

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

**Present:**

Mr. Justice Md. Kamrul Hosssain Mollah

**Criminal Appeal No.3849 of 2022**

Md. Saiful Islam

.....convict-Appellant

-Versus-

The State and another

..... respondent

Mr. Md. Motahar Hossain Saju, Advocate

.....For the convict-Appellant

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. Syed Quamrul Hossain, Advocate

...For the ACC

**Heard on 28.05.2024, 02.06.2024**

**and Judgment on: 03.06.2024**

**Md. Kamrul Hossain Mollah.J:**

This appeal has been preferred against the judgment and order of conviction and sentence dated 30.10.2008 passed by the learned Special Judge, Court No.07, Dhaka in Special Case No.29 of 2008 arising out of Shahabagh Police Station Case No.16 dated 08.10.2007 convicting the appellant under section 5(2) of the Corruption Prevention Act, 1947 (Durniti Protirod Ain, 1947) and sentencing him to suffer rigorous imprisonment

for a period of 07(seven) years and also to pay a fine of Tk.50,000/- in default to suffer rigorous imprisonment for a period of 01(one) year more.

The prosecution case, in short is that on 20.09.2007 the learned Magistrate A.K.M. Samsul Ahsan with his Peshker Md. Saiful Islam locked and key informant institute in a Mobile Court as because there was none. On the same day informant Md. Motiar Rahman communicated with Md. Saiful Islam by a secret note (as chirkut) and gave him 11,000/- out of Tk.30,000/- as per their contract for the key of his institute at the Canteen of PG Hospital, but Md. Saiful Islam could not return back the key, on the contrary on 23.09.2007 the learned Magistrate fined Tk.30,000/- without giving key to him. On 07.10.2007 he informed the same to the learned Magistrate and thereafter, on 08.10.2007 the learned Magistrate called them face to face at BCS Administrative Academy and then Md. Saiful Islam confessed the same. Hence, the informant lodged the case against the appellant for legal action.

Thereafter, on 19.08.2008 after Investigation, the Assistant Director of Anti-Corruption Commission submitted a charge sheet under section 161 of the Penal Code under section 5(2) of the Prevention of Corruption Act, 1947 (Durniti Protirod Ain, 1947) against the appellant.

On 11.09.2008 the charge was framed under section 161 of the Penal Code under section 5(2) of the Prevention of Corruption Act, 1947 (Durniti Protirod Ain, 1947) by the Special Judge, Dhaka.

The prosecution adduced as many as 06(six) witnesses to prove the case.

The appellant was not examined under section 342 of the Code of Criminal Procedure as because he was absent before the Special Judge for his illness.

After conclusion of the trial, the learned Special S Judge, Court No.7, Dhaka convicted the appellant under section under section 5(2) of the Prevention of Corruption Act, 1947 (Durniti Protirod Ain, 1947) and sentenced him to suffer rigorous imprisonment for a period of 07(seven) years and also to pay a

fine of Tk.50,000/- in default to suffer rigorous imprisonment for a period of 01(one) year more by his judgment and order of conviction and sentence dated 30.10.2008.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 30.10.2008 passed by the learned Special S Judge, Court No.7, Dhaka in Special Case No.29 of 2008 arising out of Shahabagh Police Station Case No.16 dated 08.10.2007 the convict-appellant preferred this Appeal, before this Hon'ble High Court Division.

Mr. Md. Motaher Hossain Saju, the learned Advocate for the convict-appellant submits that the appellant is innocent and he had no knowledge about the alleged offence, but he is convicted without any involvement. The prosecution adduced 06 witnesses 1) Motiar Rahman, informant 2) Habibur Rahman, Reord Keeper 3) Golam Kibria, seizure list witness 4) Zakir Hossain, seizure list witness 5) AKM Samsul Ahsan, the learned Magistrate and 6) Helal Uddin, the Investigation Officer, who did not see and support the case of the prosecution

and absolute recovery, so it is clear that the appellant is convicted without sufficient evidence rather than it is a case of no evidence.

He further submits that the Institute was locked on 20.09.2007 and on the same day informant gave taka for key to the appellant as informed by a secret slip and the Magistrate fined on 23.09.2007, but FIR lodged on 09.10.2007 and also the secret slip (as cirkut) of the appellant was not recovered and identified by the Investigating Officer and witnesses as well as the important neighbors are not produced as witnesses.

The learned Advocate lastly submits that on perusal of the FIR, Charge Sheet, Seizure list and statements of the witnesses, it is clear that the case is totally false and fabricated and there is no ingredient of section 5(2) of the Prevention of Corruption Act, 1947 against the appellant. Therefore, the judgment and order of conviction and sentence dated 30.10.2008 is illegal and liable to be set-aside. Accordingly, he prays for allowing the appeal.

