

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Criminal Appellate Jurisdiction)

Present

Madam Justice Kashefa Hussain

Criminal Appeal No. 850 of 2021

Md. Motahar Hossain Khan

.....Appellant

-Versus-

The State and another

----- Respondents.

Mr. Md. Motaher Hossain Saju, Senior
Advocate with Ms. Asma Sabira, Advocate

----- For the appellant

Mr. Md. Mohiuddin Dewan, D.A.G with
Ms. Sayeda Sabina Ahmed Molly, A.A.G

.... for the respondent No. 1.

Mr. Md. Nawsher Ali Mollah, Advocate

----- For the respondent No. 2.

Heard on: 10.05.2023, 11.05.2023 and
Judgment on 17.05.2023.

This appeal is directed against the judgment and order of conviction and sentence dated 18.01.2021 passed by the learned Special Judge (District and Sessions Judge) Special Judge Court No. 6, Dhaka, in Special Case No. 07 of 2018 arising out of Ramna Police Station Case No. 04 dated 05.11.2017 corresponding to Dudak G.R. No. 80 of 2017 convicting the appellant under section 161 of the Penal Code along with section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him to suffer rigorous imprisonment for 2(two) years.

The prosecution case, in short, is that the informant Md. Nazim Uddin, Deputy Assistant Director, Dudak, Dhaka-1 being informant lodged a First Informant Report with Ramna Model Police Station, Dhaka alleging inter alia that the convict-appellant who is the Assistant Administrator of the Office of the Bangladesh Waqf Administrator, Waqf Bhaban, Dhaka was caught red handed with Tk. 50,000/- from his office room which was taken as bribe/investigation based on the allegation of one Md. Farukh Hossain, Member, Motwalli Committee, Baghoir Jame Mosque, Keraniganj, Dhaka. By making inventory of the said bribe money, the raiding party made a trap. They also recovered Tk. 65,000/- from his left pant pocket and Tk. 14,000/- from his Almirah. On interrogation, he could not explain the source of that money. Hence the case started.

That Anti-corruption commission then took up the case for investigation and after investigation the investigating officer submitted charge sheet being No. 60 dated 05.02.2018 under section 161 of the Penal Code along with Section 5(2) of the Prevention of Corruption Act, 1947 against the appellant. That the case was then transferred and registered as Special Case No. 7 of 2018 and the case record was transmitted before the Learned Special Judge Court No. 6, Dhaka. Thereafter on

25.04.2018 the learned Court framed charge against the appellant under section 161 of the Penal Code along with section 5(2) of the Prevention of Corruption Act, 1947. That during trial the prosecution examined as many as 18(eighteen) prosecution witnesses out of 18(eighteen) witnesses and mentioned in charge sheet, the defence examined 2(two) witnesses. That after conclusion of trial the learned Court was pleased to convict the appellant under section 161 of the Penal Code along with 5(2) of the Prevention of Corruption Act, 1947 sentencing him to suffer rigorous imprisonment for 2(two) years. That on 05.11.2017 the convict appellant was arrested by the Anti-Corruption Commission and was forwarded before the learned Chief Metropolitan Magistrate Court, Dhaka below and the learned Court was pleased to send him into the jail Hajat. Thereafter on 28.12.2017 he was enlarged on bail by the Hon'ble High Court Division being Criminal Misc. Case No. 59134 of 2017. Subsequently on 25.03.2018 he voluntarily surrendered before the learned trial court and obtained bail. Since then he did not misuse the privilege of bail till pronouncement of judgment. On the pronouncement of Judgment on 18.01.2021 he was present, after conviction he

was sent to Jail. Since then he has been languishing in the Jail hajat.

Learned Advocate Mr. Md. Motaher Hossain Saju, Advocate with Ms. Asma Sabira, Advocate appeared for the convict-appellant while learned Deputy Attorney General Mr. Md. Mohiuddin Dewan with Ms. Sayeda Sabina Ahmed Molly, A.A.G appeared for the respondent No. 1 and the learned Advocate Mr. Md. Nawsher Ali Mollah, Advocate appeared for the respondent No. 2.

