



## LAWweek



### Free anti-graft body bill passed

The Jatiya Sangsad has passed the much-talked-about Anti-corruption Commission Bill, 2004. Under the framework of the law, the proposed commission will have three commissioners, who would be picked for a four-year term by the president from a six-member panel chosen by the search committee. The five-member search committee will have a judge of the Appellate Division of the Supreme Court as its chairman and a judge of the High Court Division, the chairman of the Public Service Commission, the comptroller and auditor general and the last retired cabinet secretary as its members. The commission, which will enjoy financial autonomy like the Supreme Court and the Jatiya Sangsad, will assign its officials to probe allegations of corruption. Its commissioners will also have the authority to investigate any alleged corruption. Cases under the law would be tackled in special judge's courts. The investigation officers of the commission will enjoy the authority of an officer-in-charge of a police station while investigating cases. The bill said people with 20 years of experience in law, education, administration, judiciary or armed forces would be eligible for the posts of commissioner. -*Law Desk.*

### JSC members appointed

The government has appointed Chairman and other members of the Judicial Service Commission, the body to recruit judges for lower courts. Justice Ruhul Amin, Judge of Appellate Division of the Supreme Court has been appointed as the Chairman to the JSC. Public Service Commission (PSC) Member Latifur Rahman has also been made a member of the commission. The other members of the JSC are the law, establishment and finance secretaries, registrar of the Supreme Court and Dhaka district and session's judge. -*Prothom Alo, 26 February.*

### Special tribunal for land cases

The government will set up a special tribunal to dispose of land dispute cases for speedy disposal of the pending cases. The law ministry will place a bill giving legal framework of the tribunal in the current session of parliament. The bill also seeks to simply land registration system, maintain land-related records and bring transparency to the process. A cabinet committee on land dispute cases has already finalised its report on the bill and related issues which will be placed before the cabinet soon prior to the introduction of the bill in the House. Land Minister M Shamsul Islam told that the government is computerising the entire land management system and preparing a structured and prescribed form for land registration, in which all necessary information like 25-year history of a piece of land, name or names of owners and demarcation number will be mentioned clearly. He hoped that it will help check fake and forged documentation and sales of a particular piece of land to more than one person. -*Daily Star, 15 February.*

### NGO bill called back for changes

The government has called back for modifications the proposed "The Foreign Donations [Voluntary Activities Regulation (Amendment)] Ordinance, 2004". The bill was called back 16 days after its submission to the Parliament Secretariat on January 27 to place before parliament for approval. A letter from the Prime Minister's Office signed by LGRD and Co-operatives Minister said the bill required some changes before sending for parliament's nod. The government is likely to hold dialogue with NGO stakeholders before modification of the law. The Federation of NGOs in Bangladesh (FNB) and the Association of Development Agencies in Bangladesh (ADAB) had alleged the government's move was aimed at establishing full control on the NGO sector and labelled it as a blueprint to destroy the NGO community. NGOs of the country believe that there already are adequate regulations for NGOs and the move will convert private voluntary organisations into departments attached to the government. -*Jugantor, 15 February.*

### Corruption alleged against judges

Over 100 lawyers of Dhaka Bar Association have urged the Chief Justice (CJ) to replace three judges and five magistrates including the Dhaka metropolitan sessions judge and chief metropolitan magistrate. In a memorandum to Chief Justice Syed JR Mudassir Husain the lawyers accused them of bribery, corruption and irregularities and also of misconduct. The lawyers said the allegations against these judges and magistrates in question are well known to all. Besides, the lawyers alleged, one of them took bribe to grant bail to the prime accused but refused the same to the co-accused in a case. Such actions of the judges and magistrates are unacceptable, as their actions are causing erosion of public confidence in the judiciary. The lawyers observed and urged the chief justice to find better replacements for them. -*Law Desk.*

