

**Present:**

Mr. Justice Md. Shohrowardi

**Criminal Appeal No. 6030 of 2022**

Md. Hafiz Ullah

...Appellant

-Versus-

The State and another

...Respondents

Mr. Md. Mizanul Hoque, Advocate

...For the appellant

Mr. Md. Akhtaruzzaman, D.A.G with

Mr. Sultan Mahmood Banna, A.A.G with

Mr. Mir Moniruzzaman, A.A.G with

Ms. Farhana Abedin, A.A.G with

Mr. Md. Kaium, A.A.G

...For the State

Mr. Md. Omar Farook, Advocate

...For the respondent No. 2 (ACC)

Heard on 05.03.2025, 22.04.2025, 27.04.2025 and 28.04.2025

**Judgment delivered on 06.05.2025**

This appeal under section 10 of the Criminal Law Amendment Act, 1958 is directed against the impugned judgment and order dated 01.06.2022 passed by Special Judge, Noakhali in Special Case No. 16 of 2019 convicting the appellant under Section 161 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 01(one) year and 06(six) months and fine of Tk. 20,000 (twenty thousand), in default, to suffer imprisonment for 02(two) months and convicting him under section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him thereunder to suffer rigorous imprisonment for 01(one) year.

The prosecution's case, in short, is that the accused Md. Hafiz Ullah was an Officer of Bangladesh Krishi Bank, Kadirpur Branch, Begumganj, Noakhali. He demanded Tk. 8,000(eight thousand) as bribe to complainant P.W. 6 Mahmudul Hasan Tareq to sanction a loan of Tk. 80,000 in his favour. On 28.02.2018 at 2.10 pm, the

accused received Tk. 8,000(eight thousand) from P.W. 6 Mahmudul Hasan Tareq. After that, the informant Md. Moshir Rahman along with the trap team, interrogated the accused Md. Hafiz Ullah regarding the bribe received from the complainant P.W. 6. He admitted that he received the bribe and handed over the money to the security guard Md. Ahsan Ullah @ Abul Kalam. At that time, the security guard Md. Ahsan Ullah @ Abul Kalam was taken to the office room of the Manager of the Krishi Bank of the said Branch and in the presence of witnesses, he took out Tk. 8,000(eight thousand) from the left pocket of his shirt. The members of the trap team found that the numbers of the recovered notes mentioned in the list of inventory are identical to the notes recovered from Md. Ahsan Ullah @ Abul Kalam. At that time, the trap team seized documents and took signatures of the witnesses and arrested the accused Md. Hafiz Ullah and Md. Ahsan Ullah @ Abul Kalam.

P.W. 13 Deputy Director Md. Talebur Rahman of the ACC was appointed as Investigating Officer. During the investigation, he visited the place of occurrence, seized documents, recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898 and after completing the investigation, he found prima facie truth of the allegation made against the accused Md. Hafiz Ullah and Md. Ahsan Ullah @ Abul Kalam. The Anti-Corruption Commission vide memo No. 37981 dated 18.11.2018 had given sanction to submit the charge against the accused persons. After that, he submitted charge sheet on 10.12.2018 against the accused persons under sections 161/109 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947.

The Senior Special Judge, Noakhali sent the case to the Special Judge, Noakhali. During the trial, charge was framed against the accused-persons under sections 161/109 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947 which was read over and explained to them, and they pleaded not guilty to the

charge and claimed to be tried following the law. The prosecution examined 13(thirteen) witnesses to prove the charge against the accused. After examination of the prosecution witnesses, the accused was examined under Section 342 of the Code of Criminal Procedure, 1898 and they declined to adduce any D.W. After concluding the trial, the trial Court by impugned judgment and order convicted the accused Md. Hafiz Ullah and sentenced him as stated above against which he filed the instant appeal.

