—Hartal is an unlawful assembly if criminal force is applied in its favour or to oppose it - while a hartal is observe by an assembly of five or more persons and their associates without holding procession or picket it will not be an unlawful assembly but if any criminal force is applied to observe such hartal then the members of the unlawful assembly falling within the purview of the fifth clause to section 141 of Penal Code will be liable to be punished under section 143 of Penal

Code. Hence the procession or other activities in support of applying force to observe hartal shall be unlawful assemblies including to oppose such hartal.

4 BLC 366—Lailun Nahar Ekram Vs. State—The alleged allegation against the petitioner is that she took money twice for the same work through bill No. 3 but it is contended on behalf of the petitioner by placing the rule application wherein it has been stated that the bill No. 3 in question was paid on part and its errors were corrected by bill No. 4 long before the initiation of the imugned criminal case when IPSA did not make any complaint in the matter and when the final bill was yet to be submitted it is not understood the necessity of lodging the FIR without the concurrence of IPSA and hence the proceeding is quashed.

4 BLC 402—PM August, Director Operations Vs. Chairman, First Labour Court—The Labour Court took cognizance of offence under section 20 of Payment of Wages Act as the accused petitioner contravened section 4, 5, 7 and 25 of the Act but alike the provisions of IRO the Labour Court under the Payment of Wages Act, has not been given the same powers as are vested in the Court Magistrate, First Class under the Court of Criminal Procedure for the purpose of trying an offence and hence the Labour Court cannot take cognizance of the said offence and as such the proceeding is quashed.

5 BLC 611—Shokrana (Md) Vs. State—The court under section 561A Code of Criminal Procedure could examine the admitted documents of the accused. In the instant case on a plain reading of the first information report and charge sheet it would appear that the facts stated therein clearly and manifestly fail to prove the alleged charge against the petitioner is an abuse of the process of Court and interference is required under its inherent jurisdiction to secure the ends of justice and hence the proceeding is quashed.

5 BLC 528—Abul Kalam khan Vs. Reaz Morshed and another—The learned Judges of the High Court Division while delivering earlier judgment did not take into consideration two leading decisions wherein it has been held that where an Act

repeals an earlier Act and a different intention appears, the repeal shall not affect any liability incurred or punishment incurred in respect of any offence committed against any enactment so repealed and hence the earlier judgment of the High Court Division was given per incuriam and hence it is directed that the Special Tribunal then constituted for trial of the cases under the Cruelty to women (Deterrent Punishment) Ordinance, 1983 to proceed with case then pending in the Court of Special Tribunal No. 18, Dhaka from the stage it was quashed by the High Court Division earlier exercising the inherent powers reviving the proceeding in Special Tribunal Case No. 458 of 1996. Where there is a conflict between two decisions of the High Court Division the latest decision will prevail.

5 BLC 44—Toffazel Hosain Vs. State represented by the Deputy Commissioner—The publication of notice under section 27(6) of the Special Powers Act is not required on this case as the convict petitioner and two others absconded after being enlarged on bail and it cannot in any way be said that there is no evidence for implicating the petitioner and two others and the petitioner was a fugitive from justice and hence the impugned judgment of conviction and sentence cannot be quashed.

5 BLC 125—Golam Sarwar Vs. State—If there is any provision in the Customs Act for levying any tax or customs duty upon the petitioner for purchasing the car that may be brought into action under that Act and not under the criminal law or Penal Code and as such the proceeding is quashed as the trial of the petitioner will be an abuse of the process of law and court and the petitioner will be harassed unnecessarily.

5 BLC 178—Abdur Rouf and others Vs. State and another—The Sessions Judge cannot direct the Magistrate to take cognizance of the offence and the impugned order so far it relates to such direction is set aside and quashed.

5 BLC 435—Rezaul Haque Milky and another Vs. State and others—Although it appears to be a condition precedent of the bail but nevertheless it was an agreement by the

petitioners by way of undertaking to the opposite party No.2 and hence no illegality was committed by the learned Metropolitan Sessions Judge in rejecting the prayer to delete taka one lac from the order granting bail to the petitioners.

5 BLC 422—Moulana Abdul Hakim and ors Vs. Md Siddiqur Rahman and another—Admittedly, several documents have been created by different persons showing transfer of the case land and for the reasons that the petitioners also got their deed rectified after filing a civil suit where the complainant unsuccessfully tried to be imploded as party and that the complainant also purchased a portion of the case land and in such circumstances only civil suit can resolve the legal conflict finally and effectively and no criminal liability can be saddled upon the accused petitioners and hence the proceeding against the petitioners are abuse of the process of the Court.

5 BLC 601—Shamsul Alam Vs. State—As the present case was neither heard nor disposed of on merit, the application for restoration is allowed recalling the order of discharge for default restoring to its original file and number.

5 BLC 662—Group Captain (Retd) Shamim Hossain Vs. State and another—On a perusal of the First Information Report and the charge sheet it prima facie appears that the offence alleged against the accused petitioner is an economic offence against the State and society as a whole attracting a clear prima facie offence under section 5(2) of the Prevention of Corruption Act, 1947 and hence the proceeding cannot be quashed.

5 BLC 670—Giasuddin Khan (Md) Vs. Beauty Begum & another—In this case talak was pronounced on 8-9-99 but the notice was served upon the complainant only on 14-1-99 but no notice was served on the Chairman of the Arbitration Council concerned and hence there was no legal divorce on 14-1-99. As there is element of the offence under section 4 of the Dowry Prohibition Act, the proceeding cannot be quashed.

562, 563, 564. Omitted.

PREVIOUSLY CONVICTED OFFENDERS

565. Order for notifying address of previously convicted offender.—(1) When any person having been convicted—(a) by a Court in Bangladesh of an offence punishable under section 215, section 489A, section 489B, section 489C, or Section 489D of the Penal Code, or of any offence punishable under Chapter XII or Chapter XVII of that Code with imprisonment of either description for a term of three years or upwards, or

(b) Omitted.

is again convicted of any offence punishable under any of those sections or Chapters with imprisonment for a term of three years or upwards by the High Court Division, Court of Session, Metropolitan Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, such Court of Magistrate may, if it or he thinks fit at the time of passing sentence of imprisonment for life or imprisonment on such person, also order that his residence and any change of or absence from such residence after release be notified as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) The Government may make rules to carry out the provisions of the section relating to the notification of residence or change of or absence from residence by released convicts.

(4) An order under this section may also be made by an Appellate Court or by the High Court Division when exercising its power of revision.

(5) Any person charged with a breach of any such rule may be tried by Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated.