

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 3444 of 2017

Md. Hafizur Rahman

... Appellant

-Versus-

The State and another

... Respondents

with

Criminal Appeal No. 3553 of 2017

Md. Mozibur Rahman

... Appellant

-Versus-

The State and another

... Respondents

Mr. Md. Kamrul Alam (Kamal), Advocate

... For the appellants

(In both criminal appeals)

Mr. Md. Shahidul Islam, A.A.G with

Ms. Sharmin Hamid, A.A.G

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

Ms. Quamrun Nessa, Advocate

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

Heard on 18.11.2024 and 02.12.2024

**Judgment delivered on 04.12.2024**

The above-mentioned criminal appeals have arisen out of the impugned judgment and order dated 21.03.2017 passed by Special Judge, Jessore in Special Case No. 27 of 2014 arising out of Narail Sadar Police Station Case No. 34 dated 26.07.2012 corresponding G.R. No. 218 of 2012 convicting the appellants under Sections 161 of the Penal Code, 1860 and 5(2) of the Prevention of Corruption Act, 1947 and sentencing them under Section 161 of the Penal Code, 1860 to suffer rigorous imprisonment for 2(two) years and fine of Tk. 10,000, in default, to suffer rigorous imprisonment for 3(three) months and under Section 5(2) of the Prevention of Corruption Act, 1947 to suffer rigorous imprisonment for 2(two) years and fine of Tk. 1,22,980, in default, to suffer rigorous imprisonment for 3(three) months.

The prosecution case, in short, is that on 25.07.2012 at 17.30 pm at the time of conducting a Mobile Court Tk. 30,980 was recovered from the drawer of the accused Md. Mozibur Rahman who was a Mohrar of the

Office of the Sub-Registrar, Narail and Tk. 92,000 from the drawer of the accused Md. Hafizur Rahman. On interrogation, they disclosed that they received Tk. 2,980 against the registration of a deed but they could not give any explanation as regards the possession of the other money. It has been alleged that at the instruction of Md. Sarowar Mollick, they received the said money from the people who came to register the deed. The accused persons were arrested from the office.

Md. Hafizul Islam, Assistant Director of Anti-Corruption Commission, Combined District Office, Jessore took up the investigation of the case and during the investigation, the Investigating Officer seized the documents, recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898 and submitted memo of evidence on 30.12.2013 against the appellants and obtained approval vide memo No. C-60/2012/Narail/7647 dated 10.03.2014 and thereafter submitted charge sheet against the accused persons under Sections 161/34 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947.

During the trial, the charge was framed against the accused persons under Sections 161 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947 which was read over and explained to them and they pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 15(fifteen) witnesses to prove the charge against the accused persons and the defence cross-examined those witnesses. After examination of the prosecution witnesses, the accused persons were examined under Section 342 of the Code of Criminal Procedure, 1898 and the defence examined 2(two) D.Ws. After concluding the trial, the trial Court by impugned judgment and order dated 21.03.2017 was pleased to convict the accused persons under Section 161 of the Penal Code, 1860 and sentenced them to suffer rigorous imprisonment for 2(two) years and fine of Tk. 10,000, in default, to suffer rigorous imprisonment for 3(three) months and under Section 5(2) of the Prevention of Corruption Act, 1947 to suffer rigorous imprisonment for 2(two) years and fine of Tk. 1,22,980, in default, to suffer rigorous

imprisonment for 3(three) months against which the appellants preferred the instant appeals.

