

Law and Our Rights

Share Scam Cases Can Go Ahead

by Barrister Khaled Hamid Chowdhury

After a legal battle spanning more than a year, it has now been finally settled that the cases filed against the accused companies may now go ahead before the Court of the Session Judge. The decision given by our highest court should come as a relief for those who had lost their last coin in the share market scam. At the same time, this should be treated as a caveat for those who, while holding high executive posts remarked in public that the cases were filed in a wrongful manner.

IN 1996, people from all walks of life had only one place to go to — the Dhaka Stock Exchange building. They were started having found it so easy to become rich overnight. The deposits in the banks dissipated like anything. Those who could smell some foul play in the air were ignored and termed as fools for not themselves following the trend. They were at pains to make others understand that when a company is not making that much of profit, or when it is almost a non-functioning entity, a 100 taka worth of share cannot just shot up to Tk. 15,000 and remain there indefinitely. Such an occurrence defied company law fundamentals. Even our ever suspicious minds were lantised, very few paid attention to good words and in December, the inevitable happened — the bubble burst! The prices made a nose dive thereby ruining the middle class and bringing them down to earth overnight. Then the processions began to bring to books those who manipulated the whole thing. Under unwavering public pressure, the Security and Exchange Commission (hereafter SEC), which is the organisation entrusted with the job of regulating the share market and ensuring fair dealing formed a 5-member Enquiry Committee under section 21 of the Security and Exchange Commission Ordinance, 1969 (hereafter the Ordinance) which submitted a lengthy report on 27th March 1997. The Report identified those listed companies alleged to have been involved in the sham share dealing which played the central role in raising the share prices sky high thereby inducing thousands to buy shares investing all their earnings. The Committee recommended, "these manipulators must be brought to task in the interest of the long term growth and development of the securities market in Bangladesh."

effecting a series of transactions in any security creating the appearance of active trading or of raising of price therein for the purpose of inducing its purchase by others or depressing its price for the purpose of inducing its sale by others and numerous other activities. Anyone who contravenes section 17 is liable to be punished under section 24 and may face imprisonment extending to five years or with a fine of taka five lakh or with both. Section 25 lays down that no court shall take cognizance of any offence punishable under the Ordinance except on a report in writing of the facts constituting the offence by an officer authorised in this behalf by the Commission and no court inferior to that of a Court of Session shall try any such offence.

It is interesting to note that despite the order of the CMM and reports in the newspapers, no warrant of arrest was in fact issued against the accused persons. In any event, they surrendered before the High Court the day after and obtained ad-interim bail. Thereafter three of the accused companies/persons, namely, Beximco Pharmaceuticals Ltd., Shinepukur Holdings Ltd. and Mr A K M Shamsuddouha of the Doha Securities Ltd. filed criminal revision cases before the court of the Session Judge, Dhaka. Mr Justice Golam Rasool on the 3rd of May praying for setting aside the said orders of the Magistrate under sections 435 and 439A of the Code of Criminal Procedure (hereafter CrPC) contending inter alia that the issuance of warrant of arrest against the accused persons before filing the list of prosecution witnesses as required under section 204(1A) of the CrPC was illegal, that the CMM acted in excess of its jurisdiction as the relevant schedule of the CrPC did not authorise him to issue warrant of arrest in a case where the maximum punishment is less than five years of imprisonment and that Mr M A Rashid Khan, the Executive Director of the SEC, (hereafter the officer) who filed the said cases, was not duly authorised by the SEC by a gazette notification under section 28 of the Ordinance to do so. In short, the main contention was that the cases filed by the SEC were bad on ground of want of compliance with the relevant procedural provisions and therefore not maintainable in the eye of the law. After hearing the parties the learned Session Judge passed his judgment on the 1st of June agreeing with the revisioner companies in holding that the said complaint cases were liable to be quashed as the filing officer for the SEC was not legally authorised and the provisions of law had not been complied with; that there was no application of mind by the CMM while taking cognizance of the offence; the issuance of warrant instead of summons against the accused persons without showing reasonable grounds was contrary to law for which the accused persons had faced harassment, financial loss occasioning the failure of justice and that those irregularities were not curable under section 537 of the CrPC. It

