14.8.16 , 16.8.16 , 16.8.16, 17.08.16 , 18.08.16

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 804 OF 2001.

IN THE MATTER OF:
An application under Article 102 of the Constitution of the People's Republic of Bangladesh.
-AND-
IN THE MATTER OF :
Md. Abdul Mannan Khan .....Petitioner
-VERSUS-
Bangladesh and others .....Respondents

Mr. Nizamul Haque with
Dr. Shahdeen Malik and
Mrs. Amatul Karim,Advocates .....For petitioner.

Mr. M.A. Malek,
Mr. A.F.M.Hasan Arif,
Mr. Mahmudul Islam &
Mr. Md. Munsurul Huq Chowdhury, Advocates
.....For Amicus Curiae.
Mr. Feda M. Kamal, Addl. A. G. with
Mr. Zaman Akhtar, D.A.G.
Mr. Md. Safed Ali, A.A.G. and
Mr. Sk. Taimur Reza Hasan, A.A.G.
.....For the respondent Nos 1-3
Mr. Sk. Mohd. Sirajul Islam with
Mr. Kazi Firoz Rashid,
Mr. Abdul Monin Chowdhury &
Mr. Shamsur Rahman, Advocates
..... For the Respondent No 4.

Heard on 14th, 21st 22nd March, 12th 18th, 24th, 26th, April, 2nd 21st & 24th May, 2006.

Judgment on 25th May, 2006.

Present:
Mr. Justice Md. Muzammel Hossain
And
Mr. Justice Farid Ahmed

MD. MUZAMMEL HOSSAIN,J.

1. This Rule was issued calling upon the respondent Nos.1 and 3 to show cause as to why they should not be directed to perform their statutory duties and functions for realising the remaining fine amount of Tk.2,74,35,000/- from the

respondent No.4 and why the respondent No.4 should not be directed to pay the balance fine amount of Tk.2,74,35,000/- and or such other or further order or orders passed as to this Court may seem fit and proper.

2. The petitioner being a dedicated and ardent human rights activist and an Advocate of the Supreme Court of Bangladesh is concerned with the human rights of the marginalised segments of the society and motivated with the high ideals filed a number of public interest litigations to ensure accountability and transparency of executive actions/inactions and constitutional validity of various enactments.

3. The respondent No.1 is Bangladesh, represented by the Secretary, Ministry of Law, Justice and Parliamentary Affairs. The respondent No.2 is the 2nd Court of Additional Sessions Judge and Court of Special Judge, Dhaka who passed the judgment and order of conviction and sentence in Special Case No.11 of 1992 on 7.06.1993. The respondent No.3 is the Deputy Commissioner and Collector, Dhaka and the respondent No.4 is the convict Husain Mohammad Ershad.

4. The petitioner being engaged in public interest litigation to ensure and enhance public awareness of the duties and obligations of Government agencies and increase accountability and transparency of State actions is particularly concerned to note that the respondent No.4 former President Husain Mohammad Ershad, along with 16 other accused-persons were tried in the Special Case No.11 of 1992 by the 2nd Court of Additional Sessions Judge and Court of Special Judge, Dhaka and after conclusion of the trial, the learned

Special Judge was pleased to convict the respondent No.4 under section 5(1)(e) of the Prevention of Corruption Act of 1947 and sentenced him to suffer simple imprisonment for 7 years and confiscated to the State the plot Nos. 49,49A, 49B and 49C within Kowran Bazar Commercial Area together with the buildings and structures standing thereon under section 5(2) of the said Act.

5(a). Being aggrieved by the aforesaid judgment and order the respondent No.4 preferred Criminal Appeal No.1132 of 1993 before the High Court Division. The High Court Division by the judgment and order dated 24.08.2000 dismissed the aforesaid criminal appeal and reduced the sentence of 7 years simple imprisonment (S.I.) to 5 years simple imprisonment and to a fine of Tk.5, 48,70,800/- in default, to suffer simple imprisonment for 2 years more and the High Court Division also affirmed the order of confiscation of the aforesaid plot Nos.49, 49A, 49B and 49C of Kowran Bazar Commercial Area including the building and structures thereon known as "Janata Tower". The respondent No.4 being aggrieved by the aforesaid judgment and order passed by the Hon'ble High Court Division filed Criminal petition for leave to Appeal No.226 of 2000 before the Appellate Division of the Supreme Court of Bangladesh.

(b). The Appellate Division by judgment and order dated 23.11.2000 dismissed the Leave Petition with modification of the substantive sentence of 5 years reducing to the period already undergone and maintained fine of Tk.5,48,70,800/-, in default to suffer simple imprisonment for 6 months more. The respondent No.4 has been undergoing the sentence of simple imprisonment

for 6 months since 20.11.2000 and the fine of Tk.5,48,70,800/- has not been paid as yet. It is stated that Special Case No.11 of 1992 and all other subsequently filed appeals conclusively established that the transactions involving transfer of the lands of Plot Nos.49, 49A, 49B and 49C of Kowran Bazar Commercial Area were done by the respondent No.4 by abusing his position as the President of the country and he thereby obtained pecuniary advantage for himself and others and committed criminal misconduct under section 5(1)(d) of the Prevention of Corruption Act of 1947. The payment of Taka six and half crores for construction of building on the said land was disproportionate to the known source of income of Husain Mohammad Ershad, the respondent No.4 and he thereby also committed an offence under section 5(1)(e) of the Prevention of Corruption Act, 1947. It is also stated that the Prevention of Corruption Act, 1947 was enacted to provide for a more effective law to prevent and eliminate bribery and corruption from amongst the public servants.

6. According to a recent news report published in the national daily news papers, the members of a political party are raising money to pay the fine imposed upon the respondent No.4 and obtain release of the said respondent which is completely contrary to the legislative intent of not allowing an accused to benefit from his crimes. Section 69 of the Penal Code is not applicable in this case because this case deals with Anti-Corruption Laws which is a different statute in this regard. Fine imposed for an offence of the Penal Code and fine imposed for an offence under Anti-Corruption Laws being not the same section

69 of the Penal Code is not applicable and as such dealing with the Respondent No.4 under section 69 of the Penal Code is without lawful authority.

7. Being aggrieved by the inaction of the respondents to perform statutory public duties and actions for realising the fine of Tk.5,48,70,800/- from H.M. Mohammad Ershad a convict in Special Case No.11 of 1992 of the 2nd Court of Additional Sessions Judge and Court of Special Judge, Dhaka, the petitioner preferred the writ petition and obtained the instant Rule.

8(a). The petitioner filed Supplementary-Affidavit annexing a notice demanding justice which is annexed as Annexure-D. The petitioner also filed a Supplementary-Affidavit annexing the Order No.118 dated 28.02.2001 passed by the learned Additional Sessions Judge and Ex-officio Special Judge-in Charge, Dhaka in Special Case No.11 of 1992 (Annexure-C) stating that the respondent No.4 paid Tk.2,74,35,400/- on account of fine and had served more than three months of imprisonment in default of payment of the rest of the fine amount and for release from jail as per provision of section 69 of the Penal Code. The learned Special Judge by order No.118 dated 28.02.2001 released him from jail. It is also stated that after 5 months of issuance of the present Rule the General Certificate Officer and Magistrate, Ist Class, Dhaka issued a notice on 4.09.2001 together with a copy of the certificate upon the respondent No.4 to pay the remaining amount of Tk.2,74,35,400/- on account of fine. In the said notice it was stated that in case of failure to pay, the money would be realised by execution of certificate by sale of his moveable and immoveable properties.

(b). Thereafter the respondent No.4 filed Writ Petition No.3168 of 2002 challenging Certificate Case No.19 জরিমানা/2001 which was rejected on 21.03.2006 as being not pressed. It is further stated that the learned Special Judge passed order No.121 dated 4.03.2001 stating that at the time of passing the Order No.118 dated 28.02.2001 under section 69 of the Penal Code the learned Public Prosecutor did not raise any objection rather he has supported the contention of the respondent No.4 for his release from jail on payment of 50% of the fine and the learned Special Judge also expressed his displeasure the way the Public Prosecutor represented the case on behalf of the respondent government. However it was observed relying on the case reported in 5 MI R(HCD)299 that the respondent No.4 was released from jail under section 69 of the Penal Code on payment of 50% of the fine amounting to Tk.2,74,35,400/- after serving out of the more than 50% of the period of imprisonment. It was also observed that though by order No.118 respondent No.4 was directed to be released yet no such order was passed exempting him from the payment of fine amounting to Tk.2,74,35,400/-. The Court by the aforesaid Order No.118 dated 28.02.2001 did not exonerate the respondent No.4 in making payment of 50% of the fine.

(c). Since the Court has passed the order of release from jail on 28.02.2001 it has become functus officio after passing of the said order. In other words, the learned Special Judge only allowed the respondent No.4 to get released from the jail after payment of 50% fine and serving half of the sentence but the respondent No.4 was not relieved from payment of the remaining amount of fine due to him. It is further stated that the aforesaid order of the Court dated

4.03.2001 clearly override the contention that Section 69 of the Penal Code bars the realisation of the remaining half of the fine as the Court seems to take into account the provision of section 386(1) of the Code of Criminal Procedure which provides for recovery of full amount of fine for special reasons. The Certificate Case being CC No.19 জরিমানা/2001 is pending before the General Certificate Court, Dhaka and next date was fixed on 15.06.2006. It is stated that the respondent No.4 is not acting with clean hands which would be clear from the fact that when Certificate case was started after issuance of the Rule he took a device by challenging the Certificate Case in Writ Petition No.3168 of 2002 which was subsequently rejected for non-prosecution. It is further stated that in interpreting and understanding the provisions of the Prevention of Corruption Act, 1947, Criminal Law Amendment Act 1958 and Penal Code, it is to be considered that Article 20 of the Constitution, provides for the general principle of prohibition on unearned income to the effect that a legal process or proceedings must not end in permitting a convict to retain unearned income accumulated through corruption.

9. The respondent No.4 filed Affidavit-In-Opposition denying the material allegations made in the writ petition stating, inter alia, that writ petition has been filed malafide as the same has been filed at the instance of the political rivals of the respondent No.4. It is stated that the respondent No.4 surrendered to jail custody on 20.11.2000 and his Petition for Leave to Appeal was heard on 21st, 22nd and 23rd November, 2000. The respondent No.4 had already paid Tk.2, 74,35,400/- being half of the total fine of Tk.5,48,70,800/- while serving

the imprisonment on account of fine. The respondent No.4 served more than 3 months i.e. half of the imprisonment and the respondent no.4 having paid half of the fine filed an application under section 69 of the Penal Code for his release and the learned Judge of the Special Court upon hearing and with the concurrence of the Public Prosecutor released him from jail on 28.02.2001 by order No.118. It is stated that the learned Special Judge having been satisfied on receipt of Tk.2,74,35,400/- from the respondent No.4 released him with the concurrence of the public prosecutor in accordance with the provisions of section 69 of the Penal Code. It is further stated that since the Certificate case is pending before the General Certificate Officer the Rule has become infructuous and the same is liable to be discharged. It is finally stated that the General Certificate Officer issued a notice together with a copy of the certificate upon respondent No.4 to pay Tk. 2,74,35,400/- on account of fine failing which the same will be recovered by the execution of the certificate by sale of moveable and immoveable properties and the certificate case is pending for hearing and as such the Rule is liable to be discharged.

10. During the course of hearing in response to our query Mr. Sheikh Mohd. Serajul Islam, the learned Advocate for the respondent No.4 has produced a true copy of writ petition No.3108 of 2002 with annexures.

11(a). Mr. Nizamul Haque, the learned Advocate for the petitioner submits that having regard to the prosecution case and the judgment and orders delivered in Special Case No.11 of 1992, Criminal Appeal No.1132 of 1993 by the High Court Division and Criminal Petition for Leave to Appeal No.226 of 2000 by the

Appellate Division it has been conclusively established that the transaction involving transfer of the land of Plot Nos. 49,49A, 49B and 49C within Kowran Bazar Commercial Area were done by respondent No.4 by abusing his position as the President of the republic and he thereby obtained pecuniary advantage for himself and others and committed criminal misconduct under Section 5(1)(d) of the Prevention of Corruption Act 1947 and the payment of Tk. 6.5 (six and half) crores for construction of a building on the said land was disproportionate to the known source of income of the Respondent No.4 and thereby also he committed an offence under section 5(1)(e) of the Prevention of Corruption Act, 1947 and that the respondent- Government is guilty of inaction in not performing the statutory Public duties and functions for realising the fine of Tk.5,48,70,800/- from the respondent No.4, a convict in a special case and as such the Rule is liable to be made absolute. He submits that Prevention of Corruption Act, 1947 read with Criminal Laws Amendment Act, 1958 having been enacted to prevent and eliminate bribery and corruption from amongst the public servants and for speedy trial and more effective punishment of offences committed by the highest public servants which is highly damaging to the national economy and national interest. Mr. Haque contends that special offences created under those Acts which provide for punishment in the form of fine shall not be less than the gain found to have been derived by the accused by the commission of the offence and as such a fine imposed upon the respondent No.4 a convict in a special case being a financial punishment as distinguished from physical punishment and it must be realised from him in all normal

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circumstances and the release of the respondent No.4 by order dated 28.02.2001 on payment of 50% of the fine imposed without realising the remaining 50% of the fine which being a financial punishment has been made without lawful authority and the respondent should be directed to recover the outstanding fine from the accused respondent No.4 in accordance with law. It is submitted on behalf of the petitioner that in view of the provisions of Section 3 of the Criminal Laws Amendment Act, 1958 to the effect that the Government shall by Notification in the Official Gazette, appoint as many Special Judges as may be necessary to try and punish offences specified in the schedule under section 5 of the said Act and that section 69 of the Penal Code not being applicable in a special case and not amenable within the jurisdiction of a Special Judge appointed under Section 3, the direction to release the respondent No.4 holding that he is liable to be released under section 69 of the Penal Code on such proportionate payment of fine paid is not tenable in law.

(b). Mr. Haque further contends that the fine imposed by the Special Judge upon an accused for offences under the Prevention of Corruption Act 1947 is of the nature of financial punishment as distinguished from physical punishment as is evident from the provisions of section 5(2) of the Prevention of Corruption Act, 1947 and section 9 of the Criminal Laws Amendment Act, 1958 and that the fine imposed under this special law being a charge upon the assets of the convict as a public due and it continues to be so even after his death, it must be recovered with utmost promptitude and the accused has no option in the matter to plead that he would prefer to suffer imprisonment for a fixed term in lieu of

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payment of the fine and as such the fine must be realised from him in all normal circumstances. In this context Mr. Haque refers to the decisions of the cases of Ali Hossain and others Vs. The State reported in 52 DLR(HCD)282 and Rowshan Ali Vs. State reported in 52 DLR(HCD) 510. He finally submits that having regard to the purpose and intendment of the special law, namely, Prevention of Corruption Act 1947 and Criminal Laws Amendment Act, 1958 which are enacted for the purpose of eradicating bribery and corruption and also for more speedly trial and more effective punishment of certain offences, special punishment in the form of fine which shall not be less than the gain found to have been derived by the commission of the offence and that the fine being a financial punishment must be realised from the accused respondent No.4 and he should not be allowed to gain profit or retain material benefit through corruption as the intendment of the legislation like the Prevention of Corruption Act will be frustrated if an accused is allowed to retain even half of the ill gotten property by undergoing imprisonment in default of fine and as such the respondent Government be directed to perform it's statutory duties and functions for realising the fine of Tk.2,74,35,40/- as the public dues and the Rule is liable to be made absolute.

12. Mr. Sheikh Mohd. Serajul Islam, the learned Advocate for the respondent No.4 having placed the Affidavit-in-Opposition submits that the writ petition has been filed with malafide intention at the instance of the political rivals of the respondent No.4 and as such the Rule is liable to be discharged. He then submits that the respondent No.4 has already paid Tk.2,74,35,400/- being half

of the total fine of Tk. 5,48,70,800/- while he had been serving the imprisonment in default of payment of fine and that he having served more than 3 months imprisonment i.e. half of the imprisonment paid half of the fine and then filed an application under section 69 of the Penal Code for his release and the Special Judge upon hearing released him from jail custody by order dated 28.02.2001 and as such there is no illegality in releasing the respondent No.4 as he paid 50% of the fine and served 50% of imprisonment which is more than 3 months and is proportionate to the fine unpaid. During the course of submissions in response to our query Mr. Islam submits that the General Certificate Officer, Dhaka had issued notice together with the certificate upon the respondent No.4 to pay a fine of Tk.2,74,35,400/- in certificate Case No.19 জরিমানা/2001 which was challenged by the respondent No.4 in Writ Petition No.3108 of 2002 obtaining a Rule Nisi which was discharged for non-prosecution and consequently the certificate case has been still pending before the General Certificate Court and as such the present Rule is liable to be discharged as being infructuous. Alternatively he submits that the General Certificate Officer and Magistrate, Ist Class, Dhaka had issued notice together with the copy of the certificate upon the respondent No.4 to pay Tk.2,74,35,400/- on account of fine failing which the same will be recovered by the execution of the certificate case by sale of his moveable and immovable properties and the said certificate case being pending for hearing the present Rule is liable to be discharged. He finally submnits that the respondent No.4 have already paid Tk.2,74,35,400/- out of the total fine of Tk.5,48,70,800/- and

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in lieu of the balance amount of fine he had served in jail for which the Court of Special Judge by order No.118 dated 28.02.2001 released the respondent No.4 and there is no fine due from him and that over an above the Certificate Officer issued a certificate illegally and without jurisdiction for the balance amount in C. Case No.19 জরিমানা/2001 which is pending and as such the Rule is liable to be discharged.

13. Since complicated questions of law of great public importance have arisen we have invited the learned Senior Advocates of the Supreme Court namely Mr. M.A. Malek, Mr. Mahmudul Islam, Mr. A.F.M.Hasan Arif and Mr. Md. Munsurul Huq Chowdhury as the Amicus Curiae to assist the court. Mr. Malek. Amicus Curiae submits that since the Prevention of Corruption Act read with Criminal Laws Amendment Act 1958 envisage provisions for imposing sentence of fine without any provision for execution, the provisions of Cr.P.C. and the Penal Code are applicable and in that view of the matter there is no illegality on the part of the learned special Judge in releasing the respondent No.4 on payment of 50% of the fine and serving out the sentence of imprisonment of the remaining period which is not less than the proportionate half of the amount of fine unpaid. He then submits that since the Special law is silent as to the execution of fine imposed upon the respondent No.4, the provisions of section 69 of the Penal Code read with section 386 Cr.P.C. are applicable in the present case and as such respondent No.4 should not be directed to pay the unrealised amount of fine. He finally submits that the respondent No.4 would suffer from double jeopardy in violation of Article 32

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of the Constitution if he be compelled to make remaining amount of fine against which he had served out 50% of the terms of sentence of imprisonment.

14(a). Mr. Md. Munsurul Huq Chowdhury, the Amicus Curiae, has placed before us the judgments and orders passed by the Court of Divisional Special Judge, the High Court Division and the Appellate Division and submits that Section 9 of the Criminal Law Amendment Act 1958 provides for punishment of offences charged before the Special Judge prescribing limitation on the imposition of fine which should not be less than the gain derived by the accused in consequence of the commission of the offence and also confiscation of the property of the accused to the government. He then submits that the very purpose of Prevention of Corruption Act, 1947 and the Criminal Laws Amendment Act 1958 is for the more effective prevention of bribery and corruption and for the more Speedy Trial and more effective punishment and these special laws with special provisions for imposition of fine as the punishment is in the nature of financial punishment as distinguished from physical punishment and it must be realised from the accused under all normal circumstances and as such the respondent Government should be directed to take proper steps for realisation of the remaining fine of Tk.2,74,35,400/- from the respondent No.4. Mr. Chowdhury has referred to section 5(1)(d), 5(1)(e) and 5(2) of the Prevention of Corruption Act, 1947 and section 9 of the Criminal Laws of Amendment Act, 1958 and submits that the very scheme and purpose of the Special Law is to impose fine in the nature of financial punishment as distinguished from physical punishment and it is a charge upon

the assets of the accused as a public due and as such it must be realised from him under all normal circumstances.

(b). He further submits that the fine has been imposed as a public due in view of the provisions of section 5(2) the Act of 1947 and Section 9 of the Criminal Laws Amendment Act, 1958 and as such the main purpose of the legislation is to recover the fine as a public due even though the property of the accused should also be confiscated to the Government. He further submits that section 9 of the Criminal Law Amendment Act, 1958 is a complete section and no other enabling provision is required for recovery of a fine but alternatively he submits that section 386 Cr.P.C. shall be made applicable in a limited manner in so far as this is not inconsistent with the provisions of section 9 of the Criminal Law Amendment Act. He contends that even under the provisions of Section 386 whenever an offender has been sentenced to pay a fine, the Court can issue a warrant for the levy of the fine or issue warrant to realise the amount of fine for execution according to civil process. He submits that according to proviso to Section 386 even if the offender has undergone the whole of such imprisonment in default of payment of fine the Court may issue such warrant to recover the remaining fine for special reasons to be recorded in writing.

15. Mr. A.F.M. Hasan Arif, the learned Advocate as the Amicus Curiae has placed before us the various provisions of Prevention of Corruption Act, 1947 and also Criminal Law Amendment Act 1958 and submits that the very purpose of the special law is to make effective provision for the prevention of corruption. Then he submits that the provisions of the Code of Criminal Procedure as a whole are

not made applicable in a special law rather some of the provisions of the Code of Criminal Procedure is applicable unless these are not inconsistent with the provisions of the special law. He also submits that the section 9 of the Criminal Law Amendment Act 1958 having provided a punishment of an offence with a departure from the provisions of Cr.P.C. and the Penal Code prescribed certain limitation regarding the amount of fine to be imposed being not less than the gain found to have been derived by the accused by the commission of the offence and also confiscation of the whole or any part of the property of the accused to the Government. Referring to section 25 of the General Clauses Act, the provisions of the Penal Code and the Code of Criminal Procedure he submits that the issuance and execution of the warrant for the levy of fine having been made applicable under the Prevention of Corruption Act, 1947. Section 69 of the Penal Code is applicable in the instant case and as such respondent No.1 should not be directed to pay the remaining amount of fine of Tk.2,74.35.400/- when he has already undergone or served out the 50% sentence in default of payment of fine. He also submits that section 386 Cr.P.C. is applicable for recovery of fine under the special law and the said law is silent about the execution of the sentence of fine. Mr. Arif contends that the Rule being in the nature of mandamus the final order of the release of the respondent NO.4 by the Special Court invoking jurisdiction under section 69 of the Penal Code having not been challenged by the petitioner and no direction can be given on the respondent Nos.1-3 and he finally contends that though the

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petitioner filed a public interest litigation yet he should have challenged the final order dated 28.02.2001 for release of the respondent No.4.

16. Mr. M.A. Malek, the learned Senior Advocate as the Amicus Curiae finally submits that since section 69 of the Penal Code is made applicable for execution of sentence under the special law no direction in the form of mandamus can be issued upon the respondent No.1 and as such the Rule is liable to be discharged.

17. Mr. Nizamul Huq, the learned Advocate for the petitioner in reply to the submissions made by the learned Advocates for the respondents and the Amicus curiae has placed before us the Supplementary-Affidavit dated 21.05.2006 and submits that the Special Judge by order No.121 dated 4.03.2001 having passed an order rejecting the respondent-Government's application for re-calling the order dated 28.02.2001 observed that by the earlier order the Special Judge has not exonerated the respondent No.4 from making payment of the remaining amount of fine rather by the said order on payment of 50% of the fine he was released from jail. He then submits that by the order dated 4.03.2001 the learned Special Judge having referred to the decision reported in 5 MLR(HCD)299 observed that under the provisions of section 386 Cr.P.C. remaining amount of fine should be recovered from the respondent No.4 and accordingly respondent No.1 instituted Certificate Case No.19 জরিমানা/2001 which is pending before the General Certificate Court, Dhaka and the next date of which was fixed on 15.06.2006 and that this latest development also justified

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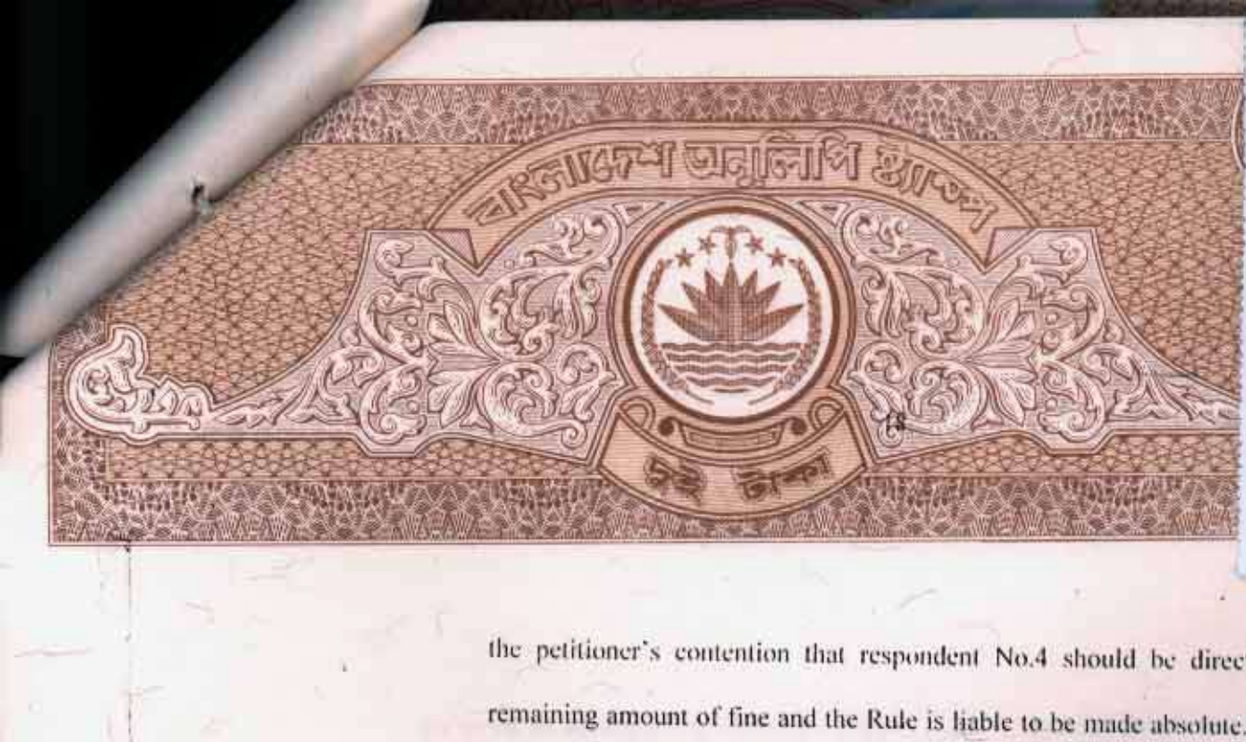

the petitioner's contention that respondent No.4 should be directed to pay remaining amount of fine and the Rule is liable to be made absolute. He finally submits that under the Prevention of Corruption Act 1947 read with Criminal Law Amendment Act, 1958 the imposition of fine by the Special Judge upon the respondent No.4 is in the nature of a financial punishment not a physical punishment and as such the same should be recovered from the respondent No.4 under the aforesaid Certificate Case and the Rule is liable to be made absolute. He finally refers to Article 20(2) of the Constitution and submits that in interpreting and understanding of the provisions of the Prevention of Corruption Act, 1947 and Criminal Law Amendment Act, 1958 and the Penal Code, the provisions of Article 20(2) of the Constitution of the Peoples Republic of Bangladesh has to be considered which provides for general principle of prohibition of unearned income.