P.W. 1 Md. Kamal Hossain stated that on 25.07.2012 he discharged his duty as Assistant Commissioner and Executive Magistrate, Narail. Based on the secret information at 5.30 pm recovered Tk. 30980 and 92000 from possession of the accused Md. Mozibur Rahman and accused Md. Hafizur Rahman respectively. The accused Hafizur Rahman was an M.L.S.S. and the accused Mozibur Rahman was a Mohrar of the office of the Sub Registrar, Narail Sadar. At the time of recovery, S.I Manik Chandra Saha was present there. At the time of registration of the deed, they received excess money at the instruction of Sarowar Mallick. A seizure list was prepared in his presence and he signed the seizure list. He proved the seizure list as exhibit 1 and his signature on the seizure list as exhibit 1/1. After that, the S.I. Manik Chandra Saha submitted the prosecution report. He proved his signature as exhibit 2/1. During cross-examination, he stated that he went to the Office of the Sub Registrar at 5.30 pm and at the order of the DC, he conducted the Mobile Court and C R Case No. 422 of 2012 was recorded against three accused persons. At the instruction of Sarowar, the excess money was received from the persons who came to register the deed. The statement under Sections 164 and 161 of the CrPC was not recorded. Order sheet was written on 25.07.2012 sitting in his Court and at that time, the Mobile Court was not functioning. He affirmed that the Sub Registrar fled away. He could not ascertain who paid the money but stated that the persons who came to register the deed paid the money. The recovered money was counted in his presence. He denied the suggestion that he did not recover the bribe money or excess money from the persons who came to register the deed. He denied the suggestion that Bappa Raz registered the deed in favour of Amio Babu. Tk. 92,000 were kept in the custody of accused Hafizur. He denied the suggestion that Rabiul Fakir purchased the land but in the absence of the transferor, the deed could not be registered. Tk. 30,000 were kept in the custody of Mozibur Rahman.

P.W. 2 Constable No. 210 Khanjahan Ali stated that on 25.07.2012 he was on mobile duty along with S.I Manik Chandra Saha. At 5.30 pm Manik Chandra Saha instructed them to go to the Office of the Sub-Registrar under the leadership of Magistrate Kamal. They entered the office room on the ground floor of the Office of the Sub Registrar and room of Mozibur Rahman. They recovered Tk. 30,980 from the drawer of the table of accused Mozibur Rahman and Tk. 92,000 from the drawer of the table of Hafizur Rahman. The money was kept in the drawer scatteredly. In the presence of witnesses, Manik Chandra Saha prepared the seizure list. Hafizur Rahman and Mozibur Rahman stated that they collected the money from the persons who came to register the deeds and they prayed apology. They could show the proof of depositing Tk. 2980 in the record. Sarwar Mollik was involved with them. S.I Manik Chandra Saha obtained the secret information and informed the learned Magistrate. He admitted that none stated that they paid the illegal money as a bribe. No statements of the accused persons were recorded. He denied the suggestion that he deposed falsely.

P.W. 3 Constable No. 276 Zahidur Rahman stated that on 25.07.2012 at 17.30 while he was on mobile duty S.I Manik Chandra Saha under the leadership of the Magistrate Kamal conducted a search on the ground floor of the Office of the Sub Registrar and recovered Tk. 30,980 from the drawer of the accused Mozibur Rahman and Tk. 92,000 from the drawer of the accused Hafizur Rahman. He proved his signature on the seizure list as exhibit 1/2. Total Tk. 1,22,980 was recovered but the accused persons could not give any explanation regarding the possession of the said money. He denied the suggestion that Bapparaz and Rabiul kept the money or no bribed money was recovered.

P.W. 4 Alamgir Hossain stated that on 25.07.2012, Deed No. 1675 was registered in the Office of the Sub Registrar, Narail. Md. Lutfar Rahman was the deed writer and Mahfuzur Rahman was his Assistant. Tk. 25,500 was deposited as fees. As government fees accused Mozibur Rahman and Hafizur Rahman received the money. They have stated that the additional cost was required to be paid by them. During cross-

examination, he stated that the accused persons were not known to him and he did not pay any money to them. He paid Tk. 25500 to the deed writer. None claimed any bribe on that day.

