

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 2914 of 2019

In the matter of:

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

And

In the matter of:

Md. Moniruzzaman

... **Convict-Appellant**

-Versus-

The State and another...

Respondents

Mr. Sarwar Ahmed, Senior Advocate with
Mr. B. M. Abdur Rafell, Advocate with
Mr. Md. Asaduzzaman Monir, Advocate
... For the Appellant

Mr. M. Sarwar Hossain, Advocate

... For the Respondent No.2

Mr. S.M. Aminul Islam Sanu, D.A.G with
Mr. Md. Nasimul Hasan, A.A.G with
Mr. Md. Golamun Nabi, A.A.G and
Ms. Farhana Abedin, A.A.G and

... For the State

**Heard on: 22.02.2026, 23.02.2026,
24.02.2026, 04.03.2026, 05.03.2026
10.03.2026 and 11.03.2026
Judgment on 12.03.2026**

This appeal, preferred under section 10(1)(a) of the
Criminal Law Amendment Act, 1958 is directed against the

judgment and order dated 07.03.2019 passed by the learned Special Judge (Sessions Judge), Jessore in Special Case No. 01 of 2017 arising out of Jessore Kotwali Police Station Case No. 42 dated 10.03.2014 corresponding to G.R. No. 218 of 2014 convicting the accused petitioner under Section 409 of the Penal Code and sentencing him to suffer rigorous imprisonment for 05(five) years with a fine of Taka 16,49,480/-(sixteen lac forty nine thousand four hundred eighty).

The facts relevant for disposal of the appeal, in short, are that one Md. Mizanur Rahman, Manager, Mutual Trust Bank Limited, Jessore lodged a First Information Report (FIR) with Kotwali Police Station, Jessore alleging *inter alia* that the accused Md. Maniruzzaman (Cash-in-charge), in collusion with one Mosammat Anowara Begum, misappropriated Taka 25,00,000/- (twenty-five lac) on 09.03.2014 at 02:45 p.m. from the cash of the bank. On interrogation, the accused Md. Moniruzzaman admitted that he had handed over the said money to the accused Anowara Begum with an assurance that the same would be returned

within a short time. Later, on 09.03.2014 at 09:00 p.m. he declined to return the money. Then the informant lodged the FIR on 10.03.2014. Thus, Kotwali Police Station Case No. 42 dated 10.03.2014 commenced.

The police apprehended the accused and prayed for remand. The accused then made a confessional statement under Section 164 of the Code of Criminal Procedure before a magistrate (PW 7).

Upon closure of the investigation, the investigating officer (PW 8) submitted report bearing charge sheet No. 1175 dated 17.08.2016 against the accused-appellant, Md. Maniruzzaman under Section 409 of the Penal Code, read with Section 5(2) of the Prevention of Corruption Act, 1947 and while not sending up Mosammat Anowara Begum for trial.

Subsequently, the case was transmitted to the learned Special Judge (Sessions Judge), Jessore and the same was registered as Special Case No. 01 of 2017. The charge was framed under Section 409 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 and

the accused pleaded not guilty and claimed to be tried when the charge was explained and read out upon him.

In the course of the trial, 08 prosecution witnesses out of 09 charge sheeted witnesses were examined while the defence adduced none. The accused was examined under Section 342 of the Code of Criminal Procedure and once again he pleaded not guilty.

Upon concluding the trial and hearing the parties, the learned Special Judge (Sessions Judge), Jessore convicted the accused under Section 409 of the Penal Code and sentenced him to suffer rigorous imprisonment for 05(five) years with a fine of Taka 16,49,480/-(sixteen lac forty nine thousand four hundred eighty) by judgment and order dated 07.03.2019.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence, the convict preferred this instant Criminal Appeal before this Court. This Court enlarged the appellant on bail for 06(six) months on 24.04.2019. Subsequently, the period of bail was extended till disposal of the appeal on 23.09.2021.

Mr. Sarwar Ahmed, the learned Senior Advocate, with Mr. B. M. Abdur Rafell, and Mr. Md. Asaduzzaman Monir, Advocates appearing on behalf of the appellant contend that at the time of occurrence, the CCTV camera was operational, but it was not seized. PW1, in his cross-examination stated that on 09.03.2014, the CCTV camera was running and in operation. The footage of CCTV camera was not proven. Thus, the prosecution hopelessly failed to prove the identity of the culprit on having examined the footage of the CCTV camera.