Learned Senior Advocate Mr. Md. Motaher Hossain Saju for the convict-appellant submits that the court below upon total misreading and misconception of evidences arrived upon a wrong conclusion and therefore the judgment of the court below is not sustainable and ought to be set aside. He submits that although it is palpable from the evidence that the appellant is not guilty of the offence of taking bribe/gratification from the initial informer Md. Farukh Hossain, but however the court upon total misconception and erroneous interpretation of the evidences came upon erroneous findings.

To substantiate his contention he draws this bench's attention to the oral evidences of the parties. He argues that from the oral evidences of the prosecution witnesses

examination, it is clear that except the initial informant P.W-2 Md. Farukh Hossain, the P.W-5 Md. Yousuf Nuri and the D.W-1 none of the other witnesses are eye witnesses. He reiterates that it is evident that P.w-2 the initial informant Md. Farukh Hossain and the P.w-5 Md. Yousuf Nuri and D.W-2 are the only eye witnesses. He submits that in a case of allegation of bribe/gratification whatsoever the evidences of the eye witnesses are evidences of primary importance, moreover given they are independent eye witnesses. He submits that in case of bribe/gratification the evidences of the eye witnesses must be sifted through to ascertain the veracity of the allegations.

He next submits that the P.W-2 Md. Farukh Hossain who is the initial informant evidently is not an independent witness. He takes us to the judgment of the trial court wherefrom he points out that it is evident that the p.w-2 Md. Farukh Hossain proceeded to inform the respondent No. 2 alleging receiving bribe/gratification against the appellant. He argues that it is clear from the records that the said Md. Farukh Hossain did not come with clean hands and has ulterior motive. He draws upon the oral evidences of the p.w-2. He takes us to the cross examination of the P.W-2 Md. Farukh Hossain wherefrom he shows that the P.W-2 he evaded the query on the name of the

2nd bidder. He submits that although the PW2 orally did not admit to his father in law and uncle in law being interested in the Tender Invitation, but nevertheless his evasive reply is not knowing the name of the 2nd bidder is sufficient to prove that some person very close to him is the 2nd bidder. He submits that it is only logical to presume that since he is aware of the name of the first highest bidder, in that event not knowing the name of the 2nd highest bidder is absurd and it is only PW2's deliberate evasion in revealing the name.

He submits that therefore it is clear that the P.w-2 is evidently an interested party in the tender through his close relatives whatsoever. He agitates that therefore when the first tender was cancelled and decision was taken for retender the P.W-2 set the trap case and consequently the FIR was started followed by the proceedings.

He next submits that the claim of the p.w-2 in his oral evidences and also in the FIR that the convict appellant received the money for purpose of bribe/gratification is not supported by any other evidences. He contends that such however proposition was not at all supported by either two eye witnesses. He next takes me to the oral evidences given that the deposition of the P.W-5 Md. Yousuf Nuri who claim to be

independent and neutral witnesses. He points out that from the oral evidences of P.W-5 Md. Yousuf Nuri it clearly appears that he has no personal connection whatsoever with the appellant and he visited the Waqf office in pursuance of his own purpose. He submits that from P.W-5's deposition it is clear that the appellant did not want to accept the money from P.W-2 and did not even keep the money with him. He argues that from the oral evidences of the independent and neutral witness P.W-5 it also shows that the appellant did not even touch the bundle rather the initial informant P.W-2 placed it beside the appellant's table. He continues that from the oral evidences of P.W-5 it is further clear that at that very moment the Trap team of the office of the respondent No. 2 entered the room and arrested the appellant. He submits that therefore from the evidences of the P.W-5 who is definitely an independent and neutral witness it is clear as day light that the appellant never even took the money in his own hand and clearly rejected the proposition of gratification/ bribe.

