

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 9039 of 2023

In the matter of:

An Appeal under Section 10(1)(a) of the
Criminal Law Amendment Act, 1958.

And

In the matter of:

Abdul Kuddus Khan

... **Appellant**

-Versus-

The State and another

... **Respondents**

Mr. Md. Shah Alam Sarker, Advocate

... For the Appellant

Mr. Bivuti Tarofder, Advocate

... For the Respondent No. 2.

Mr. Md. Shafiquil Islam, D.A.G with

Ms. Farhana Abedin, A.A.G with

Mr. Hedayth Uddin, A.A.G and

Mr. K. M. Saiful Islam, A.A.G

... For the State

Heard on: 22.01.2026, 26.04.2026,

28.04.2026, 04.05.2026 and 14.05.2026

Judgment on: 10.06.2026.

This appeal, preferred under Section 10(1)(a) of the
Criminal Law Amendment Act, 1958 is directed against the
judgment and order dated 16.08.2023 passed by the learned

Special Judge (Senior District & Sessions Judge), Special Judge Court, Faridpur in Special Case No. 09 of 2022, corresponding to Dudak Integrated District Office, Faridpur Case No. 01 dated 28.01.2020, convicting the appellant under Section 409 of the Penal Code, 1860-read with Section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him to suffer rigorous imprisonment for a period of 05(five) years with a fine of Tk. 10,000/- (ten thousand), in default to suffer rigorous imprisonment for a period of 03(three) months. The appellant was, however, acquitted of the charges under section 468, 471 and 109 of the Penal Code.

The facts relevant for disposal of the appeal, in short, are that one Md. Abu Sayed, Assistant Director, the Anti-Corruption Commission, Faridpur, lodged a First Information Report (FIR) stating *inter alia* that during an enquiry under Memo No. E/R 35/2018, conducted by the Anti-Corruption Commission, Integrated District Office, Faridpur, it was revealed that one Nishikanta Karmakar was the owner of 33 decimals of land appertaining to S.A. *Khatian* No. 217 and Plot No. 347 under Surjadia Mouza, Police Station Boalmari,

District Faridpur. Subsequently, the said Nishikanta Karmakar left for India without leaving any heir in Bangladesh and at the time of B.S. record, the said property was recorded under khas *Khatian* No. 1/1 in the name of the Deputy Commissioner, Faridpur on behalf of the Government of Bangladesh, corresponding to BS Plot No. 411.

On 15.04.2018, accused Minoz Saha and Gobinda Saha submitted an application before the Assistant Commissioner (Land), Boalmari seeking mutation of the land in their names for payment of land development tax. Despite having full knowledge that the land appertaining to BS Plot No. 411 and khas *Khatian* No. BS 1/1, which is government khas land was recorded in the name of the Deputy Commissioner, Faridpur, on behalf of the Government of Bangladesh, accused Md. Abdul Kuddus Khan concealed the said fact and submitted a report in favour of mutation. Accused Palash Sheikh, acting as Mutation Assistant, examined the papers, signed the proposal and placed the same before the Assistant Commissioner (Land).

The accused Minoz Saha and Gobinda Saha, though possessing no right, title or interest in the said government land, in collusion with each other and with dishonest intention, created a forged deed being Deed No. 6025 dated 20.12.1969 of Boalmari Sub-Registry Office, falsely showing Nishikanta Karmakar as donor and themselves as donees/transferees in respect of the said 33 decimals of government land. Thereafter, with the assistance and cooperation of the accused Md. Abdul Kuddus Khan, the then acting Union Land Assistant Officer of Parameshwardi Union Land Office, and accused Palash Sheikh, Vested Property(VP)/Mutation Assistant of Upazila Land Office, Boalmari, the said forged deed was submitted before the Assistant Commissioner (Land), Boalmari Upazila Land Office, Faridpur, and through Mutation Case No. A.C.(L) IX-P-1-2316/2017-18 and U.L.O. No. IX-P-1-159/2017-18, an attempt was made to mutate and record the said 33 decimals of land under Plot No. 411 in proposed *Khatian* No. 1/1(61), thereby attempting to misappropriate government property.