P.W. 5 Kanchan Mala Biswas stated that Mozibur Rahman and Hafizur Rahman are employees of the Office of the Sub Registrar. On 25.07.2012 she was present in his office. On that day, Police and Magistrate searched their office and Tk. 1,22,980 were recovered. Tk. 92,000 was recovered from the drawer of Hafizur Rahman and Tk. 30,980 was recovered from the drawer of Mozibur Rahman. S.I Manik Saha seized the money and prepared the seizure list in his presence. Hafizur Rahman, Mozibur Rahman and Rabiul used to sit in the same room. On 25.07.2012 Tk. 7880 was recovered as a government fee. On 07.11.2012 the Investigating Officer seized documents and the register. She proved the seizure list as exhibit 3 and his signature as exhibit 3/1. On re-call, she stated that the Chalan book, pages No. 20-22, fee book of the municipality, pay-order etc were seized. She proved the seizure list as exhibit 4 and her signature as exhibit 4/1. She proved the Chalan book of source tax dated 07.11.2012 as exhibit 5 and her signature on the seizure list as exhibit 5/1. She proved the seizure list as regards the drawer as exhibits 6 and 6/1. She proved the seizure list prepared regarding the table of Md. Mozibur Rahman as exhibit 7 and her signature as exhibit 7/1. The seizure list was prepared in his presence and the seized materials were handed over to her custody. After her retirement, all the documents were handed over to Sadhan Kumar Sikder. He retired from service and by order of the Court, the documents were produced in Court through Zainul Abedin. She proved the alamat as material exhibit I series, (7 pages). The documents were seized from different officers and she is not aware of the content of the documents.

P.W. 6 Saiful Islam stated that on 25.07.2012 he registered a deed and the value of the deed was Tk. 3 lakh. Nazrul Islam was the deed writer who received Tk. 31,000 from him as expenditure. During cross-examination, he stated that the accused-persons were not known to him

and they did not receive any money as a bribe from him and he did not pay any money to them.

P.W. 7 Md. Rafiqul Islam is the Sub-Inspector of Police, Narail. He stated that on 25.07.2012 he was posted at Narail Thana as Officer-in-Charge. On 25.07.2012 he recorded the FIR written by S.I Manik Chandra Saha. He filled up the FIR form. He proved the FIR as exhibit 8 and his signature on the FIR as exhibit 8/1. During cross-examination, he stated that he only recorded the FIR.

P.W. 8 Asim Kumar Kundu stated that the occurrence took place on 25.07.2012. On that day, he purchased land at a price of Tk. 2,07,000 and Deed No. 4623 was registered. Bapparaz paid Tk. 92,000 on that day. Before registration Tk. 1,15,000 were paid and Tk. 92,000 was paid sitting in the office to Bapparaz. Total Tk. 92,000, notes of Tk. 500, were recovered. There were two bundles of Tk. 58,000 and 42,000 respectively. At about 1/1.30 pm the money was paid and there was no note of Tk. 10/50/100/1000. Deed writer, Peon Harun, and his wife were present at the time of handing over the said money. During cross-examination, he stated that he purchased the land from Bapparaz. Sitting in the Tahashil Office, he paid Tk. 92,000. Bapparaz received the money before lunch. Kazi Rafiqul Islam was the deed writer and his wife Shilpy Rani and Harun were present there. He did not hand over any note of Tk. 500.

P.W. 9 S.I Manik Chandra Saha stated that on 25.07.2012 he was on duty at Narail Sadar Thana. At 5.30 pm under the leadership of Magistrate Kamal Hossain, they recovered Tk. 30,980 and 92,000, total Tk. 1,22,980 from the two drawers of Mohrar Mozibur Rahman and Hafizur Rahman but they could not give any explanation regarding their possession of the said amount. Under the instruction of the Mohrar Sarowar of the Office of the Sub Registrar, they kept the money in their possession. The money was received from the people illegally. A prosecution report was submitted to the Executive Magistrate. He proved his signature on the prosecution report as exhibit 2/2. He proved his signature on the seizure list as exhibit 1/3. During cross-examination, he stated that he could not say from whom they received the money but stated

that they received the money from the people who came to register the deed. He denied the suggestion that one Bappa Raj kept Tk. 92,000 to Hafizur and Rabiul Fakir kept Tk. 30,980 to Mozibur.

P.W. 10 Soumitra Mazumder stated that on 25.07.2012 at 17.30 Tk. 1,22,980 were seized from Mozibur Rahman and Hafizur Rahman by S.I Manik Chandra Saha. He proved his signature on the seizure list as exhibit 1/4. The alamat was recovered and seized in his presence. During cross-examination, he stated that he does not know about the case.

