

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

**Present:**

**Mr. Justice Md. Shohrwardi**

**Criminal Appeal No. 10693 of 2018**

**Md. Nur Hossain**

**-versus-**

**The state and another**

**Criminal Appeal No. 10068 of 2018**

**Md. Alamgir Bhuiyan**

**-versus-**

**The state and another**

Mr. Zafar Sadeque, Advocate

.....For the appellant in Cril. Appl. No. 10693 of 2018

Mr. Shaheen Ahmed, Advocate

..For the Respondent No. 2 in C.A. No. 10693 of 2018

Mr. Ashek-E-Rasul, Advocate

.. For the appellant in Cril. Appl. No. 10068 of 2018

Mr. Asif Hasan, Advocate

. For the Respondent No. 2 in C.A. No. 10068 of  
2018

Mr. S.M. Golam Mostofa Tara, DAG with

Mr. A. Mannan, AAG with

Mr. Md. Shaifour Rahman Siddique, AAG

....for the State in all the appeals.

**Heard on 25.05.2023,18.07.2023, 19.07.2023,  
20.07.2023, 24.07.2023,02.08.2023.**

**Judgment delivered on 07.08.2023**

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

The appellants preferred the above-mentioned criminal appeals under Section 10 of the Criminal Law Amendment Act, 1958 (Act No. II of 1958) challenging the legality and propriety of the impugned judgment and order dated 18.09.2018 passed by the Special Judge, Noakhali in Special Case No. 6 of 2010 arising out of Sonaimuri Police Station Case No. 16 dated 15.10.2009, G.R. No. 1118 of 2009 convicting accused Md. Alamgir Bhuiyan under section 5(2) of the Prevention of Corruption Act, 1947 read with section 109 of the Penal Code, 1860 and under sections 409/109 of the Penal Code, 1860 sentencing him to suffer rigorous imprisonment for 05 years under sections 409/109 of the Penal Code, 1860 and to pay a fine of Tk. 900,000 and also sentencing him to suffer rigorous imprisonment for 05 years under section 5(2) of the Prevention of Corruption Act, 1947 read with section 109 of the Penal Code, 1860 and convicting the accused Md. Nur Hossain under section 409 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947 sentencing him to suffer rigorous imprisonment for 05 years under section 409 of the Penal Code, 1860 and a fine of Tk. 9,00,000 and also sentencing him to suffer rigorous imprisonment for 05 years under section 5(2) of the Prevention of Corruption Act, 1947. Both the sentences passed against the appellants will run concurrently.

The prosecution case, in short, is that the Deputy Commissioner, Noakhali issued cheque No. 6820408 dated 10.11.2008 for payment of Tk.

3,06,769 and cheque No. 8393069 dated 12.04.2009 for payment of Tk. 5,17,379 drawn on Sonali Bank Ltd, Maizdee Court Branch in favour of UNO, Sonaimuri for payment of allowances of Chairman, Members and the village police etc. The accused Md. Nur Hossain received three cheques on 11.11.2008 and 15.04.2009 respectively. Subsequently, the accused by opening forged Current Account No. 514 on 13.08.2008 with the Sonali Bank Ltd, Sonaimuri Branch in the name of Upazila Housing Project deposited the said cheques and misappropriated the said amount by withdrawing money issuing seven cheques in connivance with accused Md. Alamgir Bhuiyan, Second Officer, Sonali Bank Ltd, Sonaimuri Branch. They committed offences under sections 409/109 of the Penal Code and section 5(2) of the Prevention of Corruption Act, 1947.

P.W. 23 Syed Mohammad Shahidullah, Deputy Director, Anti-Corruption Commission, Noakhali was appointed as investigating officer vide memo No. ACC/C/52/09/Noakhali/ (inquiry and investigation) dated 24.11.2009. Thereafter, he received the records of the case from Sonaimuri Thana. During the investigation, he seized the documents from the Sonali Bank Ltd, Sonaimuri Branch and the office of the UNO Sonaimuri, and visited the place of occurrence. During the investigation, he found the truth of the allegation made against the accused persons. After that, the office of the Anti Corruption vide memo dated 04.04.2010 had given approval to submit the charge sheet against the accused persons and the investigating officer submitted the charge sheet on 20.04.2010 against the accused persons under sections 409/468/420/109 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947. After that, the Chief Judicial Magistrate, Noakhali sent the case to the Senior Special Judge, Noakhali.

During the trial, the charge was framed under sections 409/109/468/420 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 against the accused persons and the

charge was read over and explained to the accused persons who pleaded not guilty to the charge and claimed to be tried in accordance with law. The prosecution examined 23 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 they again pleaded not guilty to the charge and declined to adduce any D.W. 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 above-mentioned appeals.

P.W. 1 Kazi Md. Abdur Rahman is the UNO, Sonaimuri. He stated that on 14.10.2009 he was discharging his duty as UNO, Sonaimuri and at that time allowances of the chairman and members of the Union Parishad and others were sent to UNO, Sonaimuri from the office of Deputy Commissioner, Noakhali. On 14.10.2009 he found the discrepancy in the account. The office of the Deputy Commissioner, Noakhali informed over the telephone that by 02 cheques dated 11.11.2008 and 15.04.2009 total Tk. 9,04,148 were sent and the accused Md. Nur Hossain, MLSS, Sonaimuri Upazila Parishad received those cheques by signing in the cheque received register. On interrogation, accused Md. Nur Hossain admitted that he received those cheques from the office of the Deputy Commissioner, Noakhali but he could not remember to whom he transferred the cheques. The ADC(General), Noakhali informed him that the said cheques were encashed from the Sonali Bank, Sonaimuri Branch from Current Account No. 514. On quarry, it is found that on 07.08.2008 the Current Account No. 514 was opened under the signature of the UNO, Sonaimuri and Assistant Upazilla Engineer in the name of "Upazilla Housing Project" but there is no information in the office of the UNO, Sonaimuri as regards the opening of the said account. On 07.08.2008, UNO Aaur Rahman informed that he was not aware of the said account and he did not sign the account opening form to open the said account. Thereafter, in consultation with higher authority, he lodged the FIR on 15.10.2009. He proved the FIR as exhibit-1 and his

signature as exhibit-1/1. During cross-examination, he stated that at the time of opening the account, the officers usually do not go to the bank. On 07.08.2008, Md. Shafiqur Rahman was the UNO, Sonaimuri. Aatur Rahman informed him that he did not sign the account opening form. Neither UNO Aatur Rahman nor UNO Md. Shafiqur Rahman informed him that they signed the account opening form to open the bank account. MLSS Md. Nur Hossain received the cheques from the concerned office. It was detected on 14.10.2009 that 02 cheques were not handed over to the office of the UNO, Sonaimuri and the cheques were issued in the financial year 2008 to 2009 for payment of the allowance of the chairman, members and others. He affirmed that the allowance of the chairman, members and others were paid and before lodging the FIR, he came to know that accused Md. Alamgir Bhuiyan is involved in opening the Current Account No. 514. Despite that, he did not mention the name of Md. Alamgir Bhuiyan in the FIR. He denied the suggestion that in connivance with the staff of the UNO, Account No. 514 was opened and accused Md. Alamgir Bhuiyan was not involved with the alleged opening of the forged account. He affirmed that the accused Md. Nur Hossain was authorised to receive the cheques from the office of the Deputy Commissioner, Noakhali and accused Md. Nur Hossain did not sign the account opening form of Current Account No. 514 and before the occurrence, he did not receive any expert opinion as regards the signature of UNO on the account opening form. He denied the suggestion that UNO Md. Shafiqur Rahman and UNO Aatur Rahman in connivance with the officers of the office of UNO, Sonaimuri opened the Current Account No. 514.

