

# **In the International Crimes (Tribunal-1), Dhaka**

## **ICT-BD Misc Case No. 03 of 2013**

### **In the matter of:**

A petition for contempt under section 11(4) of the International Crimes (Tribunals) Act, 1973, read with Rule 45 of the International Crimes (Tribunal-1) Rules of Procedure, 2010

**And**

### **In the matter of:**

Chief Prosecutor

.....petitioner

**-Versus-**

Channel 24 and others

.....Opposite parties

Mr. Zead-Al-Malum, with Mr. Sultan Mahmud, Ms. Tureen Afroz, Taposh Kanti Baul, Prosecutors

.....for the petitioner

Mr. Mohammad Asaduzzaman, with Md Anisul Hassan, Advocates

.....for the opposite party nos. 1, 2, 3, 5 and 6

Mr. Joynul Abedin with Md. Tazul Islam, Mohammad Toriqul Islam and Ms. Rumeen Farhana Advocates

.....for the opposite party no. 8

Mr. Dr. Zafrullah Chowdhury, opposite party no. 7

.....appeared in person

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

Facts figured in the application by the petitioner are summarized below:

The petitioner as the Chief Prosecutor of the International Crimes Tribunals [BD] presented an application along with a copy of DVD of the talk

show program before this Tribunal against the opposite parties on the allegation that they made some remarks in the talk show named 'Muktobaak' on 18.09.2013 at 11.00 P.M during its live broadcasting about the trial proceedings against accused Salauddin Quader Chowdhury.

On perusal of the application for contempt and witnessing the 'Muktobaak' talk show of Channel 24 held on 18.09.2013 the Tribunal was initially convinced by order dated 26.09.2014 to issue notices upon the opposite party nos. 1-8 to explain as to why contempt proceedings under section 11(4) of the International Crimes (Tribunals) Act, 1973, would not be initiated against them and further directed opposite party no. 7 Dr. Zafrullah Chowdhury and opposite party no. 8 Mr. Mahfuz Ullah to appear before the Tribunal in person.

On getting show cause notice the opposite party no. 7 appeared in person before this Tribunal by submitting a written reply to the show cause notice and prayed for permission to conduct his own case without appointing any lawyer for him and subsequently other opposite parties also appeared before this Tribunal through their respective counsels by submitting written replies to the show cause notice. The opposite party no. 8 Mr. Mahfuz Ullah also appeared in person before the Tribunal later on.

On 01.12.2013 an application was filed by the prosecution under Rule 46(A) of the Rules of Procedure, 2010 praying for inserting the specific names of the opposite party nos. 1, 2, 3 and 5 as their names inadvertently could not be mentioned in the main application and further prayed for designating opposite party no. 4 to be omitted. The application was allowed after hearing the parties to insert their particular names in the application as opposite party nos. 1, 2, 3 and 5.

Mr. Zead-Al- Malum, the learned Prosecutor in support of contempt of court submitted that the Tribunal by observing all provisions of law and Rules concluded the trial proceeding of the case against the accused Salauddin Quader

Chowdhury on 14.08.2013 and while it was awaiting for delivery of its verdict [Curia Advisari Vult (CAV) ] the opposite parties more particularly opposite party nos. 7 and 8 made some remarks in the Talk Show named 'Muktobaak' held on 18.09.2013 by the arrangement of Channel 24, a electronic media, which were very contemptuous under section 11(4) of the International Crimes (Tribunals) Act of 1973. He reiterated that the comments made by opposite party no. 7 as under:

*"AvRtK mvj vDwi' b Kv` i tPšajx, Avgiv wPiKvj tRtb GtmuQ, GUv Avig wekjmI Kti uQ, AvRtK tm ej tQ, tm bwiK uQtj vB bv, tmUv mZ", hvB tnvK, tm 4Uv mvŋx B Kti tQ, GKUv tZv ej jvg Avgv` i mvj gvb, AvtiKRb ntj b GKRB wmuUs RRMvne, GB nvBtKvUŋ eZgvb RRMvne tK tm mvŋx tgbtQ Ges Dwb etj tQb Dwb mvŋx w` tZ Pvb, Dwb bwiK ` i Lv` l w` tquQtj b, Avgv` i tgvRv`sj tnvmb mvntei KvQ mvŋx t` evi AbswZ tPtuQtj b, ZvtK AbswZ t` qv nqwb Ges GKRB cŋ<sup>3</sup> b ivŋ Z w` tqtQb, Dwb itbtQb| GB th wRwbUv Gi dtj wK nte? mt` nUv wKŠ' gvbj i gtb t` tKB hvte| AvBtb etj G ` kRb Avmvgx Lvj vm tctq hvK wKŠ' GKRB wbi vci va thb kw` l bv cvq|"*

