

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

Present:

Mr. Justice Md. Shohrwardi

Criminal Appeal No. 12533 of 2017 with

Criminal Appeal No. 12608 of 2017 with

Criminal Appeal No. 13383 of 2017

Md. Enamul Haq Khan

....Appellant in Cril. Appl. No. 12533 of 2017

Md. Akramuzzaman

.....Appellant in Cril. Appl. No. 12608 of 2017

Sheikh Tofazzel Hossain

.....Appellant in Cril. Appl. No. 13383 of 2017

-versus-

The state and another

.....Respondents in all the appeals

Mr. Shaikh Atiar Rahman, Advocate

... For the appellant in Cril. Appl. No. 12533 of 2017

Ms. Ayasha Akter, Advocate

... For the appellant in Cril. Appl. No. 12608 of 2017

Mr. Aminul Islam, Advocate with

Ms. Shimonti Ahmed, Advocate

... For the appellant in Cril. Appl. No. 13383 of 2017

Mr. A.S.M. Kamal Amroohi Chowdhury

.....For respondent No. 2 in all the appeals

Mr. S.M. Golam Mostofa, DAG with

Mr. Md. A. Mannan, AAG

....For the State in all the appeals.

**Heard on 01.11.2023, 21.11.2023, 22.11.2023,
23.11.2023, 28.11.2023 10.12.2023.**

Judgment delivered on 14.12.2023.

The above-mentioned criminal appeals have arisen out of the same judgment and order passed by the trial court. Therefore, all the appeals were heard analogously and disposed of by this single judgment.

The criminal appeals mentioned hereinabove are directed under section 10 of the Criminal Law Amendment Act, 1958 challenging the legality of the impugned judgment and order dated 23.10.2017 passed by Divisional Special Judge, Khulna in Special Case No. 11 of 2011 arising out of Khan Jahan Ali Police Station Case No. 4 dated 9.11.2003, G.R. No. 1283 of 2003 convicting the appellants under section 409 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 and sentencing them under section 409 of the Penal Code, 1860 to suffer rigorous imprisonment for 5(five) years each and fine of Tk.59,56,228.54 each, in default, to suffer rigorous imprisonment for 1(one) year.

The prosecution case, in a nutshell, is that the accused Sheikh Tofazzel Hossain is the Proprietor of Mrs. Sheikh Tofazzel Hossain, accused Md. Akramuzzaman is the Manager (former) of Sonali Bank Limited, Daulatpur Branch, Khulna and accused Md. Enamul Haq Khan is the Godown Keeper-cum-Clerk. The accused Sheikh Tofazzal Hossain obtained loan of Tk. 57,56,228.54 from the Sonali Bank, Fulbarighat Branch, Khulna against the pledge of 12,500 maunds of jute showing false stock of jute in his godown situated at Formaishkhan under Digholia Thana and from 17.06.2001 to 13.06.2002 the accused persons in connivance with each other misappropriated the said amount. The accused Md. Akramuzzaman and the godown keeper accused Md. Enamul Haq Khan after inspection of the said godown on 20.06.2001 had given a report stating that there was total stock of 10403 maunds of jute valued at Tk. 44, 75,450. The accused Md. Akramuzzaman made the recommendation on 21.03.2001 in favour of the

accused Sheikh Tofazzal Hossain for granting CC Pledge loan of Tk. 150,00,000(one crore fifty lakh), CC hypo of Tk. 8,00,000 and PCC 70,00,000(seventy lakh) from 2001 to 2002 and sent the file to the concerned authority for approval. Subsequently, the A.G.M, Sonali Bank, Head Officer, Dhaka on 19.09.2009 approved for disbursement of the CC pledge of Tk. 55,00,000(fifty-five lakh), CC hypo Tk. 2,00,000(two lakh) and PCC Tk. 20,00,000(twenty lakh). Against the said loan, the loanee mortgaged 21.15/16 decimal of land of his wife along with the building by registered mortgage deed No. 2742/2001 dated 05.12.2001. He also executed other security documents for obtaining the loan. Following the officer order dated 02.01.2002, a 3(three) members team headed by Md. Abu Sayeed Mrida, A.M. General, Loan Division No. 1, Sonali Bank, Head Office visited the godown of the accused Sheikh Tofazzal Hossain on 06.02.2002 and submitted the report on 17.02.2002. In the inspection report, it has been mentioned that there is total 2705 maunds of jute(pledge) valued at Tk. 6,96,367 and in the godown found the shortage of total 10675 maunds of jute (pledge) and 595 maunds of jute (hypo), total shortage of (10675+595) 11270 maunds of jute valued at Tk. 50,92,072. Subsequently, by office order dated 15.05.2002 General Manager, Sonali Bank, Khulna formed a 4-members committee headed by Samir Kumar Debnath, Senior Principal Officer for inspection and to determine total shortage of jute of the said godown. The said committee took the physical measurement of jute of the said godown on 11.06.2002, 12.06.2002 and 13.06.2002 and submitted the report on 17.06.2002 stating that there was a stock of 880 maunds of jute. The three-member committee headed by Hashem Ali Khan inspected the godown on 6.2.2002 and at the time of inspection, the said inspection team found 2705 maunds of jute in the said good. The accused Sheikh Tofazzel Hossain and the godown keeper Md. Enamul Haq Khan in connivance with each other brought out the jute from the godown with full knowledge of the Manager Md. Akramuzzaman. The Manager and the godown keeper by giving false

report about the purchase of jute in connivance with Sheikh Tofazzal Hossain jointly misappropriated Tk. 59,56,228.54.