P.W. 2 AKM Kawsar Chowdhury stated that he was the Officer-in-Charge of Sonaimuri Thana on 15.10.2009. He lodged the FIR based on Memo No. 570 dated 15.10.2009 issued from the office of the UNO, Sonaimuri and appointed S.I. Md. Abu Yousuf as investigating officer. He proved the FIR form as exhibit-2 and his signature as exhibit-2/1. Subsequently, he sent the records on 19.10.2009 to the office of the Anti-

Corruption Commission, Noakhali for investigation. During cross-examination, he stated that UNO brought the accused Md. Nur Hossain and lodged the FIR on 15.10.2019 at 10.30 pm and after four days of the FIR, the case record was sent to the ACC.

P.W. 3 Md. Ataur Rahman was the UNO, Sonaimuri Upazilla in 2008. He stated that the accused Md. Nur Hosssain was MLSS under him on 13.08.2008. He forged the signature of two UNOs of Sonaimuri Upazilla and the signature of the Assistant Engineer(Residential) and opened Current Account No. 514 in connivance with the bank officials. There was no post in the name of “Assistant Engineer(Residential)” in any Upazilla of Bangladesh. He did not sign the account opening form of Current Account No. 514. On 01.01.2009, he joined as Additional Deputy Commissioner, Noakhali. On 15.10.2009, he came to know about the alleged forged account and the misappropriation from Md. Ataur Rahman, UNO, Sonaimuri. On that day at 4 pm, he found the accused Md. Nur Hossain in the bank. He did not ask for any written report from the bank officials as regards the Current Account No. 514. He did not make any inquiry as regards the drawer and payee of those cheques and the handwriting of those cheques. At the time of issuance of the cheques, he was not UNO, Sonaimuri. There is a rule to verify the signature of the incoming UNO by the outgoing UNO. On 15.10.2009, he came to know from the bank officials that the cheques and passbook of Current Account No. 514 were received by accused Md. Nur Hossain. He denied the suggestion that Md. Alamgir Bhuiyan was not involved with the occurrence. He also denied the suggestion that he signed the account opening form of Current Account No. 514. He admitted that accused Md. Nur Hossain did not sign the declaration form and on 13.08.2008, Current Account No. 514 was opened. He denied the suggestion that after receiving the cheques from the office of the Deputy Commissioner, Noakhali, he handed over the cheques to the office of the UNO, Sonaimuri. The Office Assistant Abu Bakar Siddique deals with the banking transactions of the office of the UNO, Sonaimuri. He denied the

suggestion that accused Md. Nur Hossain did not fill up the account opening form of Account No. 514 and he also did not deposit the cheques and withdraw the money. On recall, he proved his signature dated 11.06.2005 on the account opening form of Account No. 508 maintained with the Sonali Bank, Chowmuhani Branch which was subsequently transferred to the Sonaimuri Branch. He proved the Account Opening Form as exhibit-3 and his signature as exhibit-3/1. He proved the specimen signature card of Account No. 508 as exhibit-4 and his signature as exhibit-4/1. He proved the account opening form of Current Account No. 514 as exhibit 5. He stated that he did not sign the account opening form as the identifier of Current Account No. 514 and while Current Account No. 514 was opened, he was the UNO, Sonaimuri but he did not sign the account opening form of Account No. 514. He proved the specimen signature of Current Account No. 514 as exhibit 6. He also stated that he did not sign the specimen signature card. The cheques of Current Account No. 514 produced in court were issued on 20.11.2008, 24.11.2008, 30.11.2008, 07.12.2008, 03.05.2009, 18.05.2009 and 19.05.2009. He proved those cheques as exhibit-7 series. When the cheques were issued, he was not the UNO, Sonaimuri. He proved the cheque issue register of Sonali Bank Ltd, Sonaimuri as exhibit-8 and the page No. 92 of the said register as exhibit-8/1. He denied the suggestion that the signatures of the account holders of Account No. 508 and 514 are identical. During cross-examination on behalf of the accused Md. Alamgir Bhuiyan, he stated that when cheque Nos. 6820408 and 8393069 were issued, he was not the UNO, Sonaimuri. He affirmed that between 24.05.2005 to 18.08.2008, he discharged his duty as UNO, Sonaimuri. He denied the suggestion that he signed the account opening form of Current Account No. 514. He admitted that while he was discharging his duty as UNO, Sonaimuri, Mahabubur Rahman was the Office Assistant of the UNO, Sonaimuri. Subsequently, he stated that his name is Shahiduddin Mahbub.

P.W. 4 Md. Zakir Hossain is the Account Officer, Grade-II, Sonali Bank, Maizdee Branch. He stated that he produced cheque Nos. 6806999 dated 29.09.2008 for Tk. 4,50,029, Cheque No. 6820408 dated 10.11.2008 for Tk. 3,06,769, Cheque No. 6820417 dated 04.12.2008 for Tk. 6,15,672, Cheque No. 9050235 dated 25.06.2009 for Tk. 5,97,379, Cheque No. 8393069 dated 12.04.2009 for Tk. 5,97,379 of Current Account No. 431/2007 maintained with Sonali Bank, Maizdee Court, Branch. During cross-examination, he stated that he had no personal knowledge about those cheques.