He next takes me to the oral evidences of the other independent eye witness Mr. Fakrul Kabir who was produced as D.W-2. He assails that it is evident from his deposition that he and the appellant were previously colleagues and they were

well acquainted with each other. He also submits that from the evidences of the D.W-2 it further shows that D.W-2 clearly stated that he went to the appellant's office to grant the appellant a loan of Tk. 50000/- for whatever reason. He submits that the oral evidences of the P.W-5 and the D.W-2 both of whom are independent witnesses suggest that the appellant did not consciously accept/or take any gratification/bribe from the initial informant P.W-2.

Upon a query from this bench the learned Advocate for the appellant agitated that nowhere from the oral evidences given by the D.W-2 Fakrul Kabir can it be suggested or implied that the appellant took any bribe/gratification from the p.W-2 Md. Farukh Hossain. He reiterates that these two witnesses particularly P.W-5 and also the D.W-2 are the only independent and neutral eyewitnesses but nothing whatsoever could be revealed or implied against the appellants in their deposition. He points out to the records and shows that it is clear that except the initial informant P.W-2 Md. Farukh Hossain the other two independent and neutral eyewitness there are no other eyewitness in the case. He submits that all the other witnesses including those representing the Anti-corruption commission whatsoever are not eyewitness, rather they all gave their

deposition based on hearsay. He points out to the evidences of P.W-1, P.W-3, P.W-6, P.W-7, P.W-8, P.W-9, P.W-10, P.W-11, P.W-12, P.W-13, P.W-15, P.W-17. He argues that evidently the oral evidences of these hearsay witnesses cannot be relied upon since they did not see the occurrence by themselves.

He next takes us to the oral evidences of P.W-18, the Motawalli of the Waqf estate Haji Abul Bashar. He draws upon the oral evidences including the cross examination of P.W-18. He contends that from the oral evidences of the P.W-18 nowhere is it suggested by the p.w-18 that the appellant representative the Waqf administration authority at any stage demanded bribe/gratification for the purpose of processing the procedure of retender. He submits that it is only logical to conclude that the Motawalli of the Waqf estate must be aware if any authority demand bribe/gratification to facilitate the purpose of any matter related to the waqf property.

He points out that strangely enough the lower court did not at all consider these circumstantial factors. He assails that moreover if any money may be expended anywhere for the purpose of retender facilitating or whatsoever reason that money evidently would not have been offered from the personal account of the P.W-2 Md. Farukh Hossain. He submits that

therefore it can be safely assumed that the Motawalli of the Waqf estate the P.W-18 not being aware of the fact of bribe/gratification being demanded by the Waqf authority therefore the allegation of bribe/gratification against the appellant is totally baseless. He reiterates that the P.W-2's evasion in mentioning the name of the highest bidder is also indicative enough to imply his substantive interest in the Tender process.

He next draws attention to the records and submits that except his oral evidences the P.W-2 Md. Farukh Hossain did not at any stage provide with any documents of the waqf administration or whatever other documents thereto in support of his allegations. He submits that however the trial court did not take into consideration any of these factors. He contends that the trial court in the absence of any documentary evidences and upon ignoring and overlooking the oral evidences of the independent and neutral eyewitness only relied upon the oral evidences of the p.w-2 Md. Farukh Hossain who is evidently not an independent eyewitness and also wrongly relied on the evidence based on hearsay. He contends that the ulterior motive of the P.W 2 Md. Faruk Hussain is clear from the oral evidences of the P.W-18 the Mutawalli and from P.W2's own

evasive reply in cross-examination. He submits that relying upon P.W-2 who is evidently not an independent eyewitness and relying upon the other hearsay witness while ignoring the evidence of independent eyewitness is a total deviation from the principles of law of evidences inter alia other laws.