### Law to muffle noise in the offing

The Ministry of Forest and Environment has drafted an amendment to the Noise Pollution Control Act 2004 that will bar or restrict the use of hydraulic horns, mikes, loud speakers, brick grinding machines, generators and other loud machinery. The use of microphones and sirens for religious purposes like calls for prayers and predawn meals during Ramadan, state functions and during emergencies will be outside the purview of the law. This was revealed by environment minister Shajahan Siraj. The law will be enacted gradually over a period of three months to curb the menace. A countrywide awareness campaign will be launched about the harmful effects of noise pollution. Total ban on the horns will come into effect two months after the draft is vetted. Violators will be facing a six-month jail term or a fine of Tk 10,000 or both. The draft law entitles city mayor's offices, chairmen of pourashava (municipality) and Rajdhani Unnayan Karttripakkha in Dhaka to earmark areas as residential, commercial, mixed, industrial and silent zone in the capital and all over the country, and post signs concerning the maximum allowable noise level. The law will bar the use of loud speakers for events like picnics and election campaigns, and also restrict use of loud machines for construction. -*Daily Star, 16 February.*

### Speedy trial act to continue

The Law and Order Infringing Offences (Speedy Trial) Act 2002 will continue for two more years. The cabinet has approved a bill in this regard. The bill will be tabled in the Jatiya Sangsad in its current session. Justifying the continuation of the act, the cabinet observed that it has been proved to be a successful legislation to curb law and order infringing activities. According to the meeting, 4,154 cases have been filed against 19,331 persons under the Act since its enforcement. Of the cases filed, charge sheets have been filed in 3,614, while in 397 cases police submitted final reports, as the investigators found no proof of the truth of the allegations in those cases. Of the charge-sheeted cases, 3,034 have been disposed of and 580 are under trial. 142 cases are now under investigation. The trials found 3,804 accused persons guilty in 1,607 cases, and the courts have convicted them. -*New Age, 24 February.*

## LAWSCAPE



A doctor and a lawyer were attending a cocktail party when the doctor was approached by a man who asked advice on how to handle his ulcer. The doctor mumbled some medical advice, then turned to the lawyer and asked, "How do you handle the situation when you are asked for advice during a social function?"

"Just send a bill for such advice" replied the lawyer.

On the next morning the doctor arrived at his surgery and issued the ulcer-stricken man a \$50 bill. That afternoon he received a \$100 bill from the lawyer.

\*\*\*\*\*  
The preacher came along and wrote upon the signboard: "I pray for all."  
The lawyer wrote underneath: "I plead for all."  
The doctor added: "I prescribe for all."  
The plain citizen wrote: "I pay for all."  
\*\*\*\*\*

What's the difference between a good lawyer and a great lawyer?  
A good lawyer knows the law, but a great lawyer knows the judge.

\*\*\*\*\*  
Two lawyers were walking along negotiating a case.  
"Look," said one, "let's be honest with each other."  
"Okay, you first," replied the other.  
That was the end of the discussion.  
\*\*\*\*\*

"You're a high-priced lawyer! If I give you \$500, will you answer two questions for me?"  
"Absolutely! What's the second question?"

## Star LAW report



### Bouncing of cheques

# Prior knowledge of rejection is an offence

High Court Division  
(Criminal Revisional Jurisdiction)  
Criminal Mis. Case No 9772 of 2003  
Md Amirur Rahman  
Vs  
The State and another  
Justice Gour Gopal Saha and  
Justice Abdus Salam Mamun  
Date of Judgement: June 15, 2003

#### Background

**Gour Gopal Saha, J:** This application under section 561A of the Code of Criminal Procedure is directed against the order dated 20-4-2003 passed by the Sessions Judge, Tangail in Criminal Revision No. 60 of 2003 rejecting the revisional application filed against the framing of a charge against the accused petitioner under section 420 of the Penal Code.

Short facts relevant for the purpose of the case are that on 18-12-2000 opposite party No. 2 as complainant filed a petition of Complaint in the Court of the Magistrate, Tangail alleging inter alia that the accused-petitioner took Tk 2,00,000/= (Two lac) from him on promise to pay back the same on demand with usual interests but he did not pay back any money to the complainant inspite of repeated demands.

Eventually on being pressed by the complainant, the accused gave him on 20-6-2000 a cheque on the Janata Bank, Tangail Branch for Tk 20,000/= only towards mitigating the liability. The cheque was duly deposited in the account of the complainant but it was dishonoured on 20-6-2000 due to paucity of fund. Subsequently the complainant deposited the said cheque for encashment on 25-7-2000 and 27-10-2000, but as usual the cheque was dishonoured. Thereafter the complainant requested the accused to pay his dues but the accused refused to comply with its

and eventually denied the transaction and thereby cheated the complainant.

