

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 8670 of 2020

Mohammad Abdul Motaleb

...Appellant

-Versus-

The State and another

...Respondents

Mr. Akramul Hoque, Advocate

...For the appellant

Mr. S.M. Golam Mostofa Tara, D.A.G with

Mr. A. Monnan (Manna), A.A.G

...For the State

Mr ASM Kamal Amroohi Chowdhury, Advocate

...For the respondent No. 2

Heard on 05.12.2023, 17.12.2023, 02.01.2024,
03.01.2024, 04.01.2024 and 15.01.2024**Judgment delivered on 22.01.2024**

This appeal under Section 10 of the Criminal Amendment Act, 1857 is directed challenging the legality and propriety of the impugned judgment and order dated 17.11.2020 passed by the Special Judge, Court No. 9, Dhaka in Special Case No. 07 of 2018 (Metropolitan Special Case No. 74 of 2014) arising out of Motijheel Police Station Case No. 8(8)2013, A.C.C. G.R. No. 79 of 2013 convicting the appellant under Section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him thereunder to suffer simple imprisonment for 5(five) years and fine of Tk. 50,000, in default, to suffer simple imprisonment for 1(one) month more.

The prosecution case, in a nutshell, is that the accused Mohammad Abdul Motaleb is a Junior Officer of the Insurance Development and Regularity Authority and under his leadership, a team of two members committee inspected the Reliance Insurance Ltd, Bijoyagar Branch, Dhaka on 21.07.2013 and found irregularity in the transaction of the said company. He had given a proposal to the head of the Insurance Company Ltd, Bijoyagar Branch to settle the matter and

demanded Tk. 2,50,000 failing which he threatened the manager that he will submit report against the said branch of the Reliance Insurance Company Ltd. Subsequently, the matter was settled between them. The manager agreed to pay Tk. 1,50,000 as a bribe to the accused and other officers of the Insurance Development and Regularity Authority. The manager of the said branch informed the matter to the Managing Director of Reliance Insurance Ltd who refused to pay the bribe and informed the matter to the Anti-Corruption Commission and a complaint was registered as E/R No. 30 of 2013 for conducting a trap case. On 05.08.2013 at 11.15 am Md. Tayeb Mohsin, Manager, Reliance Insurance Company of the Bijoyagar Branch went to the head office of the Anti-Corruption Commission and handed over 150 notes of Tk. 1,000, serial Nos. 4453201-4453300 and 7652301-7652350 and in the presence of Executive Magistrate Md. Asaduzzaman, an inventory was prepared and he signed the inventory. After that, in the presence of witnesses, the said notes were handed over to Md. Tayeb Mohsin with instruction. Thereafter, the informant along with the members of the trap team reached Shahana Restaurant situated on the ground floor of Hotel Purbani International, Dilkusha, Dhaka at 12.30 pm. At that time, said Executive Magistrate was also present along with the members of the trap team. Thereafter, P.W. 3. Md. Tayeb Mohsin and Deputy Senior Vice-President P.W. 5 Syed Qaiyum Hossain as per the scheduled time entered into the said restaurant along with the accused and took their seat. At that time, as per instruction of the accused, P.W. 3 Md. Tayeb Mohsin handed over the said notes to the accused as bribe. The informant and the Magistrate having disclosed their identity wanted to know about the bribe taken from P.W. 3 Md. Tayeb Mohsin. At that time, he admitted that he received the bribe. P.W. 1 holds the left hand and another member of the trap team P.W. 2 Jafor Ahmed holds the right hand of the accused. After that, the members of the trap team and the

Supervising Officer, the Manager of the said Hotel Md. Rahmatullah and the said Magistrate found that he kept those notes of Tk. 1,000 in two pockets of his jeans pant. The accused kept those notes on the table. The informant found that the numbers of the recovered notes have been mentioned in the list of inventory. At 1.00 pm prepared the seizure list and the informant, the Executive Magistrate and the witnesses signed the seizure list.

After lodgment of the FIR, P.W. 11 Md. Abdul Qader Bhuiyan was appointed Investigating Officer vide memo No. 2101 dated 23.10.2013. On the same date, he visited the place of occurrence, recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898, seized documents and visited the Head Office of the Insurance Development and Regularity Authority. After completing the investigation, he found the prima facie truth of the allegation against the accused and recommended for submitting charge sheet. The Anti-Corruption Commission vide memo No. 7752 dated 11.03.2014 had approved for submission of charge sheet against the accused and accordingly, P.W. 11 submitted charge sheet on 16.03.2014 against the accused under Section 161 of the Code of Criminal Procedure, 1898 and Section 5(2) of the Prevention of Corruption Act, 1947.

After that, the Chief Metropolitan Magistrate, Dhaka on 26.03.2014 sent the case records to the Metropolitan Senior Special Judge, Dhaka who by order dated 12.08.2014 took cognizance of the offence against the accused under Section 161 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947 and sent the case to the Special Judge, Court No. 4, Dhaka for disposal. On 11.12.2014, the charge was framed against the accused under Section 161 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947 against the accused. The charge framed against the accused was read over and explained to him and he pleaded not

guilty to the charge and claimed to be tried following the law. Subsequently, the Metropolitan Senior Special Judge, Dhaka by order dated 11.04.2018 sent the case to the Special Judge, Court No. 9, Dhaka. The prosecution examined 11(eleven) witnesses to prove the charge against the accused and the defence cross-examined the prosecution witnesses. After examination of the prosecution witnesses, the accused was examined under Section 342 of the Code of Criminal Procedure, 1898 and the accused examined himself as D.W. 1. After concluding the trial, the trial Court by impugned judgment and order convicted the accused and sentenced him as stated above against which the accused filed the instant appeal.

P.W. 1 Md. Fazlul Haque is the Assistant Director, Combined District Office, Anti-Corruption Commission, Dhaka-1. He is the informant of the case. He stated that Akter Ahmed, Managing Director of Reliance Insurance Ltd, Dhaka filed a complaint on 01.08.2013 against the accused to the Anti-Corruption Commission, Dhaka Division as regards the demand of bribe amounting to Tk. 2,50,000 to P.W. 3 Tayeb Mohsin, Manager of Reliance Insurance Ltd, Bijoy Nagar Branch, Dhaka. In the written complaint dated 01.08.2013, Akter Ahmed made an allegation to the effect that on 21.07.2013 a team of the Insurance Development and Regularity Authority headed by accused Abdul Motaleb inspected the Reliance Insurance Ltd, Bijoy Nagar Branch, Dhaka and found some irregularities in the said branch and he demanded Tk. 2,50,000 to the Manager P.W. 3 Tayeb Mohsin. Later on, the amount of the bribe was settled Tk. 1,50,000 failing which the accused threatened the Manager to close the said branch of the Reliance Insurance Company Ltd. P.W. 3 Tayeb Mohsin informed the matter to the authority but the authority of the said company refused to pay the bribe to the accused and consequently, the Managing Director of the said company filed written complaint to the Anti-Corruption Commission. Thereafter, the Anti-Corruption

