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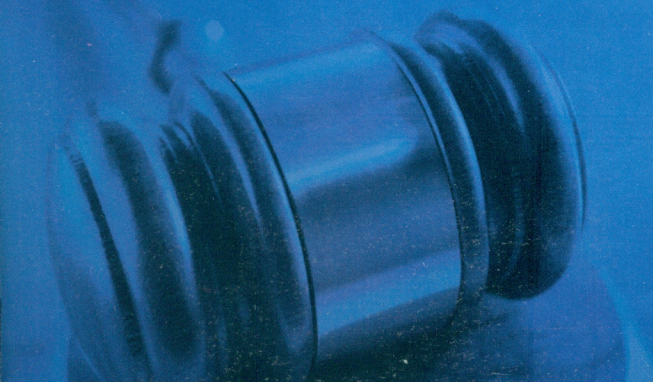
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In Loving Memory



In remembrance of our Publisher, Shahnaz Khandaker, who set sails for eternity at an early age, on 30th November 2014..

It is often said that life is a journey - an incredible adventure that exceeds the experience of none - and death is the final destination, the very last stoppage that remains obscure for the entirety of the voyage. It is the crown of a mountain that you cannot see for the mist and only manage to see once you're close to it, or you have encountered it entirely. It is the land under the blue of the endless ocean, appearing far away than anticipated, yet closer than anyone ever expects. The unpredictable nature of death is, thus, a simple yet complex phenomenon; one that induces pain and grievances like no other, but yet depicts the reality of life - the cruel fact that everything must come to an end. And thus, when a soul departs from the mortal realm, it becomes a moment of grievance and pain, a moment of lost hope and shattered dreams; an overall stagnant instant where the golden rule of mankind dictates over hope. But being the greatest creation of the Creator, we tend to find solace from one's departure. We try to draw lines from the events of one's life and form a legacy that lives until eternity. We try to glorify the achievements and preserve the memories, and in turn, allow them to live within us, within our hearts, where they shall be immortal forever.

But then, when the journey of life becomes small for one, no solaces can remission the pain so easily... no solace can fill the void that seems neverending. It becomes unbearable then - the loss of someone so dear, when it was least expected, when the lives are ripe and there's still a long way to go for them, in general human retrospect. To us, to the family of Mainstream Law Reports, it is not something new. We have lost our Editor earlier this year, in July, and we still haven't managed to reconcile with reality and accept the fact that his promising, youth presence is no more. However, as we were finding ways to crawl past this winter of sorrow, it appeared that spring of joy was still far away from our reach; as of last month, Mainstream Law Reports lost another important piece of its puzzle, a pillar that had kept us standing over the period of the last nineteen years. Our beloved publisher, Shahnaz Khandoker - the name that stood still over two decades since the inception of our journal - breathed her last on 30th November 2014, after being hospitalized for a week at a local medical facility, after being struck by a massive cardiac arrest.

Born to our Founder Editor, Late Khandoker Md. Abu Bakar, Shahnaz Khandaker became the Publisher of Mainstream Law Reports upon its inception, taking up a responsibility that was crucial as the journal was at its infancy. She persisted with her role as the journal continued to grow and flourish over the years, allowing it to expand and gain credibility along the way. She helped our editors and our staffs with her humble opinion at times, and her qualities and her support made Mainstream Law Reports shine during its tumultuous moment of struggle. Soft-spoken, yet very jovial and open-minded, her opinions always opened new windows and horizons for the journal, and allowed us to be flexible in every other way, thus making her role a crucial one at the office. Hence, her loss has left us with a void that is irreplaceable; her loss has left us with an emptiness that is eternal and would remain forever until the end of times.

She is survived by her husband and her only son, who is still at a boyhood age to take a grip of life and struggle on his own. She also left behind her mother, her siblings and her family members, along with her extended family here in Mainstream Law Reports, as well as countless well-wishers, beside whom she stood during their sorrows, as well as their joy. Her presence shall greatly be missed and she will always be in our hearts. And thus, we pray and encourage our readers to pray to the Almighty Allah for her departed soul, and that He grants her with the holy Jannatul Ferdous.

Shamah Mahbub Zoha
Student, Department of Computer Science & Engineering
BRAC University

APPELLATE DIVISION
(Civil)

Md, Muzammel Hossain–C.J.
Surendra Kumar Sinha–J.
Md. Abdul Wahhab Miah–J.
Nazmun Ara Sultana–J.
Syed Mahmud Hossain–J.
Muhammad Imman Ali–J.
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CIVIL APPEAL N0. 200 OF 2003.

(From the judgment and order dated the 18th day of November, 2001 passed by the High Court Division in Writ Petition No.3614 of 2000 heard along with Writ Petition No.3449 of 2000).

Bangladesh Jute Mills Corporation ..... Appellant.

Vs.

Md. Mahbubur Rahman and another ..... Respondents.

For the Appellant : Mr. Tofailur Rahman, Senior Advocate instructed by Mr Md. S. R. Khoshnabish, Advocate-on-Record.

For the Respondents : Mr. Abdur Rab Chowdhury, Senior Advocate instructed by Md. Zahirul Islam, Advocate-on-Record.

Judgment: December 13, 2011

Public Servants (Retirement) Act, 1974–

Services and (Re-organisation and Conditions) Act, 1995–

When it is proved that petitioner voluntarily resigned from his service while posted at the disinvested jute mills under no logic legitimately could claim any link whatsoever with BJMC and thus make prayer to be reinstated in his service in BJMC. Since the petitioner ceased to be an employee, he has got no right to reinstate his earlier service.

But when the petitioner voluntarily resigned from his service while posted at the disinvested Jute Mills under no logic he could claim any link whatsoever with BJMC and thus make prayer to be reinstated in his service in BJMC. The learned Judges of the High Court Division totally failed to consider the broad fact that the moment the petitioner resigned from his service factually and legally, he ceased to have any relationship with BJMC as it's employee. So, he could not make any prayer for reinstating him in the service of BJMC. We find no fault on the part of BJMC to take the stand that since the petitioner was neither dismissed nor removed by BJMC the question of reinstating him in the service of BJMC does not arise at all. .... (Para 10)

JUDGMENT

MD. ABDUL WAHHAB MIAH–J: This appeal, by leave, has arisen out of the judgment and order dated the 18th day of November, 2001 passed by the High Court Division in Writ Petition No.3614 of 2000 heard analogously with Writ Petition No.3449 of 2000 making the Rules absolute.

2. Facts giving rise to this appeal are as follows:

Respondent No.1 as writ-petitioner (hereinafter referred to as the petitioner) filed the said writ petition before the High Court Division challenging his release order dated 31.12.1982 from Bangladesh Jute Mills Corporation (BJMC) i.e. the present appellant to have been issued without lawful authority and is of no legal effect and as to why a direction in the nature of mandamus should not be issued to BJMC to re-instate him in his service without unavoidable delay. The Rule was issued in the terms of the prayer.

3. The case of the petitioner as made out in the writ petition was that he was appointed on July I, 1972 as Accounts Trainee Officer in the Bangladesh Industrial Development Corporation and later on, by the office order dated February 10, 1973, he was given regular appointment by BJMC with effect from November 6, 1973. BJMC being satisfied with the service of the petitioner promoted him as Accounts Officer; while he had been performing his duties as Accounts Officer in BJMC, he was temporarily transferred to Latif Bawani Jute Mills on 31st December, 1976 and later on, he was withdrawn on April 20, 1979 and posted in BJMC as Finance officer; BJMC promoted the petitioner to the post of Assistant Chief Finance officer with effect from July 1, 1980 and while serving in BJMC as Assistant Chief Finance Officer, he was transferred on December 23, 1982 to a disinvested Jute Mills, namely, Alhaj Jute Mills, without his consent by the office order dated December 23, 1982 and was released from BJMC. In transferring the petitioner from BJMC to disinvested Jute Mills the authority did not consult him and also did not obtain his consent. The petitioner made representations to the authority against his transfer, but those were not heeded to and in a compelling situation he joined the disinvested Jute Mills. After joining the said disinvested Jute Mills, the petitioner made representations to BJMC as well as to the Minister-in-charge of the Ministry of Jute and at one point of time, he made representation to the Chief Martial Law Administrator (CMLA). The petitioner again made representation to the Minister-in-charge of the Ministry of Jute on December 23, 1983 with the request to withdraw him from the disinvested Jute Mills and to place him in any other Jute Mills under the control and management of BJMC, but nothing was done. The petitioner came to know that many of the officers trans-

ferred from BJMC to disinvested private Jute Mills were withdrawn and taken back to the service of BJMC, made representations to the President and CMLA mentioning specific cases of withdrawal arid posting in BJMC and prayed for his withdrawal from disinvested Jute Mills, but that was not also heeded to.

4. In the writ petition, it was further contended that the petitioner being a permanent officer of BJMC and BJMC having had transferred him to the disinvested Jute Mills without obtaining his consent, the said action of BJMC was violative of the provision of paragraph-17 of the notification dated September 27, 1982. The action of BJMC in transferring the petitioner to the disinvested Jute Mills was *malafide* being violative of the 'policy guideline' of the Government. The petitioner had been discriminated by BJMC since many other officers and staffs who were initially recruited for disinvested Jute Mills were retained by it, but the service of the petitioner was transferred to disinvested Jute Mills in spite of being an officer of BJMC. The management of the disinvested Jute Mills, Alhaj Jute Mills, totally mismanaged the affairs of Jute Mills and they being unable to run the same gave sub-lease. The disinvested Jute Mills was unable to pay the petitioner his regular salary or any responsible job commensurate to his qualification and in that situation he was forced to resign from his post on June 23, 1987. Thereafter on December 26, 1987, the petitioner applied to BJMC to reinstate him in his service and having had no reply on April 23, 1988 he submitted a representation to its Chairman but the same went unheeded. The action of BJMC was arbitrary and capricious and discriminatory. The petitioner being a permanent officer of BJMC and being a public servant within the meaning of the Public Servants (Retirement) Act, 1974 was entitled to uniform grades and scales and uniform terms and conditions of the services under the provisions of the Services (Re-organisation and Conditions) Act, 1975 and he has a vested right to continue in the service till the age of retirement at 57 years unless he was otherwise legally terminated or removed and BJMC has a duty to take back or reinstate him in his service.

5. The Rule was contested by writ-respondent No. 1, appellant herein by filing an affidavit-in-opposition contending, *inter alia,* that as the petitioner was transferred to disinvested Jute Mills, he ceased to be an officer of BJMC. The petitioner was transferred in pursuance of the policy of disinvestment, so there was no necessity of consulting him to obtain his consent in making the order of transfer from BJMC to disinvested Jute Mills. There being no merits in the representations made by the petitioner, the same were not needed to. The transfer of the petitioner to the disinvested Jute Mills being lawful, there was no occasion to withdraw

him from the said disinvested Jute Mills and to post him in BJMC.

It was further contended that the petitioner was transferred from BJMC to the disinvested Jute Mills in compliance with the provision of law, namely, article 4(5) of the Bangladesh Industrial Enterprise (Nationalization) Order, 1972 read with paragraph 23 of the agreement between the Government and the disinvested Jute Mills and as such, his transfer was neither illegal nor void. The petitioner could not claim to be taken back in BJMC since he ceased to be the employee of BJMC after his transfer to disinvested Jute Mills and finally he having had resigned from the service in June, 1987.

6. A Division Bench of the High Court Division hearing the said writ petition along with Writ Petition No.3449 of 2000 by the judgment and order dated the 18th day of November, 2001 made both Rules absolute.

Being aggrieved by and dissatisfied with the judgment and order passed by the High Court Division, the appellant filed Civil Petition for Leave to Appeal No.555 of 2002 before this Division and leave was granted on 19.07.2003 to consider the following submissions:

"The learned Counsel for the Petitioner submits that the learned Judges of the High Court Division failed to consider that the Respondent No.1 having resigned from service on June 23, 1987 the relationship of employer and employee, if at all subsisting till then was finally severed and he ceased to be in the employment any more and thus he had no legal claim to be taken back in the BJMC and as such the Judgment and order of the High Court Division is illegal and liable to be set aside."

Mr. Tofailur Rahman, learned Counsel, appearing for the appellant, has made submissions in line with the leave granting order.

Mr. Abdur Rab Chowdhury, learned Counsel, appearing on behalf of the writ-petitioner-respondent, on the other hand, has supported the impugned judgment and order passed by the High Court Division.

7. From the impugned judgment, it appears that the learned Judges of the High Court Division made the Rule absolute on the finding, *inter alia,* that the petitioner was a permanent employee of BJMC, he could not be transferred to the disinvested Jute Mills, namely, Alhaj Jute Mills Ltd; moreso before transferring the petitioner to the disinvested Jute Mills, he was neither consulted nor his consent was obtained. In taking the said view the learned Judges relied upon the decisions given by two different Benches of the High Court Division in Civil Revision No.600 of 1988 and in Writ Petition No.2115 of 1999 and also of this Division in the case of the Chairman Petro-Bangla and others Vs. A.K.M. Fazlul Karim and another

reported in 15 BLD (AD) 111. The learned Judges further observed that after transfer the petitioner moved all quarters including the corporation and the high authorities to reconsider the order of transfer and return him back to the service of the corporation. The learned Judges also observed that when the Government took decision on 27.09.1982 to disinvest the nationalised Jute Mills and the decision was published in the Gazette notification, BJMC could not make the release order of the petitioner on 30.12.1982; since the disinvestment order was passed earlier BJMC had no authority to transfer any of its employee including the writ-petitioner to any disinvested Jute Mills after the said date of 27.09.1982 and accordingly, declared the order of transfer of the petitioner as illegal and without lawful authority.

8. From the leave granting order, it is apparent that leave was granted only on one point, whether the writ-petitioner ceased to be an employee of BJMC after he resigned from service on the 3rd day of June, 1987 and thus he had any legal claim to be taken back in BJMC.

To answer the question, we need to see the statements made in the writ petition. There is no dispute that the petitioner was an employee of BJMC and while he had been working as Assistant Chief Finance Officer, head office BJMC, he was transferred to Alhaj Jute Mills, Sharishabari, Jamalpur, a disinvested Jute Mills vide order No.BJMC/Project/Admn-71/1982 dated 23.12.1982 and he was released from the head office on 30.12.1982 vide Ref. No.BJMC/ AC/ Head Office dated 30.12.1982 and the petitioner joined the said disinvested Jute Mills on 06.01.1983. Although in the petition, the petitioner stated that he being a permanent employee of BJMC he could not be transferred to any disinvested Industrial concerned and that too without his consent and that he made many representations to the authorities concerned including the Minister-in-charge of the Ministry of Industries and Commerce and the CMLA and annexed the letters by which he gave his representations, in paragraph 15 of the petition, it was specifically stated"... *Thus the petitioner was compelled to resign his post under the Alhaj Jute Mills on 23.06.1987."* And in support of the said statement, the petitioner also annexed the letter of resignation as annexure-'M'. The said resignation letter reads as follows:

"The Managing Director,
M/s. Al-Haj Jute Mills Ltd.
19, Dilkusha C/A.
Dhaka.

Sub: Resignation-acceptance thereof.

Dear Sir,

I do hereby tender my resignation to-day the 23rd June, 1987 which

may kindly be accepted and oblige thereby.

Thanking you.

Yours obediently,
Sd/illegable
(MD.MAHBUBUR RAHMAN)
Dy. Manager (Admn)
Al-Haj Jute Mills Ltd.

Dated-23rd June, 1987

c.o.to:–
The Project Incharge,
Al-Haj Jute Mills Ltd.
Sharishabari, Jamalpur."

9. A mere reading of the resignation letter clearly shows that the petitioner addressed the same to the Managing Director of M/S. Al-haj Jute Mills Ltd with the request to accept the same and thus oblige him without any reservation. In this regard, it is to be noted that although the petitioner gave representations to the concerned authorities to transfer him from the disinvested Jute Mills to BJMC and his representations did not receive any response, he did not challenge the said order of his transfer in any Court of law. In the same paragraph, the petitioner stated that after resignation, he applied to BJMC on 26.12.1987 i.e. after long 6(six) months of the date of his resignation for reinstating him in the service of BJMC. In reply to the statements made in paragraph 15 of the writ petition, the writ-respondent stated that" ... *the question of reinstatement does not arise inasmuch as the petitioner was not dismissed or removed by BJMC."*

10. From the above, it is *prima-facie* clear that the petitioner voluntarily resigned from his service while he was posted at the disinvested Jute Mills, namely, Alhaj Jute Mills and thus the relationship of the petitioner with BJMC as employee and employer, if thereby any, had totally ceased.

It is true that the petitioner had been making representations to the concerned authorities with the prayer to transfer him to BJMC from the disinvested Jute Mills, but his representations met no favourable result. However, the petitioner might have a good case in view of the decision given by the High Court Division in Civil Revision No.600 of 1988, Writ Petition No.2115 of 1999 as well as by this Division in the case of Chairman Petro-Bangla and others Vs. AKM Fazlul Karim and another 15 BLD (AD) 114 had he not resigned from his service, *but when the petitioner voluntarily resigned from his service while posted at the disinvested Jute Mills under no logic he could claim any link whatsoever with BJMC and thus make prayer to be reinstated in his service in BJMC. The learned Judges of the High Court Division totally failed to consider the broad fact that the moment the petitioner resigned from his service factually and legally, he ceased to have any relationship with BJMC as its employee. So, he could not make any prayer for reinstating him in the service of BJMC. We find no fault on the part of BJMC to take the stand that since the petitioner was neither dis-*

missed nor removed by BJMC the question of reinstating him in the service of BJMC does not arise at all. More interestingly the petitioner applied to the Chairman, BJMC on 26.12,1987 for reinstating him in the service of BJMC treating his resignation as 'Forced Resignation' as "terminated/discharged' employee of BJMC after long 6(six) months from the date of his resignation though he submitted his resignation letter to the Managing Director, M/S. Al-haj Jute Mills Ltd on 23.06.1987. We failed to see any rationale behind the prayer of the petitioner in reinstating him in the service of BJMC when he was neither removed nor dismissed by BJMC. Since the petitioner ceased to be an employee even of the disinvested Jute Mills, the question of his reinstatement in BJMC does not arise at all. And the learned Judges of the High Court Division were not at all required to enter into the merits of the claim of the petitioner and thus to waste the valuable public time.

11. For the discussions made above, we find merits in the appeal.

Accordingly, the appeal is allowed without any order as to cost. The impugned judgment and order is set aside.

Case cited:

* ***Chairman Petro-Bangla and others Vs. AKM Fazlul Karim and another 15 BLD (AD) 114.***

APPELLATE DIVISION
(Civil)

Md. Muzammel Hossain–C.J.
Surendra Kumar Sinha.–J.
Md. Abdul Wahhab Miah–J.
A.H.M. Shamsuddin Chowdhury–J.

CIVIL PETITION FOR LEAVE TO APPEAL N0. 1327 OF 2013

(Arising out of C.M.P.No.498 of 2013) with C.M.P.N0.508 of 2013
(From the judgment and order dated the 30th day of May, 2013 passed by the High Court Division in Writ Petition No.5406 of 2013).

Government of Bangladesh and others ..... Petitioners (in C.P.No.1327 of 13)
Vice Chairman (Panel Chairman-1), Bhuiyanpur Upzila Parishad, Bhuiyanpur, Tangail ..... Petitioner (in C.M.P.No.508 of 13)

Vs.

Md. Shamsul Hoque Talukder and others ..... Respondents (in both cases)

For the Petitioners (C.P. No.1327of '13) : Mr. Ekramul Huq, Deputy Attorney General instructed by Mr. B. Hossain, Advocate-on-Record.

For the Petitioners (C.M.P. No.508 of '13) : Mr. M. Amir-Ul Islam, Senior Advocate instructed by Mr. Md. Aftab Hossain. Advocate-on-Record.

For the Respondents (in both cases) : Mr. Mahmudul Islam, Senior Advocate with Mr. A. M, Aminuddin, Advocate instructed by Mrs. Sufia Khatun, Advocate-on-Record.

Judgment: June 11, 2013.

Constitution of Bangladesh–Article 102–

When the High Court Division having been satisfied as to the primafacie illegality in the impugned orders issued the Rule and passed the interim order of stay and there is no reason to stay the stay order of High Court Division.

In the context, we would like to observe further that the post of Upazila Chairman is an elected post and is not like the post of an employee in which case, the order of removal or dismissal takes effect immediately (if not proved otherwise in a particular case). When in the writ petition, it was specifically asserted by the writ-petitioner that he did not hand over the charge, in the absence of any assertion, in the civil miscellaneous petitions or in the leave petition that the Panel Chairman had already taken over the charge of Chairman of the Upazila Parishad and also in the absence of any overt act that the order had already been acted upon before passing the interim order of stay by the High Court Division, we find no illegality with the impugned interim order. ..... (Para 7)

JUDGMENT

MD. ABDUL WAHHAB MIAH–J: This petition for leave to appeal has been filed by the writ-respondents against the interim order passed by the High Court Division on the 30th day of May, 2013 in Writ Petition No.5406 of 2013.

2. Respondent No. 1 herein as petitioner (hereinafter referred to as the writ-petitioner) filed the said writ petition challenging the office orders contained in Memo Nos. 46.046.027.00.00,232.2012-559 and 46.046.027. 00.00.232.2012-560 both dated 21.05.2013 (annexures-'G' and 'Gl' to the writ petition) issued under the signature of the Deputy Secretary (Upazila-1 Section), the Ministry of Local Government, Rural Development and Cooperatives removing him from the office of Upazila Chairman of Bhuiyapur Upazila Parishad, Bhuiyapur, Tangail and that of giving the charge of Chairman of Bhuiyapur Upazila Parishad, Bhuiyapur, Tangail to writ-respondent No.6, i.e. the Vice Chairman (Panel Chairman-1) Bhuiyapur Upazila Parished. Since in the leave petition and in the civil miscellaneous petitions, we are concerned only with the interim order passed by

the High Court Division, we are not required to state the detailed facts of the writ petition on which the High Court Division issued the Rule and passed the interim order.

3. From the order dated 30.05.2013, it appears that the High Court Division issued the Rule upon the writ-respondents in the following terms:

> "Let a Rule Nisi be issued calling upon the respondents to show cause as to why the office orders contained in memo no. 46.046.027.00.00.232.2012-559 and Memo no. 46.046.027.00.00. 232.2012-560 both dated 21.05.2013 (Annexure-G and Gl) issued under the signature of the Deputy Secretary (Upazila-1 Section) Ministry of Local Government, Rural Development and Cooperative (respondent No.4) removing the petitioner from the office of Upazila Chairman of Bhuiyapur Upazila Parishad, Bhuiyapur, Tangail and that of giving the charge of Chairman of Bhuiyapur Upazila Parishad, Bhuiyapur, Tangail to the respondent No.6 respectively should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper."

4. It further appears that the High Court Division passed an interim order staying operation of the office orders as contained in the above mentioned Memos vide annexures-'G' and 'Gl' to the writ petition for a period of 3 (three) months from date. Against the interim order, writ-respondent Nos.1, (writ-respondent No. 2 is Election Commissioner, Secretariat, represented by its Secretary, Sher-E-Bangla Nagor, Dhaka), 3, 4, 5 and 7 without approaching the High Court Division for appropriate relief straightway filed Civil Miscellaneous Petition for Leave to Appeal No. 498 of 2013 before this Division with the prayer for staying operation of the said interim order passed by the High Court Division; the Panel Chairman- 1 who is writ-respondent No. 6 also filed Civil Miscellaneous Petition for Leave to Appeal No. 508 of 2013 without approaching the High Court Division with the similar prayer for stay. Both the applications for stay were moved before the learned Judge-in-Chamber on 04.06.2013 and the learned Judge-in-Chamber posted the applications for hearing before the Court on 9th June, 2013 at the top. In the meantime, writ-respondent Nos.1, 3, 4, 5, and 7 filed the leave petition.

5. Mr. Ekramul Huq, learned Deputy Attorney General, has appeared in Civil Petition for Leave to Appeal No. 1327 of 2013 and Mr. M. Amir-Ul Islam, learned Counsel, has appeared in Civil Miscellaneous Petition for Leave to Appeal No.508 of 2013.

The learned Deputy Attorney General and Mr. M. Amir-Ul Islam have tried to assail the ad-interim order of the High Court Division submitting that the order of removal of the writ-petitioner was passed after giving

him due show cause notice and also giving him chance of hearing, but he could not assail the allegations of corruption made against him and therefore, no illegality was committed in removing him from the post of Chairman of the Upazila Parishad. Therefore, the High Court Division was not justified in issuing the Rule as well as in passing the interim order of stay. Mr. Islam has further contended that since on the same date by another Memo, i.e. vide annexure-'Gl' the Panel Chairman-1, namely, the Vice-Chairman of Bhuiyanpur Upazila Parishad was given the charge of the Upazila Parishad, the High Court Division committed apparent error in staying the operation of the said order and as such, the same needs to be interfered with by this Division. In support of his contention, Mr. Islam has referred to the case of Bangladesh and others Vs.Sarwar Kamal, 16 BLC (AD) (2012) 8.

6. Mr. Mahmudul Islam, learned Counsel, entering caveat on behalf of the writ-petitioner-respondent, has submitted that whether the order of removal passed by the Ministry of Local Government, Rural Development and Co-operatives issued under the signature of respondent No.4 was passed legally or not, is a question to be decided in the writ petition by the High Court Division and that cannot be decided in disposing of an interlocutory matter. He has further submitted that the order of removal against the writ-petitioner, was passed on 21.05.2013 and then within the quickest possible time, he prepared the writ petition and moved the same before the High Court Division on 30th of May, 2013 and the High Court Division having been satisfied as to the *prima-facie* illegality in the impugned orders issued the Rule and passed the interim order of stay and therefore, there is no reason for interference by this Division with the same and the leave petition and the civil miscellaneous petitions be dismissed.

As stated hereinbefore, presently, we are only concerned with the interim order passed by the High Court Division while issuing the Rule. From the writ petition, it appears that in paragraph-3 thereof, the writ-petitioner categorically stated *"That it is stated that the petitioner has yet not handed over the charge."* In paragraph-6 of Civil Miscellaneous Petition for Leave to Appeal No.508 of 2013 filed by the Panel Chairman-1, Bhuiyanpur Upazila Parishad (writ respondent No.6), it has been stated that *"and the petitioner was appointed as Acting Chairman by the LGED Ministry, thus there is no scope fat the respondent to say that the removal order and appointment of Acting Chairman was arbitrary and contrary to the principle of natural justice."* In the application for stay filed by the Panel Chairman in the miscellaneous petition, no statement has been made that pursuant to the order as contained in annexure'G-1' she took over the charge of the Chairman of the Upazila Chairman, Nowhere in the civil miscellaneous petition, the writ-peti-

tioner's assertion that he did not hand over the charge, has been denied. In the civil miscellaneous petition and in the leave petition filed by writ-respondent Nos.1, 3, 4, 5 and 7 also nothing has been stated controverting the statements made in the writ petition that the writ-petitioner did not hand over the charge. And these, prima-facie, show that the order vide annexure-'G1' did not take its effect till the passing of the interim order by the High Court Division. Therefore, the decision referred to by Mr. M. Amir-Ul Islam in the case of Bangladesh and others (supra) has got no manner of application in the instant case. In that case, this Division observed as follows:

7. "In the instant case, the operation of the impugned Memo dated 20-10-10, placing the petitioner under suspension, was stayed by the High Court Division, after it was effective 4 days earlier."

In the context, we would like to observe further that the post of Upazila Chairman is an elected post and is not like the post of holding any post like an employee in which case, the order of removal or dismissal takes effect immediately (if not proved otherwise in a particular case). When in the writ petition, it was specifically asserted by the writ-petitioner that he did not hand over the charge, in the absence of any assertion, in the civil miscellaneous petitions or in the leave petition that the Panel Chairman had already taken over the charge of Chairman of the Upazila Parishad and also in the absence of any overt act that the order had already been acted upon before passing the interim order of stay by the High Court Division, we find no illegality with the impugned interim order.

In view of the above, we find no merit in the leave petition as well as in the civil miscellaneous petitions; consequently, the petitions are dismissed.

Case cited:

* ***Bangladesh and others Vs. Sarwar Kamal, 16 BLC (AD) (2012) 8.***

APPELLATE DIVISION
(Civil)

Surendra Kumar Sinha–J.
Md. Abdul Wahhab Miah–J.
Nazmun Ara Sultana–J.
Syed Mahmud Hossain–J.
Muhammad Imman Ali–J.
Md. Shamsul Huda–J.

CIVIL PETITION FOR LEAVE TO APPEAL NO.2251 of 2010

(From the judgment and order dated 21.05.2009 passed by the High Court Division in Writ Petition No.3581 of 2003.)

Government of the People's Republic of Bangladesh represented by its Secretary, Ministry of Land, Bangladesh Secretariat Building, Abdul Gani Road, Ramna, Dhaka and others ..... Petitioners.

Vs.

Mozammel Haque and others .....
..... Respondents.

For the Petitioners : Mr. Murad Reza, Additional Attorney General instructed by Mr. B. Hossain, Advocate-on-Record.

For Respondent No.1 : Mr. Lutfor Rahman Mondal, Advocate instructed by Mr. Md. Abu Siddique, Advocate-on-Record.

Respondent Nos.2-15 : Not represented.

Judgment: February 23, 2012

Constitution of Bangladesh–Article 102–

On the basis of any recommendation of Deputy Commissioner, Noakhali for getting permanent settlement in favour of Freedom Fighters right, they cannot get any permanent settlement of land and also it is not a legal right to get settlement of land permanently.