is worth mentioning that, on the day of the delivery of judgment, the State, represented by the learned Attorney General filed an application under section 526 CrPC to stay further proceedings of the revision cases so as to enable it to move for transfer of the cases to the High Court Division. This prayer was rejected and the learned Session Judge went to pass the judgment as stated earlier. Although the Session Judge took the view that the complaint cases are liable to be quashed, as he has no such power under the CrPC that would allow him to do so, he made a reference to that effect to the High Court Division under section 438 CrPC. Before dealing with the references before the High Court Division, regard must be had to the Security and Exchange Commission Act, 1993 (hereafter the Act), under which the SEC has been established. The Act defines how the Commission is to be constituted, its functions, meetings of the commissions etc. The Act does not conflict with the Ordinance but is complementary to it.

The References were heard before the High Court Division Bench comprising Mr Justice Kazi Ebadul Hoque and Mr Justice Md Hamidul Haque. The judgment was pronounced on the 9th December (reported at 50 DLR 291) rejecting the references made by the Session Judge. In the course of the hearing, in favour of rejecting the references, it was contended on behalf of the State by the then learned Attorney General Barrister K S Nabi that the learned Session Judge prejudged the matters and exceeded his revisional jurisdiction. Such matters could have been disposed of at the time of framing of the charge. Moreover, if the order of warrant of arrest was issued illegally, then the same could be cancelled under section 75, CrPC and as the accused persons had obtained anticipatory bail, they were not prejudiced at all. Dr M Zahir, the counsel appearing on behalf of the SEC submitted that the SEC authorised its Chairman, who is also the Chief Executive pursuant to section 5(5) of the Act, by a

meeting of the members on the 2nd of April to take all legal steps against the persons found by the Enquiry Committee to have contravened section 17 of the Ordinance. Accordingly, the chairman executed the vokalattama and authorised the officer to present the extracts of the said Report. Thus it was the SEC which was the de facto complainant and the officer was merely authorised to do an administrative act by filing the report to the court and there was no question of delegation of authority by the Chairman himself. The magistrate saw the

that there was no contravention (Section 25A) and any such cognizance ought not be taken without proper application of mind. He further submitted that for the purpose of filing a report under Section 25, an officer must have been authorised by the SEC by a gazette notification and not merely by the Chairman. As no such authority was given, there was clear violation of Section 25 and the cases were liable to be quashed.

Mr Justice Kazi Ebadul Hoque, who pronounced the judgment dealt with the submissions in turn. First, he took the view that CrPC Schedule 4 column 2 provides that warrant for arrest shall be issued against the accused for an offence punishable with imprisonment for a period between two and five years, since the offence in question is punishable with imprisonment up to five years there is no illegality in passing an order of issuance of warrant and in any case processes of warrants of arrest were not issued at all against the accused persons. Secondly, filing of the list of prosecution witness and the copy of the complaint before the Session Judge would cure the defect of omission to do the same before the CMM. Thirdly, the accused persons obtained anticipatory bail from the High Court and the Session Judge by his order dated the 1st of June allowed them to continue on bail till the disposal of the references. Thus, the High Court Division observed that the learned Session Judge was not justified in holding that issuance of warrant of arrest was in violation of the law in the said circumstances. Fourthly, there is nothing in the CrPC that requires a magistrate to record his reasons while taking cognizance of the offence and the lawyers appearing for the accused persons could not show any decision holding in favour of such requirement. The magistrate while taking cognizance of the offence perused the extracts of the Report (complaint), the letter of authorisation and heard the lawyers for the petitioners and, therefore, made proper application of mind. Thus the Session Judge was not