P.W. 5 Manik Lal Debnath is the Manager of the Sonali Bank, Sonaimuri Branch. He stated that he produced the documents as per the direction of the Court dated 19.02.20013. He produced cheque No. 9877961 dated 20.11.2008 for Tk. 2,02,000, cheque No. 9877962 dated 24.11.2008 for Tk. 17000, cheque No. 9877963 dated 30.11.2008 for Tk. 85,000, cheque No. 9877964 dated 07.12.2008 for Tk. 17,000, cheque No. 9877965 dated 03.05.2009 for Tk. 1,55,000, cheque No. 9877966 dated 18.05.2009 for Tk. 200,000, cheque No. 9877967 dated 19.05.2009 for Tk. 2,40,000 of Current Account No. 514. He produced the deposit slips dated 12.11.2008 of Current Account No. 514 for Tk. 3,06,769 and dated 05.05.2009 for Tk. 5,97,379. He produced the account opening form dated 13.08.2008 along with the declaration form and specimen signature card. He also produced the account opening form of Account No. 508 dated 13.06.2005 along with specimen signature card and the chequebook issue register from 18.04.2009 to 14.04.2010, page No. 92 of Current Account No. 514, cheque Nos. 9877961- 9877970. During cross-examination, he stated that in the account opening form of Account No. 508, it was mentioned that the account was opened on 11.06.2005 in the name of UNO, Sonaimuri. He affirmed that Current Account No. 514 was opened in the joint name of the Assistant Engineer, Upazilla Residential Project and UNO, Sonaimuri. They signed the account opening form and put in their seals. The signature of Current Account No. 514 had been identified by the account holder of Current



Account No. 508. He affirmed that as per page No. 92 of the cheque issue register, cheque No. 9877961-9877970 of Current Account No. 514 (chequebook of 10 pages) was received by Mahabubur Rahman. Abdur Rahim, Zahir Uddin, Abdur Rashid, Nazir Ahmed, Shahidur Rahman and Sahajahan as bearers presented the 07 cheques of Current Account No. 514 produced in court today and received the money. The bearers of those cheques signed on the opposite side of those cheques. During cross-examination on behalf of the accused Md. Nur Hossain, he stated that on 16.08.2011 he joined the office of the Sonali Bank, Sonaimuri Branch and earlier he was posted at the Principal Office, Sonali Bank Ltd, Noakhali.

P.W.6 Narayan Chandra Dey is the Office Assistant, S.A. Section of Deputy Commissioner, Noakhali. He produced page Nos. 1 to 254 as regards the payment of allowance of the Chairman, Members and others and proved those documents as exhibit-9. He also produced the counterpart of the chequebook of Account No. 431/7 of Sonali Bank Limited, Maizdee Court Branch. He proved the counterpart of the said chequebook as exhibit-10 and his signature as exhibit-10/1 series. He also proved the additional records, page Nos. 1 to 53, as exhibit-11. The recipients of those cheques signed on the opposite side of those cheques. Cheque No. 8393060 dated 12.04.2009 was issued for Tk. 5,97,379 and cheque No. 6820408 dated 10.11.2008 was issued for Tk. 3,06,00,769. Md. Nur Hossain received those cheques after signing on the counterpart of the chequebook. During cross-examination, he stated that cheque No. 839069 and cheque No. 6820408 were received by Md. Nur Hossain and no specific person was assigned to receive the account payee cheques issued from the office of the Deputy Commissioner, Noakhali. At the time of issuance of the cheque, he was posted at the Office of the Deputy Commissioner, Noakhali. At the time of receipt of the two cheques, no authorization letters were produced. He denied the suggestion that Md. Nur Hossain did not receive and deposit two cheques from him. On recall, he stated that cheque No. 6820408 was issued by the Deputy Commissioner Md. Abdul Hai. He served under him and his

signature is known to him. He proved the said cheques and signature of the Deputy Commissioner as exhibit-22 and 22/1 respectively and the cheque No. 8393069 was issued by Mizanur Rahman, DC, Noakhali and his signature is also known to him. He proved the said cheque as exhibit-23 and the signature of the Deputy Commissioner as exhibit-23/1.

P.W. 7 Md. Abu Bakar Siddique is the C.A-Cum-UDA, R.M. Section, Office of the Deputy Commissioner, Noakhali. He stated that he was posted as C.A-Cum-UDA in the Office of the Sonaimuri Upazilla from 06.03.2006 to 30.06.2011. On 14.10.2009, the UNO, Sonaimuri directed him to know about the irregularity as regards the payment of the allowances of the Chairman, Members and village Police for the financial year 2008-2009. Narayan Chandra Dey of the Local Government Division informed him that Md. Nur Hossain who was posted at the office of the UNO, Sonaimuri received two cheques. The accused Md. Nur Hossain stated to UNO, Sonaimuri that he could not remember whether he received the two cheques. Subsequently, the UNO, Sonaimuri informed that two cheques were deposited in the Current Account No. 514 maintained with Sonali Bank Ltd, Sonaimuri Branch. He along with Shahidullah and Shahid Uddin went to the Sonali Bank Ltd, Sonaimuri Branch and collected the photocopy of the account opening form of said account. After that, the UNO along with him, Md. Nur Hossain and others came to the bank and examined the documents of Current Account No. 514. At that time former UNO Ataur Rahman and former Upazila Chairman A.F.M. Babul were present there. In reply to a query made by UNO Kazi Abdur Rahman, accused Md. Nur Hossain admitted at the desk of the Second Officer of Sonali Bank that he filled up the account opening form and thereafter police arrested him. He proved the seizure list dated 23.12.2009 as exhibit-12 and his signature as exhibit-12/1. He proved his signature on the Zimmanama(bond) as exhibit-12/2. He proved the register as regards the payment of the salary and allowances of the Chairman, Members and village Police as exhibits-13-17. During cross-examination made on behalf of accused Md. Nur Hossain, he

affirmed that the salary and the allowances of the Chairman, Members and the village police were paid for the years 2008 to 2009. In 2009 accused Md. Nur Hossain was posted in the office of the Upazila Chairman on deputation. He admitted that Current Account No. 508 maintained in the name of UNO, Sonaimuri was active. In the account opening form of Current Account No. 514 as the identifier, there is a signature and seal of UNO, Sonaimuri who is the account holder of Account No. 508. He denied that accused Nur Hossain did not receive any cheque.

P.W. 8 Shahid Uddin Mahbub is the Office Assistant of the Office of the UNO, Sonaimuri. He stated that he was entrusted with the duty for payment of the salary and allowances of the Chairman, Members and village police. The Deputy Commissioner, Noakhali issued the cheques in favour of the UNO for payment of the allowances of the Chairman, Members and others and the said cheques were deposited in the account of the UNO, Sonaimuri maintained with Sonali Bank, Sonaimuri Branch and after withdrawal of the money, the salary and allowances were used to pay to the beneficiary and the cheque was deposited under the signature of the UNO, Sonaimuri following the instruction of the DC. He had given the reply after examining the records as regards the expenditure for the years 2008 to 2009. Subsequently, the office of the Deputy Commissioner found that there was a discrepancy in the statement given to him. The UNO informed him that out of five cheques, Shahid Uddin Mahbub received three cheques. From the handnote written by Abu Bakar Siddique, it was found that Md. Nur Hossain received two cheques from Maizdee Court but there was no entry of those cheques in the register. As per instruction of the UNO, he received the information as regards Current Account No. 514 and on the same date, the UNO, Sonaimuri talked to ADC Kazi Ataur Rahman and informed all the employees that money from two cheques was collected through Current Account No. 514 maintained with Sonali Bank Ltd, Sonaimuri Branch. The UNO instructed them to collect the information about the said account. On the same day at noon, the UNO along with

Shahidullah and Abu Bakar went to Sonali Bank, Sonaimuri Branch and he also took Md. Nur Hossain along with him. At that time, the ADC Aatur Rahman was also present at the Bank. On scrutiny of the account opening form, it was found that "Current Account 508" is the handwriting of accused Md. Nur Hossain. On 23.12.2009, the officer of the ACC seized the documents and prepared the seizure list and he signed the seizure list. He proved his signature on the said seizure list as exhibit 12/13. During cross-examination, he affirmed that no discrepancy as regards the payment of allowances of the Chairman, Members and the village Police was found for the year 2008 to 2009. He denied the suggestion that handwriting on the account opening form of the Current Account Nos. 514 and 508 are similar. He denied the suggestion that accused Md. Nur Hossain did not receive any cheque from the Local Government Division and he also did not open Current Account No. 514 and he also did not misappropriate the money.

