

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 1855 of 2018

Md. Tayeb Hossain Khondaker

...Appellant

-Versus-

The State and another

...Respondents

with

Criminal Appeal No. 1748 of 2018

Md. Mojibor Rahman @ Mojibur Rahman

...Appellant

-Versus-

The State and another

...Respondents

Mr. Md. Hasan Rajib Prodhan, Advocate

...For the appellant (In Criminal  
Appeal No. 1855 of 2018)

Mr. S.S. Arefin Junnun, Advocate

...For the appellant (In Criminal  
Appeal No. 1748 of 2018)

Mr. Md. Anichur Rahman Khan, D.A.G with

Mr. Mir Moniruzzaman, A.A.G with

Mr. Md. Sarwar Alam Khan, A.A.G with

Ms. Nargis Parvin (Alija), A.A.G

...For the State (In both the appeals)

Mr. M.A. Aziz Khan, Advocate

...For the Respondent No. 2 (ACC)  
(In both the appeals)

Mst. Anwara Khanom, Advocate

...For the Informant (In Criminal  
Appeal No. 1855 of 2018)Heard on 26.01.2025, 27.01.2025, 19.08.2025 and  
25.08.2025**Judgment delivered on 03.12.2025**

The above-mentioned criminal appeals have arisen out of the impugned judgment and order passed by the trial Court. Therefore, both the appeals were heard analogously and disposed of by this single judgment.

The appellants were convicted by the Special Judge, Rangpur in Special Case No. 02 of 2009 by impugned judgment and order dated

24.01.2018 under sections 409/109 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947 and they were sentenced to suffer rigorous imprisonment for 2(two) years under sections 409/109 of the Penal Code, 1860 and fine of Tk. 10,000, in default, to suffer imprisonment for 4(four) months, and they were also convicted and sentenced to suffer imprisonment for 2(two) years under section 5(2) of the Prevention of Corruption Act, 1947, which will run concurrently.

The prosecution's case, in short, is that the accused Md. Tayeb Hossain Khondaker was the Manager of Rupali Bank Ltd, Barakhata Branch, Lalmonirhat, and the accused Md. Mojibor Rahman was the officer (cash) of the said branch from 22.08.2001 to 23.02.2005. The accused Md. Mojibor Rahman, in connivance with the co-accused Md. Wahed Ali, Officer of the Rupali Bank Ltd of the said branch, increased the balance of Tk. 2,50,000 on 29.07.2004, Tk. 2,50,000 on 01.08.2004, Tk. 2,00,000 on 09.11.2004 and Tk. 3,00,000, total Tk. 10,00,000 in the Account No. 402 maintained in the name of Rajshahi Agricultural Development Bank, Doani Bazaar Branch, with the Rupali Bank Ltd of the said branch, without recording in the day book register/deposit register and cash book, making a false entry in the ledger. There was no voucher for the said deposits. The accused Md. Mojibor Rahman made those entries in the ledger, and the accused Md. Wahed Ali countersigned the balance sheet. On 09.08.2004, they withdrew Tk. 2,00,000+2,00,000 and on 09.11.2004, withdrew Tk. 5,00,000, total Tk. 9,00,000. The accused Md. Mojibor Rahman posted the cheques and the accused Md. Wahed Ali passed the cheques. On 09.02.2005, Tk. 2,50,000+2,50,000 and on 13.04.2005 Tk. 2,00,000 were deposited in the daybook. Thus, the accused persons misappropriated total Tk. 3,00,000. The matter was reported to the Area Manager of the bank on 24.04.2005, who instructed to make an enquiry about the matter and lodge the FIR.

Md. Akter Hossain, Deputy Director, Anti-Corruption Commission, Combined District Office, Rangpur, was appointed as Investigating Officer of the case. During the investigation, he visited the place of occurrence, seized documents, recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898, and during the investigation, he found the prima facie truth of the allegation against the accused 1. Md. Wahed Ali, 2. Md. Mojibor Rahman and 3. Md. Tayeb Hossain Khondaker and submitted charge sheet against them under sections 409/420/109 of the Penal Code, 1860, and section 5(2) of the Prevention of Corruption Act, 1947, with prior sanction of the Anti-Corruption Commission, Head Office, Dhaka.

During trial, charges were framed against the appellants under sections 409/420/109 of the Penal Code, 1860, and section 5(2) of the Prevention of Corruption Act, 1947, which was read over and explained to them, and they pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 23(twenty-three) witnesses to prove the charge against the accused persons. After examination of the prosecution witnesses, the appellants were examined under section 342 of the Code of Criminal Procedure, 1898, and they declined to adduce any D.W. After concluding the trial, the trial Court, by impugned judgment and order, convicted the appellants and sentenced them as stated above, against which they filed the instant appeals.

