

**In the Supreme Court of Bangladesh  
High Court Division  
(Criminal Appellate Jurisdiction)**

**Present:**

**Mr. Justice Md. Shohrowardi**

**Criminal Appeal No. 2993 of 2020 with**

**Criminal Appeal No. 2994 of 2020**

**Anti-Corruption Commission, Dhaka**

**..Appellant in both the appeals**

-Vs-

The State and another

..... Respondents

Mr. AKM Alamgir Parvez Bhuiyan, Advocate

... For the appellant in both the appeals

Mr. Md. Wahiduzzaman Shohel, Advocate

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

Mr. Md. Akhtaruzzaman, DAG with

Mr. Sultan Mahmood Banna, AAG with

Mr. Mir Moniruzzaman, AAG

For the State

**Heard on 18.02.2025, 02.03.2025, 18.03.2025.**

**Judgment delivered on 19.03.2025**

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 above-mentioned criminal appeals have been filed by the Anti-Corruption Commission challenging the legality and propriety of the impugned judgment and order dated 22.07.2019 passed by the Divisional Special Judge, Dhaka, in Special Case No. 86 of 2017 convicting the accused Md. Abdul Mamun under section 5(2) of the Prevention of Corruption Act, 1947, and sentencing him to suffer imprisonment till the rising of the court and fine of Tk. 2000, in default, to suffer imprisonment for 2(two) days and acquitting the respondent Md. Anisur Rahman from the charge framed against him under sections 409/109 of the Penal Code, 1860, and section 5(2) of the Prevention of Corruption Act, 1947.

The prosecution case, in short, is that the accused Md. Anisur Rahman was the Mayor of Sreepur Pourashava, Gazipur, and accused Md. A. Mannan was the Accountant of the said Pourashava. The accused A. Mannan collected the municipality tax amounting to Tk. 43,75,137 from 02.10.2002 to 27.06.2010 and without depositing the said amount in the account of the municipality, misappropriated. As the controlling authority of the Pourashava, the accused Mayor Md. Anisur Rahman did not take any steps against the accused Md. Abdul Mannan for not depositing the said amount in the account of said Pourashava. Subsequently, the accused Md. Abdul Mannan deposited total Tk. 43,81,493 by vouchers from 06.12.2010 to 13.02.2014.

P.W. 7 Md. Iqbal Hossain is the Deputy Assistant Director, Anti-Corruption Commission, Dhaka. He was appointed as investigating officer of the case. He stated that on 17.11.2014, he took up investigation of the case. During investigation, he visited the place of occurrence, seized the documents and recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898.

After completing the investigation, he found the prima facie truth of the allegation made in the FIR against the accused and submitted the memo of evidence. The Anti-Corruption Commission vide memo No. 292589 dated 08.10.2015 had given sanction to submit charge sheet against the accused Md. Abdul Mannan and Md. Anisur Rahman and accordingly submitted charge sheet on 18.10.2015 under sections 409/109 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947.

Thereafter, the case record was sent to the Senior Special Judge, Gazipur, who by order dated 31.01.2016 took cognizance of the offence under sections 409/109 of the Penal Code, 1860, and section 5(2) of the Prevention of Corruption Act, 1947, and sent the case to the Special Judge, Dhaka for trial. At the time of taking cognizance, the accused persons were absconding and in compliance with the order passed by the court, a notification was published on 28.12.2017 in the Bangladesh Gazette. The trial court framed charge against the accused persons under sections 409/109 of the Penal Code, 1860, and section 5(2) of the Prevention of Corruption Act, 1947. At the time of framing charge, the accused persons were absconding. After examination of P.W. 2, accused Md. Abdul Mannan surrendered and cross-examined P.Ws 3 to 8.

After examination of the prosecution witnesses, the accused Md. Abdul Mannan was examined under section 342 of the Code of Criminal Procedure, 1898, and he declined to adduce any witness, but he filed the documents through phiristi. After concluding trial, the trial court by impugned judgment and order convicted the accused Md. Abdul Mannan under section 5(2) of the Prevention of Corruption Act, 1947 and sentenced him to suffer imprisonment till the rising of the

court and fine of Tk. 2000, in default, to suffer imprisonment for 02(two) days and acquitted accused Md. Anisur Rahman from the charge framed against him under sections 409/109 of the Penal Code, 1860, and section 5(2) of the Prevention of Corruption Act, 1947 against which the Anti-Corruption Commission filed the above-mentioned appeals.

P.W. 1 Md. Fakrul Islam is the Assistant Director, Anti-Corruption Commission, Combined District Office, Chattogram-1. He stated that while he was discharging his duty as DAD, Combined District Office, Dhaka-2, during inquiry of ER No. 70/13 from May 2003 to October 2005, it was found that Md. Abdul Mannan, former Accountant, Sreepur Pourashava, Gazipur, from 02.10.2002 to 02.02.2010, realized the municipality tax by issuing money receipts and, without depositing Tk. 43,75,137 in the account of the municipality, misappropriated. The accused Md. Anisur Rahman, as Mayor, did not take any step directing the accused Abdul Mannan to deposit the said misappropriated amount, and abated the accused Md. Abdul Mannan in misappropriation. He obtained the approval and accordingly submitted the inquiry report. After getting approval from the authority, he lodged the FIR. He proved the approval of the Anti-Corruption Commission as Exhibit 1. He proved the FIR as exhibit-2- 2 and his signature on the FIR as exhibit- 2/1.