P.W. 9 A.K.M Shahidullah is the Office Assistant of UNO, Sonaimuri. He stated that on 20.03.2008 he was posted at Sonaimuri Upazila in the office of the UNO, Sonaimuri as Office Assistant. He received three cheques issued for payment of the salary and allowances of the Chairman and Members of Union Parishad and the village Police for the year 2008 to 2009. He presented 03 cheques to the UNO, Sonaimuri and the three cheques were handed over to Shahid Uddin Mahbub. In 2009 report was called for by the Deputy Commissioner, Noakhali and a reply was given from the office of the UNO, Sonaimuri. Subsequently, it was informed that there was a discrepancy in the report. Out of five cheques, accused Md. Nur Hossain did not deposit two cheques received by him. The office of the Deputy Commissioner informed that the said two cheques were credited through Current Account No. 514 maintained with Sonali Bank Limited, Sonaimuri Branch and Tk. 9,04,148 were withdrawn by seven cheques. On 15.10.2009 Kazi Abdur Rahman was the UNO, Sonaimuri. Before depositing the disputed 02 cheques, Current Account No. 514 was opened. He denied the suggestion that Current Account No. 514 was opened

under the joint signature of UNO, Sonaimuri and Assistant Engineer(Residential). He denied the suggestion that the handwriting of the Current Account Nos. 514 and 508 are identical.

P.W. 10 Shafiqur Reza Biswas is the UNO, Sonaimuri. He stated that from 31.08.2008 to 26.08.2009 he was posted as UNO, Sonaimuri. Before his joining, on 13.08.2008, accused Md. Nur Hossain in connivance with accused Md. Alamgir Bhuiyan opened Current Account No. 514 through the joint signature of UNO and Assistant Engineer. Two cheques dated 10.11.2008 and 12.04.2008 for an amount of Tk. 3,06,769 and Tk. 5,97,379 respectively was received by accused Md. Nur Hossain from 15.04.2009-11.11.2008. Those cheques were deposited in Current Account No. 514 and the said account was opened by forging his signature. Subsequently, the statement of account for the year 2008 to 2009 was sent to the office of the Deputy Commissioner. While he was posted at Faridpur, he came to know that accused Md. Nur Hossain had withdrawn Tk. 9,04,319 by 02 cheques issued from Current Account No. 514 and accused Md. Alamgir Bhuiyan was also involved in the alleged misappropriation. He denied the suggestion that he signed the account opening form of Current Account No. 514. He stated that accused Md. Nur Hossain served under him as MLSS. On 13.08.2008 Current Account No. 514 was opened and at that time he was the UNO, Sonaimuri. No discrepancy was found as regards the payment of the salary and allowances of the Chairman, Members and the village Police. Subsequently, UNO found the discrepancy. Ataur Rahman was the previous UNO, Sonaimuri and he did not sign the account opening form of Current Account No. 514. His signature is known to him. He affirmed that he has no personal knowledge as regards the opening of Current Account No. 514. He denied the suggestion that UNO Ataur Rahman signed the account opening form of Current Account No. 514 and that Account No. 514 was opened in connivance with the office employee of DC, Noakhali and the UNO, Sonaimuri. He denied the suggestion that accused Md. Alamgir Bhuiyan was not involved with the

opening of the Current Account No. 514. He could not say the name of the person who is the account holder of Current Account No. 514. He admitted that on 31.08.2008 he joined as UNO, Sunaimuri. The salary and allowances of the chairman, members and the village police were paid for the year 2008 to 2009. He denied the suggestion that accused Md. Alamgir Bhuiyan is not involved with the opening of the Current Account No. 514.

P.W. 11 Shamima Ferdous stated that she was posted as Deputy Director in the office of the Deputy Commissioner, Noakhali and served there from 2008 to 2009. She found the discrepancy as regards the payment of salary and the allowances of the Chairman, Members and the village police through Current Account No. 514. The UNO informed that the accused Md. Nur Hossain deposited 02 cheques and subsequently by withdrawing the money misappropriated the same. He forged the signature of the two UNOs on the same date. On scrutiny of the records, it is found that MLSS received 02 cheques dated 11.11.2008 and 12.04.2009 but he did not hand over those cheques to the UNO, Sonaimuri. The accused Md. Nur Hossain received the cheques dated 11.11.2008 and 12.04.2009. The accused Md. Nur Hossain received the cheque No. 6820408 on 10.11.2008. She proved the counterpart of the chequebook as exhibit-10/1/1. She proved the counterpart of cheque No. 8393069 dated 15.04.2009 as exhibit-10/2/1. During cross-examination, she stated that no allegation has been made to the effect that the allowances of Chairman, Members and the village police were not paid in the year 2008 - 2009. The accused Md. Nur Hossain received total 05 cheques in the year 2008- 2009. She also affirmed that Md. Nur Hossain signed the counterpart of the cheque dated 10.11.2008 and 15.04.2009. She denied the suggestion that accused Md. Nur Hossain did not receive the cheques dated 11.11.2008 and 15.04.2009.

P.W. 12 Md. Siraj Uddin is the seizure list witness. He is the UDA (retired). He stated that on 12.01.2010 he was serving in the office of the DC, Noakhali. On that day, Deputy Director Md. Shahidullah of the ACC

seized documents. He proved his signature as exhibit-18/1. The signature of Office Assistant Narayan Chandra Dey is known to him. He proved his signature as exhibit 18/12. During cross-examination, he stated that it is not possible to say which documents were seized by the investigating officer without examining those. He had no personal knowledge about the documents seized.

P.W. 13 Nurun Nahar is the Office Assistant of the office of the DC, Noakhali. She stated that she joined on 02.08.2009. On 12.01.2010, the Deputy Director Shahidullah seized the documents. She signed the seizure list. She proved her signature as exhibit-18/3. She also stated that accused Md. Nur Hossain did not receive any cheque in her presence. During cross-examination, she stated that she had no personal knowledge about the seized documents.