P.W. 1 Md. Elias Hossain, Manager, Rupali Bank Ltd, Barakhata Branch, Hatibandha, Lalmonirhat, is the informant. He stated that he was discharging his duty in the said Branch on 30.04.2005. The occurrence took place from 29.07.2004 to 13.04.2005. At that time, the accused Md. Wahed Ali was the Second Officer, accused Md. Mojibor Rahman was the Cash Officer and accused Md. Tayeb Hossain Khondaker was the Manager of Rajshahi Agricultural Development Bank. A false deposit of Tk. 2,50,000 was recorded in the Account No. 402-A on 29.07.2004, maintained in the name of Rajshahi Agricultural Development Bank,

Doani Branch. The accused Md. Mojibor Rahman recorded the false deposit and accused Md. Wahed Ali countersigned. On 01.08.2004, a false deposit of Tk. 2,50,000, on 09.11.2004, false deposits of Tk. 2,00,000 and 3,00,000 were also recorded. The accused Md. Mojibor Rahman recorded the false deposits and accused Md. Wahed Ali countersigned against the said false deposits. Tk. 2,00,000+2,00,000 were withdrawn by two cheques on 01.08.2004 and Tk. 5,00,000 was withdrawn by one cheque on 09.11.2004. Total Tk. 9,00,000 were paid to the Rajshahi Agricultural Development Bank, Doani Branch. Subsequently, on 19.02.2005, Tk. 2,50,000+2,50,000 were deposited through vouchers, but the same was not recorded in the ledger. On 13.04.2005, Tk. 2,00,000 was further deposited by voucher, but the same was not also recorded in the ledger. Against the said false deposit of total Tk. 10,00,000, Tk. 7,00,000 was subsequently deposited, and the accused persons, in connivance with each other, committed forgery and misappropriated total Tk. 3,00,000. During the audit conducted by the Audit and Inspection Cell, Rangpur, from 27.04.2005 to 07.06.2005, the said misappropriation was detected. After that, at the instruction of the higher authority, he lodged the FIR on 06.08.2005. He proved the computer typed FIR as exhibit 1 and his signature and seal as exhibit 1/1. During the investigation on 25.03.2008, the Investigating Officer seized documents and prepared the seizure list. He signed the seizure list. He proved the seizure list dated 25.03.2008 as exhibit 2, and he received the seizure list by putting his signature. He proved his signature as Exhibit 2/1. He took the custody of this document on 25.03.2008. He proved the Jimmanama as exhibit 3 and his signature as exhibit 3/1. He proved the Cheque No. 0903622 dated 31.07.2004, Tk. 2,00,000, Cheque No. 0903623 dated 01.08.2004, Tk. 2,00,000, Cheque No. 0954518 dated 09.10.2004, Tk. 5,00,00 drawn on Account No. 402 maintained with Rupali Bank Ltd, Barakhata Branch, in the name of Rajshahi Development Bank Ltd as material exhibits I, II, and III. He proved the

deposit slip No. 89307 dated 19.02.2005 and 89300 dated 19.02.2005, each total Tk. 5,00,000 and the deposit slip No. 42419 regarding the said account and the attendant register from 2001 to 2008 as material exhibits IV to VII. On 14.09.2005, the Investigating Officer seized 4 items of documents from the Rupali Bank Ltd, Barakhata Branch, and he took the custody of those documents. He proved the Jimmanama as material exhibit 3(Ka) and his signature as exhibit 3(Ka)/1. He proved the ledger book seized on 14.09.2005, page No. 388, wherein Tk. 3,00,000 was deposited without any voucher on 9.11.2004 as material exhibit VIII. He proved the cash receipt book dated 09.11.2004 of Account No. 402 as material exhibit IX, the daily book page No. 4 as material exhibit X, and the report dated 18.06.2005 submitted by the Audit and Inspection Team, Rangpur, 3 pages, as material exhibit XI. During cross-examination on behalf of the accused Mojibor Rahman, he stated that he did not discharge his duty along with Mojibor Rahman, and he also did not sign in his presence. No specimen signature was taken to ascertain the handwriting on the ledger. Before banking hours, the Manager took the cashbook, ledger book, cash receipt register, cash disbursement and day book and handed over the cash book and cash distribution book to the cashier, and handed over the ledger and day book to the ledger keeper. After the day, the Manager kept those documents in the vault and locked. He affirmed that the accused Mojibor Rahman made the entry in the ledger of the said branch. Ledger book and day book were kept in the custody of the cashier. The ledger book and the day book of the concerned branch were kept in the custody of the Second Officer Md. Wahed Ali. He admitted that the cashier is not responsible for making the entry of debit and credit in the ledger. The accused Mojibor Rahman, discharged the duty at the time of the occurrence. As per the manual, the cashier is not responsible for making an entry in the ledger. The Manager is responsible for checking the ledger and the cash register. The Account No. 402 was operated by joined signatures of the Manager and the

