

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

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No.5000 of 2023

Mostofa Mohsin

.....Appellant

-versus-

The state and another

.....Respondents

Mr. Azizur Rahman Dulu, Advocate

.... For the appellant

Mr. A.K.M. Fazlul Haque , Advocate

.....For the respondent No. 2 ACC

Mr. S.M. Golam Mostofa, DAG with

Mr. Md. A. Mannan, AAG

....For the State in all the appeals.

**Heard on 18.02.2024, 19.02.2024, 04.03.2024,
05.03.2024, 21.04.2024 and 23.04.2024.**

Judgment delivered on 24.04.2024.

This appeal under section 10 of the Criminal Law Amendment Act, 1958 is directed challenging the legality and propriety of the impugned judgment and order dated 31.03.2022 passed by Special Judge, Court No. 10, Dhaka in Special Case No. 2 of 2020 convicting the appellant under section 420 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 07 (seven) years and

to pay a fine of Tk. 3,00,00,000 (three crore), in default, to suffer rigorous imprisonment for 1(one) year.

The prosecution case in short is that plot No. 1 measuring an area of approximately 280 square yards located at Road No. 14, Sector-5, Uttara Model Town, Dhaka was allotted to Md. Mujibur Rahman, Assistant Engineer, DIT and accordingly the Lease Deed No. 6592 of 1980 was executed and registered. The accused Mostofa Mohsin is the son of the said lessee Md. Mujibur Rahman. Subsequently, the said plot was renumbered as plot No. 1, Road No. 9C, Sector-5, Uttara, Dhaka due to change in the layout plan. The lessee Md. Mujibur Rahman sold the said plot at a price of Tk. 215,00,000 to one Kazi Aysha Humayra and received Tk. 2,14,00,000. He executed and registered sale agreement No 17728 of 1992 dated 27.09.1982. After that, the lessee Md. Mujibur Rahman, father of the accused Mostofa Mohsin, died on 16.08.1992. During his lifetime, the lessee Md. Mujibur Rahman and after his death, his heirs did not register the sale deed in favour of the Kazi Aysha Humayra. Thereafter, she filed Title Suit No. 143 of 1996 in the Court of Subordinate Judge, Court No. 2, Dhaka against the heirs of late Md. Mujibur Rahman including the accused Mostofa Mohsin and the Chairman of RAJUK was also impleaded as defendant in the said suit. On 03.03.1997 a file was opened in the law section of RAJUK and the learned Advocate Ms. Nilufa Kader was appointed to conduct the case on behalf of the RAJUK. Subsequently, the case was transferred to the Joint District Judge, Court No. 3, Dhaka and the case was renumbered as Title Suit No. 88 of 2006. After concluding the trial, the trial Court by judgment and decree dated 03.07.2006 decreed the suit in favour of the said Kazi Ayesha Humayra and the decretal Court executed the decree by registering sale deed No. 10937 dated 17.08.2011 in favour of Kazi Ayesha Humayra.

During the pendency of the said suit, the heirs of the late Mujibur Rahman filed applications on 22.11.2001 and 05.01.2006 to the RAJUK for mutating their names in the records of the RAJUK. On 17.05.2006 the file of the RAJUK was sent to the law section and in the absence of the learned Magistrate of RAJUK, co-accused Md. Meraj Ali, a concerned dealing officer of the law section of RAJUK, concealing the information about pendency of the title suit sent the record of the estate section to the learned legal advisor of the RAJUK. After that, learned Legal Advisor had given his opinion on 18.07.2006 and on 02.09.2007 approval was given to mutate the said plot in the name of the heirs of Md. Mujibur Rahman including accused Md. Mostofa Mohsin. Subsequently, permission was given to transfer the plot to Mitol Property Limited. Thereafter the plot was sold to Mitol Property Ltd. Thereby the accused persons committed offence under section 409/420/201/109 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947.