We have considered the submissions of the learned advocates of both the sides and the whole matter attentively. The writ petitioners, admittedly, were lessees of the land in question on yearly basis. According to the terms and conditions of this yearly lease the writ petitioners could be evicted from the land in question at any time. The writ petitioners could not and did not acquire any right to get permanent lease of this land. However, they can apply to the proper authority for getting permanent settlement of this land and it appears that the writ petitioners have already applied for getting permanent settlement of this land and the authority concerned also considered their prayer and also took some steps calling reports from the local administration and the local Deputy commissioner also by two memos dated 28.05.2001 and 13.07.2001 (annexure "G" and "I") recommended for giving permanent settlement of this land to the writ petitioners who are freedom fighters. The concerned authority, however, cannot be directed to give permanent settlement of this land to the writ petitioners, for, this is solely in the discretion of the concerned officials of the Government. The High Court Division, therefore, has committed an error in directing the authority concerned to implement the memos dated 28.05.2001 and 13.07.2001 the annexure-"G" and "I" respectively which contained recommendations of the local Deputy Commissioner for giving permanent settlement of the land in question to the writ petitioners. So, this very direction of the High Court Division quoted above be expunged. ..... (Para 6)

JUDGMENT

NAZMUN ARA SULT ANA–J: Delay is condoned.

Government of the People's Republic of Bangladesh represented by the

Secretary, Ministry of Land and some other Government officials have filed this civil petition seeking leave to appeal against the judgment and order dated 21.05.2009 passed by the High Court Division in Writ Petition No.3581 of 2003.

2. The respondent Nos.1 to 15 herein filed the above mentioned writ petition challenging the respondents' (present petitioners) action of demolition of their houses which they allegedly constructed on their leasehold lands and also praying for a direction to implement the recommendation of the respondent No. 4 for giving permanent lease of this land to the writ petitioners. Rule was issued in that writ petition.

3. The case of the writ petitioners, in short, was that they were freedom fighters and journalists by profession. That the lands of Plot Nos. 1501, 1502, 1525, 1527, 1528, 1529, 1530 and 1531 of mouza East Laksminarayanpur of Noakhali Sadar, Noakhali were acquired in L.A. Case No. 2 of 1920 for Public Works Directorate, Noakhali. That the writ petitioners by taking temporary lease of this land from the Public Works Authority, Noakhali started to live thereon by constructing their dwelling houses thereon since 1985. That the writ petitioners filled up the ditch land and developed that at their own cost with their legitimate expectation that they would be given permanent settlement of the said land. The writ petitioners applied for permanent lease of the said land to the Deputy Commissioner, Noakhali for the purpose of giving permanent lease of the said land to the writ petitioners, took back the said land in the khas khatian No. 1 of the government by the gazette notification dated 19.09.1996. That the writ petitioners thereafter were given lease of the said land on yearly basis and they had been possessing the said land as before. That on 12.04.2000 the writ petitioners submitted an application to the former State Minister, Land for giving permanent lease of the said land to them and the Hon'able State Minister for land, after receiving that application, directed the Deputy Commissioner, Noakhali for taking necessary steps. That on 28.05.2001 the Deputy Commissioner, Noakhali sent a letter to the Secretary, Ministry of Land recommending for giving permanent lease of the said land to the writ petitioners. On receipt of the said memo of the Deputy Commissioner, Noakhali the respondent No. 2 by his memo dated 20.06.2001 requested the Deputy Commissioner to supply the name and address of the writ petitioners with the verification as to whether they were genuine freedom fighters and also to send the proposal for giving permanent lease to the writ petitioners. The Deputy Commissioner, Noakhali then by his memo dated 13.07.2001 again sent his recommendation for giving permanent lease of the said land to the writ petitioners. That thus the proposal for giving permanent lease of the

said land to the writ petitioners was under process and at that stage the dwelling houses of the writ petitioners on the said land were demolished by the local administration without giving any notice to the writ petitioners. The writ petitioners thus have been compelled to file this writ petition.

4. The respondent Nos. 4 to 6 contested the rule by filing affidavit-in-opposition. Their case, in short, was that the writ petitioners were in possession of the land in question by virtue of temporary lease only and that according to the terms and conditions of the said yearly lease the writ petitioners could be evicted at any time. That the writ petitioners had no right to get permanent settlement of the said land. Further case of these respondents is that the government has taken a plan for constructing buildings of different categories for the government officials on this land in question and as such there was no scope to settle this land to the writ petitioners permanently.

A Division Bench of the High Court Division, after hearing both the parties, disposed of the rule by the impugned judgment and order giving a direction as follows:–

"আমাদের, উপরোল্লিখিত আলোচনার প্রেক্ষিতে, ২৮/৫/২০০১ এবং ১৩/৭/২০০১ তারিখের স্মারকদ্বয় (এ্যানেকচার-"জি" এবং "আই") সমন্ধে সরকারকে অনতি বিলম্বে আইনানুগ কার্যক্রম গ্রহন করিবার জন্য নির্দেশ প্রদান করা হইল।"

5. Being aggrieved by this very direction of the High Court Division the Government has filed this civil petition for leave to appeal.

We have heard Mr. Murad Reza, the learned Additional Attorney General for the petitioners. The learned Additional Attorney General has mainly submitted that the High Court Division has committed wrong in directing the government to implement the recommendations of the Deputy Commissioner, Noakhali in annexures-"G" and "I" inasmuch as mere recommendations of a government official being not a decision of any competent authority can not be forced to be implemented, that it is solely in the discretion of the Government, court can not compel the Government to implement any such mere recommendations. Mr. Murad Reza has argued also that the writ petitioners, admittedly, were lessees for temporary period and according to the terms and conditions of the said temporary lease they can be evicted at any time from the land in question and as such they cannot claim to have acquired any legal right to get permanent settlement of this land; that the High Court Division has ignored this aspect of legal position and thus fell in error in making the direction to the government to implement the recommendations of the Deputy Commissioner, Noakhali, for giving permanent settlement of the land in question to the writ petitioners. The learned Additional Attorney General has submitted also that the govern-

ment requires this land for the purpose of constructions of residential accommodation for different categories of government employees and has already taken some steps towards that. Mr. Murad Reza has argued also that the memos dated 28.05.2001 and 13.07.2001 sent by the Deputy Commissioner, Noakhali to the Ministry of land were only administrative correspondences and those did not create any right to the writ petitioners. The Additional Attorney General has contended that these two memos dated 28.05.2001 and 13.07.2001 contain only the recommendations of the Deputy Commissioner, Noakhali and these have no legal force at all and in the circumstances the direction for implementing these two memos have been illegal.

Mr. Lutfor Rahman Mondal, the learned Advocate for the respondent No.1 has made submissions supporting the impugned judgment and order of the High Court Division.

6. *We have considered the submissions of the learned advocates of both the sides and the whole matter attentively. The writ petitioners, admittedly, were lessees of the land in question on yearly basis. According to the terms and conditions of this yearly lease the writ petitioners could be evicted from the land in question at any time. The writ petitioners could not and did not acquire any right to get permanent lease of this land. However, they can apply to the proper authority for getting permanent settlement of this land and it appears that the writ petitioners have already applied for getting permanent settlement of this land and the authority concerned also considered their prayer and also took some steps calling reports from the local administration and the local Deputy commissioner also by two memos dated 28.05.2001 and 13.07.2001 (annexure "G" and "I") recommended for giving permanent settlement of this land to the writ petitioners who are freedom fighters. The concerned authority, however, cannot be directed to give permanent settlement of this land to the writ petitioners, for, this is solely in the discretion of the concerned officials of the Government. The High Court Division, therefore, has committed an error in directing the authority concerned to implement the memos dated 28.05.2001 and 13.07.2001 the annexure-"G" and "I" respectively which contained recommendations of the local Deputy Commissioner for giving permanent settlement of the land in question to the writ petitioners. So, this very direction of the High Court Division quoted above be expunged.*

7. The respondents, however, are directed to consider the prayer of the writ petitioners for getting permanent lease of the land in question in accordance with law.

This leave petition is thus disposed of with the above observation and direction.

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APPELLATE DIVISION
(Civil)

Nazmun Ara Sultana–J.
Syed Mahmud Hossain–J.
Mohammad Anwarul Haque–J.

CIVIL PETITION FOR LEAVE TO APPEAL NO.1342 OF 2009.

(From the judgment and order dated 27.01.2009 passed by the High Court Division in Civil Revision No.2878 of 1999).

Rafiqunnessa and another .... Petitioners.

Vs.

Abdur Rahman being dead his heirs (1) Anwara Begum and others .... Respondents.

For the Petitioners : Mr. Syed Amirul Islam, Senior Advocate, instructed by Mrs. Mahmuda Begum, Advocate-on-Record.

For the Respondents : Mr. Nikhilesh Datta, Advocate, instructed by Mrs. Sufia Khatun, Advocate-on-Record.

Judgment: October 3, 2013

Specific Relief Act, 1872–Section 42–

It is an established law that fraud vitiates everything when any person practising fraud during pendency of pre-emption subsequently change of deed of sale into a 'Nadabi' deed is created to frustate the right of pre-emption that cannot be legal and it cannot be continued.

The salient findings of the High Court Division, in brief, are as under:

Plaintiff-respondent No.1 as the pre-emptor filed Preemption Case No.208 of 1976 renumbered as Pre-emption Case No.40 of 1983 against the deed of sale dated 13.04.1975 registered during the pendency of the aforesaid pre-emption case. Purchaser-respondent No.1 filed Title Suit No.488 of 1977 on 12.11.1977 praying for declaration that the deed of sale dated 20.03.1975 was a "nadabi' deed and obtained compromise decree on 20.12.1977 within a span of 38 days. The trial Court did not consider the case of the plaintiff-respondent in its proper perspective and erroneously found that plaintiff-respondent No.1 had no locus standi to file the suit. The subsequent change of deed of sale into a 'nadabi' deed was done to frustrate the right of pre-emption. The judgment and decree obtained in Title Suit No.488 of 1977 was fraudulent. Fraud vitiates everything. ..... (Para 9)

JUDGMENT

SYED MAHMUD HOSSAIN–J: This petition for leave to appeal is directed against the judgment and

order dated 27.01.2009 passed by the High Court Division in Civil Revision No, 2878 of 1999 discharging the Rule and affirming the judgment and decree dated 30.06.1999 passed in Title Appeal No. 02 of 1996 by the then learned Subordinate Judge (now Joint District Judge), First Court, Comilla, allowing the appeal setting aside the judgment and decree dated 30.10.1995 passed in Title Suit No. 86 of 1994 by the Assistant Judge, Barura, Comilla dismissing the suit on contest.

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

Abdur Rahman, the predecessor-in-interest of respondent Nos.1-7, as the plaintiff filed Title Suit No. 86 of 1994 in the Court of Assistant Judge, Barura, Comilla impleading the respondents and the predecessor-in-interest of the petitioners as the defendants. The plaintiff's case is that defendant No. 2 being the owner of the suit land sold the same to defendant No. 1 by a registered deed of sale dated 10.06.1976 and after obtaining certified copy of the document, the plaintiff being the owner of the contiguous land filed Pre-emption Case No.22 of 1976. Pre-emption Case No. 22 of 1976 was subsequently numbered as Miscellaneous Pre-emption Case No.41 of 1983 and during the pendency of the pre-emption case, defendant Nos.1 and 2 in collusion with each other filed Title Suit No.488 of 1977 and obtained a compromise decree to the effect that the deed of sale dated 10.06.1976 which is the subject matter of Pre-emption Case No.22 of 1976 was a 'nadabi' deed and not a deed of sale. Title Suit No.488 of 1977 was filed to defeat the right of pre-emption of the plaintiff. Purchaser-respondent No.1 filed written objection, in which, he did neither disclose the date of the decree nor did he file a copy of the compromise decree with the written objection. The deed of sale dated 20.03.1975 executed by defendant No. 2 in favour of defendant No. 1 is out and out a deed of sale and hence the suit has been filed.

3. Defendant No. 1 contested the suit by filing written statement denying the material statements made in the plaint. His case, in short, is that Charag Ali Munshi, father of the defendant got title and possession of the suit land after obtaining settlement. After that, he died leaving behind four sons and three daughters as heirs and by amicable partition, defendant No.1 and his brother, Tofazzal got possession in the suit land as well as other land. The defendant stated that during S.A. operation, the suit land was wrongly recorded in the name of defendant No.2 and for that reason, defendant No.2 executed and registered the alleged 'nadabi' deed in favour of defendant No.1. The scribe mistakenly wrote the deed of sale in place of 'nadabi' deed. As Such, defendant No. 1 filed Title Suit No.487 of 1977 in the Third Court of Munsif (now Assistant Judge), Comiila and defen-

dant Nos.1 and 2 obtained decree by way of compromise. Hence the suit is liable to be dismissed.

4. The trial Court by its judgment and order dated 30.10.1995 dismissed the suit.

Against the judgment and decree of the trial Court, the plaintiff preferred Title Appeal No.02of 1996 before the District Judge, Comilla and on transfer, the appeal was heard and disposed of by the learned Subordinate Judge (now Joint District Judge), Second Court, Comilla, who by his judgment and order dated 30.06.1996 allowed the same and set aside the "judgment and decree of the trial Court.

5. Being aggrieved by and dissatisfied with the judgment and decree of the appellate Court, the defendants filed a revisional application before the High Court Division and obtained Rule in Civil Revision No. 2878 of 1999. After hearing the parties, the learned Single Judge of the High Court Division, by the judgment and order dated 27.01.2009 discharged the Rule.

Feeling aggrieved by and dissatisfied with the judgment and order passed by the High Court Division, the leave-petitioners have filed this civil petition for leave to appeal before this Division.

6. Mr. Syed Amirul Islam, learned Senior Advocate, appearing on behalf of the leave-petitioners, submits that respondent Nos.2-4 did not have locus standi to file the instant suit and that the High Court Division erroneously concurred with the findings of the appellate Court and as such, the impugned judgment should be set aside. He further submits that respondent Nos.2-4 had the knowledge of filing the suit as it is evident from written objection filed by the leave-petitioners and that the suit filed by respondent Nos.2-4 challenging the compromise decree passed in Title Suit No.288 of 1977 was fraudulent and as such, the impugned judgment delivered by the High Court Division should be set aside.

7. Mr. Nikhilesh Datta, learned Advocate, appearing on behalf of the respondents, on the other hand, supports the impugned judgment.

8. We have considered the submissions of the learned Advocates, perused the impugned judgment and the materials on record.

9. *The salient findings of the High Court Division, in brief, are as under:*

Plaintiff-respondent No.1 as the pre-emptor filed Preemption Case No.208 of 1976 renumbered as Pre-emption Case No.40 of 1983 against the deed of sale dated 13.04.1975 registered during the pendency of the aforesaid pre-emption case. Purchaser-respondent No.1 filed Title Suit No.488 of 1977 on 12.11.1977 praying for declaration that the deed of sale dated 20.03.1975 was a 'nadabi' deed and obtained compromise decree on 20.12.1977 within a span of 38 days. The trial Court did not consider the case of the plaintiff-respondent in its proper

perspective and erroneously found that plaintiff-respondent No.1 had no locus standi to file the suit. The subsequent change of deed of sale into a 'nadabi' deed was done to frustrate the right of pre-emption. The judgment and decree obtained in Title Suit No.488 of 1977 was fraudulent. Fraud vitiates everything.

10. The aforesaid findings of the High Court Division having been based on proper appreciation of laws and facts do not call for interference.

11. Mr. Syed Amirul Islam, learned Senior Advocate, contends that the suit was hopelessly barred by limitation and that the Appellate Court and the High Court Division erroneously found that the suit was not barred by limitation. Such a contention is of no avail as limitation would run from the date of actual knowledge of the decree passed in Title Suit No.488 of 1977 and the suit was filed with the statutory period of limitation as soon as the plaintiff-respondent came to know of the impugned decree. What is important to note here is that the defendant-petitioner did not file the certified copy of the decree with the written objection submitted in the pre-emption case, A mere statement of obtaining a decree in the written objection the suit is not sufficient for reckoning the period of limitation.

In the light of the findings made before, we do not find any substance in this civil petition. Accordingly, this civil petition for leave to appeal is dismissed.

APPELLATE DIVISION
(Civil)

Surendra Kumar Sinha–J.
Md. Abdul Wahhab Miah–J.
Nazmun Ara Sultana–J.
Muhammad Imman Ali–J.
Md. Shamsul Huda–J.

CIVIL REVIEW PETITION NO. 38 OF 2010

(From the judgment and order dated 4th December, 2008 passed by the Appellate Division in Civil Appeal No. 138 of 2004)

Time Tower Ltd. ..... Petitioner.

Vs.

The Chairman, RAJUK and another ..... Respondents.

For the Petitioner : Mr. Rokanuddin Mahmud, Senior Advocate, instructed by Mr. Md. Firoz Shah, Advocate-on-Record.

For Respondents : Not represented.

Judgment: October 18, 2012

Constitution of Bangladesh—Article 105—

মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জালাধার সংরক্ষনের জন্য প্রণীত আইন, ২০০০–

It is an established law that nobody should be punished unheard i.e. without being given any prior show cause notice. No approved plan of Rajuk can be cancelled or withdrawn and if it is done by any authority it will be treated as a flagrant violation of

the principle of natural justice and that cannot be sustained in law.

The High Court Division upon hearing the parties made the Rule absolute upon observing "We are of the view that before cancellation or withdrawal of the approved plan, the appellant was entitled to get a prior notice to that effect. We therefore hold that impugned order has been passed in flagrant violation of the principle of natural justice and it cannot be sustained in law". ..... (Para 5)

JUDGMENT

MUHAMMAD IMMAN ALI–J: This petition has been filed seeking review of the judgment and order dated 04.12.2008 passed by this Division in Civil Appeal No. 138 of 2008 allowing the same.

2. The facts of the case, in brief, is that 25 decimals of land of C.S. Plot No. 361 of Mouza Bhola belonged to Mr. Abu Siddique and others, that land of C.S. Plot No. 361 was acquired in part and that the land measuring 25 decimals is outside the acquired part of the land of C.S. Plot No. 361, that record of right was prepared in the name of Mr. Abu Siddique and others in respect of the said 25 decimals of land that respondent purchased the said 25 decimals of land and got his name recorded in the record of right in 1997, that respondent's vendor applied to the RAJUK for treating the un-acquired part of the land of C.S. Plot No. 361, i.e., 25 decimals of land as residential plot and RAJUK accordingly certified the land as residential plot and intimated the said fact, that the respondent applied for permission to construct 20 storied residential building and the RAJUK approved the plan. It has been alleged by the respondent that while he was taking steps for construction of the building as per approved plan RAJUK demolished the tin shed on 04.04.1999 and thereafter issued the letter dated 06.04.1999 cancelling the plan which as approved for the construction of the residential building in C.S. Plot No. 361 of Mouza Bhola. It is also the contention of the respondent that the approved plan was cancelled without prior notice and thereby there has been violation of the principle of natural justice.

3. The petitioner filed the Writ Petition No.1177 of 1999 before the High Court Division challenged the impugning Memo No. রাজউক/নঅঅ-২/৩/২২৬২/৯৭/৩৯-২ dated 06.04.1999 (Annexure-H to the writ petition) canceling the permission which was given on 28.08.1997 for the construction for 20 storied residential building and thereupon cancelling the plan for the construction of Building and obtained Rule.

4. The Rule was opposed by the appellant (respondent No. 1 in the writ petition) by filing an affidavit-in-opposition stating, inter alia, that the land in question, i.e., 25 decimals of land of C.S. Plot No. 361 claimed by the respondent was acquired in L.A. Case No.33 of 1958-59 and that the land claimed by the respondent is very much

within the acquisition since 1960 and under the water of Gulshan Lake, that respondent by suppressing the fact obtained permission to treat the land of the said plot as residential plot, that transfer of the land was illegal, that the plan was legally cancelled and that as against the order of cancellation appellant ought to have filed appeal as per provision of Section 15 of the Building Construction Act and as such the writ petition was not maintainable.

5. *The High Court Division upon hearing the parties made the Rule absolute upon observing "We are of the view that before cancellation or withdrawal of the approved plan, the appellant was entitled to get a prior notice to that effect. We therefore hold that impugned order has been passed in flagrant violation of the principle of natural justice and it cannot be sustained in law".*

6. Leave was granted to consider the following:

"I. Whether the High Court Division ought to have take into consideration that the alleged permission to treat the plot as residential one was obtained by practicing fraud and by suppressing the real facts that the land in question was under acquisition and the land in question falls within the Gulshan Lake and as such the question of permission to treat the plot as residential one is in every respect detrimental to the interest and also from the point of environment.

II. Whether several plots and necessary roads having made out of the acquired land of Plot No. 361 of Mouza Bhola and remaining un-acquired portion being part the Gulshan Lake and if the writ appellant is allowed to make construction on the said un-acquired land the nature of the Gulshan Lake will be changed affecting the Master Plan of the area and thus the RAJUK has not committed any illegality in withdrawing their approval to the plan granted earlier to the writ appellant;

III. Whether in the facts and circumstances of the case impugned letter cannot be treated as invalid for not issuing any notice of show cause as the same issued considering public interest and to save the environment and Gulshan Lake;

IV. Whether if the writ appellant is allowed to make construction in that case provision of মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকা সহ দেশের সকল পৌর এলাকার খেলার মাঠ উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষনের জন্য প্রণীত আইন (Act No.XXXVI of 2000) will be violated and there will be no existence of Gulshan Lake in that area;

V. Whether there being mentioned in the impugned letter that the land in question is part of Gulshan Lake and the writ appellant having not denied the said fact in their affidavit-in-opposition, the High Court Division erred in not holding that the case land is a part of Gulshan Lake and

VI. Whether the land of C.S. Plot No. 361 having not partitioned by metes and bounds and the writ appellant having obtained a plan in respect of an unspecified area by suppressing facts, RAJUK has not committed any illegality in cancelling the same and the High Court Division erred in not considering the said aspect of the case".

7. Mr. Rokanuddin Mahmud, the learned Senior Advocate appearing on behalf of the petitioner submits ...

We have considered the submissions of the learned Counsel for the petitioner and perused the impugned judgment of the Appellate Division and other connected papers on record.

APPELLATE DIVISION
(Civil)

Md. Muzammel Hossain–C.J.
Surendra Kumar Sinha–J.
Md. Abdul Wahhab Miah–J.
Nazmun Ara Sultana–J.
Syed Mahmud Hossain–J.
Muhammad Imman Ali–J.

CIVIL PETITION FOR LEAVE TO APPEAL NO.1614 OF 2009

(From the judgment and order dated 9th June, 2009 passed by the High Court Division in Administrative Appellate Tribunal Appeal No.155 of 2005)

Janata Bank Limited and others .... Petitioners.

Vs.

Md. Abdul Ali ..... Respondent.

For the Petitioners : Mr. Syed Abdur Rahim, Senior Advocate, instructed by Mahmuda Begum, Advocate-on-Record.

For Respondent : Mr. Muhammad Nawab Ali, Advocate-on-Record.

Judgment: February 25, 2013

Janata Bank Employees Service Regulations, 1995–Section 42–

It is true when departmental proceeding is not initiated against an employee by the competent authority as required by law in that case that departmental proceeding is illegal and for that cause whole departmental proceeding will be vitiated.

It appears that the respondent was at the relevant time an officer of the Janata Bank, Sonatala Branch, Bogra and departmental proceeding was drawn up against him by the Deputy General Manager (D.G.M.) (discipline). It appears from the decision of the Administrative Tribunal as well as Administrative Appellate Tribunal that the proceeding against the respondent was not drawn up by the competent authority as required by law and accordingly the Administrative Tribunal set aside the order of dismissal and

ordered that the respondent be reinstated in service, which was upheld by the Administrative Appellate Tribunal. ..... (Para 9)

We find from the Rule of সংশোধিত অর্পিত প্রশাসনিক ক্ষমতা-২০০০ that any departmental proceeding against a Supervisor upto senior officer was to be drawn up by the Managing Director and therefore, the Deputy General Manager was not the competent authority to draw up charges against the respondent and as such the whole departmental proceeding was vitiated. ..... (Para 9)

JUDGMENT

MUHAMMAD IMMAN ALI–J: This civil petition for leave to appeal is directed against the judgment and order dated 09.06.2009 passed by the Administrative Appellate Tribunal, Dhaka in Administrative Appellate Tribunal Appeal No. 155 of 2005 dismissing the appeal.

2. The facts of the case, in brief, are that Md. Abdul Ali, respondent herein, had joined the Janata Bank, Bogra on 24.11.1977 as clerk. Thereafter, he was promoted as an officer on 01.12.1991. During his service while he was serving at Sonatala Branch of Janata Bank a proceeding was initiated against him by framing charge for misconduct and negligence of duty under section 42 of the Janata Bank Employees Service Regulations, 1995. After observing all legal formalities the enquiry officer submitted his report to the authority and the authority issued second show cause notice and ultimately without considering the reply of the respondent the authority dismissed him from service on 03.05.2003.

3. The opposite party Nos.3 and 4-appellants contested the case by filing a written statement denying the material allegations made in the petition stating, *inter alia,* that the A. T. Case No.90 of 2003 was not maintainable in law and it was barred by limitation. The respondent has no cause or locus standi to file the case. The charges being established against the respondent in the preliminary enquiry, charge-sheet was issued on charges of corruption and misconduct on 15.07.2002 and the respondent replied thereto on 03.08.2002. But the reply being not satisfactory, on 26.08.2002 the D.G.M. of the Janata Bank, Area Office, Rajshahi was appointed Enquiry Officer who conducted the enquiry in full compliance with the rules and regulations and submitted enquiry report stating that the charges against the respondent had been proved beyond doubt. Thus in context of the findings of the enquiry report, second show cause notice dated 09.02.2003 was issued to the respondent who replied the same on 27.02.2003. But the respondent totally failed to prove his innocence; that the Bank authority by observing all formalities in accordance with law and

also considering all the relevant circumstances and evidence-on-record passed the impugned order dismissing the respondent from service. Hence, the case was liable to be dismissed.

4. The Administrative Tribunal, Bogra after hearing the parties allowed the A.T. Case No. 90 of 2003 by judgment and order dated 23.04.2005.

5. Being aggrieved by the aforesaid judgment and order passed by the Administrative Tribunal, Bogra the petitioners preferred an appeal being Administrative Appellate Tribunal Appeal No.155 of 2005 before the Administrative Appellate Tribunal, Dhaka, which was dismissed by the impugned judgment and order. Hence, the petitioners have filed the instant Civil Petition for Leave to Appeal before this Division.

6. Mr. Syed Abdur Rahim, the learned Senior Advocate appearing on behalf of the petitioners submits that the departmental enquiry against the respondent was properly held giving him every opportunity to reply to the charges leveled against him and for his personal appearance before the Inquiry Officer. The respondent accordingly personally appeared and produced all the evidence, and after due process of hearing, was found guilty and punished in accordance with the relevant rules and regulations. He further submits that the Administrative Tribunal and also the Administrative Appellate Tribunal failed to appreciate that the respondent acted against the interest and goodwill of the Bank and was rightly dismissed proper enquiry and departmental proceeding. He lastly submits that, therefore, the decisions of the Administrative Tribunal and Administrative Appellate Tribunal were arrived at without appreciation of the proper facts and circumstances and are liable to be set aside.

7. We have considered the submissions of the learned Counsel for the petitioners and perused the impugned judgment of the Administrative Appellate Tribunal, Dhaka and other connected papers on record.

8. It appears that the respondent was at the relevant time an officer of the Janata Bank, Sonatala Branch, Bogra and departmental proceeding was drawn up against him by the Deputy General Manager (D.G.M.) (discipline). It appears from the decision of the Administrative Tribunal as well as Administrative Appellate Tribunal that the proceeding against the respondent was not drawn up by the competent authority as required by law and accordingly the Administrative Tribunal set aside the order of dismissal and ordered that the respondent be reinstated in service, which was upheld by the Administrative Appellate Tribunal.

9. *We find from the Rule of সংশোধিত অর্পিত প্রশাসনিক ক্ষমতা-২০০০ that any departmental proceeding against a*

Supervisor upto senior officer was to be drawn up by the Managing Director and therefore, the Deputy General Manager was not the competent authority to draw up charges against the respondent and as such the whole departmental proceeding was vitiated.

In view of the facts and circumstances, we find no reason to interfere with the judgment of the Administrative Tribunal and accordingly the petition is dismissed.

APPELLATE DIVISION
(Civil)

Nazmun Ara Sultana–J.
Muhammad Imman Ali–J.
Mohammad Anwarul Haque–J.
Hasan Foez Siddique–J.

CIVIL PETITION FOR LEAVE TO APPEAL NO. 2263 OF 2011.

(From the judgment and order dated 18th of August,2011 passed by the High Court Division in Civil Revision No.4540 of 2004)

Shafikar Rahman ..... Petitioner.

Vs.

Ali Hosen Chowdhury and others .... Respondents.

For the Petitioner : Dr. Mohammad Abul Bashar, Adv. instructed by Mohammad Nawab Ali, Advocate-on-record.

For Respondent No.1 : Mr. Md. Aftab Hossain, Advocate-on-record.

For Respondent Nos. 2-184 : Not represented.

Judgment: April 7, 2013.

Specific Relief Act, 1872–Section 42–

It is true when complicated question of title is involved generally simple suit for partition is not maintainable but in a suit for partition all the incidental question of title however complicated it may be decided and where the share of plaintiffs cannot be decided without determining their title, a simple suit for partition will not lie.