On the other hand, Mr. Sayed Quamrul Hossain (Kiron), the learned Advocate appearing on behalf of the ACC submits that on 20.09.2007 the learned Magistrate A.K.M. Samsul Ahsan with his Peshker Md. Saiful Islam locked and key informant institute in a Mobile Court as because there was none. On the same day informant Md. Motiar Rahman communicated with Md. Saiful Islam by a secret note (as chirkut) and gave him 11,000/- out of Tk.30,000/- as per their contract for the key of his institute at the Canteen of PG Hospital, but Md. Saiful Islam could not return back the key, on the contrary on 23.09.2007 the learned Magistrate fined Tk.30,000/- without giving key to him. On 07.10.2007 he informed the same to the learned Magistrate and thereafter, on 08.10.2007 the learned Magistrate called them face to face at BCS Administrative Academy and then Md. Saiful Islam confessed the same. For this reason, the informant lodged the FIR following all legal formalities and prosecution witnesses supported the occurrence and proved the case beyond reasonable doubt. So, the judgment and order of conviction and sentence dated 30.10.2008 passed by the learned Special Judge,

Court No.07, Dhaka in Special Case No.29 of 2008 is maintainable in the eye of law. Therefore, he prays for dismissing the Appeal.

I have heard the submissions of the learned Advocate for both the parties, perused the judgment and order of conviction and sentence of the lower Court and the materials on record.

It appears from the record alleged allegation is that on 20.09.2007 the learned Magistrate A.K.M. Samsul Ahsan with his Peshker Md. Saiful Islam locked and key informant's institute in a Mobile Court as because there was none. On the same day informant Md. Motiar Rahman communicated with Md. Saiful Islam by a secret note (as chirkut) and gave him 11,000/- out of Tk.30,000/- as per their contract for the key of his institute at the Canteen of PG Hospital, but Md. Saiful Islam could not return back the key, on the contrary on 23.09.2007 the learned Magistrate fined Tk.30,000/- without giving key to him. On 07.10.2007 he informed the same to the learned Magistrate and thereafter, on 08.10.2007 the learned Magistrate

called them face to face at BCS Administrative Academy and then Md. Saiful Islam confessed the same. For this reason, the informant lodged the FIR following all legal formalities.

Now, let us discuss the evidences of the prosecution witnesses.

Dr. Motiar Rahman as P.W.1 in his deposition stated that on 20.09.2007 the learned Magistrate A.K.M. Samsul Ahsan with his Peshker Md. Saiful Islam locked and key informant institute in a Mobile Court as because there was none. On the same day informant Md. Motiar Rahman communicated with Md. Saiful Islam by a secret note (as chirkut) and gave him 11,000/- out of Tk.30,000/- as per their contract for the key of his institute at the Canteen of PG Hospital, but Md. Saiful Islam could not return back the key, on the contrary on 23.09.2007 the learned Magistrate fined Tk.30,000/- without giving key to him. On 07.10.2007 he informed the same to the learned Magistrate and thereafter, on 08.10.2007 the learned Magistrate called them face to face at BCS Administrative Academy and then Md. Saiful Islam confessed the same. Thereafter, he filed



the instant case. He identified the ejahar as exhibit-1 and therein his signature as exhibit-1/1. In his cross-examination he stated that Sumi Akter of his office gave him the chirkut on 20.09.2007 and he lodged the FIR at Police Station on 08.10.2007. At the time of lodged the FIR he did not submit the chirkut and did not give the chirkut to the investigating officer. The fine receipt was written by the accused. He does not know whether the writing of the Chirkut and the fine receipt are of different persons. In his cross-examination he further stated that the bribe money was not seized, rather he got the said money.

Md. Habibur Rahman as P.W-2 in examination in chief stated that on 25.06.2008 the officer of the anti-corruption commission coming to the office seized the documents and prepared the seizure list. He signed in the seizure list and identified the seizure list and alamat of the jimmanama as exhibits-2/3 and therein his signature as exhibits-2/1 and 3/1. He identified the signature of Zakir Hossina and Kibria as exhibits-2(2) and 2(3) and he knows his signature. In his cross-

examination he stated that he know the accused and identified the accused on dock. He does not know nothing about the occurrence, but signed in the seizure list as correct.

Golam Kibria Mojumder as P.W-3 in his deposition stated that the documents of mobile court was in his custody, which giving his custody. He submitted the seized alamats before the Court. He identified the seizure list and jimmanama as exhibits-2 and 3 and therein his signature as exhibits-2(3) and 3(3). Cross declined.

Zakir Hossain as P.W.4 declined by the prosecution.