justified in holding that the CMM took cognizance without application of the mind. Fifthly, the learned judge dealt with the meaning of the word "report" at length. Under Section 25 of the Ordinance the authorised person must file a report in writing of the facts constituting the offence. For these purposes, "report" presupposes an enquiry or investigation and without making an enquiry or investigation a report cannot be prepared and submitted. Mr Serajul Huq had argued in favour of the references that when the law requires a specified person to file a report, such failure cannot lead to a lawful taking of cognizance of offence. This is what has happened in the complaint cases as the officer himself did not make any such enquiry. The learned judge held that in the cases in question, cognizance was taken on the basis of extracts of a report submitted by a duly constituted committee and the said officer merely presented the report as he was duly authorised to do so, and as such there was no need for himself to make any such enquiry. For this reason, it was not necessary under Section 25 of the Ordinance to authorise him separately by the SEC. In other words, as the officer was authorised to file the Report compiled by a duly constituted committee, no violation of Section 25 occurred. Sixthly, although counsel for the SEC alleged unfair means to have been resorted to by some vested quarters to pervert the course of justice, on perusal of the documents submitted by the prosecution, it appeared that SEC authorised the Chairman on the 2nd of April to take legal steps on the basis of the Report whereas the Chairman authorised the officer to present the extracts of the said report on the 1st of April. However, as the Chairman being the Chief executive was quite competent to do so for the purpose of initiating the legal proceedings on behalf of the SEC, there was no necessity of authorizing the said officer separately by the Commission or for specifically confirming the authority given by the Commission. The learned judge, agreeing with the sub-

missions made by Dr Zahir, further held that even if the Chairman could not do so, there was implied ratification of such authority by the said resolution of the 2nd of April. Moreover, the Chairman did not delegate his authority on the said officer to exercise any discretion in filing the said Report. The officer was duty bound to file the said Report. It was only an act of ministerial nature and required no personal skill. Seventhly, as the presentation of a Report under Section 25 is not a function of the Commission, there was, therefore, no such requirement of gazette notification in this case. Eighthly, the fact that the complaint was filed on the basis of a duly compiled report is ample proof that there was no harassment to the accused persons. Thus the object of the provisions of Section 25 of the Ordinance was not frustrated. Ninthly, as the requirements of Section 25 is procedural but not penal, unless a broad interpretation is given to it, the object or intention of the legislature would be frustrated to bring to book persons alleged to have been contra-

vened Section 17. Thus substantial compliance of its provisions meant that the filing of the report by the officer and the taking of cognizance by the magistrate was in accordance with law. Finally, the irregularities, if any, in filing the cases cannot be said to have been of such proportion so as to have occasioned a failure of justice and were curable under Section 537 of the CrPC.

The accused persons thereafter filed an application for leave to appeal before the Hon'ble Appellate Division against the judgement of the High Court Division. After hearing the matter for two days, the Hon'ble Appellate Division on the 13th of May last, dismissed the leave petitions and affirmed the judgement of the High Court Division.

As the maxim goes, ignorance of the law is no defence! When a matter is pending before the court one should think twice and seek legal advice before passing any comment.

The writer, an Advocate of the Supreme Court is associated with Dr M Zahir and Associates



letter of authority conferred upon the officer, heard the learned advocates and his orders dated 2nd of April clearly demonstrated that he applied his mind to the complaint before taking cognizance of the offence.

On the other hand, Senior Advocate Mr Serajul Huq in favour of the references submitted that a magistrate while taking cognizance of an offence must express his satisfaction and that application of mind cannot be a mechanical act.

Barrister Rafiq-ul-Huq, also appearing in favour of the references argued that once cognizance of an offence for contravention of Section 17 of the Ordinance punishable under Section 24 is taken, the burden shifts on the accused to show

Soon after the Report was submitted demands were made to prosecute those and scantily used Ordinance was invoked. On the 2nd of April, amidst unprecedented secrecy, on the basis of the extracts from the Report, criminal cases were filed before the Court of the CMM, Dhaka against some 15 companies, their directors and against certain dealers and brokers for the alleged commission of offence under section 17 of the Ordinance. The CMM took cognizance of the offence and ordered that warrants be issued against the accused. It should be mentioned at the outset that section 17 prohibits fraudulent acts in relation to sale and purchase of any security and includes engaging in acts calculated to defraud a person, making an untrue statement, omitting to conceal a relevant fact, doing or omitting to do any act which operates as a fraud or manipulation upon any person such as making a fictitious quotation, creating a false and misleading appearance of active trading in any security, effecting a transaction or orders for sale and purchase in any security which involves no beneficial change in the ownership,

World Environment Day 1998

Pollution Free Rivers and Sea from Legal Perspective

by Shafiqul Islam Chowdhury

THE nation has observed 'The World Environment Day '98 in a befitting manner with the theme of "Pollution free rivers and sea". The theme of the day would sensitize the people about manifold environmental problems which the rivers and sea are now facing. For a country like Bangladesh which is created,

nourished and sometimes endangered by water, nothing perhaps is more important than the sustainable management of its water resources. Apart from the ecological value the resource play a vital role in the sector of economic growth and employment.

