

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 5788 of 2024

Mirza Saifur Rahman

...Appellant

-Versus-

The State and another

...Respondents

Mr. Zainul Abedin, Senior Advocate with

Mr. Azizur Rahman Dulu, Advocate

...For the appellant

Ms. Sharmin Hamid, A.A.G with

Mr. Sultan Mahmood Banna, A.A.G

...For the State

Mr. A.K.M. Alamgir Parvez Bhuiyan, Advocate

...For the respondent No. 2 (ACC)

Heard on 29.10.2024, 25.11.2024, 26.11.2024,
10.12.2024, 15.12.2024, 05.01.2025, 06.01.2025 and
07.01.2025**Judgment delivered on 12.01.2025, 13.01.2025 and
14.01.2025**

This appeal under Section 10 of the Criminal Law Amendment Act, 1958 is directed against the impugned judgment and order dated 24.06.2024 passed by Special Judge, Court No. 01, Dhaka in Special Case No. 04 of 2024 (arising out of Metropolitan Special Case No. 108 of 2019), ACCGR No. 113 of 2019 convicting the appellant under Section 161 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him under Section 161 of the Penal Code, 1860 to suffer rigorous imprisonment for 2(two) years and

fine of Tk. 2,00,000.00 (two lakh), in default, to suffer imprisonment for 6(six) months and sentencing him under Section 5(2) of the Prevention of Corruption Act, 1947 to suffer rigorous imprisonment for 2(two) years and fine of Tk. 2,00,000.00 (two lacks), in default, to suffer imprisonment for 6(six) months which will run concurrently.

The prosecution case, in short, is that the accused Mirza Saifur Rahman was the Engineer and Ship Surveyor at Sadarghat, Dhaka under the Directorate of Shipping. P.W. 4 Md. Monirujjaman Monir, Manager of M.S Shipping Lines Limited made a complaint on 01.09.2019 to the Director, Divisional Office, ACC, Dhaka stating that on 07.06.2019 the accused demanded Tk. 2,00,000 as a bribe to survey the ship MV Khadijatul Kobra which was damaged in an accident that took place on 07.06.2019. After that, the Commissioner of Anti-Corruption Commission on 01.09.2019 formed a trap team headed by P.W. 1 Md. Abdul Wadud to conduct a trap regarding the alleged demand of bribe by the accused Engineer Mirza Saifur Rahman. On 02.09.2019 at about 9.15 am P.W. 4 Md. Moniruzzaman produced 200 notes of Tk. 1000 to the ACC and a list of inventory was prepared at 9.15 am. Thereafter, the members of the trap team and P.W. 4 went to the office of the accused situated at BIWTA Bhaban, Motijheel, Dhaka and P.W. 4 entered the room of the accused and the members of the trap team remained in hiding beside the office room of the accused and different floor of the BIWTA Bhaban. After handing over the bribe amounting to Tk. 2,00,000 as mentioned in the list of inventory to the accused at about 11.40 am the members of the trap team recovered Tk. 2,00,000 from the third drawer of the accused kept in the A4 size khaki envelope. On interrogation, the accused admitted that he received the bribe amounting to Tk. 2,00,000 from P.W. 4.

P.W. 21 Md. Monirul Islam, Assistant Director, Anti-Corruption Commission, Combined District Office, Dhaka-1 was appointed as Investigating Officer vide memo dated 03.09.2019.

During the investigation, he visited the place of occurrence, prepared the sketch map and index, recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898, seized documents and prepared the seizure list. He found the prima facie truth of the allegation made against the accused in the FIR. After completing the investigation, submitted the memo of evidence against the accused and obtained approval on 18.11.2019 from the Anti-Corruption Commission, Head Office, Dhaka and submitted charge sheet on 25.11.2019 against the accused under Section 161 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947.

After that, the case record was sent to the Senior Special Judge, Dhaka who by order dated 05.02.2020 took cognizance of the offence against the accused under Section 5(2) of the Prevention of Corruption Act, 1947 and sent the case to the Special Judge, Court No. 8, Dhaka who framed charge against the accused under Section 161 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947 which was read over and explained to him and he pleaded not guilty to the charge and claimed to be tried following the law. Subsequently, the Divisional Special Judge, Dhaka by order dated 02.09.2021 passed in Metropolitan Criminal Transfer Miscellaneous Case No. 49 of 2021 sent the case to the Special Judge, Court No. 3, Dhaka. After that, the case was again transferred to the Special Judge, Court No. 1, Dhaka. The prosecution examined 21(twenty-one) witnesses to prove the charge against the accused and the defense cross-examined the prosecution witnesses. After examination of the prosecution witnesses, the accused was examined under Section 342 of the Code of Criminal Procedure, 1898 and the defense examined 3(three) D.Ws. After concluding the trial, the trial Court by impugned judgment and order convicted the accused and sentenced him as stated above against which he filed the instant appeal.

P.W. 1 Md. Abdul Wadud was the Assistant Director, Combined District Office, ACC, Dhaka. He stated that while he was discharging his duty in the said post, one Monirujjaman, Manager of MS Shipping Lines, applied on 01.09.2019 to the Director, Divisional Office, ACC, Dhaka stating that a ship named Khadijatul Kobra was damaged on 07.06.2019 in an accident at Narayanganj area with এমভি বাবা মায়ের দোয়া, sand carrying ball gate. As Manager of the MS Shipping Lines, he requested the accused Engineer Mirza Saifur Rahman to survey the damaged ship and the accused advised him to file an online application and demanded Tk. 03 lakh as bribe. He also stated that unless the bribe is paid, he will not survey the ship. Finally, he demanded Tk. 02 lakh to survey the ship. On 23.06.2019 the complainant Monirujjaman paid the survey fee, income tax and conservancy fee. On 24.06.2019 he produced the dock certificate and online application. The ID No. of the online application is 916190624064503100. Since Tk. 02 lakh was not paid as a bribe, he did not survey the ship. On 01.02.2019 the complainant went to the office of the accused situated at BIWTA Bhaban, 7th Floor, Motijheel, Dhaka and he again requested the accused to survey the ship but he demanded Tk. 02 lakh as a bribe and instructed him to come to his office on 02.09.2019 at 10.30 am. After that, on 01.09.2019 he filed an application to the Director of the Anti-Corruption Commission for taking action regarding the demand of bribe by the accused. He proved the complaint as exhibit 1. Considering the said application, the Anti-Corruption Commission formed a 13-member trap team vide memo dated 01.09.2019. He was appointed as head of the trap team. He proved the said memo as exhibit 2. On 02.09.2019 at 09.15 am a list of inventory of Tk. 02(two) lakh produced by the complainant Monirujjaman was prepared in the presence of the neutral witnesses Md. Abdul Awal, Assistant Commissioner and Zubayer Arefin Bhuiya. He proved the inventory as exhibit 03 and his signature as exhibit

03/01. A jimmanama regarding the said money was prepared. He proved the jimmanama as exhibit 04 and his signature on the jimmanama as exhibit 04/01. After that, on 02.09.2019 at 11.40 am the complainant Monirujjaman handed over the bribe amounting to Tk.02 lakh to the accused in his office situated on the 7th floor of the BIWTA Bhaban, Motijheel, Dhaka and the accused kept the money in the third drawer of his table on his right side. At that time, the members of the trap team who remained in hiding on the 7th floor of the BIWTA Bhaban, and here and there, entered the office of the accused. On interrogation, he admitted that he received Tk. 02 lakh as a bribe from Moniruzzaman and brought out Tk. 02(two) lakh from the last drawer of his table on the right side. The accused was arrested and a seizure list of Tk. 02(two) lakh kept in the A4 size envelope, total 200 notes of Tk. 1000, serial No. GhaFha 7546701 to GhaFha 7546800, total 100 notes, UmaFha 4572801 to 4572900, total 100 notes, total Tk. 02(two) lakhs was prepared. On 02.09.2019 at 12.00 the table of the accused was seized in the presence of witnesses and a seizure list was prepared. He proved the seizure list as exhibit 05 and his signature as exhibit 05/01. The seized table was handed over to Alal Uddin, a sample collector of the BIWTA. He proved the jimmanama as exhibit 06 and his signature on the jimmanama as exhibit 06/01. He proved the A4 size khaki envelope as material exhibit I. He proved the 100 notes being Nos. GhaMa 7546701 to GhaMa 7546800 as material exhibit II and 100 notes being Nos. UmaKa 4572801 to 4572900 as material exhibit III. He stated that the recovered notes are identical to the notes mentioned in the list of inventory dated 02.09.2019. He found the truth of the allegation of demanding bribe amounting to Tk. 02 lakh against the accused and he lodged the FIR. He proved the FIR as exhibit 07 and his signatures on the FIR as exhibit 07/01 and 07/02. During cross-examination, he stated that the complaint petition was filed to the ACC. The Investigating Officer was not supposed to receive the dock

certificate from him. He did not verify the hard copy of the survey application. He could not remember the procedure regarding the registration of the ship. He affirmed that none of the members of the trap team took pictures and video. No video of the confession of the accused was recorded. He admitted his guilt in the presence of an Executive Magistrate. There is no requirement to make levelling and packaging of the seized goods. Based on the application dated 01.09.2019, the approval for conducting the trap was given on 01.09.2019. He affirmed that he is also the informant regarding the trap case filed against the Chief Engineer of BIWTA and Surveyor S.M Nazmul Alam. He deposed in that case and the accused is the colleague of said S.M Nazmul Alam. There is a procedure regarding the enquiry of complaints of demanding bribes. He could not say whether the complainant Monirujjaman is the cousin of S.M Nazmul Alam. Nothing has been stated in the complaint and the FIR that from 07.06.2019 to 01.09.2019, the accused demanded bribe. The witnesses Md. Abdul Awal and Zunayed Arefin Bhuiyan who were the witnesses of the list inventory and seizure list were not members of the trap team but as neutral witnesses, they were present along with the members of the trap team. The controlling officers of Md. Abdul Awal and Zunayed Arefin Bhuiyan appointed them to present along with the trap team. On 02.09.2019 was not a holiday. None of the officers or employees of BIWTA are witnesses of the jimmanama. The numbers of the notes have been mentioned in the list of inventory. As an Engineer, the accused used to sit in the BIWTA Bhaban and as a surveyor, he used to sit in his office at Sadarghat. In the complaint petition, the complainant did not mention that from 07.06.2019 to 01.09.2019, the complainant Monirujjaman met with the accused in his office. The documents filed along with the complaint were not verified officially but he secretly verified those documents. He could not say whether any G.D. was lodged regarding the alleged accident that took place on 07.06.2019.