P.W. 14 Md. Nurul Islam is the MLSS of the office of the DC, Noakhali. He stated that from 06.09.2006 to 10.03.2011 he was posted as MLSS in the office of the DC, Local Government Division, Noakhali and accused Md. Nur Hossain, MLSS of UNO is known to him. On 11.11.2008 and 15.04.2009 accused Md. Nur Hossain received 02 cheques from the Office Assistant Narayan Chandra Dey. At that time, accused Md. Nur Hossain signed and filled up the date. He proved the signature of the accused Md. Nur Hossain as exhibit-9/1. The accused Md. Nur Hossain signed on page 135 which has been proved as exhibit-9/1, 9/1/1. The accused Md. Nur Hossain received the cheque on 15.04.2009. During cross-examination, he stated that he and accused Md. Nur Hossain served in the same office. He denied the suggestion that on 11.11.2008 and 15.02.2009 accused Md. Nur Hossain did not receive any cheque.

P.W. 15 Humayun Kabir is the Manager(retired) of the Sonali Bank Limited. He stated that from 10.05.2007 to 11.09.2008 he was the Manager of Sonaimuri Branch. Current Account No. 514 was opened in the name of the UNO, Sonaimuri on 13.08.2008 and on that day he was present at the

Sonali Bank Sonaimuri Branch. Although he was present on that day but the Second Officer opened Current Account No. 514 beyond his knowledge and after 28 days he was transferred to Feni. When he was discharging his duty as Sonaimuri, there was no transaction in the Current Account No. 514 and he was not aware of the Current Account No. 514. The office of ACC, Noakhali informed him in 2009 that Current Account No. 514 was a forged account and through that account, the money was misappropriated. Thereafter, he went to the bank and found that from the opening of the account to the issuance of the cheque all work has been done by the Second Officer Alamgir Bhuiyan and there is no signature of the Manager. In the account opening form, the Second Officer Md. Alamgir Bhuiyan signed in place of the signature of the Manager and opened the account. The Second Officer Md. Alamgir Bhuiyan used to discharge his duty along with him. His signature is known to me. He proved the signature of Md. Alamgir Bhuiyan as exhibit-5/1. The accused Md. Alamgir Bhuiyan also signed the account opening form beside the chequebook. He also proved the signature of Alamgir Bhuiyan as exhibit-5/2. During cross-examination, he affirmed that while he was discharging his duty as Manager, Sonali Bank, Sonaimuri Branch, Officer Md. Hanif was entrusted with the duty to open the account. Before opening the account, he used to take the signature of the Manager and fill up the form. Thereafter, he presented the form to the Manager for approval. He affirmed that the account holder of Current Account No. 508 is the identifier of Current Account No. 514. He denied the suggestion that during his temporary absence accused Md. Alamgir Bhuiyan bona fide signed the account opening form and there was a similarity in the signature of the identifier. He affirmed that as a Manager he left the office after scrutiny of the daily work of that branch. He denied the suggestion that on the day of opening Current Account No. 514, he came to know about the said account.

P.W. 16 Md. Motahar Hossain is the Senior Executive Officer, at Sonali Bank, Dhanmodi Branch. He stated that from 13.09.2008 to



13.01.2010 he was the Manager of Sonali Bank, Sonaimuri Branch. On 22.12.2009, the DD Md. Shahidullah went to his office and seized the documents. He proved the seizure list as exhibit-19 and his signature as exhibit-19/1. During cross-examination, he stated that he had no personal knowledge about the seized documents. On 20.11.2008 Tk.2,02,000, on 24.11.2008 Tk. 17000, on 30.11.2008 Tk. 85,000, on 07.12.2008 Tk. 1700, on 04.05.2009 Tk. 1,55,000, on 12.05.2009 Tk. 200000, on 24.05.2009 Tk. 240,000 were withdrawn from Current Account No. 514. There was a balance of Tk. 3,448 on 24.05.2009 and thereafter no money was deposited in the said account and at the time of withdrawal of money he was not the Manager of the said branch. The UNO informed over the telephone that the alleged signature of the UNO on the account opening form is not the same signature of the UNO. On 13.06.2005, Account No. 508 was opened in the name of the UNO, Sonaimuri and both the signature on the account opening form of Account No. 508 and Current Account No. 514 are not the same and the dates are also not the same.

P.W. 17 Abul Hashem stated that before his retirement he was suffering from a brain stroke. He is not fully sound. The defence declined to cross-examine him.

P.W. 18 Md. Hanif is an Officer (retired), Sonali Bank. He stated that from 23.1.2008 to 15.01.2012 he was posted as Officer of Sonali Bank, Sonaimuri Branch. On 22.12.2009, the investigating officer seized the documents and prepared the seizure list. He signed the seizure list. He proved his signature as exhibit-19/2. He stated that he used to look after the account of the government. On the day of the opening Current Account No.514, Senior Officer Md. Alamgir Bhuiyan instructed him to entry the account opening form in the register and he was entrusted with the duty of opening account and he made an entry in the register. At the relevant time, Senior Officer Alamgir Bhuiyan became sick and at that time the Manager instructed him to discharge the duty of Md. Alamgir Bhuiyan and during

one month, he received 03 cheques of Current Account No. 514 and verified the signature of the drawer of three cheques. After scrutiny of the signatures, he passed those cheques. On 24.11.2008 Tk. 17,000, on 30.11.2008 Tk. 85,000, and on 17.11.2008 Tk. 17000 was withdrawn. The accused Md. Alamgir Bhuiyan and accused Md. Nur Hossain is known to him. The employees of the UNO as bearers presented 3 cheques which were passed by him and no officer/employee of the bank was the bearer of those cheques. He admitted that in the absence of the Manager, the Second Officer used to discharge the duty of the Manager.

P.W. 19 Kamol Bihari Majumder is the Senior Officer(retired), Sonali Bank Limited. He stated that in 2009, he was the Senior Officer of Sonali Bank, Maizdee Court Branch. Sonali Bank, Maizdee Court Branch sent 05 cheques through registered post for collection which was issued by the Deputy Commissioner, Noakhali in favour of the UNO, Sonaimuri and after verification, the said cheques were sent to the Sonali Bank, Sonaimuri Branch. Subsequently, the investigating officer seized those cheques on 12.01.2010 and prepared the seizure list. He proved the seizure list as exhibit-20 and his signature as exhibit-20/1. During cross-examination, he stated that after verification, the signature of the drawer was found correct but he has no personal knowledge about those cheques.

P.W. 20 Md. Rafiq Ullah is an Officer (retired), Sonali Bank Limited. He stated that on 12.01.2010 he was posted as Officer of Sonali Bank Limited, Maizdee Court Branch. On that day, the investigating officer seized 05 cheques issued by the DC, Noakhali which were sent from the Sonali Bank, Sonaimuri Branch for collection. He proved his signature as exhibit-20/2. During cross-examination, he stated that those cheques are not available in Court.

