

In the International Crimes (Tribunal -1), Dhaka
ICT-BD Misc. Case No. 3A of 2014
(Arising out of ICT-BD Case No. 05 of 2013)

In the matter of :

Contempt proceeding under section 11(4) of the International Crimes (Tribunals) Act, 1973.

And

Present:

Mr. Justice M. Enayetur Rahim, Chairman
 Mr. Justice Jahangir Hossain, Member
 Mr. Justice Anwarul Haque, Member

In the matter of :

The State

..... Petitioner

-Versus-

Md. Abul Asad and others

..... Opposite Parties

Mr. Zead-Al-Malum, with
 Mr. Taposh Kanti Baul, Prosecutors

...For the petitioner

Mr. A.Y.M. Moshiuzzaman, with
 Mr. Gazi M.H. Tamim, Advocates

..... For opposite party nos. 1-3

Mr. M. Ali Murtaza, Advocate

.....For opposite party no. 4

Order No. 07

Date of order: 12.03.2015

ORDER

Today is fixed for passing an order in the above noted miscellaneous case.

It appears from the record that this miscellaneous case has arisen out of ICT-BD Case No. 05 of 2013, Chief Prosecutor versus A.T.M Azharul Islam, which was pending for trial before this Tribunal. That case was fixed on 03.08.2014 for examination of defence witness. From the documents submitted by the defence it appeared before the Tribunal on that day that the 'Dainik Sangram' on 27 December, 2013 had published an interview of Ekramul Haque Dulu, former Unit Commander of

Muktijodha Sangsad, Badargonj Thana Unit, Rangpur [opposite party no. 3] under the caption ‘মুক্তিযুদ্ধকালে আজহারের বিরুদ্ধে অনীত হত্যাকাণ্ডের অভিযোগ ভিত্তিতে’. In the said news item it was mentioned to the effect:

“জামায়াত নেতা এটিএম আজহারুল ইসলাম সম্পর্কে একরামুল হক দুলু বলেন, ৯৬ সালে সংসদ নির্বাচনে অংশ নেয়ার পূর্বে আমরা কেউ তাকে চিনতাম না। তিনি যে বদরগঞ্জের মানুষ এটা কেউ জানতো না। তার সম্পর্কে মুক্তিযুদ্ধকালে যে বিভিন্ন হত্যাকাণ্ডের অভিযোগ আনা হয়েছে তা অপবাদ ছাড়া কিছু নয়। থানা মুক্তিযোদ্ধা সংসদ ইউনিট কমান্ডার হিসাবে সেই সময় কারা স্বাধীনতা বিরোধী অপরাধের সংগে জড়িত ছিল তা আমার জানা। আজহারের বিরুদ্ধে কোন অপরাধের অভিযোগ থাকলে আমি অবশ্যই তা জানতাম।”

Similarly the ‘Dainik Sangram’ on 26 January, 2014 in its 2nd edition had published an interview of Azizur Rahman Ranga, Additional G.P. of Rangpur District [opposite party no. 4] under the caption ‘৬৯ থেকে ৭৪ সাল পর্যন্ত কারমাইকেল কলেজে আজহার নামে কোন ছাত্রনেতা ছিল না।’ In the said news item it was stated that-

“এক প্রশ্নের জবাবে ৭১ সালের প্রভাবশালী ছাত্রলীগ নেতা এডভোকেট আজিজুর রহমান রাস্তা বিস্ময়ের সাথে বলেন, ৭০-৭১ সালে এটিএম আজহারুল ইসলাম নামে ছাত্র সংঘের কোন নেতা দূরে থাক, ঐ নামে কাউকেই চিনতামই না। ওই নামে ঐ সময়ে আজহার নামে কোন ছাত্র নেতা ছিল। আজহার তেমন নেতা হলে অন্ততঃ আমি তাকে চিনতাম। কেননা ঐ সময় এমন ছাত্র নেতাদের নামেই অভিযোগ করা হতো। পতি সেক্রেটারি কিংবা কোন প্রভাবশালী নেতাকে চিনতাম না।”

It appeared to the Tribunal that during pendency of the trial of the aforementioned case the above two interviews were made by Ekramul Haque Dulu and Azizur Rahman Ranga respectively and the same were published in the ‘Dainik Sangram’ which were nothing but tend to prejudice the case of a party before the Tribunal, which were *prima facie* tantamount to contempt of court and, as such, this Tribunal was initially convinced by order dated 03.08.2014 to issue notices upon the opposite

party nos. 1-4 to explain in writing as to why contempt proceeding under section 11(4) of the International Crimes (Tribunals) Act, 1973 would not be initiated against them.

On getting show cause notice opposite party nos. 1-3 appeared before the Tribunal through their counsels by submitting separate replies to the show cause notice. The opposite party no. 4 also appeared in person before this Tribunal by submitting a written reply. Subsequently he engaged Mr. M. Ali Murtaza as his counsel.