A.K. Md. Shamsul Ahsan as P.W-5 in his deposition stated that on 20.09.2007 he with his Peshker Md. Saiful Islam locked and key informant institute in a Mobile Court as because there was none. On the same day informant Md. Motiar Rahman communicated with Md. Saiful Islam by a secret note (as chirkut) and gave him 11,000/- out of Tk.30,000/- as per their contract for the key of his institute at the Canteen of PG Hospital, but Md. Saiful Islam could not return back the key, on the contrary on 23.09.2007 he fined Tk.30,000/- without giving

key to him. On 07.10.2007 the informant informed the same to him and thereafter, on 08.10.2007 he called them face to face at BCS Administrative Academy and then Md. Saiful Islam confessed the same. In his cross-examination he stated that he fined the informant Tk.30,000/-. The informant did not complain to him regarding the bribe that day. He does not know nothing about the chirkut filed in the court. The fine receipt written by accused. He can't tell whether the chirkut is written by the accused or not, but there is some difference between the writing of chirkut and the fine receipt. The bribe money was seized. The recovered money was returned to the informant.

Helal Uddin Sharif as P.W.6 in his deposition stated that after taking charge of investigation he visited the place of occurrence and recorded the statement of the witnesses. He prepared the seizure list. After investigation he found prima facie case and submitted charge sheet under section under section 5(2) of the Prevention of Corruption Act, 1947 (Durniti Protirod Ain, 1947) against the appellant. In his cross-

examination he stated that he prepared the seizure list on 25.06.2008. The alamat of the case was with Nazir of the Chief Metropolitan Magistrate Court. It is not true that, he did not visit at the place of occurrence and prepare the seizure list.

In the light of the above discussion, it appears from the deposition of the informant that the mobile Court was locked the institute of the informant on 20.09.2007 and the informant to open his institute gave Tk.11,000/- as bribe to the convict-appellant. But, in his cross-examination he stated that the bribe money was not seized “ঘুষের টাকা জব্দ করা হয় নাই।”. The informant in his deposition he also stated that the convict-appellant demanded bribe money through chirkut, but at the time of lodged the FIR he did not file the chirkut and did not give the said chirkut to the investigating officer “মামলা করার সময় চিরকুট জমা দি নাই। আই.ও কে চিরকুট দি নাই।”. Further, in his deposition he stated that he lodged the FIR as per the direction of the concerned Magistrate “আমি তার কথামত আসামীর বিরুদ্ধে লিখিত এজাহার করি।”, but the Magistrate A.K.M Shamsul Huq as P.W.5 in his cross-examination stated that the informant did not lodge the FIR as per his direction “বাদী আমার নির্দেশে মামলা রঞ্জু করে নাই।”, which is

contradictory. From the cross-examination of the P.W.5, it further appears that the P.W.5 in his cross-examination stated that the fine receipt was written by the convict-appellant, but there are some differences in the writing of Chirkut and the writing of fine receipt “তবে চিরকুটের লিখা ও ফাইনের রশিদের লেখায় কিছু ভিন্নতা আছে”. So, the contradictory between the depositions of the witnesses create doubt regarding the real facts of the case and the benefit of the doubt must be got convict-appellant.

Moreover, in this case main allegation is that on the basis of chirkut the complainant gave Tk.11,000/- to the convict-appellant as bribe. But, from the record it is found that no chirkut was found and not marked as exhibit. It is also found that the vital point of this case Tk.11,000/-, which is given convict-appellant as bribe, that is not officially recovered and in support of recovery of that Tk.11,000/- no seizure list was made.

Considering the above facts and circumstances, materials on record and on perusal of the FIR, Charge Sheet, Seizure list and statements of the witnesses, it is my view that the prosecution could not prove their case beyond all reasonable doubt. Therefore, the judgment and order of conviction and sentence dated 30.10.2008 passed by the learned Special Judge, Court No.07, Dhaka in Special Case No.29 of 2008 arising out of Shahabagh Police Station Case No.16 of 2012 dated 08.10.2007 convicting the appellant under section under section 5(2) of the Corruption Prevention Act, 1947 (Durniti Protirod Ain, 1947) and sentenced him to suffer rigorous imprisonment for a period of 07(seven) years and also to pay a fine of Tk.50,000/- in default to suffer rigorous imprisonment for a period of 01(one) year more, which is not maintainable in the eye of law.

Accordingly, I find cogent and legal ground to interfere with the judgment and order of conviction and sentence dated 30.10.2008. The appeal, therefore, has merit.

In the result, the Criminal Appeal No.3849 of 2022 is allowed.

The judgment and order of conviction and sentence dated 30.10.2008 passed by the learned passed by the learned Special Judge, Court No.07, Dhaka in Special Case No.29 of 2008 arising out of Shahbagh Police Station Case No.16 dated 08.10.2007 convicting the appellant under section 5(2) of the Corruption Prevention Act, 1947 (Durniti Protirod Ain, 1947) and sentencing him to suffer rigorous imprisonment for a period of 07(seven) years and also to pay a fine of Tk.50,000/- in default to suffer rigorous imprisonment for a period of 01(one) year more is hereby set-aside and the convict-appellant be acquitted from this case.

Send down the lower Court records along with a copy of the judgment and order to the concerned Court below at once.

*Md. Anamul Hoque Parvej*  
*Bench Officer*