Second Officer. He denied the suggestion that the accused Mojibor did not make a false entry in the ledger or that the accused Mojibor was not responsible for pocket banking. On 13.04.2005, the accused Mojibor Rahman was not discharging his duty in the said branch, and on 13.04.2005, he was posted at Patgram Branch, but he is not aware whether he discharged his duty on that day in the Patgram Branch. He denied the suggestion that the allegations against the accused are false. During cross-examination on behalf of the accused Tayeb Hossain Khondaker, he admitted that after verification of the balance in the ledger, the account officer cancelled the cheque and thereafter, the cancelled cheque was sent to the Manager to be cancelled second time. He also admitted that the manager bona fide cancelled the cheque second time following the first cancellation of the cheque. During the audit and departmental enquiry, no offence was proved against the accused Tayeb Hossain Khondaker. He also admitted that the accused Tayeb Hossain Khondaker, was promoted to a higher post.

P.W. 2 Md. Ashraf Ali stated that from 08.12.2001 to 24.08.2009, he was Assistant General Manager, Rupali Bank Ltd, the Audit and Inspection Cell, Area Office, Rangpur, from 27.04.2005 to 09.06.2005. He audited the Rupali Bank Ltd, Barakhata Branch, and submitted the report on 18.06.2005. He proved his signature on the audit report (exhibit XI) as exhibits a, b, and c. On behalf of the accused Mojibor Rahman, he stated that in pages Nos. 31 to 33 of the audit report, there is no information regarding the accused Mojibor Rahman.

P.W. 3 Mostafa Afiz Uddin is the Principal Officer, Rupali Bank Ltd, Audit and Inspection Team. He stated that from 2002 to 2009, he discharged his duty in the Audit and Inspection Cell, Rangpur Area. He conducted an audit from 27.04.2005 to 09.06.2005 in the Rupali Bank Limited, Barakhata Branch, and submitted the report on 18.06.2005 (40 pages). Pages Nos. 31 to 33 relate to the occurrence of the instant case.

He proved his signatures on the audit report (XI) as material exhibits a/1, b/1, and c/1.

P.W. 4 Md. Toymur Rahman stated that from 01.11.2004 to 17.08.2005, he discharged his duty as Manager, Rajshahi Development Bank Ltd, Doani Branch, Lalmonirhat. At that time, Account No. 402 was maintained in the name of Rajshahi Krishi Development Bank Ltd with the Rupali Bank Ltd, Barakhata Branch. On 17.07.2004 Tk. 2,50,000, on 24.07.2004 Tk. 2,50,000, on 06.11.2004 Tk. 2,00,000 and on 09.11.2004 Tk. 3,00,000, total Tk. 10,00,000 were deposited through Nurunnabi of the Rajshahi Krishi Development Bank Ltd in the Account No. 402 maintained with the Rupali Bank Ltd, Barakhata Branch, through a deposit slip. Subsequently, he came to know that those amounts were not deposited on those dates in the said account. The Cashier Nurunnabi handed over the deposit slips of the said amount to the bank.

P.W. 5 Monindranath Borman is the Manager, Rajshahi Agricultural Development Bank Ltd, Fulbari Branch. He stated that on 07.02.2006, he discharged his duty as Manager of the Doani Branch of the said bank. On that day at 16-45 pm, the Investigating Officer seized four vouchers, and he took the custody of those vouchers. He proved the Jimmanama as exhibit 4 and his signature on the Jimmanama as exhibit 4/1. He proved the voucher Nos. 51025 dated 17.07.2004, 13407 dated 24.07.2004, 42803 dated 06.11.2004 and 42809 dated 9.11.2004 as material exhibit XII series. During cross-examination on behalf of the accused Mojibor Rahman, he stated that he did not see the person who signed the exhibited vouchers.