P.W. 2 Md. Moniruzzaman Sikder was the Secretary of the Rajoir Pourashava, Madaripur. He stated that on 4.08.2015, when he was discharging his duty as the Secretary of the Sreepur Pourashava, he presented the documents to DAD Md. Iqbal Hossain of the Anti-Corruption Commission. He seized those documents and handed over those documents to his custody. He proved the seizure list along with

Zimmanama as exhibit-3 and his signature thereon as exhibit- 3/1. Thereafter, he was transferred. On 31.08.2016 he handed over the documents to the Secretary Md. Bodiuzzaman.

P.W. 3 Md. Mashreikul Alam is the Secretary of Tungipara Pourashava, Gopalganj. He stated that from 2008 to 2009 he discharged his duty as Secretary of Sreepur Pourashava, Gazipur. He stated that he is not aware of the occurrence. After coming to court, he came to know that from 02.10.2002 to 27.06.2010 on different dates, the accused Md. Abdul Mannan, having realized tax of the municipality misappropriated total Tk. 43,75,137 without depositing the said amount in the account of the Sreepur Pourashava, Gazipur, and an audit report was submitted against him. During inquiry, the misappropriated amount was deposited. At the time of misappropriation, he was not posted at Sreepur Pourashava. He was not aware of the occurrence.

P.W. 4 Md. Sarwar Hossain is the Assistant Engineer of Gafargaon Pourashava, Mymensingh. He stated that from 2004 to 2008 he discharged his duty as Sub-Assistant Engineer, Sreepur Pourashava. He approved the plan, no objection certificate, and the schedule, etc. He realized the money by issuing money receipts and posted the money in the book No. 227-215-143-221-207, and the realized amount was handed over to the Accountant Abdul Mannan. He could not say whether the realized tax was deposited in the bank. He denied the suggestion that the realized money was deposited in a different head.

P.W. 5 Mobarak Hossain is the Collector of Tax, Sreepur Pourashava, Gazipur. He stated that he has been discharging his duty as Collector of Tax, Sreepur Pourashava since 2003. During his tenure, he realized the holding tax through the book Nos. 33 and 45 and deposited the amount to Accountant Md. Abdul Mannan. During cross-

examination, he stated that an audit was conducted. He denied the suggestion that as per the audit report, no money of the Sreepur Pourashava was misappropriated.

P.W. 6 Mohasinul Kadir is the Inspector of Police, Raipura, Narsingdi. He stated that on 17.07.2014, he was discharging his duty as Officer-in-Charge of Sreepur Thana. At that time, Deputy Assistant Director Md. Faqrul Islam of Anti-Corruption Commission, Combined District Office, Dhaka-2 submitted a computer-typed FIR against the accused Md. Anisur Rahman, Mayor of Sreepur Pourashava, Gazipur, and Accountant Md. Abdul Mannan (total 4 pages). He recorded the FIR and filled up the FIR form. He proved the FIR form as exhibit-4 and his signature on the FIR form as exhibit-4/1. During cross-examination, he stated that A.S.I. Azizur Rahman filled up the FIR form, and he signed the form.

P.W.7 Md. Iqbal Hossain is the Deputy Assistant Director, Anti-Corruption Commission, Dhaka. He stated that from 15.03.2012 to 10.11.2015 he discharged his duty as DAD, Anti-Corruption Commission, Combined District Office, Dhaka-2. On 17.11.2014, he took up investigation of the case. During investigation, he visited the place of occurrence, seized the documents and recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. He proved the seizure list as Exhibit 5 and his signature on the seizure list as exhibit-5/1. During investigation, he found that from 2008 to 2010, the accused Md. Abdul Mannan, Accountant, Sreepur Pourashava, on different dates, realized total Tk. 82,58,598 as tax and deposited Tk. 38,83,561 in the account of the said Pourashava and misappropriated the remaining amount for which he submitted the memo of evidence against the accused persons. The Anti-Corruption

Commission vide memo dated 08.10.2015 had given sanction for submitting charge sheet against the accused persons, and accordingly, he submitted charge sheet on 08.10.2015 against them under sections 409/109 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947. He proved the sanction letter as Exhibit 5. During cross-examination, he stated that the alams are not produced in court. From 06.12.2010 to 13.02.2014, total Tk. 43,81,492 was deposited in the account of the Pourashava. He affirmed that before lodgment of the FIR, the money was deposited. He denied the suggestion that due to local political dispute, he submitted charge sheet.

P.W. 8 Sarker Dalil Uddin is the Secretary of Sreepur Pourashava. He stated that on 04.8.2016 at 3 pm, DAD Iqbal Hossain of Anti-Corruption Commission seized the money receipt book No. 5Ka to 5Uma. He proved the money receipt books as Exhibit 5 series. During cross-examination, he stated that he joined in the Pourashava two months ago.