He further contends that at the time of the occurrence there were two cash officers namely Maniruzzaman and Ashis, but no allegation was brought against Ashis.

He submits that the prosecution hopelessly failed to prove the case beyond a reasonable doubt and the convict-appellant is entitled to be acquitted of the charge leveled against him.

Mr. Sarwar Ahmed contends that there was no ocular witness to the occurrence and it is admitted by PW 8,

Abdul Wadud, the investigating officer in his cross-examination.

He further contends that the confessional statement made by the appellant is purely exculpatory in nature and there is no eyewitness, and the prosecution failed to prove their case through circumstantial evidence beyond a reasonable doubt.

He next argues that the investigation of the case is perfunctory in nature and suffered from serious lapses because PW 8, investigating officer of the case admitted in his cross-examination that video footage of the CCTV camera was not seized and material witnesses including high officials of the bank were not examined and even they were not examined as witness and alleged misappropriated money was theft either from the vault or cash counter failed to prove and at the time of inspection of the bank PW8 found the cash drawer was under lock and key and the cash drawer was under the custody of another cashier but the said cashier was not made either accused or witness in the case.

He next contends that the alleged undertakings were obtained under coercion by the bank authority and in this connection, PW7, Maruf Ahmed, the learned Magistrate admitted in his cross-examination that the convict-appellant was pressurized by the bank authorities, resulting he admitted that he took the alleged money.

He further argues that there are two views on the same point, the views that favour the accused should be accepted and adopted and it has been decided by the Apex Court, in *Humayun Kabir Vs. The State*, reported in 74 DLR (AD)91.

He finally prays for the appeal to be allowed.

Per contra, Mr. M. Sarwar Hossain, learned Advocate appearing on behalf of the respondent No. 2, submits that the prosecution examined 8 witnesses and proved the prosecution case through oral and documentary evidence.

He next contends that the accused provided two undertakings one of which is before the higher authority of MTBL and another to the investigating officer. An

undertaking is a binding promise or pledge, often made by solicitors or parties in a contract, to perform or refrain from specific actions, carrying significant legal consequences. They are crucial for ensuring trust in transactions and are enforceable by the Courts, with breaches potentially leading to contempt of Court or professional disciplinary action.

He next submits that the video footage was forwarded to the investigating officer by the bank authority. After having such footage, the investigating officer examined those. He stated in cross-examination that সিসি ক্যামেরা ফুটেজগুলো পরীক্ষাকালে শুধুমাত্র আসামীকেই ভোল্ট ঢুকতে বের হতে দেখেছি।

He further contends that PW 4, Ashis Kumar Dey, Assistant Officer (Cash) deposed in his examination-in-chief that “সারাদিনের লেনদেনের সময় ক্যাশ ইনচার্জ মনিরুজ্জামান একক চাবি দিয়ে ভোল্ট খোলেন এবং বন্ধ করেন। এ কারণে ক্যাশে টাকা কম পাওয়া যায়। তখন ক্যাশ ইনচার্জ মনিরুজ্জামানকে বার বার জিজ্ঞাসা করা হয় এবং সে এক পর্যায়ে স্বীকার করে যে, ঐ ১৮,০০,০০০/- (আঠারো লক্ষ) টাকা তার দূর সম্পর্কীয় খালা আনোয়ারা বেগমকে দিয়েছেন এবং তিনি টাকা পরের দিন এডজাষ্ট

করে দিবেন। - This evidence proved that the appellant by himself admitted and misappropriated the funds. PW 3, Sheikh Zahid-Bin-Mohammad corroborated the evidence. In his examination-in-chief he deposed that দিন শেষে টাকার হিসাবটা মিলিয়ে দেয়ার দায়িত্ব মোঃ মনিরুজ্জামানের।