Commission had approved to conduct a trap case based on the E/R No. 30/201 and authorized him to conduct the trap case. Thereafter, he applied to the Deputy Commissioner to appoint an Executive Magistrate as a witness. On 05.08.2013 at 11.15 am, P.W. 3 Toyeb Mohsin came to his office along with Tk. 1,50,000 and in the presence of Executive Magistrate Asaduzzaman and Syed Qaiyum Hossain handed over two bundles of note of Tk. 1,000, total Tk. 1,50,000. Thereafter, he handed over the said notes to P.W. 3 Toyeb Mohsin with instructions and he came out from the office of the Anti-Corruption Commission, Head Office, Dhaka. After that, he along with the members of the trap team went to the Shahana Restaurant situated on the ground floor of Hotel Purbani International and remained in hiding. At that time, the Executive Magistrate was also present along with him. After some time, P.W. 3 Toyeb Mohsin and P.W. 5 Syed Qaiyum Hossain along with the accused entered the restaurant and took a seat beside a table. At that time, he along with others was also sitting beside a table near the accused. As per instruction of the accused, P.W. 3 Toyeb Mohsin handed over two bundles of Tk. 1,50,000 to the accused and he kept the said money in two pockets of his jeans pant. At that time, he wanted to know about the bribe received and he admitted that he received the bribe from P.W. 3. Instantaneously, he held the left hand and another member of the trap team P.W. 2 Zafar Ahmed held the right hand of the accused. After that, the Manager of the said hotel Rahmat Ulla and others reached there and in the presence of the Executive Magistrate and other witnesses admitted that he received Tk. 1,50,000 as bribe. He instructed the accused to keep the bribed money on the table and total 100 notes of Tk. 1000 and 50 notes of Tk. 1000 were recovered and counting those notes, he found total 150 notes of Tk. 1000. The numbers of the recovered notes have been mentioned in the list of inventory. He recovered Tk. 1,50,000, one Symphony Mobile Phone along with two SIM Cards being Nos. 01672-119850 and

01912-058098 and the jeans pant of the accused and took the signatures of the witnesses. The accused was handed over to the police. He prepared the list of inventory and the seizure list. He proved the FIR as exhibit 1 and his signature as exhibit 1/1. He proved the list of inventory dated 05.08.2013 as exhibit 2 and his signature on the list of inventory as exhibit 2/1. He proved the seizure list dated 05.08.2013 as exhibit 3 and his signature on the seizure list as exhibit 3/1. He produced 150 notes of Tk. 1000, serial Nos. কৰা ৪৪৫৩২০১ to কৰা ৪৪৫৩৩০০ and কন ৭৬৫২৩০৯ to কন ৭৬৫২৩৫০ as material exhibit I. He proved the jeans pant as material exhibit II. He proved the Symphony Phone along with two Sims as material exhibit III. He identified the accused in Court. During cross-examination, he stated that he conducted the trap case following the instruction of the Anti-Corruption Commission. The Managing Director of the Reliance Insurance Company Ltd filed a complaint against the accused to the Director of the Anti-Corruption Commission and following the decision of the authority, he conducted the trap case. He could not remember what kind of irregularities were found in the office of Reliance Insurance Ltd. He had no personal knowledge about the demand of bribe amounting to Tk. 1,50,000. He denied the suggestion that to save the corrupt Manager Toyeb Mohsin from his corruption, the accused was falsely implicated in the case. He denied the suggestion that to save himself the Manager Toyeb Mohsin in connivance with P.W. 1 created the trap case through him. He denied the suggestion that he had a personal relationship with P.W. 3 Toyeb Mohsin. He affirmed that he along with others entered into the Shahana Restaurant to conduct the trap case and subsequently, P.W. 3 Toyeb Mohsin, P.W. 5 Syed Qaiyum along with accused Motaleb entered into the restaurant. At the time of occurrence, a lungi was collected and thereafter seized the jeans pant with courtesy in presence of the Executive Magistrate.

P.W. 2 Zafar Ahmed is the Assistant Director of the Anti-Corruption Commission, Dhaka. He stated that on 05.08.2013, he was discharging his duty at the Combined District Office, Anti-Corruption Commission, Dhaka-1. On that day, Akter Ahmed Alam Manager of Reliance Insurance Ltd, Bijoy Nagar Branch filed a written complaint against the accused regarding the demand of bribe. Thereafter, following the instruction of the authority under the leadership of P.W. 1 Md. Fazlul Haque, a trap team was constituted. He, A.S.I Abdul Matin, Constable Akbar and Constable Abdul Hamid were members of the trap team. The Executive Magistrate Mohammad Asaduzzaman also went to the place of occurrence along with the members of the trap team. On 05.08.2013 at 12.30 pm, he went to the Shahana Restaurant and remained in hiding. At 12.35 pm P.W. 3 Toyeb Mohsin and P.W. 5 Syed Qaiyum Hossain entering into the restaurant and wait there. Before entering the restaurant, accused Abdul Motaleb was waiting in the restaurant. At 12.40 pm following the instruction of accused Abdul Motaleb, P.Ws. 3 and 5 handed over the bribe amounting to Tk. 1,50,000 to the accused. Instantaneously, P.W. 1 Fazlul Haque and the Executive Magistrate Asaduzzaman disclosed their identity and wanted to know about the bribe taken by the accused. The accused admitted that he received the bribe. At that time, he was also present there. P.W. 1 Fazlul Haque holds the left hand of the accused and he holds the right hand of the accused and the accused disclosed that he kept the money in his pockets of jeans pant and brought out Tk. 1,50,000 from the pocket of jeans pant and kept that money on the table. Counting the notes, P.W. 1 found 150 notes of Tk. 1,000. P.W. 1 prepared the seizure list and arrested the accused. During cross-examination, he stated that by reading the FIR, he partly deposed in Court. The name of the trap team was not mentioned in the FIR. During the enquiry, the accused as a government servant found irregularity in the Reliance Insurance Company, Bijoy Nagar Branch and to rectify the irregularities, he

demanded the bribe. He could not ascertain whether any report regarding the irregularity of the Insurance Company was submitted to the authority. He could not say whether at the relevant time, many branches namely Meghna, Northern, Islami Insurance, Takaful Islami Insurance, and City General Insurance Company have been closed or not. He affirmed that he is not a witness on the seizure list. The father of the accused brought the lungi to the place of occurrence.

P.W. 3 Md. Toyeb Mohsin is the Manager of Reliance Insurance Company Ltd, Bijoy Nagar Branch. He stated that he was the manager of the said branch from 04.06.2013 to 31.12.2017. On 21.07.2013, the accused along with another Junior Officer Sohel Rana came to his branch for inspection. The accused wanted to see the registers and cashbooks of the said branch and he handed over those documents to the accused. In the meantime, he demanded bribe amounting to Tk. 2,50,000. He said that he found some irregularities and threatened that unless he paid Tk. 2,50,000 he will be dismissed from service and the branch will be closed. He informed the matter to head office. In the meantime, the accused Motaleb left the office along with the photocopy of the documents. The Managing Director Akter Ahmed informed the matter to Shefaq Ahmed Chowdhury, Chairman of the Insurance Development and Regularity Authority who informed the matter to the Anti-Corruption Commission. Following the advice, he along with Syed Taium Hossain discussed the matter with the accused on 24.07.2013 and 25.07.2013 and he reduced the amount of the bribe to Tk. 1,50,000. At the advice of the Anti-Corruption Commission and the management, he along with Syed Taium Hossain went to the Office of the Anti-Corruption Commission, Dhaka Division on 05.08.2013 and met P.W. 1 Fazlul Haque at 11.15 am. At that time, in the presence of Magistrate Asaduzzaman, an inventory was prepared and there were 150 notes of Tk. 1000 being Nos. Ka, Jha-4453201 to KaJha-4453300 and KaNa-7652301 to KaNa-7652350. Magistrate

