

International Crimes Tribunal-1
Old High Court Building,
Dhaka-1000.

ICT-BD Misc. Case No. 17 of 2012
State versus Adam Roberts and another

Order No. 14
Dated: 29.12.2013

Today is fixed for passing an order on show cause notice of the contempt proceedings.

The record is taken up today for passing order in presence of the learned lawyers of both the parties. Mr. Zead-Al-Malum, the learned prosecutor and Mr. Mustafizur Rahman Khan, the learned counsel for the opposite parties conducted their respective cases.

It is evident from the order No. 01 dated 06.12.2012 passed by this Tribunal that the opposite parties namely Mr. Adam Roberts, South Asia Bureau Chief of 'The Economist' and Mr. Rob Gifford, Chief Editor of 'The Economist' were given notices to give reply within 3(three) weeks as to why proceedings under section 11(4) of the International Crimes (Tribunals) Act, 1973 shall not be initiated against them. The opposite parties were also directed to keep secret the informations which they had gathered about skype and e-mail accounts of Mr. Justice Nizamul Huq, the then Chairman of the International Crimes Tribunal- 1, Dhaka.

It has been stated in the order dated 06.12.2012 that Mr. Justice Nizamul Huq, the then Chairman of this Tribunal used to consult with Dr. Ahmed Ziauddin through skype who is an expert on International Criminal law and also a Bangladeshi by birth residing in Brussels. Just two/three days earlier of

passing the order dated 06.12.2012, the former Chairman of this Tribunal came to learn that his e-mail accounts along with his computer had been hacked. In the meantime, the former Chairman of this Tribunal received a telephone call from the office of London based "The Economist" informing him that his skype conversation with Dr. Ahmed Ziauddin was in their possession and asked some questions regarding the said hacked conversations.

That opposite parties namely Mr. Adam Roberts and Mr. Rob Gifford, Editor of the Economist have intentionally violated the code of conduct of the journalists by making direct contact through telephone with the then hon'ble Chairman of this Tribunal who is the sitting Judge of the Supreme Court of Bangladesh.

Secondly, The opposite parties most illegally kept the alleged skype conversations in their possession, because such act of hacking e-mail accounts is itself an universally recognised offence.

Opposite party Nos. 01 and 02 appeared before this Tribunal through their engaged lawyer Mr. Mustafizur Rahman Khan by executing a power and submitted a joint written reply to the show cause notice.

Mr. Zead-Al-Malum, the learned prosecutor has submitted that the opposite parties have been holding key posts of "The Economist" magazine who received illegally hacked skype conversations of the then hon'ble Chairman of this Tribunal from a third party without disclosing its identity which tantamounts to breach of private communication of the hon'ble Judge of this Tribunal.

He further submits that the opposite parties directly made contact with the hon'ble Chairman over telephone and thus they abused the process of trial and thereby constituted contempt of the Tribunal.

Mr. Mustafizur Rahman Khan, the learned counsel appearing on behalf of the opposite parties, has submitted that the opposite parties in a good faith made contact with hon'ble Chairman Mr. Justice Nizamul Huq over telephone to know the veracity of the hacked skype conversations of the hon'ble Chairman with one Mr. Ahmed Ziauddin and such communication cannot be termed to be contemptuous.

He further submits that in an earlier occasion, a defence counsel raised the issue relating to illegally recording of skype conversations of the hon'ble Chairman in another case, which was disposed of by this Tribunal having no complicity of the Economist magazine with the alleged act of hacking skype conversation. The learned counsel has lastly submitted that the case may kindly be disposed of with some observations as to mode of collecting informations from the courts of law.

We have perused the order dated 06.12.2012 containing the show cause notice which was served upon the opposite parties for giving reply to it. Perused the reply to the show cause notice submitted by the opposite parties for its due consideration.

It is true that the administration of justice is becoming more complex day by day with the tremendous development of computer literacy and e-mail communications in all over the world. Some interested quarters are found to be very much inclined to hacking e-mail accounts tempering with computer source

code and disclosing private confidential such as electronics records, documents, correspondence and private conversations.

It is an admitted fact that the former Chairman of this Tribunal Mr. Justice Nizamul Huq consulted with Dr. Ahmed Ziauddin about up-dated laws on international crimes through skype and that skype conversations with his e-mail accounts was hacked by unknown hackers. It is also undisputed that the act of hacking such kind of documents is nationally and internationally prohibited under law and also punishable offence.

It transpires from the order of issuing show cause notice that there is no allegation against the opposite parties or "The Economist" magazine for the alleged hacking of the hon'ble Chairman's skype conversation.

It simply transpires that the hon'ble Chairman received a telephone call from the office of the London based 'The Economist' magazine who wanted to know the veracity of the said conversations between the hon'ble Chairman and one Ahmed Ziauddin as they had received documents relating to the alleged skype conversations from a third party.

Admittedly, opposite party No. 01 made a contact with the hon'ble Chairman over telephone for obtaining an information which is not permissible under any law of the country. Thus, we find that the opposite party No. 1 committed a wrong in making contact with the hon'ble Judge [Former Chairman] over telephone and such act is prohibited under law.

The right to freedom of speech and press has been guaranteed under Article 39(2)(a)(b) of our constitution but it does not encourage anybody to commit contempt of court. The right to know information is also recognised

under law but the person who intends to get such information must have followed specific procedure to obtain the same.

In consideration of the submissions made by the learned lawyers of both the parties, we are inclined to hold that there is no proof before this Tribunal that the opposite parties or 'The Economist' magazine were involved with the act of hacking the said skype conversations or they ever published any part of those private conversations in their magazine. But the facts remain that opposite party No. 01 wrongly made contact over telephone with the hon'ble Chairman which is unjust and not permissible in any law. However, in consideration of the nature of allegation, we find no sufficient materials to draw up contempt proceedings against the opposite parties.

Under the above contextual circumstance we like to observe:-

- (1) No person or journalist is legally permitted to make contact with a judge of the Tribunal over telephone or in person.
- (2) A journalist may, if the information is related to a particular case, obtain the same with the help of a lawyer.
- (3) If the information is related to the administrative functions or about Judges of the Tribunal, in that event, the media person or the requiring person may communicate with the Registrar of the Tribunal.
- (4) The Registrar is empowered to disclose all informations about the functions of the Tribunals to those persons except a few which may create adverse presumption upon the Tribunal or it may appear to be an impediment on the way of fair justice.
- (5) The press should not publish a report which was obtained in violation of a specific law and such act is punishable offence.

(6) Both press and electronic media should restrain themselves in circulating an ordinary news as a big sensational news about the court proceedings.

With the observations made above, this case for contempt proceedings is hereby disposed of.

(A.T.M. Fazle Kabir, Chairman)

(Jahangir Hossain, Member)

(Anwarul Haque, Member)