Nothing has been mentioned in the complaint as regards the G.D. He could not say whether the complainant Monirujjaman filed any application for compensation against the owner of the Ship এম.ভি বাবা মায়ের দোয়া. No information about the ship এম.ভি বাবা মায়ের দোয়া has been mentioned in the application. He denied the suggestion that on 07.06.2019 no accident took place between M.V Khadijatul Kobra and এম.ভি বাবা মার দোয়া. He did not make any enquiry as to the presence of the accused on 01.09.2019 at 10.00 am. He could not say when the accused joined the BIWTA. Nothing has been mentioned in the FIR when the accused entered the BIWTA Bhaban on 02.09.2019. Nothing has been mentioned in the FIR to whom the accused handed over Tk. 2,00,000 or who had challenged the accused. He did not interrogate the master in charge Md. Azizul Islam of M.V Khadijatul Kobra before lodging the FIR. He could not say whether he talked to the authority of the Hossain Dockyard. He denied the suggestion that no docking of the M.V. Khadijatul Kobra was done at the BNS Center. He admitted that on 02.09.2019 the bribe money was not recovered from the accused for which none of the employees of the said office is cited as a witness in the case. He denied the suggestion that at the instance of S.M Nazmul Alam, the trap case was initiated against the accused.

P.W. 2 Md. Alamgir was the Assistant Director, ACC, Combined District Office, Dhaka-1. He stated that at the time of searching on 02.09.2019, he was employed as a supporting force. After recovery of two bundles of Tk. 1000, total Tk. 2,00,000, from the office of the accused the FIR was lodged. He filled up the FIR form. He proved the FIR form as exhibit 8 and his signature as exhibit 8/1. He proved his two signatures on the FIR as exhibits 7/3 and 7/4. He admitted that he did not recover any money. He did not claim that he entered the Office of the BIWTA Motijheel, Head Office, Dhaka.

P.W. 3 Zunayed Arefin Bhuiyan was the Sub-Divisional Engineer, Public Works Department-5, Sher-E-Bangla Nagar, Dhaka.

He stated that on 01.09.2019 the Assistant Director, Md. Abdul Wadud of the Anti-Corruption Commission requested his higher authority to appoint a Sub-Divisional Engineer to assist the ACC. After that, on 02.09.2019 at 9.00 am, he went to the Office of the Anti-Corruption Commission, Combined District Office, Dhaka-1 and Assistant Engineer Abdul Wadud informed him about the trap case. Thereafter, Md. Monirujjaman produced two bundles of the note of Tk. 1000 being Nos. GhaFha 7546701 to GhaFha 754800 and UmaKa 4572801 to 4572900, total 200 notes. In the presence of Assistant Commissioner Abdul Awal, a list of inventory was prepared. He proved the inventory as exhibit 9 and his signature as exhibit 9/1. After preparing the list of inventory, the notes were handed over to the custody of Monirujjaman. He proved the jimmanama as exhibit 10 and his signature on the jimmanama as exhibit 10/1. After that, at 10.45 am he along with the trap team went to the 7th floor of the BIWTA Building and was waiting for Mirza Saidur Rahman. At 11.25 he entered his office and at 11.40 am the accused Mirza Saidur Rahman received Tk. 2 lakh from complainant Monirujjaman as bribe. After that, he along with the members of the trap team entered the office of the accused Mirza Saidur Rahman and he admitted that he received the bribe. After that, the accused Mirza Saidur Rahman brought out Tk. 2 lakh kept in the last drawer of his table. The money was kept in a khaki envelope of A4 size. A seizure list was prepared regarding the recovery of the money. The notes being Nos. GhaFha 7546701 to KhaFha 7546800 and UmaKa 4572801 to 4572900, total 200 notes of Tk. 1000, was recovered. At that time, a table made of plywood used by accused Mirza Saidur Rahman was seized. He proved the seizure list as exhibit 11 and his signature on the seizure list as exhibit 11/1. The said table was handed over to the custody of Md. Alal Uddin. He proved the jimmanama as exhibit 12 and his signature on the jimmanama as exhibit 12/1. During cross-examination, he stated that the Investigating

Officer Md. Monirul Islam interrogated him. The office order by which the Executive Engineer sent him to the Office of the ACC was submitted to the ACC but he did not produce the same in Court. There were total 15 members of the trap team. He affirmed that he did not inform the DG or Chairman of the BIWTA regarding the trap proceeding. None of the Officers of the BIWTA signed the seizure list. He could not say whether the members of the trap team carried any electronics. He could not say the name of the typist who typed the seizure list but the same was typed in his presence. At 9.30 am the members of the trap team started from the office of the ACC and it took 40/45 minutes to reach the BIWTA building. He affirmed that he did not count the notes or touch the notes. He denied the suggestion that he did not enter the Office of the BIWTA and no bribe money was recovered in his presence or no money was recovered from the drawer of the table used by the accused. He could not say when he came out from the Office of the ACC. He denied the suggestion that under the influence of Abdul Wadud, subsequently, he signed the seizure list or no seizure list was prepared at the BIWTA Bhaban. He denied the suggestion that an inventory of Tk. 2 lakh was not prepared in his presence.

P.W. 4 Md. Monirujjaman Monir is the Manager of the M.S Shipping Lines. He stated that on 20.01.2018 he joined M.S. Shipping Lines and discharged his duty till 30.02.2020. During his tenure in the said office on 07.06.2019 the ship MV Khadijatul Kobra belonged to the M.S Shipping Lines was damaged in an accident at Narayanganj area with the ship 'এম.ভি বাবা মায়ের দোয়া', sand carrying ball gate. The plate on the front side of the M.V.. Khadijatul Kobra was damaged. On 08.06.2019 Md. Zahangir Hossain, the owner of the ship, instructed in writing to repair and survey the ship. From 11.06.2019 to 15.06.2019 the ship M.V Khadijatul Kobra was repaired in the Sattar Khan Dockyard. After repairing the ship, he communicated to the accused

Mirza Saidur Rahman who was the Engineer and Ship Surveyor of the Sadarghat, Dhaka and requested him to survey the said ship. The accused instructed him to file an online application after depositing the fee. On 23.06.2019 he paid the survey fee, income tax and the conservancy fees. Thereafter, he filed an online application on 24.06.2019 for surveying the ship. After applying along with the documents he communicated to the accused Mirza Saidur Rahman and handed over the relevant documents. After examining the records, he found those in form and demanded Tk. 3,00,000. He informed the matter to his employer Md. Zahangir Hossain but he refused to pay the bribe. Thereafter, he communicated to the accused Mirza Saidur Rahman who informed him that without money he would not give any survey certificate. After that, his owner met Mirza Saidur Rahman on several occasions and lastly on 01.09.2019 his employer sent him to the office of the accused situated on the 7th floor of the Motijheel Office and informed the matter of the accused. Finally, the matter was settled at Tk. 2,00,000 and he requested him to come on 02.09.2019 at 10.30 along with Tk. 2,00,000 and the relevant documents. Thereafter, he informed the matter to his employer who informed the matter to the ACC. He claimed that he filed a written application to the ACC regarding the alleged bribe demanded by the accused. He proved his signature on the complaint petition as exhibit 1/1. On 01.09.2019 the ACC formed a trap team and informed him to go there on 02.09.2019 at 9.00 am along with Tk. 2,00,000. In the presence of two witnesses Assistant Director Abdul Wadud of ACC, Combined District Office, Dhaka prepared the list of inventory of Tk. 2,00,000 and the number of the notes was mentioned in the list of inventory. He proved his signature on the inventory as exhibit 11/2. After preparing the list of inventory Tk. 2,00,000 was handed over to his custody. He proved his signature on the inventory as exhibit 10/2. The money was kept in an A4 khaki envelope and was handed over to him. The members of the

trap team went to the BIWTA Bhaban, Motijheel and took positions in different places on the 6th, 7th and 8th floors. He took his position on the 7th floor. After conducting a meeting, Mirza Saidur Rahman entered his office at 11.40 am. At that time, he along with documents and the money entered his office. After preparing the file, Tk. 2,00,000 mentioned in the list of inventory were handed over to the accused and he kept the money in his drawer on his right side. After some time, the members of the trap team entered the Office of Mirza Saidur Rahman and interrogated him regarding the bribe received from him. Initially, he refused but finally, he brought out Tk. 2,00,000 kept from the drawer of the table on his right side. The recovered money along with the table was seized. After preparing the seizure list, he signed the seizure list. He proved his signature on the seizure list as exhibit 5/2. On 12.09.2019 the Investigating Officer seized his letter of appointment, joining letter, approval letter, dockyard certificate and the document regarding the MV Khadijatul Kobra and prepared the seizure list in his presence. He proved the seizure list as exhibit 13 and his signature on the seizure list as exhibit 13/1. The seized documents were handed over to his custody. He proved the jimmanama as exhibit 14 and his signature on the jimmanama as exhibit 14/1. Those documents were handed over to his custody. He proved the documents as material exhibits IV series. During cross-examination, he affirmed that he did not lodge any GD regarding the incident that took place on 07.06.2019 and he also did not claim any compensation to the owner of the ship 'এমভি বাবা মায়ের দোয়া'. He could not say the name of the owner of the said ship. No application along with the picture of the damaged ship was filed to the Ministry of Shipping. No written application has been filed to the accused for the survey of the ship. He could not remember the web number or the email number of the online application. No date and place of the meeting has not been mentioned in the complaint filed to the ACC. The accident took place in the Narayanganj area. He denied

the suggestion that without filing any application to the Survey Office of Narayanganj as part of a conspiracy, he claimed that he applied to the Office at Dhaka. He affirmed that the statement made in the complaint and to the Investigating Officer are the same. No source of Tk. 2,00,000 is mentioned in the application. The former Engineer SM Nazmul Haque of the shipping department was not known to him. He did not file any copy of the online application. His employer Mr. Zahangir applied. At the time of docking the ship, he was sick at Khulna but he was not admitted to any hospital. He could not say who was the foreman and supervisor of the ship at the relevant time. The repairing was done at the Sattar Khan Dockyard. After 1(one) month, he came to know about the repair from his employer but he could not say the date of repair. At the time of repair, he was not present. After 2 months of filing the online application, he came to know about the online application. He denied the suggestion that the M.V. Khadijatul Kobra was not damaged in the alleged accident or he lodged the complaint after collecting a false certificate. He is not aware of the downloaded and hard copy of the online application. He could not say the name of the Master of the ship M.V Khadijatul Kobra. He is not aware of the documents of এমভি বাবা মায়ের দোয়া. He affirmed that from 04.06.2019 to 27.06.2019 he was not present at Dhaka for which he was not aware who conducted the repair. There is no audio, video or physical evidence regarding the material seized in the case. He is not aware of the letter dated 01.03.2020 issued by the Ministry of Shipping. He denied the suggestion that in connivance with Engineer S.M Nazmul Haque and others, a false case was filed against the accused.