Upon requisition by the Anti-Corruption Commission, the District Registrar, Faridpur, had issued a certified copy of

registered Deed No. 6025 of 1969. The supplied certified copy disclosed that the actual deed bearing No. 6025 dated 20.12.1969 pertained to entirely different persons and property showing Mariam Bibi as transferee and several others as transferors in respect of 27 decimals of land situated at Mouza Tongrail. Consequently, the deed submitted by accused Minoz Saha and Gobinda Saha before the Land Office was found to be false and forged.

Both accused Md. Abdul Kuddus Khan and Palash Sheikh, instead of verifying the genuineness of the deed from the concerned Sub-Registry Office, intentionally facilitated the use of the forged deed, thereby assisting in the attempt to misappropriate government land. Thus, all the accused persons, in furtherance of their common intention and in collusion with each other, committed offences punishable under Sections 409/420/467/468/471/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

Upon closure of the investigation, the Investigating Officer, Sardar Abul Bashir submitted charge sheet No. 04, dated 20.07.2022, under Sections 409/420/467/468/471 and

109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947 against 3 accused-persons.

The case record was transmitted to the learned Special Judge, Faridpur and registered as Special Case No. 09 of 2022. The charge was framed on 10.01.2023 under Sections 409/468/471 and 109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947, while the accused-persons pleaded not guilty and claimed to be tried when the same was readout and explained to the accused. The prosecution examined 07 witnesses, while the defence examined none. The accused-persons were examined under Section 342 of the Code of Criminal Procedure and once again they pleaded innocence.

The learned Special Judge after completion of the evidence, and on perusal of the same and upon hearing the parties convicted the accused under Section 409 of Penal Code with Section 5(2) of the Prevention of Corruption Act, and sentenced to suffer rigorous imprisonment for a period of 05(five) years and to pay a fine of Taka 10,000/- (ten thousand) in default to suffer rigorous imprisonment for a period of

03(three) months and acquitted him of the charges under Sections 468/471 and 109 of the Penal Code and also convicted Minoj Saha under Section 468 and 471 of the Penal Code and sentenced 07(seven) years simple imprisonment and to pay a fine of Taka 50,000/- and acquitted Palash Sheikh of the charges levelled against him.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence, the convict preferred this appeal before this Court.

Mr. Md. Shah Alam Sarker, the learned Advocate appearing on behalf of the appellant, contends that the FIR is defective as the copy writer, composer, and certified copy issuer of the alleged deed were not made accused in this case; as such, the conviction and sentence are not tenable in the eye of law.

The learned Advocate contends that the AC land did not direct the appellant whether to verify the deed was forged or genuine, as the deed was produced from the Sub-Registrar's office with official seal and signature.

He submits that the Upazila Land Office, Boalmari, Faridpur sent a copy to compare the said deed with registrar volume and sub-registrar that the said deed was not in the volume and after finding the report, the appellant proposed to the A.C. Land to cancel the Mutation Case on 13.03.2019, by this it is presumed that appellant has no power to see the same, whether it was in volume or not but the Court without consider the same convicted him, thus the conviction and sentence is not tenable in eye of law.

He next submits the suit land falls under 'Kha' list of Vested Property (VP) land and the concerned V.P. officer, namely Palash Sheikh issued a report on 22.03.2018, which runs as under:

যেহেতু আবেদনকারী ০১। মিনোজ সাহা ০২। গবিন্দ চন্দ্র সাহা পিং মৃত মধুসুধন সাহা সাং শ্রী নগর, উপজেলা বোয়ালমারী, জেলা-ফরিদপুর এর নামে সূর্য্য দিয়া মৌজার এস.এ, ২১৭, বি.এস ১/১ নং খতিয়ানের এস.এ ৩৪৭, বি.এস ৪১১নং দাগের ৩৩.০০ (তেরিশ) শতাংশ জমিতে সরজমিনে ভোগদখলে আছেন সেহেতু ৩৩.০০ শতাংশ জমি খাজনা গ্রহনের অনুমতি দেওয়া যেতে পারে।

But this accused was acquitted by the trial Court, who stood on the same footing with the appellant. Since co-accused

Palash Sheikh having been acquitted, the appellant is also entitled to acquittal on the principle of parity.

