IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present:
Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 5941 of 2023

In the matter of:
An Appeal under Section 10(1)(a) of the Criminal Law Amendment Act, 1958.

And

In the matter of:

Md. Anwar Hossain
...**Convict-Appellant**

-Versus-

The State and another
...**Respondent**

Mr. Mansurul Haque Chowdhury,
Senior Advocate with
Mr. Taufiq Anwar Chowdhury, Advocates
...For the Appellant

Mr. Bivuti Tarofder, Advocate
...For the Respondent No.2

Mr. S.M. Aminul Islam Sanu, D.A.G with
Mr. Md. Nasimul Hasan, A.A.G with
Mr. Md. Golamun Nabi, A.A.G and
Ms. Farhana Abedin, A.A.G and
...For the State

Heard on: 11.01.2026, 19.01.2026, 20.01.2026, 01.02.2026 and 01.03.2026
Judgment on 10.03.2026

This appeal preferred under Section 10(1)(a) of the Criminal Law Amendment Act, 1958 is directed against the

judgment and order dated 28.05.2023 passed by the learned Divisional Special Judge, Dhaka in Special Case No. 118 of 2017 arising out of Belabo (Narsingdi) Police Station Case No. 10 dated 25.04.2010 corresponding to G.R No. 47 of 2010 convicting the appellant under Sections 409 and 109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him under Section 5(2) of the Prevention of Corruption Act, 1947 to suffer simple imprisonment for 05 (five) years with a fine of Taka 20,000/- in default to suffer simple imprisonment for 06(six) months.

The facts relevant for disposal of the appeal, in short, is that the Upazilla Education Officer, Belabo, Narshingdi, lodged a First Information Report (FIR) with the Belabo Police Station, alleging *inter alia* that on 08.04.2010, the Manager, Sonali Bank Limited, Belabo Branch, Narshindi, contacted the informant over mobile phone and reported that one Abdul Majid, a Lower Divisional Clerk, had presented a cheque in the amount of Taka 25,000/- for immediate encashment. The manager asked him whether he had issued the cheque, and he confirmed that he had not issued any

cheque for encashment. He subsequently requested the Manager to withhold payment of the cheque and detain Abdul Majid until his arrival. On that day, he went to the bank and upon inspection, it was discovered that the cheque was an "account payee" instrument issued in favour of a school for the sum of Taka 5,000/-. It appeared that Abdul Majid had tampered with the instrument by inserting the digit '2' before '5' and thereby fraudulently converted the value from Taka 5,000/- to Taka 25,000/-. On further enquiry a broader pattern of malfeasance was revealed the accused had allegedly tampered with 26 numbers of cheques and misappropriated a total of Taka 4,00,000/- through unauthorized bank withdrawal and committed forgery. When confronted, Abdul Majid admitted to the allegations and provided an undertaking to refund the misappropriated funds. Subsequently, Abdul Majid deposited Taka 4,00,000/- back into the relevant bank account between 08.04.2010 and 13.04.2010. The matter was then formally reported to the higher authorities. It is suspected that other individuals may have complicit in the fraudulent withdrawal of account payee cheques, which was a matter

subject to further investigation. Due to the absence of the accused since 11.04.2010, a timely interrogation was not possible. Investigation further suggests that between 11.07.2007 and 08.04.2010, the accused misappropriated the amount totaling Taka 4,00,000/- and Taka 4,50,000/- during his tenure. Earlier, the accused committed a similar offence for which penalties were imposed upon him. Hence, the case was initiated.

On closure of the investigation, Md. Akbar Ali, Deputy Assistant Director, Anti-Corruption Commission, Dhaka-2, submitted charge sheet No. 55 dated 28.05.2012 against Md. Abdul Majid, Md. Anwar Hossain and Jugal Chandra Pramanik under Sections 409 and 109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

Subsequently, the case was transferred to the learned Divisional Special Judge, Dhaka and registered as Special Case No. 118 of 2017. On taking cognizance, the charge was framed under Sections 409 and 109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947,

on 30.09.2018 and the same was read out and explained to the accused when he pleaded not guilty and claimed to be tried.