P.W. 17 Md. Aminur Rahman, Assistant Director, Anti-Corruption Commission, Combined District Office, Khulna took up the investigation of the case. During investigation, he seized documents from the Sonali Bank, prepared the seizure list, visited the place of occurrence, and recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. After completing investigation found the prima facie truth of the allegation against the accused persons named in the FIR and submitted the memo of evidence and obtained the sanction from the ACC and submitted charge sheet on 31.08.2010 against the accused persons. After that, the Chief Metropolitan Magistrate, Khulna transmitted the record of the case to the Senior Special Judge, Khulna who subsequently transferred the case to the Divisional Special Judge, Khulna for trial.

During the trial, charge was framed on 09.01.2012 against the accused persons under section 409/109 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 which was read over and explained to the accused persons and they pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 17 witnesses to prove the charge against the accused persons. After that, the accused persons were examined under section 342 of the Code of Criminal Procedure, 1898 and accused Sheikh Tofazzal Hossain examined himself as D.W. 1 and also submitted documents. After concluding the trial, the trial court by impugned judgment and order convicted the accused persons and sentenced them as stated above against which they filed the instant appeals.

P.W. 1 Kamol Kumar Roy, Deputy Assistant Director, Anti-corruption Commission, Head Office, Dhaka is the informant. He stated that while he was discharging his duty as Assistant Inspector of the District Bureau of Anti-corruption, Khulna in 2002, he was appointed as inquiry

officer to inquire about the ER No. 77 of 2002. During the inquiry, in the presence of the then Manager Gopal Chandra Debnath, Sonali Bank Limited, Fulbarighat Branch, Khulna on 13.11.2002 seized documents. He proved the seizure list dated 10.11.2002 as exhibit-1 and his signature as exhibit-1/1. After completing the inquiry, he submitted the report and following instruction of the authority he lodged the FIR against the accused 1. Sheikh Tofazzal Hossain, 2. Md. Akramuzzaman, 3. Md. Enamul Haq Khan who in connivance with each other showing false purchase and stock of 12,500 maunds of jute (pledge) valued at Tk. 57,56,228.54 and CC hypo of Tk. 2 lakh, total Tk. 59,56,228.54 in the Formainshkhana Godown misappropriated the said amount. The head office of the Sonali Bank formed an inspection team headed by Abu Sayed Mrida, AGM, Sonali Bank and said inspection team also after physical inspection submitted the report. Subsequently, a four-member team headed by Samir Kumar Debnath, Senior Principal Officer, Sonali Bank Limited, Khulna was formed. After physical measurement (100%) on 11.06.2002, 12.06.2002 and 13.06.2002 the said team submitted a report regarding the shortage of jute in the said godown. After joining the said branch accused Md. Akramuzzaman took the physical measurement of the jute of the said godown. The accused Md. Enamul Haq Khan is the Godown Keeper. On the application of accused Sheikh Tofazzal Hossain, accused Md. Akramuzzaman and Md. Enamul Haq Khan made the recommendation for approval and disbursement of the loan and took the register and the key of the godown. From 17.06.2001 to 13.06.2002, the accused persons misappropriated the jute valued at Tk. 59,56,228.54. P.W. 1 proved the FIR as exhibit-2 and his signature as exhibit-2/1. He also took up the investigation of the case and after part investigation, he was transferred. During cross-examination, he stated that he wrote the FIR and accused No. 1 Sheikh Tofazzal Hossain took the loan and executed the mortgage deed No. 2742 of 2001 dated 5.12.2001 against the loan. He affirmed that in the name of purchasing jute, the accused persons misappropriated total Tk. 59,56,228.54 showing false stock of jute in the godown of Sheikh Tofazzal

Hossain at Formaishkhana. The accused Md. Enamul Haq Khan was appointed as godown keeper of Formaishkhana godown on 03.07.1998 and the Md. Akramuzzaman joined as Manager of the Sonali Bank, Doulatpur Branch on 07.08.2000 and took charge on 27.08.2000 from the previous Manager Monirul Haque and on that day, he found no shortage of jute in the godown. The accused Md. Akramuzzaman and Md. Enamul Haq Khan after inspection of the Formaishkhana godown on 20.6.2001 submitted a report stating that there was stock of 10,403 maunds of jute. The four-member committee headed by Samir Kumar Debnath submitted the report on 17.06.2002 stating that there was total 880 maunds of jute in the godown. The occurrence took place from 17.06.2001 to 13.06.2002 and during that period, accused Md. Akramuzzaman and Md. Enamul Haq Khan submitted the report. The four members inquiry committee after physical inspection on 11.06.2002, 12.06.2002 and 13.06.2002 submitted a report on 17.06.2002 stating that there was total stock of 880 maunds of jute in the said godown. The 3 (three) members committee after inspection on 06.02.2002 submitted a report on 17.06.2002 stating that there was total stock of 2705 maunds of jute in the godown. During cross-examination on behalf of the accused Md. Enamul Haq Khan, he stated that on 02.10.2002 he took up the inquiry of the ER. On recall by the prosecution, he stated that on 13.11.2002 at 14.30 he seized the documents from the Sonali Bank and Gopal Chandra Golgar, Manager, Sonali Bank Limited presented those documents. He prepared the seizure lists. He proved the seizure lists as exhibits 3 and 4. During cross-examination, he stated that he physically inspected the godown and found shortage of jute in the godown.