P.W. 1 Md. Moshir Rahman stated that on 27.02.2018 he was discharging his duty as Assistant Director, ACC, Noakhali. On that day, Md. Mahmudul Hasan Tareq made a complaint to the ACC to the effect that the accused Md. Hafiz Ullah demanded Tk. 8,000 as a bribe to sanction loan of Tk. 80,000. On 28.02.2018, a six-member trap team was formed, headed by Deputy Director ACC, Noakhali. On that day at 10.00 am in the presence of two neutral witnesses, a list of inventory of 16 notes of Tk. 500 was prepared sitting in the Office of the ACC. After that, the complainant was instructed to hand over the notes mentioned in the list of inventory. He along with the members of the trap team, took position beside the Krishi Bank, Kadirpur Branch. On that day at 2.00 pm, the complainant instructed the trap team that he handed over the bribe to the accused. Instantaneously, he along with the members of the trap team entered the bank and instructed the accused Md. Hafiz Ullah to take out the money received as a bribe. At that time, as per the instruction of the complainant Md. Mahmudul Hasan Tareq interrogated the accused No. 2 Md. Ahsan Ullah @ Abul Kalam, Security Guard of the Krishi Bank, Kadirpur Branch. He admitted that he kept the money. Instantaneously, the members of the trap team along with the accused entered the room of the Manager of the said Bank and recovered 16 notes of Tk. 500 mentioned in the list of inventory from the pocket of his shirt. P.W. 1 seized the recovered notes, the shirt of the accused No. 2, the mobile set used by the accused persons and loan application. He

proved the FIR as exhibit 1 and his signature on the FIR as exhibit 1/1. He proved the seizure list as exhibit 2 and his signature on the seizure list as exhibit 2/1. He proved the list of inventory as exhibit 3 and his signature as exhibit 3/1. He proved the office order regarding the trap team as exhibit 4. He proved the seized amount as material exhibit I series. The accused No. 2 Md. Ahsan Ullah made a statement to the Magistrate. During cross-examination, he stated that the accused No. 2 Ahsan Ullah was the guard of the bank. At about 2.00/2.30 pm, he was detained from the bank and the accused Hafiz Ullah was also detained from the bank. He denied the suggestion that accused Ahsan Ullah was detained in the guard room of the bank. He admitted that in the seizure list, it has been mentioned that the accused Ahsan Ullah is an outsourcing employee. Nothing has been mentioned in the seizure list from whom the seized money was recovered. He admitted that he did not pay the money to the accused Ahsan Ullah directly. The Deputy Director Md. Talebur Rahman was the head of the trap team. Al Mamun, Subel Ahammed, Md. Hossain Sharif, Md. Mesbaul Haque and Md. Khorshed Alam were members of the trap team. He denied the suggestion that he was not a member of the trap team. After 11.00 am, the members of the trap team started from the office. The complainant Tareq did not go along with the trap team. At 1.00 pm, the members of the trap team went near the Krishi Bank, Kadirpur. He could not remember the date of filing the application for the loan. He denied the suggestion that before the date of occurrence, Tareq did not file any application to the bank for a loan. Tareq and his mother took loan from the bank. He admitted that when the members of the trap team entered the bank, the accused Md. Hafiz Ullah was sitting in his room and the accused Ahsan Ullah was taking lunch on the first floor in another room. Having received the instruction of Tareq, the members of the trap team entered the bank. He admitted that the notes mentioned in the list of inventory were not recovered from the accused Hafiz Ullah. When the members of the

trap team entered the bank, the accused Ahsan Ullah was taking lunch. He denied the suggestion that at the time of the occurrence, the members of the trap team forced the accused Hafiz Ullah to fill up the application for loan and loan was sanctioned and disbursed at the instance of the members of the trap team. He denied the suggestion that the accused Hafiz Ullah did not demand any bribe or receive any bribe from the complainant.