P.W. 11 Kazi Mostafa Jaman stated that on 25.07.2012 at 10.00 am two tables used by accused Mozibur Rahman Mohrar and Hafizur Rahman were seized in his presence. He proved his signature on the seizure list as exhibit 7/2. Two tables were handed over to his custody. He proved the jimmanama as exhibit 9 and his signature on the jimmanama as exhibit 9/1. On 07.11.2012 at 1.05 pm total of four registers were seized from the Office of Sub Registrar and a seizure list was prepared. He proved his signature on the seizure list as exhibit 3/2. He took custody of the documents. He proved the jimmanama as exhibit 10 and his signature as exhibit 10/1. On 07.11.2012 at 1.30 pm, the documents were recovered from the Office of the Sub Registrar. He proved his signature on the seizure list as exhibit 4/2. On 07.11.2012 at 1.40 pm, he took custody of those documents. He proved his signature on the jimmanama as exhibit 5/2. On 07.11.2012 at 2.10 pm, secretariat tablets were seized. He proved his signature on the jimmanama as exhibit 6/2. The documents were handed over to his custody at 10.30 am. He proved the jimmanama as exhibit 11 and his signature as exhibit 11/1. On 07.11.2012 at 1.40 pm Chalan book of the source tax was seized. He proved his signature on the seizure list as exhibit 5/2. During cross-examination, he stated that seized documents are not available in Court. He is the only witness on the seizure list.

P.W. 12 Ananda Mohan Dutta is a Mohrar of the Office of the Sub Registrar, Narail. He stated that on 07.11.2012 at 1.05 pm several registers were seized in his presence. He proved his signature on the seizure list as exhibit 3/3. On 07.11.2012 at 1.30 pm, the challan books were seized. He

proved his signature on the seizure list as exhibit 4/3. On 07.11.2012 at 1.40 pm, the Chalan book of source tax was seized. He proved his signature on the seizure list as 5/3. On 07.11.2012 at 2.10 pm two half-secretary tablets were seized. He proved his signature on the seizure list as exhibit 6/3. On 07.11.2012 at 1.30 and 1.40 the documents were handed over to his custody. He proved his signature on the jimmanama dated 07.11.2012 as exhibit 12/12/1. He proved his signature on the jimmanama as exhibit 11/2. During cross-examination, he stated that he was on deputation in the Office of the Sub-Registrar, Narail. He was posted at the Sub-Registrar's Office, Laxmipasha.

P.W. 13 Shafiquzzaman and P.W. 14 Nazmun Nahar were tendered by the prosecution and declined by the defence.

P.W. 15 Md. Hafizul Islam is the Investigating Officer. He stated that from 02.05.2012 to 30.11.2015 he was posted at Jessore. At that time, he was appointed as Investigating Officer by memo dated 19.09.2012. He visited the place of occurrence and recorded the statements of witnesses. During the investigation, he found that under the leadership of Magistrate Md. Kamal Hossain at the time of conducting the Mobile Court on 25.07.2012 Tk. 30980 was recovered from Mohrar Mozibur Rahman and Tk. 92,000 from M.L.S.S Md. Hafizur Rahman. Under the instruction of Magistrate Md. Kamal Hossain, S.I Manik Chandra Saha lodged the FIR. On 07.11.2012 records were seized and those documents were handed over to his custody. On 28.04.2013 few documents were also seized and those were handed over to his custody. On 25.07.2012, S.I Manik Chandra Saha seized pictures sent by memo No. 167 dated 23.01.2013. During the investigation, he found that after the registry of the deed Asim Kumar received Tk. 92,000 on 25.07.2012. During the investigation, he found the truth of the allegation that the accused Mozibur Rahman and Hafizur Rahman received bribes illegally from the parties of the deed. He submitted the memo of evidence on 30.12.2013. Thereafter, approval was given on 10.03.2014 to submit charge sheet against the accused persons and accordingly on 31.03.2014 he submitted the charge sheet. He proved his signatures on the six seizure lists prepared by him as exhibits 1/3, 3/4,