He also draws this Bench's attention to the fact that the appellant was 50(fifty) years old at the relevant time but however from his PCPR also nothing compromising his reputation or integrity during service could be found anywhere upon investigation by the IO nor anywhere else. He submits that it is only logical to presume that a person who is 50(fifty) years old with a clean record would not embark upon such deviation from his moral conduct at this stage.

He next submits that the P.W-2 Md. Farukh Hossain claims that the appellant demanded Taka 5 lacs as gratification/ bribe. He submits that the P.W-2 also claimed that he gave him the bribe/gratification at various stages and that only at the last stage he informed the respondent No. 2. He submits that however the p.w-2 except for his oral deposition could not produce any witnesses or evidences of the appellant receiving bribe/gratification in the past. In support of his argument he cites two decisions one in the case of Abdul Gani Vs. State

reported in 24(DLR)(1972) 230 and in the case of AKM Kukhlesur Rahman Vs. State reported in 45 DLR(1993) 626. He also cites some other cases from the Supreme Court of India. He concludes his submission upon assertion and relying on the records before this bench that the judgment of the lower court is an erroneous judgment causing grave injustice to the appellant and such judgment ought to be set aside and the appeal be allowed for ends of justice.

On the other hand learned Advocate Mr. Md. Nawsher Ali Mollah appearing for the respondent No. 2 opposes the appeal. He submits that the court below came upon its findings upon correctly adducing evidences including the circumstantial evidences and the judgment ought not to be interfered with. He takes me to the judgment and shows that the trial court observed that from exhibit 6 series it shows that from 2013 there has been several letters exchanged between the parties (the appellant and the Waqf authority) regarding the sale of the Waqf property through tender. He submits that therefore it is clear that there is documentary evidence that the appellant was involved and interested in the sale for several years and was acquainted with the P.W2 and which proved that the allegation of bribe/gratification is true. He submits that from the trial

court's observation on exhibit 6 series it is also clear that Md. Farukh Hossain was not a stranger to the appellant who was acquainted with P.W-2 from previously. He continues that the trial court's observation on exhibit 6 is a reiteration of the truth and veracity of the appellant's demand of gratification/bribe and is also proof of receiving the gratification from the P.W2. He assails that the trial court's observation regarding exhibit-6 also shows that the allegation of his receiving bribe in the past are also true.

He next takes me to the discussion on the evidences by the trial court and submits that the trial court clearly stated that the appellant was caught red handed “হাতেনাতে গ্রেফতার এবং তাহার নিকট হইতে ইনভেস্টরীকৃত টাকার বাউল উদ্ধারের যে বর্ণনা দেওয়া হইয়াছে তাহা প্রত্যেক সাক্ষী দ্বারা সমর্থিত হইয়াছে মর্মে প্রতীয়মান হয়।” He particularly relies on this observation of the trial court and contends that the trial court upon proper evaluation of the evidences clearly found that the appellant was caught red handed with a bundle and which was supported by most of the other witnesses. He submits that p.w-11, 13, 14, 15 and 17 all corroborate each other and there is no inconsistency in their evidences. He concludes his submission upon assertion that the judgment of court below

need not be interfered with since it was correctly given and the appeal ought to be dismissed.

I have heard the learned counsels, perused the memorandum of appeal including the bail application and also the materials on record before me. I have particularly perused the oral evidences. I am of the considered view that to ascertain the veracity of the allegations against the convict appellant in this particular case since it is an allegation of taking bribe/gratification, it is necessary to ascertain firstly the deposition of the eyewitnesses. I am particularly inclined to evaluate the oral evidences of the eyewitnesses.