Thereafter defendant preferred the Civil Revision, which was heard by the Single Judge of the High Court Division in Civil Revision No.4540 of 2004 who ultimately discharged the Rule since High Court Division did not find any scope to go against the decision of the appellate court in any way.

Mr. Muhammad Abul Bashar the learned advocate appearing on behalf of the defendant-appellant submits that this simple suit for partition is not maintainable since series of the title deed has been challenged by the defendant-appel-

lant-petitioner. In fact, declaration of title and recovery of possession are required to be made under section 42 of the Specific Relief Act. Moreover, High Court Division has also committed an error of law resulting the failure of justice in considering the document dated 26.07.1939 which is absolutely false, fabricated and ante-dated one. In fine, he submits that this partition suit is also bad for defect of parties which is fatal one. But every where in his submissions he is found to be evasive and failed to assail the judgment of the court below where the part decree of a partition suit has been awarded. ..... (Para 6)

JUDGMENT

MOHAMMAD ANWARUL HAQUE–J: This petition for leave to appeal is directed against the judgment and order dated 18.08.2011 passed by the High Court Division in Civil Revision No.4540 of 2004 discharging the Rule and affirming the findings and decisions of the courts below passed in Title Appeal No.53 of 1998 maintaining the judgment of the learned Assistant Judge in part, Porshuram, Feni passed in other class Suit No. 03 of 1996.

2. Facts involved in the case briefly stated are as follows:

Plaintiff-appellant-opposite party, now respondents, filed a suit for partition 3 of 1996 in the Court of Assistant Judge, Porshu Ram, Feni for Saham of 181½ decimals of land appertaining to four C.S Khatian Nos.55, 85, 1 and 8 of Mouza-Hasanpur under the Fulgazi P.S. of Feni District against the defendant-respondent-petitioner alleging that his father late Ali Haider Chowdhury purchased the property described in the schedule in the plaint in the year 1939 and 1953 and also inherited some portion of the property described in item No.3 measuring .129$^{1}/_{5}$ acres as described in schedule from late Keramat Ali and also inherited .74 acres of land from Ali Newaj and Shamsernesa. While Ali Newaj was in possession of .171 acres of land described in the schedule he died leaving behind his son Ali Hossain Chowdhury, the present petitioner-defendant, one daughter Anwara and his widow, Taibunnessa. Further case of the plaintiff is that Anwara and Taibunnessa inherited .99¼ acres, 49$^{21}/_{24}$ acres of land respectively. Moreover, on 13.2.1995 plaintiff also purchased .35 acres of land from his co-sharer Anwara and his mother Taibun, who also inherited .33$^{7}/_{8}$ acres of land from her 1st husband Bejler Rahman and 2nd husband Ali Haider Chowdhury and became the owner of land described in item 1 and 2 of the schedule. Ultimately he died leaving behind the plaintiffs father Ali Haider Chowdhury and the defendant No.1, the present appellant, fathered by her 1st husband Bejler

Rahman. Moreover, the plaintiff also acquired .20 acres of land by purchase as described in item No.3 of the suit schedule and also acquired .8½ acres of land by purchase from different vendors. In this manner the plaintiff-appellant-respondent-opposite party became the owner and possessor of 1.90 acres of land, though he has sought for Saham of .181½ acres of land only.

3. On the other hand, defendant, the present-appellant-petitioner. filed written statement denying the case of the plaintiff-respondent contending, *inter alia,* that one Syedur Jaman, the original owner of the land, died leaving behind two sons namely, Bajler Rahman and Faijer Rahman and one daughter named Faizennessa. In turn death also took Bazler Rahman who left behind a son, defendant No.l, the present appellant-petitioner and his widow Taibunessa who subsequently entered into 2nd marriage with Ali Haider Chowdhury, the father of the plaintiff. Thus the plaintiff, has become uterine brother of the defendant; so question of inheritance through father, like full brother does not, at all, arise. However, this defendant-appellant-petitioner has no claim on the property as described in item No. 3 & 4 though he discarded the plaintiffs claim as made out in the plaint. Accordingly he prays for dismissal of the suit.

4. Considering the above facts and circumstances the learned Assistant Judge passed the part decree on contest in favour of the plaintiff on appreciation of the evidence adduced by the parties against defendant No.1, Defendant Nos.73,74, 152 and 153 who contested the suit by filing written statement. The plaintiff-respondent was allotted the Saham to the extent of 1.40 acres as against the claim of .181½ acres of land with a further direction to effect an amicable partition within the 60 days in default, plaintiff will get the Saham through court in accordance with law.

5. Being aggrieved by such part decree the plaintiff himself preferred Title Appeal No.53 of 1998 which was heard by the learned Joint District Judge, Feni who ultimately allowed the appeal, set aside the part decree passed by the learned Assistant Judge but again passed the preliminary decree in part in favour of the plaintiff-appellant granting Saham to the extent of 1.567850 acres of land.

6. *Thereafter defendant preferred the Civil Revision, which was heard by the Single Judge of the High Court Division in Civil Revision No.4540 of 2004 who ultimately discharged the Rule since High Court Division did not find any scope to go against the decision of the appellate court in any way.*

Mr. Muhammad Abul Bashar the learned advocate appearing on behalf of the defendant-appellant submits that this simple suit for partition is not

maintainable since series of the title deed has been challenged by the defendant-appellant-petitioner. In fact, declaration of title and recovery of possession are required to be made under section 42 of the Specific Relief Act. Moreover, High Court Division has also committed an error of law resulting the failure of justice in considering the document dated 26.07.1939 which is absolutely false, fabricated and ante-dated one. In fine, he submits that this partition suit is also bad for defect of parties which is fatal one. But every where in his submissions he is found to be evasive and failed to assail the judgment of the court below where the part decree of a partition suit has been awarded.

7. The learned Judge of the trial court as well as appellate court has rightly discussed the title of the plaintiff-respondent incidentally as required in partition suit against co-sharer which has been accrued by right of inheritance as well as purchase with the help of the evidence adduced by the parties. The High Court Division also concurs the views of the courts below on proper appreciation of evidence.

8. Considering these facts, circumstances and the evidence on record we also find no scope to go against the decision of the single Bench of the High Court Division passed in Civil Revision No.4540 of 2004 as well as the decision of the appellate court.

9. Now we find that the reasons assigned by the single Judge of the High Court Division in discharging the rule are entirely based on proper appreciation of evidence as such we do not find any illegality or infirmity in the impugned judgment and the order and accordingly the Civil Petition for Leave to Appeal is dismissed.

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APPELLATE DIVISION
(Criminal)

Md. Mazammel Hossain–C.J.
Surendra Kumar Sinha–J.
Md. Abdul Wahhab Miah–J.
Nazmun Ara Sultana–J.
Syed Mahmud Hossain–J.
Md. Shamsul Huda–J.

CRIMINAL PETITION FOR LEAVE TO APPEAL N0. 297 OF 2009.

(From the judgment and order dated the 24th day of June, 2009 passed by the High Court Division in Criminal Appeal No.5314 of 2007).

Md. Mostafa Zaman Khan .... Petitioner.

Vs.

The State and another ... Respondents.

For the Petitioner : Mr Sarwar Ahmed, Advocate Instructed by Mr. Nurul Islam Bhuiyan, Advocate-on-Record.

For the Respondents : None represented.

Judgment: June 11, 2012

Code of Criminal Procedure, 1898–

Section 561A–

It is a well established law that disputed facts cannot be looked into or decided in disposing of an application under section 561A of the Code of Criminal Procedure and an accused can ventilate all his grievances by cross-examining the prosecution witnesses, as well as examining defence witnesses.

From the petition of complaint, it further appears that there are clear averments that the complainant went to the Police Station to lodge the FIR, but the police refused to record the case and an affidavit was also annexed to the petition of complaint to that effect as required by section 27 of the Ain, 2000. Whether it was possible for the accused-petitioner to assault the complainant at the house of her father at Joydebpar on the date of alleged occurrence although he is a resident of Sutrapur in old Dhaka is a question of fact and cannot be looked into in deciding the merit of an application filed under section 561A of the Code Whether the complainant had gone to the police station to lodge the FIR over the incident before filing the petition of complaint is also a question of fact and that cannot be also looked into or decided in disposing of an application under section 561A of the Code. However, the petitioner shall have the liberty to thrash out those two points during the trial by cross-examining the complainant and the other prosecution witnesses. ..... (Para 9)

JUDGMENT

MD. ABDUL WAHHAB MIAH–J: The accused has filed this criminal petition for leave to appeal against the judgment and order dated 24.06.2009 passed by a Division Bench of the High Court Division in Criminal Appeal No.5413 of 2007 dismissing the same so far as it relates to him.

2. Respondent No.2 as complainant filed a petition of complaint before the Nari-o-Shishu Nirjatan Daman Tribunal, Gazipur against the accused-petitioner and 3(three) others on 29.10.2006 alleging, *inter alia,* that she was married to the accused-petitioner on 04.05.2003; at the time of marriage, her father gave gold ornaments, furniture and clothing worth about taka 3,00,000.00; at the time of marriage, the accused demanded dowry of taka 2,00,000.00 and at the intervention of the local respectable well wishers, the accused gave up their claim of dowry and then the marriage was solemnised. After marriage, the accused started inhuman torture upon the complainant for the said amount of dowry and kept her confined in a room under lock and key.

The complainant was rescued by her relatives with the help of police. The accused assured the relatives of the complainant that they would not demand dowry and torture the complainant in future and on such assurance, she started living with the accused. The accused on coming to know that the father of the complainant would retire from his service and after retirement, he would get his pension benefit, again started demanding dowry of taka 2,00,000.00 from the complainant, and since her father refused to give the dowry, the accused became furious with her and started torturing her and rebuking her. On 15.10.2006 at about 8.00 pm, the accused on the demand of dowry of taka 2,00,000.00 from the complainant beat her on the various parts of her body causing grievous injuries and accused No.1 tried to kill her by suffocation by pressing her neck with his hands. On coming to know about the occurrence, the complainant's brother rescued her in the same night from the house of the accused in Dhaka and took her to Joydebpur at the house of her father and in the next morning, got her treated by a local doctor. On 27.10.2006 the accused went to the house of the complainant at Joydebpur at about 3 pm and a *'Ghoroa Darbar'* was held amongst themselves. At one stage of the *'Darbar'* the accused demanded dowry of taka 2,00,000.00 telling that if the dowry was not paid, the accused-petitioner would not take the complainant, and when the father of the complainant expressed his inability to pay the dowry, the accused started beating her with lathi and also slapping her. Due to such assault the complainant fell on the floor.

3. Hearing cry of the complaint, the people of the neighbouring houses of the accused came there and rescued her. The other accused rebuked the complainant and also started slapping her. When the parents of the complainant resisted the accused, they also slapped them and threatened them with dire consequences. The complainant went to the concerned police station for lodging the First Information Report (FIR) against the accused, but the police refused to record the case; hence, she filed the petition of complainant before the Nari-O-Shishu Nirjatan Daman, Tribunal (hereinafter referred to as the Tribunal), Gazipur. Previously the complainant lodged a General Diary with the police station against the accused. The petition of complaint was registered as Nari-O-Shishu Nirjatan Case No.207 of 2006.

4. The Tribunal after examining the complainant under section 200 of the Code of Criminal Procedure (the Code) sent the petition of complaint to Farahgul Nijum, Magistrate, Gazipur for enquiry and report. After holding enquiry, the Magistrate gave report and on such report, the Tribunal took cognizance against the accused-petitioner along with 3(three) others under section 11(ga)/30 the Nari-O-Shishu

Nirjatan Daman Ain, 2000 (the Ain, 2000). The accused filed an application before the Tribunal under section 265C of the Code for discharging them from the case. The Tribunal by its order dated 28.10.2007 framed charge against all accused under section 11(ga)/30 of the Ain, 2000 including the petitioner.

5. Being aggrieved by and dissatisfied with the order of framing charge, the accused-petitioner and the other accused filed Criminal Appeal No. 5314 of 2007 before the High Court Division. A Division Bench of the High Court Division hearing the appeal by the impugned judgment and order allowed the same in part, that is, discharged 3(three) other accused from the case except the petitioner, the husband of the complaint; hence this petition for leave to appeal.

6. Mr. Sarwar Ahmed, learned Advocate appearing for the accused-petitioner, has submitted that the allegations made in the petition of complaint being same in respect of the other accused, who have been discharged by the High Court Division, it erred in law in dismissing the appeal in respect of the petitioner and thus he has been discriminated. Mr. Sarwar Ahmed has further submitted that the High Court Division failed to consider that the enquiring Magistrate did not hold the enquiry as per the direction given by the Tribunal. Therefore, the Tribunal erred in law in taking cognizance in the case against the petitioner on the basis of the enquiry report submitted by the Magistrate and as such, the Tribunal acted illegally in framing charge against the petitioner. He has lastly submitted that the story of the commission of offence as given in the petition of complaint *prima facie* appears to be preposterous, because it is simply absurd that the accused would dare to beat the complainant at the house of her father at Joydebpur on the alleged refusal to pay the dowry of taka 2,00,000.00, he being the inhabitant of Sutrapur of old Dhaka, but the High Court Division failed to consider this factual aspect of the case and thus erred in law in dismissing the appeal so far as it relates to the petitioner and as such, the impugned judgment and order calls for interference by this Court.

7. From the impugned judgment and order, it appears that the High Court Division dismissed the appeal so far as it relates to the petitioner on the finding that in the petition of complaint, there is allegation of assault on the victim by the accused-petitioner causing "simple hurt" for dowry which was found true in the enquiry conducted by the Magistrate, so he was liable to be prosecuted. So far as the other accused are concerned, the High Court Division discharged them on the ground that they did not assault the complainant for dowry and accordingly, the appeal was allowed in part discharging them from the case.

8. We have gone through the petition of complaint and we find that the High Court Division took a correct view in the matter, so we find no substance in the submission of Mr. Sarwar Ahmed that the petitioner has been treated in a discriminatory manner.

9. *From the petition of complaint, it further appears that there are clear averments that the complainant went to the Police Station to lodge the FIR, but the police refused to record the case and an affidavit was also annexed to the petition of complaint to that effect as required by section 27 of the Ain, 2000. Whether it was possible for the accused-petitioner to assault the complainant at the house of her father at Joydebpar on the date of alleged occurrence although he is a resident of Sutrapur in old Dhaka is a question of fact and cannot be looked into in deciding the merit of an application filed under section 561A of the Code Whether the complainant had gone to the police station to lodge the FIR over the incident before filing the petition of complaint is also a question of fact and that cannot be also looked into or decided in disposing of an application under section 561A of the Code. However, the petitioner shall have the liberty to thrash out those two points during the trial by cross-examining the complainant and the other prosecution witnesses.*

10. In view of the above, we find no merit in the petition. Accordingly, the leave petition is dismissed.

APPELLATE DIVISION
(Criminal)

Nazmun Ara Sultana–J.
Syed Mahmud Hossain–J.
Muhammad Imman Ali–J.

CRIMINAL PETITION FOR LEAVE TO APPEAL NO.448 of 2011
(From the judgment and order dated 15.12.2010 passed by the High Court Division in Criminal Appeal No.4547 of 2005 along with Death Reference No.163 of 2005 and Jail Appeal No.1296 of 2005.)

Arifur Rahman ..... Petitioner.

Vs.

The State represented by the Deputy Commissioner, Noakhali .. Respondent.

For the
Petitioner : Mr. Khurshid Alam Khan, Advocate instructed by Mr. Md. Abu Siddique, Advocate-on-Record.
Respondent : Not represented.

Judgment: July 14, 2014

Penal Code, 1860–
Section 302–

In a wife killing case, if the wife is dead in the house of husband and if it is proved that she was living with the husband on the day of occurrence and where the presence of the accused in the house at the material time is proved, in that case, the accused husband is to explain as to how his wife met this unnatural death.

Victim Josna Begum @ Beauty met her this unnatural death at her husband's house. So the husband is to explain as to how his wife met this unnatural death. But the explanation which the accused husband gave as to her wife's death at his house has been proved false. In the circumstances the legal presumption is that the accused husband caused this death of the victim Josna Begum by throttling. The accused husband though tried to say that he was not present at his house at the time of murder of his wife but this plea is not acceptable at all in view of the facts and circumstances including the fact that the accused pleaded a false case that his wife committed suicide by setting fire to her body. Admittedly the accused Arifur Rahman was at his house in the previous night of the occurrence and also in the early morning of the day of occurrence. The accused has pleaded that he went out of the house in the morning of the occurrence and the death of his wife was caused while he was not at the house. But this defence plea also is not acceptable at all in view of the fact that this accused gave a false explanation as to the death of his wife. This fact that this accused gave a false explanation as to death of his wife, rather, strongly tells in favour of guilt of this accused. ..... (Para 8)

JUDGMENT

NAZMUN ARA SULTANA–J: This Criminal Petition for Leave to Appeal, at the instance of the convicted accused Arifur Rahman, is directed against the judgment and order dated 15.12.2010 passed by the High Court Division in Criminal Appeal No. 4547 of 2005 along with Death Reference No. 163 of 2005 and Jail Appeal No.1296 of 2005 rejecting the death reference and dismissing, both the criminal appeal and jail appeal modifying the sentence of the accused-leave petitioner from death to life imprisonment.

2. The prosecution case, in short, was that victim Josna Begum @ Beauty, was married with this accused-leave petitioner Arifur Rahman four years before the occurrence. After marriage their conjugal life was peaceful for sometimes but since 6/7 months after their marriage this accused Arifur Rahman started demanding dowry to Josna Begum and to her father Md. Zafar Ullah. Md. Zafar Ullah gave money to accused Arifur Rahman several times, but he could not fulfill the accused's demand of dowry. That in the night following 09.02.2003 accused Arifur Rahman demanded Tk.30,000/- as dowry to Josna Begum for purchasing one tempo (baby taxi) and consequently there started altercation between Arifur Rahman and Josna Begum and accused Arifur Rahman ultimately murdered Josna Begum in the early morning of 09.02,2003 by

strangulation and after murdering Josna Begum Arifur Rahman set fire to the dead body of Josna Begum and left the house. Md. Zafar Ullah-the father of the victim Josna Begum getting that news of murder of his daughter came to the house of the accused Arifur Rahman and saw the dead body of Josna Begum inside the dwelling hut of the accused and thereafter he came to the police station and lodged the F.I.R. on the basis of which Charjabbar P.S. Case No. 3 dated 09.02.2003 under section 11(Ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 was started. The police, after investigation submitted charge sheet against this accused leave-petitioner under section 11(Ka) of the Nari-0-Shishu Nirjatan Daman Ain, 2000 and the case was ultimately sent to the Nari-O-Shishu Nirjatan Daman Tribunal, Noakhali and was numbered as Nari-0-Shishu Nirjatan Daman Case No.87 of 2003. This tribunal held trial against this accused-leave petitioner after framing formal charge against him under section 11(Ka) of the Nari-0-Shishu Nirjatan Daman Ain, 2000. The charge so framed was read over and explained to the accused who pleaded not guilty and claimed to be tried in accordance with law.

3. The prosecution examined 18 witnesses to prove the charge against the accused person. The accused was examined under section 342 of the Code of Criminal Procedure. The defence case was a plea of innocence. Further defence case, as it appears from the trend of cross-examination of the prosecution witnesses and also from the statement of the accused made under section 342 of the Code of Criminal Procedure, is that the victim Josna Begum @ Beauty being very much shocked with the behaviour of his father Mr. Zafar Ullah-who took loan of Tk.50,000/- from her sister-in-law Mukta and refused to return the same, committed suicide by setting fire to her body.

4. The tribunal, on consideration of evidence adduced by the prosecution including the postmortem examination report of the dead body of the victim and the evidence of the doctor who held that postmortem examination on the dead body, found that the charge against this accused leave-petitioner Arifur Rahman was proved beyond reasonable doubt and as such convicted him thereunder and sentenced him to death by the judgment and order dated 27.10.2005. The tribunal made a reference under section 374 of the Code of Criminal Procedure to the High Court Division for confirmation of the sentence of death on the basis of which the above mentioned Death Reference No.163 of 2005 was started. The condemned prisoner Arifur Rahman himself also preferred the Jail Appeal No.1296 of 2005 from jail and also a regular Criminal Appeal being No.4547 of 2005 against the judgment and order of his conviction and sentence. A Division Bench of the High Court Division heard the death reference and

both the criminal appeal and the jail appeal together and by the impugned judgment and order disposed of all those 3 as aforesaid. The High Court Division found that though the allegation of demand of dowry has not been proved by sufficient evidence but it has been proved beyond doubt that this accused-leave petitioner Arifur Rahman the husband of the victim Josna Begum murdered her at his house by throttling and thereafter set fire to the dead body of the victim Josna Begum to give a colour of suicide. The High Court Division, therefore, converted the conviction under section 11(Ka) of the Nari-O-Shishu Nirjatan Damon Ain, 2000 to conviction under section 302 of the Penal Code and reduced the sentence from death to life imprisonment.

5. Mr. Khurshid Alam Khan, the learned Advocate for the accused-leave petitioner Arifur Rahman has made submissions assailing the impugned judgment and order of the High Court Division. The learned Advocate has argued that in this case the evidence and the facts and circumstances strongly tell that the victim Josna Begum @ Beauty committed suicide by pouring kerosene oil on her body and thereafter by setting fire when her husband was not in that house; that the evidence adduced by the prosecution witnesses have proved sufficiently that the victim being annoyed with the behaviour of her father for non-payment of loan money which he took from her sister-in-law committed suicide. The learned Advocate has argued also that in this case the prosecution could not produce a single eye witness of the occurrence and in the circumstance it cannot be said that the charge against the accused-petitioner has been proved beyond all reasonable doubt. The learned Advocate has also argued to the effect that admittedly the occurrence took place in the morning when this accused-petitioner was not present in the P.O. house and in the circumstances no inference can be made that this accused-petitioner murdered his wife.

6. We have considered the submissions of the learned Advocate for the accused-leave-petitioner and gone through the impugned judgment and order of the High Court Division, that of the Nari-O-Shishu Nirjatan Damon Tribunal and the evidence on record including postmortem examination report of the dead body of the deceased.

7. It appears that in the postmortem examination report it was clearly stated that the death of the victim Josna Begum @ Beauty was caused due to asphyxia as a result of throttling which was antimortem and homicidal in nature and that burns found on the dead body were postmortem. In this report it has been elaborately stated also that on extensive dissection of the dead body antimortem blood stain was found in the subcutaneous tissue to the anterolateral sides of the neck and no sign of inflammation found on the burn

area. This postmortem examination report prepared by a doctor proves sufficiently that the victim Josna Begum was murdered by throttling and after that murder the dead body was set on fire. We find no reason not to put reliance on this postmortem examination report. The doctor who held postmortem examination on the dead body and prepared this report also has been examined by the prosecution as P.W.14. This doctor witness also has deposed before the trial court to the effect that during postmortem examination he found some postmortem burns on the dead body and on dissection he found antimortem blood stain in the subcutaneous tissue to the anterolateral side of the neck and did not find any sign of inflammation in the burn area and that in his opinion the death was due to asphyxia as a result of throttling which was antimortem and homicidal in nature. Both the tribunal and the High Court Division have put reliance on this postmortem examination report of the dead body of the victim. We also find that this postmortem examination report of the dead body of the victim has proved sufficiently that the victim was murdered by throttling and thereafter the dead body was set on fire. This fact that the victim Josna Begum was murdered by throttling and thereafter the dead body was set on fire-proves the whole defence case false.

8. *Victim Josna Begum @ Beauty met her this unnatural death at her husband's house. So the husband is to explain as to how his wife met this unnatural death. But the explanation which the accused husband gave as to her wife's death at his house has been proved false. In the circumstances the legal presumption is that the accused husband caused this death of the victim Josna Begum by throttling. The accused husband though tried to say that he was not present at his house at the time of murder of his wife but this plea is not acceptable at all in view of the facts and circumstances including the fact that the accused pleaded a false case that his wife committed suicide by setting fire to her body. Admittedly the accused Arifur Rahman was at his house in the previous night of the occurrence and also in the early morning of the day of occurrence. The accused has pleaded that he went out of the house in the morning of the occurrence and the death of his wife was caused while he was not at the house. But this defence plea also is not acceptable at all in view of the fact that this accused gave a false explanation as to the death of his wife. This fact that this accused gave a false explanation as to death of his wife, rather, strongly tells in favour of guilt of this accused.*

9. It appears that both the tribunal and the High Division, on meticulous examination and consideration of all the evidence on record and the facts and circumstances found that this accused Arifur Rahman murdered his wife Josna Begum @ Beauty by throt-

tling at his house and thereafter set fire to the dead body. We do not find any reason to differ with this concurrent findings of both the trial court and the appellate court. We have examined the evidence on record and found that this accused-leave-petitioner has been rightly found guilty of murder of his wife.

In the circumstances this Criminal Petition for Leave to Appeal is dismissed.

APPELLATE DIVISION
(Criminal)

Md. Muzammel Hossain–C.J.
Surendra Kumar Sinha–J.
Md. Abdul Wahhab Miah–J.
Nazmun Ara Sultana–J.
Syed Mahmud Hossain–J.
Muhammad Imman Ali–J.

JAIL PETITION NO. 04 OF 2011

(From the judgment and order dated 10th January, 2011 passed by the High Court Division in Death Reference No. 169 of 2005 along with Jail Appeal No. 1429. of 2005)

Md. Azizul Haque Bacchu .. Petitioner.

Vs.

The State ..... Respondent.

For the Petitioner : Mr. Helal Uddin Mollah, Advocate.

For Respondent : Mr. Md. Selim, Deputy Attorney General.

Judgment: February 25, 2013

Penal Code, 1860–
Sections 302/304 part I & II–

The law is well settled that where the finding is that accused has the guilty intention of causing such injury, as is likely to cause death, the offence cannot be converted into one under part I of section 304 of the Penal Code.

We find from the judgment of the High Court Division that the evidence of the witnesses has been thoroughly discussed, as was done by the trial Court. The condemned-prisoner-petitioner was caught red handed inside the room where he had struck the two victims with a sharp knife causing as many as 16(sixteen) incised injuries on the thirteen years old victim Pakhi Khatun alias Chandni. There were also more than four incised injuries on the body of 1½ year old victim Sumaya Khatoon on various parts of her body. Evidently the injuries caused demonstrate extreme brutality and wanton disregard for human life. Moreover, the condemned-prisoner-petitioner made a confessional statement which was recorded by a Magistrate under section 164 of the Code of Criminal Procedure in which he admitted to have attacked the victim Pakhi Khatun with a knife and struck her indiscriminately. He also admitted that two days prior to the occurrence he had the knife sharpened at Lakhkikol Bazar. ..... (Para 9)

As noted by the High Court Division, P.Ws. 2, 3, 4 and 9 are eye witnesses who saw the occurrence with the help of torch light. Such evidence of the witnesses could not be shaken in cross-examination. The accused is alleged to have entered into the room where the victims were standing. He was armed with a long knife and straightaway the helpless victims were struck mercilessly with the knife. The High Court Division rightly observed that "it cannot be said that he had no intention to kill or there is no premeditation".
..... (Para 10)

JUDGMENT

MUHAMMAD IMMAN ALI–J: This jail petition for leave to appeal at the instance of the condemned-prisoner-petitioner Md. Azizul Haque Bacchu is directed against the judgment and order dated 10.01.2011 passed by the High Court Division in Death Reference No. 169 of 2005, which was heard along with Jail Appeal No. 1429 of 2005 accepting the reference and dismissing the jail appeal.

2. The prosecution case, in brief, is that the condemned-prisoner-petitioner Azizul Hque Bacchu started living in a house as a monthly tenant for 2/3 years before the date of occurrence and he used to run his fertilizer business therefrom. The informant proposed to give the daughter of his brother-in- law in marriage to the condemned-prisoner-petitioner, but he did not agree, rather he wanted to marry the informant's daughter Pakhi Khatun alias Chandni who was aged about 13 years. Since they had refused, his proposal, he became annoyed. On 27.02.2005 while the informant went to have dinner in a different village at about 20.00 hours, he came to know from co-villager Royezuddin that condemned-prisoner-petitioner Azizul Hoque went inside the room and killed his two daughters namely Pakhi Khatoon and Sumaya Khatoon aged about 1½ years by striking indiscriminately with a knife. His wife seeing the occurrence raised hue and cry and then Md. Sukur Ali, Sahidul Islam, another Sahidul Islam, Md. Azat and others came there and saw the condemned-prisoner-petitioner Azizul Haque in the room with the knife in his hand. They locked the door from outside. Local people informed the Police Station and the police came to the place of occurrence and apprehended the condemned-prisoner-petitioner with the blood stained knife and brought him to the Police Station. The informant stated that the condemned-prisoner-petitioner in a pre-planned way killed his two daughters with a knife. Accordingly, the informant lodged the First Information Report (F.I.R.) on 27.02.2005 against the condemned-prisoner-petitioner under section 302 of the Penal Code before the Officer-in-Charge of Baraigram Police Station, Natore. Hence, the Baraigram P.S. Case No.18 dated 27.02.2005 corresponding to G.R. No.35/2005 was started.

3. The Investigating Officer visited the place of occurrence, prepared the sketch map with index, prepared inquest report and recorded the statement of witnesses under section 161 of the Code of Criminal Procedure. After completion of investigation he submitted Charge-sheet No.65 dated 15.04.2005 under section 302 of the Penal Code against the condemned-prisoner-petitioner.

