

# Case Summery on Begum Khaleda Zia Vs the State and another (2018/2019) 12 SCOB [2019] HCD

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## ABSTRACT

The High Court of Bangladesh observed in its ruling that Begum Khaleda Zia's unauthorized use of her prime ministerial position to raise funds for a personal trust was unexpected.<sup>1</sup> The special court sentenced her to seven years in prison for misappropriation of the Zia Charitable Trust in her absence. She was initially sentenced to five years in prison for the Zia Orphanage Trust by the same court.<sup>2</sup> The High Court determined the outcome of her appeal. The orphanage trust was established between 1991 and 1996, and the other between 2001 and 2006, during her tenure as prime minister. Both were named after her late spouse, Ziaur Rahman, who was the founder of the Bangladesh National Party (BNP) and served as the former president. However, she was denied parole in each of the thirty-two cases.<sup>3</sup> After being granted bail but she was required to appeal the charitable corruption verdict at the High Court. Nevertheless, all the accusations were dismissed due to the President's Prerogative of mercy, resulting in Begum Zia's release on August 6, 2024, following the glorious 'Quota Movement'.<sup>4</sup>

**Key Words:** Trust, Criminal Breach of Trust, Trustee, Penal Code 1860

## THE FACTS

The previous 3(three) Appeals and the Rule have arisen out of the same judgment and order dated 08.02.2018 passed by the learned Special Judge, Court no.5, Dhaka in Special Case no.17 of 2017 and those have been heard together and are being disposed of by this single judgment. Being aggrieved by the inadequate sentence awarded to Begum Zia the Anti-Corruption Commission (hereinafter referred to as the Commission) by preferring a revisional application has obtained the present Rule.

Begum Zia, during her tenure as Prime Minister from 1991 to 1996, initiated the establishment of the "PM's Orphanage Fund" account. Despite receiving a substantial donation of US \$12,55,000, equivalent to Bangladeshi TK. 4,44,81,216/-, intended for orphans, the funds were not distributed until 1993. Subsequently, she formed the Zia Orphanage Trust with her sons and nephew and transferred a portion of the funds to this trust. Including purchasing land, creating fixed deposit accounts (FDAs), and transferring funds to various individuals' accounts. After 13 years the money along with interest was later moved from the Trust account unlawfully, in 2006 without doing any charity for the orphans. The money was later moved in 2006 to the FDR account of Salimul Haque and two others, who then transferred the money again to Sharfuddin's account. Subsequently Begum Khaleda Zia (hereinafter referred to as Begum Zia) was charged for Criminal breach of trust by public servant, or by banker, merchant or agent under section 409 of the Penal Code and for Criminal misconduct under section 5(2) of the Prevention of Corruption Act, 1947 and other convicts were charged for Criminal breach of trust and abetment under sections 409/109 of the Penal code and section 5(2) of the Prevention of Corruption Act, 1947 along with section 109 of the Penal Code.

<sup>1</sup> Begum Khaleda Zia Vs The State and another (2018/2019) 12 SCOB [2019] HCD

<sup>2</sup> ibid

<sup>3</sup> Article 28 (4), The Constitution of the People's Republic of Bangladesh 1972.

<sup>4</sup> Article 49, ibid. Sec 401(5)(a), The Code of Criminal Procedure, 1898.

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## LEGAL ISSUES

- a. Whether Convict Begum Zia being the Prime Minister of the Republic was a public servant at the relevant time or not?
- b. Whether convict Begum Khaleda Zia had any manner of entrustment, dominion or control over PM's Orphanage Fund being account no.5416 maintained with the Sonali Bank, Ramna Corporate Branch and whether the same was a private fund, not public fund or not?
- c. Whether convict Begum Zia committed the offence of 'Criminal breach of trust' as defined in section 405 of the Penal Code and 'Criminal Misconduct' as defined in section 5(1) of the Prevention of Corruption Act, 1947 and whether convict Salimul Haque and Sharfuddin had abated in commission of such offence or not?
- d. Whether further investigation for collecting evidence to ascertain the source of the DD deposited in PM's Orphanage Fund is at all necessary at this stage or not?
- e. Whether the present case against Begum Zia is a politically motive case or not?