After examining the complainant on solemn affirmation as required under section 200 of the Code of Criminal Procedure, the learned Magistrate took cognizance of the case and ultimately framed charge against the accused-petitioner under section 138 of the Negotiable Instruments Act.

Being aggrieved by the framing of charge as mentioned above, the accused petitioner preferred Criminal Revision No 44 of 2002 before the Sessions Judge, Tangail under sections 439A of the Code of Criminal Procedure. The learned sessions Judge by his order dated 25-4-2002 allowed the revision and sent the case back to the learned Magistrate for hearing on framing of charges.

On receiving the aforesaid order of the learned Sessions Judge, the learned Magistrate heard the parties at length and, on perusal of the materials before him, framed charge against the petitioner under section 420 of the Penal Code.

Against the aforesaid order of framing charge by the learned Magistrate, the accused-petitioner preferred Criminal Motion No 60 of 2003 before the Sessions Judge, Tangail under section 439A of the Code of Criminal Procedure. The learned Sessions Judge by his impugned order dated 20.4.2003 summarily rejected the petitioner's revisional application. It is against the aforesaid order 20.4.2003 that the petitioner has preferred this application before us under section 561A of the Code of Criminal Procedure.

#### Deliberation

The learned advocate appearing for the accused-petitioner, submits that in view of provisions of section 138 of the Negotiable Instruments Act, the complainant was required to serve a notice upon the accused intimating him of the dishonour of the cheque within 15 days of the such dishonour, and that having not been done no criminal

prosecution can be launched against the accused-petitioner. The learned Advocate further submits that the charges under section 138 of the Negotiable Instruments Act having failed, the framing of charge under section 420 of the Penal Code on the self same occurrence is illegal and it amounts to an abuse of the process of the Court and, consequently, the impugned order framing charge is liable to be quashed in the interest of justice.

The learned Advocate for the petitioner has placed before us the petition of complaint, the orders passed by the learned Sessions Judge as well as the impugned order passed by the learned Magistrate framing charge against the accused petitioner under section 420 of the Penal Code.

Section 420 of the Penal Code provides penalty for the offence of cheating as defined in section 415 of the Penal Code while section 138 of the Negotiable Instruments (Amendment) Act, 1994 provides punishment for issuance of a false cheque leading to its dishonour. A person who is a victim of cheating by the accused by way of a false cheque or otherwise is clearly entitled to proceed against the accused either under the provisions of the Negotiable Instruments Act or under the provision of section 420 of the Penal Code when elements of cheating are established.

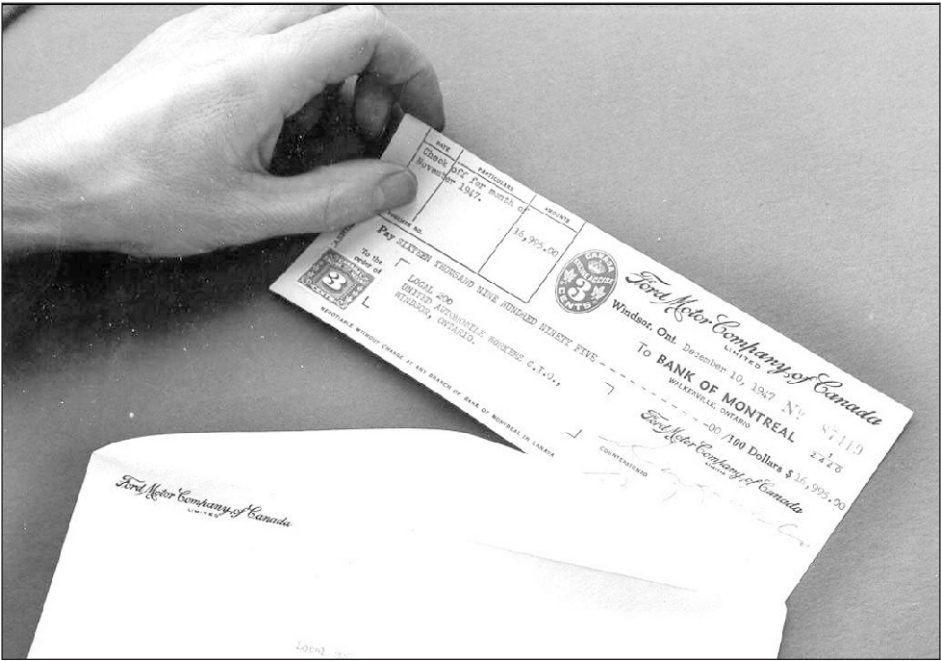
Issuing a cheque knowing full well that it shall not be honoured carries with it distinct elements of deceit on the part of the author of the cheque and it renders him liable for prosecution for cheating. The victim of such a fraud has two remedies open to him - one is to file a criminal case under section 138 of the Negotiable Instruments Act and the other is to launch a criminal prosecution under section 420 of the Penal Code. An offence under section 138 of the Negotiable Instruments Act and an offence under section 420 of the Penal Code are two distinct offences, one independent of the other. The aggrieved party has thus the option to choose its remedy under either of the two penal provisions and the defence has no right to ask the complainant to elect a particular penal law that may suit its convenience.