18. We have perused the writ petition and Supplementary-Affidavits filed on behalf of the petitioners. Affidavit-In-opposition filed on behalf of the respondent No.4 and considered the submissions made by the learned Advocates appearing on behalf of both sides and the learned Senior Advocates as the Amicus Curiae appearing on our invitation to assist the Court.

19. Admittedly the respondent No.4 was convicted by the Court of the Special Judge, Dhaka in Special Case No.11 of 1992 under section 5(2) of the Prevention of Corruption Act, 1947 for committing the offence of Criminal misconduct under section 5(1)(d) and 5(1)(e) of the said Act and sentenced to suffer simple imprisonment for 7 years. The respondent No.4 appellant

preferred an appeal being Criminal Appeal No.1132 of 1993 before the High Court Division. A Division Bench of this Court by judgment and order dated 24.08.2000 dismissed the appeal and affirmed the judgment and order of conviction of the accused respondent No.4 and reduced the sentence of 7 years simple imprisonment to a period of 5 years simple imprisonment and to pay a fine of Tk.5,48,70,800/- in default, to suffer simple imprisonment for 2 years more. The accused respondent No.4 preferred an appeal before the Appellate Division being Criminal Petition for Leave to Appeal No.226 of 2000 which was dismissed by the Appellate Division by the judgment and order dated 23.11.2000 with modification of the sentence reducing the substantive sentence of 5 years to a period already under gone by maintaining fine of Tk.5,48,70,800/- in default to suffer simple imprisonment for 6 months more. It appears that respondent No.4 without making payment of fine of Tk.5,48,70,800/- served imprisonment for more than 3 months and then deposited Tk.2,74,35,400/- which is half of the amount of fine and that he was released under section 69 of the Penal Code by order dated 28.02.2001 (Annexure-C) passed by the learned Special Judge.

20. The petitioner being an Advocate of the Supreme Court and a human rights activist filed the present Writ Petition as a public interest litigation to ensure accountability and transparency of executive actions/inactions and the constitutional validity of various enactments. According to the petitioner the respondent Nos.1 to 3 failed to perform statutory duties and functions to realise remaining amount of fine of Tk.2,74,35,400/-. The petitioner sought direction

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from this Court upon them to realise the remaining amount of fine from the respondent No.4. Admittedly respondent No.4 was found guilty under section 5(2) of the Prevention of Corruption Act, 1947 for committing offence of criminal misconduct under section 5(1)(d) and Section 5(1) (e) of the said Act and he was sentenced to suffer simple imprisonment for 7 years. We have already noticed that ultimately the Appellate Division has reduced the sentence to the period already under gone and maintained sentence of fine of Tk.5,48,70,800/- in default to suffer simple imprisonment for 6 months only.

21. The Prevention of Corruption Act, 1947 is a special law enacted with the purpose of making more effective provisions for the prevention of bribery and corruption from amongst the public servants of the country. Under Section 5(1) of the Prevention of the Corruption Act,1947 a new offence of "criminal misconduct" of public servants has been created which is punishable under Sub-Section (2) of Section 5. Section 5(1) contains comprehensive and wide range of actions in matters of corruption of the public servants. We have already noticed that the accused respondent No.4 was convicted under Section 5(1)(d) and 5(1)(e) of the Act II of 1947. According to Section 5(1)(d) of the Prevention of Corruption Act,1947 a public Servant is said to commit the offence of Criminal misconduct if he by corrupt or illegal means or by other wise abusing his position as public servant obtains or attempts to obtain for himself or for any other person any valuable thing or pecuniary advantage. Further according to Section 5(1)(e) a public servant is said to commit criminal misconduct if he or any of his dependants is in possession of pecuniary

resources disproportionate to his known source of income for which the public servant cannot reasonably account. The ingredients constituting the offence under Section 5(1)(d) of the Act are almost identical with the ingredients of section 161 of the Penal Code with the additional ingredients of "corrupt or illegal means or otherwise by abusing his official position as public servant". The offence of criminal misconduct under Section 5(1)(e) of the Act envisages distinct and Specific Offence than those of the Penal Code. Section 5(3) of the Act,1947 provides that there shall be a presumption of criminal misconducts if the accused fails to satisfactorily account for the pecuniary resources or property in his possession or in the possession of any of his dependents. If the accused fails to reasonably account for his pecuniary resources in respect of any such property the court shall presume, unless the contrary is proved, that the accused is guilty of criminal misconduct.

22. The Prevention of Corruption Act,1947 does not contain the procedures for trial of offences punishable under the Act. The offences punishable under the Prevention of the Corruption Act,1947 are triable by the Special Judge as envisaged in Section 5 of the Criminal Law Amendment. Act,1958 since the said offences have been included in the schedule to the aforesaid Act of 1958. The Criminal Law Amendment Act 1958 has been enacted for more speedy trial and more effective punishment of certain offences. Under section 5(2) of the Prevention of Corruption Act, 1947 any public servant who commits or attempts to commit criminal misconduct shall be punishable with imprisonment for a term which may extends to seven years or with fine or with both and the

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pecuniary resources or property to which the criminal misconduct relates may also be confiscated to the state. Section 3 of the Act of 1958 provides for appointment of Special Judges to try and punish offences specified in the schedule to the Act under the provisions of Section 5 of the said Act. Section 4 of the Act provides for jurisdiction of the Special Judge to take cognizance of any offence committed within the territorial jurisdiction. Section 5 provides for the offences as mentioned in the schedule to be tried by the Special Judge. Sub-Section (1) of Sections 5 contains a non-obstante clause whereby the jurisdiction of all other Courts other than the Court of Special Judge have been clearly excluded in relation to the trial of the offences Specified in the Schedule to the Act which have been exclusively triable by the Special Judge. Sub-Section (5) of Section 5 empowers the Special Judge to proceed with the case from the stage at which the same is received. Section 6 enumerates the procedure in trial of cases in the court of Special Judge and the powers of a Special Judge. Sub-section (1) of Section 6 of the Act of 1958 provides that the provisions of Cr.P.C. shall in so far as they are not inconsistent with the Act apply to the proceedings of the Court of Special Judge. Section 9 of the Act of 1958 envisages the provisions for punishment of offences triable under the Act by a Special Judge. Section 9 of the Criminal Law Amendment Act, 1958 reads as follows:

"Punishment of offences- When any person charged before a Special Judge with an offence triable under this Act is found guilty of the offence the Special Judge shall, notwithstanding anything contained in any other law whether or not

he imposes a sentence of imprisonment, impose a sentence of fine which shall not be less than the gain found to have been derived by the accused by the commission of the offence and may also order confiscation of the whole or any part of the property of the accused to the Government."