P.W. 5 Md. Abdul Awal is the UNO, Louhajang, Munshiganj. He stated that while he was discharging his duty as Assistant Commissioner on 01.09.2019 of Dhaka District, the Deputy Commissioner, Dhaka instructed him to go to the Office of the Anti-Corruption Commission, Divisional Office, Dhaka on 02.09.2019 at

9.00 am. Accordingly, he went there and the Assistant Director Abdul Wadud informed him about the trap proceeding. The complainant Monirujjaman handed over two bundles of notes of Tk. 1000 (two bundles of Tk. 01 lakh) in his presence and in the presence of Zunayed Arefin Bhuiyan. In their presence, the Assistant Commissioner of ACC having counted the notes prepared the list of inventory. He proved his signature on the inventory as exhibit 9/3. After that, the money was handed over keeping those in a khaki envelope to Monirujjaman by a jimmanama. He signed the jimmanama. He proved his signature on the jimmanama as exhibit 10/3. He along with the members of the trap team reached BIWTA Bhaban at 10.45 am. He took position on the 7th floor. The members of the trap team took position along with him and others on the 6th floor. At 11.25 the accused Mirza Saidur Rahman entered his office. He came to know that at 11.40 am the accused received Tk. 02 lakh from Monirujjaman. He along with the Assistant Director of ACC entered into the office of the accused and interrogated him regarding the bribe amounting to Tk. 02 lakh and he brought out the envelope full of money from his drawer. At about noon, the seizure list was prepared. He signed the seizure list. He proved his signature on the seizure list as exhibit 11/2. The table of the accused was also seized which was handed over to the custody of the employee of BIWTA. He signed the jimmanama. He proved his signature on the jimmanama as exhibit 12/2. During cross-examination, he stated that he discharged his duty in the Office of the Deputy Commissioner, Dhaka from 28.04.2019 to 04.08.2021. At the time of occurrence, he used an Android phone. He did not record the confession of the accused in the audio or video. He is not aware whether any other person recorded the audio or video. He did not record the video regarding handing over the bribe. The list of inventory was prepared at 9.05 am. He signed the inventory at 9.15 and jimmanama at 9.25 am. None of the police personnel was a member of the trap team. He could not say whether

there was any nameplate in the room used by the accused. He denied the suggestion that he did not visit the place of occurrence or that the accused did not make any confession. He affirmed that he stayed at the BIWTA Building for 25/30 minutes. He stayed there from 10.45 am to 11.20 am. He could not remember whether any Officer of the DG Shipping was present at the place of occurrence. He did not go to the Office of the DG Shipping.

P.W. 6 Md. Habiz Uddin was the Sub-Inspector, Motijheel Thana, D.M.P. Dhaka. He stated that on 02.09.2019 he discharged his duty as S.I of Motijheel Thana. At that time, Assistant Director Abdul Wadud of the Anti-Corruption Commission sent a requisition for a special operation. The Officer-in-Charge of Motijheel Thana instructed him to discharge the duty. On 02.09.2019 at 11.40 he went to the 7th floor of the BIWTA, Motijheel, Dhaka and entered the room of the accused along with the trap team. On interrogation, the accused admitted that he received bribe amounting to Tk. 02 lakh from Monirujjaman and he brought out Tk. 02 lakh kept in an envelope in the drawer of the table of the accused. At that time, Tk. 02 lakh and a table was seized and the learned Magistrate took his signature. He proved his signature on the seizure list as exhibit 11/3. Before the occurrence, he saw the Magistrate. He could not remember whether there was any nameplate of the accused in the disputed office room. He and four other constables did not take their position at the gate of the BIWTA Building. He could not remember whether there was any C.C. camera on the 7th floor of the BIWTA Bhaban. He did not record the audio and video of the confession of the accused. He denied the suggestion that he did not visit the office of the accused and he signed the arranged paper of the ACC. Other Officers of the DG Shipping were not present in the disputed room. He along with the Magistrate entered the room of the accused.

P.W. 7 Zahangir Hossain is the owner of the S S Shipping Lines. He stated that on 12.09.2019 he along with the Manager Md. Monirujjaman went to the Office of the Anti-Corruption, Combined District Office, Dhaka along with the records. At 11.15 those records were seized. He signed the seizure list. He proved his signature on the seizure list as exhibit 13/2. He handed over the seized documents to the custody of Monirujjaman. He proved his signature on the jimmanama as exhibit 14/2. On interrogation he informed Md. Monirul Islam that an accident took place at Fatulla between the MV Khadijatul Kobra and এম.ভি বাবা মায়ের দোয়া. He conducted the survey through the manager. He appointed the manager on 20.01.2018. The accident took place on 07.06.2019. On 24.06.2019, he filed an online application for the survey of the ship. He sent his manager to the Office of the BIWTA to survey the ship. His manager informed that he met ship surveyor Mirza Saidur Rahman who informed him to file an online application and demanded Tk. 3,00,000 as a bribe. Thereafter, he met Mirza Saidur Rahman and finally, the bribe was settled down at Tk. 2,00,000. Thereafter, he informed the matter to the ACC through the manager. The ACC formed a trap team. On 02.09.2019 two bundles of the notes of Tk. 1000, total Tk. 2,00,000, were handed over to the manager. The numbers of the notes are Gha Ka-7546701 to GhaKa 75468000, total 100 notes of Tk. 1000 and UmaKa 457280 to 4572900, total 100 notes. At the time of handing over Tk. 2,00,000 on 02.09.2019, the members of the trap team arrested the accused. The name of the ship was M.V Khadijatul Kobra. He and another person were the owners of the ship. He instructed the Manager Monirujjaman to repair the ship in the Sattar Khan Dockyard. He signed the online survey application and the original survey application. He denied the suggestion that he did not sign the original survey application or that Engineer S M Nazmul Haque forged his signature. As an owner, the online application is required to be signed by him. He did not file any application in 2020

for the survey. He is not aware of the application shown. He denied the suggestion that in 2019, he did not file any application for an online survey. He is aware of the work done by Manager Md. Monirujjaman in the Sattar Khan Dockyard from 08.06.2019 to 15.06.2019. The accident of the ship took place on 07.06.2019. He denied the suggestion that Md. Monirujjaman was not his manager. From 04.06.2019 to 27.06.2019 he was not present at Keraniganj Area. No written agreement was executed between the Sattar Khan Dockyard and him regarding the repair of the ship. The bill regarding the repair of the ship was not handed over to the Investigating Officer. He affirmed that from 04.06.2019 to 27.06.2019 he was present at Satkhira. During that period, he communicated with Md. Monirujjaman one or twice. He could not say whether the original application for the survey was signed by the master. He could not say who applied BIWTA for the survey of the ships belonging to his company. Rafiquzzaman was the in-charge master of the ship. He denied the suggestion that Azizul Islam was the master of the ship and without his permission, he mentioned the name of Azizul Islam in the survey application by forging his signature. He could not say whether the said master lodged any GD with Fatulla Thana or not. He affirmed that he could not remember the date and time of meeting with the accused but he communicated twice. He could not say the location of the office of the accused at Sadarghat but he used to sit along with another officer. He could not say whether the certificate was submitted along with the application. He could not say the name of the dockyard which issued the certificate. He affirmed that he did not lodge any GD after the accident of the ship. He could not say the name of the person who informed him about the accident of the ship. He could not say the name of the owner of the এম.ভি বাবা মায়ের দোয়া. There is no picture of the accident of the ships. He could not remember the place where he met the accused from 07.06.2019 to 02.09.2019. He could not remember whether he communicated with the accused from

17.08.2019 to 30.08.2019. He denied the suggestion that he did not file any application to the BIWTA to seize the ship বাবা মায়ের দোয়া or there is no existence of the ship এম.ডি বাবা মায়ের দোয়া or the statement regarding the accident is false.

P.W. 8 Md. Shafiqur Rahman is the Chief Inspector, Directorate of Shipping. He stated that on 13.10.2019 he discharged his duty as Chief Inspector of the Directorate of BIWTA. On that day at the instruction of Monirul Islam, Assistant Director of the ACC, he along with the computer operator went to the Office of the ACC and in his presence, the Assistant Director of ACC seized documents mentioned in serial No. 4 of the seizure list. He proved the seizure list as exhibit 15 and his signature on the seizure list as exhibit 15/A. He proved the documents mentioned in the seizure list as material exhibit V. During cross-examination, he affirmed that he verified the fourth stage of the survey certificate before the signature of the Chief Engineer. The survey certificate dated 18.11.2018 is mentioned in the seizure list dated 04.09.2019. He issued the memo No. 4825 dated 04.09.2019. Based on the said memo, the Superintendent Engineer and Ship Surveyor by memo dated 04.09.2019 took the initiative. The office of the accused is situated on the first floor at Sadarghat. He also used to sit in the Head Office to examine entrants of the BIWTA. The operator of the Head Office used to send the file of the survey certificate to him. He sent the file to the Chief Engineer and the Chief Engineer is the final approving authority. He could not say whether the concerned file of the survey certificate was presented to the operator. The master Azizul Islam was the applicant of the application dated 24.06.2019. He was a second-class master. After the accident, the file of the enquiry committee was sent to him. He is not aware whether the hard copy of the application for the survey was available in the file presented by him. He denied the suggestion that he deposed falsely.

P.W. 9 Md. Mizanur Rahman Mollik is the ASI of the Office of the Anti-Corruption, Khulna. He stated that on 13.10.2019, he discharged his duty as Constable in the Combined District Office, ACC, Dhaka-1. On the requisition of the Assistant Director Md. Monirul Islam, Chief Inspector (In-charge) Md. Shafiqur Rahman came to the Office of the ACC along with documents which were seized. He signed the seizure list. He proved his signature on the seizure list as exhibit 15/2.

P.W. 10 Md. Abdur Razzaque is an A.S.I of ACC, Combined District Office, Dhaka-1. He stated that he was a member of the trap team formed by memo No. 1236 dated 01.09.2019. On 02.09.2019 at 10.45 am he went to the Office of the BIWTA and took position on the 7th floor. The accused Mirza Saidur Rahman entered his office at 11.25. After some time, the complainant Monirujjaman entered his office. After handing over the bribe to the accused, the complainant, and the members of the trap team entered the office of the accused. At one stage of interrogation, he admitted that he received the bribe. He brought out 200 notes of Tk. 1000, Tk. 02 lakh, kept in a khaki envelope in the last drawer of the table of the accused on his right side. The recovered notes were identical to the notes mentioned in the list of inventory. On the requisition of the Investigating Officer Md. Monirul Islam on 12.09.2019 the documents were seized presented by Md. Monirujjaman. He signed the seizure list. He proved his signature on the seizure list as exhibit 13/3. The documents were handed over to the custody of the complainant. He proved his signature on the jimmanama as exhibit 14/3. During cross-examination, he stated that his authority informed him that he was a member of the trap team. Md. Abdul Wadud was the team leader. As a member of the trap team, 8/9 members started at 10.00 am from the office and at 10.45 reached BIWTA Bhaban. He took his position beside the stairs of the 7th floor. He could not say where the other members of the trap team took their

position. He could say whether there was any nameplate in front of the room of the accused. He could not remember whether the Judicial Magistrate entered the room of the accused along with them. He could not say the total number of police personnel and who was the commanding officer. The Investigating Officer recorded his statement. No audio or video was recorded regarding the interrogation of the accused by the members of the trap team. He could not say whether the confession of the accused was recorded in the audio or video. He could not remember whether any Magistrate was present along with him. He denied the suggestion that the members of the trap team did not go to the BIWTA Building or he did not enter the room of the accused.