The rivers and sea have been facing threats because of over use of agro chemicals, disposal of untreated industrial waste, domestic and municipal wastes, oil spills, ballast and bilge water, ship breaking operations, over fishing, shrimp fry collection, increased salinity, and damage of mangrove ecosystem etc. In this article it has been attempted to spell out the provisions of relevant laws and the fruitful enforcement of which would attribute in conserving the country's rivers and coastal area from the degradation.

Agro-chemical residues come into contact with water every monsoon as most of the agricultural land are low lying. The contaminated water finds its way into ponds, streams, rivers and for final discharge in the coastal region.

The Fertilizer Regulation Order, 1995 has provision for assessing the impact on environment prior to introduction of new fertilizer in the country. In giving registration of pesticides under the Agricultural Pesticides Ordinance, 1971, regard is being given only to human and animal health.

The townships and human settlements of Bangladesh do not have any domestic waste treatment facilities and therefore effluent either directly or indirectly find their way untreated into the rivers and

hence to the Bay of Bengal adding the load of waste drained out from all the upstream districts.

The manner of discharge of different types of waste has been mentioned in the respective city corporation laws while nothing is there regarding the final disposal by such authorities. The Water Supply and Sewerage Authority Act, 1996 has provision for collection, treatment and disposal of sanitary sewage and industrial waste, garbage trash etc.

Generally more than 50 per cent of the oil pollution in the marine environment comes from urban and river run-off. Localized oil pollution is heavy in the vicinity of the Chittagong and Chalna Harbours. There have also been persistent reports of oil slicks in the territorial waters of the country and the upper Bay of Bengal.

Bangladesh Inland Water Transport Authority (BIWTA) Ordinance, 1958 empowers the Authority to issue registration and check the fitness of inland water vessels. Manner of oil transfer from vessels is described in The Ports Act, 1908. The Chittagong Port Authority Ordinance, 1976 and The Mongla Port Authority Ordinance, 1976 and The Bangladesh Inland Water Transport Corporation Order, 1972 empowers the Corporation to operate inland and coastal oil tankers.

Ballast and bilge waters from oil tankers and other ships anchored in ports should only be emptied coastal installations where the oil can be separated and recycled. This is obligatory in many countries,

but Chittagong and Mongla do not have such facilities and the ships directly discharge these waste oil-water mixtures into the coastal waters of Bangladesh.

The Ports Act, 1908 provides for making rules for regulating vessels whilst taking in or discharging ballast; the manner in which oil or water mixed with oil shall be discharged and the bunkering of vessels with liquid fuel in any such port. No ballast or rubbish shall be cast or thrown within the limits of any such port is prohibited under The Ports Act, 1908. The Chittagong Port Authority Ordinance, 1976 and The Mongla Port Authority Ordinance, 1976 have relevant provisions in this respect.

Small-scale and artisanal fisher folk operating in estuaries have been over exploiting shrimp post-larvae, juveniles and pre-adults as well as finfish to meet the increasing demands of export and burgeoning population.

The Protection and Conservation of Fish Act, 1950 regulate the mesh size, period and minimum size of fish for catching.

In December, 1996 an accord for equitable sharing of Ganges water has been signed between Bangladesh and India.

There are about 425 major, 1175 moderate and 200 minor polluting industries in Bangladesh. Most of them do not have any treatment plant and few have non-functional treatment facilities which are not effective in removing pollutants. These polluting industries are mostly clustered around urban centers near to any water bodies which is ultimately channelized through the river network into the coastal waters.

The disposal of industrial wastes into environment is regulated by the Factories Act, 1965, while Bangladesh Environment Conservation Act, 1995 has detailed provision for mitigating hazardous caused by industries, obtaining environmental clearance on submission of Environment Impact Assessment.

From this discussion we have found that there are enough laws to protect the water resources. However it is unfortunate to note that these laws are not properly implemented. The various concern authorities are not enforcing them and in most of the cases less aware about the legal provisions.