Md. Shahjahan Miraj, Deputy Assistant Director of the Anti-Corruption Commission, Dhaka took up investigation of the case. During the investigation, he seized documents and recorded the statement of the witnesses under section 161 of the Code of Criminal Procedure, 1898. After completing the investigation found the prima facie truth of the allegation against the accused persons and with prior approval submitted charge sheet on 20.06.2019 against the accused (1) Nurjahan Begum 2. Mostofa Jaman 3. Mostofa Kamal 4. Mostofa Mohsin 5. Mizanur Rahman 6. Nilufar Rahman 7. Md. Meraj Ali under section 409/109/201/420 read with section 5(2) of the Prevention of Corruption Act, 1947. After that, the Chief Metropolitan Magistrate, Dhaka by order dated 08.07.2019 sent the case to the Metropolitan Senior Special Judge, Dhaka who by order dated 28.08.2019 took

cognizance of the offence against the accused persons under sections 409/420/201 /109 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 and by order dated 27.02.2000 sent the case to the Special Judge, Court No. 10, Dhaka for disposal of the case.

During the trial, charge was framed against the accused persons under sections 409/420/201/109 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 which was read over and explained to the accused Meraj Ali and he pleaded not guilty to the charge. The other accused persons including the accused Md. Mostofa Mohsin was absconding. The prosecution examined 09 witnesses to prove the charge against the accused persons and the accused Md. Meraj Ali cross-examined the prosecution witnesses. After examination of the prosecution witnesses, co-accused Meraj Ali was examined under section 342 of the Code of Criminal Procedure, 1898 and he declined to adduce any D.W. but submitted documents.

P.W. 1 Md. Shahjahan Meraj is the Deputy Assistant Director of the Anti-Corruption Commission. He stated that Plot No. 1 located at Road No. 14, Sector-5, Uttara Model Town was allotted to Md. Mujibur Rahman who is the father of the accused Mostofa Mohsin and the lease deed No. 6592 of 1980 was executed and registered. Subsequently, the road number of the said plot was renumbered as Road No. 9C due to change in the layout plan. The said lessee Md. Mujibur Rahman executed sale agreement No. 17728 of 1992 at a price of Tk. 2,15,00,000 in favour of the Kazi Ayesha Humayra and received total Tk. 2,14,00,000. After that, on 16.08.1992 Md. Mujibur Rahman died and the heirs of Md. Mujibur Rahman did not execute and register the sale deed despite the request of Kazi Ayesah Humayra. Subsequently, she

filed Title Suit No. 143 of 1996 in the Court of Subordinate Judge, Court No. 2, Dhaka against the heirs of late Md. Mujibur Rahman including the accused Mostofa Mohsin and the Chairman of RAJUK was also impleaded as defendant in the suit. A file was opened on 03.03.1997 in the law section of RAJUK to contest the suit and the learned Advocate Ms. Nilufa Kader was appointed by the RAJUK to conduct the said suit. Subsequently, the suit was transferred to the Joint District Judge, Court No. 3, Dhaka and the case was renumbered as Title Suit No. 88 of 2006 and the suit was decreed. Since the heirs of Md. Mujibur Rahman did not execute the sale deed in favour of the decree-holder, the decree-holder filed Execution Case No. 11 of 2006 for execution of the decree passed in Title Suit No. 88 of 2006 and the executing Court registered the sale deed No. 10937 on 17.08.2011. In the meantime, on 22.11.2001 and 05.01.2006 the heirs of Md. Mujibur Rahman filed an application to the RAJUK for mutating their names during the pendency of the said title suit. On 17.05.2006, the application for mutation filed by the heirs of Md. Mujibur Rahman was sent to the law section of RAJUK. In the absence of the learned Magistrate of RAJUK, co-accused Md. Meraj Ali, the concerned dealing assistant of the law section of the RAJUK, produced the record of the estate section for legal opinion and after getting the legal opinion of the legal advisor of RAJUK, the said plot was mutated in the name of the heirs of late Md. Mujibur Rahman. Subsequently, permission was given considering the file of the estate section. Heirs of the Md. Mujibur Rahman and the co-accused Md. Meraj Ali in connivance with each other concealing the record of the law section regarding the title suit illegally mutated the said plot in the name of the heirs of said Md. Mujibur Rahman and sold the said plot fixing the value approximately Tk. 300,00,000 and thereby they committed offence under sections 409/420/201 / 109 of the Penal Code, 1860 read with