P.W. 6 Md. Nurunnabi is the Cashier, Rajshahi Agricultural Development Bank Ltd, Hatibandha. He stated that from 2003 to 2006, he discharged his duty with the Rajshahi Agricultural Development Bank Ltd, Doani Branch, Lalmonirhat as Cashier. Account No. 402 was maintained with the Rupali Bank Ltd, Barakhata Branch, in the name of

Rajshahi Agricultural Development Bank Ltd. On 17.07.2004 Tk. 2,50,000, on 24.07.2004 Tk. 2,50,000, on 06.11.2004 Tk. 2,00,000 and lastly on 09.11.2004 Tk. 3,00,000 were deposited through voucher Nos. 51025 dated 27.07.2004, 113407 dated 24.07.2004, 42803 dated 6.11.2004 and 42809 dated 09.11.2004. The accused Mojibor Rahman, as Cashier of the bank, signed the vouchers. His signature is known to me. On 06.11.2004, the accused Md. Tayeb Hossain Khondaker signed the vouchers in his presence and accused Wahed Ali signed other three vouchers in his presence. Signatures of both of them are known to him. Four vouchers were proved as material exhibit XII. He denied the suggestion that the accused Mojibor Rahman did not sign the vouchers. He admitted that the signature of the Cashier is maintained with the bank. He denied the suggestion that the signature on the voucher and the specimen signature maintained with the bank are not identical. He affirmed that the accused Mojibor Rahman signed the vouchers in his presence. He denied the suggestion that the accused Mojibor Rahman did not hand over any voucher after the signature.

P.W. 7 Md. Abdur Razzak Prodhan is the Senior Principal Officer, Rupali Bank Ltd, Area Office, Audit and Inspection Cell. He stated that in 2005, he discharged his duty as Manager, Rupali Bank Ltd, Patgram Branch. In the month of February and March of that year, the accused Wahed and Mojibor Rahman were transferred to the Patgram Branch as Officer and Officer Cash. In April 2005, an occurrence regarding the misappropriation of Tk. 7,50,000 was detected against the accused Mojibor Rahman, and thereafter, he deposited Tk. 5,48,000. He undertook to deposit Tk. 2,02,000 and subsequently absconded along with the key. Thereafter, he reported the matter to the authority and the Audit and Inspection Team, after the audit and inspection found the truth of the misappropriation. During cross-examination, he admitted that at the time of the occurrence, he did not discharge his duty in the Barakhata Branch, and he had no knowledge about the account of that branch.

P.W. 8 Md. Abdul Quddus Pramanik is an Officer of Rupali Bank Ltd, Tetultola Branch. He stated that in 2005, he was posted as an Officer of Rupali Bank Ltd, Barakhata Branch, Lalmonirhat. On 14.09.2005 at 5.05 pm, the Investigating Officer seized documents of the said branch presented by the informant, and he signed the seizure list. He proved the seizure list as exhibit 5 and his signature on the seizure list as exhibit 5/1. On 25.03.2008, the Investigating Officer seized 2 items of documents presented by the informant, and he signed the seizure list. He proved his signature on the seizure list as Exhibit 2/2.

P.W. 9 Md. Nurul Haque was tendered and declined by the defence.

P.W. 10 Md. Ikhtiar Uddin is a Guard of Rupali Bank Ltd. He stated that on 14.09.2005, he discharged his duty in the Barakhata Branch. On 14.09.2005 at 5.05 pm, the Investigating Officer seized four items of documents, and he signed the seizure. He proved his signature on the seizure list as Exhibit 5/2.

P.W. 11 Md. Ruhul Amin stated that on 07.02.2006, he was discharging his duty as Second Officer of Doani Branch, Lalmonirhat, and on that day at 4.45 pm, the Investigating Officer S.I Abdus Satter seized documents presented by the Manager. He proved the seizure list dated 07.02.2006 as exhibit 6 and his signature on the seizure list as exhibit 6/1.

P.W. 12 Md. Azizul Islam stated that on 07.02.2006, he discharged his duty as Supervisor of Rajshahi Agricultural Development Bank, Doani Branch. On 07.02.2006 at 4.45 pm, the Investigating Officer seized four items of documents mentioned in column No. 4 of the seizure list presented by the Manager. He signed the seizure list. He proved his signature on the seizure list as Exhibit 6/2.

P.W. 13 A.B.M Samsuzzaman stated that on 29.05.2008, he discharged his duty as S.P.O of Rupali Bank, Head Office, General Banking Division. On 29.05.2008 at 2.30 pm, the Investigating Officer,

Akter Hossain, seized documents presented by the S.P.O., Md. Nurul Amin. He signed the seizure list. He proved the seizure list dated 29.05.2008 as exhibit 7 and his signature on the seizure list as exhibit 7/1.