He further submits that the Government released the 'Kha' listed property in the year 2013 and thus the appellant merely acted upon that legal position. He also contends that accused Md. Kuddus Khan and Polash Sheikh went to investigate the said land then they found the possession of the accused Minoz Saha, and about possession of the said land, the I.O. stated in cross-examination that Minoz Saha possessed the said land.

He next submits that the Union Assistant Officer has no power to finalise or order to make '*Namjari Jamabag*', he can only submit the documents filed by an applicant, and he has no duty to verify the genuineness of documents, but the trial Court, without considering the same, convicted him.

The learned Advocate further contends that the trial Court convicted the appellant under Section 409 of the Penal Code and Section 5(2) of the Prevention of Corruption Act, 1947 for the same alleged act, which amounts to double jeopardy, which is legally impermissible.

The learned Advocate submits that the Anti-Corruption Commission did not prove that the appellant is a beneficiary of the disputed land and deed, so, conviction is not tenable in the eye of law.

The learned Advocate finally prays for allowing the appeal.

Per contra, Mr. Bivuti Tarofder, the learned Advocate appearing on behalf of the respondent No. 2, contends that the alleged deed is dated 20.12.1969, but it was produced for mutation in 2018, after a lapse of 50 years but the appellant forwarded the proposal for mutation without verifying and ascertaining the genuineness of the deeds which is suspicious and thus committing criminal misconduct.

He next submits that the allegations against the appellant are proved by documentary evidence like Exhibit 11(9).

He next contends that the testimony of PW2 confirms that the official copy of Deed No. 6025 of 1969 shows entirely different parties and property.

He next contends that the original recorded owner, Nishi Kanta Karmakar had migrated to India before 1969 and left no

heirs in Bangladesh. He could not have executed any deed in 1969. Therefore, the foundation of the mutation application is fraudulent.

Mr. Tarofder contends that the accused Minoj Saha applied for mutation in 2018 based on the alleged deed executed in 1969, a gap of approximately 50 years. This delay is not merely suspicious but also absurd and gives an inference of fabrication.

He next argues that if the accused had genuinely acquired title under a valid deed, in the ordinary course of action, he would seek mutation within a reasonable time, certainly within a few years, not half a century.

He further argues that no land development tax was paid for this land by Minoj Saha and Gobindo Saha for 50 years. The government record shows no payment was made by them. This is impossible for a genuine owner to remain in possession without paying the land development tax for such a long time.

He further submits that during the mutation proceedings, the accused Minoj Saha and Gobindo Saha submitted their NID card (Exhibit No. 3(3), 11(10) and 11(11)) and

documents. These documents established that in 1969, the year of the alleged deed, Minoj Saha was approximately 9 (nine) years old and Gobindo Saha was approximately 2 (two) years old. A deed executed in favour of a 9-year-old child and a 2-year-old infant is void *ab initio* for want of capacity to be part of a contract.

Mr. Tarofder submits that the Union Land Assistant Officer, Abdul Kuddus Khan was entrusted with the duty to determine the original ownership of the property in question under the guideline No. 'Gha'. 1.2. 'Dha' of the Handbook for AC (Land) prepared by the Land Reform Board, Ministry of Land but he did not verify the ownership of the applicants and submitted a report without any independent verification, amounting to criminal misconduct.

He further submits that the role of the appellant (statutory verifying authority) is fundamentally different from the role of Palash Sheikh (no statutory duty) as such the acquittal of Palash Sheikh does not entitle the appellant to parity. Palash Sheikh had only a clerical role, whereas the appellant had a statutory verifying role.

Learned Advocate contends that the impugned judgment and order of conviction do not suffer from any illegality or infirmity. He finally prays for dismissal of the appeal.