In the course of the trial, 09 prosecution witnesses were examined while the defence examined none. The accused was examined under Section 342 of the Code of Criminal Procedure drawing attention to the evidence adduced and they once again pleaded innocence and submitted a written statement.

Upon conclusion of trial and hearing the parties the learned Divisional Special Judge, Dhaka convicted the accused-persons under Sections 409 and 109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 and sentenced him under Section 5(2) of the Prevention of Corruption Act, 1947 to suffer simple imprisonment for 05(five) years with a fine of Taka 20,000/- in default 06(six) months simple imprisonment.

Being aggrieved by and dissatisfied with the order of conviction and sentence preferred this instant Criminal Appeal before this Court. This Court enlarged the appellant

on bail for 06(six) months on 21.06.2023 and subsequently the same was extended time to time.

Mr. Mansurul Hauqe Chowdhury, the learned Senior Advocate appearing on behalf of the appellant contends that the appellant was not named in the First Information Report, yet the Investigating Officer, without conducting a proper and fair investigation, submitted charge-sheet against three accused persons including the present convict-appellant under Sections 409/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947, which is wholly unjustified and contrary to the materials on record.

He next contends that from the depositions and cross-examinations of the prosecution witnesses, it is evident that the prosecution has utterly failed to prove the case beyond of all reasonable doubt, that the convict appellant was not involved in any offences of criminal misconduct under Section 5(2) of the Prevention of Corruption Act, 1947, as alleged. The evidence of the prosecution witnesses clearly indicates that the appellant did not dishonestly or fraudulently misappropriate any money for his personal benefit. On the

contrary, the evidence on record reveals that the FIR-named co-accused Abdul Majid had already deposited the misappropriated money, which he had withdrawn from the bank by tampering with 26 numbers of cheques. There is not a single piece of evidence on record suggesting that the appellant abetted the said co-accused in committing the alleged offence. In the absence of any such evidence, the conviction and sentence of the appellant are illegal, arbitrary, and liable to be set aside and are not sustainable in the eye of law.

He further contends that although the bank authority temporarily suspended the appellant from service on 03.12.2012, upon completion of the departmental inquiry, no specific allegation was found against him. Consequently, the suspension order was withdrawn, and the appellant was reinstated in service by letter dated 13.10.2014, which clearly demonstrates the absence of any wrongdoing on his part.

He argues that the present case may be a case of sheer negligence of duty of the appellant but for his negligent act

the appellant cannot be prosecuted in such a criminal proceeding.

He further argues that since all allegations were admitted by a specific accused, Md. Abdul Majid, so the conviction and sentence so far as it relates to the appellant, Md. Anwar Hossain, is liable to be set aside.

The learned Advocate also contends that the appellant had no *mens rea* or criminal intention, and the prosecution failed to prove the criminal intention of the offender, which is a necessary element of the offence, and unless that is proved, no one can be convicted in a criminal case. In support of his contention, the learned counsel referred to the decision passed in ***Syed Ali Mandal alias Md. Syed Ali and 4 others Vs. The State***, reported in 46 DLR (1994) 149 and ***Aminul Islam Vs. The State***, reported in 24 DLR(1972) 150.

In the same vein, Mr. Toufiq Anwar Chowdhury, learned Advocate appearing on behalf of the appellant, contends that the trial court committed a serious error of law in convicting the appellant merely on the ground that his actions allegedly facilitated pecuniary benefit to the FIR-

named co-accused Abdul Majid. Such a finding alone is insufficient to bring the appellant within the mischief of clause (d) of sub-section (1) of section 5 of the Prevention of Corruption Act, 1947. In order to attract liability under the said provision, it must be proved that the accused was actuated by criminal intention or dishonest motive while performing the act in question. The mere fact that payments were made through encashment of certain cheques, even if irregular, does not by itself constitute criminal misconduct within the meaning of the said provision.

