

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 9035 of 2016

Md. Ayub Ali

...Convict-appellant

-Versus-

The State and others

...Respondents

Mr. Md. Abdur Razzak, Advocate

...For the convict-appellant

Mr. S.M. Golam Mostofa Tara, D.A.G with

Mr. A. Monnan, A.A.G

...For the State

Mr. Mohammad Shishir Manir, Advocate with

Mr. Md. Ruhul Amin, Advocate

...For the respondent No. 3

Heard on 01.07.2024, 02.07.2024 and 07.07.2024

**Judgment delivered on 09.07.2024**

This criminal appeal under Section 10 of the Criminal Law Amendment Act, 1958 is directed challenging the legality and propriety of the impugned judgment and order dated 31.08.2016 passed by Special Judge, Jessore in Special Case No. 2 of 2014 arising out of Criminal Miscellaneous Case No. 1489 of 2012 convicting the appellant under Section 408 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 5(five) years and fine of Tk. 27,54,228, in default, to suffer rigorous imprisonment for 1(one) year.

The prosecution case, in short, is that the accused Md. Ayub Ali is the Branch Manager of Dhaka Ahasania Mission, Hashimpur Branch, Jessore Sadar. He is the custodian of the funds and documents of the said mission. The accused used to receive the instalments from the loanee. On 08.07.2012 at 10 pm, the accused without informing the higher authority misappropriate money of the said office. P.Ws. 2 and 3 visited the said office on 09.07.2012 and did not find the accused in his office. At that time, P.Ws. 2 and 3 called P.W. 1 over mobile phone. After examination of the records

of the said branch, it was found that the accused had withdrawn Tk. 3 lakhs on 08.07.2012, (2) there was a shortage of cash amounting to Tk. 1,77,044, (3) he recovered Tk. 1,36,793 and without depositing the recovered money misappropriated, (4) on 31.05.2012 he disbursed a fake loan of Tk. 60,000 in favour of one Gita, and (5) false disbursement and recovery of loan amounting to Tk. 20,80,396 without depositing in the account of the loanees. The accused Md. Ayub Ali misappropriated total Tk. 27,54,228. After the occurrence, P.W. 1 lodged GD Entry No. 537 dated 10.07.2012. On 05.08.2012, a legal notice was sent to the accused. On 12.08.2012 at 10 am, the informant went to the Office of the District Anti-Corruption Commission to lodge the FIR but the Anti-Corruption Commission instructed him to take legal steps in the Court and on that day at 4 pm, he went to Jessore Model Thana to lodge the FIR but the concerned Police Station refused to lodge the FIR. Consequently, he filed the complaint petition in the Senior Special Judge, Jessore. The Senior Special Judge, Jessore by order dated 04.09.2012 sent the complaint petition to the Anti-Corruption Commission, Head Office, Dhaka for enquiry and by Memo No. 4218 dated 09.09.2012 sent the complaint petition to the Director General, Anti-Corruption Commission, Dhaka.

After that, S.M. Borhanduddin, Sub-Assistant Director, Anti-Corruption Commission, Combined District Office, Jessore after enquiry submitted the report on 19.05.2013 against the accused for misappropriation of total Tk. 27,54,228. On receipt of the said enquiry report, the Senior Special Judge, Jessore by order dated 22.10.2013 took cognizance of the offence against the accused Md. Ayub Ali under Sections 408/420 of the Penal Code, 1860. After that, the case was sent to the Special Judge, Jessore and the case was registered as Special Case No. 2 of 2014 and cognizance was taken

against the accused under Sections 408 and 420 of the Penal Code, 1860.

During the trial, charge was framed against the accused under Section 408 of the Penal Code, 1860 which was read over and explained to the accused and he pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 15(fifteen) witnesses to prove the charge against the accused. After examination of the prosecution witnesses, the accused was examined under Section 342 of the Code of Criminal Procedure, 1898 and he declined to adduce any D.W. After concluding the trial, the trial Court by impugned judgment and order convicted the accused as stated above against which the accused Md. Ayub Ali filed the instant appeal.