section 5(2) of the Prevention of Corruption Act, 1947. He proved the sanction letter as exhibit-1 and the FIR as exhibit-2. He proved his signature on the FIR as exhibit -2/1. During cross-examination, he stated that he is the inquiry officer, informant and the investigating officer of the case. The co-accused Md. Meraj Ali was the Superintendent of the law section of RAJIK. On 25.05.2006, the record was sent to the Executive Magistrate from the estate section and on 05.07.2006 the post of Executive Magistrate was vacant and accused Md. Meraj Ali sent the record to the legal advisor without producing the record of the law section. He denied the suggestion that accused Md. Meraj Ali did not conceal the record of the title suit and the record from 24.09.2003 to 20.06.2007 was not placed to co-accused Md. Meraj Ali.

P.W. 2 Md. Feroz Uddin is the Record Keeper of RAJUK. He stated that on 12.12.2019 at 16.00 Md. Shahjahan Miraj seized records of Plot No. 1, Road No. 9-C, Sector-5, Uttara Residential Area, Dhaka. He signed the seizure list and the seized documents were handed over to his custody. He proved the seizure list and the Zimmanama(bond) as exhibit-3 and 4. He proved his signature on the seizure list and Zimmanama as exhibits-3/1 and 4/1 respectively. He proved the alampats marked as material exhibit-I. He denied the suggestion that it was not possible to prepare the seizure list and the Zimmanama at the same time.

P.W. 3 Md. Alamgir Hossen is the Data Entry Operator of RAJUK. He stated that on 12.02.2019 at 16.00, Md. Shahjahan Meraj seized the record of the plot of Uttara Residential Area, Dhaka from the Record Keeper Feroz Uddin and he signed the seizure list. The seized documents were handed over to the custody of the Record Keeper Feroz Uddin. He proved his signature on the seizure list and the Zimmanama(bond) as exhibit-3/2 and 4/2 respectively. During cross-

examination, he stated that it took two hours to prepare the seizure list and at the time of preparing the seizure list he was present there. He affirmed that he signed the seizure list and Zimmanama(bond). He denied the suggestion that his signature on the seizure list and the Zimmanama(bond) are not identical.

P.W. 4 Mahfuzul Karim is the Law Officer of RAJUK. He stated that on 17.06.2019 at about 12.30 pm Md. Shahjahan Meraj seized the record No. 19 of 1997 of the law section of RAJUK in the presence of Record Keeper Md. Bajlul Islam and Officer Md. Serajul which was opened on 03.03.1997 in respect of Title Suit No. 243 of 1996. On the same date, the seized documents were handed over to his custody. He proved the Zimmanama as exhibit-5 and his signature on the Zimmanama as exhibit-5/1. He proved the alams as material exhibit- 6 series. During cross-examination, he affirmed that there was a note in the record regarding the communication between the learned Advocates Ms. Sucharita Sen Gupta and learned Advocate Ms. Nilufar Kader and that there was also no note regarding the progress of Title Suit No. 242 of 1996. He could not say whether the accused Md. Meraj Ali was transferred on 21/9/2003 from the estate section to the Law Section.

P.W. 5 Md. Saidur Rahman is the LDA-Cum-Computer Typist of RAJUK. He stated that on 12.02.2019 at about 1.00 pm Md. Shahjahan Miraj seized the record of the plot of the Uttara Residential Area produced by Record Keeper Md. Feroz Uddin and he signed the seizure list. On the same date and time seized alams were given to the custody of Record Keeper Md. Feroz Uddin. He also signed the Zimmanama. He proved his signature on the seizure list and the Zimmanama as exhibit- 3/3 and 4/3 respectively. During cross-examination, he stated that he is

not a regular employee of the RAJUK. He worked on the project of RAJUK and on 12.02.2019 he signed the attendant register.