P.W. 21 Bhabtush Chakrobarty is the Senior Executive Officer, Sonali Bank, Chowmohani Branch. He stated that on 12.01.2010 he was posted as Executive Officer, Maizdee Court Branch. On that day, the

investigating officer seized 05 cheques issued by the DC, Noakhali which were sent by the Sonali Bank, Sonaimuri Branch. The DC, Noakhali issued those cheques in favour of the UNO which was sent by the Sonali Bank, Sonaimuri Branch for collection. After verification, the signature of DC was found correct. During cross-examination, he stated that seized cheques are not available in Court.

P.W. 22 Kirti Narayan Bhumik is the Senior Officer, Sonali Bank, Char Motua Branch. He stated that on 12.01.2010 he was posted as Officer, Sonali Bank, Maizdee Court Branch and he used to discharge his duty as regards the administrative branch. On that day, the investigating officer seized 05 cheques of Account No. 431 of 2007 and handed over those cheques in his custody and he signed the Zimmanama (bond). He proved his signature as exhibit-20/4. The seized cheques are cheque No. 6806999 dated 29.09.2008, cheque No. 6820408 dated 10.11.2008, cheque No. 6820417 dated 4.12.2008, cheque No. 8393069 dated 12.04.2009, cheque No. 9050235 dated 25.6.2009. In 2010 he was transferred to Kankirhat Branch, Sonali Bank and handed over those cheques to Mr. Nuru Nabi, Officer of the Sonali Bank. During cross-examination, he stated that he is not the witness of the seizure list dated 12.01.2010.

P.W. 23 Syed Md. Shahidullah is the Deputy Director of Anti-Corruption Noakhali. He stated that he was posted at Noakhali from 23.04.2009 to 21.04.2013. Initially, the officer-in-charge A.K.M. Kawsar Chowdhury was the investigating officer of the case. Subsequently, the case record was sent to him. Thereafter, he sent the records to the Anti-Corruption Commission, Head Office. After that, the Anti-Corruption Commission vide memo dated 24.11.2009 directed the Director, Chattogram Division to appoint an investigating officer and the office of the Anti-Corruption Commission, Chattogram Division by memo No. 1651 dated 10.12.2009 appointed him as investigating officer. During the investigation, he collected the documents from Sonaimuri Thana and during

the investigation, he visited the place of occurrence, recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898 and seized the documents. After investigation, he found the prima facie truth of the allegation made against the accused persons and submitted a memo of evidence against them. After that, he obtained approval on 20.04.2010 for submitting charge sheet against the accused persons. During cross-examination, he stated that in the register of the payment of the salary and allowances of the Chairman, Members and Village Police. (Exhibit-14) it has been mentioned that the allowances of the Chairman, Members and village police were paid. He affirmed that he did not send the specimen signature of the accused Md. Nur Hossain put on the acknowledgement receipts of the Local Government Division, Noakhali for expert opinion. The 07 cheques have been issued in the name of several persons but they were not implicated as accused in the case. On the opposite side of the cheques, the names of the bearers have been written but no designation and address were written. He denied the suggestion that accused Md. Nur Hossain did not sign the cheques. He seized the deposit slip No. 13142 dated 12.11.2008 and another deposit slip dated 26.04.2009. He proved those deposit slips as exhibit-21 and 21/1. In the deposit slip, there is a signature but no name has been mentioned. On a bare eye, the specimen signature cannot be ascertained but 'Md. Nur Hossain' was not written there. In the deposit slip 'UNO' was written. In the application for opening Current Account No. 514, there is no name and specimen signature of Md. Nur Hossain but the form has been filled up by Md. Nur Hossain. In the account opening form dated 13.08.2009, there were two signatures and seals and the date has been mentioned as 07.08.2008. The UNO and Assistant Engineer signed the form. The chequebook, deposit slip, seal and counterpart of Current Account No. 514 were not seized from Md. Nur Hossain. He denied the suggestion that at the instance of Manager Humayun, accused Alamgir Hossain was falsely implicated in the case.

Learned Advocate Mr. Ashik-E-Rasul appeared along with learned Advocate Md. Faisal Ahsan on behalf of the appellant Md. Alamgir Bhuiyan submits that P.W. 18 Md. Hanif is the responsible officer for opening the account of the government and he initiated the file for opening the Current Account No. 514 and sent the file to the Manager for approval. Since the Manager of the concerned branch was not present at the relevant time, the appellant bonafide approved the account opening form of Current Account No. 514 but the investigating officer malafide submitted charge sheet against the accused in connivance with P.W. 18 and 15. He further submits that no evidence was adduced by the prosecution to prove that accused Md. Alamgir Bhuiyan verified the signatures of drawer of the cheques by which the alleged money was withdrawn from Current Account No. 514. He also submits P.W. 8 Shahid Uddin received the chequebook of Current Account No. 514 and subsequently the staff of the office of the UNO, Sonaimuri had withdrawn the money from the said account. P.W. 18 Md. Hanif and P.W. 8 Shahid Uddin Mahabub are responsible for opening the fake Current Account No. 514 in the name of the UNO and in connivance with each other subsequently, they withdrew the money from the said account. He lastly submits that the allowances of the Chairman, Members and others were paid and no misappropriation took place. The prosecution failed to prove the charge against the accused.

The learned Advocate Mr. Md. Zafor Sadek appearing on behalf of the accused Md. Nur Hossain submits that no evidence was adduced by the prosecution to prove that the accused Md. Nur Hossain deposited two cheques in the Current Account No. 514 and withdrew money from that account. He further submits that the accused Md. Nur Hossain is the MLSS and an orderly of the office of UNO, Sonaimuri and he discharged his duty under P.W. 8 Shahid Uddin Mahabub. Having drawn attention to the evidence of P.W. 5, 8 and 18, he submits that the alleged cheques of Current Account No. 514 were received by P.W. 8 Shahid Uddin Mahabub from the bank and the total Tk. 9,04,148 were withdrawn by 7 cheques

through Abdur Rahim, Zakir Uddin, Abdur Rashid, Nazir Ahmed, Shahidur Rahman and Shahjahan who are the staff of the office of the UNO, Sonaimuri and subsequently, allowances of the Chairman, Members and others were paid. The prosecution failed to prove the charge against the accused.

The learned Advocate Mr. Asif appearing on behalf of the Anti-Corruption Commission in Criminal Appeal No. 10068 of 2018 submits that the accused Md. Alamgir Bhuiyan verified the forged signature of the then UNO, Sonaimuri, Noakhali (exhibit-4/1) on the account opening form of Current Account No. 514 (exhibit-5) and he also had given approval (exhibit-5) for opening the Current Account No. 514 and issued the chequebook (exhibit-5/2) of the Current Account No. 514 in connivance with accused Md. Nur Hossain who received cheque No. 6820408 dated 10.11.2008 and cheque No. 8393069 dated 12.04.2008 from the office of the Deputy Commissioner, Noakhali and misappropriated total Tk. 9,04,148 by withdrawing the said amount through seven cheques (exhibit-7 series) of Current Account No. 514. The prosecution proved the charge against the accused to the hilt beyond all reasonable doubt.