The learned Advocate further contends that the facts and circumstances under which the appellant made the payment clearly demonstrate that he acted in the ordinary course of his official duties and not with any criminal intention. Mere violation of administrative instructions or banking rules, in the absence of *mens rea*, cannot give rise to criminal liability. At best, such irregularities may constitute grounds for departmental or disciplinary proceedings, but not criminal prosecution.

He next contends that it is well settled that *mens rea* or guilty intention is a necessary ingredient of the offence of criminal misconduct under section 5(1)(d) of the Prevention of Corruption Act, 1947. The definition of criminal misconduct contained in section 5(1) clearly postulates the existence of a guilty mind. However, the prosecution has completely failed to establish the case beyond of all reasonable doubt that the appellant had any such criminal intention while performing his official duties.

He next argues that the trial Court also failed to consider that the appellant joined Sonali Bank Ltd, Belabo Branch, Narsingdi on 08.01.2010, whereas according to the FIR, the alleged occurrence took place from 11.07.2007 to 08.04.2010. This circumstance clearly creates serious doubt regarding the alleged involvement of the appellant, as a substantial portion of the alleged occurrence which took place long before the appellant joined the said branch.

He next contends that Md. Abdul Hye, Senior Executive Officer, Sonali Bank Ltd, Narsingdi, examined as PW3, during cross-examination categorically stated that “২৬টি

চেকের ৪ লক্ষ টাকা আদায় হয়েছে মর্মে তদন্ত প্রতিবেদন উল্লেখ আছে। আসামী মোঃ আব্দুল মজিদ নিজে চেক টেম্পারিং করেছে তৎমর্মে লিখিত স্বীকারোক্তি আছে। বাদী টাকা ফেরৎ দিয়েছে মর্মে রিপোর্ট দেয়ার পর জানতে পেরেছি। কাঠগড়ায় দাঁড়ানো আসামীদ্বয়কে সাময়িক বরখাস্ত করা হয়েছিল। পরবর্তীতে টাকা পরিশোধ হওয়ার পর তাদের বরখাস্তের আদেশ প্রত্যাহার করে কর্তৃপক্ষ তাদেরকে চাকুরীতে পূণঃবহাল করে।" which further supports the innocence of the appellant and demolishes the prosecution case.

The learned Advocate argues that another witness, Md. Saidur Rahman Bhuiyan, examined as PW5, stated in his deposition that the alleged occurrence took place between 11.04.2007 and 08.04.2010, whereas the FIR was lodged on 25.04.2010. No satisfactory explanation has been provided for such delay, which raises serious doubts regarding the genuineness and credibility of the prosecution's case. Moreover, the appellant joined the branch only on 08.01.2010, which further renders his alleged involvement highly doubtful.

He further argues that the investigation was conducted in a perfunctory and defective manner. Unfortunately, the trial

court failed to consider this vital aspect while passing the impugned judgment and order of conviction.

The learned Advocate submits that all the prosecution witnesses examined in the case are official witnesses and highly interested witnesses, and their testimonies suffer from material inconsistencies. The trial Court failed to properly appreciate the evidence on record and misread the material evidence, thereby illegally convicted the appellant without establishing the charge beyond of all reasonable doubt, and as such, the judgment and order of conviction and sentence, so far as it relates to the convict-appellant is liable to be set aside, and the appeal may kindly be allowed.

Per contra, Mr Bivuti Tarafder, the learned Advocate appearing on behalf of the respondent No. 2, Anti-Corruption Commission, contends that the appellant abetted the principal accused, Abdul Majid, to commit the offence and had an active role in encashing the cheques and thereby directed the principal accused to deposit the same back to the Bank. But this has not been challenged by the appellant in cross-examination. No suggestion was put in cross-examination

challenging the voluntariness of admission, or the correctness of the enquiry report.