The learned Advocate Mr. AKM Alamgir Parvez Bhuiyan, appearing on behalf of the Anti-Corruption Commission in both the appeals, submits that the accused Md. Anisur Rahman was the Mayor of Sreepur Pourashava, Gazipur, and accused Md. Abdul Mannan was the Accountant of the said Pourashava, and from 2008 to 2010, accused Md. Abdul Mannan realized total tax amounting to Tk. 82,58,598 and deposited Tk. 38,83,561 and misappropriated total Tk. 43,75,137 without depositing the said amount in the account of the Pourashava. The accused Md. Anisur Rahman, as Mayor of the Pourashava, did not pass any order directing the accused Md. Abdul Mannan to deposit the said amount and thereby they committed offence under section 409 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption

Act, 1947. He further submits that the impugned sentence passed by the trial court against accused Md. Abdul Mannan is disproportionate to the gravity of the offence, and the trial court illegally passed the impugned judgment and order of acquittal in favour of the accused Md. Anisur Rahman. He prayed for allowing the appeals by enhancing the sentence against the accused Md. Abdul Mannan and convicting the accused Md. Anisur Rahman.

The learned Advocate Mr. Md. Wahiduzzaman Shohel appeared on the of the accused Md. Anisur Rahman submits that the accused Md. Anisur Rahman was the Mayor of Sreepur Pourashava, and no evidence as regards the alleged misappropriation amounting to Tk. 43,75,137 has been adduced by the prosecution against the accused Md. Abdul Mannan and the trial court, on correct assessment and evaluation of the evidence, legally passed the impugned judgment acquitting the accused Md. Anisur Rahman. He prayed for dismissal of the appeals.

No one appears on behalf of the accused Md. Abdul Mannan.

I have considered the submission of the learned Advocate Mr. AKM Alamgir Parvez Bhuiyan, who appeared on behalf of the appellants in both the appeals, and the learned Advocate Mr. Md. Wahiduzzaman Soheli who appeared on behalf of the respondent No. 2, perused the evidence, impugned judgment and order passed by the trial court and the records.

On perusal of the impugned judgment and order passed by the trial court, it is found that the accused Md. Abdul Mannan was convicted under section 5(2) of the Prevention of Corruption Act, 1947, and he was sentenced to suffer imprisonment till rising of the court and fine of Tk. 2000, in default, to suffer imprisonment for 2(two) days. Although the appeal has been filed against the judgment and order of



conviction and sentence passed by the trial court but no rule for enhancement of the sentence was prayed for by the appellant, and there is no Rule for enhancing the sentence passed by the trial court. Therefore, there is no scope to interfere with the impugned judgment and order passed by the trial court against the accused Md. Abdul Mannan.

On consideration of the evidence of the prosecution witnesses, the trial court found that the accused Md. Abdul Mannan realized the tax amounting to Tk. 82,58,598 from 2008 to 2010 and deposited total Tk. 38,83,561 and misappropriated total Tk. 43,75,137. No evidence is adduced by the prosecution against the accused Md. Anisur Rahman regarding the misappropriation of the said amount.

The alleged occurrence took place from 02.10.2002 to 27.06.2010. The accused Md. Abdul Mannan deposited Tk. 4381492 from 06.12.2010 to 13.02.2014. The Anti-Corruption Commission, Dhaka, by memo dated 13.07.2014, had approved to lodge the FIR against accused persons 1. Md. Abdul Mannan, Former Accountant of Sreepur Pourashava, 2. Mashrekul Alam, former Secretary of Sreepur Pourashava, and 3. Md. Anisur Rahmna, Mayor of Sreepur Pourashava. The Deputy Director Abdullah Al Zahid, Anti-Corruption Commission, Combined District Office, Dhaka-2, by office order contained in memo dated 16.07.2014, instructed P.W. 1 Md. Faqrul Islam, DAD, Anti-Corruption Commission, Combined District Office, Dhaka-2, to lodge the FIR against said 3 persons but in defiance of the said approval dated 13.07.2014 of the Anti-Corruption Commission, Dhaka and the said memo dated 16.07.2014, P.W. 1 Md. Faqrul Islam lodged the FIR against the accused Md. Abdul Mannan and Md. Anisur Rahman,

excluding said Mashrekul Alam and citing him as a witness in the charge sheet. Thereby, he committed misconduct.

The Chairman, Anti-Corruption Commission, is directed to take departmental action against informant P.W. 1 Md. Faqrul Islam, the then Deputy Assistant Director, Anti-Corruption Commission, Combined District Office, Dhaka-2, for said misconduct and take the decision accordingly.

In view of the above evidence, facts and circumstances of the case, findings, observation, and the proposition, I am of the view that the prosecution failed to prove the charge against the accused, Md. Anisur Rahman beyond all reasonable doubt.

I find no merit in the appeals.

Accordingly, both appeals are dismissed.

However, there will be no order as to costs.

Send down the lower Court's record at once.