P.W. 2 Gopal Chandra Golgar is the Manager, Sonali Bank Limited, Ishorechandra Street Branch. He stated that before the occurrence he was posted at Sonali Bank, Doulatpur Branch. The Sonali Bank, Head Office vide office order dated 02.01.2004 formed a 3-member committee headed by Abu Sayed Mridha, AGM, General Loan Division, Head Officer, Dhaka to inspect

the godowns of the Khulna area. Thereafter, the said team on 06.07.2002 inspected the godown of accused Sheikh Tofazzal Hossain situated at Formaishkhana under Digholia Thana and submitted the report on 17.02.2002. The said committee found the total jute valued at Tk. 6,93,000 out of required jute valued at Tk. 55,86,000(pledge) and there was no stock of jute valued at Tk. 1,99,000(hypo). There was shortage of jute valued at Tk 55,92,000. Thereafter by office order 06.04.2002, the Sonali Bank, Head Office instructed the Divisional Manager, Sonali Bank, Khulna to lodge FIR and take departmental action against the staff of the bank. The DGM, Khulna by office order dated 11.4.2002 suspended the Manager of Sonali Bank, Fulbari Bazar Branch, the godown keeper and godown chowkidar. By office order No. 11 dated 11.4.2002 directed him and the team to take charge of the said Branch. By office order dated 15.05.2002, a four-member committee was formed to ascertain the shortage of the jute of the said godown. In response to the letter dated 15.05.2002 issued by the Bank, accused Sheikh Tofazzal Hossain stated that the said shortage took place due to business transactions and took total responsibility for the shortage. Subsequently, on 11.06.2002, 12.06.2002 and 13.06.2002 the four members committee took the physical measurement of the jute of the said godown and found total 880 maunds of jute valued at Tk. 3,16,800 and at that time required stock was 13380 monds of jute valued at Tk. 60,9,668 and there was a shortage of jute (CC Hypo) valued at Tk. 200000. There was total shortage of jute valued at Tk. 59,56,288.54. During cross-examination, he stated that on 11.06.2000, 12.06.2000 and 13.06.2000 the physical weight of the jute was taken. The officer of the ACC seized the inquiry report dated 17.02.2002 and 15.05.2002 from him. In the inquiry report submitted by three-member committee, it has been mentioned that there was total 2010 kg of jute. He affirmed that the key of the godown was kept in the custody of the manager and the whole day the godown was opened. Before opening the godown the key of the godown was kept in the custody of the Manager and the godown keeper kept the key along with him and the godown was under the control of the loanee. On

11.06.2002, 12.06.2002 and 13.06.2002 he physically visited the godown. After joining the said branch, he issued a letter to the loanee to adjust his loan liability.

P.W. 3 Shibnath Sarkar is an Office, Sonali Bank Limited, Hilatala, Branch, Bagerhat. He stated that on 13.11.2002 he was posted at Sonali Bank, Fulbari Gate Branch. On that day Kamal Kumar Roy, officer of the ACC seized the documents relating to the CC loan of accused Sheikh Tofazzal Hossain and prepared the seizure list. He signed the seizure list. He proved his signature on the seizure list as exhibit-1/2. During cross-examination, he stated that he signed the seizure list along with Abul Hasan.

P.W. 4 Md. Abu Sayeed Mrida (retired) is an Officer of Sonali Bank. He stated that on 02.01.2004 the head office formed a committee for inspection of the godown. On 06.02.2003, he made the inspection and submitted the report on 17.02.2002. He proved his signature on the inspection report as exhibit-3ga/2. During cross-examination, he stated that 03 members committee inspected the godown of Formaishkhana village. During inspection, they found total 1200 maunds of jute and they took the weight of the jute. He affirmed that he instructed the loanee to deposit the loan amount. Under the instruction of the higher authority he made the inspection and he was the head of the inspection team. The photocopy of the report of the inspection team is laying with the records.

P.W. 5 Constable Md. Abul Hasan stated that in 2002 he was posted at the Bureau of Anti-corruption, Khulna. On 13.11.2002 he along with Assistant Inspector Kamal Kumar Roy went to the Sonali Bank Limited, Fulbari Gate Branch, Khulna. At that time, the documents from the bank were seized on 13.11.2002 at 2.30 pm and he signed the seizure list. He proved his signature on the seizure list as exhibit-1/3. Defence declined to cross-examine P.W. 5.