Asaduzzaman and P.W. 1 Md. Fazlul Haque signed the list of inventory. He proved his signature on the inventory as exhibit 2/2. On the same date, he along with the Officer of ACC and the Magistrate started for Hotel Purbani. Before that, the Hotel Purbani was selected as the place for giving bribe. He and others reached Purbani at 1.00 pm. He along with Syed Tayem Hossain and accused Motaleb took their seats on ground floor in the Shahana Restaurant of the Hotel Purbani. P.W. 1 Fazlul Haque, Magistrate Asaduzzaman, Police of Matijheel Thana and other Officers of the Anti-Corruption Commission were also sitting at different tables. At that time, the accused demanded bribe from him and in the presence of Syed Qaium Hossain, he handed over the notes mentioned in the list of inventory to the hand of the accused and the accused kept those notes in his two pockets. At that time, the team of the Anti-Corruption and the Magistrate detained the accused. On interrogation, he admitted that he received the bribe. He identified the accused in Court. The accused handed over the money to the Magistrate and P.W. 1 Md. Fazlul Haque counted the notes and found that the recovered notes had been mentioned in the list of inventory. The Officer of the Anti-Corruption Commission seized the bribe money and prepared the seizure list. He proved his two signatures on the seizure list as exhibits 3/2 and 3/3. The Police of Matijheel Thana arrested the accused. During cross-examination, he stated that the accused Abdul Motaleb was not known to him earlier. He denied the suggestion that during inspection, he found irregularity in his office for which he created the false trap case against the accused. He affirmed that a complaint was filed against Reliance Insurance, Bijoyagar Branch to the Insurance Development and Regularity Authority and following the complaint, an enquiry was held. The accused was the team leader of the enquiry committee and Md. Sohel Rana was a member of the said committee. He denied the suggestion that on 21.07.2013, the enquiry team seized documents from his office and the

enquiry committee found the truth of the allegation against him. He denied the suggestion that he evaded the tax. He denied the suggestion that the accused did not demand the bribe from him. He denied the suggestion that requesting the accused, he took him to the place of occurrence and made an attempt to give him money and at the time of handing over the money, a scuffling took place. He denied the suggestion that the accused did not receive any bribe from him and that he was illegally detained. He could not say whether due to the report submitted by the accused, other companies had been closed.

P.W. 4 Noba Gopal Banik stated that on 30.01.2011 he joined as a Member of the Insurance Development and Regularity Authority and retired on 29.01.2014. On 13.09.2012, a complaint was filed against Reliance Insurance Ltd and the Chairman of the Insurance Development and Regularity Authority instructed him to take action on the complaint and he formed a two-member team headed by accused Md. Abdul Motaleb and Md. Sohel Rana was a member of the said team. They inspected the Office of the Reliance Insurance on 21.07.2013 and found irregularities. In the meantime, accused Md. Abdul Motaleb was detained at Hotel Purbani along with Tk. 15,00,000. Subsequently, he came to know that to rectify the irregularities, he received the money as bribed. Subsequently on 19.08.2013 another Member Sohel Rana in the presence of Md. Abdul Motaleb submitted the report. During cross-examination, he affirmed that during his tenure, a complaint was filed against the Reliance Insurance Company Ltd. The Chairman of the Insurance Development and Regularity Authority instructed him to submit a report after enquiry. There was no allegation against the accused Abdul Motaleb before the occurrence. The allegation against Reliance Insurance was that they had violated the tariff rules and paid in cash more than Tk. 5000. More than 5% was paid to the Development Officer as salary but they did not use the stamp following law and a report was submitted by

Sohel Rana regarding the complaint. He could not say whether the accused Abdul Motaleb prepared the report or not. He could not say whether the Reliance Company in connivance with the Anti-Corruption Commission implicated the accused in the case. He heard that the accused was detained along with Tk. 15,00,000. He denied the suggestion that as a good officer accused was appointed as head of the enquiry team. He could not say whether based on the report submitted by the accused, Northern Insurance and Islami Insurance were closed. He could not say whether the accused prepared the correct report for which he was falsely implicated in the case.

P.W. 5 Syed Qaiyum Hossain is the Executive Vice-President of Reliance Insurance Limited. He stated that on 21.07.2013, P.W. 3 Md. Mohsin informed over the telephone that accused Md. Abdul Motaleb visited the branch and demanded bribe. He informed the matter to the Managing Director Akter Ahmed. He talked to the Chairman of the Insurance Development and Regularity Authority. The Chairman instructed the M.D. to hand over the person who demanded bribe. Thereafter, the Managing Director talked to the Chairman of the Anti-Corruption Commission. On 05.08.2013, the Managing Director informed that the Anti-Corruption Commission will conduct an operation to detain the accused in a trap. On 04.08.2013 at 11.15 am, he went to the office of P.W. 1. At that time, the Executive Magistrate Asaduzzaman was present there along with Toyob Mohsin, Vice-President and Manager of the said company. In their presence, P.W. 1 Fazlul Haque prepared a list of inventory of Tk. 1,50,000. The serial numbers of the notes were KaJha 4453201 to 4453300 and KaNa 7652301 to 7652350. At the time of preparing the list of inventory, Magistrate Asaduzzaman, P.W. 1, P.W. 3 and he were present there. P.W. 3 Syed Mohsin presented the notes. A list of inventory was prepared and he signed the list of inventory. He proved the inventory as exhibit 2 and his signature as exhibit 2/3. After preparing the list of

inventory at 12.15 noon, they reached Hotel Purbani and they were waiting outside the Hotel Purbani. P.W. 3 called the accused Motaleb over the phone. He informed him that he came to Hotel Purbani along with the money. P.W. 1 along with the Magistrate took their position earlier at Hotel Purbani. Many others were also present along with them. They were waiting at Shahana Restaurant. Subsequently, they entered the hotel at 12.50 and ordered food. The accused Motaleb came to the hotel at 12.30 and thereafter he along with two other persons entered the hotel. The accused, P.W. 3 and he were sitting beside one table. The accused demanded bribe to P.W. 3 Toyeb Mohsin and he handed over the notes mentioned in the list of inventory to the accused. The accused took two bundles in his two pockets of jeans pant. After that, P.W. 1 challenged him along with the Magistrate. At that time, he admitted that he received the money and the accused brought out the packets from his pocket. Executive Magistrate Asaduzzaman examined the notes and found that the numbers of the notes had been mentioned in the list of inventory. On 05.08.2013 at 1.00 pm, P.W. 1 Fazlul Haque seized the notes and a mobile phone was also seized. He proved the seizure list as exhibit 3 and his signature as exhibit 3/4. He identified the accused in Court. The place of occurrence is the Bijoynagar Branch of Reliance Insurance Company Ltd. Manager Toyeb Mohsin called him over the telephone. On 21.07.2013, the accused went to their office for inspection. At that time, another person was present along with the accused but he could not remember his name. At the time of demanding the bribe, he was not present there. Toyeb Mohsin did not inform him when the accused demanded the bribe. The Chairman of the Insurance Development and Regularity Authority instructed the Managing Director to hand over the person who demanded the bribe. Before the occurrence, an inventory was prepared. P.W. 1 Fazlul Haque, Executive Magistrate Asaduzzaman, P.W. 3 Toyeb Mohsin and he were the witnesses of the inventory. P.W. 3 Toyeb Mohsin handed over

the notes mentioned in the list of inventory. The office of the insurance company handed over the money to Toyeb Mohsin. The notes were not produced in Court today. He denied the suggestion that no inventory was prepared in fact and no money was recovered and no seizure list was prepared for which the alamat was not produced in Court. He affirmed that he started from the office of the Anti-Corruption Commission at 12.15 noon and reached at Hotel Purbani at 12.30 pm. Hotel Mananger also signed the seizure list and his name is Rahmat Ullah. Nothing has been specifically mentioned from which table the money was seized. He denied the suggestion that money was not recovered from the accused and on the date of occurrence, he also did not go to the Hotel Purbani. He denied the suggestion that based on the reports submitted by the accused, action was taken. He could not say whether based on the reports submitted by the accused punishment was awarded. He could not say whether based on the report of the accused, Reliance Insurance was punished or not. He denied the suggestion that due to action taken against the manager, he was infuriated and falsely implicated the accused. He denied the suggestion that the accused was not involved with the occurrence and he was falsely implicated in the case.