P.W. 2 Mashfiquel Haque is a Magistrate. He stated that on 28.02.2018, he discharged his duty as a Magistrate, Cognizance Court No. 3, Noakhali. On that day, he recorded the statement of accused Ahsan Ullah. He proved the confession of accused Ahsan Ullah as exhibit 5 and his signature on the confession as exhibit 5/1 series. On 24.04.2018, he recorded the statement of witnesses Abu Zaher and Kazi Mahin under Section 164 of the Code of Criminal Procedure, 1898. He proved the statements of those witnesses as exhibits 6 and 7, respectively, and his signatures on those statements as exhibits 6/1 and 7/1. He admitted that the witness Abu Zaher stated that Ahsan Ullah stated that he is the owner of the money. The witness Kazi Mahin Uddin stated that the money was recovered from the Security Guard Kalam. The witness Kazi Mahin Uddin did not make any statement against the accused Hafiz Ullah regarding his involvement.

P.W. 3 Shamim Uddin Ahammed is the Second Officer of Krishi Bank, Kadirpur Branch. He stated that on 28.02.2018, after lunch, 5/6 persons entered the Krishi Bank and they disclosed their identity as Officers of the ACC. They took the Security Guard Abul Kalam alias Ahsan Ullah to the chamber of the Manager of the Bank. At that time, he was taking lunch and 16 notes of Tk. 500 was recovered from his pocket. In presence of the officers of the ACC, he disclosed that the money was handed over by Tareq. At that time, the officers of the ACC seized the money, mobile, etc, and arrested the accused Hafiz Ullah. He admitted that while Hafiz Ullah was sitting in the Chamber of the Manager, the members of the trap team forced

him to fill up the application for loan and instructed him to make recommendation. After that, the Manager approved and disbursed the loan in favour of Tareq Hossain and others. After the disbursement of the loan, the officers of the ACC seized documents regarding the sanction and disbursement of the loan. He proved his signature on the seizure list dated 28.02.2018 as exhibit 2/2. Initially, the loan application is required to file to the Manager who sent the application to the field officer. A separate record is kept regarding the application for loan and the field officer signed the register on each date. The loan number of the complainant Mahmudul Hasan Tareq is 173 dated 25.02.2018. The accused Ahsan Ullah, as a guard of the bank, used to discharge his duty at the gate of the bank.

P.W. 4 Dr. Md. Zakir Hossain stated that on 28.02.2018 at 10.00 am, the Deputy Director Talebur Rahman, ACC requested him to go to his chamber. At that time, Assistant Director Moshir Rahman of ACC was present there. He prepared a list of inventory of 16 notes of Tk. 500. He signed the list of inventory. He proved his signature on the inventory as exhibit 3/2. He found that the number of notes mentioned in the list of inventory is identical. During cross-examination, he admitted that after signature on the inventory, he did not go anywhere.

P.W. 5 Kazi Mahin Uddin stated that on 28.02.2018 at 1.30/2.00 pm, he was sitting in his shop. At that time, he saw that the people assembled at 20 yards away from his shop. At that time, he went to the Bank situated on the first floor. His father was the owner of the building wherein the Bank was situated. The officer of the ACC requested him to go to the room of the Manager. At that time, the officer of the ACC said that Tk. 8,000 was recovered, and he showed 16 notes of Tk. 500, which were signed by the officer of the ACC. The officer of the ACC also seized the shirt and mobile phone. The officer of the ACC requested him to sign the paper, accordingly, he signed. He proved his signature on the seizure list as exhibit 2/3. After

2 months, he made a statement to the Magistrate. He proved his signature on the statement recorded by the Magistrate as exhibit 7/2. During cross-examination, he admitted that the officer of the ACC seized the shirt and mobile of the accused Kalam. He did not see anything except the mobile and the shirt.