And opposite party no. 7 further stated that,

*"mvj vDwi' b Kv` i tPšajx tK gtb-cŋ<sup>3</sup> b Nyv Kwv Avig, GB tj vK ` vex Kti tQ tm uQtj vbv, tm nwmvBb bvtgi GK RR mvnteiK mvŋx tgbtQ, tmB RR mvnteiK tKb mvŋx t` b bvB, GUvtK hv` bv t` l qv nq, Zvntj wK wePvti i evbx wbfZ Kv` te bv ? GB wePvi K tKb mvŋx t` te bv?ŋ"*

And opposite party no. 8 also continued to say that,

*"Avi Rbve Rvdi Dj wn tPšajx mvne th cŋ<sup>3</sup> D l vcb Kti tQb, tmUv nj , Dwb [mvj vDwi' b Kv` i tPšajx ] 4Rb mvdvB mvŋxi bvg w` tqtQb, thUv Ab` t` i tŋtI Mhb Kiv ntqtQ i ayZvi [mvj vDwi' b Kv` i tPšajx] tŋtI mvdvB mvŋx` i Mhb Kiv nqwb| GB Rb` B Dwb [Rvdi Dj wn tPšajx] etj tQb th GB Rb` B cŋ<sup>3</sup> wj evi evi D l vncZ nt` Qŋ|"*

Mr. Malum submitted that the remarks made in the 'Talk Show' were biased, baseless, utterly false, fabricated and ill-motivated. Those were not made

in good faith. Such comments were made only to scandalize this Hon'ble Tribunal and its process. He further contended that the opposite parties should be penalized as per section 11(4) of the International Crimes (Tribunals) Act, 1973 read with Rule 45 of the ICT (Tribunal-1) Rules of procedure, 2010.

On the other hand, Mr. Mohammad Asaduzzaman, the learned counsel for opposite party nos. 1, 2, 3, 6 and 5 by placing written reply, contended that since the 'Talk Show' named 'Muktobaak' was a live television program the above opposite parties had no scope to edit any version of that 'Talk Show', even then, the authorities of channel 24 regretted to their brief account after it was telecast/aired. He further contended that the said talk show program was broadcast in good faith and not for tarnishing the image of the Tribunal but to facilitate fulfillment of the historic role of the Hon'ble Judges of the Tribunal through constructive criticism that usually results through open talks. Mr. Asad submitted further that in the 'Talk Show' in question one participant differed from the comments of the opposite party nos. 7 and 8.

Mr. Tazul Islam, the learned counsel appearing on behalf of the opposite party no. 8 argued that Mr. Mahfuz Ullah [opposite party no. 8] made no statement in relation to on-going judicial proceedings nor had he scandalized the judiciary in any manner. Mr. Mahfuz Ullah only tried to clarify the issue raised by another participant in that talk show. He neither expressed his opinion nor supported the statement made by the opposite party no.7. Mr. Tazul Islam lastly submitted that apart from the clarification or justification Mr. Mahfuz Ullah apologized for his comments made in 'Muktobaak' if that scandalized Judges of the Tribunal or its process in any manner and prayed for exoneration of opposite party no. 8 from the contempt proceedings.

Mr. Dr. Zafrullah Chowdhury, appearing in person submitted by showing written reply to the show cause notice that he had expected to have show cause notice in bengali language from the Tribunal. If the judgment was delivered in Bengali the respect of the people will be increased on the judges as a whole. He

further contended that he did not commit any offence by making remarks in the talk show rather he reviewed the comments of the people to bring the confidence of the court in the mind of the people. He orally admitted in the Tribunal about his some mistakes while addressing the judges of the higher judiciary in that Talk Show. He had drawn attention to the Tribunal by showing his written reply that suggested looking into some observations made by judges of the foreign countries including America, England, India and Pakistan. He finally expressed his expectation to get exoneration from the contempt of court proceedings.