P.W. 6 Md. Asaduzzaman is the Secretary of Dhaka Power and Distribution Company Limited. He stated that on 05.08.2013, he was posted at the Office of D.C, Dhaka as Senior Commissioner and Executive Magistrate. On that day at 11.15 am under the instruction of the D.C, he went to the Office of the Anti-Corruption Commission, Dhaka Division. P.W. 3 Md. Toyeb Mohsin presented 150 notes of Tk. 1000, serial No. KaJha-4453201 to KaJha 4453300 and KaNa-7652301 to KaNa 7652350. P.W. 1 Md. Fazlul Haque, Assistant Director of the Anti-Corruption Commission prepared the inventory. He proved his signature on the list of inventory (exhibit 2) as exhibit 2/4. On that day at 01 pm, he went to the Shahana Restaurant situated on the ground

floor of Hotel Purbani Limited. Following the order of the Anti-Corruption Commission, he along with others went there. He went there under the leadership of Assistant Director Fazlul Haque of the Anti-Corruption Commission. Syed Qaiyum Hossain also went along with them and other members of the trap team took their seats beside a table. They saw that accused Abdul Motaleb and Toyeb Mohsin were sitting beside a table. At one point in time, Toyeb Mohsin handed over two bundles of note to the accused and he kept those bundles in his pocket. Subsequently, we charged the accused and told him why he kept those in his pocket. In reply, he admitted and brought out Tk. 15,00,000 from his pocket. After examining the recovered money, he found that the numbers of the recovered notes had been mentioned in the list of inventory. The accused also brought out a mobile phone from his pocket. P.W. 1 Fazlul Haque seized the money along with the mobile and prepared the seizure list. He signed the seizure list. He proved the seizure list as exhibit 3 and his signature as exhibit 3/5. The recovered notes were handed over to the custody of Accountant Abul Kawser Moral of Anti-Corruption Commission. He said that he has been discharging his duty since 2012. Earlier he was not involved with this type of case. The inventory was prepared on the fifth floor of the Office of the Anti-Corruption Commission, Dhaka Division. At the time of preparing the list of inventory, AD Fazlul Haque was present. He could not say the names of other persons present there but there were more than three persons. The list of inventory was prepared by Assistant Director Fazlul Haque. The alams were not produced before the Court. At 12.15, the list of inventory was prepared. The seizure list was prepared at 3 pm. Subsequently stated that at 1 pm, the seizure list was prepared. He could not remember how many witnesses signed the seizure list. Toyeb, Rahmatullah of Purbani Hotel and he was the witness of the seizure list. He could not remember who searched the body of the accused. He denied the suggestion that no one searched the

body of the accused or that no amount was recovered from his possession. He could not say how many people were present at the first floor of Hotel Purbani. He could not say how many tables were there in the Shahana Restaurant. He affirmed that he did not give any statement to the Investigating Officer. He could not say the name of the Investigating Officer. He denied the suggestion that Tk. 1,50,000 was not recovered from the possession of the accused.

P.W. 7 Md. Rahmat Ullah is the Room Division Manager of Hotel Purbani International. He stated that on 05.08.2013 at 1.00 pm, while he was discharging his duty on the first floor of Purbani Hotel, he was called as a witness. They were not known to him. Subsequently, he came to know them as Magistrate Asaduzzaman and Officer of Anti-Corruption Commission Fazlur Rahman. Possibly, he was the Assistant Director. He saw that four persons were sitting beside the table and accused Abdul Motaleb was also present amongst the four persons, The members of the ACC team charged the accused and directed him to bring out the things kept in his pocket. The accused was wearing a jeans pant. He brought out two bundles of Tk. 1000. There was 100 notes of Tk. 1000 in a bundle and 50 notes of Tk. 1000 in another bundle. A Symphony phone was also found. AD Fazlul Haque seized two bundles and he signed the seizure list. He proved his signature on the seizure list as exhibit 3/6. He proved his signature on the second page of the seizure list as exhibit 3/7. He identified the accused in Court. He was arrested on that day. He could not say whether the Investigating Officer examined him. During cross-examination, he stated that his office is situated on the ground floor and about 40/50 yards far from the Shahana Restaurant. On that day, 2/3 persons were on duty at the reception. The occurrence took place on 05.08.2013 at 1 pm. He could not say who is the owner of the money brought out from the pocket of the accused. In his presence, the same was recovered. The numbers of the notes were noted in his presence. At the time of

occurrence, 20/25 people were sitting at different tables at Shahana Restaurant. None of them were mentioned in the seizure list. He denied the suggestion that no occurrence as stated by him took place or no money was recovered from the accused. He denied the suggestion that since the informant is an Officer of Anti-Corruption, due to fear of his life he falsely deposed in the case.

P.W. 8 Md. Rashidul Ahsan Habib is an Officer of Insurance Development and Regularity authority. He stated that from 29.09.2011, he is discharging his duty in the said office. On 11.11.2013 at 12.00, Sub-Assistant Director Md. Abdul Kader Bhuiyan of the Anti-Corruption Commission came to his office situated at 139, Motijheel Commercial Area. He presented the documents mentioned in serial No. 05 of the seizure list to him. He seized the alampats and handed over to his custody. He proved the jimmanama (bond) as exhibit 4 and his signature as exhibit 4/1. He produced the documents kept in his custody as material exhibit IV. He produced the inspection report dated 21.07.2013, the complaint dated 15.04.2012 filed to the Chairman and the order dated 08.07.2013 for investigation.

P.W. 9 A.S.I Md. Abdul Matin (Retired) stated that on 04.08.2013, he was posted with the Anti-Corruption Commission, Combined Office, Dhaka-1. On 05.08.2013 following order No. 70/13 as a member of the trap team under the leadership of P.W. 1 Md. Fazlul Haque Sarker started from his office for Purbani Hotel situated at Mtijheel and reached the Shahana Restaurant situated on the ground floor of Hotel Purbani at 12.30. Following the instruction of the team leader, he took his seat beside a table. The accused Abdul Motaleb, Md. Mohsin and Md. Qaiyum Hossain was present at the Shahana Restaurant. They were sitting beside a table. Toyeb Mohsin handed over the bundle of the notes to accused Abdul Motaleb and he kept those in his pocket. Subsequently, P.W. 1 Fazlul Haque, P.W. 6 Asaduzzaman and he went near the table of the accused. The team

leader challenged the accused and he admitted that he received money. Subsequently, he brought out two bundles of notes from his pocket and there were 100 notes of Tk. 1000 in a bundle and 50 notes of Tk. 1,000 in another bundle. The team leader and the Magistrate examined those notes and found that the numbers of the recovered notes had been mentioned in the list of inventory and the team leader prepared the seizure list and seized the money. The witnesses present there signed the seizure list. After preparing the seizure list, the accused was detained and he was handed over to Thana. Subsequently, Assistant Director Abdul Kader recorded his statement on 07.11.2013. During cross-examination, he stated that Abdul Kader examined him in the Office of the Anti-Corruption Commission. At that time, Asaduzzaman, Jafar Ahmed, Ali Akbar and Kamrul Hamid were present there. He could not say whether the Investigating Officer examined them. None of them was examined in his presence. At the time of occurrence, he was posted at the Anti-Corruption Commission. Following the order No. 70/13, they went to the place of occurrence. The team leader also went there following the same order. At 11.00 am, they started from the Office of Anti-Corruption Commission. The list of inventory was prepared in their office. The numbers of the notes have been mentioned in the list of inventory but he could not say how many notes were there in the inventory. When they reached the Shahana Restaurant, except their staff no other persons were present there. The recovered notes are not produced today. He denied the suggestion that he deposed falsely in the case.

P.W. 10 A.S.I Md. Ali Akbar stated that on 05.08.2013, he was posted at the Anti-Corruption Commission, Combined Office, Dhaka-1 as a constable and he was also a member of the trap team. The prosecution tendered him and declined by the defence.