P.W. 6 Mahmudul Hasan Tareq is the complainant. He stated that in 2018, he took loan of Tk. 70,000 from the Krishi Bank, Kadirpur Branch and paid Tk. 50,000. After a few days, he went again to the Bank for loan. He requested him to sanction a new loan of Tk. 80,000. At that time, he demanded Tk. 8,000 as bribe for the loan of Tk. 80,000. He refused to sanction loan without the payment of bribe amounting to Tk. 8,000. He handed over the phone number of Robi. After one/two days from that number he called the complainant. At that time, he again demanded Tk. 8,000 to sanction loan of Tk. 80,000. He recorded the voice. At that time, he filed a complaint on 27.02.2018. The next day, he collected 16 notes of Tk. 500 and in the presence of two witnesses, handed over Tk. 8,000 to the officer of the ACC and thereafter, a list of inventory was prepared. He proved his signature on the inventory as exhibit 3/3. After preparing the list of inventory Tk. 8,000 was returned to him. They went along with him to the said branch of the Bank. They instructed him to go to the Krishi Bank. At that time, Hafiz Ullah was taking his lunch. He informed him that he brought the money. After lunch, he called him (complainant). At that time, he found him in front of the desk of the accused along with his mother. He handed over 16 notes of Tk. 500 to the accused. He kept the money. After some time, the officers of the ACC went there. The officers of the ACC interrogated the accused Hafiz Ullah and the money was recovered from the Guard of the Bank. He proved the recovered money as material exhibit I. The officers of the ACC detained Hafiz Ullah and the guard. During cross-examination, he admitted that he did not pay Tk. 20,000 of the previous loan. He could not remember the first date of sanction of

loan. He affirmed that officers of the ACC also heard the recordings of the mobile, but they did not seize the mobile set. After hearing, they returned the mobile. He denied the suggestion that Hafiz Ullah never called him. The accused Hafiz Ullah was taking lunch sitting at his table. He handed over the money to Hafiz Ullah sitting at his table. When the officers of the ACC entered the bank, he was also sitting in front of the accused. He did not go out of the office to call the officers of the ACC. He affirmed that no money was recovered from the possession of the accused Hafiz Ullah. He admitted that on the same date, he filed an application for a loan and received the loan amounting to Tk. 80,000. He denied the suggestion that he did not disclose to the IO that Hafiz Ullah demanded Tk. 8,000.

P.W. 7 Manoara Begum was tendered. During cross-examination, she admitted that on the date of the occurrence, she was sitting in the bank before the occurrence. None interrogated her.

P.W. 8 Jahangir Kabir Bhuiyan is an Office Assistant-cum-Computer Operator. He stated that on 28.02.2018 at 10.00 am, he was present in his office. At that time, Assistant Director Md. Moshir Rahman of ACC came to his Office and requested him to go to the office of the Deputy Director, ACC, Noakhali. After that, he went along with him to the office of the Deputy Director. At that time, they prepared an inventory. In his presence, one Mahmudul Hasan Tareq kept 16 notes of Tk. 500 on the table of the DD. At the instruction of the DD, the Assistant Director and another Office Assistant prepared the list of inventory. In the list of inventory, the numbers of 16 notes of Tk. 500 were mentioned. In his presence, the list of inventory was prepared. He proved the list of inventory as exhibit 3 and his signature as exhibit 3/4. During cross-examination, he stated that Mahmudul Hasan Tareq was not known to him. He denied the suggestion that as per the instruction of the officers of the ACC, he deposed falsely.

P.W. 9 Md. Abu Zaher is the former Manager of the Krishi Bank, Kadirpur Branch. He stated that from 14.03.2017 to