P.W. 6 Md. Raytul Islam is the Record Keeper of RAJUK. He stated that on 17.06.2019 at about 12.30 pm Md. Shahjahan Miraj seized the alams mentioned in serial No. 5 of the seizure list produced by Law Officer Md. Mahfuzul Karim and he signed the seizure list. The seized alams were given to the custody of Law Officer Md. Mahfuzul Karim. He signed the Zimmanama. He proved the seizure list as exhibit-7 and his signature as exhibit-7/1. He also proved the signature on the Zimmanama as exhibit-5/2. The defence declined to cross-examine P.W. 6.

P.W. 7 Md. Hafizur Rahman is the Deputy Director (Administration), at RAJUK. He stated that on 12.05.2009 the record of plot-1, Road No. 9-C, Sector-5, Uttara Residential Area, Dhaka was produced before him for appointment of Power of Attorney. At the time of producing the file the Assistant Director was on leave and as an alternative officer, he initiated the proposal which was approved by the Chairman, RAJUK and accordingly a letter was issued. At that time, there was no note in the file regarding the suit. Debashis initiated the file and Super Feroz sent the file to him. If any suit is pending in respect of the RAJUK plot a file is opened in the law section. An application for mutation was sent to the law section for opinion. He proved his signature on the para Nos. 44 and 45 as exhibit-1(A). He also proved his signature on para 46 of note as exhibit-1(B). He proved his signature on the letter dated 09.06.2009 as exhibit-1(C). He proved his signature on the summary of the records dated 12.05.2009 as exhibit-1(D). During cross-examination, he affirmed that the accused Meraj Ali has no authority to

pass any order regarding mutation without the opinion of the legal advisor.

P.W. 8 Md. Serajul Islam is the Record Keeper of RAJUK. He stated that on 17.06.2009 at about 12.30 pm Shahjahan Meraj visited the office of RAJUK and in his presence seized the alamats mentioned in serial No. 5 of the seizure list produced by the Law Officer Md. Mahfuzul Karim. He signed the seizure list. The seized alamats were given to the custody of Md. Mahfuzul Karim. He proved his signature on the seizure list as exhibit-7/1. He proved his signature on the zimmanama as exhibit 5/3. During cross-examination, he stated that he could not remember whether there was any signature of accused Meraj Ali in the record No. 19 of 1997 of the law section.

P.W. 9 Md. Shahjahan Meraj is the investigating officer of the case. He stated that he was appointed as investigation officer vide memo dated 12.08.2018 by the Anti-Corruption Commission, Dhaka. On 12.02.2019 at 16.00, he went to the Zonal Office of Deputy Director (Estate and Land), Uttara, Dhaka and in the presence of witnesses seized the alamats mentioned in serial No. 5 of the seizure list produced by the Record Keeper Md. Feroz Uddin. He took the signature of the witnesses and the same was given to the custody of Md. Feroz Uddin on the same day. He proved his signature on the seizure list and Zimmanama as exhibits-3/4 and 4/4 respectively. On 17.06.2019 at 12.30 pm, he went to the Office of RAJUK and in the presence of witnesses, he seized the alamats mentioned in Serial No. 5 of the seizure list produced by the Law Officer Md. Mahfuzul Karim. He took the signature of the witnesses and the same was handed over to the custody of the Law Officer Md. Mahfuzul Karim on the same day. He proved his signature on the seizure list and the Zimmanama as exhibits-7/3 and 5/3 respectively. He visited