I have considered the submissions of the learned Advocates for both sides, perused the evidence on record, the impugned judgment and order passed by the trial Court and the other materials on record.

For the proper adjudication of the matter and analysis of the facts on record of the evidence of the prosecution is being reviewed as follows:

PW1, Md. Abu Sayed, Deputy Director, Anti-Corruption Commission, Head Office, Dhaka, deposed that the inquiry revealed that 33 decimals of land under S.A. Plot No. 347, S.A. *Khatian* No. 217 of Surjadia Mouza, belonged to one Nishikanta Karmakar. Since the owner migrated to India, leaving no legal heirs, the property was recorded as Government khas land.

Accused Minoz Saha and Gobinda Saha forged Deed No. 6025, dated 20.12.1969. Abdul Kuddush Khan concealed government records and recommended the mutation. Accused

Palash Sheikh (Mutation Assistant) marked the file as 'verified' without checking. Following the inquiry, he submitted an inquiry report. He proved the First Information Report (FIR) as Exhibit 2.

In cross-examination, he denied the suggestion that the inquiry was flawed or that Deed No. 6025 was genuine.

PW2, Md. Yousuf Miah, Sub Registrar, Setakundu, Chattogram, testified that pursuant to ACC's requisition dated 26.02.2019, he supplied the certified copy (4 pages) of Deed No. 6025 of 1969. He proved the same as Exhibit 4 Series. He stated that the executants of the original deed were Siddheswar Biswas and others, while the recipient was Mariam Bibi.

In cross-examination, he reaffirmed that the certified copy was accurately generated from the official volume book record.

PW3, Md. Golam Nabi Biswash, Office Assistant, Sub Registry Office, Gopalganj, confirmed that the photocopy of Deed No. 6025 accurately matched the original volume book record.

PW4, Ms. Israt Jahan Zerin, Senior Assistant Secretary, Cabinet Division, Dhaka, deposed that she transmitted a 14-page comprehensive land report to ACC vide Memo No. 242 dated 14.02.2019, which confirmed government ownership. She proved the report as Exhibit 8 series.

In cross-examination, she admitted that the data sent was compiled from the records provided by the Boalmari Upazila Land Office and the District Record Room.

PW5, Md. Kamal Mollah, Office Assistant, Deputy Commissioner Officer, Faridpur deposed that the ACC official prepared a seizure list for those items and returned them to his custody under a *Zimmanama*.

He proved the seizure list as Exhibit 9, and his signature as Exhibit 9/1. He also proved the *Zimmanama* dated 17/02/2022 as Exhibit 10.

In cross-examination, he stated that the Anti-Corruption Commission office seized the papers from him.

PW6, Md. Abdus Salam, Upper Division Assistant, Anti-Corruption Office, Faridpur deposed that during his posting at

ACC Faridpur, he witnessed the recovery and seizure of evidence.

PW7, Sarder Abul Bashar, Assistant Director, the investigating officer stated that he visited the place of occurrence. He submitted charge sheet No. 04 dated 20.07.2022. He executed the formal seizures of records from the Boalmari Land Office and District Registry Office. His investigation corroborated that the land originally belonged to Nishikanta Karmakar, and subsequently the land became Government khas land upon his migration to India, and was fraudulently mutated by Minoz Saha and Gobinda Saha using a forged Deed No. 6025.

He stated that accused Abdul Kuddus Khan willfully failed to conduct a physical inspection and provided a fraudulent report to facilitate the mutation. The evidence unerringly establishes that Deed No. 6025 of 1969, as presented for mutation, was a forged document. The appellant, as Union Land officer was duty bound to verify the genuineness of the deed and the ownership status of the land. His failure to do so, and his active submission of a report favouring mutation

seems to be clear indicia of forgery (including the 50 year delay, minority of the alleged transferees, and government record) which constitutes criminal misconduct.

In cross-examination, he categorically denied that the investigation was biased or improper, asserting that the schedule of the land was verified to be government property. He proved the sanction letter as Exhibit 12.