16.04.2018, he discharged his duty as Manager of the said Branch. On 28.02.2018 at 2.00/2.15 pm, the occurrence took place. Suddenly, 12/13 people entered his room. Two of them took their seats in front of his table. He wanted to know the identity of those persons and they disclosed their identity as the people of ACC. At that time, a few officers of the ACC entered his room along with the Security Guard Abul Kalam. At that time, he was taking lunch. He admitted that he is the owner of the money recovered from him. The officers of the ACC took the money. The officers of the ACC arrested the accused Abul Kalam and the Field Officer Hafiz Ullah. During cross-examination, he admitted that he made a statement to the Magistrate on 24.04.2018. He admitted that the accused Ahsan Ullah told him that the accused Hafiz Ullah requested him to keep the money. He denied the suggestion that to save his colleague Hafiz Ullah he deposed falsely suppressing the truth. He admitted that when Kalam was detained, Hafiz Ullah was discharging his duty at his table. He admitted that at the instruction of the officers of the ACC, the accused Hafiz Ullah prepared a record regarding the loan to disburse in favour of Mahmudul Hasan Tareq. He was compelled to sanction and disburse the loan. No other application was pending regarding the sanction of the loan. The father of Mahmudul Hasan Tareq also took loan from the Bank. Subsequently, Kalam said that Hafiz Ullah requested him to keep the money, but he did not tell him that in his presence. After filing the case, he came to know about that statement.

P.W. 10 Al Mamun was the ASP. He stated that on 28.02.2018, he discharged his duty as Assistant Director of ACC, Combined District Office, Noakhali. On that day, a trap was conducted headed by Assistant Director Moshiur Rahman of ACC, and he was a member of the trap team. Mohammad Hossain Sharif, Md. Mezbah Uddin, Khorshed Alam, Rubel Ahammad were the members of the trap team and Deputy Director Md. Talebur Rahman was the head of the trap team. At 11.00 am, they started from the

Office for Bangladesh Krishi Bank, Kadirpur Branch, Noakhali. At 1.00 pm, they reached the Bank and took their position beside the Bank. Md. Moshir Rahman talked to Mahmudul Hasan Tareq. After that, Mahmudul Hasan Tareq entered the Bank. After some time at the instruction of Md. Moshir Rahman, the members of the trap team entered the Bank. At that time, they interrogated Bank Officer Hafiz Ullah. He admitted that he handed over the money to the Security Guard Abul Kalam. After that, the members of the trap team interrogated him and searched his body and recovered Tk. 8,000 from the pocket of the shirt of the accused Ahsan Ullah who disclosed that officer Hafiz Ullah instructed him to keep the money. In the presence of the Manager and the members of the trap team, they found that the recovered notes are identical to the notes mentioned in the list of inventory. The shirt of the accused Ahsan Ullah, the mobile sets of the accused Hafiz Ullah and Ahsan Ullah were seized along with other documents from the Bank. Thereafter, the accused persons were detained. During cross-examination, he admitted that all the members of the trap team entered the bank. He found the accused Hafiz Ullah in the bank. He could not remember where in the accused Ahsan Ullah was sitting. He could not remember who was interrogated first out of the accused persons Hafiz Ullah and Ahsan Ullah. No money was recovered from Hafiz Ullah. He could not remember whether he told the Investigating Officer that accused Hafiz Ullah handed over the money to accused Ahsan Ullah. The accused Ahsan Ullah said that the accused Hafiz Ullah handed over the money.

P.W. 11 Subal Ahmed stated that on 28.02.2018, he discharged his duty as Assistant Director of ACC. He was a member of the trap team. On that day at 11.00 am, he started from his Office for the Bangladesh Krishi Bank, Kadirpur Branch. Al Mamun, Hossain Sharif, Mezbaul Haque, and Khorshed Alam were the members of the trap team. At 01.00 pm, they reached the bank and took position beside the bank. At that time, Md. Mahmudul Hasan

Tareq talked to Md. Moshir Rahman. After some time, Moshir Rahman instructed them to enter the bank along with him. Moshir Rahman interrogated the accused Hafiz Ullah who disclosed that he kept the money to Guard Abul Kalam. At that time, Moshir Rahman took Abul Kalam and Hafiz Ullah to the room of the Manager of the Bank. At that time, money was recovered from Ahsan Ullah which was seized and the accused was detained along with the seized money and the documents. During cross-examination, he stated that he found Tareq on the ground floor of the bank. No one was present with him. When they entered the bank, Hafiz Ullah was sitting at his desk. He denied the suggestion that he deposed falsely.