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তিতাস গ্যাস ট্রান্সমিসন এন্ড ডিস্ট্রিবিউশন কোম্পানী লিঃ
(পেট্রোলিং একটি কোম্পানী)
১০৫, কাজী নজরুল ইসলাম এভিনিউ
কাজুরা বাজার বা/এ, ঢাকা-১২১৫
ফোনঃ ৯৫৬৩৬৭-৬৮, ৯৫৬৩৬৭০, ৮১২১৩৫-৪২, ৮১৯২১০
১.৩ ও ১.৪ শ্রেণীর ঠিকাদারী প্রতিষ্ঠানের তালিকাভুক্তি/নবায়ন সংক্রান্ত বিজ্ঞপ্তি
১৯৯৮-১৯৯৯ ও ১৯৯৯-২০০০ ইং অর্ধবৎসরের জন্য কোম্পানীর ১.৩ ও ১.৪ শ্রেণীর গ্যাস পাইপ লাইন নির্মাণকারী ঠিকাদারী প্রতিষ্ঠানের তালিকাভুক্তি/নবায়নের জন্য নির্ধারিত ফরমে আবেদনপত্র আহ্বান করা যাইতেছে। আবেদী ঠিকাদারগণ আবেদন ফরমসহ প্রতিসেট তালিকাভুক্তি তফসিল ১ ১৫০০/- (এক হাজার পঁচাত্তর) মাত্র অফেরতযোগ্য মূল্যে কোম্পানীর প্রধান কার্যালয়ে অবস্থিত হিসাব বিভাগ হইতে ১১-০৬-৯৮ইং তারিখ হইতে ৩০-০৬-৯৮ইং তারিখ পর্যন্ত সকল কার্যদিবসে ৯:০০ ঘটিকা হইতে ১৪:০০ ঘটিকা পর্যন্ত সময়কালে সংগ্রহ করিতে পরিবেন। তালিকাভুক্তি তফসিলের চাহিদা মেতাবেক প্রয়োজনীয় কাগজপত্র/দলিলপত্রসহ তালিকাভুক্তি/নবায়নের আবেদনপত্র সর্বশেষ আগামী ৩০-০৬-৯৮ইং তারিখ ১২:০০ ঘটিকা পর্যন্ত পাইপ লাইন নির্মাণ বিভাগে গৃহীত হইবে।
উপ-মহাব্যবস্থাপক
পাইপ লাইন নির্মাণ বিভাগ
ও সদস্য-সচিব, ১.৩ ও ১.৪ শ্রেণীর ঠিকাদারী প্রতিষ্ঠানের তালিকাভুক্তি।
নবায়ন কমিটি।
তিতাস/জনসংযোগ-১৩৩/৯৭-৯৮
জিডি-৪৪২

Government of the People's Republic of Bangladesh
Ministry of Food
Bangladesh Secretariat, Dhaka
No.MOF/Sec-12/IPR-11/98-365 Dated: 01/06/98
International Tender Notice for Import of Non-Basmati Parboiled Rice
Tenders in sealed cover are invited from bonafide traders for supply of 70,000 (Seventy thousand) Metric Tons of Non-Basmati Parboiled rice in cash. The particulars of tender are furnished below:
a. Quantity : 70,000 (Seventy thousand) MT (5% more or less seller's option). Minimum quantity to be offered 10,000 MT.
b. Basis : 70,000 (Seventy thousand) MT at Chittagong Port on C&F liner terms at both ends (Lighterage, if any on seller's account up to jetty). Price per MT to be quoted separately in US Dollar both in words and figure. Cash through L/C.
c. Mode of payment : Details given in the tender schedule.
d. Quality & specification : Any country.
e. Country of Origin : Latest crop of 1997-98.
f. Crop year : 50 or 75 Kg new jute bags having B-twill size 33"x26.5" and 33"x26.5" and 33"x26.5" respectively and weight 1.71 lbs and 2.10 lbs respectively.
g. Packing : 30 (thirty) days from the date of signing of the contract.
h. Date of shipment : 2% value of the total quantity to be quoted along with the tender (details given in the tender schedule).
i. Earmest Money/Bid Bond : Tk 5,000.00 (five thousand) non-refundable by Pay Order/Bank Draft drawn in favour of Secretary, Ministry of Food.
j. Cost of tender schedule and other terms & conditions : 28th June, 1998 upto 5:00 PM.
k. Last date of selling tender schedule and other terms & conditions etc. : Room No. 106, Section-12, Building No. 4, Ministry of Food, Dhaka.
l. Place of selling of tender schedule and other terms & conditions : In the tender box to be kept in the Room No. 119, Building No. 4, Ministry of Food, Bangladesh Secretariat, Dhaka or in the office chamber of Director (Procurement), Room No.501, Food Directorate, 16, Abdul Gani Road, Dhaka.
m. Place of receiving tender : 13.00 hrs BST on 29th June, 1998.
n. Time and date of closing tender : 13.30 hrs BST on 29th June, 1998. Tenderers or their representatives may attend the same.
o. Time & date of opening : Up to 17:00 hrs BST on 08th July, 1998.
p. Validity offer to be kept : Incomplete and conditional tender will not be considered. Ministry of Food reserves the right to accept or reject any or all the bids partly or wholly without assigning any reason.
q. Other terms & conditions :
DFP-12928-7/6 Md Abdul Jalil Mian
G-1303 Sr. Asstt. Secretary
Phone: 867938