P.W. 11 Md. Abdul Kader Bhuiya is the Assistant Director, Anti-Corruption Commission, Head Office, Dhaka. He stated that he

was appointed as Investigating Officer vide memo No. 2101 dated 23.10.2013. He proved the said memo as exhibit 5. On 23.10.2013, he visited the place of occurrence, recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898, and seized documents. On 11.11.2013, at 12.00 he visited the office of the Insurance Development and Regularity Authority situated at General Insurance Building 02, Dhaka. Md. Rashedul Aman Habib, Officer of IRDA presented the documents mentioned in serial Nos. 1-5 of the seizure list and he seized those documents. He proved the seizure list as exhibit 4 and his signature as exhibit 4/2. Subsequently, he handed over the documents to the custody of the said Rashedul Aman Habib. On perusal of the records, he found that on 15.04.2012 Md. Khaled Mamun filed a complaint petition to the Chairman of the Insurance Development and Regularity Authority stating that the imposition of the 25% of the tariff valuation is below the valuation fixed. On 13.07.2012 the Chairman instructed the member Nabakumar Banik to enquire about the allegation. After that, Babu Naba Kumar Banik formed a two-member committee headed by a junior officer accused Md. Abdul Motaleb and another officer Md. Sohel Rana. The team leader Abdul Motaleb and the member Sohel Rana inspected the Bijoy Nagar Branch of Reliance Insurance Company Ltd on 21.07.2013. During the inspection, the team found the truth of the allegation made in the complaint dated 15.06.2012 and collected the documents. On perusal of the records, it was found that the accused Abdul Motaleb had a discussion regarding the matter with Md. Toyeb Mohsin Manager of the Reliance Insurance Company Ltd. The accused Abdul Motaleb demanded Tk. 25,00,000 to compromise. Subsequently, on 25.07.2013 and 29.07.2013, the accused Abdul Motaleb, Tayeb Mohsin and Syed Qaiyem Hossain conducted two meetings at the Hotel Purbali and the matter was settled for compromise at Tk. 1,50,000. The matter was reported to the M.D Reliance Insurance Company Ltd who filed a

complaint to the Director, Anti-Corruption Commission and consequently, a trap team was formed headed by Assistant Director Md. Fazlul Haque and there was four other members. On 05.08.2013 at 12.30, the members of the trap team remained in hiding at Shahana Restaurant situated on the ground floor of Hotel Purbani and Executive Magistrate Md. Asaduzzaman was also present there. After some time, accused Abdul Motaleb, Md. Tayeb Mohsin and Syed Qayum Hossain entered the said restaurant. Following the instruction of accused Abdul Motaleb, P.W. 3 Md. Toyeb Mohsin handed over two bundles of Tk. 1,50,000. At that time, the members of the trap team interrogated the accused and he admitted that he received bribe. At that time, P.W. 1 Fazlul Haque held the left hand of the accused and P.W. 2 Zafar Ahmed held the right hand of the accused. The accused kept the two bundles of Tk. 1,50,000 on the table. On examination, it is found that the numbers of the recovered notes are identical to the notes mentioned in the list of inventory and accordingly, the trap team seized Tk. 1,50,000, a mobile set and the jeans pant of the accused. During the investigation, he found the truth of the allegation against the accused and submitted a memo of evidence. After that, on 11.03.2014, he obtained approval from the head office and submitted charge sheet on 16.03.2014 against the accused. He proved the letter of approval as exhibit 6. During cross-examination, he stated that on 21.07.2013, P.W. 3 Toyeb Mohsin was the Manager of Reliance Insurance, Bijoy Nagar Branch, Dhaka. He affirmed that he did not visit the Bijoy Nagar Branch during the investigation. He started at 11 am from the office of ACC. He affirmed that during the investigation, he did not find the complaint made by Akter Ahmed. He denied the suggestion that Akhter Ahmed did not file any complaint against the accused. On 23.10.2013, he took up investigation of the case. Based on the complaint dated 15.04.2012, the trap case was initiated. He denied the suggestion that the accused was entrusted to enquire the Bijoy Nagar Branch on 21.07.2013. The

inventory was prepared at the Office of the Anti-Corruption Commission and he visited the said office during investigation. At the time of inventory, Magistrate Asaduzzaman, Syed Qaiyum, Toyeb Mohsin and Md. Fazlul Haque were present. P.W. 3 Toyeb Mohsin presented the notes. He affirmed that Toyeb Mohsin brought those notes from his office. The recovered notes were produced in Court which is kept under the custody of the Court but those notes were not produced in Court today. He affirmed that before filing the case, the informant took approval from the Anti-Corruption Commission. The room number of the place of inventory was not mentioned in the list of inventory but the same was prepared on the fifth floor. There were total 20 rooms on the fifth floor. The accused found that irregularity was committed in the office of the Toyeb Mohsin. He did not make any recommendations to the Insurance Development and Regularity Authority. He recorded the statement of Toyeb Mohsin on 30.10.2013. He did not cite Akter Ahmed, MD of Reliance Insurance, as a witness in the case. He denied the suggestion that in connivance with the MD of Reliance Insurance to save the P.W. 3 Toyeb Mohsin, he submitted a false charge sheet against the accused.

D.W. 1 Md. Abdul Motaleb is the accused in the case. He stated that in 2010, he joined with Insurance Development and Regularity Authority as a Junior Officer. His duty was to inspect different offices of the insurance company. During his tenure, he visited the Northern General Islami Insurance, Meghna General Insurance, City General Insurance etc. During his enquiry, the operation of two insurance companies was suspended and fine was imposed and the employees were dismissed and the branches were closed. Before that, no other occurrence like the present one took place. On 21.07.2013, he visited the Office of the Reliance Insurance Company and his Assistant Sohel Rana was along with him. They inspected the Bijoy Nagar Branch. During the enquiry, they found violation of the Insurance Act, 2010,

seized documents and reported the matter to the higher authority and instructed Sohel Rana to prepare the report and presented the report following his instruction to the Chairman for hearing. Before fixing the date of the hearing, the employees of the company came to know about the matter and to stop the report, he was falsely implicated in the case by conspiracy. Subsequently, in his absence Md. Sohel Rana submitted the report against the Bijohnagar Branch. To save the image of the Reliance Company, the accused was falsely implicated in the case by conspiracy. He submitted the report prepared by Junior Officer Sohel Rana. He also submitted the order of fine imposed against the Pioneer Insurance Company. He also submitted a report published in the newspapers as regards the imposition of fine awarded based on his report. He mentioned that different insurance companies filed 15 cases against the Chairman of the Insurance Development and Regularity Authority. He also submitted a copy of the report of the newspaper. During cross-examination, he stated that he could not remember whether he put two signatures on the seizure list dated 05.08.2013. He could not remember how much money was recovered on that day from him. He could not remember whether on 05.08.2013 at 1.00 pm, he went to the Hotel Purbani. He could not remember whether on 05.08.2013 at 1.00 pm, he was present in his office. He could not remember whether on that day, he was arrested and handed over to the Thana but he was detained and handed over to Thana and forcibly he was taken to Thana. A scuffling took place amongst several people. They forcibly took him to Thana and there was scuffling on the ground floor of his office situated at Motijheel. He denied the suggestion that on 05.08.2013 at 1.00 pm Tk. 1,50,000 of bribed money was recovered from him at the Shahana Restaurant or he received the said money as a bribe from Toyeb Mohsin. He denied the suggestion that his mobile phone was also seized.