The learned Advocate Mr Shaheen Ahmed appearing on behalf of respondent No. 2 in Criminal Appeal No. 10693 of 2018 submits that accused Md. Nur Hossain filled up the account opening form of Current Account No. 514 and he also received two cheques from the office of DC, Noakhali and deposited those cheques in Current Account No. 514 and he withdrew the money from said account and misappropriated. He further submits that as the recipient of two cheques issued by the DC, Noakhali issued for payment of the allowances of the Chairman, Members and others, he had special knowledge about the persons who deposited the two cheques and withdrew the money, but he did not give any explanation who deposited the cheques in the Current Account No. 514 and withdrew the money from that account. He prayed for the dismissal of the appeal.

I have considered the submission of the learned Advocates engaged on behalf of the appellants in both the appeals and the learned Advocates engaged on behalf of respondent No. 2 in both the appeals, perused the evidence, impugned judgment and order passed by the trial Court and the records.

On perusal of the records, it appears that P.W. 3 Md. Ataur Rahman discharged his duty as UNO, Sonaimuri from 24.04.2005 to 18.08.2008. P.W. 10 Md. Shafiqur Reza Bishwas discharged his duty as UNO, Sonaimuri from 31.8.2008 to 26.08.2009. P.W. 1 Kazi Md. Abdur Rahman discharged his duty as UNO, Sonaimuri on 14.10.2009. At the time of opening Current Account No. 514 on 13.08.2008 P.W. 3 Md. Ataur Rahman was the UNO, Sonaimuri. On 14.10.2009 P.W. 1 found inconsistency in the statement sent by P.W. 8 Shahid Uddin Mahbub to DC, Noakhali regarding payment of the allowances of Chairman, Members and others. There is a seal of UNO, Sonaimuri on the account opening form of Current Account No. 514(exhibit-5) and there is also a signature(exhibit-4/1) on the top of the seal. Current Account No. 508 was opened on 13.06.2005 when P.W. 3 was UNO, Sonaimuri. On perusal of exhibit-5 and the signature of P.W. 3 (exhibit-3/1) on the account opening form (exhibit-3) of Current Account No. 508 maintained with Sonali Bank, Sonaimuri Branch in a juxtaposition it reveals that the signature (exhibit-3/1) of the UNO, Sonaimuri (P.W.3) on exhibit-3 is not identical to the alleged signature of UNO, Sonaimuri (exhibit-4/1) on exhibit-5. P.Ws. 1, 3 and 10 stated that they did not sign the account opening form of Current Account No. 514 (exhibit-5). Therefore, I am of the view that none of the UNO, Sonaimuri signed (exhibit-4/1) on the account opening form (exhibit-5) of Current Account No. 514 maintained with Sonali Bank Ltd, Sonaimuri Branch and the said account is a forged account.

On perusal of the evidence of P.Ws. 6, 7, 11 and 14 it further reveals that the accused Md. Nur Hossain received cheque Nos. 6820408 dated

10.11.2008 (exhibit-22) and cheque No. 8393069 dated 12.04.2009 (exhibit-23) from the office of DC, Noakhali. Two deposit slips of Current Account No. 514 were proved as exhibits-21 and 21/1. P.W. 23 Investigating Officer Syed Md. Shahidullah stated that on a bare eye, the specimen signature of two deposit slips (exhibit-21 and 21/1) could not be identified but 'Md. Nur Hossain' was not written there. He affirmed that in the deposit slips 'UNO' was written. No evidence is adduced by the prosecution to show that the accused Md. Nur Hossain deposited the said cheques( exhibits- 22 and 23) in Current Account No. 514 maintained with Sonali Bank Limited, Sonaimuri Branch. The signatures on the two deposit slips (exhibit-21 and 21/1) and the admitted signature of accused Md. Nur Hossain was not sent for expert opinion. In the absence of expert opinion as regards the specimen signature on exhibits-21 and 21/1 and the admitted signature of accused Md. Nur Hossain, it cannot be held that accused Md. Nur Hossain deposited two cheques i.e. exhibits- 22 and 23 in the Current Account No. 514.

P.W. 15 Humayun Kabir, Manager of Sonali Bank, Sonaimuri, Branch stated that the accused Md. Alamgir Bhuiyan identified the signature of the UNO, Sonaimuri on the account opening form of Current Account No. 514 (exhibit-5) as the identical signature of the UNO, Sonaimuri (exhibit-3/1) on the account opening form of Account No. 508 (exhibit-3) and he approved the account opening form to open the Current Account No. 514. Subsequently, he also issued the chequebook of the said account containing 10 pages from serial Nos. 9877961 to 9877970 (exhibit-5/2). Admittedly, P.W. 18 Md. Hanif is the responsible officer of the bank for opening the government account. He stated that after applying for opening Current Account No. 514, he made an entry in the register and subsequently he also verified the signature of the drawer of three cheques issued from Current Account No. 514. P.W. 18 Md. Hanif handed over the chequebook of Current Account No. 514 to P.W. 8 Shahid Uddin Mahbub who is the Office Assistant of the Office of UNO, Sonaimuri. From the



above evidence, it is clear as day light that P.W. 18 Md. Hanif and the appellant Md. Alamgir Bhuiyan are responsible for opening the forged Current Account No. 514 in the name of Assistant Engineer (Housing).

P.W. 5 Manik Lal Debnath, Manager of Sonali Bank Limited, Sonaimuri Branch stated that the Mahabubur Rahman received the Cheque Nos. 9877961-970 of Current Account No. 514 which has been mentioned on page No. 92 (exhibit-8/1) of the cheque issue register(exhibit-8). The said Mahabubur Rahman is examined as PW. 8. P.W. 5 also stated that as bearer Abdur Rahim, Zahir Uddin, Abdur Rashid, Nazir Ahmed, Shahidur Rahman and Sahajahan presented 7 cheques (exhibit-7 series) of Current Account No. 514 and had withdrawn money from Current Account No. 514. Out of 7 cheques (exhibit-7 series), P.W. 18 Md. Hanif verified the signatures of the drawer of 03 cheques of Current Account No. 514. He stated that the staff of the office of the UNO as bearer presented three cheques for withdrawal of the money and none of the bank officials was the bearer of those cheques. No evidence is adduced by the prosecution as regards the verification of the signatures of the drawer of 4(four) other cheques of Current Account No. 514. P.Ws. 5, 15, 18 and the investigating officer P.W. 23 did not say anything regarding the verification of the signature of the drawer of four other cheques of Current Account No. 514 and they suppressed the fact as regards the verification of the signatures of the drawers of four other cheques issued from Current Account No. 514. The accused Md. Nur Hossain neither deposited two cheques i.e. exhibits-22 and 23 issued by the DC, Noakhali in the forged Current Account No. 514 nor he withdrew any money from said account. He is a MLSS and an orderly under P.W. 8 Shahid Uddin Mahbub.