On perusal of the materials placed before us, we are satisfied that there are sufficient materials on record for framing charge against the accused-petitioner under section 420 of the Penal Code. Facts disclosed in the case also make out a case under section 138 of the Negotiable Instruments Act. In such a case, it is all too open to the complainant to proceed under any of the two penal laws available to him.

#### Decision

We are satisfied that the learned Magistrate duly applied his judicial mind into the facts and circumstances of the case and the materials on record and rightly framed charge against the accused-petitioner under section 420 of the Penal Code. The impugned order, therefore, does not suffer from any illegality or legal infirmity occasioning failure of justice. We find no substance in the submissions made by the learned Advocate for the petitioner. The application is rejected summarily.

Advocate Amjad Hossain for the petitioner.



## Star LAWhistory



# Administration of justice in Bombay

THE Legal history of Bombay may be said to have begun in 1661, when it became a British possession. The Town and Island of Bombay was received by the British as a part of the dowry of the Portuguese Princess Catherine of Braganza, sister of Alphonso VI, the then Portuguese Monarch, when she married King Charles II. Bombay then was little more than a small fishing village consisting of a few straggling huts of Kolis, its indigenous inhabitants; and its harbour, destined in the course of years to develop into the greatest and most important commercial seaport in the East, sheltered only a few fishing boats. Charles II transferred it to the East India Company in 1668 for an insignificant annual rent of 10 Pounds.

The judicial history of Bombay commences with the Charter of 1668 accompanying the transfer of Bombay from the Crown to the East India Company. In 1670, the administration of Justice was in the hands of Justices who held their sittings in the Custom Houses of Bombay and Mahim. The system of 1670 was very elementary and suffered from several drawbacks and the judicial system was too much identified with the executive government of the Island.

The main architect of the Judicial system during this period was Gerald Aungier, the Governor of Surat Factory. He has been described as the "true founder" of Bombay. He was a man with liberal ideas and believed in an impartial administration of justice without fear or favour. But he was conscious of these defects and he was himself dissatisfied with the judicial machinery. Aungier was advised by the Company to select someone knowing something of law from amongst the Company's servants in India. Aungier chose George Wilcox as the Judge and the First British Court of Justice was inaugurated in Bombay in 1672 with due pomp and ceremony.

#### Admiralty Court

The setting up of an Admiralty Court in 1684 under the Charter of 1683 opened the second phase in development of the Bombay Judiciary. Dr. St. John, an expert in Civil Law was sent by the Company to preside the Court as Judge - advocate. But there were continuous clashes between the Governor and the Court, and he was dismissed for his refusal to subordinate his own judgement to the wishes and directions of the Governor and Council. After Dr. St. John's exit, justice continued to be administered by lay person till late in the eighteenth Century.