RHD Short Notice Inviting Tenders

- Tender Notice No : 09/SRD/1997-98.
- Name of work : Brick pavement works at different KM of Gobindaganj-Chhatak-Duarabazar Road under Sunamganj Road Division during the year 1997-98. (Ch to 266-Dev) in 4 (four) groups.
- Estimated cost : As per group list.
- Earnest money : As per group list.
- Time allowed : As per group list.
- Eligibility of contractors : As per group list.
- Name of the offices where tender documents will be available : Office of the undersigned/Divisional Commissioner, Sylhet/Executive Engineer, RHD, Road Division, Sylhet/M Bazar/Hobiganj/Planning and Design, Comilla/Planning (R&B), Dhaka/SDE (RHD), Sunamganj/Chhatak/Mechanical.
- Name of the officers who received the tenders : Undersigned/Addl Chief Engineer, RHD, Comilla Zone, Comilla/Divisional Commissioner, Sylhet/Superintending Engineer, RHD, Road Circle, Sylhet/Monitoring & Evaluation Circle, Dhaka.
- Tender will be opened by : Undersigned.
- Last date of selling tenders : At 5:00 PM of 10-06-98.
- Last date of received tenders : At 12-30 PM of 11-06-98.
- Date & time of opening : At 10-00 AM of 15-06-98.
- Date & time of lottery : At 3-30 PM of 15-06-98.
- Group List

Gr No	Name of road & location	Estimated cost	Earnest money	Time allowed	Eligibility of contractors
I (one)	Brick pavement work at 16.43,197/- 22nd KM of Gobindaganj-Chhatak-Duarabazar Road.	16,43,197/-	32,864/-	15 (fifteen) days	'A' to 'D' general categories of RHD
II (two)	-do- at 23rd KM -do-	15,99,221/-	31,985/-	-do-	-do-
III (three)	-do- at 24th KM -do-	15,51,100/-	31,022/-	-do-	-do-
IV (four)	-do- at 25th KM -do-	16,04,033/-	32,081/-	-do-	-do-

Ali Ahmed Chowdhury
Executive Engineer, RHD
Sunamganj Road Division.
GD-438

LAW WATCH
May 1998
Death in Prison

Sl No	Name	Age	Jail	Date of occurrence	Reference
1.	Md Alam	30	Chittagong District Jail	9.5.98	10.5.98 Sangbad
2.	A Burmese Man	-	Chittagong District Jail	10.5.98	14.5.98 Ittefaq
3.	Abdul Hamid	30	Dhaka Central Jail	13.5.98	14.5.98 Ittefaq
4.	Abul Kalam Azad	45	Natore Jail	17.5.98	20.5.98 Janakantha
5.	Min (Myanmar Citizen)	28	Dhaka Central Jail	20.5.98	21.5.98 Sangbad
6.	Shirajuddin	30	Sylhet Jail	23.5.98	28.5.98
7.	Yasin	60	Thakurgaon	27.5.98	30.5.98 Janakantha
8.	Ghelu Mia	55	B Baria Jail	-	24.5.98 Bhorer Kagol

Courtesy : Odhakar