

LEX/BDHC/0310/2014

Equivalent Citation: 20BLC(2015)596

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION)

Criminal Appeal Case No. 7469 of 2013

Decided On: 23.01.2014

Appellants: **Giasuddin-Al-Mamun (Md.)**

Vs.

Respondent: **State and Ors.**

Hon'ble Judges:

Md. Rais Uddin, J.

Counselors:

For Appellant/Petitioner/Plaintiff: Rafique-ul Huq, Sabbir Hamza Chowdhury, Shah Monjurul Hoque and Mohammad Iman Hossain, Advocates

For Respondents/Defendant: Mahbubey Alam, Attorney-General, Nazibur Rahman, D.A.G. and Tapan Kumar Das, A.A.G.

ORDER

Md. Rais Uddin, J.

1. This matter has come up in the list for admission of appeal. At the time of admission of appeal Mr. Mahbubey Alam, the learned Attorney-General for Bangladesh, points out that the instant appeal relates to Division Bench matter inasmuch as fine amounting to Taka 40,00,00,000 (Forty crore) and confiscated Taka 20,41,25,613. 28 (Twenty crore forty one lakhs, twenty five thousand six hundred and thirteen and twenty eight paisa) in favour of the State.

2. Mr. Attorney-General further submits that one of the accused, namely, Tariq Rahman, who has been acquitted in the same case by the trial court against whom the respondent No. 2, Anti-Corruption Commission has preferred appeal being Criminal Appeal No. 7225 of 2013 before a Division Bench of this court which was admitted on 19-1-2014 and, as such, it is convenient to be heard of this appeal by the same Bench to avoid conflicting decisions.

3. Mr. Khurshid Alam Khan, the learned Advocate appearing for the Respondent No. 2 has adopted the argument of the learned Attorney-General.

4. In reply, Mr. Rafique-ul Huq, the learned Senior Counsel contents that the argument of the learned Attorney-General in the facts and circumstances of the case is plainly misconceived since there is nothing in the Rules of the High Court Division in Chapter II Rule 7 Sub-rule (2) to suggest that if any amount of money is fine or confiscated in favour of the State then Division Bench of this Court should deal that matter.

5. Mr. Attorney-General referred, to section 53 of the Penal Code which defines the punishment but he could not show any provisions of law or rules in support of his argument.

6. It appears that the punishment lies within the upper limit and lower limit. The upper limit is fixed by the substantive law defining, the offence. It is inappropriate to

add a fine and confiscation to a substantial term of imprisonment. The sentence of imprisonment is to be served and detained under custody. The imprisonment is to be suffered in a case where the fine is not paid is a punishment not for the offence but for the failure so far it relates so such payment.

7. The second branch of argument advanced by the learned Attorney-General that another appeal against acquittal has been preferred in the Division Bench and, as such, it is convenient to be heard by the same Bench to avoid conflicting decisions.

8. In this context, to answer both the questions it may refer the High Court Rules which provides the powers of Division Bench and Single Bench in criminal matters is self explanatory. I feel it is convenient to quote the relevant portion of the High Court Division Rules of Chapter II, Rule-7 of Sub-rule (2) as under:

(1).....

(2) A Single Bench consisting of one Judge may hear any appeal including appeal against inadequacy of sentence, or application for revision, except the following:

(a) one relating to an order of sentence of death, imprisonment for life or of imprisonment exceeding seven years:

(b) an appeal under section 476B of the Criminal Procedure Code;

(c) an application for transfer under section 526 of the said Code or under any other law.

(d) one relating to an order for execution of a bond where the person required to execute the bond has gone to prison in default of execution:

(e) an appeal under section 417 or 417A of the Cr.P.C. against an order of acquittal or under section 23A of the Foreign Exchange Regulation Act, 1947 against an order of acquittal or discharge, in cases involving offences punishable with sentence of imprisonment exceeding 7 (seven) years:

(f) an application for revision under section 439, CrPC against an order of acquittal in cases involving offences punishable with sentence of imprisonment exceeding 7 (seven) years:

(g) an application under section 561A, CrPC:

(h) an application for bail under section 498, CrPC or under any other law.

(3) The Judge of a Single Bench while dealing with a case may, after recording reasons, send it to the Chief Justice for disposal thereof by another appropriate Bench.

9. Therefore, I am unable to accept the contention raised by the learned Attorney-General.

10. Accordingly, prayer of the learned Attorney-General is rejected.

11. In view of the discussions, reasons and the Rules, stated above, I am of the view

that this matter should be dealt by a single bench of this Court.

12. Hence, let the records be called for. This appeal will be heard and issue usual notices upon the respondents.

The realization of fine and confiscation be stayed.

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