P.W. 12 Mezbaul Haque is a Data Entry Operator of the ACC. He stated that on 28.02.2018, as a member of the trap team, he along with Md. Moshir Rahman, Assistant Director of ACC, head of the trap team and the members of the trap team went to the Office of the Bangladesh Krishi Bank and arrived there at 1.00 pm. They took position beside the bank. The leader of the trap team talked to Mahmudul Hasan Tareq. He entered the bank. After some time, he instructed the team leader. The team leader Md. Moshir Rahman instructed the members of the trap team to enter the bank. The complainant Tareque said that he paid Tk. 8,000 as a bribe to Hafiz Ullah. Hafiz Ullah said that he handed over the money to Ahsan Ullah and searching Ahsan Ullah recovered that money. The team leader entered the room of the Manager and found that the recovered notes were identical to the notes mentioned in the list of inventory. He seized that money. At that time, the members of the trap team were present there. During cross-examination, he stated that when he arrived at the bank, Tareq was inside the bank. He saw Hafiz Ullah and Ahsan Ullah on the same floor near each other. After some time, Tareq instructed Moshir Rahman and he along with the trap team, entered the bank. He denied the suggestion that no money was

recovered from the possession of the accused or that he was not a member of the trap team.

P.W. 13 Deputy Director Md. Talebur Rahman stated that from 18.05.2016 to 04.10.2018, he discharged his duty as Deputy Director, ACC, Noakhali. He was appointed as Investigating Officer vide memo dated 22.03.2018. He proved the said memo as exhibit 8. He perused the application filed by Md. Mahmudul Hasan Tareq. He proved the said application as exhibit 9. He visited the place of occurrence, prepared the sketch map and index. He proved the sketch map as exhibit 10/1. The ACC formed a 5-member team headed by Md. Moshiur Rahman. He proved the office order as exhibit 11. He obtained the approval of the Commissioner. He proved the approval as exhibit 11. He visited the place of occurrence, recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898. He produced witnesses Ahsan Ullah, Kazi Main Uddin and Abdul Taher to the Magistrate to record their statements. On perusal of the application for loan, he found that on 25.02.2018 Mahmudul Hasan applied to the Manager, Krishi Bank, Kadirpur Branch for a loan of Tk. 80,000, and the Manager approved the loan and demanded Tk. 8,000 for sanctioning loan. On 28.02.2018, the accused Md. Hafiz Ullah made a recommendation for sanction of the loan. On 27.02.2018, Mahmudul Hasan applied to the ACC and on the basis of the said application, the trap team was formed. The recovered notes are identical to the notes mentioned in the list of inventory. The accused Md. Hafiz Ullah handed over the money to Ahsan Ullah. He submitted the charge sheet against the accused persons. He proved the approval dated 18.11.2018 as exhibit 12. During cross-examination, he stated that he did not seize the application dated 27.02.2018. There were total 7 members of the trap team. He admitted that witness Mahmudul Hasan Tareq stated that the ACC Officer instructed him to bring Tk. 8,000 to the Office of the ACC. Tareq did not say to him that he handed over 16 notes of Tk.

500 to Hafiz Ullah. He admitted that witness Al Mamun did not say to him that entering into the bank, he interrogated Hafiz Ullah. Al Mamun also did not say that Hafiz Ullah handed over the money to Guard Ahsan Ullah. He admitted that witness Subel Ahmad did not say that Hafiz Ullah handed over the money to Ahsan Ullah. He also admitted that Subel Ahmad did not disclose that Hafiz Ullah was taken to the room of the Manager or he was interrogated or the money was recovered or seized. He also admitted that witness Mezbah Ul Haque did not disclose to him that Hafiz Ullah handed over the money to Ahsan Ullah. He admitted that the mobile calls of the accused persons were not recorded. He denied the suggestion that he influenced as regards the filing application for loan. He denied the suggestion that the accused Hafiz Ullah did not demand any bribe or that he did not receive any bribe.

