

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 4775 of 2023

Palash Chandra Das

...Convict-appellant

-Versus-

The State and another

...Respondents

Mr. Md. Motaher Hossain (Sazu), Advocate with

Mr. Swapan Kumar Das, Advocate

...For the convict-appellant

Ms. Sharmin Hamid, A.A.G with

Mr. Sultan Mahmood Banna, A.A.G

...For the State

Mr. ASM Kamal Amroohi Chowdhury, Advocate

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

Heard on 02.03.2025, 03.03.2025, 04.03.2025

and 11.03.2025

Judgment delivered on 17.03.2025

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 10.05.2023 passed by Divisional Special Judge, Barishal in Special Case No. 09 of 2018 arising out of Babugonj Police Station Case No. 06 dated 13.07.2017 corresponding G.R. No. 37 of 2017 convicting the accused under Section 409 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 05(five) years and fine of Tk. 1,00,000(one lakh), in default, to suffer imprisonment for 06(six) months more.

The prosecution case, in short, is that the accused Palash Chandra Das was the Centre Manager, Grameen Bank, Agarpur Babugonj Branch, Barishal. While he was discharging his duty in the said branch from 21.08.2008 to 09.03.2011, he received total Tk. 52,721 from the loanee and made an entry in the passbook, and signed the passbook. The realized amount was not posted in the collection sheet, and without depositing in the bank, misappropriated total Tk.

52,721. During the enquiry, it was found that the accused received Tk. 17,980 from loanee Rehana, Tk. 12,791 from Hafiza Begum and Tk. 21,950 from Shamima Akter. The Anti-Corruption Commission, Head Office, Dhaka, vide memo dated 14.06.2017, had approved to lodge the FIR against the accused. Thereafter, Md. Al Amin, Sub-Assistant Director, Anti-Corruption Commission, Combined District Office, Barishal, lodged the FIR on 13.07.2017 against the accused.

P.W. 15 Md. Al Amin was appointed as Investigating Officer. He took up investigation of the case vide memo No. 818 dated 16.07.2017. During the investigation, he seized documents, recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898, and after completing the investigation, found the truth of the misappropriation of Tk. 1,24,721 against the accused. The Anti-Corruption Commission vide memo dated 16.05.2018 had approved to submit the charge sheet against the accused, and accordingly, he submitted charge sheet on 31.05.2018 against the accused under Section 409 of the Penal Code and Section 5(2) of the Prevention of Corruption Act, 1947.

After that, the case record was sent to the Senior Special Judge, Barishal who by order dated 12.08.2018 took cognizance of the offence against the accused under Section 409 of the Penal Code and Section 5(2) of the Prevention of Corruption Act, 1947. Thereafter, the case was sent to the Divisional Special Judge, Barishal for trial. During the trial, charge was framed against the accused under Section 409 of the Penal Code and Section 5(2) of the Prevention of Corruption Act, 1947. At the time of framing charge, the accused was absconding. At the time of examination of the prosecution witnesses, the accused surrendered in the trial Court and obtained bail. The prosecution examined 20(twenty) witnesses to prove the charge against the accused. The defense cross-examined the prosecution witnesses except P.W. 1. After examination of the prosecution witnesses, the accused was examined under Section 342

of the Code of Criminal Procedure, 1898 and he declined to adduce any D.W. After concluding the trial, the trial Court by impugned judgment and order convicted the accused as stated above against which he filed the appeal.

P.W. 1 Md. Selim is the Manager, Grameen Bank, Agarpur Branch, Barishal. He stated that on 24.12.2017, he was posted as Manager, Grameen Bank, Agarpur Branch, Barishal. On that day on the requisition of the Combined District Office, Barishal, he went to the Anti-Corruption Commission along with the documents following the requisition of the Anti-Corruption Commission, and those documents were seized. He proved the seizure list as Exhibit 1. He also took custody of those documents. On 12.09.2017 at 1.00 pm, a seizure list was also prepared regarding the seized documents. He proved the seizure list as Exhibit 2. He also took custody of those documents. He proved his signature on the seizure list as Exhibit 2/1. The accused was absconding and did not cross-examine P.W. 1.