4/4, 5/4 and 6/4. During cross-examination, he stated that he found the truth of the allegation of receiving bribe money against the accused persons. Saiful Alam paid Tk. 31,000 as a registry cost. Hashem Molla paid Tk. 21,000 as the cost of the registration. Saiful Alam had given bribe of Tk. 7,000. He received Tk. 7,000 as an official cost. Nothing has been stated in the FIR as regards the payment of the bribe but there is an allegation of receiving excess amount. The Sub-Registrar is not a witness in the case. He could not say actually who paid the money to him. On recall, he stated that on 25.07.2012 at 17.30 at the order of the Executive Magistrate, S.I Manik Chandra Saha recovered Tk. 1,22,980 from the custody of the accused persons. He proved the recovered money as material exhibit II. The photograph of the seized money was received on 23.01.2013 by memo No. 167. He proved the photograph as Exhibit 13. The seized money was produced in Court and there are notes of Tk. 10, 20, 100 and 500. All the money was kept in a bundle. In the photograph, there are pictures of many small bundles. The money was kept in the custody of Manik Chandra Saha. He did not prepare any jimmanama. S.I Manik Chandra Saha prepared the seizure list and took custody of the recovered money. He admitted that Rabiul, Fakir and Bapparaz claimed money. They were examined under Section 161 of the Code of Criminal Procedure, 1898 but they were not cited as witnesses in the case. The recommendation was made to include them as accused. Saiful did not say that he paid money to Hafizul and Mozibur. He denied the suggestion that the allegation of receiving bribe was not proved during the investigation.

D.W. 1 Md. Bapparaz stated that on 25.07.2012 he went to the Office of the Sub Registrar to register a deed and Deed No. 4623 was registered. Asim Kundu and his wife purchased the land. Asim Kundu paid Tk. 92,000. The accused Hafizur Rahman is his uncle. He went for prayer keeping money in the custody of his uncle. After prayer, he came back and saw that his uncle had been arrested. He affirmed that he had sworn an affidavit in the Narail Court claiming money. During investigation, he stated that he claimed money. During cross-examination, he stated that Tk. 92,000 was kept in a bundle. The deed was registered at

3.30 pm. He denied the suggestion that on 25.07.2012 Tk. 92,000 was not kept in the custody of Hafizur Rahman or the bribe money was not recovered.

D.W. 2 Md. Rabiul Islam stated that on 25.07.2012 he went to the Office of the Sub Registrar, Narail to purchase land from Masiur Rahman, Zia Fakir and Dil Ruba. He took Tk. 30,000 but he could not purchase the land on that day. He kept Tk. 30,000 in the custody of his uncle Mozibur Rahman. After prayer, he saw that the police arrested his uncle. He affirmed that he filed an application to the Court for money. During the investigation, he also claimed money but the money was not paid to him. During cross-examination, he stated that the Office of the Sub Registrar, Narail is situated 5 Kilometers away from his house. He went to the Office of Sub Registrar to purchase the land and no one was present along with him. At about 11.00 am he kept the money in the custody of Mozibur Rahman. After that, he went to the Bazaar. At the time of Asor's prayer, he came back to Mozibur Rahman and saw that the police arrested him. He read up to class eighth. The money was kept in a bundle. After 1 year of the said incident, he purchased the land. He denied the suggestion that he did not keep any money in the custody of his uncle Mozibur Rahman or that Mozibur Rahman received the money as a bribe.

Learned Advocate Mr. Md. Kamrul Alam (Kamal) appearing on behalf of the appellants submits that the prosecution failed to prove that the accused received the bribe from any of the witnesses and the alleged offence does not attract Section 161 of the Penal Code, 1860 and the trial Court failed to assess and evaluate the evidence adduced by the parties following the correct principle of appreciation of evidence and arrived at a wrong decision as to the guilt of the accused. He prayed for allowing the appeals.

Learned Advocate Ms. Quamrun Nessa appearing on behalf of respondent No. 2 submits that the accused Md. Hafizur Rahman is a M.L.S.S of the Office of the Sub-Registrar, Narail and the accused Md. Mozibur Rahman was the Mohrar of the Office of the Sub-Registrar, Narail and Tk. 92,000 was recovered from the drawer used by the accused

Md. Hafizur Rahman and Tk. 30,980 was also recovered from the drawer of the accused Md. Mozibur Rahman. They failed to give any explanation as to the possession of the said amount and committed offence under Section 161 of the Penal Code, 1860. The trial Court on proper assessment and evaluation of the evidence of the prosecution witnesses legally passed the impugned judgment. She prayed for dismissing the appeals.