It is also necessary to determine the neutrality and the independence of the eye witnesses. Apparently there are 3 eyewitnesses in the alleged occurrence. Those three eyewitnesses are P.W-2 Md. Farukh Hossain, P.W-5 Md. Yousuf Nuri who is admittedly a visitor to the office of the appellant and D.W-2 who is admittedly an ex-colleague of the appellant P.W 3 and the D.W2 who may safely be considered as neutral witnesses. There are several other witnesses but however none of the other witnesses are eyewitnesses. It goes without saying that the deposition of eyewitnesses particularly the disinterested and independent witnesses shall prevail over

any other witness. However let us come to the deposition of the initial informant P.W-2 Md. Farukh Hossain. Md. Farukh Hossain, P.W-2 evidently alleged demand of bribery/gratification against the appellant. To properly adjudicate this case it is absolutely necessary to ascertain and determine as to whether the intention of the P.W-2 is a genuine and honest intention or conversely whether he has any ulterior motive. I have examined the oral evidences of the P.W-2 to ascertain the intention behind his allegation. I have drawn attention to some particular admission in his cross examination

“আমি মোতয়োল্লী কমিটির সদস্য। তবে কোন সদস্য নম্বর নাই। মোতয়োল্লী সহ ৩ সদস্য বিশিষ্ট কমিটি দরপত্র আহ্বান করে। মোতয়োল্লীর নামে পত্রিকায় বিজ্ঞপ্তি দেয়া হয়। আমার শ্বশুরের নাম জনাব সোনা মিয়া, চাচা শ্বশুরের নাম তোতা মিয়া। ১ম দরপত্রের সর্বোচ্চ বিডার ছিলো জজ মিয়া। ২য় সর্বোচ্চ বিডারের নাম খেয়াল নাই। সত্য নয় যে, ১ম দরপত্রে আমার শ্বশুর ও চাচা শ্বশুর যথাক্রমে ১ম ও ২য় বিডার হয়।”

From the deposition of the P.W-2 it appears that he remains vague and uncertain about the name of the second highest bidder. His vague and evasive statement regarding the second bidder, such deliberate evasion leads to a strong suggestion that he is an interested party by virtue of some person close to him being an interested party as a bidder in the Tender whatsoever. However the trial court has been silent on this vital issue. The

trial court ought to have taken notice of the evasive reply of the P.W-2 regarding the name of the second highest bidder. It may be safely concluded that if he is aware of the name of the first bidder he must be aware of the name of the second highest bidder too.

Regarding the allegation against the appellant of taking bribe/gratification previously amounting to a sum of taka 1 lac 10 thousand to this effect, except the p.w-2s oral evidences there are no other evidences to substantiate those claims. Moreover I have also examined the oral evidences on this particular issue. On the issue of accepting gratification/bribe previously amounting to Taka 1 lac 10 thousand it is evident that it is a mere allegation not based on any fact except the P.W2's own claim. I am inclined to repeat that the P.W-2 cannot be considered as a reliable witness since the facts and circumstances including the P.W2's otherwise evasive reply in cross examination in mentioning the bidder No. 2 in the tender invitation and hesitation to mention the name bidder No. 2 make it all the more doubtful.

Next I am inclined to evaluate the oral evidences of the p.w-5. It has not been denied nor has it contracticted anywhere by the prosecution (respondent No. 2) that P.W-5 is not an