P.W. 6 Md. Hashem Ali Khan is the Assistant General Manager, Sonali Bank Limited, Head Office, Dhaka. He stated that at the time of occurrence, he was posted at Sonali Bank Limited, General Loan Division, Head Office as Principal Officer. Under the leadership of Abu Sayed Khan, AGM, he inspected the godown of accused Sheikh Tofazzal Hossain situated at Digholia, Formaishkhana on 06.02.2002. At that time Manager Md. Akramuzzaman, Godown Keeper Md. Enamul Haq Khan, Godown Chowkidar Abdur Rahim Babu and accused Sheikh Tofazzal Hossain were present there. According to the records, there was required stock of 13,381 maunds of jute (pledge) but they found total 2,680 maunds of jute. There was a total shortage of jute valued at Tk. 55,85,000 (pledge) but found the jute valued at Tk. 6,93,000. There was a total shortage of jute valued at Tk.48,93,000. There was also a shortage of jute valued at Tk. 1,99,000(hypo). They submitted the report to the head office on 17.02.2002. He proved his signature on the inspection report as exhibit-3ga-1/1. During cross-examination, he stated that accused Sheikh Tofazzal Hossain kept the jute in his custody and sold the jute from the godown and accused Md. Akramuzzaman is the Manager of the Bank. During cross-examination, he stated that he identified the inspection report dated 17.02.2002 and accused Sheikh Tofazzal Hossain did not sign the report. He affirmed that in the report the word 'presumptive' was mentioned.

P.W. 7 Md. Alauddin Mia is an Officer (retired) of the Sonali Bank Limited, Head Office, Dhaka. He stated that under the instruction of the Head Office, a 3 (three) members committee including him inspected the godown of accused Sheikh Tofazzal Hossain and submitted the report on 17.02.2002. He proved his signature on the report as exhibit 3 (ga)/1/2. Defence declined to cross-examine P.W. 7.

P.W. 8 Samir Kumar Debnath is the Deputy General Manager, Sonali Bank Limited, Corporate Branch. He stated that he submitted the report on 17.06.2002 after inspection regarding the shortage of jute. He proved his

signature on the report as exhibit 3 (gha)/1. During cross-examination, he stated that he inspected the godown of the accused Sheikh Tofazzel Hossain and he was the head of the team. On 11.06.2002, 12.06.2002 and 13.06.2002 he inspected the godown situated at Ishshor Press Baroitala. He denied the suggestion that in the inspection report, the shortage was not shown correctly. In the inspection report the name of the accused Md. Akramuzzaman and Md. Enamul Haq Khan was not mentioned.

P.W. 9 Md. Serajul Islam is the Senior Executive Officer of Sonali Bank Limited, Corporate Branch, Khulna. He stated that in 2002, he was the Senior Executive Officer, at Sonali Bank Limited, GM Office, Khulna. Under the instruction of the GM office, a four-member team made the inquiry regarding shortage and the said team found total 880 maunds of jute and submitted the report on 17.06.2002 stating that the required stock was 3,030 bale and 555 bale. As a member of the team, he signed the inspection report. He proved his signature as exhibit-3(Kha)/2. During cross-examination, he stated that they inspected the godown situated at Baroitala on 11.06.2002, 12.06.2002 and 13.06.2002 and they took the physical weight of the jute. He stated that after inspection of the godown situated at Ishshor Press, Baroitala they submitted the report. Baroitala godown is situated 3 km away from the Formaishkhana godown. In the report, it has been mentioned that the quality of the goods were deteriorated.

P.W. 10 Seikh Tayobur Rahman is the Senior Executive Officer, Sonali Bank Limited, Corporate Branch, Khulna. He stated that at the time of occurrence, he was the Senior Officer, Sonali Bank Limited, Head Office. Under the leadership of Senior Executive Officer Samir Kumar Debnath on 11.06.2002, 12.06.2002 and 13.06.2002 they visited the pledge godown of accused Sheikh Tofazzal Hossain and after physical measurement (weight) they found total 880 maunds of jute and submitted the report on 17.06.2002. He proved his signature on the said report as exhibit 3 (gha)/3. During cross-examination, he stated that they visited the godown situated at Ishshor Press

Baroitala and Samir Kumar Debnath was the head of the team. He, Serajul Islam and Gopal Chandra Gulgar were the members of the team. He denied the suggestion that the members of the team did not inspect the godown situated at Formaishkhana and Baroitala. After finding the shortage of jute, the notice was sent to Sheikh Tofazzal Hossain for payment of the loan. A case was filed against the accused Sheikh Tofazzal Hossain in the court of Artha Rin Adalat and there is no allegation against the accused Md. Akramuzzaman and Md. Enamul Haq Khan.

P.W. 11 Md. Abdur Rahim Babu is a Supporting Sub-Staff, Grade-2, Sonali Bank Limited, Corporate Branch. He stated that at the time of occurrence, he was posted at the Principal Officer, Sonali Bank, Head Office, Khulna. At the time of occurrence, he was discharging his duty as Chowkidar at Formaishkhana and Baroitala Godown.

P.W. 12 Md. Monirul Haque is the Manager(retired) of Sonali Bank Limited. He stated that from May 1995 to 27.08.2000 he was posted as Manager, Sonali Bank Limited, Fulbari Gate Branch. He handed over the charge to the accused Md. Akramuzzaman. During cross-examination, he stated that the godown keeper and godown chowkidar of the godown were appointed by the bank. The key of the godown is kept under the custody of the bank. He denied the suggestion that he was responsible for the shortage of jute and at the time of handing over charge, there was total dues amounting to Tk. 30,00,000 against accused Sheikh Tofazzal Hossain.