The case was transferred to the Court of Sessions Judge, Natore where it was numbered as Sessions Case No. 63 of 2005. Charge was framed under section 302 of the Penal Code against the condemned-prisoner-petitioner and read over to him to which he pleaded not guilty and claimed to be tried. During trial the prosecution examined as many as 16 (sixteen) P.Ws. who were cross-examined by the defence. The condemned-prisoner-petitioner was examined under section 342 of the Code of Criminal Procedure when again he pleaded not guilty and repeated his claim of innocence.

4. The trial Court after hearing the parties and upon consideration of the evidence and materials on record convicted the condemned-prisoner-petitioner Md. Azizul Haque Bacchu under section 302 of the Penal Code and sentenced him to death by judgment and order of conviction and sentence dated 28.11.2005.

Reference under section 374 of the Code of Criminal Procedure was made to the High Court Division for confirmation the sentence of death, which was numbered as Death Reference No.169 of 2005.

5. Before the High Court Division the Jail Appeal No. 1429 of 2005 was preferred by the condemned-prisoner-petitioner, which was heard along with the Death Reference. By the impugned judgment and order the High Court Division accepted the reference and dismissed the jail appeal. Hence, the condemned-prisoner-petitioner has filed the instant Jail Petition before this Division.

6. In his jail petition the condemned-prisoner-petitioner has stated that upon hearing the cry of a female he ran from his shop to the place of occurrence. When he entered the Room someone locked the door from the outside with a chain. Upon hearing hue and cry people from the neighborhood arrived and later the police arrived and he was handed over to the police. The condemned-prisoner-petitioner claimed that he had no part to play in the occurrence. He further stated that at the behest of the Chairman of the Pourashava the police tortured him inhumanly and later police took him to the Magistrate and made him confess on the promise that he would be released. He further claimed that he was the sole earner in his family having old aged parents.

7. Mr. Helaluddin Mollah, the learned Advocate appearing on behalf of the petitioner concedes so far as the convic-

tion under section 302 of the Penal Code is concerned, but pleads for mercy of this Division and submits that on humanitarian grounds the petitioner's sentence of death may be commutated to one of imprisonment for life. The learned Advocate further submits that the occurrence took place on the spur of the moment and the petitioner acted due to his anger because his proposal to marry the victim was rejected. With regard to the death of the victim's baby sister, the learned Advocate submits that the petitioner was not aware of her presence and therefore, in the facts and circumstances, he submits that the capital punishment may be commutated to imprisonment for life.

8. We have considered the submissions of the learned Advocate for the petitioner and perused the impugned judgment of the High Court Division and other connected papers on record.

9. *We find from the judgment of the High Court Division that the evidence of the witnesses has been thoroughly discussed, as was done by the trial Court. The condemned-prisoner-petitioner was caught red handed inside the room where he had struck the two victims with a sharp knife causing as many as 16(sixteen) incised injuries on the thirteen years old victim Pakhi Khatun alias Chandni. There were also more than four incised injuries on the body of 1½ year old victim Sumaya Khatoon on various parts of her body. Evidently the injuries caused demonstrate extreme brutality and wanton disregard for human life. Moreover, the condemned-prisoner-petitioner made a confessional statement which was recorded by a Magistrate under section 164 of the Code of Criminal Procedure in which he admitted to have attacked the victim Pakhi Khatun with a knife and struck her indiscriminately. He also admitted that two days prior to the occurrence he had the knife sharpened at Lakhkikol Bazar.*

10. *As noted by the High Court Division, P.Ws. 2, 3, 4 and 9 are eye witnesses who saw the occurrence with the help of torch light. Such evidence of the witnesses could not be shaken in cross-examination. The accused is alleged to have entered into the room where the victims were standing. He was armed with a long knife and straightaway the helpless victims were struck mercilessly with the knife. The High Court Division rightly observed that "it cannot be said that he had no intention to kill or there is no premeditation".*

Having considered the evidence and materials on record and in view of the gruesomeness of the attack upon two very young, innocent and helpless children and noting also the ruthlessness of the attack and the callous disregard of the condemned prisoner for human life, we feel no compunction to commute the sentence of death awarded by the trial Court which was confirmed by the High Court Division.

Accordingly, the Jail Petition is dismissed.

HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Md. Emdadul Huq–J.

CIVIL REVISION NO. 3960 OF 2009.

(From the judgment and decree dated 15.04.2009 passed by the learned Additional District Judge, 6th court, Dhaka in Title Appeal No. 154 of 2008 setting aside the judgment and decree dated 30.03.2008 passed by the learned Assistant Judge, 4th court Dhaka in Title Suit No. 219 of 2005.)

Secretary, Railway Division, Ministry of Communication, Bangladesh Secretariat, Dhaka ..... Petitioner.

Vs.

Md. Shahidullah alias A.Z.M. Shahidullah and others .... Opposite parties.

For the petitioner : Mr. Md. Shaheed Alam, Advocate.

For the opposite party Nos.1 and 2 : Mr. Golam Arshed with Mr. Md. Abul Kalam Patwary, Advocate.

For the opposite party Nos.6-36 : Mr. S.R.M. Lutfur Rahman Akond, Advocate.

Judgment: September 14, 2014

Emergency Requisition of Property Act, 1948– Sections 3 and 17–

It is true that according to proviso of the section 3 of the Emergency Requisition of Property Act, 1948 no property used by the public for the purpose of religious worship i.e. graveyard and cremation shall be requisitioned and when graveyard and cremation property is not requisitioned, that property cannot be returned under section 17 after the promulgation of Acquisition and Requisition Ordinance, 1982.

So the Government has no lawful authority to exercise its power under the said two sections i.e. 8 and 8B to release an admittedly acquired property, simply because the Act itself including sections 8 and 8B is no more in force. Again there is nothing on record to show that any process of release was initiated before expiry of the Act, 1948. So continuation of the process of the release of the suit land under section 17 is not possible under the expired Act, 1948. ..... (Para 20)

JUDGMENT

MD. EMDADUL HUQ–J: This Civil Revision is at the instance of the Secretary, Railway Division of the Government of Bangladesh being defendant No.2 of Title Suit No. 219 of 2005 instituted by the opposite party No.1 and 2 (plaintiffs) in respect of the legality of the acquisition of the suit land including the graveyard located therein in LA Case No.27 of 1959-60 and release thereof.

2. The learned Assistant Judge, 4th Court Dhaka, as the trial court, by its judgment and decree, dated 30.03.2008, dismissed the suit. But the learned Additional District Judge, 6th Court, Dhaka, as the appellate court, by his judgment and decree dated 15.4.2009 passed in Title Appeal No. 154 of 2008 reversed the decision of the trial court and decreed the suit with a direction for local investigation of the suit land for ascertaining the quantum of land used as graveyard as part of the suit land. Earlier a Rule was issued by this Court in this Civil Revision about sustainability of the judgment and decree passed by the appellate court.

3. Plaintiff's Case.

The two plaintiffs (opposite party Nos.1 and 2) filed the above noted suit claiming that the graveyard located in the suit land measuring 98 decimals of C.S. plot No.456 and 457 corresponding to 8 (eight) S.A. plots was illegally acquired by the Government and that it has been kept without using the same for the purpose for which it was acquired. Plaintiffs have prayed for declaration that the acquisition was illegal. They also prayed for a mandatory injunction for release of the suit land and, in case of failure to do so, to release the same by the court itself.

4. The plaintiffs claim that the suit land belonged to their grandfather being C.S. recorded tenant Syed Ali Munshi and several others. By amicable partition, Syed Ali Munshi got the entire suit land. After his death the land devolved upon his only son Noor Mohammad from whom the plaintiffs inherited it and have been in possession thereof. A family graveyard was established by the forefathers of the plaintiffs on the suit land. However local people were also allowed to use it as graveyard.

5. In L.A. Case No.27/59-60 the suit land was acquired for the purpose of cutting earth there from and for filling in the neighboring land for construction of the Kamalapur Railway Station. The predecessor of the plaintiffs never accepted the compensation and they as well as the plaintiffs continued to use the same as family graveyard. Like their predecessors plaintiffs have been allowing the local people to use the same for burial purposes.

The Government took a decision on 22.08.1983 for release of the unused portions of land acquired in the said L.A. Case No.27/59-60. So plaintiffs were expecting that their land would be released. But it did not happen. So, on 17.11.2003 they submitted an application to the Government in the Land Ministry for release of the property, but to no effect. Hence the suit.

6. Case of defendant No. 2.

Secretary, Railway Division of the Government of Bangladesh as defendant No.2, in his written statement contends that the suit is not maintainable, that it is barred by limitation and

by the principles of estoppel, waiver and acquiescence and also suffers from the defect of parties.

The defendant admits that the suit land was acquired for cutting earth and for filling the land of a government project. After acquisition of the suit land and other lands, Gazette Notification was duly published in 1962. The affected persons were paid due compensation. Government is not responsible for the alleged nonreceipts of such compensation by the predecessor of the plaintiffs.

7. Proceedings and decision of the courts below:

The trial court framed 3 issues namely, on (1) maintainability of the suit, (2) plaintiffs' right to get release of the suit land and (3) the relieves prayed for.

At the trial, the plaintiffs produced oral evidence through 5 witnesses including plaintiff No.1 as P.W.1. They produced only one document being a copy of the application dated 17.11.2003 (Exhibt-1) sent by the plaintiffs to the Land Ministry.

Defendant No.2 produced only oral evidence through a single witness (D.W.1).

After consideration of the evidence on record the trial court recorded findings that at present there is a graveyard on the suit land but the suit land was lawfully acquired and that after 50 years the plea of non receipt of compensation was not acceptable. The trial court with reference to the case of Haji Abul Bashar vs. Bangladesh (50 DLR (AD) page-11) found that the acquired land could not be released. Accordingly the trial court dismissed the suit. In the Appeal, the learned Additional District Judge reversed the decision of the trial court and decreed the suit on the reasoning that since there is a graveyard on part of the suit land, it can not be used for any other purposes, because that would violate the religious sentiment and human rights. So the graveyard portion of the suit land should be ascertained by local investigation. Accordingly the appellate court allowed the appeal and decreed the suit on setting aside the Judgment of the trial court and directed local investigation.

Addition of parties in Revision:

Opposite party Nos.6 to 35 were not parties in the original suit or in the appeal. But in this Revision they applied for being added as parties and prayed for a permission to contest the Rule on the ground that they have taken lease of part of the suit land from the government. Their application was allowed by this court by order dated 22.5.2013.

8. Deliberation in the revision:

At the hearing of this Revision, Mr.Md. Shaheed Alam, the learned Advocate for the petitioner being the Secretary, Railway Division (defendant No.2), submits that admittedly

the suit land was lawfully acquired by the Government in L.A. Case No.27/59-60 and therefore the suit land has vested in the Government and there is no legal scope to return the suit land or part thereof to the plaintiffs.

9. Mr. Alam, the learned Advocate in support of his submission informally produced a photo copy of the Gazette notification of 30th July, 1968 showing acquisition of the suit land and other lands. Mr. Alam, the learned Advocate next submits that, at the time of acquisition, there was no graveyard and that the plaintiffs or their predecessors never raised any question about the legality of the acquisition of the suit land on the ground of existence of any graveyard and therefore the suit for declaration instituted in 2005, i.e. after 37 years of the Gazette notification of 1968 is barred by limitation.

Mr. Alam, the learned Advocate, lastly submits that the trial court, on consideration of these legal and factual aspects, lawfully dismissed the suit, but the appellate court failed to consider the above aspects and committed an error of law occasioning failure of Justice.

Mr. S.R.M. Lutfar Rahman Akhond, the learned Advocate for the added opposite parties, draws my attention to a number of documents filed in this Revision and submits that the plaintiffs have not filed any document with regard to the existence of a graveyard before or after such acquisition.

Mr. Rahman, the learned Advocate next submits that the added opposite parties have taken lease of various portions of the suit land and that even the plaintiffs have taken lease of some other land as affected persons.

In reply Mr. Golam Arshed with Mr. Abul Kalam Patwary, the learned Advocates for the opposite party-plaintiffs, submit that it is in evidence that there is a graveyard on the suit land for more than 100 years and therefore the acquisition of the suit land was illegal as per proviso to section 3 of the Emergency Requisition of Property Act, 1948 (shortly the Act, 1948).

Mr. Patwary, the learned Advocate next submits that the cause of action for instituting the suit arose in 2003, when the plaintiffs submitted their application to the Government for release of the suit land, but there was no response from the defendants and then they filed the suit in 2005, and therefore it is within limitation.

In support of his submission Mr. Patwary, the learned Advocate for the plaintiff-opposite party Nos. 1 and 2, refers to the case of Adul Hafez vs. Lal Meah and others (1988 BLD. Page-497).

Mr. Patwary, the learned Advocate next submits that the appellate court lawfully passed the impugned judg-

ment reversing the decision of the trial court and therefore no interference is necessary in this Revision.

10. Findings and decision in the Revision:

Admittedly the suit land has been acquired by the Government in L.A. Case No.27 of 59-60. This is further evident from the photo copy of the Gazette Notification dated 30.7.1968 informally produced by the petitioner in this Court.

The legality of the acquisition of the suit land has been challenged by the plaintiffs on the ground of its nature as a graveyard.

Section 3 of the Act, 1948 empowers the Deputy Commissioner to requisition and also to permanently acquire a private property for public purpose and the second proviso 2nd contains bar relating to a graveyard. The section is quoted below *(underlines Added):—*

"3. ***Requisitioning of Property–****When any property is required for a public purpose or in public interest, the [Deputy Commissioner] may requisition it by an order in writing.*

Provided the projects covering more than one district or the projects of which the requiring body is [the Dacca Improvement Trust, the Chittagong Development Authority or the Khulna Development Authority], the proposal shall require the approval of the Government before proceedings under the Act, are started:

Provided further that no property used by the public for the purpose of religious worship [graveyard and cremation ground] shall be requisitioned:

[Provided further that when a property is required permanently for a public purpose or in public interest, the Deputy Commissioner may also requisition it with a view to its permanent acquisition for such public purpose or in such public interest".]

11. It is evident that the second proviso to section 3 prohibits requisition and hence permanent acquisition of a graveyard used by the public i.e. a public graveyard could not be acquired under the Act, 1948.

12. It is noted that the expression "used by the public" occurring before "religious worship graveyard" clearly indicate that a family grave yard was not exempted from acquisition under section-3. The plaintiffs, in their plaint (para-1 and 2), claim that the suit land was a private property of their predecessor, and a family graveyard was established about one hundred years ago, but subsequently it was also used by local people for the same purpose. So the burden lies upon the plaintiffs to prove that the suit land was a public graveyard at the time of acquisition thereof.

13. Plaintiff filed a photo copy of the C.S. record (not exhibited). It shows that the suit land was recorded in the names of several persons including plaintiff's predecessor Syed Ali Munshi. But there is no reference in the said C.S record indicating that any part of the suit land was used as grave-yard not to speak of a public grave-yard.

Plaintiffs have admitted in their plaint (para-1) that the suit land was recorded in the name of the Government Khas Khatian No.1 at the time of preparation of S.A record. However they have not filed the S.A khatian. So the existence of any grave-yard at that time is not ascertainable.

14. According to section 103 of the BT Act the entries in the C.S record are presumed to be correct unless rebutted by a better evidence. Section 144A of the State Acquisition and Tenancy Act, 1950 contains similar provision.

15. But the plaintiffs did not produce any documentary evidence to rebut the presumption of correctness of the C.S or S.A khatian. The only document (exhibit-1) being their application dated 16-10-2003 sent to the Land Ministry with a request for release of the suit land does not help them in this respect.

However they produced four witnesses including plaintiff No.1 (P.W.1) and three other local witnesses (P.W's2-4). P.W.5 is an employee of the D.C office, who produced the file of the LA case No. 27 of 1959-60.

P.W.1 stated that the suit land belonged to his grandfather from whom plaintiff's father and finally the plaintiff inherited the suit land.

P.W.1 also stated about establishment of the graveyard as family grave-yard about 100 years back and also about subsequent use of the land by the local people as graveyard.

The statement of P.W.1 about their acquisition of title is not consistent with the plaint wherein it is stated that there were other co-sharers and by virtue of amicable partition plaintiffs' grandfather alone got the suit land and ultimately it devolved upon the plaintiffs. Plaintiffs did not adduce any evidence about the alleged the amicable partition. It follows that other co-sharers had their share in the suit land upto acquisition. As opposed to this, plaintiffs have claimed exclusive title.

16. However the prayer portion of the plaint appears to be formulated basically for release of the suit land and yet it contains a reference to their exclusive title. So they must prove it by credible evidence, but they failed to do so. It appears that as per C.S record the suit land was a joint property and it continued to be so till acquisition.

With regard to the principal issue, that is the existence of the grave yard

at the time of acquisition P.W.1 and three other local witness (P.W.2-4) stated about the existence of a grave yard and also about burial of their relatives in the grave yard for a long time.

All the four P.W's (Nos.1-4) are aged between 50-60 years. In the absence of any credible documentary or better oral evidence e.g. the specific time of burial of the dead persons it is not believable that the graveyard is 100 years old.

The evidence produced by the plaintiffs is not sufficient to rebut the presumption of corrections of the C.S record which is silent about existence of any graveyard nor it is sufficient to establish that the suit land was "used by the public for the purpose of graveyard" as provided in section 3 (2nd provisio).

17. However the added opposite parties filed the copies of the R.S. khatian and Mohanagar Jarip Map in this court. These documents were not produced in the courts below nor formally admitted in this Revision as additional evidence. These documents indicate that there is a graveyard on a portion of the suit land.

Thus the materials on record as a whole suggest that there is a grave yard on part of the suit land but it was established at some point of time after the C.S record. But the plaintiffs failed to prove that it was in existence at the time of acquisition. It follows that the bar under the second Provisio to section 3 of the 1948 was not applicable and the suit land was legally acquired by the Government.

18. Again without any specific evidence it can not be ascertained as to which portion of the suit land have been used as graveyard. This uncertain situation is also reflected in the judgment of the appellate court which prompted him to direct a local investigation for ascertaining the measurement of the graveyard.

The appellate court committed two errors of law. Firstly his decision indicates that the graveyard portion is unspecified and therefore the court can not pass decree in the nature of declaration of title and mandatory injunction for release of an unspecific land.

19. Secondly, the appellate court failed to consider that the suit land has vested in the Government after a lawful acquisition under the Act, 1948 and therefore, the Government has no legal authority under the Act, 1948 or any other law to release or return to the plaintiffs or any other person. .

Because the Act, 1948 as per section 1(3) came into force on 16 August 1948 by virtue of Dacca Gazette Extra order dated 16th August 1948 (vide Obidul Huq's Acquisition and Requisition Manual Third Edition published by DLR).

As per section 1(4), the validity of the Act, 1948, expired after 34 years, i.e. in August 1982. So the provision of section 8 with regard to release of a requisitioned property and section 8B with regard to withdrawal from acquisition were no more in force after August 1982.

20. *So the Government has no lawful authority to exercise its power under the said two sections i.e. 8 and 8B to release an admittedly acquired property, simply because the Act itself including sections 8 and 8B is no more in force.*

Again there is nothing on record to show that any process of release was initiated before expiry of the Act, 1948. So continuation of the process of the release of the suit land under section 17 is not possible under the expired Act, 1948.

21. The next is the issue of limitation. There is no evidence on record to show that plaintiffs predecessor ever challenged the legality of the acquisition. They all along kept silent after acquisition. The plaintiffs themselves remained silent at least since 1983. This is evident from Exhibit-1 being their application dated 16-10-2003 sent to Land Ministry. They have stated as follows:

"২২.০৮.৮৩ইং তারিখে অব্যবহৃত হুকুম দখলকৃত সম্পত্তি ফেরত দেওয়ার সরকারি সিদ্ধান্ত হয়। সেই সিদ্ধান্ত অনুযায়ী উক্ত জমি হুকুম দখলমুক্ত করার জন্য আমি নিম্ন স্বাক্ষরকারী গত ২০ বছরে বহুবার আবেদন করিয়াছি। কিন্তু কোন ফল পাই নাই আমার প্রতিটি আবেদনেই আমি উল্লেখ করিয়াছি যে, সরকারি সিদ্ধান্ত অনুযায়ী আমি সকল শর্ত মানিয়া নিতে রাজি আছি।"

22. It is evident that, according to plaintiffs themselves, initially they thought of release on the ground of non-use of the land. So they were cautious of their right since 1983 and also of the refusal by the Government by keeping silent to the first application and subsequent ones.

So according to them, the cause of action arose at least in 1983. But they filed this suit in 2005. So this case is barred by limitation.

23. The principle laid down in the case of Abdul Hafeez vs. Lal Meah and others (1988 BLD, page-497) with regard to cause of action and limitation as referred to by Mr. Patwary, the learned Advocate, is not applicable to the present situation. The facts of that case are different from those of the present one.

In view of the above, I hold that the appellate court committed an error of law in passing the impugned judgment and decree and it is not sustainable.

24. In the result, the Rule is made absolute. The impugned Judgment and decree dated 15.04.2009 passed by the learned Additional District Judge, 6th Court, Dhaka in Title Appeal No. 154 of 2008 is hereby set aside with the result that the Judgment and decree dated 30-03-2008 passed by the learned Assistant Judge, 4th Court

Dhaka in Title Suit 219 of 2005 is upheld.

The ad-interim injunction granted by this court stands vacated.

No order as to costs.

Send down the LCR with a copy of the judgment and order to the courts below.

The parties may take back the annexures by substituting attested photo copies thereof.

Cases cited:

* ***Haji Abul Bashar Vs. Bangladesh, 50 DLR (AD) 11.***

* ***Abdul Hafeez Vs. Lal Meah and others, 1988 BLD, 497.***

HIGH COURT DIVISION (Statutory Original Jurisdiction)

Md. Rezaul Hasan–J.

COMPANY MATTER NO. 55 OF 2014

(Application is arising under section 81(2) read with section 83 and 85 of the Companies Act, 1994.)

M. A. Quasem Member of MAQ Paper Industries Ltd. ..... Petitioner.

Vs.

The Registrar of Joint Stock Companies and Firms and others .... Respondents.

For the petitioner : Mr. Shah Monjurul Hoque, Advocate.

For the Respondents : None appears.

Judgment: March 11, 2014

Companies Act, 1994– Sections 81(2), 83 and 85–

In an appropriate case court can appoint auditor and direct the company for holding of Annual General Meeting exercising its inherent jurisdiction for ends of justice.

The concept 'inherent jurisdiction' is far wider than the concept 'inherent power'. This court derives jurisdiction in company matters from two sources, one is section 3 of the Companies Act, 1994, and another is Rule 8 of the Companies Rules, 2009. Therefore, in an appropriate case, this court, in appointing auditor, may exercise its inherent jurisdiction, for ends of justice, particularly when the inaction, neglect of duty or malafide on the part of concerned authority/regularity body is apparent from the materials on record. In otherwords, provision of Rule 8 of the Companies Rules, 2009 has overriding effect upon sub-rule (3A) of Rule 12 of the SEC Rules, 1987 as well as upon the provision of sub-section (4) of section 210 of the Companies Act, 1994. .. (Para 16)

JUDGMENT

MD. REZAUL HASAN–J: This is an application under section 81(2) read with section 83 and 85 of the

Companies Act, 1994 (the Act). Let the supplementary affidavit do from part of the substantive application.

2. It has been stated in the petition, amongst other, that the petitioner is the Shareholder-Member of MAQ Paper Industries Ltd, a public company limited by shares and incorporated in the year 1992, having its head office at 141/1, Segunbagicha, Dhaka (*henceforth referred to as the Company*). It has been listed with the Dhaka Stock Exchange (DSE) in the year 2009 and now it falls under Z-category; that from its incorporation till 2000 the Company had been duly submitting all necessary documents and papers to the concerned authorities, including RJSC, in the result nothing remained pending/due till the FY 1999-2000; that the Company obtained last clearance certificate of submission of minutes of Annual General Meeting (AGM), returns of the share capital and other documents of the Company on 30.08.2001; that the Company could not hold its AGM in time due to unavoidable loss and damage suffered by the Company from fire accidents, change of directorships and members etcetra; that consequently, the Company has failed to submit AGM and Returns of Shares from 2000-2005; that thereafter, Company filed a petition, being Company Matter No. 05 of 2005, before the High Court Division under Section 81(2) read with Section 83 and 85 of the Companies Act, 1994, for condonation of delay in holding those AGMs and also for obtaining permission to submit the reports and returns of shares to RJSC for the years 2001-2005; that when that matter was pending before the Court, the Company was informed by the respondent No. 2 (SEC), vide letter dated 22.08.2005; that it was directed by the Secretary of the concerned Ministry, vide notification dated 6.08.2005 that a recommendation was proposed that for condonation of delay in holding those AGMs and for submitting the same before the RJSC no further permission might be required to be taken from High Court Division; that the respondent was also orally informed earlier that the concerned Ministry and the respondent Bangladesh Securities Exchange Commission (SEC) was under legal obligation to re-consider the matter that whether it was necessary to obtain permission from the High Court Division for condonation of delay in holding AGM and they were trying to find out a solution since June, 2004, which was evident from the letters dated 6.12.2004 and 5.01.2005; that BSEC sent those letters also to the Company; that therefore, the Company caused default under the instruction of the SEC and the aforesaid company matter was dismissed for default; therefore the Company was requested not to proceed with the pending matter on this issue before the Court; that thereafter the Company kept waiting by

the SEC for the final decision, but no such positive decision has yet been given by the SEC. Thereafter, petitioner repeatedly requested the SEC to receive Audited Account Reports, AGM, Returns of Shares and other relevant documents of the Company to the SEC and also sought for its advice; but the BSEC paid no heed thereon; that lastly, the petitioner approached before the RJSC for submitting the AGM, Returns of Shares and other documents of the Company, but BSEC refused to accept the same without having prior permission of the High Court Division.

3. Hence this application for condonation of delay to holding the Annual General Meeting for the years 2001 to 2012.

4. The learned Advocate Mr. Shah Monjurul Hoque, alongwith Ms. Fatema Khatun, appearing for the petitioner, having placed the petition alongwith the documents annexed therewith, submits that the company was incorporated on 27.02.1992, vide certificate of incorporation No. C-21829(236)/96, as a public company limited by shares and that the company is listed with the Stock Exchanges as a 'Z' category company. He further submits that since incorporation till 2000 the company duly held its Annual General Meetings and complied with all legal formalities, but the company could not hold its Annual General Meetings from 2001 to 2012. He also submits that the company filed an petition, being company matter No. 5 of 2005, before the High Court Division under Section 81(2) read with Section 83 and 85 of the Companies Act, 1994, for condonation of delay in holding AGMs and also for obtaining permission to submit AGM and Returns of Shares to RJSC for the years 2001-2005. When that matter was pending before the Court, the Company was informed by the respondent no. 2, BSEC, vide letter dated 22.08.2005 that it was directed by the secretary of the concerned Ministry, vide a notification dated 6.08.2005, that a recommendation was proposed that for condonation of delay in holding AGM and for submitting the same before the RJSC no further permission might be required to be taken from High Court Division. He next submits that, in these circumstance the Company Matter No. 5 of 2005 was dismissed for default. He also submits that thereafter the company was kept waiting by the SEC for its final decision, but no decision has yet been given by the SEC. Thereafter, petitioner repeatedly requested the SEC to receive Audited Account Reports, AGM, Returns of Shares and other relevant documents of the Company to the SEC and also sought for advice; but SEC paid no heed thereon. Lastly, the petitioner approached before the RJSC for submitting the AGM, Returns of Shares and other documents of the Company, but SEC refused to accept the same without

having prior permission of the Hon'ble High Court Division. Accordingly, he concludes that there was no willful laches on part of the company in holding the aforesaid Annual General Meetings for the period from 2001 to 2012. He continues that this petition has been filed in good faith and unless the delay occurred in holding the aforesaid Annual General Meetings is not condoned the company as well as the share-holders/members will suffer irreparable loss. On a query from the Bench, as to whether the company is a going concern, the learned advocate has submitted a supplementary affidavit, sworn on 5.3.14, enclosing auditors report for the year ended on 31.12.2012 and submits that the company has been auditing its account on regular basis since 1st January 2001 to 31st December 2012 and, as such, evidently the company is a going concern. At last, based on foregoing facts and circumstances, he has prayed that the entire period of delay in holding the Annual General Meetings for the years from 2001 to 2012 may be condoned and the company may be permitted to hold its AGM for the aforesaid years.

5. No one appeared to oppose the application, even the SEC although it is respondent No. 2 and the petition contains certain statements about it.

6. I have heard the learned advocate, perused the petition and the documents annexed therewith.

7. Admittedly, the company was incorporated in the year 1992. It has been stated that till 2000 the company has held each Annual General Meeting without any default. Thereafter, as stated in the petition, the company could not hold its Annual General Meetings from for the years 2001 to 2012 for the reasons as stated in the substantive petition and as explained in the course of submission of the learned advocate for the petitioner. Hence, these are not needed to be repeated. Be that as it may, admittedly the company could not hold its Annual General Meetings for the years 2001 to 2012 and filed this petition for condonation of delay in holding those Annual General Meetings. The petitioner has submitted an audit report ended as at December 30th 2012 to show that it is a going concern and has been regularly auditing account its since 2001.

8. In this connection, I have taken for consideration section 210 of the Companies Act, 1994 that reads as follows:

"210. **Appointment and remuneration of auditors**- (1) Every company shall, at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the next annual general meeting and shall within seven days of the appointment, give intimation thereof to every auditor is appointed:

Provided that no person can be appointed auditor of any company

unless his written consent has been obtained prior to such appointment or re-appointment.

