

FOR YOUR INFORMATION



LAW WEEK

Probe Mridul Kanti's death: HC

The High Court on August 25 ordered investigation into the death of Mridul Kanti Chakrabarty, a Dhaka University teacher who allegedly died for doctors' negligence. The court directed the Director General (DG) of the Directorate of Health to form a probe committee in this regard and submit the investigation report on October 17. The DU teacher died at LabAid hospital on August 15. - *The Daily star online edition August 25 2011.*

Aug 21 attack: Charge framing hearing begins Sep 11

Hearing on charge framing against BNP Senior Vice Chairman Tarique Rahman and 29 others in connection with the August 21 grenade attack will begin on September 11. Judge Mohammad Zohurul Haque of Metropolitan Sessions Judge's Court fixed the date on August 25. Eighteen of the 30 supplementary charge-sheeted accused including Lutfozzaman Babar, former state minister for home, and Ali Ahsan Muhammad Mojahid, Jamaat-e-Islami secretary general, were produced before the court. Twenty-four people were killed in the grisly grenade attack on an Awami League rally at Bangabandhu Avenue on August 21, 2004. - *The Daily star online edition August 25 2011.*

Dropping names of accused challenged

The father of a rape victim of Viqarunnisa Noon School and College on August 25 challenged the dropping of names of two accused from the charge sheet. The victim's father challenged the charge sheet filing a no-confidence petition before the First Special Tribunal for Prevention of Women and Children Repression. Mohammad Shahadat Hossain, officer-in-charge of Badda Police Station and also the investigation officer (IO) of the rape case, submitted the charge sheet on August 11 dropping the names of Husne Ara Begum, the principal of the school and college, and Lutfur Rahman, in-charge of the school's Bashundhara branch. The IO submitted the charge sheet against Porimol Joydhor, a teacher of the school's Bashundhara branch, as he found Porimol guilty of raping a class-X student of the school. In the case, the victim's father accused Lutfur and Husne Ara of trying to cover up the incident and delaying action against the culprit. - *The Daily star online edition August 25 2011.*

Murder case against criminal withdrawn

The government has withdrawn a murder case against an infamous criminal considering it "politically motivated and harassment" even though another accused in the case disclosed the latter's involvement with the killing. On May 6, 2006, a garment trader Abdullahel Baqui, 24, in the city's Mirpur area was slaughtered over a business feud by a gang led by infamous criminal Mohammed Anisur Rahman Anis. National Committee on Withdrawal of Politically Motivated Cases in its 21st meeting on September 8, 2010, recommended withdrawal of the murder charge against Anis. Upon the committee's decision, Dhaka Metropolitan Public Prosecutor Abdullah Abu submitted an application with the trial court on February 13 this year for the same. Later on June 14, Judge Begum Chamon Chowdhury of the Second Additional Metropolitan Sessions Judge's Court of Dhaka withdrew the murder case against Anis. Aminul Islam Mithu, plaintiff in the murder case filed with Mirpur Police Station, said Anis is a low profile criminal in the city's Kazipara area. - *The Daily star August 25 2011.*

HC summons two diplomats in Kolkata

The High Court on August 23 summoned Bangladesh Deputy High Commissioner in Kolkata Mustafizur Rahman and First Secretary Anwarul Islam to appear in person on October 13 to explain their failure in extending security and facilities to visiting judges in accordance with the warrant of precedence. Division bench of justices AHM Shamsuddin Chowdhury and Gobinda Chandra Tagore also issued a rule upon the government, returnable in four weeks, to explain why it should not be directed to ensure security and facilities to persons holding constitutional posts in accordance with the warrant of precedence. The orders came upon a writ filed on behalf of the Human Rights and Peace for Bangladesh. - *The Daily star August 24 2011.*

HC asks authorities to explain

The High Court (HC) on August 23 issued a rule upon authorities concerned to explain why Mohiuddin Khan Alamgir is holding the office of a parliamentary member despite the Supreme Court's (SC) cancellation of his candidacy. In response to a writ petition, the court asked the government, the Election Commission (EC) and Alamgir, an Awami League leader, who was elected from Chandpur-1 constituency, to respond to the rule within four weeks. On July 15 last year, the SC upheld the HC's order declaring the EC's decision to cancel Alamgir's candidacy in the 2008 parliamentary elections, as legal. In another writ petition, the same HC bench issued a rule upon the authorities concerned to explain why ANM Ehsanul Haque Milon, who got the second highest vote in the constituency in the same parliamentary elections, should not be declared elected following the SC order. - *The Daily star August 24*

**Dear reader,**  
You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those.  
Please send your mails, queries, and opinions to: Law Desk,  
The Daily Star 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel:

Environment Clearance Certificate (ECC)

MD. GOLAM SARWAR

THE Environment clearance certificate is a process to ensure sustainable development, without creating harmful effect on the environment and the bio diversity. Environment Conservation Act 1995 which was amended in 2010 in section 12 and Environment Conservation Rules provided procedure for the ECC (Environment Clearance Certificate). Though this is a very long procedure, the following effort is made to make this process to understand in short.