Learned Advocate Mr Akramul Hoque appearing on behalf of the accused Mohammad Abdul Motaleb submits that a complaint was filed against the Reliance Insurance Company Ltd, Bijoy Nagar Branch and following the order of the Chairman of Insurance Development and Regularity Authority, the accused along with another Officer Sohel Rana visited the Office of the Bijoy Nagar Branch of the said Insurance Company before the alleged occurrence and found the truth of the allegation of violation of the Insurance Act, 2010 and he instructed Sohel Rana, member of the inspection team to submit the report regarding the irregularity found against the Reliance Insurance, Bijoy Nagar Branch committed by P.W. 3 Md. Toyeb Mohsin who was the Manager of the said Branch and at the relevant time, many insurance companies and the branches of the different insurance companies were penalized relying on the reports submitted by the accused after enquiry. To save himself, P.W. 3 in connivance with the P.W. 1 Md. Fazlul Haque and the police of the Motijheel Thana illegally detained the accused without prior approval of the Commissioner of the Anti-Corruption Commission and malafide implicated him in the false case showing false recovery of Tk. 1,50,000 from him. He further submits that the members of the trap team are interested persons and the prosecution could not prove the appointment of the P.W. 6 by the DC, Dhaka to conduct the trap and the trap proceeding was initiated without approval of the ACC. He also submits that there is a contradiction in the evidence of the prosecution witnesses regarding the time of entry of the accused at the place of occurrence and the recovery of the alleged notes from the alleged possession of the accused. He lastly submits that approval of the Commissioner under Rule 16 of the Anti-Corruption Commission Rules, 2007 for initiating the trap case and the appointment of the members of the trap team by the ACC is mandatory but the P.W. 1 in connivance with the police without any approval under Rule 16 of the said Rules conducted the

trap case. Therefore, the whole proceedings of the trap was vitiated and the accused was prejudiced in his defence. He lastly submits that admittedly, the trap proceeding was initiated based on the written complaint dated 01.08.2013 made by Akter Ahmed, MD of the Insurance Company to the Anti-Corruption Commission but the prosecution neither examined said Akter Ahmed nor the complaint dated 01.08.2013 was proved by the prosecution. The learned Advocate in support of his submission relied on the decisions made in the case of Abdur Rahman Vs. The State reported in 27 DLR 268, Gopal Rajgor and ors Vs. the State reported in 42 DLR 446, Ghulam Ali versus the State reported in PLD 1963 (W.P.) Karachi 582, Md. Rezaul Kabir Vs. The State and another reported in 14 MLR 482, AKM Mukhlesur Rahman Vs. the State reported in 45 DLR 626 and State vs Moslemuddin (Md) reported in 56 DLR (AD) 174.

Learned Advocate Mr. ASM Kamal Amroohi Chowdhury appearing on behalf of respondent No. 2 submits that P.W. 1 initiated the trap case based on the prior approval of the commissioner and a Magistrate (P.W. 6) was also appointed on the requisition of the P.W. 1 to conduct the trap and a list of inventory of Tk. 1,50,000 as supplied by P.W. 3 was prepared in the presence of the Executive Magistrate P.W. 6. P.W. 1 handed over those notes to P.W. 3 to bribe the accused. P.W. 3 bribed the accused at 1.00 pm at Shahana Hotel situated on the ground floor of Purbani Hotel and immediately after handing over the bribe to the accused the notes mentioned in the list of inventory were recovered by P.Ws. 1, 2 and 3 from the accused kept in two packets of his jeans pant in presence of P.Ws. 5, 6 and 7. Learned Advocate having placed the evidence of P.W. 6 submits that P.Ws. 1, 2 and 6 are neutral witnesses and no enmity was suggested and the prosecution by adducing legal evidence proved the recovery of Tk. 1,50,000 from possession of the accused received by him as bribe and the prosecution proved the charge against the accused beyond all reasonable doubt.

Learned Advocate relying on the decision made in the case of Anti-Corruption Commission vs Rezaul Kabir and another reported in 68 DLR (AD) 291 and the case of Nurul Islam Moni vs Government of Bangladesh represented by the Secretary, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Dhaka and others reported in 72 DLR 62 submits that Rule 16 of the Anti-Corruption Commission Rules, 2007 is a procedural law and not mandatory. He prayed for the dismissal of the appeal.

I have considered the submissions of the learned Advocate Mr. Akramul Hoque who appeared on behalf of the appellant and the learned Advocate Mr. ASM Kamal Amroohi Chowdhury who appeared on behalf of respondent No. 2, perused the evidence, impugned judgment and order passed by the trial Court and the records.

It has been alleged that before initiating the trap case an application was filed on 01.08.2013 by Akter Ahmed, Managing Director of Reliance Insurance to the Anti-Corruption Commission against the accused Mohammad Abdul Motaleb regarding claiming bribe. P.W. 1 stated that after getting the approval, he sent a requisition to the DC, Dhaka for the appointment of a Magistrate to conduct the trap case. P.W. 6 Md. Asaduzzaman stated that as per instruction of the DC, Dhaka on 05.08.2013 at 11.00 am, he came to the Office of the Anti-Corruption Commission, Combined Office, Dhaka Division-1. Thereafter a list of inventory of Tk. 1,50,000 was prepared on 05.08.2013 at 11.00 am in the Office of the Director, Anti-Corruption Commission, Combined Office, Dhaka Division and at the time of preparing the list of inventory, P.W. 1 Md. Fazlul Haque, P.W. 3 Toyeb Mohsin and P.W. 6 Executive Magistrate Md. Asaduzzaman were present there. P.Ws. 1, 2 and 9 stated that following order No. 70 of 2013, the members of the trap team went to the Shahana Restaurant situated on the ground floor of Hotel Purbani International. The prosecution could not prove the said application dated 01.08.2013,

approval of the ACC for conducting the trap case and the appointment of the members of the trap team to conduct the trap case. The prosecution also could not prove any appointment of P.W. 6 Md. Asaduzzaman to be a member of the trap team by DC, Dhaka and Office Order No. 70 of 2013.

At this stage, it is relevant here to rely on a decision made in the case of Moslemuddin (Md) vs The State passed in Criminal Appeal No. 2013 of 1992 judgment dated 28.06.1995 wherein the High Court Division has held that

“From the lower court record, it does not appear that the learned Special Judge took notice of such a patent fact and that any sanction letter was ever produced before the learned judge and that he ever wrote under section 6(5) of the Criminal Law (Amendment) Act to the proper authority for the sanction. It is now well settled that sanction confers jurisdiction upon the Special Judge for taking cognizance of an offence against a government servant. Mere statement in the charge-sheet that some sort of sanction was received without producing the sanction order before the court and putting in the same to the evidence in order to show that the sanction order was valid and proper is not enough. In my view, the trial has been held without sanction from the proper authority and, as such, the trial held by the Special Judge is without jurisdiction and the impugned order of conviction and sentence is illegal.”

The above view of the High Court Division was subsequently affirmed by our Apex Court in the case of State vs Moslemuddin (Md) judgment dated 19.01.2004 reported in 56 DLR (AD) 174. Because of the judgment passed by our Apex Court in the referred case, in the absence of any proof of appointment of Magistrate (P.W. 6) and the

order No. 70/2013, it cannot be said that P.W. 6 was appointed by DC, Dhaka to conduct the trap case. Furthermore, there was no approval of the Commissioner under Rule 16 of the Anti-Corruption Commission Rules, 2007 to conduct the trap against the accused. P.Ws. 1, 2, 9 and 10 also could not show their appointment of the Anti-Corruption Commission to conduct the trap. In the absence of any appointment of P.Ws. 1, 2, 9 and 10 by the Anti-Corruption Commission, it cannot be said that the members of the trap team are neutral persons.

P.W.6 stated that at the instruction of the authority of the ACC, he along with the members of trap team and P.W. 5 went to Shahana Restaurant situated on the ground floor of Hotel Purbani International under leadership of P.W. 1 and he was the member of the trap team. Entering the Shahana Restaurant he found that accused Abdul Motaleb and P.W. 3 Toyeb Mohsin were sitting beside a table. P.Ws. 3 and 5 stated that they were sitting along with the accused beside a table. The above evidence of P.W. 6 is contradicted by P.Ws. 3 and 5. No explanation was given by P.W. 6 as to why he accompanied P.Ws. 3 and 5 who are not the members of the trap team. P.W. 6 appears to me as interested witness.