The opposite party no.1 Md. Abul Asad is the editor of the 'Dainik Sangram' and opposite party no.2 Mohammad Nuruzzaman is a local reporter of that daily news paper, Rangpur. The contents of the written replies submitted by opposite party nos. 1-3 are almost similar to each other and all of them have tendered unconditional apology. The opposite party nos. 1-3 in their written replies to the show cause notice have stated, *inter alia*, that they have realized their mistakes and the severity of their faults and are now throwing themselves at the complete mercy of the Hon'ble Tribunal and they are not offering any explanation for their actions.

Besides, opposite party no. 1 has stated in his written reply to the show cause notice that he is the editor of the 'Dainik Sangram' and he has the highest regard for the judiciary and had no intention of scandalizing the judiciary. However, in publishing the two reports in question in the 'Dainik Sangram' dated 27.12.2013 and 26.01.2014, he has realized that as editor he has rendered himself liable for punishment for contempt of court. He has appreciated that he should not have allowed publication of the comments and news in relation to a matter which was sub-judice before this Hon'ble Tribunal. He has realized that a serious lapse was

committed by him in publishing the news items in question. The opposite party no. 1 has regretted having published the said two news items and has sought unconditional apology and thrown himself at the mercy of this Hon'ble Tribunal and he has further undertaken that he will never again publish any news item which would scandalize the judiciary or interfere with the administration of justice or be considered as contumacious, and he will ensure and observe great care and responsibility in reporting news in relation to the judiciary, and in the circumstances, he has prayed to be pardoned and exonerated from the charge of contempt of court.

The opposite party no. 2 in his written reply has stated, *inter alia*, that he is a responsible journalist and he has the highest regard for the judiciary and had no intention of scandalizing the judiciary. However, in writing the two news reports in question, he has realized that he has rendered himself liable for punishment for contempt of court. He has appreciated that he should not have written of those two reports in relation to a matter which was sub-judice before this Hon'ble Tribunal. He has realized that his actions in writing the news items were liable to affect the judiciary in its administration of justice and also to lower the dignity of the judiciary. The opposite party no. 2 having expressed his sincere regret tendered his unconditional apology. He has undertaken that he will never again write any news item which would scandalize the judiciary or interfere with the administration of justice, and he will ensure and observe great care and responsibility in reporting news in relation to the judiciary, and in the circumstances, he has prayed to be pardoned and exonerated from the charge of contempt of court.

The opposite party no.3 in his written reply to the show cause notice has stated, *inter alia*, that due to a lack of circumspection on his part the

interview was given which was published in the 'Dainik Sangram'. He has realized that due to his interview published in the said news paper he has made himself liable for punishment for contempt of court. He should have taken measures so that no such publication was made on a matter in relation to which a criminal proceeding was pending before this Hon'ble Tribunal. The opposite party no. 3 has apologized for not realizing at the time of giving the interview in question that the same would be regarded as contempt of court. However, he has now realized his error and is throwing himself at the mercy of this Hon'ble Tribunal for its forgiveness. He has the highest regard for the judiciary and had no intention of scandalizing the judiciary. He has undertaken that in future he will personally take steps to ensure and observe great care and responsibility in giving interview/statement in relation to the judiciary. He has further undertaken not to give any interview/statement which would scandalize the judiciary or interfere with the administration of justice. He has tendered his unqualified and unconditional apology at the earliest stage. In tendering his apology, he has neither justified nor attempted to provide an explanation for his alleged actions. In the circumstances, the opposite party no. 3 has prayed to be pardoned and exonerated from the charge of contempt of court.

The opposite party no. 4 in his reply has stated, *inter alia*, that on 06.12.2013 one Md. Nuruzzaman came to his residence situated at Pirgonj Upazila, Rangpur and identified himself as a writer and requested him to give a writing regarding the Liberation War and mass uprisings in Rangpur District to publish the same in a Souvenir. The opposite party no. 4 on good faith disclosed his life story to him who said that his life story would be published in their Souvenir on 16.12.2013 and a copy of

the Souvenir would be handed over to him. On 16.12.2013 no such publication was made. Later on opposite party no. 4 came to know that on 26.01.2014 a news item was published in the 'Dainik Sangram' regarding his interview in question. He never stated the said facts of news item to the reporter of the 'Dainik Sangram'. The reporter according to his own will and words published the said news item to cause harm to him. The opposite party no. 4 being a strong follower of Bangladesh Awami League and Additional Government Pleader of Rangpur District, he could not make any such comment regarding a sub-judice matter. The statement made in the news item in question is totally false and concocted and published with an ulterior motive to save accused A.T.M Azharul Islam and to motivate the people of the country for illegal gain. If he could have learnt the news item published earlier, he might have given a rejoinder against the false and fabricated news. The opposite party no. 4 being a lawyer and law abiding citizen of the country did never committed any such offence during his past life, therefore, he has tendered unqualified apology and mercy before the Hon'ble Tribunal for any fault of his own and has undertaken that he would be careful regarding the matter in future life.