P.W. 13 Molla Nur Mohammad stated that from 2008 to 2010 he was discharging his duty as Manager, Sonali Bank Limited, Fulbari Gate Branch. On 05.05.2010, the officer of the Anti-corruption Commission seized the documents from Sonali Bank regarding the CC hypo. The seized documents are the CC hypo ledger, pledge ledger, key register, the statement of account and handed over those documents to his custody and prepared the Zimmanama (bond). He proved the seizure list as exhibit-1/Ka and his

signature as exhibit-1/ka(1). He proved the Zimmanama as exhibit-5 and his signature on the Zimmannama as exhibit-5/1. After his transfer, the subsequent Manager took custody of those documents. During cross-examination, he stated that due to shortage of the goods in the godown, the case was lodged. At the time of entry of the goods in the godown, the same is mentioned in the ledger and at the time of taking out the goods from the godown, it is also mentioned in the register. After depositing the sale proceeds of the goods, the Manager signed the ledger. The manager and godown keeper are the joint custodians of the goods. The godown keeper brings the key from the Manager signing the register and after the day, hands over the key to the Manager and the Manager of the bank controls the entry and out of the goods of the godown. He stated that the case was filed in the Artha Rin Adalat for recovery of the loan. At the time of entry/deposit of the goods in the godown, the customer informed the matter to the Manager. He had no personal knowledge about the facts of the case.

P.W. 14 Md. Abdul Jalil is a cash officer (retired). He stated that on 05.05.2010 he was posted at Sonali Bank Limited, Fulbari Gate Branch as an Officer (Cash). On that day, the investigating officer seized the register of the loan and the documents. He signed the seizure list(exhibit-1/Ka). He proved his signature as exhibit-1/Ka(2). During cross-examination, he stated that before he joined the branch, the case was lodged.

P.W. 15 Akter Hossain is the Principal Officer (retired). He stated that on 05.05.2010 he was posted as Senior Officer, Sonali Bank Limited, Fulbari Gate Branch, On that day at 3.30 pm, the investigating officer Aminur Rahman examined the records in the room of the Manager and he also seized the documents from the bank. He signed the seizure list (exhibit-1/ka). He proved his signature as exhibit-1/Ka(2). He stated that before he joined the branch the case was lodged.

P.W. 16 Jalal Uddin Khandker was tendered and declined by accused Sheikh Tofazzal Hossain. During cross-examination on behalf of the accused Md. Akramuzzaman and Md. Enamul Haq Khan, he stated that on 30.9.1997 he joined and on 15.03.2010 he was transferred from Sonali Bank, Fulbari Gate Branch. There were two godowns under Sonali Bank, Fulbari gate branch at Baroitala and Formaishkhana which were situated one mile away from another.

P.W. 17 Md. Aminur Rahman, Assistant Director of the Anti-corruption Commission is the investigating officer. He stated that from 2008 to 2011 he was posted as Assistant Director, Combined Office, Anti-corruption Commission, Khulna. He took up the investigation of the case on 23.03.2010. On 05.05.2010 at 3.30 pm, he seized the documents from the Sonali Bank Limited, Fulbari gate Branch, Khulna and the then Manager Molla Nur Mohammad presented those documents. He prepared the seizure list (exhibit-1/Ka). He proved his signature as exhibit-1/Ka(4). Subsequently, he handed over the documents by preparing the Zimmanama(bond). He proved the Zimmanama(bond) as exhibit-5 and his signature on the Zimmanama as exhibit-5/2. He visited the place of occurrence, recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898 and perused the records. During the investigation, he found the truth of the allegation of misappropriation of jute valued Tk. 59,56,228.54 in account No. 00006 (CC pledge) and CC hypo Account No. 13 of accused Sheikh Tofazzel Hossain maintained in the name of Mrs. Sheikh Tofazzel Hossain. He submitted the memo of evidence and obtained sanction from the Anti-Corruption Commission for submitting charge sheet and accordingly, he submitted charge sheet on 31.08.2001 against the FIR named accused persons. During cross-examination, he stated that the place of occurrence is the Sonali Bank Limited, Fulbari Gate Branch. The accused persons misappropriated the money and the jute. The accused persons took loans from the bank and misappropriated. Two teams inquired. One team of Head

Office, Dhaka and another team of GM Office, Sonali Bank Limited, Khulna. The inquiry teams sent from the Dhaka office found total 2705 maunds of jute and the GM office Khulna found stock of 880 maunds of jute. The accused No. 2 and 3 after inspection on 20.06.2001 submitted a report on 20.6.2001 stating that they found 10403 maunds of jute in the godown. After obtaining loan, the loanee purchased the jute. During the investigation, he did not find the report of the Gopal Babu. The accused took loan amounting to Tk. 55,00,000 (pledge) and hypo Tk. 200,000. There was 20% margin on the said amount. During cross-examination on behalf of the accused Md. Akramuzzaman and Md. Enamul Haq Khan, he stated that the accused persons violated the terms and conditions of the sanction letter but he did not seize the sanction letter.