At this stage, it is relevant here to rely on the decision made in the case of Emperor Vs. Anwar Ali reported in 1948 AIR (Lahore) 27 and the case of Rao Shiv Bahadur Singh and another Vs. State of Vindh-P reported in 1954 AIR (SC) 322. In the case of Rao Shiv Bahadur Singh (Supra), it has been held that

“The evidence of the witnesses who were out to entrap the accused their evidence cannot be relied upon without independent corroboration. It may be argued that the recovery in the present case has been proved by PW 4 Mr. Md. Abdus Samad, the Upazila Magistrate. It may further be argued why this PW 4 should depose against the appellant falsely when the defence failed to prove or

suggest any enmity or ill feeling. It is true that PW 4 is a Magistrate of the Upazila but from the materials on record, it appears that from the very beginning, he was with the police trap party and he acted as a member of that party. Though he is a Magistrate of the Upazila and he allegedly witnessed the recovery of the two currency notes, the evidence of PW 1 indicates that from the time of handing over of the two currency notes to PW 2 he was with the trap party. So, when PW 4 was with the trap party even though he is a Magistrate his evidence cannot be construed as evidence of a neutral witness and as he was a member of that trap party his evidence cannot be taken at its face value. So, in view of the aforesaid decisions and in view of the evidence on record it appears that the prosecution by examining independent and disinterested witnesses failed to corroborate the evidence of trap party witnesses.”

In the case of AKM Mukhlesur Rahman Vs. State reported in 45 DLR 626 High Court Division considering the referred cases opined that

“It is also well settled that to establish a case of bribery against an accused for having accepted marked currency notes from a decoy witness employed by the police in furtherance of a trap against the accused, it is not sufficient proof that the marked notes passed from the decoy witness to the accused. It is of the utmost importance in cases of this kind that there should be independent corroboration of the statement of the decoy witness, that the money was received by the accused person for an illegal purpose.”

P.Ws. 1, 2, P.W. 6 (Executive Magistrate Md. Asaduzzaman), P.W. 9 A.S.I Md. Abdul Matin (Retired), P.W. 10 (Constable) and another Constable were the members of the trap team. P.W. 2 stated that he deposed in Court partly reading the FIR although he is not the informant. P.W. 1 conducted the trap case without the approval of the Commissioner under Rule 16 of the Anti-Corruption Commission Rules, 2007. No explanation was given by the prosecution as to why P.Ws. 9, 10 and another Constable, all are police personnels, were appointed as a member of the trap team. Furthermore, at the time of conducting the trap, the police personnels of the Motijheel Thana were also present at the Shahana Hotel situated on the ground floor of the Hotel Purbani International. A police personnel shouldn't be appointed to conduct the trap. Therefore, I am of the view that the trap proceeding was vitiated due to conducting the trap by police personnel and the presence of police of Motijheel Thana at the time of conducting the trap.

Another point required to be addressed as to whether there is any conformity or consistency in the evidence of the prosecution witnesses as regards the time of entry of the accused and the witnesses in the Shahana Hotel situated on the ground floor of the Hotel Purbani International.

P.W. 1 stated that he along with the members of the trap team remained in hiding at the Shahana Restaurant situated on the ground floor of the Hotel Purbani and at that time, the Magistrate (P.W. 6) was also present there. Subsequently, the accused Md. Abdul Motaleb entered the restaurant along with P.W. 3 Md. Toyeb Mohsin and P.W. 5 Syed Qaiyum Hossain. P.W. 2 Zafar Ahmed stated that on 05.08.2013 at 12.30, he went to the Shahana Restaurant and remained in hiding there and at 12.35 pm P.W. 3 Md. Toyeb Mohsin and P.W. 5 Syed Qaiyum Hossain entered the said restaurant and waited there. He further stated that before he entered the Shahana Hotel, accused Abdul

Motaleb was waiting there. P.W. 3 Md. Toyeb Mohsin stated that at 1.00 pm, they reached Hotel Purbani and took their seat beside a table on the ground floor of Shahana Restaurant, Purbani Hotel along with P.W. 5 Syed Qaiyum Hossain and the accused. P.W. 1 Md. Fazlul Haque, P.W. 6 Md. Asaduzzaman, the police of Motijheel Thana and other Officers of the Anti-Corruption Commission took their position. P.W. 5 Syed Qaiyum Hossain stated that P.W. 1 Md. Fazlul Haque along with the Magistrate was waiting at Hotel Purbani along with other people. Subsequently, he entered the Hotel Shahana at 12.50 and he gave the order for food. Subsequently, the accused came at 12.30 noon in front of the hotel and thereafter, he along with the accused total of three persons entered the hotel. P.W. 6 Md. Asaduzzaman stated that under the leadership of P.W. 1 Md. Fazlul Haque at 1.00 pm following the order of the Anti-Corruption Commission authority he went to Shahana Restaurant situated on the ground floor of Hotel Purbani and P.W. 5 Syed Qaiyum Hossain was also along with them. The members of the trap team were sitting beside a table. He saw that the accused Abdul Motaleb and Toyeb Mohsin were sitting beside a table. P.W. 7 Md. Rahmat Ullah stated that on 05.08.2013 at 1.00 pm, he was called as a witness. While he went to the ground floor of the Hotel Purbani, he saw Magistrate Asaduzzaman and P.W. 1 Md. Fazlul Haque, total of four persons were sitting beside a table including accused Abdul Motaleb. P.W. 9 A.S.I Md. Abdul Matin (Retired) stated that on 05.08.2013 at 12.30, he under the leadership of P.W. 1 Md. Fazlul Haque went to Shahana Restaurant situated on the ground floor of Hotel Purbani and took their position beside a table. At that time, accused Abdul Motaleb, P.W. 3 Md. Toyeb Mohsin and P.W. 5 Syed Qaiyum Hossain also entered the Shahana Restaurant and took their seat beside a table. P.W. 3 did not say anything when the accused Mohammad Abdul Motaleb entered the Hotel Purbani. He also did not say that he called the accused Mohammad Abdul Motaleb over mobile

phone to come at Hotel Purbani International Motijheel. The above evidence of P.Ws. 1, 2, 3, 5, 6, 7 and 9 depicts that there is a material contraction in their evidence regarding the time of entry of the accused and the witnesses in the Shahana Restaurant and their sitting arrangement which creates doubt about alleged manner of handing over bribe to the accused.

P.Ws. 1, 2, 5, 6 stated that Tk. 1,50,000 was handed over by P.W. 3 to P.W. 1 before preparing the list of inventory but the evidence of those witnesses is not corroborated by P.W. 3. Therefore, there is a doubt about handing over the Tk. 1,50,000 to P.W. 1 by P.W. 3.

The defence case is that the accused Mohammad Abdul Motaleb was entrusted to enquire into the allegation made against the Reliance Insurance Company, Bijoyagar Branch. P.W. 3 is the Manager of the said Branch and P.W. 5 is also a higher official of the said insurance company. It transpires from the cross-examination of the prosecution witnesses that during the enquiry about the allegation made against the said Branch of the Reliance Insurance Company, the accused along with another Officer Md. Sohel Rana found the truth of the irregularity committed under the Insurance Act, 2010 and he instructed Sohel Rana to prepare a report against the said company. It further transpires that at the relevant time, the accused also submitted several reports against many other insurance companies and the Insurance Development and Regularity Authority has taken legal action against those companies. After the inspection of the Bijoyagar Branch of the Reliance Insurance Company, the authority of the said company and P.Ws. 3 and 5 were infuriated upon the accused. Therefore, I am of the view that P.Ws. 3 and 5 are inimical witnesses.

P.W. 4 Naba Gopal Banik stated that the accused Motaleb and another Officer Md. Sohel Rana were appointed by the authority to enquire into the allegation dated 13.09.2012 filed against Reliance Insurance Company Ltd and they inspected the said company on

21.07.2013. P.W. 8 Md. Rashidul Ahsan Habib stated that during the investigation, the inspection report dated 21.07.2013, the complaint dated 15.04.2012 and the order dated 08.07.2013 was seized by the Investigating Officer. He proved those documents as material exhibit IV. The defence plea that the accused Md. Motaleb during enquiry found irregularity and instructed Md. Sohel Rana to submit the report is also corroborated by the evidence of P.Ws. 4 and 8. Therefore, the defence put forward by the accused might be true and false implication of the accused Mohammad Abdul Motaleb cannot be ruled out.

