

**IN THE SUPREME COURT OF
BANGLADESH**

HIGH COURT DIVISION

**(CRIMINAL APPELLATE
JURISDICTION)**

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 9188 of 2017

Mohammad Ali

.....Appellant

-versus-

The State and another

.....Respondents

Mr. Mohammad Rezaul Kabir Khan,
Advocate

.... For the appellant

Ms. Quamrun Nessa, Advocate

....For the respondent

No.2

Mr. Md. Anichur Rahman, DAG with

Mr. Mir Moniruzzaman, AAG with

Mr. Md. Sarwar Alam Khan, AAG with

Ms. Nargis Parvin (Alija), AAG

....For the

State

Heard on 13.01.2026, 21.01.2026, 22.2026.

Judgment delivered on 29.01.2026

This appeal under section 10 of Criminal Law Amendment Act, 1958 is directed against the impugned judgment and order dated 31.07.2017 passed by Special Judge, Kushtia in Special Case No. 18 of 2012 arising out Kushtia Police Station Case No. 59 dated 29.09.2011 corresponding G.R. Case No. 374 of 2011 convicting the appellant under section 409 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 02(two) years and fine of Tk. 10,000(ten thousand), in default, to suffer imprisonment for 3(three) months, and also convicting him under section 5(2) of the Prevention of Corruption Act, 1947, and sentencing him thereunder to suffer rigorous imprisonment for 2 years and a fine of Tk. 10,000, in default, to suffer imprisonment for 3 months, which will run concurrently.

The prosecution's case, in short, is that the accused Mohammad Ali, Union Land Assistant Officer, Majampur Union Land Office, Kushtia Sadar, Kushtia, collected Tk. 476 from Md. Moynul Haque as Land Development tax of 0.1932 acres of land, Mouza- Chourhash, Holding No. 3516, R.S. Khatian No. 1983/2, Dag No. 6518 by money receipt No. P-029145 dated 22.12.2005, but tempering the carbon copy of the said money receipt, Tk. 426 has been written in the daily registrar book No. III. He realized Tk. 1739 by money receipt No. P-029252 dated 18.01.2006 regarding Holding No. 1431, Khatian No. 1429, Dag No. 8054 of .0650 acres of land, but in the carbon copy of the money receipt and the daily register book No. III recorded Tk. 45.50 as realized tax, and in the cashbook, it has also been recorded that Tk. 45.50

has been realized. He realized total Tk. $476+1739=2215$, but he deposited Tk. $427+45.50=472.50$, and without depositing the realized tax amounting to Tk. 1742.50 misappropriated.

P.W. 5 Motiur Rahman, Deputy Director, Anti-Corruption Commission, Combined District Office, Kushtia, was appointed as the investigating officer of the case. During investigation, he visited the place of occurrence, prepared the sketch map and index, seized documents, recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898 and after completing investigation found prima facie truth of the allegation against the accused Mohammad Ali under section 409 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947. During trial, charge was framed against the accused under section 409 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.

Prosecution examined 5 (five) witnesses to prove the charge against the accused, and the defence cross-examined the prosecution witnesses. After examination of the P.Ws, the accused was examined under section 342 of the Code of Criminal Procedure, 1898, and he declined to adduce any DW. After concluding the trial, the Special Judge, Kushtia, by judgment and order dated 31.07.2017, convicted the accused under section 409 of the Penal Code, 1860, and sentenced him thereunder to suffer rigorous imprisonment for 2 (two) years and

a fine of Tk. 10,000 in default, to suffer imprisonment for 3 months, and also convicted him under section 5(2) of the Prevention of Corruption Act, 1947, and sentenced him thereunder to suffer rigorous imprisonment for 2 years and a fine of Tk. 10,000, which will run concurrently against which the accused Mohammad Ali filed the instant appeal.

P.W. 1 Md. Shahidul Islam Moral was the Sub-Assistant Inspector, Combined District Office, Anti-Corruption Commission, Kushtia, and informant of the case. He stated that the accused Mohammad Ali was the Union Assistant Land Officer, Majompur, Zonal Office. On 22.12.2005, he realized tax amounting to Tk. 476 by receipt No. 029145 from Moynul Haque, owner of the Holding No. 3516, and recorded in the register No. II, but in the carbon copy, the register No. III and in the cash book recorded Tk. 427 as the realized tax. He realized Tk. 1739 from Mamunur Arju by receipt No. 029258 dated 18.01.2006 for holding No. 1431 of Mouza-Chowrahash, and in the register No. II, carbon copy, and the cash book, recorded Tk. 45.50. The accused realized Tk. 2215 by said two dakhilas and deposited Tk. 472.50 and misappropriated Tk. 1742.50. P.W. 1 proved the FIR as exhibit-1 and his signature as exhibit-1/1. During cross-examination, he admitted that the owner of the holdings did not make any complaint. The other employee of the Union Land Office is not cited as a witness in the case. He also affirmed that before the joining of the accused Mohammad Ali, Assistant Officer Suvas Chandra discharged duty. He denied the suggestion that the accused did not misappropriate any tax. He is

not aware whether, after 3 days of realization, the tax was deposited or not. He denied the suggestion that in column Nos. 3 and 4 of the seizure list, there is tampering, or he deposed falsely.

