

In The Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)
PRESENT:
MR. JUSTICE MD. SHOHROWARDI
CRIMINAL APPEAL NO 4337 OF 2022.
Md. Hanif

..... Appellant.

-Versus-

The State

..... Opposite parties.

Mr. Syed Mejbahul Alam, Advocate with
Mr. Md. Sohrab Sarker, Advocate

.....For the appellant.

Mr. A.S.M. Kamal Amroohi Chowdhury,
Advocate

..for the respondent No. 2 ACC

Mr. Akhtaruzzaman, D.A.G with
Mr. Sultan Mahmood Banna, AAG with
Mr. Mir Moniruzzaman, AAG with

....for the State

Heard on 23.04.2025, 30.04.2025 and 18.05.2025

Judgment on: 22.05.2025

MD. Shohrowardi, J.

This appeal under section 10 of the Criminal Law Amendment Act, 1958 is directed against the impugned judgment and order of conviction and sentence dated 27.03.2022 passed by the Special Judge, Noakhali in Special Case No. 19 of 2018 arising out of Feni Model Police Station Case No. 56 of 30.09.2014 corresponding A.G.R. No. 24 of 2014 convicting the accused under section 420 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 3 years and fine of Tk. 20,000, in default, to suffer imprisonment for 01 (one) month and convicting him under section 468 of the Penal Code, 1860 and sentencing him thereunder to suffer

rigorous imprisonment for 3 years and fine of Tk. 20,000, in default, to suffer imprisonment for 01(one) month.

The prosecution's case, in short, is that the accused Md. Hanif is the Proprietor of Bathania Dairy Firm. He applied without mentioning a date to the Manager, Sonali Bank Ltd, Mohipal Branch, Feni for the sanction of the SME loan of Tk. 400,000 in favour of the Bathania Dairy Firm, which had no existence at that time. Md. Abul Kashem is the Manager of the Sonali Bank, Mahipal Branch, Feni, and without any inquiry, violating the rules of disbursement of the SME loan, he sanctioned loan of Tk. 400,000 in favour of the said firm without any date of approval, and transferred Tk. 400,000 in the Account No. 640000094 maintained in the name of Md. Hanif, Proprietor of Bathania Dairy Firm. The accused Abul Kashem transferred the said amount on 04.08.2011 by cheque No. CD 5243713 to the account maintained in the name of the accused, and he withdrew Tk. 360,000. The said manager, in connivance with the accused, misappropriated total Tk. 400,000. In the FIR, it has been mentioned that the Manager, Sonali Bank, discharged his duty in the said branch from 11.11.2010 to 19.12.2011, but recently he died. As per the rules of the disbursement of the SME loan, there was a precondition of attaching the identity card, trade licence, contract/agreement for rent, TIN, and information regarding the businesses, and the statement of account was required to be attached to the application for the loan. The Manager Abul Kashem, without any inquiry or security, disbursed the said amount.

Md. Abul Kalam Azad, DAD, Anti-Corruption Commission, Combined District Office, Noakhali, took up the

investigation of the case. During the investigation, he visited the place of occurrence, seized documents, recorded the statement of the witnesses under section 161 of the Code of Criminal Procedure, 1898, and after completing the investigation, submitted charge sheet on 21.06.2016 against the accused Md. Hanif under sections 406/420/467/468 of the Penal Code, 1860.

During the trial, charge was framed against the accused under sections 406 /420/467/468 of the Penal Code, 1860, which was read over to the accused present in court, and he pleaded not guilty to the charge and claimed to be tried following the law. During trial, the prosecution examined 7 witnesses to prove the charge against the accused and the defence cross-examined the prosecution's witnesses. After examination of the prosecution witnesses, the accused was examined under section 342 of the Code of Criminal Procedure, 1898, and the defence examined 2 D.W. After concluding the trial, the trial court by impugned judgment and order convicted the accused and sentenced him as stated above, against which he filed the instant appeal.