On scrutiny of the records, it is found that there is no copy of the approval of the Commissioner under Rule 16 of the Anti-Corruption Commission Rules, 2007 with the records. P.W. 11 stated that during the investigation, he did not find a copy of the complaint dated 01.08.2013. The prosecution also could not show any appointment of the P.W. 6 by DC, Dhaka to be the witness of the list of inventory and trap cases. Furthermore, the order No. 70 of 2013 was also not proved by the prosecution. In the above backdrop, this Court is constrained to hold the view that no reliable, independent and neutral witnesses conducted the trap case.

In the list of inventory, it has been mentioned that the list of inventory was prepared in the office of the Director, Combined Office, Dhaka Division-1. The said director was not examined in the case. The presence of the police of Motijheel Thana and the inclusion of P.W. 9, 10 and another constable in the list of the trap team vitiated the sanctity of the trap.

A trap has been defined as “a person who, with a view to securing the conviction of another person, proposes certain criminal conduct to him, and himself ostensibly takes part therein. He creates the occasion for someone else to commit the offence.” Swift’s Law of Criminal Procedure, p. 485.

In the case of R. V. Cleaver, 1967 (4) S.A. 256 (R.A.D.) known as Cleaver's case the specific guidelines were laid down for proper execution of a trap case. It was stated that "the greatest care should be taken to ensure that the trap is a fair one. Verbal persuasion is not to be used. It would seem that this latter stricture was not intended to exclude the normal verbal arrangement of the trapping transaction. What apparently the court had in mind was to exclude such things as "pleas of desperate illness, offers of great sums, continued and persistent coaxing or any effective appeal to the impulses of compassion, sympathy, pity, friendship, fear or hope where there is more than the ordinary expectation of gain and profit incident to the traffic".

In the case of Abdur Rahman Vs. The State reported in 27 DLR 268 it has been held that

"The prosecution should see that in arranging this trap they do not deviate from the fundamental principle of justice. It should also be borne in mind that the police which is an organisation entrusted by the State to maintain law and order and help in the administration of the justice should not indulge in doing things which have not been authorised by any Act of the police. The police has also a duty to the state and the citizen."

The whole basis of the prosecution case is the complaint dated 01.08.2013 filed by Akter Hossain, Managing Director of Reliance Insurance Company Ltd. During the investigation, the Investigating Officer did not find a copy of the said complaint made against the accused. The prosecution is bound to prove all the material facts stated in the FIR. The prosecution did not examine said Akhter Hossain who filed a written complaint on 01.08.2013 against the accused. Furthermore, P.W. 2 admitted that he deposed in Court partly reading the FIR although he is not the informant. P.W. 2 appears to me as highly interested witness. Therefore evidence of P.W. 2 cannot be relied on by this Court to find the accused guilty of the alleged offence.

No explanation has been given by the P.Ws. 1, 2, 3, 5 and 6 as to how they found the accused Mohammad Abdul Motaleb in the Shahana Restaurant of Hotel Purbani at the relevant time.

At this stage, it is relevant here to rely on the decision made in the case of Gopal Rajgor and ors Vs. the State reported in 42 DLR 446 wherein it has been held that

“In the present case, we take note of the complete departure of the prosecution case from first recorded version with great doubt. Partial departure from the first information report, makes the prosecution case shaky and the same may be looked upon with great suspicion. It will not be safe to rely on the evidence of witnesses who are found to be un-worthy of credence relating to one part of the prosecution story in its material particulars. It is elementary that where the prosecution has a definite or positive case, it must prove the whole of the case. Therefore, partial departure affects the credibility of the witnesses very much and complete departure of the prosecution case from the FIR case robs the witnesses of their credibility making their testimony to be entirely discarded and they should be spotted as liars.”

As regards the credibility of the witnesses of trap case, in the case of Ghulam Ali versus the State reported in PLD 1963 (W.P.) Karachi 582 it has been held that

“There is no doubt that in the present case there was more than a reasonable possibility and indeed, in my opinion, an establishment of fact that the defence put forward by the appellant may be true. The defence examined by the appellant read with the admissions made by the prosecution witnesses, the unreliability of

the main prosecution witnesses, the interested nature of the testimony of Saffar and the overwhelming circumstance of Faiz Muhammad Almani being inimical towards the appellant undoubtedly points to more than a reasonable doubt of the prosecution case.”

In this connection, reference may be made to the *Simon Kaitan Fernandez Vs. the State* reported in AIR 1951 Bom. 468 wherein it has been opined that

“Where the entire law in regard to the importance to be attached to panch witnesses or mashirs has been discussed. It was held that it was essential that panch witnesses should be independent, unbiased and without being in any way under the control of the police, that as far as possible the police and the investigating officers should avoid utilizing panch witnesses when they have already acted as panch witnesses, that those should be panch witnesses whom the police officers do not know at all, and about whose independence and impartiality there can be no question at all. Piaro's testimony read as a whole, suffers greatly indeed, and is found wanting if weighed in the light of these principles.”

In the case of *Md. Rezaul Kabir Vs. The State* and another reported in 14 MLR 482 the High Court Division exercising jurisdiction under Section 561A of the Code of Criminal Procedure, 1898 after elaborate discussion on Rule 16 of the Anti-Corruption Commission Rules, 2007 has held that

“In view of the above, as contemplated in Rule 16 of the Anti-Corruption Commission Rules, 2007, as referred to above, we find that the legislature or the framers of the law expressed their intention that in laying and conducting a trap case to catch hold of a public servant

red handed connected with the offence as mentioned in the schedule to the Anti-Corruption Commission Act, 2004 the provisions laid down in Rule 16 of the Anti-Corruption Commission Rules, 2007 shall be followed. There is no scope on the part of the Court to put a different word to give a different meaning other than the one which was meant by the expression employed by the framers of the law. Therefore, the provisions as laid down in Rule 16 of the Anti-Corruption Commission Rules, 2007 are construed to be mandatory.”

The above view of the High Court Division in the Md. Rezaul Kabir (Supra) has been set aside by our Apex Court in the case of Anti-Corruption Commission vs Rezaul Kabir and another reported in 68 DLR (AD) 291 wherein our Apex Court has held that

“The trapping party had followed the relevant Rules at the time laying trap or not or in other words, pre-arranged raid/trap carries any evidentiary value or not for non-compliance of procedural formalities before laying traps should be considered by the Courts after recording evidence along with other evidence. The Court may or may not accept the evidence of a decoy witness considering the facts, circumstances, the procedure to be followed for laying traps and that the officials laying traps were designated or not. There may be other reliable evidence in the hand of the prosecution against the respondents to connect with the offence. In two cases the allegations are that the accused respondents accepted considerable amounts as gratifications before laying traps. Accept means to take or receive with a consenting mind. Obviously such a consent can be established not only leading evidence of

prior agreement but from the circumstances surrounding the transaction itself.”

In interpreting Rule 16 of the Anti-Corruption Commission Rules, 2007 it is also profitable here to rely on a decision made in the case of State of HP Vs. Lekh Raj reported in 2000 SCC (Cr) 147 wherein it has been held that

“The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hyper-technical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be an utopian thought but has to be considered as part and parcel of human civilization and the realities of life. The court cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting the society and the mankind.”

On careful consideration of the evidence of the prosecution witnesses and D.W. 1 in a juxtaposition, I am of the view that the prosecution failed to conduct the trap proceeding fairly. The whole trap proceeding was initiated at the instance of Akhter Hossain, the then Managing Director of the Reliance Insurance Company Ltd in the absence of any approval of the Commissioner under Rule 16 of the Anti-Corruption Commission Rules, 2007 in connivance with the P.Ws. 1, 2, 3, 5, 6, 9, 10 and the police of Motijheel Thana.

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 to the hilt against the accused beyond all reasonable doubt.

I find merit in the appeal.

In the result, the appeal is allowed.

The impugned judgment and order passed by the trial Court against accused Mohammad Abdul Motaleb is hereby set aside.

Send down the lower Court's records.