D.W. 1 Tofazzal Hossain is the accused who obtained the loan from Sonali Bank Limited. He stated that he has been doing the jute business through the Sonali Bank Limited, Fulbarigate Branch, Khulna since 1994. At that time, the total transaction limit was Tk.500,000. In 2002, the CC loan limit was increased to Tk. 5500,000 and hypo Tk. 200,000. The total loan limit was increased to Tk.5700,0000. On 17.06.2001 he applied to the bank for renewal and extension of the limit of the loan and based on the said application the loan was sanctioned on 27.09.2001. He executed the deed of mortgage and other security documents to secure the loan. On 05.12.2001 the deed was executed and he started the business. He could not pay the loan. Consequently, the bank filed Artha Rin Case No. 53 of 2003 in the Artha Rin Adalat, Khulna and the bank obtained the decree. Subsequently, the Artha Jari Case No. 20 of 2008 was filed and Decree Execution Case No. 155 of 2002 was also filed. The Decree Execution Case No. 155 of 2002 was stayed. At that time, Gopal Chandra Gulzar (P.W. 2) was the Manager. The Directorate of Jute sent a letter to Gopal Chandra Gulzar to report regarding the stock of the jute of the accused. Gopal Chandra Gulzar submitted the report on 09.05.2003 stating that there was total stock of 13,381 maunds of

jute in the godown. After that, the Directorate of Jute vide memo dated 15.04.2003 issued letter to renew his licence. He is the owner of 02 jute godowns situated at Baraitala and Formaishkhana. The total value of the mortgage property was assessed at Tk. 2,53,00,000 by the engineer of Kholna. By selling the mortgaged property, the bank could realize the dues. He proved the certified copy of the deed No. 2742 of 2001 dated 05.12.2001, the plaint of Artha Rin Case No. 53 of 2003 and the judgment and decree (total 38 pages), Artha Decree Case No. 23 of 2008 (certified copy 5 pages). Decree Execution Case No. 155 of 2002 dated 15.04.2003, the valuation report of the mortgaged property by (KDA) (one page), valuation of the KCC certificate (one page), loan sanction letter (5 pages) total 73 pages as exhibit-1 series. During cross-examination, he stated that he filed Criminal Revision Case No. 124 of 2011 against the bank officers but they were acquitted and the appeal filed against the judgment is now pending. The bank also filed a case under sections 420/406 of the Penal Code, 1860 against him which has been stayed. He denied the suggestion that he took the jute outside the godown without permission.

The learned Advocate Mr. Sheikh Atiar Rahman appearing on behalf of the accused Md. Enamul Haq Khan submits that accused Md. Enamul Haq Khan is a godown keeper and the key of the godown was kept in the custody of the Manager of the Bank and admittedly the loanee Sheikh Tofazzel Hossain sold the pledge jute with prior approval of the Manager and as a godown keeper, accused Md. Enamul Hoq Khan only complied with the direction of the Manager. He further submits that since the accused Sheikh Tofazzel Hossain obtained the loan from the bank by executing a deed of mortgage and other security documents to satisfy the loan amount, no criminal offence was committed by the godown keeper.

The learned Advocate Mr. Amimul Islam appearing on behalf of the accused Sheikh Tofazzel Hossain submits that the accused Sheikh Tofazzel Hossain took loan from the bank by mortgaging the property of his wife and

also executed the security documents to secure the loan for realization of the loan and in the meantime, the bank and accused Sheikh Tofazzel Hossain made settlement out of court and the execution case filed by the bank for the execution of the decree passed in the Artha Rin Adalat was withdrawn after satisfaction of the decree passed against the accused Sheikh Tofazzal Hossain. He also submits that the prosecution malafide initiated the proceedings against the accused Sheikh Tofazzal Hossain although no criminal offence was committed by the accused.

The learned Advocate Ms. Aysha Akter appearing on behalf of the accused Md. Akramuzzaman submits that before the recommendation of the loan, he along with the godown keeper after inspection found sufficient stock of jute in the godown and submitted the report to the authority for approval of the loan and after scrutiny of the documents and report submitted by the accused, the authority of the bank was fully satisfied with the stock of jute in the godown and had given approval and sanctioned the loan in favour of the accused Sheikh Tofazzal Hossain and following sanction letter issued by the bank authority, accused Md. Akramuzzaman only disbursed the loan and beyond his knowledge accused Sheikh Tofazzal Hossain sold the goods and subsequently paid the entire loan amount. Therefore, no offence was committed by the accused Md. Akramuzzaman.

The learned Advocate Mr. A.S.M. Kamal Amroohi Chowdhury appearing on behalf of respondent No. 2, Anti-Corruption Commission, submits that the Manager and godown keeper were entrusted with pledge and hypo goods kept in the godown of the accused Sheikh Tofazzal Hossain who took loan from the bank and the accused Sheikh Tofazzal Hossain in connivance with the Manager Md. Aktaruzzaman and Godown Keeper Md. Enamul Haq khan illegally sold the pledge and hypo (goods) without depositing the sale proceeds against the loan liability of the Sheikh Tofazzal Hossain. The accused Md. Akramuzzaman and Md. Enamul Haq Khan was entrusted with the pledge and hypo goods and by selling the pledge and hypo

goods of the bank in connivance with the loanee Sheikh Tofazzal Hossain committed an offence under section 409 of the Penal Code, 1860. The learned Advocate also submits that the offence under section 409 of the Penal Code is not compoundable. Therefore, subsequent deposit or payment of the entire loan after long 28 years will not absolve the accused persons from criminal liability. The accused Sheikh Tofazzel Hossain by selling the pledge goods abated the offence of the breach of trust and thereby committed offence under section 409 of the Penal Code, 1860. Therefore, all of them are liable under sections 409/109 read with section 5(2) of the Prevention of Corruption Act, 1947. He prayed for the dismissal of the appeals.