P.W. 2 Sudangshu Kumar Chakrabarty is the Land Sub-Assistant Officer, Nandalalpur Union Land Office, Kumarkhali, Kushtia. He stated that on 04.04.2012 at 12.00 pm, while he was discharging his duty as Land Sub-Assistant Officer of Majampur Union Land Office, the register No. 235 and the counterfoil of the receipts were seized by the officer of the Anti-Corruption Commission. He signed the seizure list. He proved the seizure list dated 04.04.2012 as exhibit-2 and his signature as exhibit-2/1. He proved those registers as Exhibit 2. He proved the register No. II as material exhibit-1. He stated that by receipt No. 025145 dated 22.12.2004 Tk. 476 was realized as tax on holding No. 3516. He proved the seized register No. II as material exhibit-II. The receipt No. 029258 dated 18.01.2006 for Tk. 1739, holding No. 1431 has been cancelled. He proved the cashbook register No. IV as material exhibit-III. On page No. 72 of the material Exhibit III by Chalan No. B-53 dated 27.12.2005 Tk. 7159 has been deposited from 22.12.2005 to 27.12.2005. He proved two receipt books as material exhibit-IV. By receipt No. P-029258 dated 15.01.2016, it has been shown that Tk. 45.50 was realized in respect of holding No. 1431, and in another receipt book, page No. 029145, it has been shown that Tk. 427 was realized against the holding No. 3516. In the register No. III (material exhibit-V), at page No. 77, receipt No. 029145 dated

22.12.2005 it has been mentioned that Tk. 427 has been realized. Subsequently, in register No. III at page No. 85, receipt No. 029258, Tk. 45.50 has been recorded. He proved the seized passbook as Exhibit 6. The realized amount Tk. 32,392.65 has been deposited in the account of Sonali Bank at page No. 35 by chalan No.B-84 dated 31.01.2006. During cross-examination, he stated that on 19.09.2010, he joined the office of the Majampur Union Land Office. From 22.05.2005 to 18.01.2006, he was not present in the said office. The original receipt regarding holding Nos. 3516 and 1431 were not seized.

P.W. 3 Suvash Chandra Datta is the Assistant Inspector of the Anti-Corruption Commission, Combined District Office, Kushtia, and the investigating officer of the case. He stated that the accused Mohammad Ali was the Union Assistant Land Officer of Majampur Union Land Office, Kushtia. He realized Tk. 476 from Maynul Hoque, owner of 0.1932 acres of land of R.S Khatian No. 1983/2, Dag No. 6518 by receipt No. P-29145 dated 22.12.2005, but in the carbon copy, tempering Tk. 476, Tk. 427 has been written. In the register No. III and cashbook Tk. 427 has been recorded. He realized Tk. 1739 by money receipt No. II dated 18.01.2006, by register book No. III, receipt No. P-029258 from Monowara Arju, owner of 0.650 acres of land of holding No. 1431, Khatian No. 1429, Dag No. 8054 of Mouza Chouhash, but in the carbon copy of the money receipt Tk. 45.50 was recorded, and in the daily register book No. III and the cash book Tk. 45.50 was recorded on 18.01.2006. He realized total tax amounting to Tk. 2215 and deposited Tk. 472.50 and did not

deposit Tk. 1742.50 and misappropriate the said amount. After completing the investigation, he submitted a memo of evidence. He proved the memo of evidence as exhibit-3 and his signature as exhibit-3/1. During cross-examination, he stated that he did not seize the receipt and the register. He collected the copy of the receipt register and the audit report. The original copy of the receipt was lying with the owner of the land, and the carbon copy is kept in the office. The realized amount was recorded in different register and was not deposited by chalan. He denied the suggestion that he did not inquire correctly.

P.W. 4 Babul Hossain Khan is a constable. He stated that on 04.04.2012 at 12.00 pm, Deputy Director, Md. Motiur Rahman of the Anti-Corruption Commission, sitting in the said office, seized the different register, cashbook from Sudangsu Chakrabarty, Sub-Assistant Land Officer. He proved his signature on the seizure list as exhibit-2/2. Subsequently, the register and cashbook were handed over to Sudangshu Chakrabarty, who produced those registers. During cross-examination, he stated that the documents were presented to Deputy Director Md. Motiur Rahman. He could not say the name of the person who produced the documents.