... এর মধ্যে আমরা মনিরুজ্জামানকে জিজ্ঞাসাবাদ করতে থাকি। প্রথমে স্বীকার করেনি পরে সে তার দূর সম্পর্কের খালা আনোয়ারা বেগমকে অনুমান ১০/১৫ মিনিটের মধ্যে মাত্র ০৯:১০/০৯:১৫ মিনিটের দিকে ব্যাংকে এসে নিজের পরিচয় দেয় এবং বলে যে সে মনিরুজ্জামানের খালা। তখন মনিরুজ্জামান স্বীকার করে যে, কোর্টের পকেটে করে কয়েক বারে তার খালা আনোয়ারা বেগমকে টাকাটা দিয়েছে।”

Mr. M. Sarwar Hossain argues that the confessional statement is not exculpatory in nature because he was responsible for the cash and the cash counter and vault were under his custody and control.

He further contends that the convict, Md. Maniruzzaman provided 3 statements, 2 of which are undertakings and the another is confessional statement under Section 164 of the Code of Criminal Procedure. In the statement which was provided to the investigating

officer, the accused stated that “ব্যাংকের ভোল্ট হতে আত্মসাতের মোট ২৪,৬৯,৪৮০/- (চব্বিশ লক্ষ উনসত্তর হাজার চারশত আশি) টাকার মধ্যে ‘ফাহিম এন্টারপ্রাইজ’ (‘ফাতিমা বহুমুখী সমবায় সমিতি’) এর ঋণ পরিশোধ বাবদ ১,০০,০০০/- (এক লক্ষ) টাকা আনোয়ারা বেগমের ২,২২,০০০/- (দুই লক্ষ বাইশ হাজার) টাকা, মায়ের দোয়া মৎস্য ভান্ডার এর এ/সি এ ব্যক্তিগত ঋণ পরিশোধ (বাংলালিংক যশোরের তুষারের মাধ্যমে ব্যাংকে জমাকৃত) ৪,০০,০০/- (চার লক্ষ) টাকা, আমার নামীয় এম.টি.বি ক্রেডিট কার্ডের ফেব্রুয়ারী ২০১৪ মাসের বিল প্রদান ৯১,২৯৪/- (একানব্বই হাজার দুইশত চুরানব্বই) টাকা ব্যয় হয়েছে।” He admitted that he misappropriated Taka 24,69,480/- (twenty four lac sixty nine thousand four hundred eighty) by the said statement and as such he is liable to be punished and the appeal to be dismissed.

He further contends that there is no illegality, impropriety or infirmity in the impugned judgment and order of conviction and sentence.

He finally submits that the trial Court very rightly and legally passed the impugned judgment and order of conviction and sentence and as such the appeal is liable to be dismissed.

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

To consider the merit of the case and analyze the facts, let me review the evidence adduced by the prosecution witnesses.

PW1, Mijanur Rahman, the Manager of Mutual Trust Bank Ltd., who is the informant deposed that the occurrence took place on 09.03.2014 and on that day he was absent. Deputy Manager, Shaikh Zahid Bin Mohammad was in charge of the Manager. The accused was Cash-in-charge and Cash Officer. The Deputy Manager informed him on 09.03.2014 at 09:00 p.m. about Taka 25,00,000/- was missing. He also informed that Maniruzzaman was interrogated but he denied the allegations. When he was asked to close the cash transaction then he admitted that he paid Taka 25,00,000/- (twenty five lac) to his aunt Anowara Begum and the same would be refunded within a short period. But he failed to

make payment till 08:00 p.m. Then PW1 returned from Dhaka. On query, the accused admitted that he took Taka 25,00,000/- (twenty five lac) from the cash counter for his personal need. Thereafter, the higher authority of the bank came and asked the accused about the occurrence and the accused admitted that he took the money. Then he lodged the FIR against the accused Maniruzzaman and Anowara Begum. He proved the FIR as exhibit 1, the seizure list as exhibit 2.

In cross-examination, he stated that at the time of the occurrence, Maniruzzaman and Ashis were cash officers. Mr. Murad was an Assistant Officer and Mr. Jamal was a junior officer. There was a CCTV camera in the bank and it was running. The CCTV camera was running on 09.03.2014.

PW2, Atoshi Bhattacharja, Senior officer, Mutual Trust Bank, Jessore Branch deposed that he exited from the bank at 06.30 pm on 09.03.2014. He came to the bank on 10.03.2014 and heard that Taka 25,00,000/- (twenty five lac) was missing. He identified the accused on the dock.