P.W. 14 Abdul Khaleque stated that in 2005, he discharged his duty as S.P.O, GBD Dhaka. By letter dated 30.04.2005, he and S.P.O Tofayel Hossain were instructed to enquire about the misappropriation of the Rupali Bank Ltd, Patgram Branch. The accused Wahed Ali and Mojibor Rahman were discharging their duty with the Barakhata Branch before their posting in the Partgram Branch. The authority also instructed to make an enquiry in the Barakhata Branch. He made an enquiry in the Patgram Branch on 02.05.2005 and the Barakhata Branch on 07.05.2005 and submitted the report on 20.06.2005. He found the truth of the allegation regarding the different irregularities against the accused Mojibor Rahman and Wahed Ali. During cross-examination, on behalf of the accused Mojibor Rahman, he stated that the cashier was not responsible for giving any note. The accused Mojibor Rahman did not discharge his duty along with him, and he also did not sign in his presence. He denied the suggestion that the accused Mojibor Rahman did not make any entry in the ledger or that the allegation of misappropriation is not true. During cross-examination on behalf of the accused Tayeb Hossain Khondaker, he stated that the Bank Manager is entitled to distribute the work for the interest of the bank. The Officer signed the deposit slip and cheque at the time of passing the cheque. After the signatures of the Cashier and Officer, the Manager signed after examining the records.

P.W. 15 Md. Jashimuddin stated that at the time of the occurrence, he was discharging his duty in the General Banking Division, Rupali Bank Ltd. On 29.05.2008 at 2.30 pm, the Investigating Officer seized documents in his presence, and he signed the seizure list. He proved his signature on the seizure list as Exhibit 7/2.

P.W. 16 Md. Iqbal Shafi stated that on 06.08.2005, he discharged his duty as Officer-in-Charge of Hatibandha Thana. On 06.08.2005 at 9 am, the informant Elias Hossain lodged the FIR, filled up the FIR form, and recorded the Hatibandha PS Case No. 6 dated 06.08.2005. He proved the formal part of the FIR as exhibit 8 and his signature as exhibit 8/1 and 2. He proved his signature on the FIR as Exhibit 1/2.

P.W. 17 Md. Zahir Uddin Bhuiyan is the Senior Principal Officer, Rupali Bank, Head Office, Dhaka. He stated that in 2011, he joined the Head Office in Dhaka. Md. Nurul Amin was his previous S.P.O who retired in September, 2011. On 29.05.2008, Md. Nurul Amin handed over the documents to the bank. He handed over the enquiry report and the final demand. Md. Nurul Amin received the custody of the documents. After his retirement, he took custody of the seized documents. The signature of Md Nurul Amin is known to him. He proved the Jimmanama dated 29.05.2008 as Exhibit 9. He proved the signature of Md. Nurul Amin as Exhibit 9/1. He produced 18 pages enquiry report.

P.W. 18 Md. Mozammel Haque stated that in 2005, he discharged his duty as S.P.O of Rupali Bank Ltd, General Banking Division. A three-member committee was formed by memo dated 22.09.2005 to finalize the demand of the affected account holders. He was a member of the committee. On 23.10.2005, the committee submitted the report (8 pages). He submitted the 8-page report on 23.10.2005, which has been proved as Exhibit 10. He proved his signatures as exhibit 10/1 series and the full signature as exhibit 10/2.

P.W. 19 Md. Tofayel Hossain stated that in 2005, he discharged his duty as S.P.O GPD Rupali Bank Ltd, Head Office, Dhaka. On 30.04.2005, a two-member enquiry committee was formed to enquire into the Barakhata Branch. After an enquiry on 20.06.2005, he submitted a 9-page report, and he signed all the pages. He proved the report dated

20.06.2005 as exhibit 11, and his specimen signature as exhibit 11/1 and his full signature as exhibit 11/2.

P.W. 20 Md. Mostafizar Rahman stated that on 26.06.2008, as Second Officer, he discharged his duty with the Rajshahi Agricultural Development Bank, Doani Branch, Lalmonirhat. On that day at 11.30 am, the Investigating Officer Akhter Hossain seized documents mentioned in serial No. 4, and he signed the seizure list. He proved his signature on the seizure list dated 26.06.2008 as exhibit 12 and his signature on the seizure list as exhibit 12/1. He took custody of the seized documents. He proved the Jimmanama dated 26.06.2008, prepared at 11.30, as exhibit 13 and his signature as exhibit 13/1. Since he was transferred, he handed over the document to the custody of the Manager.