The cheque No. 6820408 dated 10.11.2008(exhibits-22) and cheque No. 8393069 dated 12.04.2009(exhibit-23) were issued by DC, Noakhali in favour of the UNO, Sonaimuri for payment of the allowances of the Chairman, Members and others for the years 2008 to 2009 and the said

cheques were deposited on 12.11.2008 and 05.05.2009 in the Current Account No. 514. P.Ws. 1, 6, 7, 8, 10, 11 and 23 admitted that the allowances of the Chairman, Members and others for the year 2008 to 2009 were paid. P.W. 8 Shahid Uddin Mahabub, Office Assistant of the office of the UNO, Sonaimuri received the chequebook (ten cheques) of Current Account No. 514 from the Sonali Bank, Sonaimuri Branch and as custodian of the cheques of Current Account No. 514, he has to explain who subsequently withdrew the money from the bank issuing the cheques received by him. It is found that the prosecution failed to produce any evidence to show that the accused Md. Nur Hossain withdrew the money from Current Account No. 514 and the prosecution also could not adduce any evidence to prove that accused Md. Alamgir Bhuiyan verified any cheque by which the money was withdrawn from the forged Current Account No. 514. P.W. 8 did not say anything as to how the money was withdrawn issuing the cheques of forged Current Account No. 514 received by him. Therefore, it is crystal clear that P.W. 8 Shahid Uddin Mahabub is involved with the opening of the forged Current Account No. 514 and withdrawal of money from the said account.

On perusal of the evidence of P.W. 8 Shahid Uddin Mahabub, it reveals that while he submitted the report regarding payment of allowances of Chairman, Members and others to the DC, Noakhali, a discrepancy was detected and thereafter the matter was informed to the UNO, Sonaimuri. It is already found that the two cheques exhibits-22 and 23 were deposited in the Current Account No. 514 and the chequebook of Current Account No. 514 was received by P.W. 8 Shahid Uddin Mahabub who is the Office Assistant of the office of UNO, Sonaimuri. P.Ws. 1, 6, 7, 8, 10, 11 and 23 admitted that the allowances of the chairman, members and village police from 2008 to 2009 were paid to them. No explanation was given by them from where the said allowances were paid. No allegation has been made by the Chairman, Members and others that their allowances were not paid. P.W. 8 is the dealing assistant of the UNO, Sonaimuri and responsible for

payment of the said allowances. Therefore, it is crystal clear that P.W. 8 Shahid Uddin Mahbub withdrew the money issuing cheques of forged Current Account No. 514 in the name of Abdur Rahim, Zahir Uddin, Abdur Rashid, Nazir Ahmed, Shahidur Rahman and Sahajahan who are also staff of UNO, Sunaimuri. It is inferred that when the office of DC, Noakhali found the discrepancy regarding the payment of the allowances of the Chairman, Members and others, P.W. 8 subsequently paid the allowances to the Chairman, Members and others. P.W. 8 Shahid Uddin Mahbub falsely deposed in the case against accused Md. Nur Hossain to shield himself from criminal liability.

P.W. 18 Md. Hanif is the dealing officer of the bank regarding opening the government account and after inquiry, he gave initials on the account opening form (exhibit-5) of the Current Account No. 514 and he handed over the chequebook of said account to P.W. 8 Shahid Uddin Mahabub. Admittedly, the signatures of the drawer on three cheques of Current Account No. 514 were verified by P.W. 18 Md. Hanif. The accused Md. Alamgir Bhuiyan is not named in the FIR and he did not verify the signature of the drawer of any cheque issued for the withdrawal of money from Current Account No. 514. No evidence has been adduced by the prosecution against the accused Md. Alamgir Bhuiyan regarding misappropriation. Therefore, I am of the view that the accused Md. Alamgir Bhuiyan bonafide verified the signature of UNO, Sonaimuri on the account opening form of Current Account No. 514 (exhibit-5). He is only responsible for negligence of duty.

To prove the charge under section 409 of the Penal Code, 1860 only proof of entrustment or dominion over the property is not sufficient. The prosecution shall prove that the accused has dishonestly misappropriated or converted the property to his use or dishonestly used or disposed of that property in violation of any law or willfully suffered another person or persons so to do. The prosecution failed to prove that the accused Md. Nur

Hossain and accused Md. Alamgir Bhuiyan withdrew money from forged Current Account No. 514 and misappropriated the allowance of the Chairman, Members and village police of different Unions of Sonaimuri Upazila.

P.W. 8 Shahid Uddin Mahabub received the chequebook of forged Current Account No. 514 from P.W. 18 Md. Hanif and he is the custodian of those cheques. He had the special knowledge who had withdrawn the money issuing the cheques received by him. Abdur Rahim, Zahir Uddin, Abdur Rashid, Nazir Ahmed, Shahidur Rahman and Sahajahan who are staff of the UNO, Sonaimuri as bearers presented 7 cheques (exhibit 7 series) and withdrew the money from the said account. P.W. 23 Investigating Officer Syed Md. Shahidullah malafide shield those bearers and said that he did not find the names and addresses of the bearers of 7 seven cheques (exhibit-7 series), although they are the staff of the UNO, Sonaimuri. No explanation has been given by P.W. 8 Shahid Uddin Mahabub and P.W. 23 Syed Md. Shahidullah (investigating officer) as to how the said staff of UNO, Sonaimuri had withdrawn the money as bearers of the seven cheques (exhibit-7 series) received by P.W. 8 from the Bank. P.W. 18 Md. Hanif handed over the chequebook of Current Account No. 514 to P.W. 8 and he verified the signatures of the drawer of three cheques of the said account. Therefore, I am of the view that P.W. 8 Shahid Uddin Mahabub and P.W. 18 Md. Hanif are the mastermind and in connivance with each other, they opened the forged Current Account No. 514 and subsequently, they withdrew the money from the said account. The accused persons are only the 'scapegoat'. The trial Court failed to assess and evaluate the evidence of prosecution witnesses in its true perspective and illegally passed the impugned judgment and order of conviction and sentence against the accused persons.

By filing a supplementary affidavit on 23.07.2023 on behalf of the accused Md. Alamgir Bhuiyan having annexed a death certificate issued by

the Penal Mayor, Noakhali Pourashava it has been stated that during the pendency of the appeal, accused Md. Alamgir Bhuiyan died on 22.09.2021. Therefore, the appeal so far relates to the sentence of imprisonment passed against the accused Md. Alamgir Bhuiyan is abated in view of the provision made in section 431 of the Code of Criminal Procedure, 1898.

In view of the above evidence, findings, observation and proposition, I am of the view that the prosecution failed to prove the charge against the accused persons beyond all reasonable doubt.

The Criminal Appeal No. 10068 of 2018 filed by accused Md. Alamgir Bhuiyan, so far it relates to the sentence of imprisonment is abated and the sentence of fine is hereby set aside.

The Criminal Appeal No. 10693 of 2018 is allowed.

The impugned judgment and order of conviction and sentence passed by the trial Court against the accused Md. Nur Hossain is hereby set aside.

Send down the lower Court's record at once.