PW3, Sheik Zahed Bin Mohammed, Deputy Manager, Mutual Trust Bank, Jessore deposed that he was in charge of the Manager on the date of the occurrence. He saw that Taka 18,94,294/- (eighteen lac ninety four thousand and two hundred ninety four) was missing from the cash counter. Subsequently, the accused refunded Taka 91,294/- (ninety one thousand and two hundred ninety four). He informed the Manager about the missing Taka 18,00,000/- (eighteen lac). Then the Manager informed the higher authority of the Head office of the bank regarding the incident. Thereafter, he interrogated the accused about the missing money and the accused refused. Later, he informed that he sent the money by his aunt Anowara Begum. Anowara Begum came to Bank at the request of the accused and she admitted that she received the money from the accused and the accused gave assurance that he would pay Taka 18,00,000/- (eighteen lac) on the following day and in this regard, he gave a writing. Meanwhile, the family members of the accused Maniruzzaman came to the bank and the authority held a meeting with them. They

assured that they would refund Taka 24,69,400/- (twenty four lac sixty nine thousand and four hundred). They deposited Taka 8,20,000/- (eight lac twenty thousand) on 12.03.1994 through online.

He denied the suggestion that he and the Manager planned to implicate Maniruzzaman, as he did not assist them. He also denied that the Manager took a leave of absence for one day for designing this conspiracy. In cross-examination, he deposed that the sister of the accused, Shamima provided evidence before AGM of Sonali Bank, Sawpan Kumar Mitra. He further stated that there were three keys of the vault, which were kept with him, Manager and the accused Maniruzzaman. When the Manager went to Dhaka, the key was kept with him. He also deposed that the Anti-Corruption Commission seized the footage of the CCTV camera from the Manager.

PW4, Ashis Kumer Dey, Assistant officer (Cash), Mutual Trust Bank, Gour Nodi, Barishal deposed that he went to the head office to send Taka 50 lac with a gunman and messenger. After return he sat at cash counter and

received cash from 02:30 p.m. At about 07:00 p.m. Md. Maniruzzaman asked the Deputy Manager to come to check the cash. Then it was found that there was missing of Taka 18,91,000/- (eighteen lac ninety one thousand). When the cash in charge was asked about the missing but he failed to reply properly. Subsequently, Md. Manuruzzaman went out and brought Taka 91,000/- (ninety one thousand) and adjusted the same. Then the quantum of shortage stood at Taka 18,00,000/-(eighteen lac). In the whole day, Maniruzzaman opened the vault and closed it with his key. On query, Maniruzzaman admitted that he gave the shortage amount to his aunt Anowara Begum and said that he would adjust the money the following day. At one stage, Anowara Begum came to the bank and she assured that she would adjust the amount after two days. Subsequently, she refused to pay. Thereafter, Maniruzzaman informed his wife. His wife came to the bank with his kids. The authority lodged a case against Maniruzzaman and Anowara Begum. Maniruzzaman gave a written statement that he had taken Taka 18,00,000/- (eighteen lac).

PW5, Murad Ahamed, Junior Officer (Credit), Mutual Trust Bank, Kushtia Branch who is a seizure list witness deposed that he served at Jessor Branch from 10-11-2010 to 15-02-2015. On 31-03-2014 at 11:00 am, A. Wadud, the Anti-Corruption Commission officer seized a few *alamats* from the manager in his presence. He signed on the seizure list. He proved the seizure list as exhibit 2.

In cross-examination, he stated that he does not know what documents were kept in the seizure list.

PW6, Md. Shamsuzzaman, Junior officer, Mutual Trust Bank, Pabna Branch, who was serving in Mutual Trust Bank, Jessore Branch at the time of the occurrence. He stated that the manager kept the key of the vault of bank to him on 06.03.2014 as he went on leave on 09.03.2014. He received the key by signing on the register. The cash-in-charge called him and the Deputy Manager at about 7:00-7:30 p.m. and then the Deputy Manager saw that Taka 18,91,294/= was deficit in the cash counter. The cash-in-charge informed that there might be an error in counting. When they saw the cash shortage then they put pressure to

the accused but he denied, later he admitted that he gave Taka 18,00,000/- to his aunt, Anowara Begum on condition that she would refund it at afternoon. Subsequently, Anowara Begum was called and she came to the bank. She admitted that she took the money and it would be refunded in two days later. Maniruzzaman gave a written statement to the Deputy Manager that he took Taka 18,00,000/- and it would be refunded. Thereafter, the manager came to the bank and lodged a case with the local police station. After that, the police came to the spot and apprehended Maniruzzaman and Anowara Begum and took them to the police station.