23. From a clear reading of section 9 it appears that certain limitation has been prescribed regarding the amount of fine to be imposed being not less than the gain found to have been derived by the accused by the commission of the offenee. Section 9 provides that the power of Special Judge is not confined by any limitation in respect of imposition sentence of imprisonment but as regards imposition of fine it is confined to the extent that it shall not be less than the gain found to have been derived by the accused by the commission of the offence for which he is tried and that the Special Judge may also order confiscation of the whole or any part of the property of the accused to the Government. In this context we may refer to Sub-section (2) of Section 5 the Prevention of Corruption Act 1947 which provides as under:

"any public servant who commits or attempts to commit criminal misconduct shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both, and the pecuniary resources or property to which the criminal misconduct relates may also be confiscated to the state"

It appears that Sub-Section (2) of Section 5 of the aforesaid Act prescribes not only punishment of imprisonment for the offence of Criminal misconduct

which may extend to seven years or with fine or with both but also includes the confiscation of the pecuniary resources or property of the accused.

24. From a careful reading of the aforesaid provisions of Sub-section (2) of Section 5 it is manifest that the intent of the legislation is that no one should be allowed to take advantage or gain material benefit through corruption and such intent of the legislation negatives the purpose that the accused respondent No.4 should be allowed to retain ill gotten property by serving out a few months of imprisonment instead of making payment of the fine.

25. We have already observed that Sub-section (2) of Section 5 of the Act of 1947 prescribes the punishment of imprisonment for the offence of criminal misconduct, as defined in Section 5(1), committed by a public servant which may extend to 7 years or with fine or with both and the pecuniary resources or property to which the criminal misconduct relates may also be confiscated to the state. The provisions of Section 5(2) of the Act of 1947 read with Section 9 of the Criminal Law Amendment Act,1958 conveys the message that any public servant who commits criminal misconduct shall be punished with imprisonment for a term which may extend to 7 years or with fine or with both and it contains certain limitation to the effect that whether sentence of imprisonment is imposed or not the Special Judge shall impose a sentence of fine which shall not be less than the gain derived by the accused on account of the commission of the offence.

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26. According to Section 68 of the Penal Code the imprisonment which is imposed in default of payment of a fine shall terminate wherever that fine is either paid or levied by process of law. Section 69 of the Penal Code which deals with termination of imprisonment on payment of proportional part of fine reads as follows:

"If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate."

27. The word "levied" in Sections 68 and 69 of the Penal Code means actual realisation of the fine. Section 70 of the Penal Code deals with fine leviable within six years or during imprisonment and the death of the offender does not discharge from the liability any property which would after the death of the offender be legally liable for debts.

28. In case of Emperor -Vs- Sm. Sarojini De Chowdhury reported in AIR 1939 Calcutta 337 it has been observed that:

"Section 386(1)(b) Proviso requires the Magistrate to record his special reasons for issuing a distress warrant only when the warrant is issued after the offender has undergone the whole of the imprisonment in default. It cannot therefore be said that the issue of the warrant in the present case was illegal or that the sale was illegal merely because reasons were not recorded for issuing the warrant. The warrant was issued before the whole of the imprisonment in default had

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been undergone. The law does not require that reasons should be given for selling attached property after the disposal of claims. In view of the fact that no proper enquiry was made into the claim of the wife, we accept the reference and set aside the order rejecting the claim of the offender's wife to the property attached. The Magistrate is directed to dispose of that claim according to law."

29. In the case of Keshav Datta Misra -Vs- State reported in AIR 1967 Allahabad 276 it has been held that even after the accused had served out the full terms of imprisonment in default of payment of fine, the fine can be levied at any time within the expiry of the period of limitation under Section 70 of the Penal Code. But according to the proviso to Section 386(1)(b) of the Criminal Procedure Code,1898 where the offender has undergone the whole term of imprisonment to which he has been sentenced in default of payment of fine no court shall issue such warrant for the levy of the fine unless for special reasons to be recorded in writing the court considers it necessary to do so.

30. In the case of Paras Nath and others -Vs- State reported in AIR 1969 Allahabad 116 it has been held that the undergoing of imprisonment in default of payment of fine does not operate as discharge of the liability to pay the fine. It has also further been held that although the imprisonment in default of payment of fine does not by itself operate as discharge of the liability for the fine yet under Section 386(1) of the Code of Criminal Procedure where the accused has served the full terms of imprisonment for default of payment of the fine the court shall not issue the warrant for the realisation of fine unless for special reason to be recorded in writing the court considers it necessary to do so.

31. We have already noticed that the very purpose of this special legislation is to prevent bribery and corruption of ill gotten property of a public servant by misusing the high office. In this context the decisions of the cases of Ali Hossain and others Vs. The State reported in 52 DLR(HCD)282 and Rowshan Ali -Vs- The State reported in 52 DLR (HCD) 510 may be referred to. The aforesaid decisions were passed by a Single Bench of this Hon'ble Court considering the provisions of the Prevention of Corruption Act 1947 read with Criminal Law Amendment Act 1958. In the case reported in 52 DLR (HCD) 282 at page 288 para 38 the High Court Division observed as follows:

"Fine imposed upon an accused in a criminal proceeding is of the nature of a financial punishment and it must be paid by him under all normal circumstances. Only when the assets of the accused cannot cover the amount of the fine imposed upon him and when there is no way out for realisation of the fine the accused shall have to undergo imprisonment of either description for a period fixed by the Court in default for payment of fine. There is no option left to the accused to plead that he will undergo further imprisonment for a fixed term in lieu of payment of the fine, fine being a compulsory payment. If the accused is allowed to avoid payment of the fine by exercising his option by undergoing imprisonment for default in payment of the fine I am afraid, the very purpose of imposition of the fine as a pecuniary punishment upon the accused and for prompt realisation of the fine as a State due without initiating any new and time-consuming lengthy proceeding shall be set at naught and the clear legislative intent frustrated. This is why in a case under the Prevention of

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Corruption Act, the convict is sentenced to pay a fine to the tune of the money or the value of the property misappropriated by him in addition to a substantive sentence of imprisonment for the offences involved in the case. If the accused is allowed to avoid the payment of the fine by undergoing imprisonment in lieu of payment of the fine, the concerned public authority or body suffering injury due to the criminal act of misappropriation of its money by the accused, shall be left with no prompt efficacious measure to recover its losses. This will, in fact, tantamount to be a premium to the delinquent at the cost of the aggrieved. Fine is a charge upon the assests of the convict as a public due and it continues to be so even after his death and it is recoverable from his successor-in-interest under the provisions of section 386 of the Code of Criminal Procedure. Sub-section (3) of section 386 of the said Code provides that where the Court issues a warrant to the Collector under sub-section (1) clause (b) such warrant shall be deemed to be a decree, and the Collector shall be the decree-holder, within the meaning of the Code of Civil Procedure and the nearest competent civil Court shall be deemed to be the Court which passed the decree and all provisions of the Code of Civil Court in matters of execution of the decree shall apply. A duty is, therefore, cast upon the trial Court to recover the fine imposed upon an accused by the Criminal Court as promptly as practicable and must ensure that it does not go by lapse, inaction or inertia."