Under the ECA and ECR, for the purpose of issuance of Environmental Clearance Certificate, the industrial units and projects have been classified under 4 categories: a) Green b) Orange A c) Orange B d) Red. The category is based on the location and its impact on the environment. Regarding impact, Environmental Impact Assessment (EIA) is well recognized under Environment Conservation Rules which is regarded as a toll of ensuring sustainable environment. According to rule 7, the Environment Impact Assessment report is a must for establishing a Red category industry. The industries which fall under the Red category are important for the economy of the country. But these industries have a wider chance of destruction of our environment. So before establishing any industry it is required to find out that how much is it going to cause pollution and how can it be mitigated.

From the rules it is seen that the green category industries are less harmful to environment friendly than the orange A category. Accordingly the Orange B category industries are less harmful to environment than Red categories. The red categories are potentially hazardous industries. Under the ECA and ECR, it is compulsory for both old and new industrial units to apply for an ECC prior to commencing production. The steps involved in gaining an ECC are described below.

Process of Obtaining an Environment Clearance certificate

An ECC is issued to green category industries upon application. But orange A, orange B and red category industries are generally required to first obtain a Site Clearance Certificate (SCC) before they can apply for an ECC. However the ECR do provide the DG with the discretionary authority to grant exemption from securing a SCC and simply to apply for the ECC though this rarely hap-



pens. The SCC application process requires the owner or representative of an industry to apply to the Divisional Officer in Charge at the Department of Environment. The application involves the completion of a short form (Form-3) of ECR, several supporting documents, which vary depending on whether the industry is new or an existing one and the appropriate fee.

For proposed industrial units a Feasibility Report is required, this should give information on the type of industry and also provide evidence that the proposed plan for establishing the Industry is "feasible" in terms of current technology, economies and social needs. Again they have to submit the Initial Environmental Examination (IEE) report including process flow diagram, layout plan and design of the Effluent Plant (ETP) of their unit.

When these documents are submitted, the SCC will be issued within 30 days to Orange A category or within

60 days to Orange B and Red category industry. After receiving the SCC, Orange A and Orange B categorical units can undertake land, infrastructure and machinery development and apply for the ECC. But Red category units have to submit the Environmental Impact Assessment (EIA) and IEE report to the DOE for approval. If they are approved within 60 working days the unit may open its later of credit for importing machinery and apply for the ECC.

When the applications of all these categories are submitted with proper documents, the ECC will be issued within 30 working days to Orange A categorical unit or within 60 working days to the Orange B and Red categorical units or their application will be rejected mentioning the reasons.

Existing industries will go through a different procedure to obtain the ECC. They must submit Environment Management Plan (EMP) of the unit including process flow diagram and layout plan showing the location of the proposed ETP, as well as its design and information about the effectiveness of the proposed ETP.

The documentation for proposed and existing units must also include a No Objection Certificate (NOC) from the local authority (the Union Parishad Chairman or the Ward commissioner), and must provide an emergency plan outlining what action would be taken to rehabilitate the site should a major accident, such as a chemical spill or explosion, take place. Under the amended section 12 of ECA along with EIA and EMP, consideration of public opinion and the information given to the people about the whole process are to be mentioned in detail. The period of validity of an ECC for red category industries is one year, and the application letter to DOE requesting permission for renewal and the previous copy of the ECC. These are all about the process of getting an ECC. It must be remembered that a failure to comply with any part of the ECA may result in punishment.

The writer is a Student of Law, University of Dhaka and works with Law Desk.

CRIME & PUNISHMENT

Criminal trespass

UNDER section 441 of the Penal Code, a person commits criminal if he (1) enters into or upon any property in the possession of another, (2) with intent to commit an offence or (3) to intimidate, insult or annoy any person in possession of such property; or (4) having lawfully entered into or upon, such property, unlawfully remains there, (a) with intent thereby to intimidate, insult or annoy any such person, or (b) with intent to commit an offence.