P.W. 1 Md. Abu Sufian Noyon is the Principal Officer, Sonali Bank, Sadar Upazila Complex, Feni. He stated that based on the GD No. 56 dated 26.05.2014 Md. Nurul Islam, Assistant Director, Anti-Corruption Commission, Combined District Office, Noakhali, seized the goods of the Bathania Dairy Firm and the records in his presence, sitting in his office, which were presented by him. He signed the seizure list dated 09.03.2015. He proved the seizure list as exhibit-1 and his signature on the seizure list as exhibit-1/1. On recall, he stated that he is not aware whether the Manager of the bank, after inspection, disbursed the loan. He proved the loan application (4 pages), the bio-data of the

directors (2 pages), the sanction letter of the loan (2 pages), DP note (1 page), DP note delivery letter (1 page), balance confirmation (1 page), form K-special (2 pages), form A-Special (2 pages), NID of the loanee (1 page), trade licence (1 page), under taking of the guarantor (1 page), notice of the bank (1 page), the final notice of the bank (1 page), statement of disbursement of the loan (1 page) and the statement of account of the accused as exhibit- 2 series. The investigating officer seized documents on 13.09.2014 in his presence. He could not say whether, after verification, the loan was disbursement or not. The defence declined to cross-examine P.W.1.

P.W. 2 Md. Abu Nazmul Hasan is the Deputy Director, Anti-Corruption Commission, Combined District Office, Khulna. He stated that the accused Md. Hanif applied for a loan of Tk. 400,000 creating forged documents in the name of Bathania Dairy Firm, which had no existence at the relevant time and the Manager, Sonali Bank, without inquiry, had given sanction of the loan and disbursed said loan of Tk. 400,000 in favour of the accused Md. Hanif. The accused withdrew Tk. 360,000 from the account. After inquiry, he submitted the report, and after approval of the head office, he lodged the FIR. He proved the FIR as exhibit-3 and his signature on the FIR as exhibit-3/1. He denied the suggestion that he did not verify the correct address and filed a false report against the accused, or that the allegations made in the FIR against the accused are false.

P.W. 3 Muazzem Hossain is the Principal Officer of the Sonali Bank, Lashkar Hat Branch, Feni. He stated that on 08.06.2016, he discharged his duty as Principal Officer, Sonali Bank, Mahipal Branch, Feni. On that day, an Officer of the

Bureau of Anti-Corruption seized documents from the said branch. He signed the seizure list. The seized documents were handed over to the custody of Abu Sufiyan Nayon. He signed the seizure list. He proved the seizure list as exhibit-4 and his signature on the seizure list as exhibit-4/1. He proved his signature on the Zimmanama as exhibit-4/2.

P.W. 4 Md. Badrul Alam is the AGM, Sonali Bank Ltd., Principal Branch, Feni. He stated that from 09.06.2015 to 10.03.2019, he discharged his duty as Manager, Sonali Bank, Mahipal Branch. On 23.07.2015, on the requisition of the Abul Kalam Azad, Officer of the Anti-Corruption Commission, he issued a certificate regarding Md. Hanif, Proprietor of Bathania Dairy Firm. In the certificate, it has been mentioned that there was total outstanding dues of Tk. 4,45,500. He proved the certificate as exhibit-5 and his signature on the certificate as exhibit-5/1. During cross-examination, he stated that before the disbursement of the loan, the bank inquired about the applicant. After verification of the detailed documents, Manager Abul Kashem disbursed the loan of Tk. 400,000. He admitted that as of 09.04.2019, he paid total Tk. 420,800. Only the interest remained due. He denied the suggestion that the statement made in the certificate is not correct.

P.W. 5 Md. Mahiuddin Bhuiyan is the DGM, Sonali Bank, Shilpa Bhaban Corporate Branch, Dhaka. He stated that in 2011, he discharged his duty as Principal Officer of Sonali Bank, Feni. At that time, a four-member enquiry committee was formed, headed by him. On 11.03.2012, he submitted the report. He proved the photocopy of the report as exhibit-6 and his signature as exhibit-6/1. During cross-examination, he stated that he is not

aware whether, at the time of disbursement of the loan, the accused submitted the NID, trade licence, and the citizenship certificate. He denied the suggestion that the document submitted by the accused was found correct by the bank and accordingly disbursed the loan. He admitted that the accused paid Tk. 420857. He denied the suggestion that he submitted a false report against the accused or that he deposed falsely.