the place of occurrence and recorded the statements of witnesses. During the investigation, he found that Plot No. 1, Road No. 14, Sector-5, Uttara, Dhaka was allotted to Md. Mujibur Rahman and accordingly, lease deed No. 6592 of 1980 was executed and registered. Later on, the road number of the said plot was re-numbered as Road No. 9-C due to a change in the layout plan. The said lessee Md. Mujibur Rahman sold the plot fixing the value at Tk. 2,15,00,000 and received Tk. 214,00,000 and executed the sale agreement dated 27.09.1982 in favour of Kazi Ayesha Humayra. After that, Md. Mujibur Rahman died on 16.08.1992 and the heirs of Mujibur Rahman did not execute and register the sale deed despite the request of the Kazi Ayesha Humayra. Thereafter, she filed Title Suit No. 143 of 1996 in the Court of Subordinate Judge, Court No. 2, Dhaka against the heirs of late Mujibur Rahman including accused Mostofa Mohsin and the Chairman, RAJUK was impleaded as the defendant in the said suit. To contest the suit, RAJUK appointed learned Advocate Ms. Nilufar Kader and the said suit was dismissed on 26.11.2000 on contest against the defendant Nos. 1 to 7 and experty against the dependent No. 8. Both the parties filed Title Appeal Nos. 701 of 2000 and 280 of 2000 before the High Court Division and Title Appeal No. 280 of 2000 was dismissed and the Title Appeal No. 701 of 2000 was allowed and the suit was sent to the Joint District Judge, Court No. 3, Dhaka on remand. Thereafter the suit was renumbered as Title Suit No. 88 of 2006. After concluding the trial, the trial Court by judgment and order dated 03.07.2006 decreed the suit. The defendant i.e. heirs of Md. Mujibur Rahman preferred Title Appeal No. 327 of 2006 against the judgment and decree passed in Title Suit No. 88 of 2006 and the Additional District Judge, Court No. 8, Dhaka by judgment and order dated 13.06.2007 allowed the appeal reversing the judgment and decree passed by the trial Court. Against the said judgment and decree passed

by the appellate court, the Plaintiff filed Civil Revision No. 3964 of 2007 before the High Court Division and the High Court Division by judgment and order dated 17.02.2011 made the Rule absolute affirming the judgment and decree dated 03.07.2006 passed by the trial court. In Execution Case No. 11 of 2006, the executing court registered the Sale Deed No. 10937 dated 17.08.2011.

He further stated that on 03.03.1997 a file was opened in the law section of RAJUK to contest Title Suit No. 143 of 1996 and there were correspondences between the RAJUK and its Advocate Ms. Nilufar Kader till 22.08.2005. During the pendency of Title Suit No. 143 of 2006, on 22.11.2001 and 05.01.2006, the heirs of the late Mujibur Rahman applied for mutating their names in the record of RAJUK. On 17.05.2006, the said applications for mutation were sent to the Law Section of RAJUK. In the absence of the learned Magistrate of RAJUK, the accused Md. Meraj Ali, Superintendent of the Law Section, produced the records to the learned legal advisor of RAJUK for opinion concealing the record of Title Suit No. 143 of 2006 of the law section. On 18.06.2006, the learned legal advisor of the RAJUK opined positively to mutate the said plot in the name of the heirs of the late Md. Mujibur Rahman and thereafter on 02.09.2007 approval was given to mutate the said plot in the name of the heirs of Md. Mujibur Rahman.

He also stated that on 25.02.2009, the heirs of the late Md. Mujibur Rahman applied to RAJUK for the appointment of Md. Mostofa Jaman as the Power of Attorney which was approved by the RAJUK and accordingly Power of Attorney Deed No. 10274 dated 25.09.2009 was executed and registered. On 17.11.2009 Md. Mustafa Jaman filed an application to RAJUK for permission to hand over the said plot to Kamal Hossain Selim, Managing Director of Mitol Property Ltd and after

approval, the plot was sold to said Kamal Hossain Selim and registered deed No. 6908 dated 06.06.2010 was registered. He further stated that at the time of mutation of the plot in the name of the heirs of late Md. Mujibur Rahman, the file of the law section was concealed and considering the record of the estate section subsequent permission was given in favour of the heirs of late Md. Mujibur Rahman. The accused Md. Meraj Ali concealing the record of the law section of RAJUK collusively mutated the plot in the name of the heirs of late Md. Mujibur Rahman and the plot was sold at a price approximately Tk. 3,00,00,000. Thereby the accused persons committed offence under section 409/420/201/109 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947. He submitted charge sheet against the accused persons with prior approval dated 26.05.2009. He proved the sanction letter as exhibit-8 and the certified copy of the plaint and judgment of Title Suit No. 143 of 1996 as exhibit-II series and the certified copy of the judgment of Title Suit No. 88 of 2006 as exhibit-III series. He proved the certified copy of deed No. 10937 of 2011 (47 pages) as exhibit-IV series. During cross-examination, he stated that he was the informant as well as the investigating officer of the case. From 24.09.2003 to 20.06.2007 the record was lying in the law section while the accused Md. Meraj Ali was posted therein and there is no signature of the accused in the record.