In cross-examination, he denied the suggestion that they obtained signature on a few documents by the accused forcibly under coercion. He stated that the wife of Maniruzzaman came to the bank when she was called by Maniruzzaman.

PW7, Maruf Ahmed, Senior Judicial Magistrate, Jessore, who recorded the statement of the accused made under Section 164 of the Code of Criminal Procedure,

stated in his chief-in-examination that DAD Md. Abdul Wadud produced the accused, Md. Maniruzzaman before him for recording his confessional statement. He proved the confessional statement as exhibit 4.

In cross-examination, he stated that no medical examination of the accused was done before recording the confessional statement. He deposed that it was written on page number 3B that the accused admitted that he had taken the money under coercion.

PW8, Md. Abdul Wadud is the Investigating Officer of this case. He stated in his examination-in-chief that during investigation, he visited the place of occurrence, seized *alamots*, managed to record the confessional statement of the accused Maniruzzaman. It was revealed that the accused misappropriated Taka 24,69,400/- from the bank on 09-03-2014. So, he submitted a charge sheet against Maniruzzaman and did not send up Anowara Begam as nothing was against her.

In cross-examination, he stated that he checked the footage of the CCTV camera, the Cash counter and the

vaults which were under the CCTV camera. He saw the accused enter and exit from the vault.

It appears from the evidence of PW1, the informant that there were CCTV cameras in the bank premises and those were in operation on 09.03.2014, which is the date of occurrence but the CCTV cameras were not seized. However, footage was checked by PW8. PW8 in his cross-examination deposed that সিসি ক্যামেরার ভিডিও ফুটেজগুলো পরীক্ষা করেছি। ঐ ব্যাংকে একাধিক সিসি ক্যামেরা আছে। ...ক্যাশ কাউন্টার সি.সি. ক্যামেরার আওতাভুক্ত। ভোল্টটাও সিসি ক্যামেরার আওতাভুক্ত। তবে দুটোর অবস্থান দুজায়গায়। আমার সিসি ক্যামেরা ফুটেজগুলো পরীক্ষাকালে শুধুমাত্র আসামীকেই ভোল্টে ঢুকতে বের হতে দেখেছি।”

It appears from the above-mentioned evidence that there was a CCTV camera in the cash counter, but no prosecution witness or the investigating officer discussed about the footage from the camera of the cash counter. This omission creates a serious lacuna in the prosecution case. Cash-in-charge Ashis and the peon were not made accused. It was not detected who took the missing cash money and how the same was missed. There is no direct eyewitness to

the alleged occurrence. No security guard or peon was examined in the trial. PW8 Investigating officer in his cross-examination stated that আসামী ঐ ব্যাংক থেকে টাকা নিয়েছে এমন কোন দেখা সাক্ষী পাইনি। ঘটনাকালে ঐ ব্যাংকে ০৬(ছয়) জন কর্মকর্তা দায়িত্ব পালন করত।

I find contradictions in the evidence of PW3, Shaikh Zahid-Bin-Mohammad in cross-examination, who stated that “সিসি ক্যামেরার ফুটেজ ম্যানেজারের কাছে থেকে দুদক জব্দ করেছে।” On the other hand, PW8, Md. Abdul Wadud, investigating Officer in his cross-examination stated that, “সিসি ক্যামেরার ভিডিও ফুটেজগুলো জব্দ করিনি। তবে তদন্তকালে এগুলোকে পরীক্ষা করেছি।”

In this regard, reliance may be placed on the decision passed in the case of *Humayun Kabir (Md) vs. The State* (supra), wherein the Apex Court held that Courts decision must rest not upon suspicion but upon legal grounds establish by legal testimony. Mere suspicion, however strong, cannot take the place of proof. It is a well-settled principle that where on the evidence two possibilities are open, one which goes in favour of prosecution and the

other benefits the accused, the accused is entitled to the benefit of doubt.

