

Present :

Mr. Justice Ashish Ranjan Das.

**Criminal Appeal No. 1750 of 1994**

**In the matter of:**

A. Wahab Howlader

..... Appellant

-Versus-

The State

..... Respondent.

None appears for the appellant.

Mr. Kazi Eliasur Rahman, A.A.G. with

Ms. Tahmina Sultana, A.A.G

... For the State

**Heard on: 11.08.2022 and**

**14.08.2022**

**Judgment on: 17.08.2022**

**Ashish Ranjan Das, J:**

Learned Senior Special Judge, Gopalganj in Special Case No. 13 of 1993 by his judgment dated 18.09.1994 convicted the appellant under section 409 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947 and sentenced him to suffer rigorous imprisonment for 3 years coupled with a fine of Tk. 40,000/-, in default to suffer rigorous imprisonment for 6 months more.

The conviction is some 30 years old. It remained

unknown as to whether the convict appellant or his lawyer is alive or not. Although the matter has been occurring in the daily cause list over the period with the name of the advocate.

However, I have heard the learned Assistant Attorney General.

Short fact relevant for the purpose that could be gathered from the file is that the convict appellant Abdul Wahab Howladar used to be the Chairman of Pinjuri Union Parishad, Police Station-Kotalipara, District-Gopalganj. In 1989 and 1990 season in the food for work Programme for the purpose of reconstruction of a Rural Road known as Gopalpur-Kakdanga Family Well-fare Centre road, wherein the accused convict used to be the chairman of the Project Committee. For the purpose he was allocated 48.45476 metric tons of wheat. Admittedly the convict chairman withdraw 25 metric tons of wheat for the purpose from the local government Godown till 30.01.1990. Accused chairman withdraw 25 metric tons of wheat but after final measurement it was found that the work done amounts to 20.03 metric tons only and hence 4.97 metric tons of wheat

worth Tk. 39,700/- was misappropriated. Getting the enquiry and measurement report the local Upuzilla Nirbahi Officer filed written complaint against the accused chairman before the then District Anticorruption Officer, Gopalganj. Accordingly E.R. No.8-91 was started and after enquiry the Assistant Inspector of District Anticorruption Bureau, Gopalganj found the allegation primarily proved and hence upon approval of the authorities Kotalipara police station Case No. 309 of 1992 was set on motion. In the primary investigation the case was preliminarily proved as the accused Project chairman misappropriated wheat worth Tk. 39700/- allocated by the government and thereby committed an offence calling for a penalty under section 409 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947. A formal charge accordingly was framed and read over to which the convict appellant pleaded not guilty. Thereafter defence version was that the allegation was false and fabricated out of political vengeance. The accused chairman actually did all the require job meant for 25 metric tons of wheat and nothing was misappropriated. Since the accused used to be a supporter of erstwhile

Upazilla parishad chairman Kazi Montu at his departure the case was created. The measurement book and the level book showing shortage of work are false and fake.

In order to bring the charge home the prosecution examined as many as 8 witnesses. However, the defence examined none.

P.W.1 Syed Abdul Hye, the informant of the D.A.B as he agitated his case, P.W.2 was the officer in charge of the L.S.D and testified that the accused actually withdrew the entire 25 metric tons of wheat. P.W.3 was in charge of measurement of the works done. P.Ws. 6, 7 and 8 of the witnesses to the seizure of documents supporting the charge.

There was a defence plea that at the time of measurement of the proposed work, the site was under water hence a true measurement could not be had.

Now the matter is so simple, the accused appellant as the union parishad chairman of Pinjuri Kotalipara became the chairman of the project committee for construction of a Rural road and for the purpose he was allocated 25 metric tons of wheat, which he had withdrawn from the local government godown. But upon measurement it was found that of 20.03

metric tons of wheat was done while the remaining portion of 405034 cft of earth work costing Tk. 39700/- was found short upon a methodical measurement.

Defence plea is that the measurement was not proved but there was nothing on record to fancy that such a physical measurement was untrue. Defence took a plea that at the time of measurement the place work was under water. But it had there been an earth work of the entire of the work it ought to have not been under water. Thus, I find that the learned trial judge was quite justified in holding the accused appellant guilty of the charge of 409 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947, that requires no interference in appeal. The sentence inflicted seems nothing harsh. It is only 4 years of rigorous imprisonment followed by a fine.

Therefore, I can not help accepting the submission of the learned Assistant Attorney General and the appeal seems absolutely meritless. The same is therefore dismissed.

The accused appellant is directed to serve out the remaining part of the sentence if there be any and the fines levied should also be recovered.

With the findings the Criminal Appeal is dismissed.

Send down the L.C.R and the copy of the order to the learned trial court for information and necessary action.

*(Justice Ashish Ranjan Das)*

Md. Atikur Rahman, A.B.O.