He further contends that PW9, Md. Akbar Ali, the Investigating Officer of Anti-Corruption Commission proved the allegatons against the accused, Md. Anwar Hossain in his examination-in-chief stating that তদন্তে আগত আসামী মোঃ আনোয়ার হোসেন সোনালী ব্যাংক লিঃ বেলাব শাখায় অফিসার ক্যাশ হিসেবে দায়িত্ব পালনকালে উক্ত একাউন্ট পে-ই ২৬টি চেক এবং চেক নং-৯৩৬৯৫৪৯ তারিখঃ ২৩/৪/২০০৯ টেম্পারিং করে নগদায়নের জন্য জমা প্রদান করেন। একাউন্ট পে-ই চেক নগদায়ন করার কোন নিয়ম না থাকা সত্বেও আসামী মোঃ আনোয়ার হোসেন উক্ত চেকগুলো নগদায়নের উদ্দেশ্যে নিজেই ডেবিট করে পাশ করেন এবং নগদ প্রদান করুন সীল মোহর দিয়ে ক্যাশ শাখায় প্রেরণ করেন। তদন্তে আগত আসামী যুগল চন্দ্র প্রামানিক ঘটনার সময় যুগ্ম জমাদার ক্যাশ হিসেবে সোনালী ব্যাংক লিঃ, বেলাব শাখায় কর্মরত ছিলেন। তিনি উল্লেখিত বিতর্কিত চেকগুলো নগদ প্রদানের কোন নিয়ম না থাকা সত্বেও আসামী আব্দুল মজিদকে তা নগদায়নের সহায়তা করে দন্ডনীয় অপরাধ সংঘটন করেছেন।

He next contends that the prosecution witnesses proved the case beyond a reasonable doubt, and the trial Court rightly convicted the appellant and sentenced him and there is no

illegality, impropriety or infirmity in the impugned judgment and order of conviction and sentence.

Mr. Tarofder argues that under the normal banking practice, it is not possible to encash any tampered cheque. Without collusion of the Bank Officials, it is not possible to encash those tampered cheques. Furthermore, the repeated encashment of a tampered cheque clearly indicated the involvement of the appellant.

He further argues that the evidence shows that the cheques were clearly marked as “Account Payee” nonetheless they were disbursed as cash payments. Under standard banking regulations, “Account Payee” cheques cannot be cashed over the counter; they must be deposited into the specific account named. The fact that the appellant, as Officer (Cash) processed these as cash withdrawals and hence he is liable to be punished as such the trial Court rightly convicted and sentenced the appellant.

The learned Advocate finally prays for dismissal of the appeal, affirming the Judgment and order of the conviction and sentence of the appellant.

In support of his contention, he refers to the case of ***Government of Bangladesh vs. Md. Misfor Ali and others***, reported in 2BLD(AD)(1982)94 and ***Government of Bangladesh vs. Md. Abdul Karim***, reported in 16BLD(AD) (1996) 99.

I have considered the submissions of the learned Advocates for both sides, perused the evidence on record, impugned judgment and order passed by the trial Court and the materials on record.

To consider the merit of the case and analyze the facts, let me review the evidence of the prosecution's case.

PW 1, Md. Osman Gani, Higher graded Assistant, Upazilla Education Office, Narshingdi, who is a seizure list witness. He proved the seizure list as Exhibit 1 and proved his signature as Exhibit 1/1. He was not cross-examined.

PW 2, Md. Sahidullah, Ex Manager, Sonali Bank Ltd., Belabo Branch, Narshingdi, who was a seizure list witness. Seized articles were kept under his custody. He proved the seizure list and his signature as Exhibit l ka and 1/ka/1.

PW 3, Md. Abdul Hai, Ex-Senior Executive Officer, Sonali Bank Ltd., Principal Office, Narshingdi, deposed that he investigated into the matter. He visited the concerned bank on 11.05.2010 to investigate into the matter of misappropriation done by Mr. Anwar Hossain, Officer Cash. He found that Abdul Majid had withdrawn Taka 5,77,500/- through 26 cheques by practising fraud. Abdul Majid tampered with 26 cheques and thus misappropriated Taka 4,00,000/- and subsequently he deposited Taka 4,00,000/-to the concerned account of the bank. On query, Officer (cash), Md. Anwar Hossain admitted to the payment of the alleged cheques and informed that he arranged for the adjustment of Taka 4 lac within 3 days. After the closure of the investigation, he submitted an investigation report to the Deputy General Manager on 16.05.2010. He proved the copy of the report as Exhibit 2.