I have considered the submission of the learned Advocates who appeared on behalf of the appellants and the learned Advocate who appeared on behalf of the respondents, perused the evidence, the impugned judgment and order passed by the trial court and the records.

On perusal of the records, it appears that the accused Md. Akramuzzaman was the Manager of Sonali Bank Limited, Fulbarigate Branch, Khulna and accused Sheikh Tofazzal Hossain is a loanee of the said branch. The accused Md. Enamul Haq Khan is the godown keeper of the Sonali Bank Limited, Fulbarigate Branch, Khulna. The accused Sheikh Tofazzal Hossain applied to the Manager, Sonali Bank Ltd for loan (pledge and hypo) and accused Md. Akramuzzaman and Md. Enamul Haq Khan after physical inspection of the godown on 20.06.2001 submitted report stating that there was total stock of 10403 maunds of jute valued at Tk. 44,75,450 in the godown of the Sheikh Tofazzal Hossain. Thereafter, the Sonali Bank, Head Office vide its memo dated 19.09.2001 had approved the disbursement of CC pledge lone of Tk. 55,00,000 and CC hypo loan of Tk. 200,000 and PCC loan of Tk. 20,00,000. The said loan was secured by mortgage deed No. 2742 dated 05.12.2001 and other security documents were also executed by the loanee.

The Head Office by office order dated 21.01.2002 formed a 03 members committee to inspect the godown of Sonali Bank, Fulbarighat Branch through PWs 4, 6 and 7 and said 3 members team physically inspected the godown of Sheikh Tofazzal Hossain on 06.02.2002 and submitted the report on 17.02.2002 stating that as on 06.02.2002 the required stock of the pledge and hypo jute were valued at Tk. 55,86,000 and there was stock of jute valued at Tk. 6,93,363 and there was shortage of jute (hypo) valued at Tk. 1,99,000 of jute total value at Tk. 55,92,000. Again the Divisional Office of Sonali Bank, Khulna by office order dated 15.05.2002 formed a 04 members inquiry committee headed by P.W. 8 and P.Ws. 2, 9 and 10 were the members of the said committee. The said 4 members team in the presence of the accused Sheikh Tofazzal Hossain physically took the weight of the jute on 11.06.2002, 12.06.2002 and 13.06.2002 kept in the godown of the accused. The said team after taking measurements/weight of the jute found in the godown of the accused Sheikh Tofazzal Hossain submitted the report on 17.06.2002 stating that there was total stock of 880 maunds of jute and they did not find any stock of jute(hypo). There was total shortfall of jute valued at Tk. 59,56,228.54. The statement given by the inquiry committee in the report dated 17.06.2002 regarding the shortage of jute is also corroborated by P.Ws. 2, 8, 9 and 10. Although the 3-member committee in the report dated 17.02.2002 stated that there was shortfall of jute valued at Tk. 55,92,000 but the report dated 17.06.2002 submitted by the 4-member inquiry committee is the latest. Therefore, the report dated 17.6.2002 will prevail.

It is found that during the trial of the case, the prosecution produced the photocopy of the report dated 17.02.2002 submitted by the 3 members inquiry committee formed by the head office and the report dated 17.06.2002 (exhibit-3(gha)) submitted by the 04 members committee formed by the General Manager, Sonali Bank Limited, Khulna. The evidence of P.Ws, 2, 8, 9 and 10 as regards the inspection of the godown of the accused Sheikh

Tofazzal Hossain on 11.06.2002, 12.06.2002 and 13.06.2002 was affirmed by the defence by cross-examining those P.Ws. Furthermore, during cross-examination on behalf of Sheikh Tofazzal Hossain, the defence affirmed that there was a shortage of jute in the godown and the accused Sheikh Tofazzal Hossain by applying to the Manager of the Bank admitted that the shortfall took place due to business transaction and asserted that he will pay the entire dues. The evidence of P.Ws. 2, 8, 9 and 10 as regards the shortfall of jute valued at Tk. 59,56,228.54 was not disputed by the accused Sheikh Tofazzal Hossain.

In the above conspectus, I am of the view that the shortfall of jute as mentioned in the report dated 17.06.2002 [exhibit-3(gha)] is admitted by the accused Sheikh Tofazzal Hossain. The report dated 17.02.2002 was proved as exhibit-3(ga). The Bank Manager accused Md. Akramuzzaman and the godown keeper accused Md. Enamul Haq Khan were entrusted with the pledged and hypothecated goods. It is found that the key of the godown was kept under the custody of the Manager Md. Akramuzzaman and the godown keeper Md. Enamul Haq Khan took the key from the Manager as and when required. They are the custodian of the pledge and hypothecated goods. The accused Sheikh Tofazzal Hossain took the key from accused Md. Enamul Haq Khan to deliver the jute from the godown. No step was taken by the said Manager and the godown keeper against the loanee Sheikh Tofazzal Hossain for the shortfall of the total 11,270 maunds of jute, although they were entrusted with the pledged and hypothecated jute kept in the godown. At the time of inspection by the 04 members committee on 11.06.2002, 12.06.2002 and 13.06.2002, the committee found that there was total stock of 880 maunds jute and there was total shortfall of 11,270 maunds of jute valued at Tk. 59,56,228.54. There was 20% margin on the loan.