It appears from the statement made by the accused under Section 164 of the Criminal Procedure Code that the accused did not admit that he received or misappropriated the missing money. The statement is reproduced below:

“আমি মোঃ মনিরুজ্জামান। আমি মিউচুয়াল ট্রাস্ট ব্যাংক যশোর শাখায় জুনিয়ার অফিসার ও ক্যাশ ইনচার্জ হিসাবে কর্মরত আছি। ঘটনার দিন দুপুরে আমি ক্যাশে কর্মরত থাকা অবস্থায় অপর ক্যাশ ইনচার্জ আশিষ ও পিয়নকে আমার ক্যাশ ড্রয়ার দেখতে বলে তালা না দিয়েই খেতে চলে যাই। পরে ২টার আগেই ফিরে এসে পুনরায় ক্যাশে আমার কার্যক্রম চালাতে থাকি। কাজ করা অবস্থায় বিকাল ৫টার দিকে আমার মনে হয় ক্যাশে টাকা কম আছে এবং আমি তখন হিসাব করে দেখতে পাই ২৪,৬৯,৪৮০/- (চব্বিশ লক্ষ উনসত্তর হাজার চারশত আশি) টাকা খোয়া গেছে। আমি তখন বার বার হিসাব করেও হিসাব মেলাতে না পেরে অফিসের সেকেন্ড অফিসারকে ঘটনাটি জানাই। তিনি এসেও আবার হিসাব করে ঐ টাকা কম পান। এবং আমাকে তখন সেকেন্ড অফিসার মুরাদ সাহেব ও জামাল সাহেব টাকার জন্য চাপ দিতে থাকে। আনোয়ারা বেগম আমাদের ব্যাংকে লেনদেন করবেন বলে প্রতিশ্রুতি দেয়ায় তার সাথে আমার একটি সুসম্পর্ক গড়ে উঠে এবং সেকেন্ড অফিসার তখন আমাকে চাপ দেন যাতে আমি আনোয়ারা বেগমকে ফোন হেইবট। ফোন দিলে রাত ১০টার দিকে আনোয়ারা বেগম আসে এবং তাকে তখন

কর্মকর্তারা চাপ দেন যাতে তিনি স্বীকার করেন যে, তিনি উক্ত টাকাটা নিয়েছেন। এভাবে সারাদিন কাটার পর, পর দিন সন্ধ্যায় পুলিশ আসে এবং আমাকে ও আনোয়ারা বেগমকে গ্রেফতার করে। এর আগে আনোয়ারা বেগমের সাথে আমার যোগাযোগ হয়েছিল কারণ আমি শুনেছিলাম আনোয়ারা বেগমের স্বামী মৃত্যুকালে সেনালী ব্যাংকের হেড অফিসে ৭২ কোটি টাকা রেখে গেছে। আমি চাইছিলাম তিনি যেন সেটা আমাদের ব্যাংকে জমা দেন এবং সে কারণে তার সাথে যোগাযোগ করলে তিনি বলেন যে, ঐ টাকা ছাড় করতে ১,০৮,০০০/- (এক লক্ষ আট হাজার) টাকা প্রয়োজন হবে। আমি তখন শেয়ার মার্কেটে আমার কিছু শেয়ার বেচে ৩,৫০,০০০/- (তিন লক্ষ পঞ্চাশ হাজার) টাকা তাকে হেইবট এবং তার কাছ থেকে লিখিত ও ব্যাংক চেকের পাতা নেই। সে আরো কথা দিয়েছিল টাকাটা পেলে সে আমাকে বেশ বড় অংকের একটা টাকা দেবে। এছাড়া টাকাটা আমাদের ব্যাংকে জমা হলে আমার প্রমোশন হওয়ার কথা ছিল। ঐ সূত্র ধরেই তিনি আমাদের ব্যাংকে একাউন্ট খুলছিলেন, যদিও তাতে তেমন টাকা ছিল না। এই আমার জবানবন্দি।”