In cross-examination, he deposed that after the adjustment of money, the accused were reinstated in the service of the bank.

PW 4, Md. Akmal Ali, Assistant Sub Inspector, Anti-Corruption Commission, Head Office, Dhaka is a seizure list witness who proved his signature in the seizure list as Exhibit 1/2.

PW 5, Md. Saidur Rahman Bhuiya, Inspector of Police, PBI, Dhaka-District recorded the FIR and he proved the FIR as Exhibit 5 and his signature as Exhibit 5/1. In cross-examination, he stated that it was recorded in the FIR that a delay was occurred in lodging the FIR.

PW 6, Md. Mozibur Rahman, Education Officer, Department of Primary Education, Mirpur, Dhaka, is the informant of the case. He stated that on 08.04.2010, the Manager, Sonali Bank Limited, Belabo Branch, Narshindi, contacted him via mobile phone and reported that Abdul Majid, Lower Divisional Clerk of his office, had presented a cheque amounting Taka 25,000/-(twenty five thousand) for immediate encashment. The manager asked him whether he had issued the cheque, and he confirmed that he had not issued any cheque for encashment. He subsequently requested the Manager to withhold payment of the cheque and to keep

Abdul Majid detained until his arrival. On that day at 5:00 p.m., he went to the bank and upon inspection, it was discovered that the cheque was an “account payee” instrument issued in favour of a school for the sum of Taka 5,000/-(five thousand). It appeared that Abdul Majid had tampered with the instrument by inserting the digit ‘2’ before the ‘5’ and thereby fraudulently converted the value from Taka 5,000/-(five thousand) to Taka 25,000/-(twenty five thousand). Further inquiry revealed a broader pattern of malfeasance; the accused had allegedly tampered with 26 numbers of cheques and misappropriated a total amount of Taka 4,00,000/- (four lac) through unauthorized bank withdrawal and committed forgery. When confronted, Abdul Majid admitted to the allegations and provided an undertaking to refund the misappropriated funds within 03(three) days. Subsequently, Abdul Majid deposited Taka 4,00,000/- (four lac) back into the relevant bank account between 08.04.2010 and 13.04.2010. The matter was then formally reported to the higher authorities. He further made an investigation and found that Abdul Majid misappropriated more of Taka

4,50,000/-(four lac fifty thousand). Thus, he misappropriated Taka 8,50,000/-(eight lac fifty thousand) from 11.07.2007 to 08.04.2010. He lodged the FIR with the Belabo Police Station.

He proved the FIR as Exhibit 5Ka and his signature as Exhibit 5(ka)/1.

In cross-examination, he stated that he did not mention the name of other accused except Abdul Majid in the statement made under Section 161 of the Code of Criminal Procedure.

PW 7, Md. Abul Kashem Sarkar, Officer, Sonali Bank Ltd., Poradia Bazar Branch, Narshingdi, who is a seizure list witness. He proved the seizure list as Exhibit 1(ka)/2 and his signature as Exhibit 1(kha)/2.

PW 8, Zahirul Islam, Manager, Sonali Bank, Belabo Branch, Narshingdi, who produced the alamats (kept in the bank) before the trial Court as Exhibit 6 series.

In cross-examination, he stated that he brought the alamats from the almirah of the bank as per the order of the Court.

PW 9, Md. Akbar Ali, Ex-Assistant Director, Anti-Corruption Commission, Head Office, Dhaka, the investigating officer submitted the charge sheet. He proved the sanction letter as Exhibit 7.