The learned Advocate Mr. Azizur Rahman Dulu appearing on behalf of the appellant submits that admittedly Md. Mujibur Rahman, the father of the appellant, is the lessee of Plot No. 1, Road No. 9C, Sector-5, Uttara, Dhaka and he died on 16.08.1992 and after the death of his father all the heirs of Md. Mujibur Rahman inherited the property and during the lifetime, said lessee did not own the Sale Agreement No. 17728 of 1992 and Title Suit No. 143 of 1996 was filed after long 14

years from the alleged bairanama dated 27.09.1992 and four years after the death of the lessee. Since the appellant along with other heirs of his father admittedly inherited the property there is no bar in mutating the plot in the name of the heirs of the late Md. Mujibur Rahman. He further submits that the prosecution did not prove the alleged Deed No. 6908 dated 06.06.2010 during trial of the case and in the absence of the said deed, there is no scope to hold the view that the appellants transferred the property in the name of Mitul Property Ltd. Having drawn the attention of this Court to the order passed by the trial court, the learned Advocate submits that the learned Metropolitan Senior Special Judge, Dhaka by order dated 28.08.2019 took cognizance of the offence against the accused persons and issued the warrant of arrest against them fixing the next date on 10.10.2019 for report. On 10.10.2019, no execution report was submitted but the Metropolitan Sessions Judge, Dhaka without any report from the concerned police station published notification in the gazette for the appearance of the accused fixing the date on 20.11.2019 and at the time of the framing charge the case was not ready for trial. Consequently, the trial was held illegally in absentia for which the appellant did not get the opportunity to appear before trial court to defend him. Therefore, he prayed for setting aside the impugned judgment and order passed by the trial court.

The learned Advocate Mr. A.K.M. Fazlul Haque appearing on behalf of respondent No. 2 (ACC) submits that the father of the appellant Md. Mujibur Rahman was the lessee of Plot No. 1, Road No. 9C, Sector-5, Uttara, Dhaka and he transferred the said plot on 27.09.1992 in favour of Kazi Ayesha Humayra and executed a registered bairanama and received Tk. 2,14,00,000 and the appellant is the heirs of Md. Mujibur Rahman. The heirs of Md. Mujibur Rahman did not transfer the plot by registered deed in favour of the said Kazi Ayesha Humayra and she filed

Title Suit No. 143 of 1996 for specific performance of the contract dated 27.09.1992 in the Court of Joint District Judge, Court No. 2, Dhaka and during pendency of the said suit, the accused filed applications on 22.11.2001 and 05.01.2006 to the RAJUK for mutation of the name of the heirs of the Md. Mujibur Rahman in the record of RAJUK suppressing the fact of pendency of the Title Suit No. 143 of 1996 and the heirs of Md. Mujibur Rahman in connivance with co-accused Md. Meraj Ali fraudulently sent the file to the learned legal advisor of RAJUK for opinion regarding the mutation of the plot in the name of the heirs of Md. Mujibur Rahman and collusively obtained a positive opinion for mutating the name of the heirs of Md. Mujibur Rahman in the record of RAJUK and subsequently fraudulently transferred the said plot by registered deed No. 6908 dated 06.06.2010 in favour of the Mitul Property Limited suppressing the judgment and decree dated 03.07.2006 passed in Title Suit No. 88 of 2006 (Title Suit No. 143 of 1996) passed against the heirs of Md. Mujibur Rahman and thereby committed offence under section 420 of the Penal Code, 1860. The prosecution witnesses proved the charge against the appellant to the hilt beyond all reasonable doubt. Therefore, he prayed for the dismissal of the appeal.

I have considered the submission of the learned Advocate engaged on behalf of the appellant and learned Advocate who appeared on behalf of the ACC, perused the evidence, impugned judgment and order passed by the trial court and the records.