P.W. 21 Md. Abdus Satter stated that he is a Sub-Inspector (retired). On 06.08.2005, he was appointed as Investigating Officer of the case registered by the O/C Iqbal Shafi. During the investigation, he visited the place of occurrence and prepared the sketch map, which has been proved as Exhibit 14. He proved the index as Exhibit 15. His signature on the sketch map as exhibit 14/1 and his signature on the index as exhibit 15/1. He seized documents on 14.09.2005. He proved the seizure list as exhibit 5 and his signature on the seizure list as exhibit 5/3. He recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. He submitted the report on 16.06.2006. During cross-examination on behalf of the accused Tayeb Hossain Khondaker, he stated that on 06.08.2005, the case was registered with the Hatibandha Thana under sections 420/409/468/109 of the Penal Code, 1860. He had a little knowledge about the Anti-Corruption Commission Act, 2004. He is aware of the fact that section 409 is a schedule offence under the Anti-Corruption Law. He had no knowledge whether he was empowered to investigate the case.

P.W. 22 Md. Shahjahan Ali is a Sub-Inspector of Police. He stated that on 02.09.2005, he verified the name and address of the accused Mojibor Rahman and Wahed Ali following the Enquiry Slip No. 27/05 dated 08.08.2005 and submitted the report on 02.09.2005.

P.W. 23 Md. Akter Hossain is the Deputy Director (now Director) ACC, Barishal. When he discharged his duty as Deputy Director, Rangpur, he was appointed as Investigating Officer of the case. On 25.03.2008, he seized documents from Rupali Bank Ltd, Barakhata Branch, Hatibandha, Lalmonirhat, and took the signature of the witnesses. On 29.05.2008, he seized documents from the Rupali Bank Ltd, Dilkusha Branch, Head Office, and prepared the seizure list. On 26.06.2008, he seized documents from the Rajshahi Agricultural Development Bank, Doani Bazaar Branch, Hatibandha, Lalmonirhat, which have been mentioned in serial No. 4 of the seizure list. The accused Md. Wahed Ali was discharging his duty as Second Officer of Rupali Bank Ltd, Barakhata Branch, Hatibandha, Lalmonirhat from 30.04.2001 to 17.03.2005, and accused Mojibor Rahman was discharging his duty as Officer Cash of the said Branch from 22.08.2001 to 23.02.2005. The Account No. 402 was maintained in the name of Rajshahi Agricultural Development Bank with the Rupali Bank Ltd, Doani Bazaar Branch. The said accused persons increased the balance of Tk. 2,50,000 on 29.07.2004, Tk. 2,50,000 on 01.08.2004, Tk. 2,00,000 and 3,00,000 on 09.11.2004 by false deposits recorded in the ledger without recording in the daybook register and deposit register. The accused Md. Mojibor Rahman recorded in the ledger, and Wahed Ali countersigned. Subsequently, on 01.08.2004, Tk. 2,00,000 was withdrawn by Cheque No. 0903622, Tk. 2,00,000 by Cheque No. 0903623, Tk. 5,00,000 by Cheque No. 0954518 on 09.11.2004. The accused Mojibor Rahman posted the cheques, and the accused Wahed Ali passed the cheques. The then Manager accused Tayeb Hasan Khondaker finally approved the cheques. After that, the accused Mojibor

Rahman and Wahed Ali deposited Tk. 2,50,000+2,50,000=5,00,000 on 19.02.2005, Tk. 2,00,000 on 13.04.2005 total Tk. 7,00,000 in the Account No. 402 recording in the cashbook, day-book, clean cash, and the main khatian of the branch, but was not mentioned in the ledger. The accused Mojibor and Wahed signed the said deposit vouchers. From the seized document, it is found that by the deposit receipt No. 0113407 dated 24.07.2004, Tk. 2,50,000, deposit receipt No. 51025 dated 17.07.2004 Tk. 2,50,000, deposit receipt No. 42803 dated 6.11.2004 Tk. 2,00,000 and by deposit receipt No. 42809 dated 09.11.2004, Tk. 3,00,000, total Tk. 10,00,000 were deposited in the Account No. 402 maintained with the Rupali Bank Ltd, Barakhata Branch. The accused persons, in connivance with each other, deposited Tk. 7,00,000 out of said Tk. 10,00,000 in the Account No. 402 and misappropriated Tk. 3,00,000. The ACC by memo dated 05.08.2008 of the Head Office and memo dated 09.08.2008 of Rajshahi had given sanction. P.W. 23 proved his signature on the seizure list as exhibits 12(2), 7(3), 2(3). The seized documents were handed over to the custody of the persons who presented the documents by 3 Jimmanama. He proved his signature on the Jimmanama dated 25.03.2008 as exhibit 3(2), signature on the Jimmanama dated 26.06.2008 as exhibit 13(2). He proved the approval dated 05.08.2008 as exhibit 16 and approval dated 09.08.2008 contained in memo No. 1041 of Rajshahi as exhibit 16(1). He asserted that S/I Abdus Satter initially investigated the case, prepared the seizure list, and handed over the documents to the custody. During his investigation, he found those in form. During cross-examination on behalf of the accused Mojibor Rahman, he affirmed that he did not send the signatures and the entry to the handwriting expert. He admitted that the specimen signatures of the Bank Officers are maintained with the Bank. He did not seize the specimen card of the accused. He denied the suggestion that he compare the false signature and entry with the specimen signature. He denied the suggestion that he did not investigate the case properly. During cross-