independent and neutral witnesses. Moreover I also do not find anything elsewhere from where it may be implied that he was otherwise unduly influenced by any quarter or that he is not an independent witness. Keeping this in mind I have carefully perused the deposition of the p.w-5. I am particularly inclined to confine myself to the relevant portion of his deposition wherein he stated that: “আমার নাম ইউসুফ নুরী। বর্তমানে আমি রামপুরা এলাকায় বর্ণিত ঠিকানায় ১টি মন্ডল পরিচালনা করি। গত ৫/১১/২০১৭ ইং তারিখ আমি বাংলাদেশ ওয়াকফ প্রশাসন কার্যালয়ে যাই। আমি আমাদের নিজস্ব ওয়াকফ সংক্রান্ত ১টি কাজে ঐখানে গিয়েছিলাম। আমি মোতাহার সাহেবের রুমে চেয়ারে বসা ছিলাম। তার সাথে কথা বলতে ছিলাম। ঐ সময় মোতাহার সাহেবের নিকট মোবাইলে ১টি call আসে। একল তার রুমে ফকরুল কবীর সাহেব নামে আরেকজন লোক আসে। ঐখানে আরেক মুরব্বী লোক ছিলো। ফকরুল কবীর ১০০০/- টাকার নোটের ১টি বান্ডিল দেয়। মোতাহার সাহেব টাকাটি গুনে দেখে। আমার মনে হয় ঐখানে ৫০,০০০/- টাকা ছিলো। ঐ টাকা মোতাহার সাহেব প্যাণ্টের পকেটে রাখে। এর পর ঐ ফকরুল সাহেব চলে যায়। আমি সামনের চেয়ারে এসে বসি। এর পর আরো ১ জন ভদ্রলোক ভিতরে ঢুকে। তার নাম ফারুক হোসেন। ফারুক সাহেব মোতাহার সাহেবকে ১টি খাম দিতে অনেক চেষ্টা করে। মোতাহার সাহেবকে দেখে মনে হচ্ছিলো তিনি ফারুক সাহেব চিনেন না। ফারুক সাহেব তখন ঐ খামটি মোতাহার সাহেবের টেবিলের বাম পাশে রেখে দেয়। তাৎক্ষনিক ভাবে দুদকের কয়েকজন ভিতরে প্রবেশ করে। মোতাহার সাহেবকে গ্রেফতার করে। ঐখানে দুদকের লোকেরা জব্দ তালিকা তৈরী করে। এই সেই জব্দ তালিকা, উহা প্রদঃ ৫, উহাতে এই আমার স্বাক্ষর, উহা প্রদঃ ৫/৫। খামের মধ্যে টাকা বের করে দুদকের

লোকেরা আমাকে দেখায়। cross-examination: ফারুক সাহেব ঢোকান আনুমানিক ৫/৭ মিনিট পর দুদকের লোকেরা ঢুকে। মোতাহার সাহেব খামটি গ্রহন করতে চায় নাই। এক পর্যায়ে ফারুক সাহেব মোতাহার সাহেবের বাম পাশে রাখে। মোতাহার সাহেব ঘটনার আকসিকতায় খাবড়িয়ে যায়। দুদকের লোকেরা ঢুকেই প্রথমে হ্যান্ডকাপ পড়ায়। আমার মনে হয়েছে মোতাহার সাহেব ঐ দিনই প্রথম ফারুক সাহেবকে দেখেছে।”

From the oral evidence of P.W-5 it clearly appears that the convict appellant did not have much previous acquaintance with the initial informer P.w-2 Farukh Hossain nor did he accept any bribe/gratification for him. Since I am of the considered view that he is an independent and neutral witness and his independent and neutral status not controverted by the other side, therefore it may be safely concluded that the deposition made by him is true.

Among the three eyewitnesses another eyewitness D.W-2 Fakrul Kabir is an ex-colleague of the appellant and is pre-acquainted with him. Therefore his oral evidence regarding granting loan of Tk. 50000/- may be relied upon in the absence of any contradictory claim or proof from the other side.

Moreover there was some other allegation of appropriated money in the জব্দ তালিকা which subsequently the trial court also directed that the amount be returned. Regarding