P.W. 5 Md. Motiur Rahman is the Deputy Director of the Anti-Corruption Commission. He stated that on 15.03.2012, he was appointed as the investigating officer of the case. He seized the documents and register. He proved his signature on the seizure list on 04.04.2012. During the investigation, he recorded

the statements of witnesses. After concluding the investigation, he found prima facie truth of the allegation against the accused and submitted the memo of evidence. He obtained sanction from the Anti-Corruption Commission. By receipt No. 029145 Tk. 476 was realized, but tempering on the carbon copy Tk. 427 has been recorded in place of Tk. 476, which has been mentioned in the material exhibit-1 of holding No. 3516. Tk. 427 has been recorded in material exhibit-5. Monowara Arjo was the tenant of the holding No. 1431 and vide receipt No. 029258 dated 15.01.2006. Tk. 1739 for 0.0650 acres of land of Dag No. 8054, holding No. 1431, Khatian No. 1429 was realized, but in the material exhibit-II, it has been recorded that Tk. 45.50 was realized. In material exhibit-5 (page-85) Tk. 45.50 was recorded. By two money receipts, he realized Tk. 2215 and deposited Tk. 472.50. He misappropriated total Tk. 1742.50. During cross-examination, he stated that the owners of the holdings were not cited as witnesses in the case, and their statement was not recorded. He could not seize the original receipt. None of the owners of the holdings made any allegation. The Chairman of the Union Parishad is not cited as witness in the case.

Learned Advocate Mr. Muhammad Rezaul Kabir Khan, appearing on behalf of the appellants, submits that the two money receipts regarding the alleged realization of the tax amounting to Tk. 2,250 by the accused Mohammad Ali is not proved in the case, and the prosecution failed to prove the charge against the accused by adducing documentary evidence, and the trial court failed to legally assess and evaluate the evidence of

the prosecution witnesses, and illegally passed the impugned judgment and order.

Learned Advocate Ms. Quamrun Nessa, appearing on behalf of the respondent No.2 (ACC), submits that the accused realized Tk. 476 by receipt No. 029145 dated 22.12.2005 and recorded the same in the register No. II, but in the carbon copy and the register No. III tempering the amount Tk. 476, Tk. 427 was recorded and also in the cash book, Tk. 427 was recorded regarding the realization of tax from Mainul Haque, owner of the holding No. 3516, and he also realized Tk. 1739 by receipt No. 029258 dated 18.01.2006 in respect of holding No. 1431 from owner Monowara Arjo, but in the register No. II Tk. 45.50 and the carbon copy and register No. 3 recorded that Tk. 45.50 was realized. By the said 2 dakhilas, the accused realized total Tk. 2215, but he deposited Tk. 472.50 and misappropriated Tk. 1742.50. The prosecution proved the charge against the accused beyond all reasonable doubt, and the trial court, on correct assessment and evaluation of the evidence, legally passed the impugned judgment and order. She prayed for dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Muhammad Rezaul Kabir Khan, who appeared on behalf of the appellant, and the learned Advocate Ms. Quamrun Nessa, who appeared on behalf of the respondent No. 2, perused the evidence, impugned judgment, and orders passed by the court below, and the records.

On perusal of the evidence, it reveals that the accused Mohammad Ali was discharging duty as Assistant Land Officer, Mazampur Union Land Office, Kushtia, at the time of the occurrence. He realized Tk. 476 by receipt No. 029145 dated 22.12.2005 in respect of holding No. 3516 from Maynul Hoque and recorded the same in the register No. II, but in the carbon copy and the register No. III by tempering the amount Tk. 476, Tk. 427 was written, and the same was also recorded in the cash book. P.W.2 proved the register No. II in respect of holding No. 3516 as material exhibit-I. The accused Mohammad Ali also realized Tk. 1739 by receipt No. 029258 dated 18.01.2006 as tax in respect of holding No. 1431 from Manowara Arju. In the carbon copy and the register No. III, it has been mentioned that Tk. 4.50 was recovered, which has also been mentioned in the cash book. P.W. 2 proved the cashbook, register No. IV and the receipts as Exhibit IV and register No. III as exhibit- No. 3. He proved the register No. III regarding receipt No. 029258 as Exhibit 6.

On scrutiny of the material exhibits I to VI reveals that the accused received total Tk. 2215 as tax in respect of holding Nos. 1431 and 3516 from Manowara Arju and Maynul Hoque, but deposited Tk. 472.50 and misappropriated Tk. 1742.50. Manowara Arju and Moynul Hoque did not make any complaint, and they were not examined in the case. Although original money receipts were not proved in the case, but the realization of Tk. 2215 has been mentioned in the material exhibits I and VI.

Therefore, no illegality was committed by the trial court in passing the impugned judgment and order of conviction.

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

The accused Moha cdmmd Ali is found guilty of the offence under section 409 of the Penal Code, 1860, and section 5(2) of the Prevention of Corruption Act, 1947, and he is sentenced under section 409 of the Penal Code, 1860 to suffer imprisonment already undergone and a fine of Tk. 1742.50.

In the result, the appeal is disposed of with modification of sentence.

The convict petitioner Mohammad Ali is directed to pay the fine within 30 days from date, if not paid earlier, failing which, the trial court shall do the needful.

Send down the lower Court's record at once.

7.4.26

ABO
Hasan