We heard all the parties at length on the proceedings of show cause notice issued earlier by this Tribunal on 26.09.2013 and perused the application wherefrom it transpires that the comments of opposite parties in the 'Talk Show' were broadcast and aired which generated a debate in the mind of the prosecution as well as people of the country. Such concerns of the judiciary and the honor and dignity of the judges, if is not otherwise motivated, is the healthy sign for the upholding the justice delivery system and the rule of law. However whether any of the opposite parties committed contempt of court proceedings by making such remarks in the 'Talk Show' is the main issue before us.

Now let us understand what contempt is and what procedure to be followed and provided in the Act. It has been defined in section 11(4) of the International Crimes (Tribunals) Act, 1973 as follows:

*“A Tribunal may punish any person, who obstructs or abuses its process or disobeys any of its orders or directions or does anything which tends to prejudice the case of a party before it, or tends to bring it or any of its members 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.”*

Moreover, the Tribunal has adopted rules to deal with contempt proceedings under Rule 45 of the International Crimes (Tribunals) Rules of Procedure, 2010 which is as follows:

*“In pursuance of section 11(4) of the Act, the Tribunal may draw a proceeding against any person who obstructs or abuses the process of the Tribunal, or disobeys any of its order or direction of the Tribunal, or who does anything which tends to prejudice the case of a party before the Tribunal, or tends to bring the Tribunal or any of its members into hatred or contempt, or does anything which constitutes contempt of the Tribunal.”*

Nevertheless, there is a law in our country titled ‘the Contempt of Courts Act,’ 1926 in which no definition has been given regarding the contempt of court. But in Article 108 of our Constitution it has been stated that,

*“The Supreme Court shall be a court of record and shall have all the powers of such a court including the powers subject to law to make an order for the investigation of or punishment for any contempt of itself.”*

It has been described by KJ Aiyar in his treatise, “Law of Contempt of Courts” 7<sup>th</sup> Edition as under:

*“A contempt can assume any form, any act, any slander, any contemptuous utterance,*

*or can be the subject matter of any news, report or article, or it may be an act of disobedience of Court's order. Consequently, the Courts dealing with contempt cases, have, in the peculiar circumstances associated with the nature and range of the delinquency in question, not been able to define the said words exhaustively.”*

Halsbury's Laws of England, Volume VII, paragraph 603 divides contempt of Court into two categories,

1. *“Criminal contempt; consisting in words or acts obstructing or tending to obstruct, the administration of justice, or*
2. *Contempt in procedure, consisting in disobedience, of orders or other process of the Court, and involving a private injury.”*

A contempt proceeding which is quasi criminal in nature. The contemnor is entitled to benefit of doubt, and since the Court is both prosecutor and judge, rule as to proof of guilt of the contemnor must be strictly observed.

It may be borne in mind that though a contempt proceeding is quasi-criminal in nature; the contemnor is not like an accused in a criminal case since he may file affidavit or make statements on oath or even may file written reply in refutation of the allegation against him. The charge must be proved to the hilt otherwise the contemnor is entitled to benefit of doubt. [Moazzem Hossain – Vs- State, 35 DLR (AD) 290 and Mahbubur Rahman Sikder-Vs-Majibur Rahman Sikder, 35 DLR (AD) 203].

As the object of the proceedings for contempt is not the vindication of the character or conduct of a Judge but to protect the Court from attack and to maintain in it the confidence of the people, particularly the litigants, the true ground for initiating such proceedings is the public interest. It is for this reason that the jurisdiction to punish for contempt is envisaged to be a special jurisdiction governed by its own rules even where they come in conflict with some general principles of law.

Secondly, the prestige and the dignity of the Courts of law must be preserved. The confidence of the litigant should not be shaken by the use of contemptuous and scandalous expressions toward Court for its judgments and attempting thereby to belittle them. Stream of justice is not to be polluted by shaking the confidence in the administration of justice by conduct exhibited and words used.

In *Morris -Vs-Crown Office* [1970] 2 QB 114, 129 Salmon LJ observed:

*“The sole purpose of proceedings for contempt is to give our courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented.”*

Many years ago Lord Diplock in *Attorney-General –Vs- Leveller Magazine Ltd* [1979] AC 440, 449F thus summarized the position:

*“although criminal contempts of court may take a variety of forms they all share a common characteristic; they involve an interference with the due administration of justice either in a particular case or more generally as a continuing process. It is justice itself that is flouted by contempt of court.....”*



The court must fetch the constitutional values of free speech and expression of the commentators. The balance should be struck between such values vis-a-vis the rights of the people in their lives and properties as guaranteed by the constitution for strengthening the confidence in respect, dignity and honor of the judiciary.