On perusal of the records, it appears that Md. Mujibur Rahman, father of the appellant, is the lessee of the Plot No. 1, Road No. 9C, Sector-5, Uttara, Dhaka and Lease Deed No. 6592 of 1980 was executed and registered by the RAJUK in favour of Md. Mujibur Rahman. After that, on 27.09.1982 Md. Mujibur Rahman executed registered sale

agreement No. 17728 of 1982 on 27.09.1982 and he died on 16.09.1992. During the lifetime of Md. Mujibur Rahman, he did not transfer the plot to the Kazi Ayesha Humayra by executing the registered deed of transfer and after four years of his death, Kazi Ayesha Humayra filed Title Suit No. 143 of 1996 in the Court of Subordinate Judge, Court No. 2, Dhaka impleading the heirs of Md. Mujibur Rahman and the RAJUK as defendants. No explanation is given as to why Kazi Ayesha Humayra did not file said suit during lifetime of lessee Md. Mujibur Rahman. The said suit was transferred to the Subordinate Judge, Court No. 3, Dhaka and was renumbered as Title Suit No. 88 of 2006. During pendency of the Title Suit No. 88 of 2006, the heirs of Md. Mujibur Rahman including the accused Mostofa Mohsin filed applications on 22.11.2001 and 05.01.2006 for mutating the name of the heirs of Md. Mujibur Rahman in the records of RAJUK as the legal heirs of Md. Mujibur Rahman and the RAJUK by order dated 02.09.2007 had approved for mutating the name of the heirs of Md. Mujibur Rahman in the records of RAJUK as owner in place of Md. Mujibur Rahman.

Admittedly, the accused Mostofa Mohsin and others whose names were mutated in the records of RAJUK are the heirs of lessee Md. Mujibur Rahman. Since the prosecution admitted that the accused Mostofa Mohsin and others are the legal heirs of Md. Mujibur Rahman, there is no bar in mutating the names of heirs of Md. Mujibur Rahman in the record of RAJUK as owner of the Plot No. 1, Road No. 9C, Sector-5, Uttara, Dhaka.

The case of the prosecution is that the heirs of Md. Mujibur Rahman including the accused Mostofa Mohsin inconnivance with co-accused Md. Meraj Ali suppressing the records of the law section of RAJUK and the information about pendency of the Title Suit No. 143 of

1996 malafide obtained the mutation and fraudulently transferred the plot in favour of Md. Kamal Hossain Selim, Managing Director of Mitol Property Limited.

Now the question has arisen whether there was any bar in transferring land by the heirs of Md. Mujibur Rahman including the accused Mostofa Mohsin in favour of Md. Kamal Hossain Selim and whether the alleged transfer constitutes criminal offence under section 420 of the Penal Code, 1860.

On perusal of the evidence of the prosecution witnesses, it reveals that after 14 years from the date of the registered bainanama dated 27.09.1982 and four years of the death of Md. Mujibur Rahman, Kazi Ayesha Humayra filed Title Suit No. 143 of 1996 for specific performance of the contract. The said suit was transferred to the Subordinate Judge, Court No. 3, Dhaka and the suit was dismissed on 26.11.2000. Against the said order of dismissal, Civil Revision No. 701 of 2000 and Civil Revision No. 280 of 2000 were filed before the High Court Division and the High Court Division made the Rule absolute issued in Civil Revision No. 701 of 2000 sending the case on remand directing the trial Court to restore the suit by setting aside the order of dismissal passed by the trial court. Thereafter, the suit was renumbered as Title Suit No. 88 of 2006 in the Court of Subordinate Judge, Court No. 3, Dhaka and the said suit was decreed on 03.07.2006. Against the said judgment and decree dated 03.07.2006, the heirs of Md. Mujibur Rahman filed Title Appeal No. 327 of 2006 before the District Judge, Dhaka and the appellate court by judgment and decree dated 13.06.2007 allowed the appeal sending the case on remand to the trial Court by setting aside the judgment and decree dated 03.07.2006 passed by the trial court. Thereafter, the plaintiff filed Civil Revision No. 3964 of 2007

before the High Court Division and the High Court Division by judgment and order dated 17.2.2011 made the rule absolute setting aside the judgment and decree dated 13.6.2007 passed by the appellate court below and restored the judgment and decree dated 03.07.2006 passed by the trial court.