P.W. 6 Pear Ahmed is the Senior Officer (retired), Sonali Bank, Mahipal Branch, Feni. He stated that in 2010, he discharged his duty with the Sonali Bank, Principal Office, Feni. A four-member enquiry committee was constituted vide memo No. 279 dated 10.03.2012 to inquire about the irregularity of disbursement of the loan by the then Manager Abul Kashem, Sonali Bank, Mahipal Branch, Feni. He was a member of the enquiry committee. After the inquiry, he submitted the report. He proved his signature as exhibit-6/2 on the inquiry report (Exhibit 6). He denied the suggestion that the accused filed an application for loan following all the requirements of law. He denied the suggestion that no irregularity was committed at the time of disbursement of the loan.

P.W. 7 Abul Kalam Azad stated that from 20.03.2014 to 03.03.2016, he discharged his duty as DAD of the Anti-Corruption Commission, Combined District Office, Noakhali. The Anti-Corruption Commission, Dhaka vide Memo dated 26.04.2015 and the Divisional Office, Chattogram vide Memo No. 1149 dated 15.06.2015 appointed him as investigating officer of the case. He proved the said memo as Exhibit 7 series. During the investigation, he visited the place of occurrence, recorded the statements of the witnesses under section 161 of the Code of

Criminal Procedure, 1898. On 08.02.2016, he seized the documents regarding the loan disbursed in favour of Md. Hanif and handed over those documents to the custody of Principal Officer Abu Sufiyan Noyan. During the inquiry, he did not find the existence of the Bathania Dairy Firm, and the locals also did not give any information regarding the said Dairy Firm. The accused filed the application for loan using a false address and forged documents to the Manager, Sonali Bank, Mohipal Branch, and obtained a loan of Tk. 400,000 based on the forged documents. The accused withdrew Tk. 360,000 from his loan account and committed an offence under sections 406/467/468 of the Penal Code, 1860. He proved his signature on the seizure list dated 08.03.2016 as exhibit-4/3 and his signature on the Zimmanama as exhibit-4/4. He proved the sanction letter for submitting charge sheet as Exhibit 8. During cross-examination, he stated that he visited the place of occurrence several times, but he could not remember the dates. He interrogates many locals but cannot remember their names. Kamrun Nahar, the wife of Ruhul Amin, who is the guarantor of the loan, went along with him. He denied the suggestion that before filing the case, the accused paid the entire loan amount. He denied the suggestion that he submitted a false report.

D.W. 1 Mohammad Yousuf stated that the accused Md. Hanif is the owner of the Bathania Dairy Firm set up at village Bathania, Post-Panchgachhia, Feni. The investigating officer visited the Khalighar Bathania, Panchgachhia, Feni. During cross-examination, he stated that Panchgachhia Bathania is situated 30 km away from his house. While the officer of the Anti-Corruption

Commission went to Panchgachhia, Bathania, he was present there. He denied the suggestion that he deposed falsely.

D.W. 2 Nasir Uddin stated that the accused Md. Hanif is the owner of the Bathania Dairy Firm situated in his locality. The accused is a resident of the said area. He took loan from the bank. He did not see any officer of the Anti-Corruption Commission in the locality. During cross-examination, he stated that he deals with the business. Every day in the afternoon, he visits the bazaar to sell cows. The accused purchased the land 15/16 years ago and set up the dairy firm about 12 years ago.

The learned Advocate Mr. Syed Mejbahul Alam, appearing along with the learned Advocate Mr. Md. Sohrab Sarker, on behalf of the accused Md. Hanif submits that the accused applied for loan of Tk. 400,000 complying with all the rules and submitted the relevant documents, which have been proved by P.W. 1 as exhibit-2 series and former Manager, Abul Kashem, after verification of the documents, properly disbursed the loan of Tk. 400,000, and he paid total Tk.420857 till 09.04.2019, which has been affirmed by P.W. 5, and the investigating officer conducted a perfunctory investigation of the case without examining the documents of the loan, and malafide submitted the charge sheet against the accused. The prosecution failed to prove the charge against the accused beyond all reasonable doubt, and the trial court, without considering the evidence of P.W. 4 to 6, illegally passed the impugned judgment and order. He prayed to allow the appeal.