32. In these reported decisions it has been held that fine imposed upon an accused person in a criminal proceeding is of the nature of a financial punishment as distinguished from physical punishment and it must be realised from him under

all normal circumstances. We are in respectful agreement with the views expressed by the learned Single Judge in advancing the proposition of law that fine is a charge upon the assets of the convict as a public due and it continues to be so even after his death and it is recoverable with promptitude from his Successor-in-Interest under the provisions of Section 386 of the Code of Criminal Procedure. Section 386 of the Code of Criminal Procedure reads as follows:-

"(1) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may-

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the movable or immovable property, or both the defaulter;

Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment of default, no Court shall issue such warrant unless for special reasons to be recorded in writing it considers it necessary to do so.

(2) The [Government] may make rules regulating the manner in which warrants under sub-section (1) clause (a), are to be executed, and for the summary determination of any claims made by any person other than the

offender in respect of any property attached in execution of such warrant.

(3) Where the Courts issue a warrant to the Collector under sub-section (1) clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code as to execution of decrees shall apply accordingly;

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender."

33. Proviso to Section 386(1) of the Code of Criminal Procedure contemplates that if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant for the levy of the fine unless for special reasons to be recorded in writing the Court considers it necessary to do so. We have already observed that Prevention of Corruption Act 1947 and the Criminal Law Amendment Act 1958 are special laws containing special provisions for the prevention of bribery and corruption and also for speedy trial and more effective punishment of certain offences for recovery of public fund misappropriated by public servant by corrupt or illegal

means or by abusing his position as a public servant obtained and adopted for himself or any other person any valuable thing or pecuniary advantage or being a public servant if he cannot reasonably account for any pecuniary resource or of a property which has an unearned source of income. According to section 6 of the Criminal Law Amendment Act, 1958 the Code of Criminal Procedure shall apply in the proceedings before the Court of Special Judge so far as they are not inconsistent with the provisions of the Act of 1958. It has already been noticed that the Act of 1958 is a Special Law having special features as contained therein. Section 9 of the Criminal Law Amendment Act.1958 provides for punishment of offences triable under the Act. According to Section 9 the Special Judge shall notwithstanding anything contained in any other law whether or not impose a sentence of imprisonment, impose a sentence of fine, which shall not be less than the gain, found to have been derived by the accused by the commission of the offence. It also provides for confiscation of the whole or any part of the property of the accused to the Government. So from the very provisions of section 9 it appears that the Special Judge is not mandatorily required to impose a sentence of imprisonment but section 9 prescribes certain limitations regarding the imposition of fine which shall not be less than the gain the accused derived in consequence of the commission of the offence.

34. As per provisions of Sub-Section (2) of Section 5 of Act No.II of 1947 any public servant who is said to have committed the offence of criminal misconduct within the meaning of sub-section (1) of section 5 shall be punished with imprisonment for a term which may extend to 7 years or fine or both and

pecuniary resources of the property to which criminal misconduct relates may also be confiscated to the State. The special provisions within the scheme of this special legislation is some what different and distinct from the provisions of the Penal Code and also Cr.P.C. It is true that the Cr.P.C. is applicable for trial of cases before a Special Judge so far as these are not inconsistent with the provisions of the aforesaid Act of 1958. As we have already noticed that the very purpose and intent of the legislation is to realise the fine which shall not be less than the gain found to have been derived by the accused on account of the commission of the offence and that the provision of confiscation of the property of the accused must also be to the extent gained in consequence of the commission of the offence for which he is being tried. From a careful reading of section 9 of the Criminal Law Amendment Act,1958 it reveals that the legislature has not confined the power of the Special Judge with any limitation in respect of imposition of imprisonment but as regards imposition of fine the very power of the Special Judge has been limited which shall not be less than the gain found to have been derived by the commission of the offence. It has also been observed that Section 9 of the Act of 1958 provides for the confiscation of the ill gotten property to the State.

35. In the instant case we have found that the respondent No.4 was convicted under Section 5(2) of the Prevention of Corruption Act,1947 for committing the offence of criminal misconduct under Sections 5(1)(d) and 5(1)(e) of the aforesaid Act and the Appellate Division of the Supreme Court by the judgment and order dated 23.11.2000 reduced the substantive period of sentence of 5

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years imprisonment to the period already undergone by maintaining the fine of Tk. 5,84,70,800/- in default to suffer simple imprisonment for 6 months only. The Prevention of Corruption Act 1947 is a special law enacted for making more effective provisions for the prevention of bribery and corruption of public servants guilty of criminal misconduct which is triable by the court of Special Judge under the provisions of Criminal Law Amendment Act.1958 which provides for more speedy trial and more effective punishment of those offences. Under Section 5 of the Prevention of Corruption Act,1947 read with Section 9 of the Criminal Law Amendment Act.1958 the Special Judge shall impose a sentence of fine whether or not he imposes a sentence of imprisonment. It is also provided that the fine shall not be less than the gain the accused derived by the commission of the offence.

৯. Section 69 of the Penal Code contemplates that the termination of imprisonment on payment of the proportional part of fine will not discharge the accused from his liability for the balance nor entitle him to the remission of the balance of the fine and notwithstanding the release of the accused under Section 69 the balance will be recoverable from him within the period of limitation as stipulated in Section 70 of the Penal Code. Mere serving out of sentence of imprisonment in default of payment of fine does not entitle the accused-petitioner to be discharged from the liability for payment of fine. But proviso to Section 386(1)(b) of the Code of Criminal Procedure envisages that while the offender has undergone the whole terms of imprisonment to which he has been sentenced in default of payment of fine no court shall issue such warrant unless

for special reasons to be recorded in writing the court considers it necessary to do so. In the instant case the criminal misconduct committed by the accused-petitioner by misappropriating public fund for which fine has been imposed in the nature of a financial punishment as distinguished from physical punishment which is a special reason within the meaning of the proviso to Section 386(1)(b) of the Cr.P.C. and accordingly it must be paid by him under all normal circumstances.