Learned Advocate Mr. Md. Mizanul Hoque appearing on behalf of the appellant submits that admittedly the money was recovered from the Guard Md. Ahsan Ullah @ Abul Kalam and the application for loan seized by the trap team was not proved in the case to show that an official act was pending to the accused at the time of the alleged occurrence. P.Ws 3 and 9 admitted that on the date of occurrence the members of the trap team forced the accused to fill up the application for loan and disbursed the loan on the same date. He further submits that nothing has been mentioned in the seizure list against the accused and P.Ws 3 and 5, who are the witnesses of the seizure list, did not also implicate the accused regarding the recovery of the alleged money. P.Ws 3 and 9 stated that the co-accused Md. Ahsan Ullah admitted that the recovered money belonged to him. The prosecution failed to prove the charge against the accused and the trial Court without correct assessment and evaluation of the evidence of the prosecution witnesses illegally passed the impugned judgment and order. He prayed for setting aside the impugned judgment and order passed by the trial Court.

Learned Advocate Mr. Md. Omar Farook appearing on behalf of the respondent No. 2 (ACC) submits that the accused Md. Hafiz Ullah, Officer of the bank, received Tk. 8,000 from the accused and the recovered 16 notes are identical to the notes mentioned in the list of inventory, and the prosecution witnesses proved that Tk. 8,000 paid by P.W. 6 to the accused as a bribe was recovered from the accused Md. Hafiz Ullah. The prosecution witnesses proved the charge against the accused beyond all reasonable doubt. He prayed for the dismissal of the appeal.

I have considered the submissions of the learned Advocates of both parties, perused the evidence, impugned judgment and order passed by the trial Court and the records.

At the very outset, it is noted that during the pendency of the appeal, the appellant Md. Hafiz Ullah died on 27.02.2023.

On perusal of the evidence, it appears that Md. Hafiz Ullah was the Field Officer of the Krishi Bank, Kadirpur Branch, Noakhali. Admittedly, Tk. 8,000 was recovered from the co-accused Md Ahsan Ullah @ Abul Kalam. It has been alleged that the accused Md. Hafiz Ullah demanded Tk. 8,000 as bribe to P.W. 6 Mahmudul Hasan Tareq to sanction a loan amounting to Tk. 80,000 in his name. During trial, no application for loan was proved although seized by the trap team as stated by P.Ws 1, 10 to 12.

On perusal of the complaint made by P.W. 6 to the ACC dated 27.02.2018 (exhibit 9 ), it appears that no date of demand of bribe has been mentioned in the said application. P.W. 6 admitted that out of the previous loan of total Tk. 70,000, he paid Tk. 50,000 and total loan of Tk. 20,000 remain unpaid. P.Ws 3 and 9 stated that on the date of occurrence, i.e on 28.02.2018 the members of the trap team compelled the accused to fill up the application for a loan and on the same date, the loan was disbursed. The investigating officers seized those documents, but during trial the prosecution did not prove the

application for loan and the other documents relating to disbursement of the loan.

Although co-accused Md. Ahsan Ullah @ Kalam made a statement under Section 164 of the Code of Criminal Procedure, 1898 stating that the accused Md. Hafiz Ullah handed over Tk. 8,000 to him, but P.W. 2 Magistrate Mashfiqul Haque stated that P.W. 9 Md. Abu Zaher stated that co-accused Ahsan Ullah @ Abul Kalam stated that he is the owner of the money recovered from him. At the time of occurrence, he stated to P.Ws 3 and 9 that he is the owner of the money recovered from him, but in the belated statement recorded under Section 164 of the Code of Criminal Procedure, 1898, he stated that the accused Hafiz Ullah handed over Tk. 8,000 to him. P.W. 13 Investigating Officer stated that complainant P.W. 6 did not say to him that he handed over Tk. 8,000 to accused Hafiz Ullah. The statement of co-accused Md. Ahsan Ullah @ Abul Kalam to P.W. 2, 9 and 13 are contradictory. Therefore, the contradictory statement of co-accused Ahsan Ullah @ Abul Kalam made to P.Ws 3, 9, and the Magistrate P.W. 2 cannot be relied on by this Court to conclude as to the guilt of the accused Md. Hafiz Ullah. It is found that at the time of alleged demand of the bribe, the mobile conversation between accused Md. Hafiz Ullah and P.W. 6 Mahmudul Hasan Tareq was recorded which was handed over to the Investigating Officer, but he did not seize the mobile call record of the accused Md. Hafiz Ullah and P.W. 6.