#### Mayor's Court

In 1726, the issue of the charter by King George I to the Company turned over a new leaf in the evolution of the judicial institutions. The Charter of 1726 introduced a uniformity of approach and established similar judicial institutions. Thus in 1726 "The Mayor's Court" was established under direct authority of the King. The Mayor and the nine aldermen were to constitute the Mayor's Court. The Court was to have authority to hear and try all Civil Suits arising within the town and its subordinate factories. For the first time, a right of appeal to the King-in-Council from the decision of the Courts in India was granted. The Mayor's Court was to be a Court of record and thus had power to punish persons who might be guilty of its contempt.

#### Recorder's Court

In 1798 the Mayor's Court was abolished and in its place was established the Recorder's Court, as per the Charter of 1798. Judicial administration in Bombay was completely changed for the better by the establishment of this Court. It consisted of a Mayor, three Aldermen and a Recorder appointed by the Crown, who was to be a Barrister of not less than 5 years standing. The first Recorder was Sir William Syer. The official association of Indians in the administration of law started with the establishment of this Court.

#### The Supreme Court

In 1823, an Act of Parliament authorised the Crown to establish a Supreme Court in place of the Recorder's Court at Bombay by Royal Charter. The power vested in the Recorder's Court were to be transferred to the Supreme Court. The Supreme Court at Bombay was to be invested with the same powers and authority and was to be subject to the same limitations & restrictions as the Supreme Court at Calcutta by the 17th Section of the Act of 1823. The Court was formally inaugurated at Bombay on 8th May, 1824.

The Supreme Court functioned from 1824 to 1862. English barristers began to practice in Bombay and some of them achieved distinction in the High Court later. Several notable judgements were given in the Supreme Court, which made an important contributions to the development of Law in India. The main inspiration of the Supreme Court and even the High Court in its early years, was the Law of England: and apart from Hindu and Mahomedan Laws, it was the principle of the Common Laws and Equity which were embodied with slight modification in the judgements of the Courts. In the first century of British Justice in Bombay, there is no record of any Indian judge or lawyer. It was only after the establishment of the High Court that Indian Barrister began to make their solitary appearances in the High Court.

#### The Bombay High Court

The 'Indian High Courts Act' of 1861, vested in Her Majesty the Queen of England to issue letters patent under the Great Seal of the United Kingdom to erect and establish High Courts of Calcutta, Madras and Bombay. The Indian High Courts Act, 1861 did not by itself create and establish the High Courts in India. The express and avowed aim of the Act was to effect a fusion of the Supreme Courts and the Sudder Adalats in the three Presidencies and this was to be consummated by issuing Letter Patent. The Charter of High Court of Bombay was issued on June 26, 1862.

The Bombay High Court was inaugurated on 14th August, 1862. The High Court had an Original as well as an Appellate Jurisdiction the former derived from the Supreme Court, and the latter from the Sudder Diwani and Sudder Foudjari Adalats, which were merged in the High Court. With the establishment of the High Court the Penal Code, the Criminal Procedure Code and Code of Civil Procedure were enacted into law. The Letter Patent of the Bombay High Court authorised 15 Judges, but it started with only 7.

## READERqueries



### Your Advocate



**This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law.**

**Q:** My husband Anil Barua was working in Bangladesh Navy Dockyard as skilled grade labourer I at Chittagong. One day being too tired he was taking rest during working hour. The shift in-charge seeing him sitting, got angry and they exchanged hot words. Later on the matter was informed to higher authority. Thereafter he was forcefully taken to the hospital verbally declaring him as psyche patient and kept him confined in the navy hospital for 4/5 months till he became total insane and sacked him from the job making a so called medical board and declared him invalid for any kind of job. My husband is now living like a dead man. I have six children. I took a job as aya for livelihood. But they ruined his life for ever as well as our family. My questions are : A. Was the medical board legal in view of medical jurisprudence? B. Can we bring any legal action those doctors and officers for their heinous act? C. They are using psychiatrists and doctors as a tool of punishing employees, if they wish to do so, how this can be stopped? D. Now a days defense doctors are using their position as a tool to make normal people insane, is there any legal way to punish these people in civil or criminal law? Please show legal path.