P.W. 11 Rezaul Karim was the Deputy Director, ACC, Combined District Office, Faridpur. He stated that he was a member of the trap team formed by memo No. 1236 dated 01.09.2019. On 02.09.2019 at 10.45 am he went to the Office of the BIWTA along with the members of the trap team. At 11.25 the accused Mirza Saidur Rahman entered the BIWTA Bhaban. Immediately after entering Mirza Saidur Rahman in his office room, the complainant Md. Monirujjaman, Manager S.M Shipping Lines, having entered the room at 11.40 handed over Tk. 2,00,000 as a bribe. At that time, he along with the members of the trap team entered the office of the accused. At the time of interrogation, the accused admitted that he received Tk. 2,00,000 as a bribe from the complainant. In the presence of the witnesses including him, an A4 size envelope full of money kept in the last drawer of the table used by the accused was recovered. Total 200 notes of Tk. 1000 were kept in the said envelope. The head of the trap team Abdul Wadud seized the recovered Tk. 2,00,000 at noon and filed the case. The numbers of the notes were mentioned in the list of inventory and the seizure list. There is no audio or video regarding the receipt of bribe by the accused. He denied the suggestion that he did not see any audio or video. He did not record any audio or video of the acceptance of the

bribe. There is no audio or video recording of the conversation in the room of the accused. He also denied the suggestion that the members of the trap team did not interrogate him or he did not bring out the bribe money. He could not say the total number of the members of the trap team or whether any fingerprint of the accused was taken or not. He could not remember whether the Judicial Magistrate was present at the place of occurrence. None was waiting on the first floor of the BIWTA. He was present on the 7th floor. None of the Officers of the BIWTA was present at the place of occurrence. He could not remember whether there was any nameplate of the accused outside of his room. He denied the suggestion that he deposed falsely. He started from his office at 10.00 am. He could not remember the time when he went to the Office of the BIWTA. He could not remember whether any Executive Magistrate was present along with him. He could not say whether the office of the accused was situated at the Sadarghat. He denied the suggestion that he deposed without knowing anything at the instruction of the Investigating Officer.

P.W. 12 Md. Monwarul Islam is the Assistant Director, Divisional Office, ACC, Dhaka. He stated that on 01.09.2019 while he was discharging his duty as Assistant Director, ACC, Dhaka Division, Md. Abdul Wadud, Assistant Director of the ACC informed him that a trap will be conducted on 02.09.2019 and he is a member of the trap team. On 02.09.2019 he came to his office and along with the thirteen members of the trap team and the police personnel, the Executive Magistrate and the Engineers of the PWD at 10.25 am reached the 7th floor, BIWTA Bhaban Dhaka. He took position beside the Office of the accused Mirza Saifur Rahman. At that time, He was present in his room. At 11.25 he entered his room and Md. Monirujjaman entered the room of the accused. At 11.40 the head of the trap team entered the office of the accused. While Md. Abdul Wadud interrogated the accused, he entered the room of the accused. At one point of

interrogation, the accused admitted that he received the bribe and recovered two bundles of Tk. 1000, total Tk. 2 lakh, from the third drawer of the accused on his right side. He admitted that he received the money as bribe from Monirujjaman. The recovered notes were identical to the notes mentioned in the list of inventory. At noon the seizure list was prepared. He signed the seizure list. He did not record any audio or video regarding acceptance of the bribe. He also did not record any audio or video of the confession of the accused. No video or audio regarding bringing out the bribe money from the drawer of the table was recorded. He could not remember how many police personnel were present along with the trap team. He denied the suggestion that the accused brought out the bribe money was a false story or that he deposed falsely. He affirmed that there was no nameplate outside the room of the accused. He denied the suggestion that he did not go to the place of occurrence or Khan Mafizul Islam was present at the place of occurrence. He could not say whether any fingerprint of the accused was taken from the place of occurrence. The complainant Monirujjaman was not known to him previously. The accused was also not known to him before the occurrence. He denied the suggestion that since the accused was not known to him, he did not go to the office of the accused on 02.09.2019 at 11.25.

P.W. 13 Md. Amir Hossain was the Assistant Director (P.R.L), Combined District Office, ACC, Dhaka. He stated that on 01.09.2019 Assistant Director Abdul Wadud informed him that on 02.09.2019 a trap would be conducted and he was a member of the trap team. On 02.09.2019 at 10.45 am he along with the members of the trap team went to the Office of the BIWTA, Motijheel and remained in hiding. The accused entered his office at 11.25 am. At that time, the complainant Monirujjaman entered his room and paid Tk. 2,00,000 as a bribe. After that, members of the trap team entered the room of the accused and on interrogation, he admitted that he received the bribe

amounting to Tk. 2,00,000 and brought out Tk. 2,00,000 from his third drawer. The numbers of the recovered notes were identical to the notes mentioned in the list of inventory. A seizure list was prepared. During cross-examination, he stated that the fingerprint of the accused was not taken from the place of occurrence. The latent print of the accused was not taken. He could not say the room number of the accused. He took position on the 7th floor in front of the office of the accused. He could not say where the other members of the trap team took their position. He denied the suggestion that he did not go to the office of the accused. No audio or video regarding the acceptance of the bribe was recorded. The confession regarding the acceptance of the bribe was not recorded in the audio or video. He denied the suggestion that the signatures of neutral witnesses were not taken on the packet of the recovered alamat. He could not say whether Khan Mafizul Islam went to the place of occurrence after the occurrence but an officer went there. He could not remember the name of that officer. Monirujjaman entered the office of the accused at 11.15 am. The accused and Monirujjaman were not known to him before the occurrence.

P.W. 14 Mohammad Nur Alam Siddique is the Assistant Director, Anti-Corruption Commission, Head Office, Dhaka. He stated that on 01.09.2019 he was posted with ACC, Combined District Office, Dhaka as Sub-Assistant Director. He was appointed as a member of the trap team by office memo No.1236 dated 01.09.2019. On 02.09.2019 at 10.45 am he along with the members of the trap team went to the 7th floor of the BIWTA Bhaban. The accused Mirza Saidur Rahman entered his office room at 11.25 am and received Tk. 2,00,000 as a bribe at 11.40 am from Md. Monirujjaman. At that time, he and others entered the room of the accused. On interrogation, he admitted that he received bribe and brought out two bundles of the notes of Tk. 1000 kept in an A-4 size envelope in the drawer used by the accused. The recovered notes were identical to the notes mentioned in the list of

inventory. At noon Assistant Director Abdul Wadud seized the recovered money and prepared the seizure list. During cross-examination, he stated that the complainant Monirujjaman and the accused Mirza Saidur Rahman were not known to him before the occurrence. He could not remember whether after coming out of Monirujjaman, he entered the room of Mirza Saidur Rahman. He affirmed that he did not see the transaction between Monirujjaman and the accused. He affirmed that no audio or video of the occurrence was recorded. No audio or video regarding the confession of the accused as to the recovery of Tk. 2,00,000 was recorded. He denied the suggestion that he did not go to the place of occurrence or the accused was taken along with Khan Mafizul Islam to the Office of the Anti-Corruption Commission. The Office of Ship Surveyor accused Mirza Saidur Rahman was situated on the 7th floor of the BIWTA Bhaban. He denied the suggestion that as Engineer and Ship Surveyor, the office of the accused was situated at the Dhaka River Port.

P.W. 15 Md. Nurul Islam was the Assistant Inspector (retired). He stated that on 02.09.2019 he was posted with Anti-Corruption Commission, Combined District Office, Dhaka-1 as Assistant Inspector. He was a member of the trap team formed on 01.09.2019. He along with the members of the trap team went to the Office of the BIWTA at 10.40/10.45 am and took position in the said office. The accused came to his office at 11.25 am. The accused received Tk. 2,00,000 from Monirujjaman as a bribe and sensing the handing over of money, he along with Fazlur Bari, Md. Raseduzzaman entered the office of the accused and while he was sitting on his chair, he was detained. After that, the head of the trap team and other members of the trap team along with the Magistrate and Engineer entered the room of the accused. The head of the trap team Abdul Wadud had challenged the accused regarding the receipt of bribe amounting to Tk. 2,00,000. The accused said that he kept the money in his drawer and brought out

Tk. 2,00,000, two bundles of the notes of Tk. 1000, kept in an A4 size envelope in the third drawer. The recovered notes were identical to the notes mentioned in the list of inventory. He got the signal of Monirujjaman at 11.40/11.45 am. He could not say anything about what happened before getting the signal. He, Fazlul Bari, Raseduzzaman, Abdul Wadud, Monirujjaman, Amir Hossain, Rezaul Karim, Manwar Hossain, Sub-Assistant Director Nurul Alam Siddique, Kamruzzaman, S.I Abdur Razzaque, Constable Showkat took their position on the 7th floor of the BIWTA Bhaban. They took positions in different places in the corridor. He along with Fazlul Bari, Raseduzzaman, Abdul Wadud and Monirujjaman took their position at the same place. He could not remember whether there was any nameplate outside the different room on the 7th floor. He stated that he was not aware that the disputed place of occurrence was not the office of the accused. The accused was not known to him before the occurrence. The audio or video of the occurrence was not recorded. The fingerprint on the recovered alamat was not taken. No levelling or packaging of the seized alamat was done. He along with Fazlul Bari got the signal of Monirujjaman at 11.40/11.42/11.45.

P.W. 16 Fazlul Bari was the Deputy Director of the Combined District Office, Chattogram. He stated that on 01.09.2019 he discharged his duty as Assistant Director, ACC, Combined District Office, Dhaka-2. He was a member of the trap team. On 02.09.2019 at 10.45 am he along with the trap team went to the 7th floor of the BIWTA Bhaban. He took a position on the 7th floor at the instruction of the team leader. At 11.25 am the accused entered his room. At 11.40 the complainant Monirujjaman entered the room of the accused and handed over Tk. 2,00,000 to the accused as bribe. At that time, the members of the trap team who remained in hiding entered the office of the accused. On interrogation, the accused admitted that he received Tk. 2,00,000 as bribe. He brought out two bundles of Tk. 1000, total Tk. 2,00,000. The

head of the trap team found that the recovered notes were identical to the notes mentioned in the list of inventory. In the presence of witnesses, Tk. 2,00,000 and the table was seized and prepared the seizure list. During cross-examination, he stated that no levelling and packaging of the recovered alamat was done. None signed on the alamat. At 10.45 am he was present beside the room of the accused. No audio or video of the occurrence was recorded. The seizure list was prepared at noon. He denied the suggestion that the accused did not receive any bribe and the members of the trap team did not go to the office of the accused and no bribe money was recovered from the accused. He affirmed that the accused was not known to him before the occurrence.

P.W. 17 Md. Kabir Hossain Khan is the Upper Division Assistant, ACC, Head Office, Dhaka. He stated that on 07.10.2019 he discharged his duty as Data Entry Control Operator of the ACC, Head Office, Dhaka. On 02.09.2019 at 9.00 am the head of the trap team Abdul Wadud informed him that his name was included as a member of the trap team. At 10.45 am he reached the Office of the BIWTA, Motijheel. At the instruction of the head of the trap team, he took position on the 7th floor. At 11.25 am he came to know that the accused Mirza Saifur Rahman entered his office. Having received the signal at 11.40 am, he along with others entered the office of the accused. In his presence, the head of the trap team interrogated the accused and he admitted that he received bribe amounting to Tk. 2,00,000 and he brought out two bundles of Tk. 1000, total Tk. 2,00,000, kept in an A4 size khaki envelope in the drawer of his table. The head of the trap team found that the recovered notes were identical to the notes mentioned in the list of inventory. During cross-examination, he affirmed that the accused and the Monirujjaman were not known to him before the occurrence. He did not record the video of the occurrence. There were thirteen members of the trap team. He took position on the

7th floor of the BIWTA Bhaban. He was not present at the time of making the list of inventory. He denied the suggestion that the accused did not make any confession regarding the acceptance of the bribe or he was not present at the place of occurrence or he deposed falsely.