37. Extensive economic activities involving disbursement of very large amount of public fund have been continuously on increase and all these activities offer wide scope of corrupt practices and seriousness of the evil design and possibility of its continuance were such as to necessitate immediate drastic action to stamp out this evil. This special law for special offences has provided for special punishment in the form of a fine, which shall not be less than the gain found to have been derived by the accused by the commission of the offence. It is the mandatory provision of this special law that the sentence of fine must not only be compulsory but it must also be not less than the amount misappropriated. The fine imposed by the Criminal Court upon an accused for offences under the Prevention of Corruption Act, 1947 is of the nature of a financial punishment as distinguished from physical punishment and it must be realised from him under all normal circumstances. The fine imposed under this special law is a charge upon the assets of the convict as a public due and it continues to be so even after his death and it must be recovered with utmost promptitude and the accused has no option in the matter to plead that he would

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prefer to suffer imprisonment for a fixed term in lieu of payment of the fine. In view of the aforesaid discussions and findings we are very much in respectful agreement with the aforesaid decisions reported in 52 DLR (HCD)282 and 52 DLR (HCD) 510 and are of the view that the punishment under the Prevention of Corruption Act,1947 read with Criminal Law Amendment Ac.1958 is in the nature of a financial punishment as distinguished from physical punishment and it must be paid by the accused in all normal circumstances. The accused should not be allowed to exercise his option by undergoing imprisonment for default in payment of fine because the very purpose of pecuniary punishment and prompt realisation of fine as a state due would be frustrated. If the accused is allowed to avoid the payment of fine by undergoing imprisonment in lieu of payment of the fine which is a charge upon the assets of the accused then this will amount to a great indulgence to the accused at the cost of the aggrieved person. If the accused has undergone the whole term of imprisonment in default of payment of fine yet the court shall issue warrant for the levy of the fine. For the special reason a fine being the financial punishment as distinguished from physical punishment which is a charge upon the assets of the accused as a public due and it continues to be even after his death and it is recoverable from his successor-in-interest under the provisions of Section 386(3) of the Code of Criminal Procedure which provides that where the court issues a warrant to the Collector under Sub-Section(1) Clause (b) such warrant shall be deemed to be a decree and the Collector shall be the decree-holder within the meaning of the Code of Civil Procedure and the nearest competent civil court shall be deemed to be the

court which passed the decree and all provisions of the Code of Civil Procedure in matters of execution of the decree shall apply.

38. We express our utter dismay to the event of raising money by the members of a political to pay the fine imposed upon the accused respondent No.4 as asserted by the petitioner with reference to certain newspaper reports. The payment of fine by others and not by the accused himself results in the avoidance of the infliction of the penalty i.e. financial punishment which he ought to suffer for his crime. The practice of allowing others to publicly raise money for the payment of fines imposed on a convict will encourage violation of law as the convict, in such instances, will not be visited by the full vigour of the punishment.

39. In the instant case it appears from the Affidavit-in-Opposition filed by the respondent No.4 and from the Supplementary-Affidavit dated 21.05.2006 filed by the petitioner that after the issuance of the Rule on 29.04.2001 the learned Special Judge by order No.121 dated 04.06.2001 observed that the release of the accused on receipt of 50% of the fine amounting to Tk.2,74,35,400/- by order dated 28.02.2001 has not exonerated the respondent No.4 from making payment of the remaining payment of fine which he is legally bound to pay and the learned Special Judge also rightly observed by the earlier Order No.118 that the accused was not exonerated from making payment of the remaining amount of fine rather he is bound to make the said payment in accordance with law. This is very much clear from the Annexure-I. to the Supplementary-Affidavit filed by the petitioner.

40. Admittedly after issuance of the Rule and in view of the order dated 4.03.2001 the respondent Nos.1 and 3 filed General Certificate Case No.19 জরিমানা/2001 before the General Certificate Officer and Magistrate, Ist Class, Dhaka against the respondent No.4 for realisation of the remaining amount of fine. Admittedly respondent No.4 filed writ petition No.3108 of 2002 challenging the aforesaid General Certificate Case No.19 জরিমানা/2001 and subsequently on 21.02.2006 the Rule in the said writ petition was discharged as being not pressed. This means that the respondent No.4 has not successfully challenged the General Certificate Case for realisation of the remaining amount of fine. From the Supplementary-Affidavit filed by the petitioner it appears that the next date has been fixed on 15.06.2006 and the same is very much pending before the competent Court. Since the respondent Nos.1-3 filed General Certificate Case No.19 জরিমানা/2001 before the Court of General Certificate Officer, Dhaka which is pending for hearing no direction is required to be issued upon the respondent Nos.1-3 ~~since~~ as they have already been proceeding with the case and performing their statutory duties for realising the remaining amount of fine of Tk.2,74,35,400/- from the respondent No.4. Release of the accused respondent No.4 after payment of 50% of the amount of fine without making payment of the remaining 50% does not exonerate him from making payment of the remaining amount of fine which is required to be paid by him. Section 69 of the Penal Code provides for termination of imprisonment on payment of proportionate part of fine. The provisions of section 9 of the Criminal Law Amendment Act, 1958 and section 5 of the Prevention and Corruption Act,

1947 are Special of laws which should be construed according to the purpose and intendment of the special legislation. For the reasons stated above, however the provisions of section 386 Cr.P.C, is very much applicable for realisation of fine from the accused respondent No.4 even if where the accused person has undergone the whole of the sentence of imprisonment in default payment of fine for the "special reasons" that fine imposed upon the accused respondent No.4 is a financial penalty not a physical penalty in view of the special provisions of law as contained in section 9 of the Act, 1958 read with section 5 of the Prevention and Corruption Act, 1947. We have already noticed that the very scheme of the special law is not to allow the accused to make benefit out of his ill gotten property.

41. In view of the above discussions and observations the Rule is disposed of. Since the respondent Nos.1and 3 have been persuing the General Certificate Case No.19 সার্টিফিকেট/2001 before the Court of General Certificate Officer, Dhaka they are at liberty to proceed with the certificate case in accordance with law.

42. Communicate a copy of the judgment and order at once to the concerned authority for information and necessary action in accordance with law.

Md. Muzammel Hossain.

FARID AHMED, J:

I agree.

Farid Ahmed.

Typed by: Alam: 16.08.2016

Read by : 16.08.16

Exam by :

Readied by : 16.8.16

17.8.16

মোঃ আব্দুর রশিদ
প্রশাসনিক কর্মকর্তা

17.8.16

মোঃ আব্দুল্লাহ
সুপারিনটেনডেন্ট

প্রত্যায়িত অবিকল প্রতিলিপি

সহকারী রেজিস্ট্রার
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ
(১৮৭২ ইং সালের ১নং আইনের)
৭৬ ধারামতে ক্ষমতা প্রাপ্ত