Furthermore, during the hearing, the learned Advocate Mr. Aminul Islam submitted that the accused Sheikh Tofazzal Hossain paid the entire dues of the bank to satisfy the decree passed against the accused and the

execution case filed by the bank was disposed of after full satisfaction of the decretal amount of Tk. 60,50,000. It is found that the entire loan liability was adjusted in the execution case filed by the bank after about 22 years of the alleged misappropriation.

At this stage it is relevant here to rely on a decision made in the case of Md. Kalimullah vs. the state and ors reported in 8 MLR (AD) 39 it has been held that;

“ In order to sustain conviction under section 406 of the Penal Code there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged and in the instant case the petitioner though took the loan to set up the machine from the Krishi Bank but never repaid the amount remaining the dues to be unadjusted, rather disposed of the mortgaged machine without the permission of the Bank. The prosecution examined two witnesses supporting the prosecution case of entrustment of the machine which the petitioner has subsequently sold away to outsiders without any permission from the Bank thereby committing breach of trust for Tk. 46,349/- which amounts dishonestly selling away the machine in question for making gains at the cost of the bank.”

In the instant case, the bank Manager and the godown keeper were entrusted with the pledged and hypothecated goods and no action was taken by them against the accused Sheikh Tofazzal Hossain for illegally selling the pledged and hypothecated goods amounting to Tk. 59,56,228.54. The accused Sheikh Tofazzal Hossain in connivance with the Manager Md. Akramuzzaman and the godown keeper Md. Enamul Haq Khan dishonestly sold 11,270 maunds of jute (pledge and hypo) valued at Tk. 59,57,228.54 and without depositing the sale proceeds against his loan misappropriated the said amount. The accused Md. Akramuzzaman and accused Md. Enamul Haq Khan committed offence under section 409 and read with section 5(2) of the

Prevention of Corruption Act, 1947. The accused Sheikh Tofazzal Hossain committed offence under sections 409/109 of the Penal Code, 1860.

In the case of *The State vs. Abdul Muttaleb Khan* reported in 14 BLD (AD) 12 para-13 our apex court took a lenient view in awarding the sentence and held that;

“The alleged offence was committed in 1961-62 and the Respondent faced two trials and had to take two appeals until he was acquitted by the impugned judgment in 1986. Thus, it appears that the Respondent has already suffered much during all these years and any direction to suffer further imprisonment now will only add to his misery which he has had enough. We, therefore, propose to take a lenient view in the matter of sentence.”

At this stage, it is relevant here to cite a decision made in the case of *Hosna Jahan vs. Md. Shahjahan* reported in 4 BLC(AD)(1999) para-6 wherein A.T.M.Afzal, CJ observed that;

“From the above, it was therefore a case of temporary defalcation. It is a serious offence nevertheless. However, we think the ends of justice will be met in the facts and circumstances of the case if the sentence of fine of each of the accused-appellants is maintained and the substantive sentence is reduced to the period already undergone as prayed for.”

The offence under section 409 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947 is not compoundable. Therefore, subsequent payment of the defalcated amount will not absolve the loanee from criminal breach of trust committed under section 409 of the Penal Code, 1860. The fact remains that after payment of the loan liability by the accused Sheikh Tofazzel Hossain, the execution case filed by the bank was disposed of with satisfaction.

Because of the above facts and circumstances of the case and 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. Akramuzzaman is found guilty of the offence under section 409 read with section 5(2) of the Prevention of Corruption Act, 1947 and he is sentenced under section 409 of the Penal Code, 1860 to suffer rigorous imprisonment for one year and a fine of Tk. 500,000.

The accused Md. Enamul Haq Khan is found guilty of the offence under section 409 read with section 5(2) of the Prevention of Corruption Act, 1947 and he is sentenced under section 409 of the Penal Code, 1860 to suffer rigorous imprisonment for 06(six) months and fine of Tk. 200,000.

The accused Sheikh Tofazzel Hossain is found guilty of the offence under sections 409/109 of the Penal Code, 1860 and he is sentenced to suffer rigorous imprisonment for one year and a fine of Tk. 59,56,228.54.

It is found that the accused Sheikh Tofazzel Hossain already paid Tk. 60,50,000 to satisfy the claim of the bank and the execution case filed by the bank was disposed of with the satisfaction. Therefore, the fine imposed by this court against the accused Sheikh Tofazzel Hossain is not required to be deposited again.

The fine awarded against accused Md. Akramuzzaman and accused Md. Enamul Haq Khan are recoverable following the law.

In the result, the appeals are disposed of with a modification of the sentence.

The trial court is directed to do the needful.

Send down the lower Court's record at once.