P.W. 18 Md. Showkat Hossain was a Constable of ACC, Combined District Office, Dhaka. He stated that on 01.09.2019 he was included as a member of the trap team. On 02.09.2019 at 10.45 am he along with the members of the trap team went to the 7th floor of the BIWTA Bhaban, Motijheel. At 11.25 the accused Mirza Saidur Rahman entered his room. Subsequently, the transaction regarding the bribe took place. After that, the head of the trap team entered the room of the accused and interrogated him regarding the acceptance of the bribe. At one point in time, he brought out two bundles of total Tk. 2,00,000 and there were notes of Tk. 1000. The recovered notes were identical to the notes mentioned in the list of inventory. The recovered money and the table used by the accused were seized. During cross-examination, he stated that the accused Mirza Saidur Rahman and Monirujjaman were not known to him before the occurrence. He reached BIWTA Bhaban at 10.25 or 10.30. He could not say whether any video of the occurrence was recorded. He denied the suggestion that he deposed falsely.

P.W. 19 Md. Raseduzzaman was a Constable of the ACC, Combined District Office, Dhaka. He stated that on 01.09.2019 a trap team was formed. As a member of the trap team on 02.09.2019 at 10.45 he under the leadership of the head of the trap team went to the 7th floor of the BIWTA Bhaban and they took position beside the office of the accused. The accused entered his room at 11.25 and at 11.40 the Manager Monirujjaman entered his room and handed over two bundles of notes of Tk. 1000, total Tk. 2,00,000, to the accused. At that time, under the instruction of the head of the trap team, he entered the room of the accused. The head of the trap team interrogated the accused

regarding the bribe received from the Monirujjaman and he admitted that he received the bribe and brought out Tk. 2,00,000 from the drawer of the accused. The head of the trap team found that the recovered notes were identical to the notes mentioned in the list of inventory. At noon the seizure list was prepared at the place of occurrence. The table used by the accused was also seized. No audio or video of the occurrence was recorded. He denied the suggestion that the accused did not make any confession regarding the bribe or that the accused did not bring out Tk. 2,00,000 or the accused is innocent or he deposed falsely. The accused and Monirujjaman were not known to him before the occurrence. He denied the suggestion that as surveyor there was no office of the accused at the BIWTA Bhaban or he deposed falsely. He was not the witness of the list of inventory.

P.W. 20 Md. Alal Uddin was a Sample Collector of the Marine Engineering Examination Branch, BIWTA, Dhaka. He stated that on 02.09.2019 the informant seized a table at noon from his office which was given to his custody and he signed the jimmanama. He proved his signature on the jimmanama as exhibit 12/3.

P.W. 21 Md. Monirul Islam is the Investigating Officer. He stated that while he was posted with ACC, Combined District Office, Dhaka-1 as Assistant Director, he was appointed as Investigating Officer vide memo No. 34224 dated 03.09.2019. He proved the said memo as exhibit 16. During the investigation, he visited the place of occurrence and prepared the sketch map and index. He proved the sketch map and index as exhibit 17 and his signature as exhibit 17/1. He recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898. On 12.09.2019 at 11.15 am he seized the record mentioned in serial No. 4(1) to 4(10) of the seizure list sitting in the Office of the ACC, Combined District Office, Dhaka-1 and Manager Md. Monirujjaman of M.S. Shipping Line presented those documents. He proved his signature on the seizure list as exhibit 13/4.

He handed over the seized documents to Md. Monirujjaman who presented those documents. He proved his signature on the jimmanama as exhibit 14/4. On 13.10.2019 at 11.15 sitting in the Office of the ACC, Combined District Office, Dhaka-1, he seized documents mentioned in the serial No. 4(1) to 4(9) of the seizure list in the presence of two witnesses and Md. Shafiqur Rahman, Chief Inspector of the BIWTA presented those documents. He proved his signature on the seizure list as exhibit 15/3. During the investigation, he found the prima facie truth of the allegation against the accused made in the FIR and submitted the memo of evidence against the accused. The ACC, Head Office, Dhaka vide memo No. 44954 dated 18.11.2019 had given the approval to submit charge sheet against the accused. He proved the approval as exhibit 18. After that, he submitted charge sheet on 25.11.2019 against the accused under Section 161 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947. During cross-examination, he stated that he could not say whether on 07.06.2019 Monirujjaman went to the office of the accused at Sadarghat. He did not make any investigation as to the presence of the accused on 07.06.2019 at his office in Sadarghat. He could not say whether 07.06.2019 was Friday. He is not aware of whether there were seven stages of the online survey application. He could not say at which stage the application was pending on the date of occurrence. He admitted that the involvement of the accused in the case was illegal and harassing as he was not aware of the stage of pendency of the application. He could not say whether the online application was pending before the operator, He denied the suggestion that although the online application was not sent to the accused, he was falsely implicated in the case. Md. Azizul Islam was the master of the ship. He did not record the statement of the said master. He collected the certificate of the said master. He could not say whether the online application was filed by forging the signature of the master Azizul

Islam. He could not say whether the accused was present in his office from 17.08.2019 to 30.8.2019. He did not record the statement of Surveyor Ahtesanul Haque Fakir who discharged his duty at Sadarghat from 17.08.2019 to 30.08.2019. He could not say the location of Md. Zahangir Hossain and Md. Monirujjaman on 08.06.2019. He collected the dock certificate regarding the repairing of the ship but he did not seize any material. He denied the suggestion that no accident of the ship took place. He could not say whether there was any GD or FIR regarding the accident of the ship. He is not aware whether the owner of the ship informed the matter about the accident to the BIWTA. He did not seize any video regarding the accident of the ship but he seized a picture. He did not seize any documents regarding the registration of the এম.ভি বাবা মায়ের দোয়া. He denied the suggestion that no accident took place between the এম.ভি বাবা মায়ের দোয়া and MV Khadijatul Kobra. No expert opinion was taken from the C.I.D. regarding the picture. He did not visit the dockyard wherein the M.V. Khadijatul Kobra was repaired. He did not get any bill/voucher regarding the repair of the ship. He could not say whether there was any agreement between the owner of the ship and the dockyard regarding the repair of the ship. He denied the suggestion that no repairing was done in the Sattar Khan Dockyard or that the certificate was forged. He could not collect any video of the occurrence. No video footage of the CCTV was seized. He is not aware of the work done by the accused regarding the online application. He did not find any audio or video of the occurrence. No statement of the owner of the এম.ভি বাবা মায়ের দোয়া was recorded. The date of joining of Md. Monirujjaman on the letter of appointment was overwritten. No document was seized from the authority regarding the office of the accused at Motijheel. The truth or otherwise of the dock certificate of Hossain Dockyard was not verified.

D.W. 1 Mirza Saifur Rahman is the accused. He stated that on 11.02.2013 he joined as Engineer and Ship Surveyor of the BIWTA on

a contract basis. He proved the photocopy of the letter of appointment as exhibit A. He was posted as Engineer and Ship Surveyor at Sadarghat by office order dated 07.04.2013 and he joined in the said post on 15.04.2013. He proved the joining letter as exhibit B. He proved his joining letter as Engineer and Ship Surveyor, Grade-1 dated 08.07.2013 as exhibit C. After joining his service, he was posted in the Office of the Engineer and Ship Surveyor, Dhaka River Port. At the last or fifth stage, he receives the online survey application. He proved the memo dated 12.09.2019 regarding the procedure of submitting an online application as exhibit D. After completing the official work by the operator, the application for an online survey is sent to the surveyor. On 07.06.2019 he was not present in his office at Sadarghat. 07.06.2019 was a Friday and a Government Holiday. He proved the attendance register of the employee as exhibit E. From 18.08.2019 to 30.08.2019, he was on official duty in China. At that time, Md. Ahteshamul Haque discharged his duty as Engineer and Ship Surveyor of Sadarghat, Dhaka. He proved the office order regarding the handing over charge as exhibit F. On 02.09.2019 while he was going to his office at Sadarghat, 6/7 unknown persons encircled him near the water tank situated at Bijoy Nagar. They disclosed their identity as the Officers of the ACC. They snatched away his phone and detaining him took him to the Office of the ACC, Combined District Office, Dhaka-1 situated at Segun Bagicha by microbus. Md. Azizul Islam, master of the ship, lodged a GD entry on 30.01.2021 with Fatullah Model Thana, Narayanganj regarding the false occurrence disclosed in the case. He submitted the copy of the GD No. 1614. The alleged application filed by the M.S. Shipping Lines was not sent to his online account and the same was not pending to him. He claimed that he was an innocent person and falsely implicated in the case. He denied the suggestion that he discharged his duty in the Office of the BIWTA. He affirmed that occasionally he visited the said office. He affirmed that he was not an

examiner of the BIWTA except discharging his duty as Engineer and Ship Surveyor. He denied the suggestion that intentionally he suppressed the fact that he discharged his official duty on the 7th floor of the BIWTA Bhaban. He affirmed that he was abducted from 102 Bijoy Nagar by the Officers of the ACC and at the time of abduction, one Mafizul Islam Khan was also abducted along with him by the people of the Anti-Corruption Commission. He denied the suggestion that at the time of receiving the bribe, he was detained from the Office of the BIWTA Bhaban.

D.W. 2 Md. Mahmudul Hasan is the Inspector, Engineer and Ship Surveyor, Narayanganj. He stated that he joined as Inspector on 16.10.2012 in the Office of the Directorate of Ocean Transport. He was entrusted with the duty of security survey of the ship. He was transferred on 21.01.2018 as Inspector to the Office of Dhaka River Port, Sadarghat. After that, on 17.07.2022 he was again transferred to Narayanganj. After joining the Office of Sadarghat, he discharged his duty as a surveyor operator. He proved the office order dated 08.10.2018 as exhibit H. He stated that the hardcopy of the online application for the survey of the M.V Khadijatul Kobra belonged to M.S. Shipping Lines was not submitted to him for which he couldn't ascertain whether any survey application was filed for the survey of the said ship. During cross-examination, he stated that he discharged his duty under the accused from 21.01.2018 to 17.07.2022. He is not aware as regards the online application filed for the survey of the M.V. Khadijatul Kobra. He denied the suggestion that the online survey application was sent to the accused or he deposed falsely as he discharged his duty under the accused.