I have considered the submissions of the learned Advocate Mr. Md. Kamrul Alam (Kamal) who appeared on behalf of the appellants and the submissions of the learned Advocate Ms. Quamrun Nessa who appeared on behalf of respondent No. 2, perused the evidence, the impugned judgment and order passed by the trial Court and the records.

On perusal of the evidence, it appears that the accused Md. Hafizur Rahman is the M.L.S.S of the Office of the Sub-Registrar, Narail and the accused Md. Mozibur Rahman is the Mohrar of the Office of the Sub-Registrar, Narail. It is an admitted fact that Tk. 92,000 was recovered from the drawer used by the accused Md. Hafizur Rahman and Tk. 30,980 was recovered from the possession of the accused Md. Mozibur Rahman. The prosecution case is that the appellants received the bribe from the people who came on 25.07.2012 to the Office of the Sub-Registrar, Narail to register their documents and after the recovery of the said money, the concerned Sub Registrar fled away.

P.W. 1 Md. Kamal Hossain is the Assistant Commissioner Land, Bhola Sadar and P.W. 9 Manik Chandra Saha is the Sub-Inspector of Police and P.W. 2 Khanjahan Ali and P.W. 3 Zahidur Rahman are constables. P.Ws 1 to 3 and 9 were present at the time of recovery of the alleged money from the possession of the accused persons.

P.W. 1 Md. Kamal Hossain, Assistant Commissioner Land, Sadar Bhola stated that at the instruction of the Mohrar Sarowar Mollick, the accused persons collected an additional amount from the people who came on 25.07.2012 to register the deeds. During cross-examination, he also affirmed that at the order of Sarowar, the additional amount was received. P.W. 9 S.I Manik Chandra Saha stated that at the order of Mohrar Sarowar, the accused persons collected the money from the people who

came on 25.07.2012 to register the deed. Although Sarowar Mollick is named in the FIR as accused but the Investigating Officer submitted the final report in favour of Sarowar Mollick. The evidence of P.W. 1 as regards the recovery of the alleged money from the possession of the accused persons is corroborated by P.Ws. 9, 2, 3 and 5.

P.W. 8 Ashim Kumar Kundu stated that on 25.07.2012, he purchased the land from Md. Bapparaz at a price of Tk. 2,07,000 and on the date of occurrence, he paid Tk. 92,000 and before registration of deed No. 4623, he paid Tk. 1,15,000 to Md. Bapparaz. The said Md. Bapparaz was examined as D.W. 1. He stated that accused Md. Hafizur Rahman is his uncle and on the date of occurrence keeping Tk. 92,000 in possession of his uncle Md. Hafizur Rahman, he went for prayer. He also sworn an affidavit in the Court claiming the money. P.W. 15 is the Investigating Officer. He stated that during the investigation, he found that Ashim Kumar told him that on 25.07.2012 he received Tk. 92,000 from Md. Bapparaz. During cross-examination, P.W. 15 affirmed that the accused received the bribe money from Saiful Islam who is examined as P.W. 6. P.W. 6 Saiful Islam stated that after purchasing land he registered the deed on 25.07.2012 and handed over Tk. 31,000 to the deed writer Nazrul Islam for the entire cost. During cross-examination, he affirmed that the accused persons were not known to him and they did not demand any bribe from him.

None of the prosecution witnesses stated that the accused persons demanded bribe or they paid the bribe to the accused persons. Mere keeping money in possession of the government employee is not an offence under Section 161 of the Penal Code, 1860 unless the prosecution proved that the money recovered from possession of the accused persons was received to discharge his/her official duty.

Because of the above evidence, findings, observation and proposition, I am of the view that the prosecution failed to prove the charge against the appellants Md. Hafizur Rahman and Md. Mozibur Rahman beyond all reasonable doubt.

I find merit in the appeals.

In the result, appeals are allowed.

The impugned judgment and order passed by the trial Court against the appellants Md. Hafizur Rahman and Md. Mozibur Rahman is hereby set aside.

Send down the lower Court's records at once.