He stated that the cheques were issued in favour of 78 primary school of Belabo Upazilla and were kept under custody of the accused Abdul Majid. The cheques were issued for handing over to the Head masters of the primary schools. But Abdul Majid had withdrawn Taka 5,77,500/- (five lac seventy seven thousand five hundred) instead of Taka 1,77,500/- (one lac seventy seven five hundred) from the Sonali Bank by 26 A/C payee cheques from 01.03.2010 to 08.04.2010. Later on, he deposited Taka 4,00,000/- (four lac) to STD A/C No. 21.

He further stated that it is transpired in the investigation that 26 cheques were presented for encashment at that time when the accused, Md. Anwar Hossain was in charge of the officer (cash). He debited and passed the cheques and had put a seal for cash payment, violating the rules. At that time, the

accused, Jugal Chandra Pramanik, was Joint Custodian (cash).

In cross-examination, he deposed that after the adjustment of money, the accused were reinstated in the service of the bank.

The record shows that PW 3, Md. Abdul Hai, Senior Executive Officer, Sonali Bank, Member of the enquiry committee exhibited the enquiry report as exhibit No. 3. It is categorically written in the said enquiry report:

"(২) জনাব মোঃ আনোয়ার হোসেন অফিসার (ক্যাশ)কে অনিয়মিত ভাবে চেকের টাকা পেমেন্টর ব্যাপারে জিজ্ঞাসা করা হলে তিনি ও এর সত্যতা স্বীকার করেন এবং টাকা পেমেন্ট করার ০৩ (তিন) দিনের মধ্যে ৪,০০,০০০/- (চার লক্ষ) টাকা আদায় করে এসটিডি হিসাব নং-২১ এ জমা করার ব্যবস্থা করেন বলে জানিয়েছেন। এসটিডি হিসাব নং-২১ হতে টাকা প্রদানের বিষয়ে তিনি লিখিত জবাব দিয়েছেন (চিত্রানুলিপি সংযুক্ত)। প্রকাশ থাকে যে উক্ত হিসাবের বর্নিত চেকগুলো জনাব আনোয়ার হোসেন নিজেই ডেবিট করে পাশ করেছেন। চেকের মধ্যে "A/C payee" সীলগুলো অস্পষ্ট ও টাকার পরিমান অংকে ও কথায় উপরিলিখন করা হয়েছে। অজ্ঞতাবশতঃ "A/C Payee" চেকগুলো তিনি পাশ করে ক্যাশ স্ক্রল ভুক্ত করেছেন বলে তিনি ক্ষমা প্রার্থনা করেছেন (লিখিত বক্তব্য সংযুক্ত)।"

It transpires from the above-mentioned enquiry report that the appellant personally passed the cheques, and he sought forgiveness for cash payment. He also arranged repayment of misappropriated funds. The said report has been proved by PW 3.

PW 3, Md. Abdul Hai, Senior Executive Officer, Sonali Bank, Member of the enquiry committee in his evidence also deposed that:

তাছাড়া অফিসার (ক্যাশ) মোঃ আনোয়ার হোসেনকে অনিয়মিতভাবে চেকের টাকা পরিশোধের ব্যাপারে জিজ্ঞাসা করা হলে তিনিও তার সত্যতা স্বীকার করেন এবং টাকা পেমেন্ট করার ৩ দিনের মধ্যে ৪ লক্ষ টাকা আদায় করে সংশ্লিষ্ট হিসাবে জমা করার ব্যবস্থা করেন বলে জানিয়েছেন। তদন্তে দেখা গিয়েছে যে, ২৬ টি চেকের টাকার অংক টেম্পারিং করে ইচ্ছামত টাকার অংক বসিয়ে অতিরিক্ত ৪ লক্ষ টাকা নগদ উত্তোলন করে অফিস সহকারী আব্দুল মজিদ আত্মসাৎ করেন যা তিনি তাৎক্ষনিক স্বীকার করে আত্মসাৎকৃত সমুদয় টাকা ব্যাংকে জমা প্রদানের অংগীকার করেন। পরবর্তীতে আব্দুল মজিদ ৪ লক্ষ টাকা জমা করেন।