P.W. 1 Aslam Uddin is the Branch Manager of Dhaka Ahasania Mission, Hashimpur Branch, Kotwali, Jessore. He stated that accused Ayub Ali was the Manager of the said branch for about two years. After 07.07.2012, he was absent in his office and the matter was reported on 09.07.2012 to the Area Manager. After that, the Area Manager Khairul Islam visited the Hashimpur Branch and examined the records. On examination of the chequebook, it is found that the accused withdrew Tk. 3 lakh and there is total shortage of Tk. 1,77,044 and he received Tk. 1,36,793 from the members, but did not deposit the said amount. He disbursed fake emergency loan of Tk. 60,000 and fake disbursement of loan amounting to Tk. 20,80,394. The accused misappropriated total Tk. 27,54,228. GD entry was lodged on 10.07.2012 with the Kotwali Model Thana. On 05.08.2012, the notice was served upon the accused. On 12.08.2012, he went to the Office of the ACC to file the case. Thereafter, he filed the complaint petition. He proved the complaint petition as exhibit 1 and his signature as exhibit 1/1. He identified the accused in Court. On 21.01.2013, S.M Borhan Uddin,

Sub-Assistant Director, ACC, Jessore seized documents from the office. He proved the seizure list as exhibit 2 and his signature as exhibit 2/1. The seized documents were handed over to his custody. He proved his signature on the jimmanama (bond) as exhibit 2/2. During cross-examination, he stated that he deposed in Court following the complaint petition. On 12.08.2012 he went to the Office of the ACC and the certificate is lying with the Court. The certificate was collected on 02.09.2012. He denied the suggestion that no approval was taken from the ACC. The Executive Committee of the Ahasania Mission issued the certificate on 02.09.2012 to file the case. The certificate was given by the Area Manager Khairul Islam. He is not a Member of the Executive Committee. The Executive Committee is empowered to file the case. Refat Ara and Alauddin were the employees of the Hashimpur Branch. The accused Md. Ayub Ali initiated the cattle programme. He denied the suggestion that the loanee could not pay the loan. Refat Ara and Alauddin also distributed and recovered the loan. He received the documents in his custody from the Audit Committee. Anjuara paid Tk. 20,000 but the accused did not deposit the said amount. Tk. 20,000 deposited by Archana Rani is mentioned in the passbook, but not deposited in the cashbook. He could not say whether handwriting was sent for the report of the expert. The photocopy of the cheque has been seized. He denied the suggestion that the accused did not misappropriate the money and that Refat Ara and Alauddin misappropriated the money and the accused was falsely implicated in the case.

P.W. 2 Rezaul Karim is the Coordinator of Field Operation, Micro Credit Program, Ahasania Mission, Dhaka. He stated that he conducted an audit from 09.07.2012 to 12.07.2012 against accused Ayub Ali. At that time, he was absent. He, Monirul Islam, and Ziaul Hasan conducted the audit and he was the head of the audit team.

On 08.07.2012, Tk. 3 lakh was withdrawn and there was a shortage of Tk. 1,77,044 in cashbook. On scrutiny of the passbook, it was found that Tk. 1,36,790 was deposited but the said amount was not mentioned in the cashbook. Tk. 60,000 of insurance was not returned to the members. There was a shortage of loans amounting to Tk. 20,80,394. There was total misappropriation of Tk. 27,54,228 and accordingly an audit report was prepared. He proved the audit report as exhibit 3 and his signature as exhibit 3/1. During cross-examination, he stated that as head of the audit team, he conducted the audit from 2010 to 2012. He affirmed that the accused misappropriated total Tk. 27,54,228. The investigating officer seized the audit report. The documents found at the time of the audit are not available in Court. The documents regarding the fake customers were handed over to the investigating officer. At the time of audit Alauddin and Refat Ara were present in the branch. The Manager controlled collection and deposit of the money. At the time of conducting the audit, the signature was not sent for the report of the expert. Two members of the audit team are now sitting in Court. He denied the suggestion that the audit was not conducted correctly and a false report was submitted against the accused although he did not misappropriate any amount.

P.W. 3 Manirul Islam is the Coordinator (Program) of Ahsania Mission, Dhaka. He was a member of the audit team. He stated that from 09.07.2012 to 12.07.2012 audit was conducted. The accused Ayub Ali was the Unit Manager. He found the evidence of misappropriation of total Tk. 27,54,228. He proved his signature on the audit report as exhibit 3/2. During cross-examination, he stated that written statements of the fake customers were recorded. The money of the customers was not deposited. He denied the suggestion that no correct report was submitted.