D.W. 3 Khan Mafizul Islam is a Ship Mariner. He stated that on 02.09.2019 at 8.00 am he was waiting at Bijoy Nagar, Shahid Syed Nazrul Islam Sarani, Purana Paltan standing on the road for his friend. At 8.05 am a white coloured microbus stopped 6/7 meters away from

him and they started searching for someone. At about 8.15 am a rickshaw came from the south side and said 6/7 people encircled the rickshaw. At that time, he heard the hue and cry and also heard that “আমাকে ফোন করতে দেন, আমাকে ধরছেন কেন?” He went near that person and identified him as Chief Engineer Mirza Saidur Rahman. At that time, he saw that the said persons detained Mirza Saidur Rahman and arrested him. The said persons also detained him along with Mirza Saidur Rahman and at 8.45 am took them to the Office of the ACC Segun Bagicha, Dhaka. They were detained in separate rooms. He disclosed his identity to them. They said that he has to depose in Court. They also disclosed that the accused Mirza Saidur Rahman received Tk. 2,00,000 as bribe. He refused to give evidence regarding the false incident. He is a mariner and Mirza Saidur Rahman was known to him for the last 20/25 years. He was not personally known to Mirza Saidur Rahman.

Learned Senior Advocate Mr. Zainul Abedin appearing along with learned Advocate Mr. Azizur Rahman Dulu on behalf of the appellant Mirza Saifur Rahman submits that the prosecution did not prove any document regarding the repairing of the ship Khadijatul Kobra and no online application or hardcopy of the online application for the survey of the said ship was proved in the case. From 04.06.2019 to 27.06.2019 admittedly P.W. 4 and 7 went out of Dhaka and no application was filed on 24.06.2019 by them for the survey of the ship. He further submits that in the online application dated 24.06.2019 (exhibit V) date of docking has been mentioned as 13.02.2019 but the alleged accident of the ship took place on 07.06.2019 and no official act was pending to the accused. The accused was abducted on 02.09.2019 at 8.00 am from Bijoy Nagar by the people of the ACC along with D.W. 3 and the defense by cross-examining D.W. 1 affirmed that on the alleged date of occurrence, D.W. 1 accused Mirza Saifur Rahman was abducted from Bijoy Nagar. Having drawn the

attention of this Court to the office order dated 18.08.2019 (Annexure G) he submits that the accused Mirza Saifur Rahman was posted at Sadarghat as Engineer and Ship Surveyor and no documentary evidence was adduced to prove that he discharged his official duty at BIWTA Bhaban, Motijheel, Dhaka. He was falsely implicated in the case by arranging a false trap at the instance of S.M. Nazmul Haque who was the Engineer of the BIWTA and convicted in Special Case No. 1/2024. Lastly, he submits that no FIR or GD was lodged with any police station in compliance with the provision made in Sections 44 and 45 of the Inland Shipping Ordinance, 1976 regarding the alleged accident that took place on 07.06.2019. The prosecution failed to prove the charge against the accused beyond all reasonable doubt and the trial Court without following the correct principle of the appreciation of evidence mechanically passed the impugned judgment and order illegally convicting the accused. He prayed for setting aside the impugned judgment and order passed by the trial Court.

Learned Advocate Mr. A.K.M. Alamgir Parvez Bhuiyan appearing on behalf of respondent No. 2 (ACC) submits that P.W. 4 Monirujjaman, Manager of the ship M.V. Khadijatul Kobra, applied on 01.09.2019 (exhibit 1) to the Director, Divisional Office, ACC, Dhaka stating that the accused Mirza Saifur Rahman demanded bribe amounting to Tk. 2,00,000 for the survey of the said ship damaged in an accident took place on 07.06.2019 and the Commissioner of the Director, Division office, ACC, Dhaka by office order dated 01.09.2019 (exhibit 2) formed a 13-member trap team headed by P.W. 1 to conduct a trap regarding the demand of bribe by the accused. P.Ws. 1, 10 to 19 and 21 were the members of the trap team who proved that P.W. 4 handed over Tk. 2,00,000, 200 notes of Tk. 1000, to the ACC on 2.9.2019 at 9.15 am and after preparing the list of inventory at about 11.40 am PW. 4 handed over Tk. 2,00,000 as bribe to the accused to survey the ship M.V. Khadijatul Kobra. The

prosecution witnesses proved the charge against the accused beyond all reasonable doubt and the trial Court considering the evidence of both the parties legally passed the impugned judgments and orders. He prayed for the dismissal of the appeal.

I have considered the submissions of the learned Senior Advocate Mr. Zainul Abedin who appeared along with learned Advocate Mr. Azizur Rahman Dulu on behalf of the appellant and the learned Advocate Mr. A.K.M. Alamgir Parvez Bhuiyan who appeared on behalf of respondent No. 2 (ACC), perused the evidence, impugned judgment and order passed by the trial Court and the records.

On perusal of the evidence, it appears that P.W. 4 applied on 01.09.2019 (exhibit 1) to the Director, Anti-Corruption Commission, Divisional Office, Dhaka stating that on 01.09.2019 the accused Mirza Saifur Rahman demanded bribe amounting to Tk. 2 lacks to survey the ship M.V. Khadijatul Kobra damaged in an accident took place on 07.06.2019 at Narayanganj area. Thereafter, AFM Aminul Islam, Commissioner of Anti-Corruption Commission, Divisional Office, Dhaka by office order dated 01.09.2019 (exhibit 2) formed a 13-member trap team headed by P.W. 1 Md. Abdul Wadud, Assistant Director, ACC, Combined District Office, Dhaka-1 and P.Ws 10 to 19 and 21 were the members of the trap team. Md. Kamruzzaman, Sub-Assistant Director, ACC, Combined District Office, Dhaka-2 was another member of the trap team. Amongst those members, P.Ws. 11 to 17 and 21 were the Officers of the ACC and P.Ws. 10, 18 and 19 were the police personnel. Rule 16 of the Anti-Corruption Commission Rules, 2007 empowers the Commissioner of the Anti-Corruption Commission to form a trap team headed by an officer of the said commission. In Rule 16 of the said Rules no provision is made to include any police personnel in the trap team to conduct the trap. Therefore, I am of the view that P.Ws. 10, 18 and 19 were included as

members of the trap team in violation of Rule 16 of the Anti-Corruption Commission Rules, 2007.

At this stage, it is very pertinent here to rely on a decision made in the case of *Abdur Rahman Vs. The State* reported in 27 DLR 268 para 23 in which it has been held that

“The prosecution should see that in arranging this trap they do not deviate from the fundamental principle of justice. It should also be borne in mind that the police which is an organisation entrusted by the State to maintain law and order and help in the administration of the justice should not indulge in doing things which have not been authorised by any Act of the police. The police has also a duty to the state and the citizen.”

In the case of *Mohammad Abdul Motaleb vs The State and another*, Criminal Appeal No. 8670 of 2020, judgment dated 22.01.2024, this bench considering the Rule 16 of the Anti-Corruption Commission Rules, 2007 held that

“No explanation was given by the prosecution as to why P.Ws. 9, 10 and another Constable, all are police personnel, were appointed as a member of the trap team. Furthermore, at the time of conducting the trap, the police personnel of the Motijheel Thana were also present at the Shahana Hotel situated on the ground floor of the Hotel Purbani International. A police personnel shouldn't be appointed to conduct the trap. Therefore, I am of the view that the trap proceeding was vitiated due to conducting the trap by police personnel and the presence of police of Motijheel Thana at the time of conducting the trap.”

In this connection, reference may be made to the *Simon Kaitan Fernandez Vs. the State* reported in AIR 1951 Bom. 468 wherein it has been opined that

“Where the entire law in regard to the importance to be attached to panch witnesses or mashirs has been discussed. It was held that it was essential that panch witnesses should be independent, unbiased and without being in any way under the control of the police, that as far as possible the police and the investigating officers should avoid utilizing panch witnesses when they have already acted as panch witnesses, that those should be panch witnesses whom the police officers do not know at all, and about whose independence and impartiality there can be no question at all. Piaro's testimony read as a whole, suffers greatly indeed, and is found wanting if weighed in the light of these principles.”

In the case of Md. Rezaul Kabir Vs. The State and another reported in 14 MLR 482 the High Court Division exercising jurisdiction under Section 561A of the Code of Criminal Procedure, 1898 after an elaborate discussion on Rule 16 of the Anti-Corruption Commission Rules, 2007 opined that;

“In view of the above, as contemplated in Rule 16 of the Anti-Corruption Commission Rules, 2007, as referred to above, we find that the legislature or the framers of the law expressed their intention that in laying and conducting a trap case to catch hold of a public servant red handed connected with the offence as mentioned in the schedule to the Anti-Corruption Commission Act, 2004 the provisions laid down in Rule 16 of the Anti-Corruption Commission Rules, 2007 shall be followed. There is no scope on the part of the Court to put a different word to give a different meaning other than the one which was meant by the expression employed by the framers of the law. Therefore, the provisions as laid

down in Rule 16 of the Anti-Corruption Commission Rules, 2007 are construed to be mandatory.”

The above view of the High Court Division in the Md. Rezaul Kabir (Supra) has been set aside by our Apex Court in the case of Anti-Corruption Commission vs Rezaul Kabir and another reported in 68 DLR (AD) 291 in which our Apex Court has held that

“The trapping party had followed the relevant Rules at the time laying trap or not or in other words, pre-arranged raid/trap carries any evidentiary value or not for non-compliance of procedural formalities before laying traps should be considered by the Courts after recording evidence along with other evidence. The Court may or may not accept the evidence of a decoy witness considering the facts, circumstances, the procedure to be followed for laying traps and that the officials laying traps were designated or not. There may be other reliable evidence in the hand of the prosecution against the respondents to connect with the offence. In two cases the allegations are that the accused respondents accepted considerable amounts as gratifications before laying traps. Accept means to take or receive with a consenting mind. Obviously such a consent can be established not only leading evidence of prior agreement but from the circumstances surrounding the transaction itself.”

In interpreting Rule 16 of the Anti-Corruption Commission Rules, 2007 it is also profitable here to rely on a decision made in the case of State of HP Vs. Lekh Raj reported in 2000 SCC (Cr1) 147 in which it has been held that

“The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in

favour of the accused. The traditional dogmatic hyper-technical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be an utopian thought but has to be considered as part and parcel of human civilization and the realities of life. The court cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting the society and the mankind.”

A trap has been defined as “a person who, with a view to securing the conviction of another person, proposes certain criminal conduct to him, and himself ostensibly takes part therein. He creates the occasion for someone else to commit the offence.” Swift’s Law of Criminal Procedure, p. 485.

In the case of R. V. Cleaver, 1967 (4) S.A. 256 (R.A.D.) known as Cleaver’s case the specific guidelines were laid down for proper execution of a trap case. It was stated that;

“the greatest care should be taken to ensure that the trap is a fair one. Verbal persuasion is not to be used. It would seem that this latter stricture was not intended to exclude the normal verbal arrangement of the trapping transaction. What apparently the court had in mind was to exclude such things as “pleas of desperate illness, offers of great sums, continued and persistent coaxing or any effective appeal to the impulses of compassion, sympathy, pity, friendship, fear or hope where there is more than the ordinary expectation of gain and profit incident to the traffic”.

As regards the credibility of the witnesses of the trap case, in the case of Ghulam Ali versus the State reported in PLD 1963 (W.P.) Karachi 582 it has been held that

“There is no doubt that in the present case, there was more than a reasonable possibility and indeed, in my opinion, an establishment of fact that the defense put forward by the appellant may be true. The defense examined by the appellant read with the admissions made by the prosecution witnesses, the unreliability of the main prosecution witnesses, the interested nature of the testimony of Saffar and the overwhelming circumstance of Faiz Muhammad Almani being inimical towards the appellant undoubtedly points to more than a reasonable doubt of the prosecution case.”