Upon scrutiny of the evidence on record, it appears that Minoj Saha and Gobinda Saha created forged deed No. 6025, dated 20.12.1969 and thereafter on 15.04.2018 they submitted an application before the Assistant Commissioner (Land), Boalmari seeking mutation of the land in their names for payment of land development tax. On 18.03.2018, the Assistant Commissioner (Land) directed the Upazila Land Assistant Officer, namely Abdul Kuddus Khan to submit a report after reviewing the deed-documents and physical possession of the land. Accordingly, the appellant submitted a report as under:

- (a) তফসিল বর্ণিত জমির বি.আর.এস জরিপ চূড়ান্তরূপে প্রকাশিত হয়েছে।

(b) অর্পিত সম্পত্তির প্রত্যর্পণ ২য় সংশোধন আইন ২০১৩ এর ২৮ ধারার বিধান মতে ‘খ’ তফসিল বর্ণিত সম্পত্তির আর কখনও অর্পিত হিসেবে গণ্য হবে না।

(c) ভূমি মন্ত্রণালয়ের আইন অধিশাখা ৪ কর্তৃক ২১/১১/২০১৩ খ্রি. তারিখের ৩১.০০.০০০০.০৪৫.৫৩.০৬৫.১-৬১৫ নং স্মারকে জারিকৃত পরিপত্রের ৬ নং অনুচ্ছেদের প্রদত্ত নির্দেশনার আলোকে ১/১নং খতিয়ানের রেকর্ড হওয়া ‘খ’ তফসিলভুক্ত সম্পত্তির অর্পিত সম্পত্তি প্রত্যর্পণ ২য় সংশোধন আইন ২০১৩ কার্যকর হওয়ার সাথে সাথে অকার্যকর বলে গণ্য হয়েছে।

(d) আবেদনকারী প্রার্থীত জমি দলিল মূলে প্রাপ্ত হয়ে ভোগ দখলে আছেন। সরেজমিনে তদন্তকালে কোন আপত্তি পাওয়া যায় নাই।

(e) প্রার্থিত জমি খাস ‘ক’ তফসিলভুক্ত ভিপি, অধিগ্রহণকৃত, পরিত্যক্ত, ওয়াকফ, দেবোত্তর, দেওয়ানী মোকদ্দমাভুক্ত, এমনকি কোন প্রতিষ্ঠানের মালিকানা সম্পত্তি নহে। ইহা বাংলাদেশ সরকারের ভিপি গেজেটের ‘খ’ তালিকাভুক্ত। বাংলাদেশ গেজেটের ৫৮১৬০নং পৃষ্ঠার ১৪৩নং ক্রমিকে লিপিবদ্ধ আছে। ইহা ১/১ নং খতিয়ান ভুক্ত জমি।

(f) প্রার্থিত জমিতে আবেদনকারীর মালিকানা সঠিক মর্মে প্রতীয়মান হয়।

Despite having full knowledge that the land appertaining to BS Plot No. 411 and khas *Khatian* No. BS 1/1 which is government khas land recorded in the name of the Deputy Commissioner, Faridpur on behalf of the Government of Bangladesh, accused Md. Abdul Kuddus Khan concealed the fact and submitted the above-mentioned report in favour of mutation.

The Land Reform Board, Ministry of Land published a Handbook for AC (Land) wherein the role and responsibilities of a Union Land Assistant Officer have been described in Guideline No. ঘ.১.২.৫ (gha. 1.2. dha). The guideline is as follows:

“ইউনিয়ন ভূমি সহকারী কর্মকর্তা নামজারির নির্ধারিত প্রতিবেদন ফরমে প্রতিবেদন প্রদানকালে নামজারির আবেদনকারী কিভাবে জমিপ্রাপ্ত হয়েছে, দখলে কে আছে, দাতা জমির প্রকৃত মালিক কিনা এবং জমি হস্তান্তর প্রক্রিয়া আইনানুগ কিনা, জমিতে সরকারি কোন স্বার্থ আছে কিনা, নিজ অফিসের রেজিস্টারভুক্ত দেওয়ানি মামলা সম্পৃক্ত কিনা,

দাবিকৃত জমি সরেজমিনে আছে কিনা এসব বিষয়ে সুস্পষ্ট
মতামতসহ প্রস্তাব প্রেরণ করবেন। প্রতিবেদনে নামজারির
প্রস্তাব/সুপারিশ থাকলে প্রস্তাবিত নতুন খতিয়ান ইউনিয়ন ভূমি
সহকারী কর্মকর্তা স্বাক্ষর করে প্রতিবেদনের সাথে সহকারী
কমিশনার (ভূমি) বরাবর প্রেরণ করবেন। ...”