It transpires that at the time of the alleged transfer and registration of the alleged Deed No. 6908 dated 06.06.2010, there was no decree in favour of Kazi Ayesha Humayra. No evidence was adduced by the prosecution to the effect that on the date of execution of the alleged Deed No. 6908 dated 06.06.2010 there was an order of injunction against the heirs of Md. Mujibur Rahman including the accused Mostofa Mohsin from transferring the said plot.

The learned Advocate Azizur Rahman Dulu having drawn the attention of this court to the copy of the passport of the accused Mostofa Mohsin submits that at the time of execution of alleged transfer deed No. 6908 dated 06.06.2010, accused Mostofa Mohsin was residing in USA and he did not execute and register the said deed in favour of Md. Kamal Hossain Selim.

It is found that the disputed plot was transferred by the Court in favour of the Kazi Ayesha Humayra in execution of the decree and no allegation has been made by the said Kazi Ayesha Humayra against the heirs of Md. Mujibur Rahman including the accused Mostofa Mohsin that they have fraudulently transferred the land to Md. Kamal Hossain Selim. The execution of the alleged Deed No. 6908 dated 06.06.2010 is denied by the accused and during trial the prosecution did not prove the deed No. 6908 dated 06.06.2010 to prove that the heirs of the Md. Mujibur Rahman including accused Mostofa Mohsin transferred the plot to Md. Kamal Hossain Selim. In the absence of said deed, it cannot be

held that the accused persons executed and registered the deed No. 6908 dated 06.06.2010.

At the time of filing applications dated 22.4.2001 and 05.01.2006 to the RAJUK for mutation of the name of heirs of Md. Mujibur Rahman, there was no decree in favour of Kazi Ayesha Humayra and there was no order restraining the heirs of Md. Mujibur Rahman and the RAJUK from mutating the name of the heirs of Md. Mujibur Rahman in the record of RAJUK in place of lessee Md. Mujibur Rahman. Without mutating the name of the heirs of Md. Mujibur Rahman, it was not possible to transfer the land to anyone including Kazi Ayesha Humayra. None raised any objection to the RAJUK restraining mutation of the said plot in the name of the heirs of Md. Mujibur Rahman. Naturally, after the death of the lessee, the property will be mutated in the name of the heirs of the lessee in the records of the RAJUK. Therefore, there was no illegality in mutating the name of the heirs of Md. Mujibur Rahman in the record of the RAJUK in place of late lessee Md. Mujibur Rahman inasmuch as admittedly Md. Mujibur Rahman is the lessee and the appellant and others whose names were mutated are the admitted heirs of late lessee Md. Mujibur Rahman.

It is found that on the date of execution and registration of the alleged deed No. 6908 dated 06.06.2010, there was no judgment and decree against the heirs of late lessee Md. Mujibur Rahman. There was no order restraining the heirs of Md. Mujibur Rahman from transferring the land to anyone. No money was received by the heirs of lessee Md. Mujibur Rahman from Kazi Ayesha Humayra for transferring the plot to her. Assuming that the accused Mostofa Mohsin and other heirs of Md. Mujibur Rahman executed and registered the alleged deed No. 6908 dated 06.06.2010, even then, no offence was committed. No allegation

has been made by the Kazi Ayesha Humayra against the heirs of Md. Mujibur Rahman that they fraudulently received the money from her and transferred the land in favour of Md. Kamal Hossain Selim, Managing Director, Mitul Property Limited. The prosecution also did not examine Kazi Ayesha Humayra as a witnesses in the case.

Because of the above evidence, facts and circumstances of the case, it transpires that it is a pure and simple civil dispute between the heirs of late lessee Md. Mujibur Rahman and Kazi Ayesha Humayra.

The prosecution failed to prove the charge under section 420 of the Penal Code, 1860 against the appellant beyond all reasonable doubt and the trial court committed serious illegality in finding the accused Mostofa Mohsin guilty of the offence under section 420 of the Penal Code, 1860.

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 Mostofa Mohsin are hereby set aside.

Send down the lower Court's record at once.