Mr. A.Y.M. Moshiuzzaman along with Mr. Gazi M. H. Tamim, the learned counsels for opposite party nos. 1-3 having placed their written replies to the show cause notice submitted that opposite party nos. 1-3 have begged unconditional apology and prayed to be pardoned and exonerated from the charge of contempt of court and that such mistakes would not be repeated in the future and they will remain utmost cautious in dealing with such matter and, as such, this miscellaneous case should be disposed of accordingly. The opposite party no. 4 has also tendered

unconditional apology and undertaken that he would be careful regarding the matter in future life. He has also prayed to be pardoned and exonerated from the charge of contempt of court.

Mr. Zead-Al-Malum and Mr. Tapos Kanti Baul, the learned prosecutors appearing for the State, have submitted that the opposite parties are personally liable for their acts and omissions as stated in the show cause notice, however, since they have tendered unconditional apology and undertaken that they would not repeat the same thing in the future, the Hon'ble Tribunal may pass any order as it deems fit and proper.

Be that as it may, we have heard the learned lawyers of respective parties and considered their submissions. We have also carefully scrutinized the two news items in question published in the 'Dainik Sangram', written replies to the show cause notice submitted by the opposite parties and other materials on record.

The moot question that falls for consideration by this Tribunal in the instant proceeding is that whether the alleged news items are contemptuous which come under the mischief of section 11(4) of the International Crimes (Tribunals) Act, 1973.

Before going into the gamut of the case let us first see what are the redeeming features governing the contempt of proceeding as a whole. At the very outset we would like to mention here that the Contempt of Court Act, 1926 has not given any definition as such to explain what constitutes an offence of contempt. But it has been defined in sub-section (4) of section 11 of the Act of 1973 which is quoted below:

"A Tribunal may punish any person, who obstructs or abuses its process or disobeys any of its order or direction, or does

anything which tends to prejudice the case of a party before it, or tends to bring it or any of its member into hatred or contempt, or does anything which constitutes contempt of the Tribunal, with simple imprisonment which may extend to one year, or with fine which may extend to Taka five thousand, or with both."

The essence of contempt is action or inaction amounting to an interference with or obstruction to or having a tendency to interfere with or obstruct the normal course of administration of justice. Section 11(4) of the Act of 1973 as quoted above is wide and the same is referable even to doing anything which tends to bring the Tribunal or its members into hatred, in addition to obstruction to its process or doing anything which tends to prejudice the case before it. The phrase 'doing anything' refers to publication, speech or comments whether by words spoken or written or even by signs or by visible representations which scandalizes or tends to scandalize, or lowers or tends to lower the authority of the Tribunal or prejudices or interferes or tends to interfere with the due course of any judicial proceeding or interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner. Criminal contempt of court may also consist the acts committed out of court *ex facie curie* such as publishing matter or indulging in conduct likely to prejudice the fair trial of pending proceedings. In this type of case, actual intention to prejudice the proceeding is immaterial.

On perusal of the record it appears that the case of the Chief Prosecutor versus A.T.M. Azharul Islam [ICT-BD Case No. 05 of 2013] was pending for trial in this Tribunal. This Tribunal by its order dated 25.07.2013 took cognizance of the offences as specified in section 3(2)

read with section 4(1) and 4(2) of the Act of 1973 against accused A.T.M. Azharul Islam and thereafter charge was framed on 12.11.2013 against the accused. During pendency of the trial of the said case the alleged two interviews were made by opposite party nos. 3 and 4 and the same were published in 'Dainik Sangram' dated 27.12.2013 and 26.01.2014 respectively touching the charges/ allegations brought against the accused person with a view to give a different version regarding the charges/ allegations brought against the accused to the public at large. During pendency of trial making any public comment /interview in media by any person touching the merit of the charges/allegations and publishing such comment /interview in media no doubt is an attempt to interfere with the proceeding of the Tribunal. These attempts are nothing but to tend to prejudice the case of a party before the Tribunal, which amount to contempt of law and, as such, the opposite parties have committed contempt of court which is punishable under section 11(4) of the Act of 1973.