On perusal of the evidence, it appears that P.W. 4 Md. Monirujjaman Monir is the Manager of the M.S. Shipping Lines Limited and P.W. 7 Zahangir Hossain is the owner of the ship M.V. Khadijatul Kobra belonged to said company. On 01.09.2019 P.W. 4 Md. Monirujjaman Monir filed an application (exhibit 1) to the Director, Anti-Corruption Commission, Divisional Office, Dhaka stating that the front side of the ship M.V. Khadijatul Kobra was damaged in an accident took place on 07.06.2019 with ball gate at Narayanganj area and at that time he went to the accused Mirza Saifur Rahman to survey the ship and he demanded bribe amounting to Tk. 3 lakh to survey the said ship. The statement made in exhibit 1 that on 07.06.2019 the accused demanded bribe amounting to Tk. 3 lakh to P.W. 4 is not corroborated by P.W. 4 and 7. No date of filing an online application has been mentioned in the application dated 01.09.2019 (Exhibit 1).

P.W. 4 stated that he filed an online application on 24.06.2009 to survey the ship M.V. Khadijatul Kobra damaged in an accident that took place on 07.06.2019 but no such application was proved by P.W. 4

for the survey of the said ship allegedly damaged in an accident took place on 07.06.2019. P.W. 1 stated that the ID No of the application dated 24.06.2019 filed by P.W.4 was 916190624064503100 and the said application was proved as exhibit V series by P.W. 8. P.W. 4 also proved the same application as exhibit IV/12. In the said online application (exhibit IV/12) or V series the date of docking has been mentioned as 13.02.2019 which proved that no application has been filed by P.W. 4 for the survey of the ship M.V. Khadijatul Kobra allegedly damaged in an accident took place on 07.06.2019.

Now the question has arisen whether the alleged ship casualty was reported to the Officer-in-Charge of the nearest Police Station by the master of the ship or any other person following the provision made in Section 44 of the Inland Shipping Ordinance, 1976.

Under Section 44 (2) of the Inland Shipping Ordinance, 1976 every shipping casualty is required to be reported forthwith and, if this is not possible, within twenty four hours of its occurrence to the Officer-in-Charge of the nearest police station by the master of the ship of the inland ship or any other competent person. From the declaration (exhibit IV/13), it reveals that one Md. Azizul Islam was the master of the M.V. Khadijatul Kobra allegedly damaged in the casualty that took place on 07.06.2019 and he did not sign exhibit IV/13. The master of the ship Md. Azizul Islam was not examined in the case. No GD or FIR is proved in the case as to the alleged casualty of the M.V. Khadijatul Kobra allegedly took place on 07.06.2019 at Narayanganj area. The prosecution failed to prove the alleged casualty that took place on 07.06.2019.

On perusal of the certificate dated 15.06.2019 (exhibit IV/10), it appears that said certificate was issued regarding the repairing of the M.V. Khadijatul Kobra from 11.06.2019 to 15.06.2019 by Selim Ahmed Khan, Managing Director of Sattar Khan Dockyard but he was not examined in the case. P.W. 4 did not say anything that Selim

Ahmed, Managing Director of the Sattar Khan Dockyard was personally known to him and he was also acquainted with the signature of Selim Ahmed Khan. A person who issued a document is competent to prove the same or any other person who is acquainted with the signature of that person is also legally authorised to prove the signature of that person. P.W. 4 illegally proved the said certificate as exhibit IV/10. Nothing has been mentioned in the online application dated 24.06.2019 (exhibit IV/12) and application dated 01.09.2019 (exhibit 1) that the M.V. Khadijatul Kobra was repaired in the Sattar Khan Dockyard from 11.06.2019 to 15.06.2019 which proved that the exhibit IV/12 or V series were subsequently created. In exhibit IV/12 the date of docking has been mentioned as 13.02.2019. Therefore, I am of the view that the prosecution failed to prove that the M.V. Khadijatul Kobra was repaired in the Sattar Khan Dockyard and Engineering Works from 11.06.2019 to 15.06.2019.

P.W. 3 Zunayed Arefin Bhuiyan, Sub-Divisional Engineer of Public Works Department-5, Sher-E-Bangla Nagar, Dhaka and P.W. 5 Md. Abdul Awal, Assistant Commissioner and Executive Magistrate of the Office of the Deputy Commissioner, Dhaka were allegedly present at the time of preparing the list of inventory and the trap proceeding. P.W. 1 stated that P.Ws. 3 and 5 were appointed by the concerned authority on the requisition of the ACC. No requisition of the ACC as to the appointment of P.Ws. 3 and 5 and the letter of appointment of P.Ws. 3 and 5 by the concerned authority regarding their presence at the time of preparing the list of inventory and conducting the trap was proved by the prosecution. In the absence of any requisition and appointment of P.Ws 3 and 5, it cannot be said that P.Ws. 3 and 5 were appointed by their authority to present at the time of preparing the list of inventory and conducting the trap. It is found that from the time of handing over 200 currency notes of Tk. 1000 by P.W. 4 to ACC till the alleged recovery of money, P.Ws 3 and 5 were with the trap party.

P.W.5 Md. Abdul Awal was the Assistant Commissioner and Executive Magistrate, Dhaka. In Rule 16 of the Anti-corruption Commission Rules, 2007 nothing has been mentioned as regards the presence of a Magistrate during conducting a trap. A Magistrate discharges judicial duty and delivers judgment considering the evidence adduced by the parties. If a Magistrate is allowed to join the trap team of ACC, it will undermine the prestige and dignity of a Magistrate. It is regrettable that in a trap arranged by the ACC, the Magistrate was involved along with the trap party from beginning to end.

The practice of utilising the Magistrate as a witness in a trap case has been criticised in the case of Nazir Ahmed Vs. Emperor reported A.I.R. 1936 (P.C.) 253, page-258 in which Lord Roche observed as follows :-

"So with regard to the Magistracy, it is for obvious reasons most undesirable that Magistrates and judges should be in the position of witnesses in so far as it can be avoided. Sometimes it can not be avoided, as under sec-533, but where matter can be made of record and therefore admissible as such there are the strongest reasons of policy for supposing that the legislature designed that it should be made available in that form and no other. In their Lordship's view it would be particularly unfortunate if Magistrates were asked at all generally to act rather as police officers than as judicial persons to be by reasons of their position freed from the disability that attached to police officers under sec. 162 of the Code and to be at the same time freed, notwithstanding their position as Magistrate, from any obligation to make records under S. 164."

In the case of M. C. Mitra Vs. the State reported in A.I.R. 1951 Cal. 524 as regards sending the Magistrate as witness in a trap case their Lordships observed as follows:-

"Before I conclude I wish to express this Court's great disapprobation of the practice that seems to have become very frequent of sending Magistrate as witnesses of police trap. The Magistrate is made to go under disguise to witness the trap laid by the police. In this case, it was Presidency Magistrates and in other cases which have come to our notice, there have been other Magistrates who became such witnesses. To make the Magistrate a party or limb of the police during the police investigation seriously undermines the independence of the Magistrates and perverts their judicial outlook. The Magistrates are the normal custodians of the general administration of criminal justice and it is they who normally decide and pass judgments on the acts and conducts of the police. It is not enough to say, therefore that the Magistrate acting as a witness in a particular case does not himself try that case....There is another danger and that is the Magistrate is put in the unenviable and embarrassing position of having to give evidence as a witness and then being disbelieved. That is not the way to secure respect for the Magistracy charged with the administration of justice. In my judgment this practice which is unfair to the accused & unfair to the Magistrate. It is also unfair to the police. Because charged with the high responsibility and duty of performing a great and essential public service of this state the police can not offer to run the risk of opprobrium even if unfounded, that they have enlisted

the Magistrate in their cause, that risk is too great & involves for feiting public respect and confidence.

The above view of Calcutta High Court was also upheld in the case of Rao Shib Bahadur Singh and another Vs. The State reported in A.I.R. 1954 (S.C.) 322, page 335, in which their Lordship have observed in the following terms;

"We perfectly endorse the above observation made by P. B. Mukherjee and hope & trust that Magistrate will not be employed by the police authorities in the manner it was done by the special Police Establishment in this case before us." The independence of the Judiciary is priceless, treasure to be cherished and safeguarded at all costs against predatory activities of this character and it is of the essence that public confidence in the independence of the judiciary should not be undermined by any such tactics adopted by the Executive authorities."

P.W. 4 stated that repairing of the M.V. Khadijatul Kobra was done in the Sattarkhan Dockyard from 11.06.2019 to 15.06.2019. On 24.06.2019 he filed the online application to survey the ship. During cross-examination, he stated that possibly on the 3rd or 4th of June, 2019 he went to Jashore and on 27.06.2019 he came back to Dhaka. In reply to a question, he affirmed that since he was not present in Dhaka, he was not aware of who looked after the work regarding the survey of the ship from 04.06.2019 to 27.06.2019. He is also not aware of who went to the surveyor on 07.06.2019. P.W. 7 Zahangir Hossain is the owner of the ship M.V. Khadijatul Kobra. He stated that he filed an online application on 24.06.2019 for a survey of the ship and he sent the Manager to Sadarghat, BIWTA Office.

On scrutiny of the evidence of P.Ws. 4 and 7, it appears that the evidence of P.Ws. 4 and 7 regarding filing an online application on 24.06.2019 by them is contradictory. It is found that no online application regarding repairing the said ship allegedly damaged in an accident that took place on 7.6.2019 was proved in the case. P.W. 7 stated that no agreement between the Sattarkhan Dockyard and M.S. Shipping Lines was executed regarding the repairing of the ship. The bills for repairing the ship were not handed over to the Investigating Officer. From 04.06.2019 to 27.06.2019, he was present at Satkhira. During cross-examination, he stated that he could not remember where he communicated with the accused from 07.06.2019 to 2.09.2019. In the application dated 01.09.2019 (exhibit 1), it has been alleged that on 01.09.2019 at 10.30 am, P.W. 4 went to the office of the accused allegedly situated on the 7th floor, BIWTA Bhaban, Motijheel, Dhaka. From office order dated 18.08.2019 (Annexure-G) issued by the Directorate of the Inland Shipping, reveals that at the time of the alleged occurrence on 01.09.2019 and 02.09.2019, the accused Mirza Saifur Rahman was posted as Engineer and Ship Surveyor at Sadarghat.

During cross-examination, P.W. 7 Zahangir Hossain, owner of the ship MV Khadijatul Kobra, affirmed that from 04.06.2019 to 27.06.2019 he was not present in Dhaka and he is aware of the work done by Manager Md. Moniruzzaman in the Satter Khan Dockyard from 08.06.2019 to 15.06.2019. From 04.06.2019 to 27.06.2019 he was not present in the Keraniganj area. He affirmed that from 04.06.2019 to 27.06.2019 he was present at Satkhira. PW.4 Md. Moniruzzaman stated that at the time of docking the ship, he was sick at Khulna. After two months of filing an online application, he came to know about the online application. Evidence of P.Ws 4 and 7 as regards repairing M.V. Khadijatul Kobra from 11.06.2019 to 15.06.2019 in the Sattar Khan Dockyard is contradictory.