The appellant, Abdul Kuddus Khan, was the Union Land Assistant Officer. His role and responsibilities were expressly defined above. He was responsible to independently verify the original ownership of the property in question; examine whether the deed was valid, registered, and genuine and confirm whether the land was subject to any government claim and to ascertain physical possession and payment of land development tax. The appellant, under the aforesaid Handbook, had the clear duty to verify the original ownership and genuineness of the deed.

The appellant performed none of these duties. He submitted a false report without any independent verification. His act was not one of omission but of active commission with dishonest intention.

Despite this glaring and fatal defect, the convict appellant Abdul Kuddus Khan, in collusion with the private accused and recommended mutation in their favour.

The passage of 50 years without any claim, mutation, tax payment, or possession gives rise to suspicion of fabrication and forgery and proves that the mutation application was nothing but a fraudulent means of land grabbing.

The trial Court, upon careful evaluation of the evidence and the applicable legal framework, found that Palash Sheikh had no statutory duty under the relevant guidelines (Handbook for AC Land) to verify the deed or report on the mutation application. His role was primarily clerical or ancillary. Consequently, even though he submitted a report, he could not be held criminally liable for failure to perform a duty that did not legally rest upon his office. The trial Court therefore acquitted him.

The principle of parity does not apply where the roles and statutory duties are different. The appellant was the verifying authority under the Handbook for AC (Land), Palash

Sheikh performed a clerical role. The trial Court's acquittal of Palash Sheikh does not entitle the appellant to acquittal.

The learned Advocate for the appellant contended that the FIR is defective as the copy writer, composer, and certified copy issuer of the alleged deed were not made accused in this case; as such, the conviction and sentence is not tenable in the eye of law. However, this Court finds no substance in the contention. Because non-impleadment of certain persons does not vitiate the FIR or the trial, so long as the core allegations against the appellant are made out.

The conviction under Section 409 of the Penal Code (criminal breach of trust by public servant) and Section 5(2) of the Prevention of Corruption Act (criminal misconduct) does not amount to double jeopardy, as the offences are distinct in ingredients and the same set of facts may constitute both. There is no bar to conviction under both provisions.

It transpires that the convict-appellant is not a habitual offender and there is nothing on record to suggest that he has any previous criminal antecedent and the appellant is about 60 years old.

Considering the facts and circumstances of the case and the evidence on record, this Court is of the view that the ends of justice would be best served if the sentence of the substantive terms of imprisonment is reduced to the period already undergone by the appellant and the fine while maintaining the conviction.

Accordingly, the conviction of the appellant under Section 409 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947 is hereby affirmed. However, the sentence is modified. The sentence of rigorous imprisonment for 05 (five) years is reduced to the period already undergone by the appellant and the fine of Taka 10,000/- (ten thousand) is reduced to Taka 1,000/-(one thousand), in default of payment the appellant shall suffer simple imprisonment for a period of 01(one) month.

In the result, the appeal is dismissed with modification of sentence indicated above.

The judgment and order dated 16.08.2023 passed by the learned Special Judge (Senior District & Sessions Judge), Special Judge Court, Faridpur in Special Case No. 09 of 2022

is hereby affirmed in respect of conviction and modified in respect of sentence and fine as above.

The convict-appellant is released from his bail bond.

Let a copy of the judgment with the Lower Court Records (LCR) be transmitted to the Court concerned forthwith.

(Md. Bashir Ullah, J)

Md. Sabuj Akan
Assistant Bench Officer.