P.W. 4 Ziaul Hasan is the Senior Audit Officer, Dhaka Ahasania Mission. He stated that he conducted the audit of the Hashimpur Branch, Ahasania Mission from 09.07.2012 to 12.07.2012. The accused Ayub Ali was the Branch Manager. He found the evidence of misappropriation of total Tk. 27,54,228 and submitted the audit report. He proved his signature on the audit report as exhibit 3/3. During cross-examination, he stated that three members conducted the audit. He denied the suggestion that the audit report was not correct.

P.W. 5 Md. Khairul Islam is the Senior Area Manager, Dhaka Ahasania Mission, Jessore. He stated that he visited the Hashimpur Branch on 21.01.2013. The Enquiry Officer S.M Borhan Uddin seized documents i.e. passbook of nine members and the cashbook. The alamat was handed over to the custody of the Branch Manager. He proved his signature on the seizure list as exhibit 2/3. He denied the suggestion that he is not empowered to delegate the authority to file the case. He authorized the Branch Manager to file the case. He recorded the statement of the customers at the place of occurrence. The audit team conducted the audit. In the audit report, it has been mentioned that the signature of Alauddin is identical to the signature on the cheque. He denied the suggestion that he deposited falsely and filed the case illegally.

P.W. 6 Md. Morshed Ali is the Branch Manager of the Ghana Branch, Satkhira. He stated that he was posted with Ahasania Mission, Jessore Sadar from 2012 to 2015. Ayub Ali of the Hashimpur Branch was known to him. He was the Manager. He left the branch on 08.07.2012. He went along with the Area Manager to the Hashimpur Branch. Tk. 3 lakh was withdrawn on the 8<sup>th</sup>. There was a shortage of Tk. 1,77,094. Tk. 20,54,000 was misappropriated from the members. The accused Ayub Ali misappropriated total Tk. 27,54,228 and fled away. During cross-examination, he stated that

the audit committee conducted the audit. Sometimes, the Manager alone withdraws money. He interrogated 7/8 persons and recorded their statements. The Assistant Manager also collects the money. The loan was approved by the Manager. He denied the suggestion that he deposed falsely.

P.W. 7 G.M. Alauddin Hossain is the Field Organizer, Hashimpur Branch, Jessore. He stated that on 24.03.2010, he was posted at the Hashimpur Branch. At that time, the accused Md. Ayub Ali was the Manager. He was responsible for disbursement of the loan, verification and withdrawal of the money and he was also responsible for all official works. On 08.07.2012 the accused had withdrawn Tk. 3 lakh. On 09.07.2012, he was absent in his office. After that, he informed the matter to the Area Manager. Subsequently, the Area Manager examined the record of the branch. The accused misappropriated total Tk. 27,54,228. During cross-examination, he admitted that he was responsible for selecting the members and recovery of the instalments. He did not sign the cheque. He denied the suggestion that he recovered the money and kept the same in his custody. He denied the suggestion that he withdraw the cheque amount. He also denied the suggestion that he misappropriated the money and that he deposed falsely to save him.

P.W. 8 Most. Anjuara stated that she was a member of a group of Ahsania Mission. She took the loan from the Manager. The Manager is now present in Court. She took loan of Tk. 72,000 and paid the loan and interest. She paid total Tk. 74,700 to the accused Manager and in the deposit book, he wrote that the loan had been recovered. She submitted the deposit book and there is a signature of the Manager. She proved the deposit book as exhibit 4. During cross-examination, she stated that Alauddin and Refat Ara were employees of the Ahasania Mission and they are known to her. They

used to look after her. She denied the suggestion that no money was paid to the accused and she deposed falsely in a false case.

P.W. 9 Most. Moyna Khatun is a member of the Ahasania Mission. She stated that Manager Ayub Ali was previously known to her and is now present in Court. She took a loan of Tk. 45,000 and paid total Tk. 50,000 to Ayub Ali and the accused signed the passbook after receiving the money but the same was not deposited in the registrar. He signed the passbook. She proved the passbook as exhibit 5. During cross-examination, she stated that Refat Ara and Alauddin are employees of the Ahasania Mission. At the time of payment of the said amount, they were also present. She took loan in 2011 for six months and paid the loan in 2012. During the investigation, she handed over the passbook to I.O. who returned it to her. She denied the suggestion that she deposed falsely and that she did not pay the money to the accused.