No documentary evidence was adduced by the prosecution to prove that the accused Mirza Saifur Rahman was posted in the office of BIWTA Bhaban, Motijheel Dhaka. During cross-examination, P.W. 21 affirmed that he did not find any document from the authority of the accused to prove that the office of the accused was situated at Motijheel. He did not find any document regarding discharging the additional duty of the accused. P.W. 12 admitted that there was no nameplate outside the office room (Motijheel) of the accused. The Office order dated 18.08.2019 issued by the DG, Directorate, Inland Shipping (exhibit 'G') proved that the office of the accused Mirza Saifur Rahman was situated at Sadarghat. I am of the view that at the time of occurrence on 02.09.2019 the Office of the accused Mirza Saifur Rahman was situated only at the River Port, Sadarghat. The evidence of P.Ws. 1, 2, 4, 6, 7, 10 to 19 and 21 that on 02.09.2019 at 10.30 am, they went to the Office of the accused situated at BIWTA Bhaban, Motijheel, Dhaka and P.W. 4 handed over Tk. 2 lakh at 11.40 am to the accused Mirza Saifur Rahman as bribe finds no substance.

In a trap case, the prosecution is required to prove that an official act was pending to the delinquent officer and he received the bribe to discharge the official act. The defense examined 3(three) witnesses in the case. The defense case is that on 02.09.2019 when the accused Mirza Saifur Rahman was going to his Office at Sadarghat at about 8.00 am at the instance of S.M. Nazmul Haque, Engineer and Ship Surveyor of the BIWTA, he was abducted along with D.W. 3 Khan Mafizul Islam by the people of the Anti-Corruption Commission with the help of the police personnel. The accused Mirza Saifur Rahman was examined as D.W. 1. He stated that on 07.06.2019, he was not present at Sadarghat and it was Friday and a government holiday. He proved the attendance register as exhibit E1 and the office order dated 18.08.2019 as exhibit G which proved that 07.06.2019 was a holiday and from 18.08.2019 to 30.08.2019 accused Mirza Saifur

Rahman, Engineer and Ship Surveyor, Sadarghat was on official duty in China and at that time, Mohammad Ahoteshamul Haque Fakir discharged duty as Engineer and Ship Surveyor, Dhaka.

D.W. 1 accused Mirza Saifur Rahman stated that on 02.09.2019 he was abducted by 6/7 unknown persons from the Bijoy Nagar Water Tank area, Dhaka and taken to ACC Combined District Office, Dhaka-1 at 8.45 am by a microbus. D.W. 3 Khan Mafizul Islam was cited as a witness in the charge sheet. He stated that on 02.09.2019 at 8.00 am he was waiting standing on Bijoy Nagar Shahid Syed Nazrul Islam Sarani and at 8.15 am he saw that 6/7 persons encircled a rickshaw and he heard the hue and cry “আমাকে ফোন করতে দেন, আমাকে ধরছেন কেন?” At that time, he found Engineer Mirza Saifur Rahman and he was abducted along with Mirza Saifur Rahman and at 8.45 am they were taken to the Office of the ACC, Segun Bagicha. He denied the suggestion that on 02.09.2019, he went to the Office of the DG Shipping Line, Motijheel. By cross-examining, the defense failed to assail the evidence of D.W. 3 that on 02.09.2019 at about 8.00 am, he was abducted along with accused Mirza Saifur Rahman from Bijoy Nagar Area and was taken to the Office of the ACC, Combined District Office, Dhaka. By cross-examining D.W. 1 and 3, the defense affirmed that D.W. 1 was abducted on 02.09.2019 at about 8.00 am along with D.W. 3 which disproved the evidence of P.Ws. 1, 2, 4, 6, 7, 10 to 19 and 21 that on 02.09.2019 at about 11.40 am the accused Mirza Saifur Rahman received Tk. 2,00,000 as bribe from P.W. 4 Md. Monirujjaman Monir.

D.W. 2 Md. Mahmudul Hasan is the Inspector, Engineer and Ship Surveyor, Narayanganj. He stated that on 21.01.2018 he was transferred as Inspector to the Dhaka River Port, Sadarghat and he was transferred from that post on 17.07.2022 to Narayanganj. He proved the office order dated 08.10.2018 as exhibit H. He stated that the hardcopy of the online application for the survey of the ship M.V. Khadijatul Kobra was not submitted to him for which he couldn't verify whether

any online application regarding the survey of the said ship was submitted or not. He affirmed that from 21.01.2018 to 17.07.2022 he discharged his duty under the accused Mirza Saifur Rahman and the accused was his immediate higher officer. The evidence of D.W. 2 that hardcopy of the online application for the survey of the ship M.V. Khadijatul Kobra was not submitted to him is not denied by the prosecution. It is already found that the prosecution failed to prove any casualty of the ship M.V. Khadijatul Kobra allegedly took place on 07.06.2019 and no evidence regarding the repairing of the said ship was proved. The prosecution also failed to prove any hardcopy or online application regarding the survey of the said ship allegedly damaged in a casualty that took place on 07.06.2019. Therefore, I am of the view that no official act was pending to the accused Mirza Saifur Rahman on 02.09.2019 to be discharged by him regarding the alleged survey of the M.V. Khadijatul Kobra.

At this stage, it is profitable here to rely on a decision made in the case of HT Hunays quoted/referred in the case Abdul Gani vs. State reported in 24 DLR 230 in which it has been held that

“This Court laid down that to attract the provisions of this section it was not sufficient merely to establish that the person proceeded against was a public servant and that while acting as a public servant, he did certain acts; it must be established that the act complained of was an official act. In this case, the act complained of was the act of receiving illegal gratification. That surely could not be an act done or purporting to be done in the execution of duty.”

Admitted by Md. Azizul Islam was the master of the ship M.V. Khadijatul Kobra. As master of the ship Md. Azizul Islam is the competent witness to prove that the said ship was damaged in a casualty that allegedly took place on 07.06.2019 with the এম.ভি বাবা মায়ের দোয়া. The prosecution withheld Md. Azizul Islam and Selim Ahmed

Khan, Managing Director of the Sattarkhan Dockyard allegedly issued the repairing certificate (Annexure-IV/10).

A trap is a pre-planned proceeding. Nowadays science has developed to its highest pick. The audio and video evidence is available everywhere and it is very easy to take the audio or video or picture of any trap proceeding. Therefore, at the time of conducting the trap, the members of the trap team should record the entire trap proceeding in a video or audio or picture. No audio, video, picture or any scientific proof regarding the handing over bribe of Tk. 2,00,000 by P.W. 4 to accused Mirza Saifur Rahman was proved. No phenolphthalein powder test or latest print test of the alleged A-4 khaki envelope (material exhibit-I) wherein Tk. 2,00,000 (materials exhibit-II & III) were kept by the accused Mirza Saifur Rahman is done in the instant case. It is unsafe to convict a person in a trap case without scientific proof.

At this stage, it is relevant here to rely on the decision made in the case of C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779; (2009) 2 SCC (Cri) 1] and in B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P, (2014) 13 SCC 55, (2014) 5 SCC (Cri) 543]. In the aforesaid judgments considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it has been reiterated that

“To prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. The absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court.” (emphasis

added) Thus, the demand for gratification and its acceptance must be proved beyond a reasonable doubt.”

In case of **P. Satyanarayana Murthy Vs. The state of Andhra Pradesh reported in (2015) 10 SCC 152** as regards the trap it has been held that

“Proof of demand of illegal gratification is gravamen for offences punishable under Sections 7 and 13(1)(d)(i) and (ii) of the Act, 1988. Mere acceptance of any amount by way of gratification or recovery thereof dehors the proof of demand would not be sufficient to bring home the charge under aforesaid sections of the Act, 1988. The proof of demand is a sine qua non and in the absence of proof of demand, legal presumption under Section 20 of the Act, 1988, cannot be raised.”

In case of **Neeraj Dutta Vs. State (NCT of Delhi) (2023) 4 SCC 731** the Constitution Bench of the Supreme Court considered all the precedents to answer the reference which is quoted below;

“Question for consideration:

45. On consideration of the aforesaid cases, the question framed for determination by the larger Bench is as under:

“(1) Whether, in the absence of evidence of complainant/direct or primary evidence of demand of illegal gratification, is it not permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution?”

The reference was answered by holding in the following terms:-

88.1. (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13 (1)(d) (i) and(ii) of the Act.

88.2. (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

88.3. (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct, oral and documentary evidence.

88.4. (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13 (1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13 (1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring

home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13 (1)(d) and (i) and (ii) of the Act.”

In the case of J. S. Yadav Vs. State of Madhya Pradesh passed in Criminal Appeal No. 130 of 2016 the judgment dated 30.05.2024 the High Court of Madhya Pradesh at Gwalior has held that

“The chain of evidence is not complete to show that in all human probabilities, the accused has demanded and accepted illegal gratification as motive or reward to forbear to discharge his public duty of checking the vehicles. The circumstances established by the evidence do not lead to the irresistible and definite conclusion of guilt of the accused.”

The mere acceptance of the money without any official act to be done by the accused government servant is not sufficient to prove the charge under Section 161 of the Penal Code, 1860 unless the prosecution proved that on 02.09.2019 an official act was pending to the accused Mirza Saifur Rahman regarding the survey of the ship M.V. Khadijatul Kobra and he received bribe to discharge his official act. It is found that no official act was pending on 02.09.2019 to the accused Mirza Saifur Rahman. There was no reason to demand the bribe by the accused Mirza Saifur Rahman to P.W. 4 Md. Monirujjaman Monir. P.W. 21 Investigating Officer Md. Monirul Islam admitted that the involvement of the accused in the case was illegal and harassing as he was not aware of the stage of pendency of the application. The evidence of DW. 1 that on 2.9.2019 at 8.44 am he was abducted by the people of ACC from the Bijohnagar area along with

DW.3 who is cited as a witness in the charge sheet is corroborated by D.W. 3. Therefore the defense put forward by the accused Mirza Saifur Rahman might have been true and the false implication of the accused in the case cannot be ruled out.

The defense is not bound to prove the defense case by adducing legal evidence. When both parties adduced evidence, the Court shall consider those evidence in a juxtaposition. The trial Court without considering the evidence of the defense witnesses in their true perspective merely relied on the prosecution witnesses. The trial Court failed to adopt the correct principle of appreciation of evidence of both parties and arrived at a wrong decision as to the guilt of the accused Mirza Saifur Rahman and illegally convicted him.

Because of the above evidence, facts and circumstances of the case, findings, observation and the proposition, I am of the view that the prosecution failed to prove the charge against the accused Mirza Saifur Rahman beyond all reasonable doubt.

I find merit in the appeal.

In the result, the appeal is allowed.

The impugned judgment and order of conviction and sentence passed by the trial Court against the accused Mirza Saifur Rahman is hereby set aside.

However, there will be no order as to costs.

Send down the lower Court's records at once.