The learned Advocate Mr. ASM Kamal Amroohi Chowdhury, appearing on behalf of the Anti-Corruption Commission, submits that a 4-member enquiry committee was

formed to inquire into the irregularity committed at the time of sanction and disbursement of the lone of Tk. 400,000, and after inquiry, submitted the report (exhibit-6) against the accused regarding the sanction and disbursement of loan amounting to Tk. 400,000, and the trial court, considering the evidence of both parties, legally passed the impugned judgment and order. He prayed for dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Syed Mejbahul Alam, who appeared along with the learned Advocate Mr. Md. Sohrab Sarker on behalf of the accused and Mr. ASM Kamal Amroohi Chowdhury, who appeared on behalf of the respondent No. 2, Anti-Corruption Commission, perused the evidence, impugned judgment and order passed by the trial court, and the records.

P.W. 1 stated that during the inquiry on 09.03.2015 Md. Nurul Islam, Assistant Director, Anti-Corruption Commission, Combined District Office, Noakhali seized the materials of the Dairy Firm of the accused and the records and signed the seizure list. During cross-examination, he stated that he is not aware that, after inquiry, the Manager found the Dairy Firm. On recall by the prosecution, P.W. 1 proved the loan application (4 pages), the bio-data of the Directors (2 pages), the sanction letter of the loan (2 pages), DP note (1 page), DP note delivery letter (1 page), balance confirmation (1 page), form K-special (2 pages), form A-Special (2 pages), NID of the loanee (1 page), trade licence (1 page), under taking of the guarantor (1 page), notice of the bank (1 page), the final notice of the bank (1 page), statement of disbursement of the loan (1 page) and the statement of account of the accused as exhibit- 2 series. He could not say whether the

bank disbursed the loan after verification. P.W. 4 Badrul Alam, AGM, Sonali Bank, Principal Office, Feni stated that before the disbursement of the loan, the bank collected information about the loanee. He admitted that the then Manager Abul Kashem, after verification, rightly disbursed the loan of Tk. 400,000, and the accused Md. Hanif paid total Tk. 4,20,800 as on 09.04.2019. P.W. 5 Md. Mohiuddin Bhuiyan is the Head of the inquiry committee, who conducted the inquiry about the alleged irregularity committed at the time of sanction and disbursement of the loan. After inquiry, he submitted the report, which has been proved as exhibit-6. During cross-examination, he admitted that the accused took loan of Tk. 400,000 and paid total Tk. 4,20,800. During cross-examination, P.W. 7 admitted that he interrogated Kamrun Nahar, the wife of Ruhul Amin, who is the guarantor of the loan.

On perusal of the evidence of both parties, it reveals that at the time of disbursement of the loan, the accused submitted all required documents along with the application for the loan of Tk. 400,000, which has been proved by P.W. 1 as exhibit-2 series. The evidence of P.Ws 1, 4, 5 and 7 depicts that after complying with the rules regarding the sanction and disbursement of the SME loan, the then Manager Abul Kashem legally sanctioned and disbursed the loan of Tk. 400,000 in favour of the Bathania Dairy Firm, and the convict petitioner paid total Tk. 420,800. Non-payment of the entire loan and interest, or part payment of loan is not an offence. The trial court passed the impugned judgment and order without considering the documents (exhibit-2 series) and evidence of P.Ws 1, 4, 5, and 7.

The Exhibit 2 series was not sent to the handwriting expert to prove that those are forged documents. No evidence was

adduced by the prosecution to prove that the documents submitted along with the application for loan (Exhibit 2 series) are forged. The prosecution failed to prove the charge against the accused Md. Hanif beyond all reasonable doubt.

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

I find merit in the appeal.

In the result, the appeal is allowed.

The impugned judgment and order of conviction and sentence passed by the trial court against the accused Md. Hanif is hereby set aside.

However, there will be no order as to costs.

Send down the lower court's record at once.