P.W. 2 Md. Sadequr Rahman stated that from 2008 to 2012, he discharged his duty as Manager, Grameen Bank, Agarpur Babuganj Branch, Barishal. The accused Palash Chandra Das was the Manager of the Agarpur Babuganj Centre, Grameen Bank. On 09.03.2011, he remained absent, and he (P.W. 2) lodged the G.D entry. He made an enquiry and found that he received total Tk. 2,72,683(two lakh seventy two thousand six hundred and eighty three) from the loanees and fled away. He denied the suggestion that except Tk. 52,721, there is no other due to the bank. He denied the suggestion that there are no dues except the money mentioned in the FIR.

P.W. 3 Md. Nasir Uddin stated that on 07.10.2012 he discharged his duty as Manager, Grameen Bank Agarpur Babuganj Branch, Barishal. Before his joining, the accused Palash misappropriated Tk. 2,72,683(two lakh seventy two thousand six hundred and eighty three) and fled away. With prior approval of the

authority, he made a complaint to the Anti-Corruption Commission. He denied the suggestion that a specific target was given to the accused for which he left the job. He denied the suggestion that except Tk. 52,721(fifty two thousand seven hundred and twenty one), there was no other dues of the accused to the bank.

P.W. 4 Md. Zakir Hossain stated that on 09.03.2011, he discharged his duty as Second Officer, Grameen Bank, Agarpur Branch. The accused Palash, was the centre manager. The accused misappropriated Tk. 2,72,683 and fled away. During cross-examination, he stated that the FIR was lodged for misappropriation of Tk. 52,721. He is not aware that the accused paid total Tk. 1,24,721 on 07.01.2020 and 09.02.2020. He is not aware whether any other dues of the accused is pending with the Grameen Bank.

P.W. 5 Md. Nowab Hossain stated that from 2008 to 2016 he was posted in the Audit Division of Grameen Bank, Barishal. During the enquiry, he found the irregularity of Tk. 2,72,683 against the Centre Manager Palash Chandra Das. During cross-examination, he admitted that he did not submit any audit report.

P.W. 6 Md. Wahidul Islam stated that on 09.03.2011 he conducted the audit of the Grameen Bank, Babuganj Agarpur Branch, Barishal, and found the truth of misappropriation of Tk. 2,72,683 against the accused. During cross-examination, he stated that he did not submit an audit report.

P.W. 7 Rehana Begum is a member of the Grameen Bank, Agarpur Center. He stated that he paid total Tk. 17980 to the accused. During cross-examination, he stated that he took the loan in 2011, and he used to pay the installment of Tk. 500. The branch manager has collected the money deposited by the customer. She admitted that the accused received the money from the loanee and deposited the realized amount with the manager.

P.W. 8 Shamima Akter is a member of the Grameen Bank, Agarpur Babuganj Branch. The accused Palash was the Manager,

Grameen Bank, Agarpur Babuganj Branch. She paid Tk. 30,750 to the accused but he did not issue any money receipt. Subsequently, she came to know that the accused Palash received money from other members of the group and misappropriated the realized amount without depositing it in the bank. During cross-examination, she stated that the accused wrote in the passbook that the installment was paid. She denied the suggestion that at one time, she did not pay Tk. 30,750 to the accused. She could not say whether the accused deposited the realized amount.

P.W. 9 Hafiza Begum is a member of the Grameen Bank, Babuganj Agarpur Branch. She stated that she took a loan of Tk. 20,000 from that Branch. She paid Tk. 500 as an installment every week. She paid total Tk. 16151(sixteen thousand one hundred and fifty one) at a time to the accused Palash, but he did not deposit the said amount in the bank. During cross-examination, she stated that the accused Palash was the field officer and, having collected the money, he used to deposit the amount to the manager. On 24.01.2011, he paid the said amount to the accused. He is not aware whether the accused deposited the said amount with the manager. He denied the suggestion that the accused deposited the money with the manager.

P.W. 10 Alam Taj is a member of the Grameen Bank, Agarpur Branch. She stated that she took loan of Tk. 58,000 from the Grameen Bank, and she paid Tk. 1032 as an installment. On 09.03.2011, she paid an installment of Tk. 1032. She could not say whether the accused deposited the said amount into the bank. During cross-examination, she stated that the accused was the fieldworker. She admitted that the field worker had realized the money. She could not say whether the money paid to the accused was deposited with the manager.