The appellant cross-examined PW9, Md. Akbar Ali, IO, by giving the suggestion that:

“২০০৯-২০১০ পর্যন্ত সময়ে টোকেন ক্লার্ক চেক জমা রেখে টোকেন দিত কিনা তা আমার জানা নেই। সত্য নয় যে, উল্লেখিত মর্মে সঠিকভাবে তদন্ত করি নাই।

পরবর্তীতে টোকেন ক্লার্ক চেকগুলি লেজার ক্লার্কের কাছে দিতেন। লেজার ক্লার্ক সংশিষ্ট ভলিউম থেকে ব্যালেন্স দেখে চেক ডেবিট করে নগদ প্রদান সীল দিয়ে পরবর্তীতে অফিসার ক্যাশ এর নিকট পাশের জন্য পাঠাতেন কিনা তা আমার জানা নেই। পূর্ব অভিজ্ঞতা না থাকায় পাচিং অফিসার হিসেবে এ আসামী সংশ্লিষ্ট চেক পাশ করে ক্যাশ প্রদানের জন্য অপর ক্যাশ অফিসারের নিকট চেক পাঠাতেন কিনা সেটিও আমার জানা নেই। দিনের শেষে ডে-বুকের মাধ্যমে পরিশোধকৃত টাকা মিলানো হতো। তারপর চেকিং অফিসার কর্তৃক চেকিং করার নিয়ম। তৎপর পরের দিন ম্যানেজার সাহেব সকল জমা খরচ ও সমস্ত ভাউচার চেক করে উড পেন্সিল দিয়ে চেক ও জমা ভাউচার বাতিল করার নিয়ম। ম্যানেজার এপ্রোভাল দিলে টাকা পরিশোধ হতো কিনা তা আমি জানি না”

It is important to mention that the appellant did not deny that he was not a part of the transaction to encash the cheques by giving a suggestion.

In the said cross-examination, PW9, Md. Akbar Ali did not admit any suggestion given by the appellant. Furthermore, the appellant did not produce any witnesses in support of such a suggestion as part of the evidence.

The record shows that 26 “A/C payee” cheques were presented for encashment. This is not a single incident which could have been done mistakenly. Repeated incident of so

many times clearly indicates concious participation of the appellant that he was the part of the commission of the offence.

The learned Advocate appearing on behalf of the appellant argued that he was discharged from the departmental proceeding and reinstated in the service and there is no scope of convicting the appellant for the self-same offence in the criminal case. However, this Court finds no substance in that contention. It is settled principle that departmental proceedings and criminal prosecution operate in distinct fields. In this regard, in ***Government of Bangladesh vs. Md. Misfor Ali and others***, reported in 2 BLD(AD) (1982) 94, the Appellate Division held:

> "Discharge from the criminal case for the charge levelled against them, by itself, cannot be a ground for disentitling the competent authority to initiate departmental proceedings on the same allegations and award punishment in accordance with the Service Rules. Similarly, if the delinquent

> employee escapes punishment in a departmental proceeding, that by itself cannot be a ground for discharging him from the charges in the criminal case started against him. The question of the application of the rule of double jeopardy may be examined from another aspect. If the delinquent employee is found guilty of the charge in a departmental proceeding, for which the maximum punishment may be dismissal, whereas if he is found guilty of the same offence in a criminal case, he is liable to suffer punishment as provided in the law. So, in any view of the matter, the rule of double jeopardy has no application in the instant case."

Similarly, in ***Government of Bangladesh vs. Md. Abdul Karim***, reported in 16 BLD (AD) (1996)99, the Appellate Division held:

"It is well settled that on the self-same allegations, a departmental proceeding against an employee is competent besides a proceeding in a Court of law. Although in the present case the departmental proceeding was started on the basis of the conviction of the respondent in the Summary Martial Law Court but it was an independent enquiry in which the respondent had examined several witnesses in his defence, and no fault was found by either of the tribunals with the enquiry procedure. The order of compulsory retirement was passed following an independent enquiry, and the said order has been affirmed in an appeal filed under the Rules. Under such circumstances, irrespective of the question as to whether conviction on a criminal charge in a Martial Law Court is covered by Rule 8 of the

Rules or not, the order of punishment cannot be interfered with in the absence of any fault found with the departmental proceeding."