The above view was aptly stated in *Razina –Vs- Metropolitan Police Commissioner, Ex parte Blackburn*, [1968] 2 All ER 319 [1968] CA 150. by Lord Denning.

*“All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.”*

In respect of accountability we must enjoy an opportunity to place the main line of thought of the judiciary on the subject that Mr. Justice Mostafa Kamal, former Chief Justice of Bangladesh, in his reply to the felicitation organized on 1<sup>st</sup> June, 1999 by the Supreme Court Bar Association expressed views as under:

*“The legal profession and the judiciary now stand at a cross-road of history. So long the judiciary functioned almost beyond the gaze of public eyes, but with the concept of accountability growing currency by the day, the legal profession and the judiciary can no longer function behind and beyond public*



contributed in broadcasting said 'Talk Show' on 18.09.2013 giving untrue statements on the sub-judice matter with intent to lower down the image of the Tribunal as well as judiciary in the estimation of the people at large.

Everybody knows there are always two sides to a coin. A single hand does not clap alone. Judges are always obliged to deal with the litigations of litigants and they [Judges] try to dissolve the disputes fairly in the dispensation of justice which brings the peace and tranquility in the society and makes the law and order situation stable for the nation as a whole. The strains and mortification of litigation cannot be allowed to lead litigants to tarnish, terrorize and destroy the system of administration of justice by vilification of judges. It is the right and interest of the public in the due administration of justice that has to be protected.

Our Appellate Division in the case of A. Karim –Vs- State reported in 38 DLR (AD), 188 observed that,

“So we approach the question not from the point of view of the judge whose honor and dignity require to be vindicated, but from the point of view of the public who have entrusted to us the task of due administration of justice.”

It is pertinent to mention here that the proceedings of the Tribunals shall be guided by the International Crimes (Tribunals) Act of 1973 enacted with a protection under Article 47 (3) of our constitution with a view to try and punish the perpetrators who committed offences of atrocious acts during the War of Liberation in 1971. As per section 22 of the said Act of 1973 it has subsequently regulated the rules of procedure as ICT (Tribunal-1) Rules of Procedure, 2010 and section 23 of the said Act prohibits the applicability of the Code of Criminal Procedure, 1898 and the Evidence Act, 1872. Though the definition of contempt of court has not been defined in any other law of the country but it has been defined in section 11(4) of the said Act with a view to try and punish the perpetrators without having any obstruction or abuses its process or

disobeys any of its order or directions 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. So it should be borne in mind that it is an exceptional law enacted in 1973 by the legislators in Parliament.

Upon scrutiny of the reply to the show cause notice by opposite party nos. 1, 2, 3, 5 and 6 it transpires that they did not have responsibility as they made no remark in the 'Talk Show' named 'Muktobaak' held on 18.09.2013 as participants and they further wanted to show that they could not edit or prevent any of the participants from their comments during the on-going live show. By the said contention it can be said that it is absolutely a lump excuse or explanation placed by them before us. They were to realize that on-going talk show if any contemptuous act of conduct was made by any one, the Anchor or the concerned authority of the program ought to have prevented the participants from making further contemptuous comment. The whole responsibility lies with the Anchor how he organizes or manages his program but the Anchor failed to control the whole situation or he willingly over-looked the random criticisms of participants on the sub- judice matter.

Although the Anchor of the program in question Mr. Mahmudur Rahman Manna [opposite party no.06] is a highly educated and known personality, from whom it was not expected in not taking appropriate measures while the program was broadcasting in the air. However, immediately after the order of the Tribunal, the authority of the Channel 24 expressed their sorrow for those comments and inaction.

It has been stated in the reply to the show cause notice by opposite party no. 8 that he is one of the leading environmental activists and media personalities of Bangladesh and he obtained masters degrees in Physics, Journalism and Mass Communication from the University of Dhaka and has a long standing career in relation to the environment and journalism. He made some comments following one of the participants in the 'Talk Show' regarding

the question that was raised by Dr. Zafrullah Chowdhury was that he [Salauddin Quader Chowdhury] submitted the names of four defense witnesses, which were allowed in other cases, but not allowed in his [Salauddin Quader Chowdhury] case. That was why, he [Dr. Zafrullah Chowdhury] was saying that, these questions were being repeatedly raised. Such comments created concerns in the mind of the people at large.