P.W. 11 Hasna Hena stated that she paid Tk. 270 as an installment of the loan to the accused. She used to pay the installment to the accused Palash, who was the Manager of Grameen Bank. She

heard that the accused Palash fled away. During cross-examination, she stated that having realized the money as a fieldworker, the accused deposited the amount to the manager. She could not say whether she deposited the money with the manager.

P.W. 12 Arifa Akter stated that she took loan of Tk. 1 lakh from Grameen Bank, Agarpur Branch. She paid Tk. 4910 to accused as an installment and he fled away. During cross-examination, she stated that on 09.03.2011, she heard that the accused fled away. During cross-examination, she stated that the fieldworker had received the installment and deposited the amount to the manager. She could not say whether the manager misappropriated the amount. She saw all the staff in the bank except the accused.

P.W. 13 Md. Abdus Salam stated that on 13.07.2017, while he was Officer-in-Charge of Babuganj Thana, Al Amin, Sub-Assistant Director, Anti-Corruption Commission, Barishal, lodged the FIR, and he filled up the FIR form. He proved the FIR form as exhibit 3 and his signature on the FIR form as exhibit 3(i). He put the seal and signature on the FIR. He proved his signature on the FIR as exhibit 4(i).

P.W. 14 Sushanto Chandra Das is a Customer of the Grameen Bank, Agarpur Branch. He stated that monthly, he paid Tk. 500 as DPS to the field worker accused Palash. The money was not deposited in the bank, and the accused misappropriated. During cross-examination, he stated that the accused had written in the passbook that the installments were paid. He admitted that he received the money from the DPS. He denied the suggestion that he deposed as per the instructions of the bank.

P.W. 15 Md. Al Amin, Assistant Director, Anti-Corruption Commission, Khulna, is the Investigating Officer. He stated that he was appointed as Investigating Officer vide memo No. 818 dated 16.07.2017. At that time, he discharged his duty as Sub-Assistant Director, Combined District Office, Barishal. On 24.12.2017, he

seized passbook of 19 loanee. He seized the collection sheet, 8 pages of the Gramaeen Bank, Agarpur Babuganj Branch Center No. 7/Ma, a collection sheet, total 10 pages of 14/Ma, a collection sheet, 9 pages of 57 male center. Statement of the distribution of loanee, 17 pages, passbook of 3 loanee as presented by Selim on 12.09.2017. Application for loan 1 page, loan distribution khatian 1 page, draft application 1 page, and collection sheet 02 pages. He seized the passbook of Rehena and the information of the loanee Shamim, and the khatian of the distribution of loans 01 and 02 pages. Passbook of Hafiza Begum, application for loan 1 page, and disbursement of the loan 01 page, letter of appointment of accused Palash 01 page, confirmation letter 01 page, Undertaking 02 pages. After an enquiry, the Grameen Bank found the truth of the misappropriation of Tk. 2,72,683 against the accused. He recorded the statements of witnesses. During his investigation, he found the truth of the misappropriation of Tk. 1,24,721. The Anti-Corruption Commission vide memo dated 16.05.2018 had approved to submit a charge sheet against the accused, and accordingly, on 31.05.2018, he submitted charge sheet against the accused. He proved the seizure list dated 12.09.2017 as exhibit 2 and his signature thereon as exhibit 2/2. He proved the seizure list dated 24.12.2017 as exhibit 1 and his signature as exhibit 1/2. He proved the seized documents as material exhibits I and IA. During cross-examination, he stated that he is not aware that the accused paid the misappropriated amount. He could not say whether the accused deposited the misappropriated amount into the bank.

P.W. 16 Nazmun Nahar stated that she was the Customer of Grameen Bank, Agarpur Branch, and the accused was known to him. She paid the installment to the accused, but he did not deposit the installment in the Bank and misappropriated. During cross-examination, she stated that she used to pay the installment of Tk. 370 to the accused. She took a loan of Tk. 25000. She could not say the

exact figure of the misappropriated amount. Her money was not deposited in the bank. She denied the suggestion that the accused Palash did not misappropriate any amount. She denied the suggestion that she deposed falsely.