P.W. 10 Chihari Begum stated that she was a member of No. 13 Shapla Group of Ahasania Mission. Before five years, she took loan of Tk. 50,000 from Ahasania Mission and paid Tk. 20,000 which has been mentioned in the passbook. Subsequently, she paid Tk. 15,000 to Ayub Ali but he did not deposit the said amount in the office and absconded. She proved her passbook as exhibit 6. She claimed that the accused Ayub Ali signed the passbook. During cross-examination, she stated that she could not remember the date of payment. She paid total Tk. 35,000. She affirmed that she paid money to the accused Ayub Ali. She denied the suggestion that Ayub Ali did not sign the passbook and that she deposed falsely.

P.W. 11 Hamida Begum stated that she took loan of Tk. 40,000 from the Ahasania Mission, Hashimpur Branch and she paid the money to Branch Manager Ayub Ali. The accused Ayub Ali received the money after signing the passbook. She proved her passbook as exhibit 7. She claimed that Ayub Ali signed the



passbook. During cross-examination, she stated that the passbook belonged to her. Today she submitted the passbook to Court. Earlier the passbook was lying with the Manager. Today she brought the passbook from the Hashimpur Branch. The Manager Ayub Ali signed the passbook and received the money. She brought the passbook from the new Manager. She denied the suggestion that she did not deposit the money to the accused Ayub Ali and that she deposed falsely.

P.W. 12 Parvina Begum is a member of the Ahasania Mission. She stated that she took a loan of Tk. 40,000 about five years back. She paid Tk. 50,000 to Ayub Ali. He signed the passbook and received the money but he did not deposit the money in the cashbook. She proved her passbook as exhibit 8. She identified the accused in Court. During cross-examination, she stated that the passbook was lying with the Manager and today she brought the passbook. She denied the suggestion that she did not pay the instalment to the accused and that she deposed falsely.

P.W. 13 Archana Rani is a member of the Rajanigondha Group of Ahasania Mission. She stated that she took loan of Tk. 6,000 and paid Tk. 3,250 to Ayub Ali who made the entry in the cashbook but he did not deposit the money in the office. She proved her passbook as exhibit 9. She claimed that the accused Ayub Ali signed the passbook. During cross-examination, she stated that the passbook was lying with the Manager. Her passbook was seized by the investigating officer. She denied the suggestion that she did not deposit the passbook to Ayub Ali and that she deposed falsely.

P.W. 14 Selina Begum stated that she took loan of Tk. 40,000 from Ahasania Mission. She paid Tk. 20,000 to Ayub Ali on 28.05.2012. He made the entry of deposit in the passbook but the accused did not deposit the money in the office. During cross-examination, she stated that her passbook had been lost. The loan

was paid in 2012. The amount paid to Ayub Ali was subsequently deposited in the office. She did not hand over the passbook to the investigating officer. She denied the suggestion that she did not deposit any amount to Ayub Ali.

P.W. 15 S.M Borhanuddin is the Sub-Assistant Director of ACC, Combined District Office, Jessore. He stated that he took up the investigation of the case based on the memo dated 20.11.2012 and started the investigation on 30.12.2013. He visited the place of occurrence on 17.02.2013, prepared the seizure list on 21.01.2013 at 11.14 and seized the documents. He proved his signature on the seizure list as exhibit 2/4 and handed over the seized documents to the custody of the Branch Manager Aslam Uddin. He recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898. After repeated service of notice upon the accused, he was found absconding. After completing the investigation, he submitted the memo of evidence on 29.04.2013 and the ACC by memo dated 18.07.2013 approved to submit the charge sheet. During cross-examination, he stated that the accused Ayub Ali and the informant Aslam Uddin were employees of the Ahasania Mission. He stated that there is no office order of the Ahasania Mission to file the case. He affirmed that he did not seize the cheque issued for payment of Tk. 3 lakh and he did not go to the Agrani Bank for investigation. He perused the records. He relied on the audit report and visited the place of occurrence. He denied the suggestion that the Commissioner of the ACC is his controlling authority. After getting the order of approval, he submitted the report on 21.01.2013. The seized cashbooks of the Hashimpur Branch are now lying with the Court. The passbooks of P.Ws. 8 and 9 were seized based on the seizure list. He did not seize the passbook of Tehari Begum. He served notices upon the accused Ayub Ali. He denied the suggestion that he did not investigate the

case properly and that the accused was not responsible for the alleged occurrence.