## SUBMISSIONS ON BEHALF OF THE CONVICT BEGUM ZIA

1. The advocates representing convict Begum Zia assert that as the head of the executive branch, she holds a constitutional office and can only be removed through constitutional procedures. Consequently, they argue that she does not meet the criteria to be classified as a 'public servant' according to the definitions provided in Section 21 of the Penal Code and Section 2(b) of the Criminal Law Amendment Act, 1958. They also contend that the inclusion of clause 'Twelfth' in section 21 of the Penal Code, defining 'public servant,' was nullified by a previous court judgment (Siddique Ahmed Vs Bangladesh), known as the 7th amendment case, rendering it legally nonexistent. Therefore, Begum Zia's trial conducted in the Special Court established under the Criminal Law Amendment Act, 1958, lacks legal validity and jurisdiction. Additionally, the charges specified under Section 409 of the Penal Code or Section 5(2) of the Prevention of Corruption Act, 1947, do not apply to Begum Zia.
2. Lack of evidence proves the PM's Orphanage Fund was a public fund entrusted to Begum Zia, challenging her conviction. The Amir of Kuwait donated the money for Zia Orphanage Trust, not for PM's orphanage fund, for charitable purpose, and there was no fund in Prime Minister's office in the name of PM's Orphanage Fund.
3. The prosecution failed to investigate the source of the fund properly, disregarding evidence suggesting it was from the Amir of Kuwait.
4. Begum Zia's lack of signatures on account documents indicates her non-involvement and no knowledge in opening or managing the account. They claim that the then-Foreign Minister, Mustafizur Rahman, brought the money from the Amir of Kuwait for charity, and he was aware of the fund. Begum Zia maintains her innocence, framing the case against her as political victimization.
5. Documents presented by the prosecution are alleged to be fabricated, lacking evidentiary value.
6. Documents lack official signatures, diminishing their credibility.
7. Begum Zia claims no association with the Trust, suggesting any misappropriation falls under the Trust Act 1984, not her responsibility.
8. Key witnesses are deemed biased and unreliable, tainting the trial's integrity.
9. Incomplete investigation into the fund's source leads to wrongful presumptions, demanding further inquiry to ensure justice.

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## SUBMISSIONS ON BEHALF OF CONVICT SALIMUL HAQUE

1. Salimul Haque's receipt and handling of five cheques lacked any indication of dishonest intent, particularly as he returned them to Tareque Rahman after receiving them without any designated account holder's name, therefore cannot be held liable U/S-409 of Penal Code,1860.
2. The Special Judge overlooked Salimul Haque's inability to know the source or legitimacy of the cheques, given the considerable time gap since their issuance.
3. Salimul Haque received the cheques as a personal acquaintance of Tareque Rahman, not in his official capacity, therefore cannot be convicted U/S-409 Penal Code,1860 and U/S-5(2) Prevention of Corruption Act,1947. However, the Judge erroneously treated him as a public servant, invoking inappropriate legal statutes.
4. Salimul Haque had no involvement in the alleged transfer of funds to the Trust in 1993, negating any accusations of abetment U/S-109. Therefore the learned Special Judge improperly and illegally convicted the appellant
5. The Judge disregarded evidence presented by Defense Witness 1 (DW-1), Sharfuddin himself by using his influence as Chairman of the Prime Bank Ltd. got the Concerned FDR, who admitted to opening an FDR in Salimul Haque's name, indicating errors in the Judge's findings and justifying Salimul Haque's acquittal.

## SUBMISSIONS ON BEHALF OF CONVICT SAHRFUDDIN AHMED

1. The prosecution failed to establish crucial details regarding the offense of 'criminal breach of trust,' including who committed the offense, when it occurred, and who abetted or instigated it. Consequently, the prosecution did not prove the elements of sections 409/109 of the Penal Code against Sharfuddin beyond a reasonable doubt.
2. Sharfuddin is neither a merchant nor an agent, rendering him ineligible for trial under section 409 of the Penal Code.
3. The evidence, including a judgment and decree from Money Suit no. 01 of 2012 and bank statements from Uttara Bank, Gulshan Branch, was not adequately considered by the Special Judge. The Judge erroneously claimed there was no Trust account in Uttara Bank, overlooking the return of money to the Trust following the court's ruling in Money Suit no. 01 of 2012.
4. Sharfuddin could, at most, be charged under section 411 of the Penal Code for receiving or retaining allegedly misappropriated money. Respondents/Prosecution Lawyers Arguments:

Submissions on behalf of Respondent no.1-the State:

1. The learned Special Judge made no errors or illegalities in assessing the evidence, both oral and documentary, leading to the conviction.
2. To sustain a conviction under section 409 of the Penal Code, the prosecution must prove that the accused, a public servant, was entrusted with property they were duty-bound to account for, and that they misappropriated it. In this case, the prosecution established that Begum Zia, as Prime Minister, was entrusted with the PM's Orphanage Fund and dishonestly used it, ultimately transferring portions to other convicts. All convicts aided each other in committing the offense of criminal breach of trust.
3. Once entrustment is proven, it is the accused's responsibility to show that they discharged their obligation. Although entrustment was proven against Begum Zia, she failed to demonstrate that she fulfilled her obligations, leading to the lawful conviction by the Special Judge.

4. The prosecution does not need to prove the exact manner of misappropriation; once entrustment is established, it falls on the accused to explain how the entrusted property was handled. In this case, Begum Zia failed to fulfill this burden of explanation.

Submissions on behalf of Respondent No.2, Anti-Corruption

## COMMISSION

1. The issue of whether Begum Zia, as Prime Minister, was considered a public servant has been previously decided by the High Court Division in Criminal Miscellaneous Case no.21979 of 2009 and affirmed by the Appellate Division in Criminal Petition for Leave To Appeal no.134 of 2012. It was determined that as a public servant, she was entrusted with the orphanage fund, and if she aided others in using any amount from the fund in violation of its prescribed mode, offenses under sections 409/109 of the Penal Code may apply.
2. The PM's Orphanage Fund was opened with Sonali Bank by the Prime Minister's secretary, Kamal Siddique, as per Begum Zia's instructions, preceding the deposit of money through a Demand Draft from United Saudi Commercial Bank, refuting claims that the fund was private rather than public.
3. Witness testimonies and supporting documents confirm the existence of the PM's Orphanage Fund.
4. Despite efforts to trace the source of the Demand Draft, the United Saudi Commercial Bank's non-operation hindered the investigation. However, other strong and corroborative evidence supports the prosecution's case.
5. The prosecution demonstrated that Begum Zia, as Prime Minister, was entrusted with the PM's Orphanage Fund and dishonestly transferred a portion to the Zia Orphanage Trust, established with her relatives. Subsequently, the trustees transferred the money to Salimul Haque and Sharfuddin, who were not connected to the Trust, resulting in misappropriation.
6. The offenses of criminal breach of trust and criminal misconduct have been proven against Begum Zia, while the offense of abetment has been proven against the other convicts.

Analysis of the Judge:

ISSUE-A: Whether Convict Begum Zia being the Prime Minister of the Republic was a public servant at the relevant time or not?

In light of the judgment rendered in Civil Appeal No.48 of 2011, which declared certain proclamations, ordinance orders, and martial law regulations made between March 24, 1982, and November 11, 1996, as void and non-existent, a new law was enacted to fill the legal vacuum. This law, known as the 'Act No. VII of 2013' sought to ratify and confirm the aforementioned proclamations and ordinances. Despite Ordinance No.X of 1982 not being listed in the schedule of this law, a careful reading of section 4(Kha) reveals its applicability to amending ordinances, which includes Ordinance No.X of 1982. Consequently, the provision of clause 'Twelfth' of section 21 of the Penal Code, defining public servants, remains in force. Furthermore, legal interpretations, constitutional provisions, and precedents establish that the Prime Minister, being a Member of Parliament remunerated by the government for public duties, falls under the category of public servants as outlined in clause 'Twelfth.' Therefore, the argument against Begum Zia's classification as a public servant and the legality of her trial under section 409 of the Penal Code lacks merit.

ISSUE-B: Whether convict Begum Khaleda Zia had any manner of entrustment, dominion or control over PM's Orphanage Fund being account no.5416 maintained with the Sonali Bank, Ramna Corporate Branch and whether the same was a private fund, not public fund or not?