P.W. 17 Liza Begum stated that she was a member of the Grameen Bank, Agarpur Branch. She paid total Tk. 4859 to the accused. He recorded payment in the passbook, but he did not deposit the amount in the bank. The case was filed in 2017. She admitted that the manager was the custodian of the ledger sheet. The manager stated that the installment was not deposited in the bank.

P.W. 18 Kamrul Islam was a member of the Grameen Bank, Agarpur Branch. He stated that he maintained two deposits of Tk. 1000. He paid Tk. 2000 to the accused Palash, but he did not deposit the amount in the bank. He recorded the payment in the passbook, but he did not deposit the amount in the bank. During cross-examination, he stated that the accused did not deposit the amount. While he went to deposit the installment of the second month, the manager informed him that the installment of the previous month had not been paid. The manager informed that the money was not deposited. He denied the suggestion that the accused Palash deposited the money.

P.W. 19 Anowara Begum stated that she was a customer of the Grameen Bank. She used to pay the loan to the accused Palash, and he fled away along with the money. During cross-examination, she stated that she paid the money sitting in the center. The accused Palash tore her passbook in her presence. She could not say whether the accused deposited the entire amount with the manager. She deposed as per the statement of the manager.

P.W. 20 Puspo Begum stated that she paid the installment to the accused Palash. He recorded the payment in the passbook, but he did not deposit the amount in the bank and fled away. She could not say whether the deposit sheet was submitted to the manager. Having

received the installment, the accused handed over the same to the manager.

Learned Advocate Mr. Md. Motaher Hossain (Sazu), appearing along with learned Advocate Mr. Swapan Kumar Das on behalf of the appellant submits that the accused was the Manager of the Center of Grameen Bank, Agarpur Babuganj Branch, Barishal, and having realized the installment from the members of the Center of the Grameen Bank, deposited the amount to the Manager P.W. 2 Md. Sadequr Rahman. He further submits that the alleged occurrence took place from 21.08.2008 to 09.03.2011 while the P.W. 2 was the manager of the said branch but no allegation was made against the accused during the tenure of P.W. 2 in the said bank and after about 9 years, the FIR was lodged against the accused when he was not in the service of the Grameen Bank and no audit report was proved by the prosecution. The prosecution failed to prove the charge against the accused beyond a reasonable doubt. However, he submits that during the trial of the case, the accused voluntarily surrendered on 07.01.2020 and under compulsion, he paid the total misappropriated amount Tk. 1,24,721 to get the bail from the trial Court. He prayed for allowing the appeal.

Learned Advocate Mr. ASM Kamal Amroohi Chowdhury, appearing on behalf of the respondent No. 2 (ACC), submits that the accused realized the total installment of Tk. 1,24,721 from the members of the Grameen Bank Center, Agarpur Babuganj Branch, Barishal, and without depositing the said amount, misappropriated. He further submits that by suggesting P.W. 4, the defense admitted that he paid Tk. 52,721 on 07.01.2020 and Tk. 72,000 on 09.02.2020 and admitted the guilt of the offence under Section 409 of the Penal Code, 1860, and the trial Court legally passed the impugned judgment and order of conviction and sentence. He prayed for the dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Md. Motaher Hossain (Sazu) who appeared along with learned Advocate Mr. Swapan Kumar Das on behalf of the appellant and the learned Advocate Mr. ASM Kamal Amroohi Chowdhury who appeared on behalf of the respondent No. 2 (ACC), perused the evidence, impugned judgment and order passed by the trial Court and the records.

On perusal of the evidence, it appears that the accused was the Manager of the Grameen Bank Center, Agarpur Babuganj Branch, Barishal, and P.W. 2 Md. Sadequr Rahman was the Manager of Grameen Bank Agarpur Branch, Barishal from 2008 to 2012. The alleged occurrence took place from 21.08.2008 to 09.03.2011, and the FIR was lodged on 13.07.2017, after about 9 years from the date of occurrence. The prosecution's case is that the accused has received total Tk. 1,24,721 from the members of the Agarpur Branch of Grameen Bank, Barishal and without depositing the said amount misappropriated. P.W. 2 stated that on 09.03.2011, the accused fled away from the office and he lodged a GD entry on that day. No GD is proved in the case. No explanation is given by P.W. 2 Md. Sadequr Rahman, the Manager of the Grameen Bank, Agarpur Babuganj Branch, as to why on 09.03.2011 he did not take any step regarding the alleged misappropriation of Tk. 1,24,721.