**Madhuri Datta,**  
*Housing Estate, Chittagong.*

**Your Advocate:** Substance of your allegation is- your husband is a civilian and was working in the Navy dockyard Chittagong as a graded labourer. Following an altercation with his Shift-in-Charge penal actions were taken against him by the Officer-in-Charge who also felt insulted by your husband's conduct. The whole thing arose out of slang used against your husband by his Shift-in-Charge reacted to by him. Your husband for that matter any conscientious being may react to the slanging by anybody whoever he may be. Slang, colloquialism are something which gradually emerge into use in different local groups, professional and age groups, people of the same workplace etc. Not all slang expressions refer to insult or contempt. They are of everyday use in almost every corner of a country and true of the entire world. One living and working in such a situation must be tuned and needs not be hypersensitive to the prevailing slang-culture which is otherwise innocent. But that does not mean that intentional, well calculated and persistent slanging would not be taken exception of.

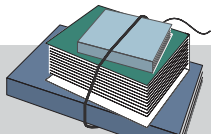
Now the problem that has arisen is- your husband is taken to the Navy hospital and is being treated as a mental patient. As it transpires in the decision leading to hospitalisation there are involvement of the higher officers of the Navy aided by the opinion of psychiatrist and a medical board. Nothing sounds or looks unusual or malicious. But it is your conviction as the wife of the patient that the whole thing has arisen out of a conspiracy by the people in the Navy who matter in the helm of affairs. Your further claim is your husband is a man of sound mind and physique. The hospitalisation, medical board etc. are arraigned drama designed to victimise your husband and your mind has traveled to the extent of belief that your husband is being tortured and administered with such drugs as to render him total insane so that he loses his eligibility for any other job in future. It is a serious thing to apprehend.

So far as I could gather from your words, I am afraid, I cannot fully share your concern. The people involved in the hospitalisation and treatment of your husband are responsible persons having their professional attainments and standing. They would be most unlikely to be prevailed upon by an ill-disposed Sift-in-Charge of the Dockyard. Logically and realistically your concern seems to be ill-founded.

Right or wrong you believe that your husband is caught in a vicious circle and his life is at stake. The anxious questions that cropped up from your troubled mind are whether the Medical Board is legal? If not, what are the legal measures that can be taken against those doctors and officers of the Navy? How this kind of vicious underhand practices to punish a malcontent be stopped? Is there any way to punish these people in civil and criminal law?

Well, if there is really any such vicious practices prevailing anywhere in the Navy or anywhere in the armed forces, so to say, can the persons perpetrate the crime with impunity? The simple answer is, 'No'. Discipline in our armed forces are regulated by stringent provisions of law. So far as the Navy is concerned, the Navy Ordinance, 1961, provides for punishment of any person subject to the law, guilty of disgraceful conduct of a cruel, indecent or unnatural kind. Even officers may be punished for any conduct unbecoming of his position and the character expected of him. For civil offences committed by any member of the Navy the offender is triable by a naval tribunal and punishable with imprisonment of different terms including the capital punishment. Moreover, as in your case, that is, the offence of torture and malicious application of harmful drugs on a civilian, complaint may be made in a competent court of Magistrate for initiating a proceeding against the members of the Navy responsible for the alleged offences. This will not, however, take away your right to sue them for damages caused to the body and mind of your husband. Please have consultation with your family, friends and relatives and come to a well-considered decision as to whether you need to go for action. If so, take help of a good lawyer and proceed according as he advises.

## LAW lexicon



#### Privilege

A special and exclusive legal advantage or right such as a benefit, exemption, power or immunity. An example would be the special privileges that some persons have in a bankruptcy to recoup their debts from the bankrupt's estate before other, non-privileged creditors.

#### Probate

The formal certificate given by a court that certifies that a will has been proven, validated and registered and which, from that point on, gives the executor the legal authority to execute the will. A "probate court" is a name given to the court that has this power to ratify wills.

#### Presumption of advancement

A presumption in trust, contract and family law which suggests that property transferred from a parent to a child, or spouse to spouse, is a gift and would defeat any presumption of a resulting trust.

#### Profit a prendre

A servitude which resembles an easement and which allows the holder to enter the land of another and to take some natural produce such as mineral deposits, fish or game, timber, crops or pasture.

#### Pro forma

As a matter of form; in keeping with a form or practice. Something done pro forma may not be essential but it facilitates future dealings. For example, an invoice might be sent to a purchaser even before the goods are delivered as a matter of business practices.