To prove an offence under Section 161 of the Penal Code, 1860 the prosecution shall prove that an official act was pending to the accused before or at the time of the occurrence. The evidence of P.Ws 3 and 9 that on the date of occurrence, the members of the trap team compelled the accused to fill up the application for loan and on the same date loan was disbursed was not denied by the prosecution. No reason has been assigned as to why the seized documents were not proved by the prosecution. The prosecution failed to adduce any

evidence to prove that on or before the occurrence, an application for loan was pending to the accused. Unless the prosecution proved that an official act was pending to the accused at the time of occurrence, the question of the demand of bribe will not arise at all.

P.W. 6 Mahmudul Hasan Tareq stated that from handing over Tk. 8,000 by him to the accused Md. Hafiz Ullah to till the recovery of said money from the co-accused Kalam, he was present at the desk of Hafiz Ullah, but he did not say anything, how the money was handed over by the accused Md. Hafiz Ullah to the co-accused Md. Ahsan Ullah @ Kalam. P.W. 9 Md. Abu Zaher stated that accused Abul Kalam stated to him that he is owner of the money received from him. P.W. 13 Investigating Officer Md. Talebur Rahman stated that P.W. 6 Mahmudul Hasan Tareq did not say to him that he handed over 16 notes of Tk. 500 to accused Md. Hafiz Ullah and P.W. 10 Al Mamun, P.W. 11 Subal Ahmed and P.W. 12 Mezbaul Haque also did not say to him that accused Md. Hafiz Ullah handed over money to co-accused Ahsan Ullah @ Abul Kalam. I am of the view that P.W. 6 Mahmudul Hasan Tareq did not hand over 16 notes of Tk. 500 to accused Md. Hafiz Ullah.

In the case of Mirza Saifur Rahman versus The State and another Criminal Appeal No. 5788 of 2024 judgment dated 14.01.2025 this bench (Md. Shohrowardi, J) as regards conducting trap it has been held that;

“A trap is a pre-planned proceeding. Nowadays science has developed to its highest pick. The audio and video evidence is available everywhere and it is very easy to take the audio or video or picture of any trap proceeding. Therefore, at the time of conducting the trap, the members of the trap team should record the entire trap proceeding in a video or audio or picture. No audio, video, picture or any scientific proof regarding the handing over bribe of Tk. 2,00,000 by

P.W. 4 to accused Mirza Saifur Rahman was proved. No phenolphthalein powder test or latest print test of the alleged A-4 khaki envelope (material exhibit-I) wherein Tk. 2,00,000 (materials exhibit-II & III) were kept by the accused Mirza Saifur Rahman is done in the instant case. It is unsafe to convict a person in a trap case without scientific proof.”

In the instant case, the prosecution failed to prove that on or before the date of occurrence, an official act was pending to the accused and he received the bribe to discharge the official act. No scientific evidence was adduced by the prosecution against the accused Md. Hafiz Ullah as to the recovery of the alleged money. It is not safe to convict the accused in a trap case without scientific proof.

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 against the accused Md. Hafiz Ullah 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. Hafiz Ullah is hereby set aside.

However, there will be no order as to costs.

Send down the lower Court’s records at once.