the return of the amount, the trial court observed that “সাক্ষ্য প্রমাণে দেখা যায় আসামীর হেফাজত হইতে ইনভেন্টরীকৃত ৫০,০০০/- (পঞ্চাশ হাজার) টাকা ব্যতীত আরো ৭৯,০০০/- (উনআশি হাজার) টাকা জব্দ করা হইয়াছিলো। উক্ত টাকার মধ্যে ৫০,০০০/- (পঞ্চাশ হাজার) টাকা আসামীর দাবী মতে তাহার বন্ধু ফখরুল কবির প্রদত্ত ধারের অর্থ। এ বিষয়ে ফখরুল কবির ডিডব্লিউ-২ হিসাবে আদালতে আসিয়া সাক্ষ্য প্রদান করেন এবং ঘটনার দিন ০৫/১১/২০১৭ অনুমান দুপুর ১২.০০ টায় আসামীকে তাহার কার্যালয়ে গিয়ে টাকাটা নগদ ধার হিসাবে প্রদান করিয়াছিলেন মর্মে উল্লেখ করেন। এই বিষয়ে উক্ত তারিখে টাকা উত্তোলন বিষয় তিনি ব্যাংক প্রত্যয়নপত্র দাখিল করেন। অপর ২৯,০০০/- (উনত্রিশ হাজার) টাকা যে ঘুষ লব্ধ তদবিষয়ে রাষ্ট্রপক্ষ কোন সাক্ষ্য প্রদান করেন নাই। এমতাবস্থায় অত্র ৭৯,০০০/- (উনআশি হাজার) টাকা আসামী ফেরৎ পাবে।” Therefore it appears that the trial court also absolved and acquitted the appellant against such allegation if any.

I am of the considered view that among the three eyewitnesses P.W-2, Md. Farukh Hossain evidently is not an independent witnesses and is clearly representing an interested quarter and has some interest in the case. Regarding the independent eyewitness P.W-5 Md. Yousuf Nuri his deposition could not be contradicted by any evidence by the prosecution nor could it be established that P.W-5 is otherwise not independent. Therefore it is concluded that the P.W-5 is an independent and neutral witness and his statement may be relied upon. Furthermore as an objective bystander with no

interest of his own. Regarding the D.w-2, Fakrul Kabir also his evidences and statement made as D.W-2 those are correct and could not be proved to the contrary. It is also a fact that the trial court also could not find anything to the effect that D.W-2 Fakrul Kabir gave money to the appellant not as a loan but for some other purpose albeit illegal.

The P.W-2 the initial informant claimed that the appellant demanded taka 5 lacs initially and the P.W-2 also claimed that he has already given him Tk. 1 lac 10 thousands as bribe from time to time. Whatever the P.W-2 may claim but however such claim has not been substantiated or supported by a single evidence. Apart from P.W-2's own allegation, there is no other evidence to substantiate or corroborate his allegation of the appellant previously receiving any bribe/gratification from the P.W-2. I am of the considered view that such allegation is a mere allegation with ulterior motive and with no factual basis.

I have next examined the oral evidences of the P.W-18 who is the Motawalli of the Waqf estate. It goes without saying that the overall issue arising out of the instant case involve a sale of some property from a waqf estate. Tender invitation for sale of the land was advertised and some persons participated in

the tender as bidder. The evasive reply of the P.W-2 in cross examination apparently not pretending not to remember the name of the 2nd bidder certainly is not a transparent conduct given that he could clearly state the name of the bidder number-1. Such evasive reply clearly suggest that some relative or some person close whatsoever to the P.W-2 may have some interest in the sale.

Keeping this in mind I have examined the oral evidences of the p.w-18 who is the Motawalli of the Waqf Estate. It goes without saying that the Motawalli being the motawalli of the estate evidently ought to have some interest in the whole process. However from the oral evidences of the P.W-18 nowhere is it suggested that the appellant demanded bribe/gratification for purpose of retendering at any stage. It is only reasonable to hold that if the appellant had demanded any bribe and as high a number as Tk. 5 lacs whatsoever the Motwalli of the estate being the Motawali evidently must have had knowledge of such illegal demand. It is clear that the Motawalli did not state anything nor even mention that the appellant demanded any bribe/gratification to do his work in his official capacity as সহকারী ওয়াকফ প্রশাসক. Moreover it is also reasonable to hold that if ever any money has to be given by

way of bribe/gratification or in any other manner to serve such purpose the money would have to given out of the funds of the Waqf estate and not from anyone's personal account. Therefore if any money was ever demanded by the appellant as bribe/gratification the Motawalli would have been well aware of such unlawful demand. The Motawalli however is totally silent on the appellant's issue. Such silence only substantiates the fact that the appellant is not guilty of the offence.

