

ICT BD (ICT-2) Misc. Case No.04 of 2014

The State Vs. Editor, The Daily Protham Alo

Order No.12

Dated 01.04.2015

Today Mr. Anisul Hassan, Advocate representing Mr. Rezaur Rahman by filing a supplementary written statement expressed unconditional apology for the conduct he had shown being a party to the impugned statement. We have heard the learned Advocate. We have seen and perused the explanation. It is to be noted that already 25 makers of the statement have been exonerated as they have tendered unconditional apology for their conduct. Accordingly **Mr. Rezaur Rahman** is also exonerated with observation that in future he will remain cautious in making any comment on the lawful authority and jurisdiction of the Tribunal, a lawfully constituted judicial forum.

1. We have patiently ploughed through the explanation submitted by the 23 makers to the statement in question. It appears that by appearing in person and also by engaging counsel, by submitting written explanation (1) **Masud Khan**, (2) **Afsan Chowdhury**, (3) **Ziaur Rahman**, (4) **Hana Shams Ahmed**, (5) **Anu Muhammad**, (6) **Anusheh Anadil**, (7) **Muktasree Chakma Sathi**, (8) **Lubna Marium**, (9) **Farida Akhter**, (10) **Shireen Huq**, (11) **Dr. Zafrullah Chowdhury**, (12) **Mr. Ali Ahmed Ziauddin**, (13) **Rahnuma Ahmed**, (14) **Dr. Shahidul Alam**, (15) **Dr. C.R. Abrar**, (16) **Dr. Bina D' Costa**, (17) **Mahmud Rahman**, (18) **Dr. Zarina Nahar Kabir**, (19) **Leesa Gazi**, (20) **Shabnam Nadiya**, (21) **Nasrin Siraj Annie**, (22) **Tibra Ali**, (23) **Dr. Delwar Hussain** expressed 'regret' for the comment they made in the said statement.

2. At the out set, it is to be noted that out of 49 citizens who were asked to explain their conduct regarding the impugned statement they made, 26 citizens have already threw them to the mercy of the Tribunal seeking unconditional apology and accordingly they have already been exonerated. But the explanation furnished by 23 citizens the makers to

the impugned 'statement' through which they have expressed their mere 'regret' by saying-

"Statement and conduct was not in any way intended to 'belittle the authority and institutional dignity of the Tribunal in the mind of public' nor was it intended to question the 'openness and transparency of the Tribunal' as stated in the said Order of the Hon'ble Tribunal, and thus **regret** any such impression inadvertently made."

3. At the same time they have made an effort to defend by taking protection of fundamental rights enshrined in the Constitution of Bangladesh in respect of freedom of thought and conscience and freedoms of expression and association."

4. Prima facie it appears that the core content of the 'statement' questions '**transparency and openness**' of the judicial proceedings before the Tribunal and also **justification of the order sentencing** a journalist for the act of scandalising the Tribunal constituting the offence of contempt.

5. The way the makers to the 'statement' have expressed their concern on the matter arising out of the order convicting David Bergman for the offence of contempt *prima facie* appears to have tended to belittle the authority and institutional dignity of the Tribunal in the mind of public which goes against 'public interest'.

6. We are constrained to infer it *prima facie* that the 23 citizens in the name of expressing concern by making the impugned statement are not found to have expressed true remorse and repentance for their comment, by submitting explanation. Rather, they have made effort to justify their conduct they have shown by initiating the impugned statement.

7. The Tribunal finds the '**regret**' they have expressed it to be without real and sincere remorse. The Tribunal thus finds that it has been merely tendered as a 'weapon of defence'. It is to be noted that 'regret' and 'justification' or 'defence' cannot stand together. We are not convinced to

accept it particularly when it is coupled with a 'defence'. Thus it is rejected.

8. In view of above, we are of the view that for protecting authority and dignity of the Tribunal and to keep the notion of administration of justice untainted in the mind of public it is appropriate to draw contempt proceeding under section 11(4) of the International Crimes (Tribunals) Act 1973 against **(1) Masud Khan, (2) Afsan Chowdhury, (3) Ziur Rahman, (4) Hana Shams Ahmed, (5) Anu Muhammad, (6) Anusheh Anadil, (7) Muktasree Chakma Sathi, (8) Lubna Marium, (9) Farida Akhter, (10) Shireen Huq, (11) Dr. Zafrullah Chowdhury, (12) Mr. Ali Ahmed Ziauddin, (13) Rahnuma Ahmed, (14) Dr. Shahidul Alam, (15) Dr. C.R. Abrar, (16) Dr. Bina D' Costa, (17) Mahmud Rahman, (18) Dr. Zarina Nahar Kabir, (19) Leesa Gazi, (20) Shabnam Nadiya, (21) Nasrin Siraj Annie, (22) Tibra Ali, (23) Dr. Delwar Hussain** the makers to the impugned 'statement' published in the daily Prothom Alo on 20 December 2014.

9. As we find prima facie case in initiating contempt proceedings against those 23 citizens, we decide to ask each of those 23 citizens, to show cause, as to why they will not be punished individually for contempt of the Tribunal for scandalizing the Tribunal in the mind of the public by making impugned statement and thereby demean its authority and dignity under the provision of section 11(4) of the International Crime (Tribunals) Act, 1973 on or before 23.04.2015.

10. The **eight (8)** persons who have been staying in abroad may be duly notified through the respective Bangladesh Mission. Ministry of Foreign Affairs, Dhaka, Bangladesh is asked to do the needful.

11. Records shows, notice of the order has duly been served upon the respective authority of "New York Times" but they have not responded yet. In such a posture, we are constrained to pass appropriate order

regarding the comment made by the "New York Times" for scandalizing the Tribunal in the mind of the public by publishing impugned comment inter alia 'It should immediately overturn Mr. Bergman's Sentence and Conviction' in its editorial dated 23.12.2014 and thereby demean its (Tribunal's) authority and dignity.

23.04.2015 is fixed for further order. Registrar, ICT is directed to communicate the order accordingly.

Justice Obaidul Hassan, Chairman

Justice Md. Mozibur Rahman Miah, Member

Justice Md. Shahinur Islam, Member