Before making such comments, he did not try to know what happened, in fact, in respect of examination of defense witnesses in the case of Salauddin Quader Chowdhury. It is very unfortunate and unexpected for the people at large that such a personality having no knowledge over the proceedings of the case, passed such remarks during the live 'Talk Show' named 'Muktobaak' held on 18.09.2013. However, he subsequently apologized for his comments made in 'Muktobaak' adding that he had no intention to undermine the dignity and integrity of the Tribunal.

It appears that Dr. Zafrullah Chowdhury [opposite party no.7] stated some irrelevant events in his written reply which are not at all related to the show cause notice issued by this Tribunal. On a plain reading of the remarks made by him we find those comments on sub-judice matter to be contemptuous as per provision of section 11(4) of the International Crimes (Tribunals) Act of 1973 as stated earlier but he, while appearing in the Tribunal, orally urged that he did not willfully and deliberately utter such comments in the 'Talk Show' in question to undermine the judges of the Tribunal. It is not desirable by the civilized society to hear derogatory remarks by highly educated person expressing in a cool brain without having knowledge on the fact in issue. Nothing will have to have in the hands of the law abiding citizens of the country, if justice delivery system is collapsed in the name of random criticism. Respected citizens should not forget that Mr. Md. Muzzamel Hossain, the Hon'ble Chief Justice of Bangladesh, not only a Chief Justice but he is an

Institution of the judiciary, a wing of three organs of the State and other judges are part of it. So everybody has to be careful while addressing them.

It is appreciated that the people of this country are very alert and watchful of every conduct of ours regarding the proceedings of the Tribunals. But at the same time each and everybody has to keep it in mind that if one does not respect other, none will respect him in any manner. Perhaps, opposite party no. 7 does not have knowledge regarding language used in the judgment by our judges. Our Hon'ble Judges of the higher judiciary as well as lower subordinates started writing judgments and orders in Bengali language from long years ago keeping in mind of our language movement. The judges of both the Tribunals have every respect to our cute bengali language in writing or penning judgment and order in all cases of the Tribunals but there are a plenty of watchers and followers all over the globe who do not have finest knowledge on bengali language. Therefore, the English language is being used in the proceedings of the Tribunal.

But it is surprising that we find some quotations and words narrated in English by the opposite party no. 7 in his written reply to the show cause notice. Nowadays, it is observed that some participants of a 'Talk Show', telecast in electronic Medias, made comments/views regarding Judiciary and even judicial performance of a judge without having adequate knowledge on the judicial systems and court proceeding. It is expected that the participants of the 'Talk Show', who are mostly well educated people should be more careful in expressing their views and comments on the judiciary as well as the judges because they are leading the country as per their respective positions.

We also observed that in the written reply, opposite party no. 7 made some derogatory and unwanted remarks which are contemptuous but, the demeanour of the opposite party no. 7 was found respectful to the Tribunal at the time of appearing in person which indicated that probably he made the

comments innocently in the 'Talk Show' in question without knowing the manner and proceedings of the Tribunal.

Unless the contempt is of a very gross nature, the court is inclined to except apology from the contemnor. An apology usually mitigates the offence of contempt of court but it must come from the heart of the contemnor. It is not a simple word; it has a proper dictionary meaning which cannot be exercised in an insignificant way. In the instant case it finds that the opposite party no. 8 tendered apology at the earliest stage immediately after receiving show cause notice, therefore, we believe that he [opposite party no. 8] made the plea of apology from his heart. In this context our Appellate Division observed in the case of Md. Riaz Uddin Khan and another Vs Mahmudur Rahman and others reported in 63 DLR [AD] [2011] 29 as quoted below,

*“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.”*

In view of the facts and laws as stated above, we are expecting more circumspection, understanding, discretion and judgment on the part of the opposite parties because they are leading the society by holding their respective positions and with a further hope that they [opposite parties] shall be more careful, cautious and respectful in making any statement or comment with regard to the judicial proceedings or the judges of the Tribunals or any other courts of Bangladesh in future. With the said observations the application filed by the Chief Prosecutor is hereby disposed of accordingly.

However, the authorities of Channel-24 are directed not to broadcast the 'Talk Show' program in question any more in future.

**(M. Enayetur Rahim, Chairman)**

**(Jahangir Hossain, Member)**

**(Anwarul Haque, Member)**