(2) Every auditor appointed under sub-section (1) shall, within thirty days of the receipt from the company of the intimation of his appointment, inform the Registrar in writing that he has accepted, or refused to accept, the appointment.

(3) At any annual General meeting a retiring auditor, by whatsoever authority appointed, shall be reappointed, unless-

(a) he is not qualified for re-appointment; or

(b) he has given the company notice in writings of his unwillingness to be re-appointed; or

(c) a resolution has been passed at the meeting appointing some body else instead of him or providing expressely that he shall not be re-appointed:

Provided that for the purpose of passing a resolution under clause (c), a notice thereof shall in accordance with section 211 be issued prior to the meeting, and such resolution cannot be passed except on the ground of death, incapacity or dishonesty or disqualification of the retiring auditor,

(4) if an appointment of an auditor is not made at an annual general meeting, the Government may appoint a person to fill the vacancy.

(5) The company shall, within seven days of the Governments power under sub-section (4) becoming exercisable, give notice of that fact to the Government; and, if a company fails to give such notice, the company, and also every officer of the company who is in default, shall be punishable with fine which may extend to one thousand taka.

(6) The first auditor or auditors of a company shall be appointed by the Board of Directors within one month of the date of Registration of the company, and the auditor or auditors so appointed shall hold office until the conclusion of the first annual general meeting:

Provided that–

(a) the company may, at a general meeting remove any such auditor or all or any of such auditors and appoint in his or their place any other person or persons who have been nominated for appointment by any member of the company, and or whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting; and

(b) if the Board of Directors fails to exercise its powers under this

sub-section, the company in a general meeting, may appoint the first auditor or auditors.

(7) The Board may fill any casual vacancy in the office of any auditor, but while any such vacancy continues, the remaining auditor or auditors, if any, may act:

Provided that where such vacancy is caused by the resignation of an auditor, the vacancy shall only be filled by the company in general meeting.

(8) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

(9) Except an provided in the process pursuant to sub-section (7), any auditor appointed under this section may be removed from office before the expiry of his term only by a special resolution of the company in the general meeting.

(10) The remuneration of the auditors of a company–

(a) in the case of an auditor appointed by the Board or the Government, shall be fixed by the Board or the Government respectively; and

(b) subject to clause (a), shall be fixed by the company in the general meeting or in such manner as the company in the general meeting may determine.

(11) For the purposes of sub-section (10), any sums paid by the company in respect of the auditors expenses shall be deemed to be included in the expression "remuneration". (empasis added)

9. Evidently, sub-section (4) of section 210 stipulates that, if appointment of an auditor is not made at an Annual General Meeting the government may appointment a person to fill the vacancy. Admittedly, the company did not hold its Annual General Meetings for the Financial year 2000-2001 (FY 2000-2001), in respect of the AGM schedule to be held on in the year 2011. As such, no auditor was appointed in the Annual General Meeting scheduled to be hold in the year 2011, as required by the provision of sub-section (1) of section 210 of the Companyies Act, 1994. Therefore, the auditors alleged to have been appointed by the Board of Directors for the FY 2000-2001 to FY 2001-2012 is contrary to the provisions subsection (1) of section 210 of the Companies Act, since no Annual General Meeting was held in the year 2001 or in the subsequent years. Hence, in may considered opinion, the auditor(s) appointed by the Board of Director for the FY 2000-2001 to FY 2011 and 2001 to 2012 is country to the provision of subsection (1) of section 210 of the Companies Act. Therefore, the auditors appointed by the Board for auditing the account of the company

for FY 2000-2011 to 2001-2012 was beyond there authority of the Board of Directors because, except the first auditor/auditors, all other auditors shall be appointed in the Annual General Meetings, vide the provisions of sub-section (6) read with sub-section (1) of section 210 of the Companies Act. Hence, I hold that the auditor(s) appointed for auditing the account for the years 2001 to 2012 was ultravires the authority of the Board of Directors and the audit reports submitted for the years 2001 to 2012 are of no legal effect and are not acceptable in law.

10. The directors may fill up any casual vacancy occurred in the office of the auditors. But, the question of casual vacancy would arise only when an auditor was duly appointed. In the instant case, no auditor was appointed in the Annual General Meetings (scheduled to be held in the year 2001), so the question of any casual vacancy or to fill the same up by the board of directors does not arise.

11. On the other hand, Rule (3A) of Rules 12 Securities & Exchange Rules, 1987, (hearing after referred as the Rules) provides as follows: "(3A) The financial statements referred to in sub-rule (1) shall be audited within one hundred and twenty days from the date on which the issuer's financial year ends and a copy of such audited financial statements shall be submitted to the Commission and the Stock Exchange within fourteen days thereof:

Provided that on the application filed by the issuer within the aforesaid specified time the Commission may on good cause shown and only under extreme circumstances extend the time for a auditing the financial statements or submission of the financial statements to the Commission, as the case may be, as it deems fit:

Provided further that if an issuer fails to get its financial statement, audited in the manner as specified in sub-rule (3) and fails to submit the same to the Commission and the stock exchange within the said specified time, or extended time, as the case may be, the Commission may appoint an auditor to audit the accounts of the issuer at the issuer's cost." But there is nothing on record to show that any auditor was appointed under sub-rules (3A) of Rule 12 of the SEC Rules, 1987, or in the manner as prescribed under the provisions of sections 210 of the Companies Act.

12. It is legal duty on the part of a listed company to get its account audited within the time or within the extended time, as the case may be, as laid down in sub-rules (3A) of Rule 12 of SEC Rules, 1987. Otherwise, the Commission (SEC) may appoint an

auditor to audit the account of the issuer at the issuer's cost.

13. For the reasons herein before recorded, I am of further view that the auditors appointed by the Board of Directors for auditing the accounts of the company, not being appointed in the manner laid down in sub-section (1) of section 210 of the Companies Act, they had no authority to audit the financial statements of the company, and the audit reports for years 2001 to 2012 are not audit reports in the eye of law and shall not be treated as compliance on the part of the company or as proper audit of the accounts of the company, for those financial years.

14. Having considered the provisions of sub-section (4) of section 210 of the Companies Act vis-à-vis the provision laid down in sub-rules (3A) of Rules 12 of the SEC Rules, 1987, I am of the considered opinion that, in respect of a company listed with the Stock Exchanges, the Rules made under the Securities and Exchanges Commission Ordinance, 1969, being a Special Law, the provision of sub-rule (3A) of Rule 12 of the SEC Rules, 1987, shall override the provision of subsection (4) of section 210 of the Companies Act, 1994, authorizing the government to appoint auditor, if no auditor is appointed in the AGM, as required by sub-section (1) of section 210 of the Act. Commission shall appoint an auditor, as per provisions of sub-rule (3A) of Rule 12 of SEC Rules, 1987, to audit the accounts of the company for the FY 2000-2001, to be submitted in the AGM scheduled to be held in the year 2001. This auditor appointed by the Commission, for FY 2000-2001, may either be continued or a new auditor may be appointed in the subsequent Annual General Meetings to be held pursuant to the order of this court, as permitted by the provision of subsection (1) of section 210 of the Companies Act that stipulates that every company shall, at each Annual General Meeting, appoint auditor or auditors to hold office from the conclusion of that meetings until the next Annual General Meeting.

15. I have also considered the decision reported in 1986 BLD (AD), page 311: Ghyasuddin Ahmed vs. Q. A. Faruque. That judgment was delivered by the Appellate Division with a direction to hold the first Annual General Meeting of the company under the chairmanship of a neutral person and for placing balance sheets, profit and loss accounts before the meetings after auditing the same. That matter was considered as per provision of section 79(3) of the Companies Act 1913 and this is the consistent view of this court. This court's power to pass a direction to call, hold and conduct the Annual General Meeting is undisputed. However, in the instant case, this court is not appointing an auditor, nor the company has appointed any

auditor in its Annual General Meeting, in this case. Hence, on this aspect, the instant case is liable to be distinguished from the case reported in 1906 BLD (AD) 311. Besides, another aspect, having jurisdictional relevance, to be noted here is that the judgment reported in 1986 BLD (AD) 311 was passed on 24.03.1986 i.e. before Companies Rules, 2009, has been framed. The Rules has invested inherent jurisdiction in this court under Rule 8, in addition to the inherent power vested in this court under Rule 263 of the said Rules.

16. *The concept 'inherent jurisdiction' is far wider than the concept 'inherent power'. This court derives jurisdiction in company matters from two sources, one is section 3 of the Companies Act, 1994, and another is Rule 8 of the Companies Rules, 2009. Therefore, in an appropriate case, this court, in appointing auditor, may exercise its inherent jurisdiction, for ends of justice, particularly when the inaction, neglect of duty or malafide on the part of concerned authority / regularity body is apparent from the materials on record. In otherwords, provision of Rule 8 of the Companies Rules, 2009 has overriding effect upon sub-rule (3A) of Rule 12 of the SEC Rules, 1987 as well as upon the provision of sub-section (4) of section 210 of the Companies Act, 1994.*

17. Before parting of, this court notes dissatisfaction to the inaction, non-performance of statutory duties and indifferences on the part of the SEC, and their go slow or keeping the eyes closed like attitude in performing its duties entrusted upon it, to ensure compliance of the applicable laws, Rules and the notifications issued by it. How far the SEC is efficient and anxious in protecting interest of the small investors and in maintaining discipline in the capital market needs to be screened by studing its function since 1995 to 2012. SEC even did not appear in this case, although it is respondent No. 2. It has utterly failed to perform its duties as per provision of sub-rule (3A) of Rule 12 of the SEC Rules, 1987, in appointing auditor. If the small investor's trust in capital market is diminished then this the alternative source (the capital market) to procure equity, without recurring interest, will become a desert, unlike the industrialized economies. Besides, this alternative source (the capital market) available for procuring interest free equity must have positive impact on the economy in that it will most likely compel reducing bank interest rate and will have its competitive role as an alternative to money market. These deserves active attention of the authority which is entrusted to oversee the activities of the SEC, so that necessary enactments/amendment and/or guidelines can be made or formulated, as the case may be.

18. In view of the facts, circumstances and the deliberation recorded above, I find merit in this petition.

In the result the petition is allowed subject to certain directions.

Accordingly, the entire period of delay that has occurred in holding the Annual General Meetings of MAQ Paper Enterprise Ltd for the period of 2001 to 2012, is hereby condoned and the company is permitted to hold those Annual General Meetings, within 6(six) months from drawing up of this order and upon following the provisions of law and the Rules applicable to a public company listed with the Stock Exchanges and subject to appointment of auditor and doing fresh audit in respect of those years as per provisions laid down in sub-rule (3A) of Rules 12 of the Securities & Exchange Rules, 1987, read with subsection (1) of section 210 of the Companies Act, 2010.

The appointment of auditors by the Board of director, to audit the accounts of the company for the FY 2000-2001 to FY 2001-2012 is hereby declared ultravires and the audit reports for those period are neither to be treated as valid reports, nor to be placed for approval in any AGM for the said period.

The respondent No. 2 (SEC) is directed to appoint, within 14 days from receiving copy of this judgment and order, an auditor, from any one of the reputed audit firms having at least 3 years experience in auditing the account of a listed company, to audit the account of Paper Industries Ltd, for the FY 2000-2011 only and to submit a compliance report within 7(seven) days thereafter.

The auditors for the FY 2001-2002 to FY 2011-2012 is/are to be appointed in the respective AGM, according to the provision of sub-section (1) of section 210 of the Companies Act, 1994.

This order will be effective subject compliance of the direction regarding donation.

Cost will be borne by the company.

Let a copy of this judgment and order be sent to the Registrar of the Joint Stock Companies and Firms for record and for acceptance of the documents to be filed pursuant to the meetings to be held pursuant to this court's order and as may be required to be filed as per law.

Let another copy of this judgment and order be sent to the Chairman, Bangladesh Securities & Exchange Commission, Jibon Bima Tower, Dilkusha C/A, Dhaka, though special messenger, at the cost of the petitioner.

Case cited:

* ***Ghyasuddin Ahmed vs. Q. A., 1986 BLD (AD), page 311.***

HIGH COURT DIVISION
(Criminal)

Siddiqur Rahman Miah–J.
Md. Ataur Rahman Khan–J.

DEATH REFERENCE NO. 150 OF 2005
With
CRIMINAL APPEAL NO. 4256 OF 2005
And
JAIL APPEAL NO. 1180 OF 2005

(From the judgment and order of conviction and sentence dated 04.10.2005 passed by the learned judge, Nari-O-Shishu Nirjatan Daman Tribunal in Nari-O-Shishu case No. 28 of 2004.)

The State ..... Appellant.

Vs.

Mahabur Sheikh @ Mahabur .....
..... Condemned Prisoner.

For the Condemned Prisoner : Mr. Khondaker Mahbub Hossain with Mr. Kamrul Alam Kamal.

For the State : Mr. Zahirul Haque Zahir, DAG with Mrs. Salma Rahman, AAG.

Judgment: January 16, 2011

Nari-O-Shishu Nirjatan Daman Ain, 2000–
Section 11(Ka)–
Penal Code, 1860–
Section 302–

It is the established principle of law that in a wife killing case only the husband is under obligation to explain the cause of death of his wife if it is established that his wife died in his presence.

At the fag end we are thus constrained to decide that the circumstances revealed on extensive analysis have consistently completed the chain which irresistibly leads us to the conclusion that it was nobody but the accused Mahabur Sheikh was the assailant who killed his wife Kohinoor and he did the murderous act for the lust of dowry. On broad analysis as made above the circumstances and evidence revealed may be categorized as below.

Victim Kohinoor was throttled to death. She was done the death for the cause of dowry, victim Kohinoor was murdered in her conjugal none. The accused Mahabur Sheikh remained absconded for long 5 months and 20 days from the inception of the heinous crime. The plea of 'alibi' has been turned into total falsity and thus it adds assurance to other circumstances as a determining link as to complicity of the accused with the commission of crime, The accused failed to explain how his wife Kohinoor died in his dwelling hut. According to PW.1 the informant their anger upon the accused has been subdued due to a subsequent 'compromise' of the cause by the interven-

tion of the local headmen. Such compromise is considered as another confirmatory link to the chain of circumstances. Owing to such 'compromise' the PWs 1 to 5 have made a vicious move to hide the fact that they witnessed the accused severely beating his wife Kohinoor when they on getting information came to the P.O. house. The PWs 1 to 5 have disclosed half truth. The attempt of PWs 1 to 5 to brand the death of the deceased as suicide by hanging has been abruptly turned into falsehood...... (Para 55)

JUDGMENT

SIDDIQUR RAHMAN MIAH–J: The Death Reference being No. 150 of 2005 has been sent by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narail for confirmation. The Criminal Appeal No. 4256 of 2005, Jail Appeal No, 1180 of 2005 and Death Reference No. 150 of 2005 arises out of the judgment and order of conviction and sentence dated 04.10.2005 passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narail in Nari-O-Shishu Nirjatan Case No. 28 of 2004 convicting the accused Mahabur Sheikh @ Mahabur under section 11 (ka) Nari-O-Shishu Nirjatan Daman Ain, 2000 sentencing him thereunder to death.

2. The prosecution case, *inter alia,* is that the deceased Kohinoor was married with accused Mahabur Sheikh and their conjugal life was continued for four years and it was ended with the diabolical murder of the victim wife. The victim wife used to reside with her husband in her conjugal life. On 23.09.2003 at about 9.00 p.m. on getting information that the accused assaulted his wife Kohinoor for demand of dowry. The informant Md. Kamal Biswas being accompanied by Anwara Begum, Akter Biswas, Rejaul Shiekh and Salam Biswas rushed to the place of occurrence, i.e. the dwelling house of the accused Mahabur Sheikh, In their presence accused Mahabur Sheikh became aggressive and started beating his wife Kohinoor despite their resistance. Thereafter the victim Kohinoor instantly died there. Further prosecution case is that the informant and his companions found the dead body of Kohinoor lying on veranda of the place of occurrence hut, on the following morning at 10.35 a.m. the informant Md. Kamal Biswas lodged the FIR with Lohagara PS upon which Lohagara PS case No.16 dated 24.09.2003 was started under section 11(ka) Nari-O-Shishu Nirjatan Daman Ain, 2000 against the accused appellant only.

3. On being entrusted with the task of investigation, SI Rampada Mondal of Lohagora police station visited the place of occurrence, prepared sketch map and index thereof; held inquest of the dead body of deceased Kohinoor

which he found lying on the verandha of the dwelling hut of the accused; sent the dead body to the morgue for holding autopsy; examined the witnesses and recorded the statements under section 161 of the Code of Criminal Procedure and obtained post mortem report. Thereafter, the allegation having been found *prime face* proved he submitted charge sheet against the accused Mahabur Sheikh @ Mahabur under section 11(Ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and the accused remained absconded.

4. At the trial, the charge was framed under section 11(ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 against the accused person which was read out and explained to the accused who pleaded not guilty and demand trial.

5. The prosecution in all examined 7 witnesses including the investigating officer in support of his case but the defence examined none.

6. The defence case as it transpires from the trend of cross examination of the PWs is that he is innocent and he has been falsely implicated in this case out, of suspicion and enmity.

7. The learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narail on consideration of the evidence on record and the facts and circumstances of the case found the accused Mahabur Sheikh @ Mahabur guilty under section 11(Ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and convicted and sentenced him thereunder to death.

8. The accused appellant being aggrieved by and dissatisfied with the conviction and sentence dated 04.10.2005 passed, by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narail in Nari-O-Shishu Nirjatan Daman Case No. 28 of 2004 have come up with present Criminal Appeal No. 4256 of. 2005 and Jail Appeal No. 1180 of 2005 before this court.

9. Mr. Khondaker Mahbub Hossain, along with Mr. Kamrul Alam Kamal, the learned Counsel, appeared on behalf of appellant Mahbubur sheikh @ Mahbubur and Mr. Zahirul Haque Zahir, the learned Deputy Attorney General and Mrs. Salma Rahman the learned Assistant Attorney General appeared on behalf of the State.

Mr. Khondaker Mahbub Hossain, the learned counsel for the appellant at the inception has taken us through the FIR, charge sheet, charge so framed, the deposition of the prosecution witnesses and the impugned judgment and the materials available in the paper book and submits that the learned trial court failed to consider the defence case and that the court below illegally convicted the condemned prisoner on suspicion. It is further submitted that the prosecution failed to prove the case against the condemned prisoner beyond all

reasonable doubt; that the judgment and order of conviction and sentence is bad in law as well as on fact and that the impugned judgment and order is liable to be set aside.

He cited decisions in the case of Abdul Mannan @ Mona Miah vs. State reported in 58 DLR 91, Abu Taher vs. State reported in 10 MLR 282, Mukter Hossain Khan (Md) vs. State reported in 60 DLR(AD)44, Abdul Hannan vs. State reported in 60 DLR 590, Md. Hadiuzzaman @ Abdul Hadi and others vs. The state reported in 1986 BLD (AD) 191, Siraj Mal and others vs. State reported in 45 DLR 688, Firoz Miah vs. state reported in 51 DLR 37, Muslimuddin and others vs. The state reported in 7 BLD(AD) 01, Tareque Habibullah vs. The state reported in 12 BLD 147 and Zahirul Alam Kamal and another vs. state reported in 1 BLC 325 in support of his contention.

10. Mr. Zahirul Haque Zahir, the learned Deputy .Attorney General along with Mrs. Salma Rahman, the learned Assistant Attorney General for the state, on the other hand, submits that the prosecution has proved its case against the condemned person by the most consistent, corroborative, overwhelming and competent witnesses; that the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narail is quite justified in convicting and sentencing the condemned person on the basis of the most cogent and reliable evidence and his judgment does not suffer from any misreading and non-reading of evidence. There is no internal points of falsehood in their evidence on any point and as such the impugned judgment calls for no interference by this court.

11. The learned Deputy Attorney General for the State cited the decisions in the case of State vs. Abdal Kader @ Kada and others reported in 13 MLR (AD) 86, in the case of State vs. Kamruzzaman @ Mantu reported in 11 BLC 77 and in the case of Abdul Motleb Howlader vs. state reported in 6 BLC (AD) 01 in support of his contention.

12. The only point for determination in the Death Reference and appeals is whether the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narail, was justified in convicting and sentencing the condemned prisoner under section 11(Ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000.

13. In the face of arguments advanced by the learned Advocates of the contending parties, we are now called upon to scrutinize the material evidence on record in order to come to a proper decision in this Death Reference and appeals.

14. The allegation is of bride killing for the cause of dowry, the unfortunate incident alleged to have taken place in the dwelling hut of the accused husband. The informant and the witnesses as cited in the FIR are alleged to have witnessed the occur-

rence. The dead body of the deceased Kohinoor was found on the verandah of the p.o house by them. The case thus appears to have rested upon circumstantial evidence as well as the testimony of the witnesses as cited, in the first Information Report of the 07 P.w.s examined, by the prosecution, P.W.1, Md. Kamal Biswas is the informant, brother of the deceased Kohinoor.

P.W.2, Anwara begum is the mother of the deceased.

P.W.3, Akhtar Biswas is the cousin of the deceased.

P.W.4, Rezaul Sheikh is the cousin of the deceased.

P.W.5, Salam Biswas is the uncle of the deceased.

P.W.6, Dr. Md. Kader held autopsy of the dead body of the deceased.

P.W.7, S.I Rampada Mondol investigated into the case and submitted charge sheet.

Before going into an analytical discussion about the circumstances revealed, let us first see what the P.W.s have stated on dock.

15. P.W.1 Md. Kamal Biswas, the informant brother of the deceased Kohinoor Begum, has deposed in court that Kohinoor was given in marriage with the accused Mahabur Sheikh 4 years ago. This P.W further deposed that he learnt that the accused assaulted his wife Kohinoor for the cause of dowry and then Kohinoor died and that is why he initiated this case, P.W.1 proved the F.I.R and his signature therein as Exhibit-1 and 1/1 respectively P.W.1 also stated his examination-in-chief that Kohinoor died at 9 p.m. in the house of her husband Mahabur. On the following morning he went there and found the dead body of Kohinoor lying on the veranda of accused's hut. At that time accused was found absent. Then they took the dead body of Kohinoor to his own house and then the burial took place. Even at that time too the accused did not come and attend the burial ceremony.

16. In cross-examination this P.W.-1 deviating from earlier position has stated that nobody told him that the accused assaulted Kohinoor for the cause of dowry. He also stated that accused used to stay in his place of business and used to come in his house after 15 days' interval. In-cross-examination P.W.1 has surprisingly stated that on being rebuked by the mother-in-law and sister-in-law ('nanad'), Kohinoor committed suicide. On the next breath he also stated that no ligature was found around the neck of Kohinoor when he witnessed her dead body. Surprisingly enough P.W.1 at the fag end of his cross-examination has stated that their anger upon the accused has already been subdued as the case has been mediated, by the intervention of the local elites.

P.W.2 Anwara Bsgum, the mother of the deceased Kohinoor has deposed that Kohinoor Committed suicide by hanging. This P.W. also stated that she learnt that, accused assaulted Kohinoor for the cause of dowry and thus her son (P.W.1) initiated this case.

P.W.3 Md. Akhter Biswas, a cousin of victim, has deposed that nearly one year ago at about 8 P.M. while he was in Lohagora Bazar he learnt that Kohinoor committed suicide by hanging. Thereafter at 9 P.M. he went to the Place of occurrence (accused's dwelling house) and he found the dead body of Kohinoor lying on the verandah. But he could not see as to where and with which her body was suspended by way of hanging. He did not make any query about it. He found the accused absent when he reached to the place of occurrence house. Even he found no other inmates of accused's family at that time.

P.W.4 Rezaul Sheikh, the cousin of unfortunate victim, has deposed that the incident took place at about one year ago at 9P.M. On getting information being accompanied by the mother of the deceased Kohinoor he went to the house of the accused and found the dead body of the victim deceased Kohinoor lying on the verandah of the hut owned by the accused Mahabur. The neighbors told them that there had been a 'ganjam' between Kohinoor and the neighbors and then Kohinoor committed suicide by hanging. But the neighbors did not disclose it to them as to how and where Kohinoor committed suicide.

In cross-examination, this P.W stated that they found accused. Mahabur absent when they reached the P.O house. He further stated that the accused was present in the burial ceremony of Kohinoor.

P.W.5 Salam Biswas, the uncle of the deceased Kohinoor, has deposed that at about 01 year ago at night while, he was in his shop, on getting information he rushed to the house of the accused and found the dead body of Kohinoor suspended with the branch of a mango tree situated to the eastern side of accused's house in hanging position. He heard that Kohinoor committed suicide. This P.W has further deposed that he also found Akhter Biswas (P.W.3) and Rezaul Sheikh (P.W.4) who came there prior to his arrival.

In cross-examination P.W.5 stated that, he could not say why Kohinoor committed suicide.

P.W.6 Doctor Md. Abdul Kader, the then emergency Medical Officer, Narail Hospital has deposed that on 24.9.2003 on identification by a Police Constable no. 203, Farid Ahmed, he did autopsy of the dead body of victim Kohinoor and found the following injuries:–

a. Three crescentic nail marks on the right side of the neck in the sub-mandibular region.

b. One crescentic mark of nail of the left side of the neck in the sub-mandibular region.

c. One abrasion on the nasal bridge ½x 1/6".

d. One abrasion on the right side of the back at the level of the renal angle size 1½ x ½.

e. One abrasion on the lateral aspect of the right arm size 2" x ½". P.W.6 further stated that he opined that in their opinion, death was due to asphyxia & shock resulting from the throttling which was anti-mortem and homicidal in nature.

In cross-examination this P.W.6 Dr. Md. Abdul Kader has stated that above injuries or crecentic marks of nail are not possible to be found in case of hanging by rope.

P.W.7 Rampada Mondal, the then S.I of Lohagara Police station, (now S.I. Kafrul Police Station, Dhaka Metropolitan Police) investigated into the case. He deposed that on 24.9.2003 on the basis of ejahar as lodged by the informant Kamal Biswas, the charge-officer, Lohagara Police Station S.I. Md. Nurul Amin recorded this case and filled up the columns of F.I.R Form. This P.W as he is acquainted with the hand writing and signature of said Nurul Amin, proved the F.I.R" Form and signature of the recording officer as Exhibit 3, 3/1 respectively. On being entrusted with the task of investigation, he visited the place of occurrence, prepared sketch map and index thereon (exhibit 4 and 5). recorded statements of the witnesses under section 161 of the Cede of Criminal Procedure; held inquest of the dead body of Kohinoor which he found lying on the verandah of the dwelling hut of accused Mahabur; sent the dead body to the morgue for holding autopsy. He procured the postmortem report. This PW further stated that he found accused Mahabur Sheikh and other inmates of the house absent, when he visited the place of occurrence house. He seized the wearing apparels of the deceased by preparing seizure list exhibit-6. On completion of the investigation on having found the allegation *prima facie* proved he submitted charge sheet being no, 184 dated 17.12.2003 against the accused Mahabur Sheikh under section 11(ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000.

In cross examination, this PW.7 reiterated that he found the accused and his relatives absent: when he held inquest of the dead body of the deceased Kohinoor, P.W.7 denied the suggestion put to him by the defence that the victim committed suicide and she was not done to death for the cause of dowry.

17. Above is all about the evidence oral and documentary adduced by the prosecution in this case to prove the charge levelled against the accused person under section 11(ka)

of the Nari-O-Shishu Nirjatan Daman Ain, 2000.

18. Fundamental principles of Criminal jurisprudence is that onus of proving everything essential to establishment of charge against accused lies upon prosecution which must prove charge substantially as laid down i.e. to probe to hilt beyond all reasonable doubt on strength of clear, cogent, credible and unimpeachable evidence. Proof of charge must depend upon judicial evaluation of totality of evidence, oral and circumstances and not by an isolated scrutiny of evidence. Prosecution version is, also required to be judged taking into account the overall circumstances of case with a practical, pragmatic and reasonable approach in the appreciation of evidence. It is always to be remembered that the graver the charge the greater is the standard of proof required.

19. The doctrine of presumption of innocence is always in favour of accused. The accused person must be presumed to be innocent until the guilty is proved by cogent and credible evidence.

A judge does not preside over a Criminal trial merely to see that no innocent person is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. A judge is to shift grain out of chaff. Therefore, he, cannot afford any favour other than truth and only truth.

In the touchstone of above stated principles of criminal Jurisprudence, the points formulated are being addressed.

Convict-appellant stood convicted for the offence under section 11 (ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000.

It is true that the death of a human being has actually taken place. Court is to see whether the death has been caused by or in consequence of the act of the accused Mahabur Sheikh @ Mahabur.

20. Mr. Khondaker Mahbub Hossain, the learned counsel for the appellant submits that the informant has not supported as what has been narrated in the FIR.

PWs 2 to 5 have not supported to have witnessed the alleged fact for assaulting the victim by the accused; that the testimony of PWs as to cause of death of the unfortunate deceased is inconsistent with the post mortem report; that the alibi taken by the defence has been proved; and that since the prosecution case and defence case are equally probable, the benefit of such equal probability goes in favour of the accused.

21. In addition to the above argument, the learned counsel also submitted that since the informant has compromised the accusation, the

accused may have refuge to the mercy of the court though he frankly admitted too that the offence alleged is not compoundable one.

Now the point for determination is whether the death of the victim homicidal or suicidal.

However, inlimine, let us see the cause of death of the deceased. According to the doctor PW-6 Dr. Kader who held autopsy of the dead body the following injuries were found on the person of the deceased.

Three abrasions respectively on the nasal bridge, back of the legal of the renal angle and lateral aspect of the right arm.