The record shows that the appellant, Anwar Hossain, who was a passing officer, submitted a written statement before the trial Court at the time of examination under section 342 of the Code of Criminal Procedure, wherein he admitted as follows:

"উপরোক্ত নম্বর মামলার ঘটনাস্থল সোনালী ব্যাংক লিমিটেড, বেলাবো শাখায় আমি ০৮/০১/২০১০ ইং হইতে ৩১/০৫/২০১০ ইং তারিখ পর্যন্ত কর্মরত ছিলাম। অফিসার ক্যাশ হিসেবে এটাই আমার প্রথম দায়িত্ব ছিল।

...আমি নিম্ন স্বাক্ষরকারীর পূর্ব অভিজ্ঞতা না থাকায় A/C Payee চেক নগদ প্রদানের কোন নিয়ম না থাকা সত্ত্বেও নরসিংদী উপজেলা শিক্ষা অফিস এর নিম্নমান সহকারী আঃ মজিদ লেজার কিপারকে ভুল বুঝাইয়া 'নগদ প্রদান' সীল দিয়া পাসিং অফিসার এর নিকট পাঠাইতেন। পাসিং অফিসার চেক পাশ করিয়া দেওয়ায় উক্ত আঃ মজিদ বিভিন্ন তারিখে ৪,৪০,০০০/- টাকা উত্তোলন করে।..."

It appears from the above-mentioned statement made by the appellant that he passed the cheques and was involved in malfeasance.

It is evident that 26 cheques were issued in favour of various primary schools of Belabo Upazilla and was kept under the custody of Abdul Majid for handing over to the Head Master of the concerned schools. Abdul Majid presented the cheques for encashment without handing over to the school authority. These cheques were issued for relatively small amounts (e.g., a cheque for 5,000/-) but were altered by adding a digit before the original number (e.g., adding a “2” to make it 25,000/-). Abdul Majid tampered the cheques and wrote individual names above the names of the school authority or the chequqe holders. Under the normal banking practice, it is not possible to encash any tampered cheque without collusion of the Bank Officials. At that time Md. Anwar Hossain, the appellant was in charge of the officer (cash) and it appears that he debited and passed the cheque as passing officer and put a seal for cash payment on the cheques.

It is evident that the appellant passed the tampered cheques sevaral times and disbursed the same as cash payments and thus it appears that he aided the principal

offender, Abdul Majid and was directly involved in malfeasance. The element of criminal misconduct and abetment stands proved beyond reasonable doubt.

In view of the above facts and circumstances, I find no illegality or impropriety in the impugned judgment and order of conviction so far as relates to the appellant, and I do not find any substance in the submissions advanced by the learned Advocates appearing on behalf of the appellants, and I find no substance in the appeal, which is liable to be dismissed.

The appellant is currently over seventy years of age. He is not the principal offender in the instant case, not a habitual offender, has no previous criminal record and the misappropriated amount has already been refunded. Pursuant to the precedent established in ***Hasan Ali and others Vs. The State***, reported in 47 DLR (AD) 69, wherein the Apex Court mitigated a sentence based on the advanced age of the appellant, this Court is inclined to take a lenient view and reduce the sentence of the appellant in consideration of his age and the specific circumstances of his involvement.

In the result, the appeal is dismissed with modification of the sentence. The period of imprisonment awarded to the convict appellant is reduced to the period already undergone. The sentence of fine is also reduced to Taka 1000/-, in default to suffer simple imprisonment for 1(one) month.

The convict-appellant is hereby released from his bail bond if not wanted in any other case.

Let the judgment, along with the lower Court's records (LCR) be communicated to the Court concerned forthwith.

(Md. Bashir Ullah, J)

Md. Ariful Islam Khan,
Bench Officer