It may be reiterated here that all the opposite parties [opposite party nos. 1-4] by submitting separate replies to the show cause notice have tendered unconditional apology. An apology usually mitigates the offence of contempt of court when it must come from the heart of the contemner, and when it is unqualified the court may accept it. Unless the contempt is of a very gross nature, the court is generally inclined to accept apology from the contemner. Where the violation of the court's order is deliberate and pre-planned indicating certain defiant attitude on the part of contemnors, the court may refuse to accept the unqualified apology. An apology is not a weapon of defence forged to purge the guilt of the offender, nor it is intended to operate as panacea. It is intended to be

evidence of real contriteness, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrong-doer's power. Such an apology to be acceptable must be sincere, unqualified and should be tendered at the earliest opportunity. However, on some occasions the court may accept the apology even though tendered at the belated stage. In the peculiar circumstances of a case, court may accept apology though tendered belatedly.

In order that a court may accept the apology of a contemner, four elements are necessary in an application offering unconditional apology. **In the case of Abdul Karim Sarker vs. the State reported in 38 DLR [AD] 188 [194 paragraph 18] the Appellate Division of the Supreme Court of Bangladesh** having concurred with a decision of the Supreme Court of Pakistan laid down certain principles in the matter of acceptance of apology in the following terms:

"In considering whether the apology should be accepted or not, a few facts should be taken into consideration." These facts, as mentioned by the Court, are:

- "(i) As to whether the appellant appreciated that his act was within the mischief of contempt; *
- (ii) Whether he regretted it;*
- (iii) Whether his regret was sincere;*
- (iv) Whether it was accompanied with expression of the resolution never to repeat again; and*
- (v) Whether he made humble submission to the authority of the court."*

In this context our Apex Court also observed **in the case of Md. Riaz Uddin Khan and another vs. Mahmudur Rahman and others reported in 63 DLR[AD] 29** as under:

“Apology or repentance in the facts of the given case came from the pen and not from his heart. Apology must have been tendered at the earliest opportunity. The Apex Courts of this subcontinent held that the delay in tendering unqualified apology is not an apology in the eye of law.”

It may be mentioned here that subsequently opposite party nos. 1-3 by submitting a supplementary reply have stated that the opposite party no. 1, Md. Abul Asad, editor, the Dainik Sangram has published a news item on the front page of the ‘Dainik Sangram’ titled “cKivkZ msev` mslMtgi `yl cKivk” regretting for their acts in question. The said news item is as follows:

“GKivEi সালে আহজাহার নামে কোন রাজাকার কমান্ডারের নাম শুনিনি এবং ১৯৬৯ সাল থেকে ১৯৭৪ সাল পর্যন্ত রংপুর কারমাইকেল কলেজে আজহার নামে কোন ছাত্রনেতা ছিল না শিরোনামে সাবেক মুক্তিযোদ্ধা কমান্ডার ইকরামুল হক দুলা এবং সাবেক ছাত্রলীগ নেতা আজিজুর রহমান সরকার রাঙ্গার উদ্ধৃতি দিয়ে সাক্ষাৎকারমূলক দুটি প্রতিবেদন দৈনিক সংগ্রামে প্রকাশ করা হয় ২৭ ডিসেম্বর ২০১৩ ও ২৬ জানুয়ারি ২০১৪ তারিখে।

Sjjjuja @eaj HWHj BSqjll ইসলামের বিরুদ্ধে ট্রাইব্যুনালে মামলার কার্যক্রম চলাকালে এই দুটি প্রতিবেদন প্রকাশ করা সঠিক হয়নি। এজন্য দৈনিক সংগ্রাম কর্তৃপক্ষ ভুল স্বীকার ও দুঃখ প্রকাশ করছে। - pcfjclz ”

In the instant case we find that all the opposite parties tendered unconditional apology at the earliest stage immediately after receiving show cause notice. Besides, the opposite parties have stated that they have realized their mistakes and the severity of their faults and have thrown themselves at the complete mercy of this Tribunal. They have not offered any explanation for their actions and have regretted their

contemptuous actions. They have also resolved not to repeat contumacious actions. So, we believe that the opposite parties have tendered their apology from their hearts at the earliest stage. Since the opposite parties have expressed remorse and thrown themselves at the mercy of this Tribunal, their unconditional apology may be accepted by us. Though the Court/Tribunal has ample authority to punish a contemner, but it intends to take lenient view in giving him an opportunity to rectify himself without punishing him when he expresses remorse and throws himself at the mercy of the Court. In this context we find support of the observation made by **our Apex Court in the case of M Saleemullah vs. State reported in 57 DLR [AD] 94** which is as under-

“The contempt petitioner having expressed remorse and thrown himself at the mercy of this Court we are accepting his unconditional apology and exonerating him from the charge of contempt of Court.”

With the aforesaid observations and findings the instant miscellaneous case is disposed of with a note that the opposite parties shall be careful, cautious and respectful in making and / or publishing any statement or comment with regard to the judicial proceedings or the Judiciary or the Judges or the Courts of Bangladesh in future.

(M. Enayetur Rahim, Chairman)

(Jahangir Hossain, Member)

(Anwarul Haque, Member)