It appears from the confessional statement made by the accused under section 164 of the Code of Criminal Procedure before the magistrate (PW7) appears to be exculpatory in nature. This type of exculpatory statement is not a confession at all. An exculpatory statement does not constitute a true confession and cannot form the basis of

conviction. Even the appellant earlier denied that he took the alleged money. It is corroborated by PW1, the informant and PW3. PW1, in his examination-in-chief stated that ক্যাশ ইনচার্জ মনিরুজ্জামানকে জিজ্ঞাসাবাদ করা হয়েছে কিন্তু দোষ স্বীকার করেন নাই।

In cross-examination he further admitted that ১০.০৩.১৪ইং তারিখে উর্দতন কর্মকর্তা ব্যাংকে আসে মর্মে উল্লেখ নাই। উর্দতন কর্তৃপক্ষের কাছে আসামী ক্যাশ থেকে সে টাকা নিয়েছে স্বীকার করার কথা উল্লেখ করে নাই। He further admitted in his cross-examination that ১০.০৩.১৪ইং তারিখে মনিরুজ্জামানকে জিজ্ঞাসাবাদ করা হয় এবং টাকার বিষয়ে কিছু জানে না মর্মে জানায়।

It appears that material contradictions are evident in the evidence adduced by the prosecution witnesses regarding the control of the key of bank vault. PW1, informant stated in his evidence in his cross-examination “তিনটি চাবি থাকে তিন জনের কাছে। একটি চাবি দিয়ে ভোল্ট খোলা বন্ধ করা যায়না। তিনটি চাবিই দরকার হয়।”

The vault was not under exclusive control of the accused. PW3, Sheik Zahid Bin Anower, who was in charge of the Manager at the time of the occurrence, he also

admitted in his cross-examination that “ভোল্টের চাবি তিন (০৩) টা, যার মধ্যে ১টা আমার কাছে, ১ টা ম্যানেজারের কাছে এবং ১ টা ক্যাশ ইনচার্জ মনিরুজ্জামানের কাছে ছিল। ম্যানেজার সাহেব ঢাকায় যাওয়ার সময় তার চাবিটা আমার কাছে দিয়ে যায়।”

PW4, Ashis Kumar Dey, Assistant Officer (Cash) deposed in his cross-examination that, “সাধারণত ম্যানেজার, ডেপুটি ম্যানেজার এবং ক্যাশ ইনচার্জ এই তিন জনের কাছে তিনটা চাবি থাকে। ০৯.০৩.২০১৪ ইং তারিখে ম্যানেজারের চাবি ছিল ডেপুটি ম্যানেজারের কাছে সত্য নহে। ঐ চাবি ছিল শামসুজ্জামানের কাছে।”

On this point PW6, Shamsuzzaman, Junior Officer of the Bank stated in his examination-in-chief that “ম্যানেজার মোঃ মিজানুর রহমান সাহেব ০৯.০৩.২০১৪ ইং তারিখ রবিবার ছুটিতে থাকবে এই কারণে আমার কাছে ব্যাংকের ভোল্টের চাবি আমার কাছে ০৬.০৩.২০১৪ ইং তারিখে বুঝিয়ে দেন। আমি রেজিস্ট্রারে স্বাক্ষর করে চাবি বুঝে নিই।”

It transpires from the record that the informant lodged the First Information Report against the appellant and one Mosammat Anowara Begum. The police also apprehended the two accused. PW3, Sheik Zahed Bin Mohammed, Deputy Manager, Mutual Trust Bank, Jessore deposed in his examination-in chief that the accused

Maniruzzaman sent the money by his aunt Anowara Begum. Anowara Begum came to the Bank at the request of the accused and she admitted that she received the money from the accused. PW6, Md. Shamsuzzaman, Junior officer also stated in his evidence that when they saw the cash shortage, then they put pressure to the accused but he denied, however later he admitted that he gave Taka 18,00,000/- to his aunt, Anowara Begum on condition that she would refund it at afternoon. Subsequently, Anowara Begum was called and she came to the bank and admitted that she had taken the money and it would be refunded two days later.

However, Anowara Begam was not sent up for trial, which created the prosecution case doubtful; the benefit of the doubt must be given to the accused.