Section 405 of the Penal Code, which defines "Criminal breach of trust." It highlights that anyone entrusted with property who dishonestly misappropriates it or violates the terms of the trust commits a criminal offense. The case pertains to the PM's Orphanage Fund, where funds were deposited into a specific account. Witnesses testified to the opening and handling of this account, indicating that it was under the control of the Prime

Minister's office. The court examined various documents, including bank statements and witness testimonies, and conclude that the fund was indeed public and under the control of the Prime Minister's office. Additionally, the defense's argument that the funds were meant for a trust, highlighting the lack of evidence for such a claim. Finally, it concluded that the then-Prime Minister, Begum Zia, had control and dominion over the fund, thus she can be charged in the case of criminal breach of trust.

ISSUE-C: Whether convict Begum Zia committed the offence of 'Criminal breach of trust' as defined in section 405 of the Penal Code and 'Criminal Misconduct' as defined in section 5(1) of the Prevention of Corruption Act, 1947 and whether convict Salimul Haque and Sharfuddin had abated in commission of such offence or not?

The Court observed that the Orphanage Fund was created in 1991 and managed by Kamal Siddique, the Prime Minister's secretary. Funds amounting to US \$12,55,000 were deposited in the account but not used for orphan welfare. In 1993, two trusts were formed, but the money was not used for its intended purpose. Later, the funds were transferred to various accounts and misused through fraudulent means. The trusts were mere paper entities, and the funds were not spent for orphan welfare. The Prime Minister and other accused parties were involved in the misappropriation. Convictions were based on charges of criminal breach of trust and abetment of the offense. Overall, the prosecution establishes a clear case of fund misappropriation, implicating the Prime Minister and others involved. Begum Zia's abuse of power and failure to ensure the proper use of entrusted funds aggravated the offense, warranting a maximum sentence.

ISSUE-D : Whether further investigation for collecting evidence to ascertain the source of the DD deposited in PM's Orphanage Fund is at all necessary at this stage or not?

The defense has repeatedly called for further investigation to determine the source of a deposited demand draft (DD) in the PM's Orphanage Fund, suggesting it was sent by the Amir of Kuwait for the Zia Orphanage Trust, not the PM's Fund. However, due to the bank's merger, the identity of the sender could not be established. The court deems this issue non-incriminating since the focus should be on the foreign donation received for the PM's Fund. Even if the DD was from the Amir of Kuwait, it wouldn't benefit Begum Zia. The nature and purpose of the PM's Orphanage Fund cannot be altered, as indicated by the DD and testimony from witnesses. Thus, the defense's request for further investigation is deemed futile and outside the scope of the law, as there's no provision for accused to sought for further evidence during the appeal process.

ISSUE- E: Whether the present case against Begum Zia is a politically motive case or not?

The case against Begum Zia has been argued to be politically motivated, but the evidence presented suggests otherwise. The prosecution was initiated based on specific charges under the Penal Law, not due to political reasons. The principle that no one is above the law applies, regardless of political affiliation. The court emphasizes that political identity does not grant immunity from prosecution or trial. Begum Zia received all defense rights and procedural safeguards during the trial. Therefore, her political identity does not exempt her from being held accountable for the proven offense. Considering political identity in the legal process would set a dangerous precedent. Corruption poses a grave threat to good governance, democracy, and the rule of law, and leniency towards individuals in positions of power is unwarranted.

## JUDGMENT

The learned Special Judge found all appellants guilty under sections 409/109 of the Penal Code and section 5(2) of the Prevention of Corruption Act, 1947, but sentenced them only under sections 409/109 of the Penal Code. The convictions and sentences of the other convict appellants under sections 409/109 of the Penal Code were not considered. Begum Khaleda Zia was convicted under section 409 of the Penal Code and section 5(2) of the Prevention of Corruption Act, 1947, and sentenced only for Section 409 of the Penal Code to ten years of rigorous imprisonment and a fine. The appeals were dismissed, and the convictions and sentences of Kazi Salimul Haque alias Kazi Kamal and Sharfuddin Ahmed were upheld. The lower court records were to be sent immediately to the relevant court for information and further action.

## **CONCLUDING REMARKS**

This is a landmark judgement and appealed with major significance indeed. However, after a thorough legal scrutiny of this case notes, the author also believes that there was a sight of controversy exhibited as well. There should not be any difficulty to oversee that all the decided trials (2011- 19) endured from The Trusts Act 1882. The former Prime Minister or the defendant and others were being found guilty for breaching duties as a trustee. However, there was no mention of pertinent sections like 27, 36, 88 and 89.