The defence case is that the accused received the installment from the members of the Center of Grameen Bank, Agarpur Branch, Barishal, and deposited the amount to P.W. 2 Md. Sadequr Rahman, Manager, Grameen Bank, Agarpur Babuganj Branch. But the manager did not deposit the said amount in the bank. P.W. 7 Rehana Begum admitted that the accused, having realized an installment from them, handed over the installment to the manager. It is found that the accused is absent in the bank from 09.03.2011. From the above evidence, it is found that P.W. 2 was also involved with the alleged misappropriation, and he did not take any steps against the

accused to suppress the misappropriation of the realized installments. No documentary evidence was proved by P.W. 2 to show that he informed about the alleged misappropriation to his authority.

P.W. 15 Md. Al Amin Investigating Officer stated that the accused realized total Tk. 1,24,721 from the members of the Center of the Grameen Bank, Agarpur Branch. By suggesting P.W. 15, the defence affirmed that the misappropriated amount was paid to the bank. During cross-examination of P.W. 4 Md. Zakir Hossain, the defence admitted that the accused paid total Tk. 1,24,721 on 07.01.2020 and 09.02.2020, which has not been denied by P.W. 4, who was the Second Officer of the Grameen Bank, Agarpur Branch. P.Ws 5 and 6 who are the Audit Officers of the Grameen Bank, stated that they conducted an audit and found the misappropriation of Tk. 2,72,683 but no audit report was submitted by them. Therefore, it cannot be said that Tk. 2,72,683 was misappropriated by the accused. On scrutiny of the evidence of P.Ws 7 to 12, 14, 16, 17, and 18, it is found that the accused realized total installment of Tk. 78,822.

At this stage, it is relevant here to rely on a decision made in the case of Sekander Ali Howlader and others reported in 4 BLC (AD) 116 judgment dated 18.11.1997 in which our Apex Court held that

“It is contended that a compassionate view has been taken in this case because the money which was allegedly misappropriated had already been returned and the accused-appellants have in the meantime suffered part of their sentence and are at present on bail by the order of the Appellate Division and in such circumstances it will not be unreasonable to show a little more compassion and exonerate the appellants from suffering the remaining part of their sentence. It is a case of temporary defalcation which is a serious offence. The ends of justice will be met in the facts and

circumstances of the case if the sentence of fine of each of the appellants is maintained and the substantive sentence is reduced to the period already undergone as prayed for.”

Subsequently, in the case of Alauddin Bhuiyan (Md) vs State reported in 13 BLC (AD) 36, our Apex Court reiterated the view expressed in the referred case and held that

“Admittedly, the accused-petitioner, a Nazir in the office of Tarail Land Revenue office was officially entrusted with the responsibility of collecting lease money of different hats, bazars and Jalmohals and he has accordingly collected an amount of Taka 1,31,262 by issuing DCR's in favour of lease holders but only deposited Taka 6,148.13 to the Government Treasury by way of various challans. That after the filing of the case in order to avoid the liability of the case he deposited the rest of the amount of Taka 1,25,113.87. Thereby, the accused could not avoid the criminal liability of at least temporary embezzlement and the allegations levelled against him.”

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 proved the charge against the accused beyond all reasonable doubt. It is found that P.W. 2 Md. Sadequr Rahman was also involved in the alleged misappropriation, and the FIR was lodged after 9 years on 13.07.2017, although the accused Palash Chandra Das remained absent in his office from 09.03.2011. The accused deposited Tk. 1,24,721. He voluntarily surrendered on 07.11.2019 and obtained bail from this Court on 18.11.2019, and he served total 33 days in custody.

Considering the gravity of the offence and facts and circumstances of the case, I am of the view that the ends of justice

would be best served if the sentence passed by the trial Court is modified as under;

The accused is found guilty of the offence under Section 409 of the Penal Code, 1860, and he is sentenced thereunder to suffer imprisonment already undergone and a fine of Tk. 1,24,721. Since the accused has already paid the fine amount Tk. 1,24,721, he is not required to deposit the fine amount again in the trial Court.

In the result, the appeal is disposed of with modification of the sentence.

Send down the lower Court's records at once.