Learned Advocate Mr. Md. Abdur Razzak appearing on behalf of the appellant Md. Ayub Ali submits that the Executive Committee of the Ahasania Mission is the competent authority to file the case against the accused who authorized P.W. 5 to file the case but P.W. 5 without filing the case against the accused delegated his power to P.W. 1 to file the case and P.W. 1 violated the provision made in Section 6 of the Societies Registration Act, 1860, Therefore, the proceeding was initiated without any lawful sanction of the competent authority. Having drawn the attention of this Court to the audit report (exhibit 3), the learned Advocate submits that two field officers Refat Ara and G.M. Alauddin Hossain (P.W. 7) are responsible for the misappropriation of Tk. 27,54,228 but the trial Court did not consider the audit report (exhibit 3). He further submits that P.W. 15 Investigating Officer S.M Borhanuddin admitted that he did not seize the cheque by which Tk. 3 lakh was allegedly withdrawn by the appellant. He further submits that none of the witnesses proved the signature of the accused on the passbook and the official record of the alleged misappropriation. He also submits that P.W. 7 admitted in cross-examination that he was responsible for selecting the members to distribute the loan and realization of the loan which proved that the field officers misappropriated the loan amount realized from the members of the Ahasania Mission which is also corroborated by the audit report (exhibit 3). The prosecution failed to prove the charge against the accused beyond all reasonable doubt and the trial Court without any evidence illegally convicted the accused. Therefore, he prayed for allowing the appeal.

Learned Advocate Mr. Mohammad Shishir Manir appearing along with learned Advocate Mr. Md. Ruhul Amin on behalf of

respondent No. 3 submits that the accused Md. Ayub Ali is the Branch Manager and under the মাইক্রো ফিন্যান্স কর্মসূচী ম্যানুয়েল, ২০১১ the Manager of the branch is solely responsible for the selection of the members and disbursement and realization of the loan. He further submits that the audit report (exhibit 3) proved that the accused Md. Ayub Ali received the instalments from the loanee and subsequently misappropriated. P.Ws. 8 to 13 stated that they paid Tk. 2,32,950 to the accused and there was shortage of funds amounting to Tk. 1,77,044. He also submits that the accused illegally withdraw the emergency loan amounting to Tk. 30,000 and the prosecution proved the charge against the accused beyond all reasonable doubt and the trial Court on proper assessment and evaluation of the evidence legally passed the impugned judgment and order. Therefore, he prayed for dismissal of the appeal.

I have considered the submissions of the learned Advocate Mr. Mr. Md. Abdur Razzak who appeared on behalf of the appellant and the learned Advocate Mr. Mohammad Shishir Manir who appeared on behalf of respondent No. 3, perused the evidence, impugned judgment and order passed by trial Court and the records.

On perusal of the evidence of the prosecution witnesses, it reveals that after the alleged misappropriation of total Tk. 27,54,228, the audit team constituted by the Head Office of the Ahasania Mission made the audit of the Ahasania Mission, Hashimpur Branch, Jessore and after completing the audit submitted the report on 29.05.2013 which has been proved as exhibit 3. In the audit report (exhibit 3), it has been mentioned that they found long-term financial irregularity in the said branch and the two field officers are responsible for the financial irregularity.

The relevant part of the audit report is quoted below;

“০৫. ভূমি ঋণ বিতরণ, আদায়কৃত টাকা জমা না করাঃ বিএম জনাব আইয়ুব আলী ৩০ জন ঋণীর (সংযুক্তি-৪ এর ১-৩০ নং ক্রম অনুযায়ী) নামে ভূমি বিতরণ দেখিয়ে ১,৬৪৪,০০০ টাকা

(রেফাতের দলে ০৪ জন-১৮৫,০০০ টাকা, আলাউদ্দীনের দলে ২৬ জনের-১,৪৫৯,০০০ টাকা) এবং ২০ জন সদস্যের (সংশুক্তি-৪ এর ৩১-৫০ নং ক্রম অনুযায়ী) ৪৩৬,৩৯৪ টাকা সদস্যদের পাশ বহিয়ে লিখে অফিসে জমা না করে সর্বমোট ২,০৮০,৩৯৪ টাকা তিনি আত্মসাৎ করেছেন। সরজমিনে সদস্যদের সাথে কথা বলে নগন টাকা আদায়ের ক্ষেত্রে প্রমান পাওয়া গেছে। নিরীক্ষা কালীন কমিটির নিকট প্রতীয়মান হয়েছে উক্ত আর্থিক অনিয়ম ক্রমাগতাবে দীর্ঘদিন যাবৎ চলে আসছিল এবং এর সাথে সংশ্লিষ্ট এফওদ্বয় জড়িত বলে কমিটির নিকট প্রতীয়মান হয়েছে।”