Punishment: Imprisonment of either description for 3 months, or with fine which may extend to five hundred taka or with both. (Sec.447)

The following points can should be considered with regard to the offence of trespass:

(1) Trespass can only be committed in respect of immovable corporeal property, such as land, houses etc.

(2) The essence of the offence is the intention with which it is committed. It must be proved that one or other of the intents named above was present in the mind of the offender at the time of committing the trespass. A knowledge of likelihood does not form a part of the definition.

In the case of *Jane Alam v. state 17 DLR (SC) 455*, it was held that intent to commit the offence enu-



merated in the section is to be inferred from proved facts, the rule being that a person intends the natural and inevitable consequences of his own acts.

Intention which is a state of mind cannot ordinarily be proved as a fact; it can be only be inferred from the facts and circumstances established in a particular case. (*Gulam Nabi v. state 11 DLR 120.*)

(3) A person entering on the land of another in the exercise of a bonafide claim of right will not be guilty, though the claim is unfounded. But if the entry is made with intent to annoy, it does not matter whether it was made under a claim of right.

In the case of *S Selvanayagam vs. King 4 DLR 74* it was held that entry upon land, made under a bonafide claim of right however ill-founded in law the claim may be, does not become criminal merely because a foreseen consequence of the entry is annoyance to the occupant.

(4) The property must be in the actual possession of the person other than the trespasser. It is de facto and de Jure possession that is necessary in regard to the commission of the offence.

Source: Penal Code by Dr.L.Kabir.



YOUR ADVOCATE

*This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies.*

*Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.*

Query

I got married in Canada . Now I and my husband both are back in Dhaka after 15 years of marriage. The marriage contract in Canada do have a provision of prenuptial agreement. Does that apply in Bangladeshi law as well? Can I clame the matters which is mentioned in prenup?

Reema Afsana  
Baridhara, Dhaka

Response

We would like to thank you very much for your inquiry. It has been understood from your query that your marriage took place in Canada according to the Canadian Law. You have returned to Bangladesh with your husband after 15 years of your marriage. Your marriage contract in Canada has a provision of prenuptial agreement.

Prenuptial agreements are made by the people who intend to marry or contract with each other before marriage or civil union, usually to resolve issues of support and property division if the marriage ends in divorce or by the death of a spouse. The contents of a prenuptial agreement vary but commonly include provisions for division of property and spousal support in case of divorce or breakup of marriage. Family law is personal in Bangladesh, i.e. it is depended on the religion of the person concerned. Being a Muslim, you have to follow the Muslim Law

in Bangladesh in marriage and divorce related matters. In this country, there is no application of prenuptial agreement as yet in marriage related cases. In case of divorce, any dispute between the spouses or any matter arising out of the divorce will be settled in accordance to the applicable Muslim Law and other laws of the land. Accordingly, if you



mutually decide to adhere to the terms of the said agreement, you may decide to do so provided that nothing in this agreement violates any provision of the Bangladeshi law and the relevant/applicable Muslim laws. If, on the other hand, either of you decide not to abide by the prenuptial agreement, the same cannot be legally enforced. I hope the aforesaid opinion will help you to understand your position.

For detailed query contact: [omar@legalcounselbd.com](mailto:omar@legalcounselbd.com).



LAW AMUSEMENTS

Cross-examination!

At a trial, an attorney was putting witnesses through an exacting cross-examination, and was taking great delight into forcing witnesses to admit that they did not remember every single detail of an automobile accident. While the lawyer knew that no witness has a perfect memory, he had honed a skill in exploiting minor inconsistencies and lapses of memory in order to challenge the credibility of honest witnesses. After a series of scathing cross-examinations, he was looking forward to his examination of yet another witness.

"Did you actually see the accident?" he asked. The witness responded with a polite, "Yes, sir." "How far away were you when the accident happened?"

"I was Thirty-four feet, seven and three quarters inches away from the point of collision."

"Thirty-four feet, seven and three quarter inches?" the lawyer asked, sarcastically, "Do you expect us to believe that your memory is so good, and your sense of distance is so precise, that months after the accident you can come into court and give that type of detail?"

The witness was unphased. "Sir, I had a hunch that some obnoxious, know-it-all lawyer would ask me the distance, and would try to make it seem like I was lying if I could not give an exact answer. So I got a tape measure, and measured out the exact distance."