Mr. Sarwar Ahemd, the learned Advocate appearing on behalf of the appellant, contends that the Special Judge tried the case without Jurisdiction. The prosecution failed to produce the sanction letter before the Special Judge as evidence, resulting in the Special Judge tried the case being

coram-non-judice. In support of his contention, he refers to the case of *State Vs. Moslemuddin (Md)*, reported in **56 DLR (AD) (2004) 174**.

In reply to the above-mentioned contention, Mr. M. Sarwar Hossain, the learned Advocate appearing on behalf the Anti Corruption Commission contends that Section 32(2) of the Anti Corruption Commission Act, 2004 has been complied with and after having the sanction letter, the trial Court took cognizance and since the said sanction letter is lying with the record, so there is no need to exhibit it. It has already been brought to the judicial notice. He further submits that if the prosecution fails to exhibit the sanction letter, then it may be treated as an irregularity or technical error but for this reason, a criminal is not entitled to be acquitted. In support of his contention, he refers to the case of *The Government of the People's Republic of Bangladesh and others Vs. Iqbal Hasan Mahmood alias Iqbal Hasan Mahmood Tuku*, reported in **60 DLR (AD) (2008) 144**, *Shamsun Nahar Haque Vs. State and another*

reported in 22 BLC(2017) 385 and Abdus Salam (Md.) Vs. State and another reported in 17 BLC (2012) 873.

In reply, Mr. Ahmed submits that the cited cases are not applicable in the present case. Proceedings were challenged in all the three of the cited cases. ***Government of the People's Republic of Bangladesh and others Vs. Iqbal Hasan Mahmood alias Iqbal Hasan Mahmood Tuku*** case reported in 60 DLR (AD) 147 is related to a writ petition challenging the entire proceedings of a special case. The cases, namely ***Shamsun Nahar Haque Vs. State and another reported in 22 BLC(2017) 385*** and ***Abdus Salam (Md.) Vs. State and another reported in 17 BLC (2012) 873*** were passed by the High Court Division regarding quashing the proceeding of special cases. He further contends that a judgment passed by the High Court Division cannot supersede the judgment delivered by the Appellate Division as per the provisions of Article 111 of the Constitution of the People's Republic of Bangladesh.

This Court finds substance in the submissions advanced by the learned Advocate appearing on behalf of

the appellant. The record shows that no prosecution witness produced and proved the sanction letter as an exhibit or evidence. A crucial legal infirmity arises from the non-production of sanction order. In this regard, reliance may be placed upon the decision passed in *State vs. Moslemuddin (Md)*(Supra). In that case, the Appellate Division quoted the findings of the High Court Division, wherein it has been held:

“...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.”

In view of the settled principle laid down in the above-mentioned case mere mention of sanction in charge sheet without formal proof is insufficient. Absence of valid

sanction renders the trial *coram non judice* and vitiates the conviction.

In order to convict a person, there should be unimpeachable evidence of a reliable witness beyond any reasonable doubt. If any doubt arises in a criminal case, then the benefit of doubt should be given to the accused. Suspicion, however strong cannot substitute proof. At this stage, I remember the age-old maxim that it is the cardinal jurisprudence that thousands of accused may be acquitted, but no single innocent person should be convicted.

Considering the aforesaid facts and circumstances of the case and the *ratio* mentioned above, this Court finds absence of direct evidence, non-production of CCTV footage, contradictions in prosecution evidence, exculpatory nature of the confessional statement and failure to prove sanction and thus the prosecution has failed to prove the guilt of the convict-appellant beyond all reasonable doubt. So, the appellant is entitled to the benefit of doubt. More so, this Court finds illegality, impropriety and infirmity in the impugned judgment and order of

conviction passed against the convict-appellant. Accordingly, I find substance in the appeal.

In the result, the appeal is allowed.

The judgment and order dated 07.03.2019 passed by the learned Special Judge (Sessions Judge), Jessore in Special Case No. 01 of 2017 is hereby set aside.

The convict-appellant, Md. Moniruzzaman is acquitted of the charges leveled against him.

The convict-appellant is released from his bail bond. Let the judgment and order along with the lower Court's records (LCR) be communicated to the Court concerned forthwith.

(Md. Bashir Ullah, J)