examination on behalf of the accused Tayeb Hossain, he stated that at the relevant time, the Manager discharged additional duty regarding the increase in deposits. He denied the suggestion that the Departmental Enquiry Committee did not find the truth of the allegation against the accused. He is not aware of the promotion of the accused. He denied the suggestion that Tayeb Hossain is not involved with the occurrence or that he did not investigate the case properly.

Learned Advocate Mr. Md. Hasan Rajib Prodhan, appearing on behalf of the accused Md. Tayeb Hossain Khondaker in Criminal Appeal No. 1855 of 2018 submits that P.W. 1 Md. Elias Hossain admitted that during the audit and departmental enquiry, the allegation of misappropriation was not proved against him and P.W. 2 Md. Ashraf Ali and P.W. 3 Mostafa Afiz Uddin, after the audit submitted the report (exhibit XI) and the Departmental Committee, in its report dated 20.06.2005 (exhibit 11), submitted by P.W. 14 Abdul Maleque and P.W. 19 Md. Tofayel Hossain, and also in the demand finalization report dated 23.10.2005 (exhibit 10) submitted by P.W. 18 Md. Mozammel Haque, no adverse remark was made against the accused Md. Tayeb Hossain Khondaker, regarding the alleged misappropriation, and the prosecution totally failed to prove the charge against him beyond all reasonable doubt, but the trial court, without a correct assessment and evaluation of the evidence, illegally convicted the accused Md. Tayeb Hossain Khondaker. He prayed for allowing the appeal by setting aside the impugned judgment and order passed by the trial Court.

Learned Advocate Mr. S.S. Arefin Junnun, appearing on behalf of the accused Md. Mojibor Rahman @ Mojibur Rahman submits that the specimen signature of the accused was maintained with the bank, and the alleged signature of the accused Md. Mojibor Rahman, appearing on the deposit slip (exhibit XI series), and the signature of the accused Md. Mojibor Rahman, on the disputed cheques exhibits I, II, and III were not sent to the handwriting expert to ascertain that the accused signed the

disputed deposit slips and the cheques and withdrew the money, and the specimen signature of the accused on the deposit slips and the cheque were also not sent to the handwriting expert to prove the involvement of the accused. He further submits that the specimen signature of the accused maintained with the Branch was also not proved in the case, and the trial Court, relying on the oral evidence of the prosecution witnesses, illegally passed the impugned judgment and order.

Learned Advocate Mr. M.A. Aziz Khan, appearing on behalf of the respondent No. 2 (ACC), in both the appeals, submits that the accused Md. Mojibor Rahman @ Mojibur Rahman was the Cashier and accused Md. Tayeb Hossain Khondaker was the Manager of the bank who, in connivance with co-accused Wahed Ali, made false deposits to increase the balance, and subsequently, they passed three cheques (exhibits I, II, and III) for withdrawal of Tk. 10,00,000 and misappropriated Tk. 3,00,000 from the Account No. 402 maintained in the name of Rajshahi Agricultural Development Bank with Rupali Bank Ltd, Barakhata Branch. During the trial, the prosecution proved the charge against the accused beyond all reasonable doubt. He prayed for dismissal of the appeal.

Learned Advocate Mst. Anwara Khanom, appearing on behalf of the informant in Criminal Appeal No. 1855 of 2018, assisted the Court by adopting the submission made by the learned Advocate Mr. M.A. Aziz Khan engaged on behalf of the respondent No. 2 (ACC).