Also four crescentic nail marks were found in the submandibular region on both sides of victim's neck. According to him death was due to asphyxia and shock resulting from throttling which was ante-mortem and homicidal in nature.

22. We find from the medical Jurisprudence that firm pressure of the fingers upon the front of the neck causes compression of the neck. One hand or both hands may be used. This form of strangulation is called manual strangulation or throttling. The Medical Jurisprudence also says that in cases of manual strangulation or throttling, compression of the neck is caused by firm pressure of the fingers upon the front of the neck; the marks on the neck include abrasions and bruises. Bruises or echymosis are produced by pressure of the tips or pads of the fingers. Additionally, crescentic marks, abrasions made by the finger nails of the assailant will be found over the front of the neck, if the finger tips have been pressed deeply into the soft tissues of the neck. (Medical Jurisprudence .C.C. Mallik Edition; second published October 1984).

23. In view of above medico-legal features coupled with the injuries found on the neck and person of the victim we come to an underling conclusion that the unfortunate Kohinoor was done to death by "manual strangulation or throttling" by firm pressure of the fingers upon the front of her neck. Considering the injuries found on the neck and on the person of the deceased it can also be irresistibly held that the intention of the perpetrator of the Criminal act was to cause her death.

24. Now let us have a look to the probability of the plea that the victim committed suicide by hanging. In case of suicidal hanging the body ought to have been found suspended with special reference to the place of occurrence, its surroundings, point of suspension. Ligature material might also be found. Besides, in case of suicidal hanging ordinarily, there should not be any mark of injury or any sign of struggle on the person of the victim.

25. But in the case in our hand, we see that the doctor who held autopsy

of the dead body of the victim found abrasions on the person of the deceased in addition to the crescentic marks of nail on the front side of her neck. P.W. 7 the investigating officer on the following morning visited the P.O. house and found the dead body of the deceased lying on the verandah of the dwelling hut of the accused.

26. P.Ws. 1-5, according to narration made in the First Information Report, on getting information that the accused assaulted his wife Kohinoor rushed to the P.O. house at 9 p.m. And they witnessed there the accused Mahabur Sheikh beating severely the victim. But while deposing in court none of them supported to have witnessed the alleged fact of assaulting the victim.

27. But of them, PW.3 Met. Akhter Biswas, PW.4 Rezaul Sheikh, the cousins of the deceased admitted to have rushed to the place of occurrence house at the relevant time and of them PWs.3 and 4 have stated to have found the dead body of the deceased Kohinoor lying on the varandah of the place of occurrence hut of the accused. PW.5 made a different version. According to him coming to the place of occurrence at the relevant time he found the dead body of Kohinoor suspended with the branch of a mango tree situated to the eastern side of accused's house in hanging position, He heard that Kohinoor committed suicide. This PW has further deposed that he also found Akhter Biswas (PW.3) and Rezaul Sheikh (PW.4) in the place of occurrence who came there prior to his arrival. Had it been so, PWs 3 and 4 obviously would not have found the dead body of the deceased lying on the verandah of the place of occurrence. Thus the version of P.W 5 Salam Biswas as to seeing the dead body of Kohinoor suspended with the branch of a mango tree appears to be down right false. Though this PW has proved his going to the place of occurrence house at the relevant time on getting information.

28. The accused husband and other inmates were fond absent in the P.O. house when the PWs 3, 4, and 5 on getting information came there.

PWs 1,2,3 and 4 have tried to establish that there has been a quarrel between Kohinoor and a neighbor and thus owing to undesirable behavior of the neighbor and also on being rebuked by the mother in law she committed suicide. Probability of this story ultimately has been turned into a big zero. It is not believable at all that simply a quarrel with a neighbour prompted the victim to commit suicide. Thus the defence plea that the victim's wife of the accused committed suicide has been turned into a total falsity.

29. Now the question comes, who committed the diabolical crime. Thus medico legal evidence has unequivocally proved that the death of the unfortunate victim wife of the accused

meets with his homicidal in nature. It is not denied that the deceased died in her conjugal home and her dead body was found in the dwelling hut of the accused. In our criminal justice delivery system, defense is to prove nothing and an accused is said to be favourable child of law. But in a case of wife killing primarily the accused husband is obliged to explain how his wife died particularly when it happens during staying of the wife with her husband in the same hut.

Defence adopted the plea of alibi that the accused was not in home at the time of incident and he was in Gopalganj. The plea of alibi is only a Rule of evidence recognized in section 11 of the evidence Act. In a bride killing case plea of alibi has to be proved by the defence.

PWs have admitted that the accused had timber trade PW.2 Anwara begum, the mother of the deceased, stated that accused's place of business is about 03 miles away from his house i.e. place of occurrence PW.5 Salam Biswas stated that he could not say since when the accused remained absent from the place of occurrence house.

30. According to the PWs 1, 3 and 4, they found the accused and his inmates absent when they come in the place of occurrence house and found the deceased Kohinoor lying on the verandah thereof. It indicates that the accused immediate after committing the crime fled away and since then remained absconded for long 5 months and 20 days till he surrendered before the tribunal. This fact is by itself a confirmatory and incriminating circumstance of the guilty conscience of the accused and lends weight to other circumstance to connect him with the commission of the alleged killing of his wife.

Even the accused according to PW.1, the informant, did not attend the burial-ceremony of the deceased. Why? if actually the accused had no guilty mind he would attend his wife's burial ceremony. Such unusual conduct, in other words, adequately points his culpability. The mere fact that, accused's place of business is about 03 miles away from the P.O. house in absence of cogent evidence ipse fact does not indicate conclusively that the accused had not been in the house at the relevant time i.e. at 9.00 p.m., on the date of occurrence, There are no evidence or minimum circumstances in support of the alibi. Rather it has become untrue and improbable and thus it took fall down.

31. PW.1 Md. Kamal Biswas the informant brother of the deceased Kohinoor in his cross examination has stated that their anger to the accused has already been subdued as the case has been settled down or compromised by the intervention of the local elites, firstly, who is he to make compromise an offence like murder with the accused party.

Secondly, being informant he just lodged the FIR to set the machinery on motion and during trial, his duty is to come on dock to depose as witness only. The prosecution is not entirely rests upon him or the FIR laid by him. The victim of the crime was Kohinoor who is now above all the earthly well and woe and the crime committed is, in fact, a crime against the state. The informant the brother of the deceased is nobody to make any compromise. It is the state who is obliged to deal with the prosecution.

32. The learned advocate for the appellant during argument also stressed that since the matter has been mediated and compromised between the parties, the accused may have refuse of the kind mercy of the court.

33. In our demoralized society, the so called social headman having domineering influence over the helpless poverty stricken group of people, in other words, in the name of compromising the accusation always prefer to extend their unethical favor to the author of a crime even like murder, have been obstructing the natural course of Justice, As a result the relatives of the victim of the crime are compelled to make chaotic and obliging version in court.

34. In the case in our hand too we must say that P.Ws.1-5 have made a vicious move to hide the truth just to provide a premium t› the accused. But the offence of murder is not compoundable. A court of Law cannot be party to the compromise effected outside court between on the informant and the accused and thereby it cannot provide mercy to the author of the crime like murder taking the fact of subsequent compromise into consideration. This is not court's function. The court of law acts and administers justice only in accordance with law. Thus, once a crime appears to have been committed by the accused there can be no room to brand the accused 'not guilty'- merely for the reason of a subsequent compromise.

35. The version of the informant P.W.1 that their anger has been subdued as there had been a subsequent compromise over the accusation by the intervention of the local headmen, in other words, lends and adds further assurance to other circumstances as to complicity of the accused with the commission of the crime. It is thus unerringly and beyond reasonable doubt found that nobody but the accused was the author of the crime who for the cause of dowry throttled his wife to death.

36. In course of argument it is frankly admitted by the learned defence counsel that though the defence could not project any satisfactory explanation as to victim wife's death, benefit of doubt revealed as to complicity of the accused with the commission of the crime goes in his favour. Yes, one accused is entitled to

the benefit of doubt. But the doubt must not be a faint one. The doubt must be reasonable, to such a degree which prompts a reasonable and prudent man to infer a hypothesis compatible to the innocence of the accused.

37. In a society pregnant of numerous immoralities, erosion of values it is no difficulty to procure and produce false eye witnesses, but it is indeed very difficult to produce circumstantial evidence of convincing character. Thus, inevitably circumstantial evidence having consistent link is more convincing and reliable than evidence of witnesses.

38. It is an old adage that a person may tell a lie but circumstances must not tell a lie. In a case, circumstantial evidence when the accused offers a plea or explanation and that plea or explanation is found untrue, it offers an additional link in the chain of circumstances to complete the chain. In a bride killing case the husband is primarily obliged to explain the reasons of his wife's death. It is proved that the unfortunate wife of the accused died due to asphyxia as a result of throttling. On contrary, defence failed to establish that she committed suicide by hanging.

39. Plea, of staying in the place of business at the relevant time has not been proved by any evidence. According to PW-2, Amena Begum, the mother of the deceased, accused's place of business is about 03 miles away from the P.O. house where the accused along with her victim wife used to reside. The incident took place at 9,00 PM. in the dwelling house of the accused which remains undisputed. In these circumstances, in absence of any satisfactory explanation the finger points to the guilt of the accused husband.

40. According to the medico legal evidence it has been conclusively proved that the deceased Kohinoor was homicidally throttled to death. Thus the PWs appear to have suppressed the truth by saying improbable story of suicide owing to quarrel with a neighbor with a motive to serve the purpose of the defence and in the process of hiding truth deliberately, they have made a combated endeavor to brand the death of the deceased as 'suicide' by hanging. But the attempt ultimately becomes in vain. The defence that the deceased Kohinoor committed suicide by hanging thus falls down.

41. After initiating FIR the informant is nobody excepting a mere witness. The narration in the FIR is not the first and last word, the truth is unfolded only in trial. The inconsistency in testimony when occurs due to deliberate suppression of fact favoring the accused only for the reason of compromise by the informant with the accused party does not outright tarnish the prosecution case.

42. In the present case P.W.1 Kamal Biswas the informant brother lodged First Information Report with the concerned police Station on the following morning i.e. without any delay. But surprisingly, in court, he has not in supported what he narrated in the FIR. The reason is, according to him, subsequent "Compromise" with the accused by the intervention of the so called local headmen.

43. It is to be noted too that even the mother (P.W.2) of the deceased forgetting the pain of losing her daughter Kohinoor deliberately stated that her daughter committed suicide. But they, this court thinks, have failed to hush up the truth in any manner. Besides deviation by the informant from what has been narrated in the First Information Report for the reason of subsequent 'compromise' itself shall not tarnish the entire prosecution. In this regard the following observation as made by this Court in the case of Khorshed (Md) alias Khorshed Vs State reported in 51 DLR 317 deserves to be mentioned here–

> "First information report is not substantive evidence. It can be used to corroborate or contradict the maker thereof When the FIR is lodged within minimum possible time, such FIR story should not be disbelieved only because of any such result on the part of the informant."

44. In the case before us we have already got that for the reason of "compromise' the informant and other PWs have opted to save the accused by deliberately hiding the truth. PWs 1 to 5 including the informant PW. 1 have deliberately testified a different story favourable to defence as to cause of death of the unfortunate victim. Thus they cannot be expected to disclose the detail story of 'demand of joutak'. The motive of the murderous episode in court. Besides, demand of dowry is an event which generally takes place in absence of eye witnesses. No outsider and the near relative of the wife are expected to have direct knowledge about it, Normally such unethical demand is raised in the conjugal home of the wife.

45. Despite all these situations PW.1 the informant has stated in his examination in chief that the accused assaulted his wife Kohinoor for the demand of dowry as a result of which she died and this is why he initiated this case. This version remained totally unshaken and even has not been denied in his cross examination. PW.2 Amena Begum, the mother of the deceased also corroborated that the accused assaulted Kohinoor for the cause of dowry and her son PW.1 the informant, initiated this case. The above version also remained unimpeached in her cross examination. It is to be noted chat the object of cross examination is to impeach and dislodge what has been deposed in exam-

ination in chief and to make this defence case probable to the reasonable degree. But in this case, defence appears to have failed, even to put suggestion that the fact of raising demand of dowry for the reason of which the accused assaulted his wife victim, perhaps for the reasons of hiding the truth in part by the PWs 1 to 5 by making obliging and chaotic version in court. Thus the above testimony of PW.1 and PW.2 coupled with the other circumstances inevitably direct us to the legitimate inference that the victim was done to death in her conjugal home and the motive was nothing but lust for dowry. It is also reveals that the informant, brother of the deceased Kohinoor, however proved to have lodged the FIR against the accused on allegation of causing his wife's death by assaulting her for the cause of dowry. Victim's mother PW.2 has corroborated it. Defence as it appears, on contrary, failed to dislodge this fact to in any manner.

46. The accused Mahabur Sheikh remained absconded for long 5 months and 20 days from the inception of the case. No explanation was given by defence side. Absconsion immediately after the commission of the crime for long period of time is considered to be a confirmatory and incriminating circumstances which adequately corroborates that the accused was the assailant. This view finds support for the decision of Pakistan Supreme Court in the case Gul Hassaan and another vs. the state as reported in PLD 1969 SC 89. Failure to explain reason for absconding after occurrence favours prosecution. In this regard, it has been observed by the Hon'ble High Court Division in the case of Wasim Mia and others vs. The state reported in BCR 24 HCD 392 as below, "Act of abscondance is a relevant piece of evidence to be considered along with other evidence and it can be held as a determining link which admits of no other reasonable hypothesis than that of guilt of the accused appellant."

47. The PWs. 1 to 5, as has already been said, have not supported to have witnessed the incident and of them PW.1, 2, 3 and 4 just coming to the P.O. house found the dead body of the deceased and they also found the accused and other inmates absent there. But merely for this reason it cannot be said that a reasonable doubt has been created in this case, particularly in presence of other cogent and convincing circumstances as already discussed above.

48. The Chain of consistent circumstances inevitably directs us to make legitimate and valid inference as to complicity of the accused with the commission of the crime. Since the attempt of PWs 1 to 5 favouring the accused to save him form criminal liability by making chaotic version as to cause of victim' death straight way falls down on the face the medico legal evidence. We do not find any reason-

able degree of doubt which can destroy the prosecution.

49. Besides, merely for the reason that the informant himself has not supported in toto what he narrated in the FIR, course of justice cannot be allowed to be defeated particularly when it is proved how and where the victim meet her death, to whom the law and circumstances point finger as the perpetrator of the crime. On the concept of the proof beyond reasonable doubt this Division in the case of Awal Fakir (Md) vs. The State as reported in 9 MLR 297 observed as below:

50. Proof of reasonable doubt must commensurate with the nature of the offence. Proof beyond reasonable doubt shall not mean proof beyond the shadow of doubt, Benefit of doubt to an accused would be available provided there is supporting evidence on record. For creating or granting benefit of doubt will be such as may lead to such doubt but it is always to be remembered that there should not be exaggerated devotion to the Rule of benefit of doubt at the expense of social defence, and course of justice cannot be allowed to be defeated on the concept of the Rule of benefit of doubt.

51. It remains undisputed that the unfortunate Kohinoor died in her husband's dwelling hut and her dead body was found lying on the verandah thereof. PWs 1, 2 and 4 do not claim to have witnessed the assault on the victim by the accused as alleged in the FIR. But they corroborated each other to have found the dead body of the deceased Kohinoor on the verandah of accused's dwelling hut when they went there after commission of the crime and thus naturally they found the accused and his other inmates absent in the house. In this circumstances initial burden thus lies upon the accused husband to explain his wife's death otherwise law will finger to him for the murderous act.

52. Because it is now well settled that in case of killing bride in husband's house, a heavy onus lies upon husband to account for the death of wife and husband is obliged to explain satisfactorily as to how his wife met her death in his house and in the absence of any explanation coming from husband, the irresistible presumption is that it is the husband who is the perpetrator of the crime.

53. This view finds support from the observation of our Hon'ble Apex court as made in the case of The State represented by the solicitor to the government of the people's Republic of Bangladesh vs. Md. Shafiqul islam @ Rafique and another reported in 43 DLR (AD) 92 which is as below–

> "Where it is proved that the wife died of assault in the house of her husband, there would be strong suspicion against the husband that at his hands the wife died. To make the

husband liable the minimum fact that must be brought on record, either by direct or circumstantial evidence is that he was in the house at the relevant time".

54. In the case in our hand, we have already got strong and consistent circumstantial evidence which irresistible point to the guilt of the accused and on contrary the accused failed to prove the plea of 'alibi' as well as to explain his wife's death. Rather it appears that instead of explaining it the accused has adopted the mechanism of 'compromise' with the informant party by the intervention of local headmen and tried to establish the death of his wife as suicide by influencing the PWs for making obliging statement in court. Considering the entire circumstances revealed coupled with the testimony of PWs 1 to 5 so far they made despite their deliberate attempt to hide the truth in part. We find no substance in the argument as has been advanced by the learned defence advocate that the prosecution suffers from reasonable doubt.

55. *At the fag end we are thus constrained to decide that the circumstances revealed on extensive analysis have consistently completed the chain which irresistibly leads us to the conclusion that it was nobody but the accused Mahabur Sheikh was the assailant who killed his wife Kohinoor and he did the murderous act for the lust of dowry. On broad analysis as made above the circumstances and evidence revealed may be categorized as below.*

Victim Kohinoor was throttled to death. She was done the death for the cause of dowry, victim Kohinoor was murdered in her conjugal none. The accused Mahabur Sheikh remained absconded for long 5 months and 20 days from the inception of the heinous crime. The plea of 'alibi' has been turned into total falsity and thus it adds assurance to other circumstances as a determining link as to complicity of the accused with the commission of crime, The accused failed to explain how his wife Kohinoor died in his dwelling hut. According to PW.1 the informant their anger upon the accused has been subdued due to a subsequent 'compromise' of the cause by the intervention of the local headmen. Such compromise is considered as another confirmatory link to the chain of circumstances. Owing to such 'compromise' the PWs 1 to 5 have made a vicious move to hide the fact that they witnessed the accused severely beating his wife Kohinoor when they on getting information came to the P.O. house. The PWs 1 to 5 have disclosed half truth. The attempt of PWs 1 to 5 to brand the death of the deceased as suicide by hanging has been abruptly turned into falsehood.

56. The cumulative effect and probative force of the guilt-pointing circumstances as revealed in the present case is of such nature that we con-

clude not that the accused Mahabur Sheikh may be guilty but that he is guilty. On rational analysis and deductions as made above we come to decision that it is impossible to escape the conclusion that the circumstantial testimony as adduced in incompatible with the guilelessness of the accused Mahabur Sheikh.

57. From whatever angle we view the above circumstances and fact, the conclusion is inescapable that none but the accused husband Mahabur Sheikh committed the dreadful crime for the lust of dowry. Thus no hesitation to say that the prosecution has been able to prove the accusation as brought against the accused Mahabur Sheikh.

58. Concatenation of incriminating facts coupled with prolonged abscondsion of the accused and failure on his part to set up any facts which may cast reasonable doubt over the prosecution suffice to prove the fact of raising demand of dowry by the accused and the complicity of accused Mahabur Sheikh with the murder of unfortunate Kohinoor Begum in her conjugal home at 9.00 P.M. and on the date and thus he is found guilty of offence punishable under section 11 (Ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000.

59. This brings us to a legal aspect of the matter, convict-appellant stood charged and convicted for offence of section 11 (ka) of the Ain of 2000. Section 11 (ka) enjoins that if the husband of a women or the father, monther, guardian, relation or any other person on behalf of the husband for dowry cause death to a woman or ventures to cause death or causes hurt or have a try to cause hurt that husband, father, mother, guardian, relation or the person (a) shall stand sentenced to death for causing death or shall stand sentenced to imprisonment for life for mounting endeavour to cause death and in both the counts he shall be, also, liable to pay fine, and (b) shall be sentenced to imprisonment for life causing hurt or be sentenced to rigorous imprisonment for a period not more than 14 (fourteen) years and less than 5(five) years for striving to cause hurt and in both courts shall be liable to fine.

In order to attract section 11(ka) it is to be proved that death was caused in view of demand of dowry put forward from the side of husband or father, mother, guardian, or relation of the husband or any person for and on behalf of husband.

60. From circumstantial evidence it had come to light that convict-appellant had caused the death of deceased and a clear case of murder had been brought home to the door of convict-appellant .

This takes us to a legal debate of fundamental character, which is,

i. Whether the convict-appellant can be graced with a verdict of acquittal when charge of section 11

(ka) of the Ain of 2000 could not be pressed against him.

ii. When a clear case of murder has been established by circumstantial and medical evidence against him whether the convict-appellant can be convicted for the offence of murder punishable under section 302 of the Penal Code.

iii. Whether the case is required to be sent back to Tribunal or Court of sessions for fresh trial.

Section 25 of The Ain of 2000 postulates that Tribunal defined section 2 (Gha) shall be treated as Court of Sessions and Tribunal shall be able to exercise all powers of Sessions Court in holding trial of an offence.

Section 26 of The Ain 2000 enshrines that Tribunal so constituted shall be recorded as Nari-O-Shishu Nirjatan Daman Tribunal and shall be constituted with on Judge and Judge of Tribunal shall be appointed from amongst District and Sessions Judge to the Government, if necessary, shall appoint any District and Sessions Judge as Tribunal Judge in addition to his charge. Section 20 further enjoins that under the section Additional District and Sessions Judge shall, Also stand included as District and Sessions Judge.

61. From the above it becomes manifestly clear that a Tribunal trying a case under the Ain of 2000 is, also, a Court of District and Sessions Judge, When a Judge sits in a Tribunal or Special Tribunal Case holding trial of an offence under a Statute or Special Statute is a Tribunal or Special Tribunal and a Judge when sits in Sessions Case trying an offence punishable under Penal sections of Penal code sits as Sessions Judge.

The case is hand, although, tried by a Tribunal constituted under The Ain of 2000 that Tribunal was, also, the court of Sessions. In the Judgment, learned Judge was described as district and Sessions Judge, Narail as well as Nari-O-Shishu Nirjatan Daman Bishesh Adalat, Narail. Judgment demonstrates that learned District and Sessions Judge has been, also, exercising the power and Jurisdiction of the Nari-O-Shishu Nirjatan Daman Tribunal. Fate of the convict-appellant and result of the case would have been the same whether it would have been tried either as a Nari-O-Shishu case by the tribunal or as a sessions case by learned Sessions Judge and if section 11(ka) of the Ain of 2000 was not attracted in respect of convict appellant the offence of section 302 the Penal Code could be very much pressed into service against the convict appellant, and he could be conveniently tried and convicted for offence of section 302 of the Penal Code.

62. As regard remand of the case, we may profitably refer the decision in the case of Asiman Begum vs state reported in 51 DLR (AD) 18 where in it has been decided that the remand

order for trial of the case as a Sessions case in the particular circumstances of the case will be a mere formality because Nari-O-Shishu Case no. 2 of 1996, although, tried under Bishesh Bidhan Ain, 1995 by a Bishesh Adalat, the presiding officer was no other than the Sessions Judge himself and, as such, it was unlikely that the result would be anything different if the case was tried by him as a Sessions case. Appellate Division, thus sent the appeal to High Court Division to consider the case on merit and to pass whatever or orders it might think appropriate in the interest of justice.

63. In State vs Abul Kalam, 5 BLC 230 one Abul Kalam stood convicted for offence of section 10(1) of The Ain of 1995 for murder of his wife for dowry by learned Sessions Judge and Special Tribunal No.1, Noakhali. Consequential sentence was death. Condemned-prisoner preferred Jail appeal and, also, regular Criminal appeal before High Court Division. There had been, also, Death Reference. A Division Bench of High Court Division heard Death Reference, Jail Appeal and Criminal Appeal together and disposed of those by a common Judgment. High Court Division found that there had not been cogent evidence as to committing murder for dowry and no evidence had been led as to the real cause of killing of wife by husband and held that the case did not come under section 10(1) of The Ain of 1995 and the case comes under section 302 of The penal Code. The High Court Division further held that Sessions Judge, in fact, was the Special Tribunal no, 1 who tried the case and for no fault of the accused the case had been tried as Special Tribunal case. High Court Division instead of sending the case back for fresh trial under section 302 of The Penal Code by learned Sessions Judge disposed of the appeal. High Court Division altered conviction from section 10(1) of The Ain, 1995 to one under section 302 of Penal Code. Sentence of death was altered to one of imprisonment for life. The High Court Division in rendering decision took into account Asiman Begum vs State (Supra).

64. In the case of Shibu Pada Acharjee vs State reported in 56 DLR 285, accused-appellant was convicted for offence of section 4(c) of The Ordinance of 1983 for commission of rape upon victim Ratna Rani but ingredients of section 4(c) of The Ordinance of 1983 could not be brought home to accused-appellant. In the case it had been laid down:

To take the prosecution out of Court on a question of technicality, will be a travesity of Justice and technicality must bend to cause of Justice inasmuch as ends of law is Justice."

Accused-appellant can be fastened for offence of section 376 of the Penal

Code and conviction under section 4(c) of The Ordinance of 1983 can be altered to one of section 376 of The Penal Code.

In the said case conviction under section 4(c) of The Ordinance of 1983 was altered to one of section 376 of the Penal Code.

In the event of sending the case either to Tribunal or Court of Sessions for fresh trial proceeding would be protracted which cannot be allowed in the interest of true dispensation of criminal justice.

Since offence of murder punishable under section 302 of Penal Code was carried to the door of convict-appellant he can be very much convicted for offence of section 302 of the Penal Code and as such we convert the offence of section 11(ka) of the Ain of 2000 to offence of section 302 of penal Code. Convict-appellant, thus stands convicted for offence of section 302 of the Code.

Legal debate stands solved in the following terms and language:

i. Convict-appellant Mahabur Sheikh @ Mahabur cannot be graced with a verdict of acquittal.

ii. Convict-appellant can be convicted for the offence punishable under section 302 of the Penal Code.

iii. Case is not required to be sent either to Tribunal or Court of Sessions for fresh trial.

65. What sentence is to be imposed upon convict-appellant-death or imprisonment for life?

Sentencing discretion on the part of a Judge is the most difficult task to perform. There is no system or procedure in the Criminal Justice administration method or Rule to exercise such discretion. In sentencing process, two important factors come out which shall shape appropriate sentence (i) Aggravating factor, and (ii) Mitigating factor. These two factors control the sentencing process to a great extent. But it is always to be remembered that the object of sentence should be to see that the crime does not go unpunished and the society has the satisfaction that justice has the satisfaction that justice has been done and court responded to the society's cry for justice. Under section 302 of The Code, though, a discretion has been conferred upon the Court to award two types of sentences, death or imprisonment for life, the discretion is to be exercised in accordance with the fundamental principle of criminal justice.

Convict-appellant is aged about 45 years when he was examined under section 342 of the Code of Criminal Procedure. Record indicates that convict-appellant is not a harden criminal and he cannot be at all characterized to be a menace to the society. Taking an account of aggravating and mitigation circumstances, we are of this considered view that ends of Justice will be met if death sentence is altered to one of imprisonment for life. Convict-

appellant thus, stands sentenced to imprisonment for life. Convict-appellant, also, is to pay a fine of taka 2,000/- and in default of payment of fine to suffer rigorous imprisonment for 3 (three) months more.

66. On the premises of the foregoing discussion, the following orders and passed.

A. Death Reference No. 150 of 2005 is rejected.

B. Criminal Appeal No. 4256 of 2005 and Jail Appeal no. 1180 of 2005 stand dismissed with modification of conviction and sentence. Judgment of conviction and sentence dated 04.10.2005 passed by Nari-O-Shishu Nirjatan Daman Tribunal, Narail in Nari-O-Shishu Case No. 28 of 2004 is modified in the epithet that convict-appellant Mahabur Sheikh @ Mahabur is found guilty of the offence of section 302 of Penal Code and not for an offence of section 11(ka) of Nari-O-Shishu Nirjatan Daman Ain, 2000 and conviction for offence of section 11(Ka) of the Ain of 2000 is altered to one of section 302 of the Penal Code and death sentence is altered to one of sentence of imprisonment for life and he is to pay a fine of taka 2000/- and in default of payment of fine to undergo rigorous imprisonment for 3 (three) months more.

Lower Court record be sent down as immediate as possible.