“বিএমের পলায়নের ব্যাপারে নিশ্চিত হওয়ার পর সংশ্লিষ্ট এফওদের বিএমের অনিয়মের ব্যাপারে জিজ্ঞেস করলে তারা সংশুক্তি-০৪ মোতাবেক বিএমের আত্মসাৎ এর তালিকা দেন। তালিকা অনুযায়ী গত ৬/৭ মাস যাবৎ বিএম উক্ত ভূয়া ঋণগুলো বিতরণ করেছেন তাহলে তারা কেন ব্যবস্থাপনাকে অবহিত করেনি তার কোন সদুত্তর তারা দিতে পারেননি।”

“ভূয়া বিতরণকৃত ঋণের ঋণ আবেদন পত্রে সংশ্লিষ্ট এফওর সুপারিশ আছে, অধিকাংশ সদস্যের ভর্তি ফরমে তারা সুপারিশ করেছেন, উক্ত সদস্যদের নাম তারা কালেকশন সীটে লিখছেন অথচ তারা বলছেন তারা সদস্য চিনেন না, তার মানে উক্ত অনিয়মের সাথে সংশ্লিষ্ট এফও রেফাত আরা এবং জেএফও আলা উদ্দীন উভয়েই জড়িত বলে প্রতীয়মান হয়।”

On perusal of the evidence, it appears that P.W. 7 G.M. Alauddin Hossain and Field Officer Refat Ara are field officers mentioned in the audit report (exhibit 3) who admittedly misappropriated Tk. 20,80,394. The investigating officer did not include said two field officers as accused in the charge sheet. Rather field officer G.M. Alauddin Hossain was cited as a witness in the charge sheet and was examined as P.W. 7. Under the মাইক্রো ফিন্যান্স কর্মসূচী ম্যানুয়েল, ২০১১ the Area Manager is the final authority to recommend for approval of the loan. In the instant case, the concerned Area Manager is not an accused in the case. Rather the concerned Area Manager was cited as a witness in the case and examined as P.W. 5. Because of the above evidence, I am of the view that the concerned Field Officers G.M. Alauddin Hossain (P.W. 7) and Refat Ara are responsible for misappropriation of Tk. 20,80,394.

It is alleged that the accused Md. Ayub Ali had withdrawn Tk. 3 lakh by issuing a cheque. P.W. 15 investigating officer admitted in cross-examination that he did not seize the cheque by

which the accused Md. Ayub Ali allegedly had withdrawn Tk. 3 lakh. Since the prosecution did not prove the said cheque, I am of the view that the prosecution failed to prove that the accused Md. Ayub Ali had withdrawn Tk. 3 lakh by issuing a cheque.

P.Ws. 8 to 13 stated that they deposited Tk. 2,32,950 to accused Md. Ayub Ali. The defence cross-examined P.Ws. 8 to 13 but by cross-examining P.Ws. 8 to 13, the defence could not assailed their evidence as regards payment of Tk. 2,32,950 to the accused Md. Ayub Ali. The audit team found the shortage of Tk. 1,77,044. The members of the enquiry committee were examined as P.Ws. 2 to 4. The relevant documents regarding the shortage were not proved by the prosecution but no cross-examination has been done regarding the shortage of Tk. 1,77,044. Therefore, the evidence of P.Ws. 2 to 4 regarding the shortage of funds amounting to Tk. 1,77,044 is admitted by the defence. It is also found that the accused disbursed an emergency loan of Tk. 60,000 in the name of fake person. By cross-examining the prosecution witnesses, the defence could not bring out any contradiction in the evidence of those witnesses regarding the false payment of an emergency loan amounting to Tk. 60,000.

In view of the above evidence, facts and circumstances of the case, I am of the view that the prosecution partly proved the charge of misappropriation of total Tk. 4,69,994 against the accused Md. Ayub Ali.

In the result, the appeal is allowed in part.

Considering the gravity of the offence, I am of the view that the ends of justice would be best served if the sentence passed by the trial Court is modified as under:

The accused Md. Ayub Ali is found guilty of the offence under Section 408 of the Penal Code, 1860 and he is sentenced to suffer rigorous imprisonment for 6(six) months and a fine of Tk.

4,69,994. The fine amount imposed by this Court is recoverable following the law.

The accused Md. Ayub Ali is directed to surrender before the trial Court forthwith failing which the trial Court shall do the needful.

Send down the lower Court's records at once.