I have considered the submissions of the learned Advocate Mr. Md. Hasan Rajib Prodhan, who appeared on behalf of the appellant Md. Tayeb Hossain Khondaker, learned Advocate Mr. S.S. Arefin Junnun, who appeared on behalf of the accused Md. Mojibor Rahman @ Mojibur Rahman and the learned Advocate Mr. M.A. Aziz Khan, who appeared on behalf of the respondent No. 2 (ACC), perused the evidence, impugned judgment and order passed by the trial Court, and the records.

On perusal of the evidence reveals that on 29.07.2004 Tk. 2,50,000, on 01.08.2004 Tk. 2,50,000, on 09.11.2004 Tk. 2,00,000 and on 09.11.2004 Tk. 3,00,000 were deposited by the accused Md. Mojibor Rahman and Md. Wahed Ali in the Account No. 402 maintained in the name of Rajshahi Agricultural Development Bank with the Rupali Bank Ltd, Barakhata Branch without recording in the cash receipt register and daybook. Subsequently, by three cheques exhibits I, II, and III, Tk. 2,00,000+2,00,000+5,00,000=9,00,000 were withdrawn. The audit team in its report (Exhibit XI) also found the misappropriation of Tk. 3,00,000 of the said account. The four deposit slips dated 17.07.2004, 24.07.2004, 06.11.2004, and 9.11.2004 (material exhibits XII series) total Tk. 10,00,000 were not recorded in the cash receipt register and daybook. After enquiry conducted by the Departmental Committee, the accused Md. Wahed Ali and accused Md. Mojibor Rahman deposited Tk. 7,00,000 and misappropriated Tk. 3,00,000.

On perusal of the evidence reveals that accused Md. Tayeb Hossain Khondaker is not named in the FIR. In the report dated 23.10.2005 submitted by the Demand Finalization Committee (exhibit 10), it has been mentioned that the accused Md. Mojibor Rahman @ Mojibur Rahman and accused Md. Wahed Ali are responsible for the misappropriation and pocket banking. In the report dated 20.06.2005 submitted by P.Ws 19 and 14 (exhibit 11), it has been mentioned that the accused Md. Mojibor Rahman @ Mojibur Rahman and accused Md. Wahed Ali are responsible for the misappropriation and pocket banking. The said committees did not find any evidence of misappropriation against the accused Md. Tayeb Hossain Khondaker. P.Ws 19 and 14 in their report (exhibit 11) recommended for taking departmental action against the accused Md. Tayeb Hossain Khondaker for negligence of duty. During investigation of the case, the accused Tayeb Hossain Khondaker was dismissed from service, but subsequently the bank reinstate him in his service and finally promoted to the higher post. The

trial court, failed to construe the evidence of P.W. 1, material exhibits XI, exhibits 10 and 11, in its true perspective and illegally passed the impugned judgment and order against the appellant Md. Tayeb Hossain Khondaker.

The bank officials are the custodian of the money of the account holder as well as the bank. There is a fiduciary relation between the bank and its officers. A trust was created for the accused Wahed Ali and accused Md. Mojibor Rahman regarding the deposits and withdrawal of money. It is found that the accused Md. Wahed Ali and accused Md. Mojibor Rahman, by four false deposits, illegally increased the total balance of Tk. 10,00,000 in the Account No. 402 maintained in the name of Rajshahi Agricultural Development Bank Ltd with the Rupali Bank Ltd, Barakhata Branch, and subsequently by three cheques (exhibits I, II, and III), withdrawn Tk. 9,00,000. During the departmental enquiry, the accused Md. Wahed Ali and accused Md. Mojibor Rahman deposited Tk. 7,00,000 and misappropriated the remaining Tk. 3,00,000 in connivance with each other.

I am of the view that the prosecution failed to prove the charge against the accused Md. Tayeb Hossain Khondaker, beyond all reasonable doubt, and the prosecution proved the charge against the accused Md. Mojibor Rahman @ Mojibur Rahman beyond all reasonable doubt.

In the result, the Criminal Appeal No. 1855 of 2018 filed by appellant Md. Tayeb Hossain Khondaker is allowed. The Criminal Appeal No. 1748 of 2018 filed by appellant Md. Mojibor Rahman @ Mojibur Rahman is dismissed.

The impugned judgment and order passed by the trial Court against the accused Md. Tayeb Hossain Khondaker is hereby set aside.

The accused Md. Mojibor Rahman @ Mojibur Rahman is directed to surrender forthwith and deposit the fine amount, failing which, the trial Court shall do the needful.

Send down the lower Court's records at once.