Cases cited:

* ***Abdul Mannan @ Mona Miah vs. State, 58 DLR 91.***
* ***Abu Taher vs. State, 10 MLR 282.***
* ***Mukter Hossain Khan (Md) vs. State, 60 DLR (AD) 44..***
* ***Abdul Hannan vs. State, 60 DLR 590.***
* ***Md. Hadiuzzaman @ Abdul Hadi and others vs. The state, 1986 BLD (AD) 191.***
* ***Siraj Mal and others vs. State, 45 DLR 688.***
* ***Firoz Miah Vs. state, 51 DLR 37.***
* ***Muslimuddin and others vs. The state, 7 BLD (AD) 01.***
* ***Tareque Habibullah vs. The state, 12 BLD 147.***
* ***Zahirul Alam Kamal and another vs. state, 1 BLC 325.***
* ***State vs. Abdal Kader @ Kada and others, 13 MLR (AD) 86.***
* ***State vs. Kamruzzaman @ Mantu, 11 BLC 77.***
* ***Abdul Motaleb Howlader vs. state, 6 BLC (AD) 01.***
* ***Khorshed (Md) alias Khorshed Vs State, 51 DLR 317.***
* ***Gul Hassaan and another vs. the state, PLD 1969 SC 89.***
* ***Wasim Mia and others vs. The state, BCR 24 HCD 392.***
* ***Awal Fakir (Md) vs. The State, 9 MLR 297.***
* ***Bangladesh vs. Md. Shafiqul islam @ Rafique and another, 43 DLR (AD) 92.***
* ***Asiman Begum vs state, 51 DLR (AD) 18.***
* ***State vs Abul Kalam, 5 BLC 230.***
* ***Shibu Pada Acharjee vs State, 56 DLR 285.***

[পূর্বের ইস্যুর পর হইতে]

৪০। কর্তৃপক্ষ বা তদ্‌কর্তৃক ক্ষমতাপ্রাপ্ত ব্যক্তিকে সহযোগিতা।– প্রত্যেক খাদ্য ব্যবসায়ী বা তদ্‌কর্তৃক ক্ষমতাপ্রাপ্ত অন্য কোন ব্যক্তি, খাদ্য ব্যবসা পরিচালনাকালে, কর্তৃপক্ষ বা তদ্‌কর্তৃক ক্ষমতাপ্রাপ্ত কোন ব্যক্তিকে খাদ্য ব্যবসা সংশ্লিষ্ট যে কোন বিষয়ে পরিদর্শন, তদন্ত, নমুনা সংগ্রহ বা পরীক্ষাকরণে সহযোগিতা করিতে বাধ্য থাকিবেন।

৪১। বিজ্ঞাপনে অসত্য বা বিভ্রান্তিকর তথ্য।– কোন ব্যক্তি কোন খাদ্যদ্রব্য বা খাদ্যোপকরণ বিপণন বা বিক্রয়ের উদ্দেশ্যে, প্রবিধান দ্বারা নির্ধারিত বিজ্ঞাপনের শর্তাদি লঙ্ঘন করিয়া বিজ্ঞাপনে বিভ্রান্তিকর বা অসত্য তথ্য প্রদান করিয়া অথবা মিথ্যা নির্ভরতামূলক বক্তব্য প্রদান করিয়া ক্রেতার ক্ষতিসাধন করিতে পারিবেন না।

৪২। মিথ্যা বিজ্ঞাপন প্রস্তুত, মুদ্রণ, বা প্রচার।– (১) কোন ব্যক্তি কোন খাদ্যদ্রব্য বা খাদ্যোপকরণের গুণ, প্রকৃতি, মান, ইত্যাদি সম্পর্কে অসত্য বর্ণনাসম্বলিত কোন বিজ্ঞাপন প্রস্তুত, মুদ্রণ, প্রকাশ বা প্রচার করিতে পারিবেন না যাহার দ্বারা জনগণ বিভ্রান্ত হইতে পারে।

(২) এই ধারার অধীন আনীত কোন মামলায় বিবাদিকে, আত্মপক্ষ সমর্থনে, প্রমাণ করিতে হইবে যে–

(ক) উক্তরূপ অসত্য তথ্যসম্বলিত বিজ্ঞাপনের বিষয়ে তিনি অবগত ছিলেন না অথবা বিষয়টি সর্বোচ্চ প্রচেষ্টা সত্ত্বেও তাহার নিকট প্রতিভাত হয় নাই; এবং

(খ) বিজ্ঞাপন প্রস্তুত, মুদ্রণ, প্রকাশ বা প্রচারকারী হিসাবে তিনি সাধারণ ব্যবসায়িক প্রক্রিয়ায় বিজ্ঞাপনটি প্রস্তুত, মুদ্রণ, প্রকাশ বা প্রচার ব্যবস্থা করিয়াছেন।

(৩) এই ধারার অধীন কোন ব্যক্তির বিরুদ্ধে কোন আদালতে কোন অভিযোগ উত্থাপিত হইলে, ভিন্নরূপ না হইলে, আদালত এই মর্মে বিবেচনা করিতে পারিবে যে, সংশ্লিষ্ট উৎপাদনকারী বা বিক্রয়কারী কর্তৃক উক্ত বিজ্ঞাপন, প্রস্তুত, মুদ্রণ, প্রকাশ বা প্রচারের প্রয়াস বা সহায়তা করা হইয়াছে।

ষষ্ঠ অধ্যায়
খাদ্য ব্যবসায়ীর বিশেষ দায়-দায়িত্ব

৪৩। নিম্নমানের অথবা ঝুঁকিপূর্ণ বা বিষাক্ত পদার্থযুক্ত খাদ্যদ্রব্য প্রত্যাহার।– (১) যদি কোন ব্যক্তির নিকট বিশ্বাস করিবার মত যুক্তিসঙ্গত কারণ থাকে যে, তিনি যে সকল খাদ্যদ্রব্য বা খাদ্যোপকরণ উৎপাদন, প্রক্রিয়াকরণ, সরবরাহ বা বিক্রয় করিয়াছেন সেইগুলির ক্ষেত্রে এই আইন বা অন্য কোন আইনের অধীন নির্ধারিত মানদণ্ড প্রতিপালিত হইতেছে না অথবা উহাতে কোন দুষক, তেজস্ক্রিয়তাযুক্ত, বিকিরণযুক্ত বা অন্য কোন ঝুকিপূর্ণ বা বিষাক্ত পদার্থের উপস্থিতি বিদ্যমান রহিয়াছে, তাহা হইলে তিনি, কারণ উল্লেখপূর্বক বিষয়টি সর্বসাধারণের জ্ঞাতার্থে প্রচারসহ, অনতিবিলম্বে সন্দেহজনক প্রশ্নবিদ্ধ খাদ্যদ্রব্য বা খাদ্যোপকরণ, কর্তৃপক্ষকে অবহিত করিয়া, প্রবিধান দ্বারা নির্ধারিত পদ্ধতিতে, বাজার বা খাদ্য ভোক্তার নিকট হইতে প্রত্যাহারের ব্যবস্থা গ্রহণ করিবেন।

(২) যদি কর্তৃপক্ষের নিকট বিশ্বাস করিবার মত যুক্তিসঙ্গত কারণ থাকে যে, কোন ব্যক্তি কর্তৃক যে সকল খাদ্যদ্রব্য বা খাদ্যোপকরণ উৎপাদন, প্রক্রিয়াকরণ, সরবরাহ বা বিক্রয় করা হইয়াছে, সেইগুলির ক্ষেত্রে এই আইন বা অন্য কোন আইনের অধীন নির্ধারিত মানদণ্ড প্রতিপালিত হইতেছে না অথবা উহাতে কোন দূষক, তেজস্ক্রিয়তাযুক্ত, বিকিরণযুক্ত বা অন্য কোন ঝুকিপূর্ণ বা বিষাক্ত পদার্থের উপস্থিতি বিদ্যমান, তাহা হইলে কর্তৃপক্ষ, সন্দেহজনক প্রশ্নবিদ্ধ খাদ্যদ্রব্য বা খাদ্যোপকরণ বাজার বা ভোক্তার নিকট হইতে প্রত্যাহারের জন্য সংশ্লিষ্ট ব্যক্তিকে নির্দেশ প্রদান করিবে এবং উক্ত ব্যক্তি উক্ত নির্দেশনা অনুযায়ী উপ-ধারা (১) এর বিধান অনুসরণে সংশ্লিষ্ট খাদ্যদ্রব্য বা খাদ্যোপকরণ প্রত্যাহারের প্রয়োজনীয় ব্যবস্থা গ্রহণ করিবেন।

৪৪। উৎপাদনকারী, মোড়ককারী, বিতরণকারী এবং বিক্রয়কারীর বিশেষ দায়বদ্ধতা।– (১) কোন খাদ্যদ্রব্য বা খাদ্যোপকরণ উৎপাদনকারী বা মোড়ককারী এই আইন বা তদধীন প্রণীত বিধি বা প্রবিধানের শর্তাবলী প্রতিপালনে ব্যর্থ হইলে উহা এই আইনের লঙ্ঘন হিসাবে গণ্য হইবে।

(২) কোন খাদ্যদ্রব্য বা খাদ্যোপকরণ মজুদকারী বা বিতরণকারী এই আইনের বিধান লঙ্ঘনের জন্য দায়ী হইবেন, যদি তিনি,–

(ক) মেয়াদ উত্তীর্ণ তারিখের পরে কোন খাদ্য সরবরাহ করেন;

(খ) উৎপাদনকারী ঘোষিত সাবধানতা সংক্রান্ত নির্দেশনা লঙ্ঘন করিয়া খাদ্য মজুদ বা বিতরণ করেন;

(গ) খাদ্য নিরাপদতা সংক্রান্ত তথ্য, ব্যবসায়িক চিহ্ন বা পরিচিতি মুছিয়া ফেলেন;

(ঘ) যাহার নিকট হইতে খাদ্যদ্রব্য মজুদ বা বিতরণের জন্য গ্রহণ করিয়াছিলেন, তাহাকে বা উৎপাদনকারীর উৎস শনাক্তকরণ করিতে না পারেন; বা

(ঙ) অনিরাপদ জানা সত্ত্বেও খাদ্যদ্রব্য মজুদ বা বিতরণের জন্য গ্রহণ করেন।

(৩) কোন খাদ্যদ্রব্য বা খাদ্যোপকরণ বিক্রেতা কোন খাদ্য বিক্রয়ের ক্ষেত্রে এই আইনের বিধান লংঘনের জন্য দায়ী হইবেন, যদি তিনি,–

(ক) মেয়াদ উত্তীর্ণ তারিখের পরে কোন খাদ্যদ্রব্য বিক্রয় করেন অথবা বিক্রয়স্থলে মজুদ রাখেন;

(খ) অস্বাস্থ্যকর অবস্থায় কোন খাদ্য বিক্রয়ের জন্য সংরক্ষণ বা মজুদ করেন অথবা বিক্রয় করেন;

(গ) খাদ্য নিরাপদতা সংক্রান্ত তথ্য, ব্যবসায়িক চিহ্ন বা পরিচিতি মুছিয়া ফেলেন;

(ঘ) যাহার নিকট হইতে খাদ্যদ্রব্য গ্রহণ করিয়াছিলেন, তাহাকে বা বিতরণকারী বা উৎপাদনকারীর উৎস শনাক্তকরণ করিতে না পারেন; বা

(ঙ) অনিরাপদ জানা সত্ত্বেও মজুদ অথবা বিক্রয়ের উদ্দেশ্যে কোন খাদ্যদ্রব্য গ্রহণ করেন।

সপ্তম অধ্যায়
খাদ্য বিশ্লেষণ ও পরীক্ষণ

৪৫। খাদ্য বিশ্লেষক নিয়োগ ও দায়িত্ব প্রদান।– (১) কর্তৃপক্ষ, এই আইনের উদ্দেশ্য পূরণকল্পে, খাদ্যদ্রব্য বা খাদ্যোপকরণের নমুনা বিশ্লেষণ বা পরীক্ষার জন্য প্রয়োজনীয় সংখ্যক খাদ্য বিশ্লেষক নিয়োগ করিবে।

(২) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, কর্তৃপক্ষ, বিশেষ প্রয়োজনে, সরকার বা স্থানীয় কোন কর্তৃপক্ষের অনুমোদনক্রম, সরকারি বা স্থানীয় কর্তৃপক্ষের কোন কর্মকর্তাকে খাদ্য বিশ্লেষকের দায়িত্ব প্রদান করিতে পারিবে এবং দায়িত্ব পালনের সময় সংশ্লিষ্ট কর্মকর্তা, এই আইনের উদ্দেশ্য পূরণকল্পে, একজন খাদ্য বিশ্লেষক হিসাবে গণ্য হইবেন।

(৩) উপ-ধারা (১) বা (২) এ যাহা কিছুই থাকুক না কেন, কোন ব্যক্তিকে খাদ্য বিশ্লেষক হিসাবে নিয়োগ বা দায়িত্ব প্রদান করা যাইবে না, যদি তিনি প্রত্যক্ষ বা পরোক্ষভাবে কোন খাদ্যদ্রব্য বা খাদ্যোপকরণ উৎপাদন বা বিপণনের সহিত সংশ্লিষ্ট কোন ব্যবসা বা বাণিজ্যের সহিত জড়িত থাকেন।

৪৬। খাদ্যবস্তু পরীক্ষা।– (১) কোন ব্যক্তি খাদ্যদ্রব্য বা খাদ্যোপকরণ সংগ্রহ বা ক্রয় করিবার পর, বিধি দ্বারা নির্ধারিত ফিস পরিশোধপূর্বক, যে স্থান বা উৎস হইতে খাদ্যদ্রব্য বা খাদ্যোপকরণ সংগ্রহ বা ক্রয় করিবেন, তাহা যে, অধিক্ষেত্রের খাদ্য বিশ্লেষকের এখতিয়ারাধীন হইবে, সেই খাদ্য বিশ্লেষকের দ্বারা উহার নমুনা বিশ্লেষণ বা পরীক্ষা করাইতে পারিবেন এবং প্রবিধান দ্বারা নির্ধারিত পদ্ধতিতে উক্তরূপ বিশ্লেষণ বা পরীক্ষার ফলাফলের সনদ গ্রহণ করিতে পারিবেনঃ

তবে শর্ত থাকে যে, কোন ব্যক্তি খাদ্য বিশ্লেষক প্রদত্ত কোন সনদ বা উহার অনুলিপি তাহার ব্যবসায়িক স্থাপনা বা অন্য কোন স্থানে প্রদর্শন করিতে বা বিজ্ঞাপন হিসাবে ব্যবহার করিতে পারিবেন না।

(২) এই ধারার অধীন নিয়োগপ্রাপ্ত খাদ্য বিশ্লেষকের দায়িত্ব ও কর্তব্য প্রবিধান দ্বারা নির্ধারিত হইবে।

৪৭। নমুনা বিশ্লেষণ বা পরীক্ষার জন্য খাদ্যের নমুনা বাধ্যতামূলক বিক্রয় বা সমর্পণ।– (১) খাদ্যদ্রব্য বা খাদ্যোপকরণের নমুনা বিশ্লেষণ বা পরীক্ষার প্রয়োজনে, কর্তৃপক্ষ বা তদ্‌কর্তৃক ক্ষমতাপ্রাপ্ত যে কোন ব্যক্তি, উৎপাদন, প্রক্রিয়াকরণ, বিক্রয় বা প্রস্তুতিতে ব্যবহারের উদ্দেশ্যে রক্ষিত সংশ্লিষ্ট খাদ্যদ্রব্য বা খাদ্যোপকরণের মূল্য প্রদানপূর্বক উহার নমুনা সংগ্রহ করিতে পারিবেনঃ

তবে শর্ত থাকে যে, কোন খাদ্যদ্রব্য বা খাদ্যোপকরণ বিক্রয়ের জন্য না হইলেও উহা নমুনা হিসাবে সংগ্রহ করা যাইবে।

(২) উপ-ধারা (১) এ উল্লিখিত নমুনা বিক্রয়, উৎপাদন, সরবরাহ বা মজুদ স্থলসহ যে কোন স্থান হইতে সংগ্রহ করা যাইবে এবং যে ব্যক্তির দখলে থাকাব্যস্থায় কোন খাদদ্রব্য বা খাদ্যোপকরণের নমুনা সংগ্রহের জন্য যাচনা করা হইবে, সেই ব্যক্তি, এতদুদ্দেশ্যে কর্তৃপক্ষ বা তদ্‌কর্তৃক ক্ষমতাপ্রাপ্ত ব্যক্তির চাহিদা অনুযায়ী, উক্ত নমুনা বিক্রয় বা, ক্ষেত্রমত, সমর্পণ (Surrender) করিতে বাধ্য থাকিবেনঃ

তবে শর্ত থাকে যে, সমর্পণকৃত খাদ্যদ্রব্য বা খাদ্যোপকণের মূল্য দাবী করা হইলে, উক্তরূপ দাবীর এক মাসের মধ্যে দাবীকৃত নমুনার মূল্য পরিশোধ করিতে হইবে।

(৩) এই ধারার অধীন নমুনা সংগ্রহের ক্ষেত্রে নমুনা প্রদানকারী, কর্তৃপক্ষ বা তদ্‌কর্তৃক ক্ষমতাপ্রাপ্ত ব্যক্তির

নিকট, বিশ্লেষণ বা পরীক্ষণের উদ্দেশ্যে, উক্ত নমুনা বিক্রয় বা, ক্ষেত্রমত, সমর্পণ করিয়াছেন মর্মে নির্ধারিত ফর্মে একটি ঘোষণায় স্বাক্ষর করিয়া লিখিতভাবে স্বীকারোক্তি প্রদান করিবেন।

(৪) উৎপাদান বা মজুদস্থল হইতে খাদ্যদ্রব্য বা খাদ্যোপকরণ যে সকল সরবরাহ পথ অতিক্রম করে বা যে সকল স্থানে সরবরাহ বা মজুদ করা হইয়া থাকে, উপ-ধারা (১) এ উল্লিখিত ক্ষমতাপ্রাপ্ত ব্যক্তি বা কর্তৃপক্ষের প্রয়োজনে, সে সকল স্থানে প্রবেশের এবং উক্ত স্থানের যে কোন রেকর্ডপত্র পরিদর্শনের অধিকার থাকিবে।

৪৮। **নমুনা বিশ্লেষণ বা পরীক্ষার ফলাফল সংগ্রহের পদ্ধতি**।– (১) ধারা ৪৬ এর বিধান অনুযায়ী কোন ব্যক্তি খাদ্যদ্রব্য বা খাদ্যোপকরণের নমুনা বিশ্লেষণ বা অন্যভাবে পরীক্ষা করিতে আগ্রহ প্রকাশ করিলে অথবা ধারা ৪৭ এর বিধান অনুসারে কোন নমুনা বিক্রিত বা সমর্পিত হইলে, নমুনা গ্রহণকারী, প্রযোজ্য ক্ষেত্রে,–

(ক) নমুনা বিক্রেতা বা সমর্পণকারীকে বিষয়টি তৎক্ষণাৎ লিখিতভাবে অবহিত করিবেন;

(খ) নমুনা বিক্রেতা বা সমর্পণকারীর উপস্থিতিতে নমুনাকে চারটি অংশে বিভক্ত করিবেন এবং প্রত্যেকটি অংশ, প্রবিধান দ্বারা নির্ধারিত পদ্ধতিতে, চিহ্নিতকরতঃ সিলগালা করিয়া বাঁধিয়া ফেলিবেন এবং অতঃপর,–

(অ) একটি অংশ নমুনা প্রদানকারী বা বিক্রেতাকে প্রদান করিবেন;

(আ) একটি অংশ, ভবিষ্যতে তুলনা করিবার উদ্দেশ্যে, প্রবিধান দ্বারা নির্ধারিত স্থানে সংরক্ষণ করিবেন; এবং

(ই) অবশিষ্ট দুইটি অংশ, প্রবিধান দ্বারা নির্ধারিত পদ্ধতিতে, যথাযথ ধারণপাত্রের উপর নাম, ঠিকানা ও নমুনা বিশ্লেষণ বা পরীক্ষার অভিপ্রায় উল্লেখসহ রেজিস্ট্রিকৃত ডাকযোগে, সুনির্দিষ্ট অধিক্ষেত্রের খাদ্য বিশ্লেষক বা খাদ্য পরীক্ষাগার বা কার্যালয় প্রধানের নিকট প্রেরণ করিবেন।

(২) খাদ্য বিশ্লেষক বা খাদ্য পরীক্ষাগার বা কার্যালয় প্রধান উপ-ধারা (১) এর অধীনপ্রাপ্ত নমুনার দুইটি অংশের মধ্যে একটি অংশ ধারা ৪৯ এর বিধান অনুযায়ী বিশ্লেষণ বা পরীক্ষা করাইয়া পরবর্তী ব্যবস্থা গ্রহণ করিবেন এবং অবশিষ্ট অংশ প্রবিধান দ্বারা নির্ধারিত পদ্ধতি ও স্থানে সংরক্ষণ করিবেন।

৪৯। **নমুনা বিশ্লেষণ বা পরীক্ষা এবং সনদ প্রদানে খাদ্য বিশ্লেষকের দায়িত্ব**।– (১) ধারা ৪৮ এর বিধান অনুযায়ী খাদ্য বিশ্লেষকের নিকট কোন নমুনা বিশ্লেষণ বা পরীক্ষার জন্য উপস্থাপিত হইলে,–

(ক) তিনি নমুনা বিশ্লেষণ বা পরীক্ষার ব্যবস্থা গ্রহণ করিবেন;

(খ) নমুনা প্রাপ্তির তারিখ হইতে সাধারণ ক্ষেত্রে ৭(সাত) কার্যদিবসের মধ্যে এবং জরুরী ক্ষেত্রে ৩(তিন) কার্যদিবসের মধ্যে প্রবিধান দ্বারা নির্ধারিত ফর্মে বিশ্লেষণ বা পরীক্ষার ফলাফল উল্লেখপূর্বক নমুনা প্রেরককে সনদ প্রদান করিবেন; এবং

(গ) বিশ্লেষণের ফলাফলের একটি অনুলিপি কর্তৃপক্ষের নিকট প্রেরণ করিবেন।

(২) এই আইনের অধীন যে কোন তদন্ত, বিচার বা কার্যধারা পরিচালনার ক্ষেত্রে খাদ্য বিশ্লেষক কর্তৃক, প্রবিধান দ্বারা নির্ধারিত ফরমে, সনদ হিসাবে স্বাক্ষরিত কোন দলিল এই ধারার অধীন একটি বিশ্লেষণ বা পরীক্ষার ফলাফলের প্রমাণ হিসাবে গণ্য হইবে।

৫০। **নমুনা বিশ্লেষণ বা পরীক্ষায় আদালতের নির্দেশ**।– (১) এই আইনের অধীন কোন তদন্ত বা বিচার চলাকালে খাদ্য আদালত, প্রয়োজনে, স্বতঃপ্রণোদিতভাবে অথবা বাদী বা বিবাদীর আবেদনক্রমে, যে কোন খাদ্যদ্রব্য বা খাদ্যোপকরণের নমুনা বিশ্লেষণ বা পরীক্ষার জন্য কর্তৃপক্ষকে নির্দেশ প্রদান করিতে পারিবে।

(২) উপ-ধারা (১) এর অধীন খাদ্য আদালত কর্তৃক কোন খাদ্যদ্রব্য বা খাদ্যোপকরণের নমুনা বিশ্লেষণ বা পরীক্ষার জন্য নির্দেশপ্রাপ্ত হইলে কর্তৃপক্ষ, এতদুদ্দেশ্যে সরকার কর্তৃক নির্দিষ্ট পরীক্ষাগারের মাধ্যমে, সংশ্লিষ্ট খাদ্যদ্রব্য বা খাদ্যোপকরণের নমুনা বিশ্লেষণ বা পরীক্ষা করাইয়া উহার প্রতিবেদন আদালতে উপস্থাপন করিবে।

(৩) উপ-ধারা (২) এর অধীন আদালতে উপস্থাপিত প্রতিবেদন সাক্ষ্য হিসাবে গণ্য করা যাইবে।

(৪) এই ধারার অধীন সকল পরীক্ষা বা বিশ্লেষণের ব্যয়, আদালতের নির্দেশনা অনুযায়ী, বাদী বিবাদী বা উভয় পক্ষ কর্তৃক পরিশোধিত হইবে।

অষ্টম অধ্যায়
পরিদর্শন এবং খাদ্যদ্রব্য জব্দকরণ

৫১। পরিদর্শক নিয়োগ ও দায়িত্ব প্রদান।– (১) কর্তৃপক্ষ, এই আইনের অধীন নির্দিষ্ট দায়িত্ব পালনের জন্য প্রয়োজনীয় সংখ্যক নিরাপদ খাদ্য পরিদর্শক নিয়োগ করিবে।

(২) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, কর্তৃপক্ষ, বিশেষ প্রয়োজনে, সরকার বা স্থানীয় কোন কর্তৃপক্ষের অনুমোদনক্রমে, সরকারি বা স্থানীয় কর্তৃপক্ষের কোন কর্মকর্তাকে নিরাপদ খাদ্য পরিদর্শকের দায়িত্ব প্রদান করিতে পারিবে এবং দায়িত্ব পালনের সময় সংশ্লিষ্ট কর্মকর্তা, এই আইনের উদ্দেশ্য পূরণকল্পে, একজন নিরাপদ খাদ্য পরিদর্শক হিসাবে গণ্য হইবেন।

(৩) উপ-ধারা (১) বা (২) এ যাহা কিছুই থাকুক না কেন, কোন ব্যক্তিকে পরিদর্শক হিসাবে নিয়োগ বা দায়িত্ব প্রদান করা যাইবে না, যদি তিনি প্রত্যক্ষ বা পরোক্ষভাবে কোন খাদ্যদ্রব্য বা খাদ্যোপকরণ উৎপাদন বা বিপণনের সহিত সংশ্লিষ্ট কোন ব্যবসা বা বাণিজ্যের সহিত জড়িত থাকেন।

৫২। পরিদর্শকের দায়িত্ব ও কর্তব্য।– (১) পরিদর্শক নিম্নরূপ দায়িত্ব ও কর্তব্য পালন করিবেন, যথাঃ–

(ক) কর্তৃপক্ষের নির্দেশনা অনুযায়ী যে কোন খাদ্য স্থাপনা নিয়মিতভাবে পরিদর্শন;

(খ) প্রযোজ্য ক্ষেত্রে, খাদ্য স্থাপনার লাইসেন্সের শর্তাবলী পর্যবেক্ষণ;

(গ) এই আইন বা বিদ্যমান অন্য কোন আইনের ব্যত্যয় ঘটাইয়া উৎপাদিত, মজুদকৃত, বিক্রিত বা বিক্রয়ের জন্য প্রদর্শিত হইতেছে বলিয়া সন্দেহ হইলে যে কোন খাদ্যদ্রব্য বা খাদ্যোপকরণের নমুনা সংগ্রহ ও পরীক্ষা-নিরীক্ষার জন্য খাদ্য বিশ্লেষকের নিকট প্রেরণ;

(ঘ) খাদ্যদ্রব্যের নমুনা গ্রহণ, মজুদ, জব্দ এবং খাদ্য আদালতের নির্দেশানুযায়ী সকল পরিদর্শন ও গৃহীত রেকর্ডের অনুলিপি প্রদান ও সংরক্ষণ;

(ঙ) এই আইন বা বিদ্যমান অন্য কোন আইনের ব্যত্যয় ঘটাইয়া খাদ্যদ্রব্য বা খাদ্যোপকরণের উৎপাদন, মজুদ বা বিপণন করা হইতেছে কি না তাহা নিরূপণের জন্য, প্রয়োজনীয় ক্ষেত্রে, অনুসন্ধান ও পরিদর্শন;

(চ) অনিরাপদ খাদ্যবাহী বলিয়া সন্দেহ হইলে যুক্তিসঙ্গতভাবে ন্যূনতম সময়ের জন্য যে কোন যানবাহন থামাইয়া তল্লাশী;

(ছ) এই আইনের অধীন কোন মামলায় কোন ব্যক্তির খাদ্য ব্যবসার লাইসেন্স বা নিবন্ধন বাতিল বা স্থগিত করা হইলে, তাহার নাম, ঠিকানা, প্রকৃতি ও ব্যবসা স্থানের রেকর্ড সংরক্ষণ;

(জ) এই আইনের আওতায় পরিচালিত প্রতিটি মামলার ক্ষেত্রে আদালতের সিদ্ধান্তসমূহের রেকর্ড সংরক্ষণ;

(ঝ) এই আইনের অধীন দায়েরকৃত বা রুজুকৃত মামলায় আদালত প্রদত্ত সিদ্ধান্তের অনুলিপি কর্তৃপক্ষের নিকট প্রেরণ;

(ঞ) আমদানি বা বিপণনের জন্য নিষিদ্ধ ঘোষিত সন্দেহজনক খাদ্যদ্রব্য বা খাদ্যোপকরণ আটক;

(ঠ) এই আইনের ব্যত্যয় সম্পর্কে লিখিতভাবে কোন অভিযোগ প্রাপ্ত হইলে, উক্ত অভিযোগ অনুসন্ধান বা, ক্ষেত্রমত, অদন্ত;

(ঠ) ভেজাল খাদ্য জব্দ; এবং

(ড) কর্তৃপক্ষ এবং খাদ্য আদালত কর্তৃক নির্দেশিত অন্যান্য দায়িত্ব পালন।

৫৩। খাদ্য স্থাপনা, ভবন বা গৃহে প্রবেশ করিবার ক্ষমতা।– (১) এই আইনের বিধান লংঘন করিয়া খাদ্য স্থাপনা, ভবন বা গৃহে কোন ঘটনা সংঘটিত হইতেছে কিনা তাহা নিশ্চিত হইবার জন্য পরিদর্শক, কর্তৃপক্ষ কর্তৃক নির্দেশিত পন্থায় যে কোন সময়ে, যে কোন খাদ্য স্থাপনা বা ভবনে প্রবেশ করিতে পারিবেন।

(২) কোন ব্যক্তি উপ-ধারা (১) এর অধীন আইনানুগ কার্যাবলী সম্পাদনের ক্ষেত্রে কোন পরিদর্শককে কোন খাদ্য-স্থাপনা, ভবন বা গৃহে প্রবেশের ক্ষেত্রে বাধা বা প্রতিবন্ধকতা সৃষ্টি করিতে পারিবেন না।

৫৪। জমা-খরচের বহি, রশিদ, দলিল এবং হিসাব দাখিল।– কোন পরিদর্শক, তদন্ত করিবার জন্য, খাদ্যদ্রব্য বা খাদ্যোপকরণ সংক্রান্ত ব্যবসা বা বাণিজ্য পরিচালনাকারী অথবা উৎপাদন বা বিপণনকারীর নিকট, লিখিতভাবে নোটিশ প্রদান করিয়া, উহার সকল ব্যবসা, বাণিজ্য, উৎপাদন, উৎস-সনাক্তকরণ (traceability) বা বিপণন সংক্রান্ত জমা-খরচের বহি, রশিদ ও অন্যান্য দলিলপত্র যাচনা করিতে পারিবেন এবং পরিদর্শকের