Next I have examined the oral evidences of the other witnesses p.w-1, 3, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17. All these witnesses whatever they stated in their deposition are all based upon hearsay evidences. It is clear that only after the alleged occurrence they appeared in the scene. Therefore it is evident that they did not see anything, rather they are relying upon the P.W-2 allegations. As stated above the P.W-2's is an interested party and therefore his allegation cannot be relied upon.

The trial court apart from relying upon the hearsay evidences also relied upon exhibit-6. The relevant portion of the finding by the trial court is “প্রদর্শনী-৬ সিরিজ পর্যালোচনায় দেখা যায় ২০১৩ সাল হইতে আসামী বাঁঘের জামে মসজিদের ওয়াকফকৃত সম্পত্তির বিক্রয়ের বিষয়ে

বিভিন্ন পত্র চালাচালিতে সম্পৃক্ত ছিলেন সে কারণে প্রতীয়মান হয় যে, মোতাওয়াল্লী পক্ষের ক্ষমতাপ্রাপ্ত প্রতিনিধি ফারুক হোসেনের সহিত বহু পূর্ব হইতেই পরিচিত ছিলেন। এমতাবস্থায় সাক্ষীদের সাক্ষ্য হইতে রাষ্ট্রপক্ষের আনীত অভিযোগ সন্দেহাতীতভাবে প্রমানিত হয় মর্মে প্রতীয়মান হয়।”

I have examined exhibit-6. Strangely enough it appears that exhibit-6 does not manifest any exchange between any person nor does it otherwise indicate any exchange of letter between P.W-2 and the appellant nor any other person. It is evident that the জিম্মানামা is in pursuance of the জব্দতালিকা. Therefore it fails my reasoning as to why the trial court relied upon the জিম্মানামা when the জিম্মানামা is totally a different nature of document. I have examined the L.C.R. I have not found anything to show that there was ever any exchange of letter between the P.W-2 and the appellant regarding the tender or retendering nor any other issue.

Upon a query from this bench the learned Advocate for the respondent also could not show anything from the records which may indicate that there was previous exchange between the p.w-2 and the p.w-18 or the appellant which may indicate that the appellant was previously acquainted with P.W-2.

The learned Advocate for the appellant relied on some decisions. The relevant portions are reproduced below:

In the case of Abdul Gani Vs. State reported in 24(DLR)(1972)231 the relevant portion is reproduced hereunder:

“Courts should be very cautious and scrutinising in examining prosecution case under sections 161 & 165A PPC for it is very easy to implicate a person in such case on false allegation. ”

In the case of AKM Mukhlesur Rahman Vs. State reported in 45 DLR(1993) 626, the relevant portion is reproduced hereunder:

“There is no authority for the proposition that making demand for illegal gratification is an essential ingredient of the offence under section 161 Penal Code. In order to prove this offence it is the duty of the prosecution to prove that there was conscious acceptance of the bribery money by the accused.”

I am of the considered view that it could not be proved in trial that there was any conscious acceptance of

bribe/gratification money by the appellant. The hearsay evidences of the other P.Ws are somewhat inconsistent with each other and cannot be considered as reliable evidence.

Under the facts and circumstances of the case, the evidence on record and in the light of the above discussions and decisions cited, I find merit in this appeal.

In the result, the appeal is allowed. The judgment and order of conviction and sentence dated 18.01.2021 passed by the learned Special Judge (District and Sessions Judge) Special Judge Court No. 6, Dhaka, in Special Case No. 07 of 2018 arising out of Ramna Police Station Case No. 04 dated 05.11.2017 corresponding to Dudak G.R. No. 80 of 2017 convicting the appellant under section 161 of the Penal Code along with section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him to suffer rigorous imprisonment for 2(two) years, is hereby set aside.

Let the sub-ordinate Court Records along with a copy of this judgment be sent to the Court below at-once.

Communicate this judgment at once.