চাহিদা অনুযায়ী নোটিশপ্রাপ্ত ব্যক্তি তাহা প্রতিপালন করিতে বাধ্য থাকিবেন।

৫৫। ভেজাল খাদ্য জব্দ করিবার ক্ষমতা।– (১) পরিদর্শক, মধ্যরাত হইতে সূর্যোদয়ের পূর্ব মুহূর্ত পর্যন্ত সময় ব্যতীত, যে কোন সময়ে–

(ক) খাদ্য বিপণনের সরবরাহ স্থল, সরবরাহ পথ, মজুদস্থল বা বিক্রয়ের জন্য রক্ষিত খাদ্যদ্রব্যে ব্যবহারযোগ্য যে কোন বস্তুর অবস্থা, স্থান অথবা উহার উৎপাদন প্রক্রিয়ার অবস্থা পরিদর্শন করিতে পারিবেন; এবং

(খ) খাদ্যদ্রব্যের জন্য ব্যবহৃত বা ব্যবহারের জন্য রক্ষিত উপকরণ বা এইরূপ যে কোন বস্তু এবং খাদ্য প্রস্তুতকরণ বা বিপণনের জন্য ব্যবহৃত যে কোন কৌটা বা ধারণপাত্র পরীক্ষা-নিরীক্ষা করিতে পারিবেন।

(২) উপ-ধারা (১) এর অধীনে যে কোন পরিদর্শন বা পরীক্ষা-নিরীক্ষার জন্য পরিদর্শককে কোন ব্যক্তি বাধা প্রদান বা প্রতিবন্ধকতা সৃষ্টি করিতে পারিবেন না।

(৩) উপ-ধারা (১) এর অধীন পরিদর্শন এবং পরীক্ষাকালে যদি পরিদর্শকের বিশ্বাস করিবার কারণ থাকে যে খাদ্য প্রস্তুতকরণ বা বিপণন সংক্রান্ত কাজে নির্দিষ্ট কোন জীবন্ত বা ক্রিয়াশীল বস্তু, ধারণপাত্র বা উহার উপাদান যাহা মানুষের স্বাস্থ্যের জন্য ক্ষতিকর বা অনুপযোগী বা ভেজাল, তাহা হইলে তিনি ঐ সকল বস্তু বা উহা দ্বারা প্রস্তুতকৃত খাদ্যদ্রব্য জব্দ করিতে পারিবেন।

(৪) উপ-ধারা (৩) এর অধীনে কোন কিছু জব্দের ক্ষেত্রে কোন ব্যক্তি বাধা প্রদান বা প্রতিবন্ধকতা সৃষ্টি করিতে পারিবেন না।

(৫) উপ-ধারা (৩) এর অধীনে যে কোন খাদ্য, উপকরণ বা বস্তুকে ভেজাল বা দূষিত হিসাবে বিশ্বাস করিয়া জব্দ করা হইলে পরিদর্শক জব্দকৃত নমুনাকে ধারা ৪৮ এর বিধান অনুসারে, যথাশীঘ্র সম্ভব, পৃথক করিয়া, নির্ধারিত পদ্ধতিতে, সকল নমুনা বন্টন ও হস্তান্তর করিবেন।

(৬) উপ-ধারা (৩) এর অধীন কোন জীবন্ত বা ক্রিয়াশীল বস্তু, ধারণপাত্র বা উহার উপাদান বা উহা দ্বারা প্রস্তুতকৃত খাদ্যদ্রব্য জব্দ করিবার ক্ষেত্রে, জব্দকারী,–

(ক) খাদ্যদ্রব্য, জীবন্ত বা ক্রিয়াশীল বস্তু, ধারণপাত্র বা উহার উপাদান অবিলম্বে অপসারণ করিবেন; এবং

(খ) অপসারণের পর উহাদিগকে নির্ধারিত পদ্ধতিতে চিহ্ন ও সীলমোহর প্রদান করিয়া নিরাপদ হেফাজতে রাখিবেন এবং, ক্ষেত্রমত, ধারা ৫৬ বা ৫৭ এর বিধান অনুযায়ী প্রয়োজনীয় ব্যবস্থা গ্রহণ করিবেন।

(৭) কোন ব্যক্তি এই ধারার বিধান অনুসারে পরিচালিত কোন অপসারণ কার্যকে বাধা প্রদান বা প্রতিবন্ধকতা সৃষ্টি করিতে পারিবেন না এবং কোন জীবন্ত বা ক্রিয়াশীল বস্তু, উপকরণ খাদ্যদ্রব্য পদার্থ, বা ধারণপাত্র উপ-ধারা (৬) এর দফা (খ) এর বিধান অনুসারে রক্ষিত হেফাজত হইতে অপসারণ করিতে পারিবেন না বা হেফাজতে থাকাকালীন উহা হস্তান্তর করিতে পারিবেন না।

৫৬। জীবন্ত বা ক্রিয়াশীল বস্তু বিনষ্ট, ইত্যাদি।– (১) ধারা ৫৫ এর উপ-ধারা (৩) এর অধীন কোন পরিদর্শক বা কোন কর্তৃপক্ষ হইতে ক্ষমতাপ্রাপ্ত কোন ব্যক্তি কর্তৃক কোন পরিদর্শক বা জীবন্ত বা ক্রিয়াশীল বস্তু, খাদ্যদ্রব্য, উপকরণ, পদার্থ, ধারণপাত্র জব্দ করা হইলে, উহা যে মালিক দখলে পাওয়া যাইবে সেই ব্যক্তি বা মালিকের লিখিত সম্মতিতে দুইজন ব্যক্তির সম্মুখে উহা তৎক্ষণাৎ ধ্বংস করা যাইবে;

(২) যদি উক্তরুপ সম্মতি না পাওয়া না যায়, তাহা হইলে জব্দকৃত জীবন্ত বা ক্রিয়াশীল বস্তু বা উপকরণ, পদার্থ দ্রুত পচনশীল প্রকৃতির হইলে এবং ধারা ৫৫ এর উপ-ধারা (৩) এর অধীন জব্দকারী পরিদর্শক বা ক্ষমতাপ্রাপ্ত কোন ব্যক্তির বিবেচনায় উহা মানব স্বাস্থ্যের জন্য ক্ষতিকর বা মানুষের খাদ্য হিসাবে অনুপযোগী হইলে, উহা তৎক্ষণাৎ ধ্বংস করা যাইবে।

(৩) উপ-ধারা (১) ও (২) এর অধীন ব্যবস্থা গ্রহণের সমুদয় ব্যয় উক্ত জীবন্ত বা ক্রিয়াশীল বস্তু, খাদ্যদ্রব্য, উপকরণ, পদার্থ, বা ধারণপাত্র জব্দের সময় যাহার দখলে পাওয়া যাইবে তাহার নিকট হইতে সরকারি দাবী হিসাবে আদায়যোগ্য হইবে।

৫৭। জব্দকৃত জীবন্ত বা ক্রিয়াশীল বস্তু, উপকরণ, পদার্থ ও ধারণপাত্র নিষ্পত্তি।– (১) ধারা ৫৫ এর উপ-ধারা (৩) এর পরিদর্শক বা এতদ্দ্যুশ্যে কর্তৃপক্ষ হইতে ক্ষমতাপ্রাপ্ত কোন ব্যক্তি কর্তৃক অধীন যে কোন জীবন্ত বা ক্রিয়াশীল বস্তু বা যে কোন উপকরণ, পদার্থ, বা ধারণপাত্র পরিদর্শক কর্তৃক জব্দ করা হইলে, ধারা ৫৬ এর বিধান অনুযায়ী উক্ত জীবন্ত বা ক্রিয়াশীল বস্তু,

উপকরণ, পদার্থ, ধারণপাত্র ধ্বংস করা না গেলে, যে ব্যক্তির দখলে থাকাবস্থায় উহা জব্দ করা হইয়াছে তাহাকে উক্তরূপ জব্দের বিষয়টি এইমর্মে অবহিত করিতে হইবে যে, জব্দকৃত বস্তু, উপকরণ, পদার্থ বা ধারণপাত্রটি এখতিয়ার সম্পন্ন ম্যাজিস্ট্রেটের সম্মুখে উপস্থাপন করা হইবে।

(২) এই আইনে বা আপাততঃ বলবৎ অন্য কোন আইনের অধীন কোন অভিযোগ উত্থাপিত হউক বা না হউক, উপ-ধারা (১) এর অধীন বিবেচনার জন্য কোন জীবন্ত বা ক্রিয়াশীল বস্তু বা যে কোন উপকরণ, পদার্থ বা ধারণপাত্র ম্যাজিস্ট্রেটের সম্মুখে উপস্থাপন করা হইলে ম্যাজিস্ট্রেট, তদ্‌বিবেচনায় প্রয়োজনীয় প্রমাণাদি গ্রহণের পর, যদি মনে করেন যে, উক্ত–

(ক) খাদ্যদ্রব্য, জীবন্ত বা ক্রিয়াশীল বস্তু, উপকরণ বা পদার্থ মানব স্বাস্থ্যের জন্য ক্ষতিকর বা খাদ্য হিসাবে অনুপযোগী বা দুষিত বা ভেজাল-মিশ্রিত; অথবা

(খ) বিক্রয়ের উদ্দেশ্যে ধারণপাত্রটিতে কোন ভেজাল মিশ্রিত খাদ্য, মানব স্বাস্থ্যের জন্য ক্ষতিকর বা মানুষের খাদ্য হিসাবে অনুপযোগী বা দুষিত খাদ্য উৎপাদন বা সংরক্ষণের জন্য ব্যবহার করা হইয়াছে বা ধারণপাত্রটিতে মানব স্বাস্থ্যের জন্য ক্ষতিকর বা মানুষের খাদ্য হিসাবে অনুপযোগী কোন বস্তু, উপকরণ বা পদার্থ রহিয়াছে,–

তাহা হইলে ম্যাজিস্ট্রেট, উক্ত জীবন্ত বা ক্রিয়াশীল বস্তু বা খাদ্যদ্রব্য, উপকরণ, পদার্থ বা ধারণপাত্র কর্তৃপক্ষের অনুকূলে বাজেয়াপ্ত করতঃ কর্তৃপক্ষকে তৎক্ষণাৎ উহা ধ্বংস করিতে নির্দেশ প্রদান করিবেন এবং উক্তরূপ কোন নির্দেশ প্রদত্ত হইলে কর্তৃপক্ষ উহা ধ্বংস বা অন্য কোন ভাবে নিষ্পত্তির ব্যবস্থা গ্রহণ করিবে।

নবম অধ্যায়
অপরাধ, দণ্ড, ইত্যাদি

৫৮। এই আইনের বিধান লঙ্ঘন করিবার দণ্ড।– কোন ব্যক্তি তফসিলের কলাম (৩) এ বর্ণিত এই আইনের কোন বিধান লঙ্ঘন করিলে উহা এই আইনের অধীন অপরাধ হিসাবে গণ্য হইবে এবং তজ্জন্য উক্ত বিধানের বিপরীতে কলাম (৪) এ বর্ণিত দণ্ডে এবং একই বিধান পুনরায় লঙ্ঘন করিলে কলাম (৫) এ বর্ণিত দণ্ডে দণ্ডিত হইবেন।

৫৯। কোম্পানী কর্তৃক বিধান লঙ্ঘন বা অপরাধ সংঘটন।– (১) এই আইন বা তদধীন প্রণীত বিধি বা প্রবিধানের কোন বিধান লঙ্ঘনকারী বা অপরাধ সংঘটনকারী যদি কোম্পানী হয়, তাহা হইলে উক্ত কোম্পানীর মালিক, অংশীদার, স্বত্ত্বাধিকার, চেয়ারম্যান, ব্যবস্থাপনা পরিচালক, পরিচালক জেনারেল ম্যানেজার, ম্যানেজার, সচিব বা প্রত্যক্ষভাবে সংশ্লিষ্ট অন্য কোন কর্মকর্তা, কর্মচারী বা এজেন্ট, যে নামেই অভিহিত হউক না কেন, বিধানটি লঙ্ঘন বা অপরাধ সংঘটন করিয়াছেন বলিয়া গণ্য হইবে, যদি না তিনি প্রমাণ করিতে পারেন যে, উক্ত লঙ্ঘন বা অপরাধ তাহার অজ্ঞাতসারে সংঘটিত হইয়াছে অথবা উক্ত লঙ্ঘন বা অপরাধ রোধ করিবার জন্য তিনি যথাসাধ্য চেষ্টা করিয়া অকৃতকার্য হইয়াছেন।

(২) উপ-ধারা (১) এ উল্লিখিত কোম্পানী আইনগত ব্যক্তিসত্ত্বা (Body Corporate) হইলে, উক্ত উপ-ধারায় উল্লিখিত ব্যক্তিকে অভিযুক্ত ও দোষী সাব্যস্ত করা ছাড়াও উক্ত কোম্পানীকে পৃথকভাবে একই কার্যধারায় অভিযুক্ত ও দোষী সাব্যস্ত করা যাইবে, তবে ফৌজদারী মামলায় উহার উপর সংশ্লিষ্ট বিধান অনুসারে শুধু অর্থদণ্ড আরোপ করা যাইবে।

ব্যাখ্যা।– এই ধারায়–

(ক) 'কোম্পানী' অর্থে যে কোন সংস্থা, সংবিধিবদ্ধ হউক বা না হউক, বাণিজ্যিক প্রতিষ্ঠান, অংশীদারী কারবার, সমিতি, সংঘ বা সংগঠনও অন্তর্ভূক্ত হইবে; এবং

(খ) বাণিজ্যিক প্রতিষ্ঠানের ক্ষেত্রে 'পরিচালক' অর্থে উহার কোন অংশীদার বা পরিচালনা বোর্ডের সদস্যও অন্তর্ভূক্ত হইবে।

৬০। জামিনযোগ্যতা ও আমলযোগ্যতা।– এই আইনের ধারা ২৩, ২৪,২৫, ২৬, ২৭, ২৮, ২৯, ৩০, ৩১, ৩৩, ৩৪, ৩৫ ও ৩৭ এ বর্ণিত অপরাধ আমলযোগ্য (cognizable) ও অজামিনযোগ্য (non-bailable) হইবে এবং উক্ত অপরাধ ব্যতীত এই আইনের অন্যান্য অপরাধ অ-আমলযোগ্য (non-cognizable) ও জামিনযোগ্য (bailable) হইবে।

৬১। অন্য আইনে অপরাধ হইবার ক্ষেত্রে অনুসরণীয় পদ্ধতি।– আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নরূপ যাহা কিছুই থাকুক না কেন, এই আইনের অধীন কোন অপরাধ যদি অন্য কোন আইনে বিশেষ অপরাধ হিসাবে উচ্চতর দণ্ডযোগ্য অপরাধ হইয়া থাকে, তাহা হইলে

উহাকে এই আইনের অধীন নিরাপদ খাদ্য বিরোধী বিশেষ অপরাধ হিসাবে গণ্য করিয়া বিচারের জন্য গ্রহণের ক্ষেত্রে আইনত কোন বাধা থাকিবে নাঃ

তবে শর্ত থাকে যে, সংশ্লিষ্ট অপরাধের প্রকৃতি ও গুরুত্ব বিবেচনা করিয়া যদি কর্তৃপক্ষ মনে করে যে, উক্ত অপরাধের জন্য সংশ্লিষ্ট বিশেষ আদালত বা বিশেষ ট্রাইব্যুনালে, যাহা প্রযোজ্য, উহার বিচার হওয়া সমীচীন হইবে, তাহা হইলে এতদুদ্দেশ্যে চেয়ারম্যানের নিকট হইতে ক্ষমতাপ্রাপ্ত কর্মকর্তার মাধ্যমে, উহার অধিকতর কার্যকর বিচার নিশ্চিত করিবার উদ্দেশ্যে, বিশেষ আদালত বা বিশেষ ট্রাইব্যুনালে যাহা প্রযোজ্য, মামলা দায়েরের লক্ষ্যে চেয়ারম্যান প্রয়োজনীয় ব্যবস্থা গ্রহণ করিবেন।

৬২। **অর্থদণ্ডের অর্থের অংশ অভিযোগকারীকে প্রদান**।– এই আইনের অধীন কোন মামলায় খাদ্য আদালত কোন অভিযুক্ত ব্যক্তিকে দোষী সাব্যস্ত করিয়া কোন অর্থদণ্ড আরোপ করিলে উক্ত অর্থের ২৫ (পঁচিশ) শতাংশ অর্থ প্রণোদনা হিসাবে সংশ্লিষ্ট অভিযোগকারী প্রাপ্ত হইবেনঃ

তবে শর্ত থাকে যে, অভিযোগকারী কর্তৃপক্ষের কোন কর্মকর্তা বা কর্মচারী হইলে, তিনি উক্ত প্রণোদনা প্রাপ্য হইবেন না।

৬৩। **প্রকৃত অপরাধীকে সনাক্তকরণে সহায়তা, ইত্যাদি**।– (১) এই আইনের কোন বিধান লঙ্ঘনজনিত কোন কার্যের সহিত কোন বিক্রেতার জ্ঞাতসারে সংশ্লিষ্টতা না থাকার বিষয়টি যদি সন্দেহাতীত ভাবে বোধগম্য হয় এবং প্রয়োজনবোধে উক্ত বিক্রেতা আইনের বিধান লঙ্ঘনকারীকে সনাক্তকরণে সহযোগিতা করিতে যদি প্রস্তুত থাকেন, তাহা হইলে এই আইনের অধীন অপরাধের জন্য দায়ী করিয়া তাহার বিরুদ্ধে শাস্তিমূলক কোন ব্যবস্থা গ্রহণ না করিয়া আইনের বিধান লঙ্ঘণকারীকে সনাক্তকরণের কার্যক্রম গ্রহণ করা যাইবে।

(২) কোন দোকান হইতে বিক্রিত কোন খাদ্যদ্রব্য দূষিত, ভেজাল, নকল বা ত্রুটিপূর্ণ হইবার ক্ষেত্রে যদি উক্ত খাদ্যদ্রব্য কোন বৈধ বা অনুমোদিত কারখানা, ফ্যাক্টরি বা প্রতিষ্ঠানে উৎপাদিত বা প্রস্তুত হইয়া থাকে এবং যদি সন্দেহাতীতভাবে বোধগম্য হয় যে খাদ্যদ্রব্য প্রস্তুত বা উৎপাদন প্রক্রিয়ার সহিত দোকানের মালিক বা পরিচালকের কোন সংশ্লিষ্টতা নাই এবং প্রয়োজনবোধে যদি উক্ত ব্যক্তি আইনের বিধান লঙ্ঘনকারীকে সনাক্তকরণে সহযোগিতা করিতে প্রস্তুত থাকেন, তাহা হইলে দোকানের মালিক বা পরিচালককে দায়ী করিয়া কোন ফৌজদারী বা প্রশাসনিক কার্যক্রম বা ব্যবস্থা গ্রহণ না করিয়া আইনের বিধান লঙ্ঘনকারীকে সনাক্তকরণের কার্যক্রম গ্রহণ করা যাইবে।

(৩) জীবিকা অর্জনের উদ্দেশ্যে কোন ব্যক্তি কোন খাদ্যদ্রব্য ক্রয় করিয়া হকার বা ফেরিওয়ালা হিসাবে বিক্রয় করিলে এবং অনুরূপ বিক্রিত খাদ্যদ্রব্য যদি নকল, ভেজাল বা অন্য কোনরূপ ত্রুটিপূর্ণ হইয়া থাকে এবং উহার দ্বারা কোন খাদ্যভোক্তার স্বার্থ ক্ষুণ্ন হইয়া থাকে, তাহা হইলে অনুরূপ কারণে যদি সন্দেহাতীতভাবে বোধগম্য হয় যে, তিনি অবৈধভাবে লাভবান হইবার উদ্দেশ্যে সজ্ঞানে বা যোগসাজশে অথবা জানিয়া শুনিয়া উহা খাদ্য ভোক্তার নিকট বিক্রয় করেন নাই এবং প্রয়োজবোধে যদি উক্ত হকার বা ফেরিওয়ালা বিধান লঙ্ঘনকারীকে সনাক্তকরণে কর্তৃপক্ষকে সহযোগিতা করিতে প্রস্তুত থাকেন, তাহা হইলে উক্ত হকার বা ফেরিওয়ালাকে দায়ী করিয়া কোন ফৌজদারী বা প্রশাসনিক কার্যক্রম বা ব্যবস্থা গ্রহণ না করিয়া আইনের বিধান লঙ্ঘনকারীকে সনাক্তকরণের কার্যক্রম গ্রহণ করা যাইবে।

(৪) কাঁচা মৎস্য ও শাক-সবজির ন্যায় দ্রুত পচনশীল কোন খাদ্যদ্রব্য কোন হকার বা ফেরিওয়ালার নিকট বা কোন দোকানে স্বাভাবিক প্রাকৃতিক কারণে পচিয়া যাওয়া অবস্থায় পাওয়া গেলে যদি ইহা সহজেই বোধগম্য হয় যে পচিয়া গিয়াছে জানিয়াও অবৈধভাবে লাভবান হইবার উদ্দেশ্যে সজ্ঞানে বা যোগসাজশে তিনি উহা খাদ্য ভোক্তার নিকট বিক্রয় বা বিক্রয়ের চেষ্টা করেন নাই তাহা হইলে উক্ত হকার, ফেরিওয়ালা বা দোকানদারকে দায়ী করিয়া কোন ফৌজদারী বা প্রশাসনিক কার্যক্রম বা ব্যবস্থা গ্রহণ না করিয়া কর্তৃপক্ষ কর্তৃক পচনশীলতা প্রতিরোধমূলক কার্যক্রম গ্রহণ করা যাইবে।

(৫) এই ধারার অধীন দায় হইতে অব্যাহতিপ্রাপ্ত কোন ব্যক্তি কর্তৃপক্ষ কর্তৃক আদিষ্ট বা অনুরুদ্ধ হইলে তাৎক্ষণিকভাবে নকল বা ভেজালের উৎস উদঘাটনের বিষয়ে এবং প্রয়োজনবোধে বিচার কার্যের সাক্ষী হিসাবে কর্তৃপক্ষকে সহায়তা প্রদান করিতে বাধ্য থাকিবেন।

দশম অধ্যায়

খাদ্য আদালত, অভিযোগ, বিচার, ইত্যাদি

৬৪। খাদ্য আদালত নির্ধারণ, ক্ষমতা ও এখতিয়ার।– (১) এই আইনের অধীন অপরাধ বিচারের জন্য প্রয়োজনীয় সংখ্যক আদালত থাকিবে যাহা বিশুদ্ধ খাদ্য আদালত নামে অভিহিত হইবে।

(২) ফৌজদারী কার্যবিধিতে যাহা কিছুই থাকুক না কেন, উপ-ধারা (১) এর উদ্দেশ্য পূরণকল্পে, সরকার, সুপ্রিম কোর্টের সহিত পরামর্শক্রমে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, প্রথম শ্রেণীর ম্যাজিস্ট্রেট আদালত বা, ক্ষেত্রমত, মেট্রোপলিটন এলাকার জন্য মেট্রোপলিটন ম্যাজিস্ট্রেট আদালতকে বিশুদ্ধ খাদ্য আদালত হিসাবে নির্ধারণ করিবে এবং একাধিক আদালত নির্ধারণ করা হইলে উহাদের প্রত্যেকটি আদালতের জন্য এলাকা নির্দিষ্ট করিয়া দিবে।

(৩) সরকার, সুপ্রীম কোর্টের সহিত পরামর্শক্রমে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, সময় সময়, উপ-ধারা (১) এর অধীন নির্ধারিত খাদ্য আদালতের অধিক্ষেত্র নির্ধারণ বা পুনঃ নির্ধারণ করিতে পারিবে।

(৪) ফৌজদারী কার্যবিধিতে যাহা কিছুই থাকুক না কেন, এই আইনের অধীন কোন ব্যক্তির উপর অর্থদণ্ড আরোপের ক্ষেত্রে খাদ্য আদালতের এই আইনে উল্লিখিত যে কোন পরিমাণ অর্থদণ্ড আরোপ করিবার ক্ষমতা থাকিবে।

৬৫। বিচার।– (১) এই আইনের অধীন সংঘটিত অপরাধ যে খাদ্য আদালতের স্থানীয় অধিক্ষেত্রের মধ্যে সংগঠিত হইবে, সাধারণভাবে সেই আদালতে উহার বিচার অনুষ্ঠিত হইবে।

(২) খাদ্য আদালত এই আইনের অধীন সংঘটিত অপরাধসমূহের বিচার সংক্ষিপ্ত পদ্ধতিতে সম্পন্ন করিবে এবং এতদুদ্দেশ্যে, এই আইনে ভিন্নতর কিছু না থাকিলে, ফৌজদারী কার্যবিধির Chapter XXII-তে বর্ণিত পদ্ধতি, যতদূর প্রযোজ্য হয়, অনুসরণ করিবে।

৬৬। অভিযোগ ও মামলা দায়ের।– (১) খাদ্য ক্রেতা, ভোক্তা, গ্রহীতা বা খাদ্য ব্যবহারকারীসহ যে কোন ব্যক্তি এই আইনের অধীন নিরাপদ খাদ্য বিরোধী কার্য সম্পর্কে চেয়ারম্যান বা তদ্‌কর্তৃক ক্ষমতাপ্রাপ্ত প্রতিনিধি বা পরিদর্শকের নিকট লিখিতভাবে অভিযোগ জানাইতে পারিবেন।

(২) চেয়ারম্যান বা তদকর্তৃক ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা বা পরিদর্শক, এই আইনের অধীন যে কোন অপরাধ সংঘটনের বিষয় অবহিত হইবার পর, প্রয়োজনীয় অনুসন্ধান ও পরীক্ষা-নিরীক্ষান্তে সংশ্লিষ্ট অপরাধের বিষয়ে প্রাথমিকভাবে নিশ্চিত হইলে, খাদ্য আদালতে মামলা দায়ের করিবে।

(৩) এই ধারায় ভিন্নরূপ যাহা কিছুই থাকুক না কেন, যে কোন ব্যক্তি, এই আইনের অধীন মামলা দায়েরের জন্য কারণ উদ্ভব হইবার ৩০ (ত্রিশ) দিনের মধ্যে, নিরাপদ খাদ্য বিরোধী যে কোন কার্য সম্পর্কে খাদ্য আদালতে মামলা দায়ের করিতে পারিবেন।

৬৭। তদন্ত ও তদন্তকারী কর্মকর্তা।– (১) চেয়ারম্যান কর্তৃক ক্ষমতাপ্রাপ্ত কর্মকর্তা বা স্থানীয় অধিক্ষেত্রে নিয়োজিত পরিদর্শক তদন্তকারী কর্মকর্তা হিসাবে এই আইনে বর্ণিত সকল অভিযোগের তদন্ত করিবেন।

(২) এই আইনের অধীন কোন অভিযোগের তদন্তকার্য পরিচালনাকালে তদন্তকারী কর্মকর্তা ফৌজদারী কার্যবিধির বিধান অনুসরণে থানার ভারপ্রাপ্ত কর্মকর্তার ন্যায় ক্ষমতা প্রয়োগ করিবেন।

(৩) উপ-ধারা (১) এর অধীন তদন্তকালে তদন্তকারী কর্মকর্তা, প্রয়োজনে, আইন শৃংখলা রক্ষাকারী বাহিনীসহ অন্য যে কোন সংস্থার নিকট সহায়তা যাচনা করিতে পারিবেন এবং এইরূপ সহায়তা যাচনা করা হইলে উক্ত সংস্থা যাচিত সহায়তা প্রদান করিতে বাধ্য থাকিবে।

৬৮। তদন্তের সময়সীমা।– (১) চেয়ারম্যান কর্তৃক ক্ষমতাপ্রাপ্ত কর্মকর্তা বা পরিদর্শক খাদ্য আদালত কর্তৃক কোন অপরাধ তদন্তের আদেশ প্রদানের তারিখ হইতে পরবর্তী ৯০ (নবক্ষই) কার্যদিবসের মধ্যে তদন্তকার্য সম্পন্ন করিবেন।

(২) কোন যুক্তিসঙ্গত কারণে, উপ-ধারা (১) এ উল্লিখিত সময়সীমার মধ্যে, তদন্তকার্য সম্পন্ন করা সম্ভব না হইলে, তদন্তকারী কর্মকর্তা কারণ লিপিবদ্ধ করিয়া অতিরিক্ত ৩০ (ত্রিশ) কার্যদিবসের মধ্যে তদন্তকার্য সম্পন্ন করিবেন এবং তৎসম্পর্কে কারণ উল্লেখপূর্বক খাদ্য আদালতকে লিখিতভাবে অবহিত করিবেন।

(৩) উপ-ধারা (২) এ উল্লিখিত সময়সীমার মধ্যেও তদন্তকার্য সম্পন্ন করা না হইলে, সংশ্লিষ্ট তদন্তকারী কর্মকর্তা উক্ত সময়সীমা অতিক্রান্ত হইবার ২৪ (চবিক্ষশ) ঘন্টার মধ্যে উক্তরূপ তদন্তকার্য সম্পন্ন না হওয়া সম্পর্কে খাদ্য আদালতকে লিখিতভাবে অবহিত করিবেন।

[চলিবে]