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

Present:
Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 10423 of 2023

In the matter of:

An Appeal under Section 10 of the Criminal Law Amendment Act, 1958.

And

In the matter of:

Md. Abdul Baset

...Convict-Appellant

-Versus-

The State and another

...Respondent

Mr. Hasan Abdul Quium, Advocate

...For the Appellant

Mr. Md. Anwarul Islam Badhon, Advocate

...For the Respondent No.2

Mr. Md. Shafiquil Islam, D.A.G with
Ms. Farhana Abedin, A.A.G with
Mr. Hemayth Uddin, A.A.G and
Mr. K. M. Saiful Islam, A.A.G

… For the State

Heard on: 19.05.2026, 20.05.2026, 21.05.2026, 07.06.2026, 08.06.2026, 09.06.2026, 10.06.2026, 11.06.2026, 14.06.2026, 17.06.2026 and 18.06.2026
Judgment on: 29.06.2026

This appeal, preferred under Section 10 of the Criminal Law Amendment Act, 1958 is directed against the judgment and order dated 25.09.2023 passed by the learned Special Judge, Court No. 7, Dhaka in Special Case No. 05 of 2013 arising out of Gulshan Police Station Case No. 09 dated 03.11.2011 corresponding to ACC G.R. No. 107 of 2011 convicting the appellant under Sections 468 of the Penal Code and sentencing him to suffer rigorous imprisonment for a period of 05(five) years and to pay a fine of Taka 20,000/- in default to suffer further rigorous imprisonment for 03(three) months and also convicting him under Section 5(2) of the Prevention of Corruption Act, 1947 and sentencing to suffer rigorous imprisonment for a period of 5(five) years and to pay a fine of Taka 20,000/-, in default to suffer further rigorous imprisonment for 03(three) months and both sentences awarded were directed to run concurrently.

The facts relevant for disposal of the appeal, in short, are that on 03.11.2011, Md. Mojahar Ali Sardar, Assistant Director, Anti-Corruption Commission, Dhaka, lodged a First Information Report (FIR) with Gulshan Police Station alleging *inter alia* that an investigation conducted under Memo No. ACC/Special Investigation-1/92-2011 revealed that the Ministry of Health and Family Welfare had allocated Taka 19,99,64,000/- for the procurement of Medical Surgical Requisites (MSR) and Taka 11,98,56,400/- for printing materials for the 2010–2011 fiscal year under the Revitalisation of Community Health Care Initiatives in Bangladesh (RCHCIB) Project. The authority approved the procurement schedule and the draft tender notices submitted by the accused, Md. Abdul Baset, for publication in *The Daily Prothom Alo* and *The Daily Star* on 13-02-2011. The accused falsely represented that the tender notices had been published in the respective newspapers and moved to convene the Tender Evaluation Committee (TEC). While the tender notice was successfully uploaded to the Central Procurement Technical Unit (CPTU) website under the Ministry of Planning, 7 bids for MSR and 13 bids for printing materials were received. The TEC subsequently recommended awarding the Notifications of Award (NOA) to JMI Bangla Company Limited and M.N. Mallik & Company, respectively, as they emerged as the lowest responsive bidders.

Following this, Md. Abdul Baset, in his capacity as the Project Accountant, processed a proposal to forward the TEC's recommendations to the Ministry for final approval. However, the transmission was halted due to intelligence reports disclosing irregularities, which ultimately led to the cancellation of the entire tendering process. As a direct consequence of this disruption, the operational capacity of the community clinics was severely impaired, government initiatives were obstructed, and public welfare was significantly jeopardised.

The subsequent inquiry established that no such tender notices were ever published in *The Daily Prothom Alo* or *The Daily Star* on 12-02-2011. Instead, Md. Abdul Baset had intentionally forged and falsified copies of the newspapers and inserted them into the official case file to fraudulently represent that proper publication had occurred. By his acts of forgery, cheating, and criminal misconduct, the accused committed offences punishable under Sections 467/468/420 of the Penal Code, 1860, read with Section 5(2) of the Prevention of Corruption Act, 1947.

Upon closure of the investigation, the investigating officer submitted charge sheet no. 403 dated 08.10.2012 against 03(three) accused-persons including the present appellant under Sections 420/467/468 and 109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

The learned Metropolitan Senior Special Judge, Dhaka took cognizance of the offence and transmitted the case to the learned Special Judge, Court No. 7, Dhaka for trial.

Charges were framed under Sections 467/468/420 and 109 of the Penal Code against the accused persons on 25.05.2014 to which the accused-persons pleaded not guilty and claimed to be tried.

In the course of trial, 11 prosecution witnesses were examined while the defence examined none. The accused-persons were examined under Section 342 of the Code of Criminal Procedure, wherein they repeated their innocence.

Upon conclusion of trial and hearing the parties the learned Special Judge (District and Sessions Judge), Court No. 7, Dhaka convicted the accused-appellant under Section 468 of the Penal Code and sentenced him to suffer rigorous imprisonment 05 (five) years with a fine of Taka 20,000/- and also convicted under Section 5(2) of the Prevention of Corruption Act, 1947 and sentenced him to suffer rigorous imprisonment for 05(five) years with a fine of Taka 20,000/- and both sentences were directed to run concurrently and acquitted Dr. Firoj Miah and Mahbub Alam Mallik of charges levelled against them by judgment and order dated 25.09.2023.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence, the convict-appellant preferred this instant Criminal Appeal before this Court. This Court enlarged the appellant on bail on 07.12.2023.

Mr. Hasan Abdul Quium, Advocate appearing on behalf of the appellant submits that the appellant was not entrusted with the responsibility of publishing the tender notice in the

Daily newspapers and consequently, no breach of duty or criminal liability can be attributed to him.

He further submits that the prosecution has failed to establish the essential ingredients of the offence under Section 5(2) of the Prevention of Corruption Act and the appellant cannot be held liable thereunder.

He next submits that the tender was ultimately cancelled and no financial loss was occasioned to the State exchequer. No misappropriation of funds has been proved by the prosecution.

He argues that no independent witness was examined by the prosecution to corroborate its version. Material Witness, particularly Dr. Barendra Nath Mondol who headed the Departmental Inquiry Committee was not produced before the trial Court. Furthermore, no representative from *The Daily Prothom Alo* and T*he Daily Star* was examined to prove the alleged forgery of the published tender notices. This omission, it was argued, creates a fatal lacuna in the case.

He contends that the trial Court committed a manifest error by acquitting co-accused Dr. Md. Firoz Miah, member-secretary of the Tender Committee and Mahbub Alam Mallik who was the participant in the tender of the same charges and the appellant stands on a similar footing with the acquitted co-accused and the principle of parity was wrongly ignored by the trial Court to prejudice of the appellant.

He contends that the informant and the investigating officer are the same person and he is an interested witness, his testimony in the absence of independent corroboration ought not to form the basis of a conviction.

He next submits that the prosecution evidence is replete with contradictions and inconsistencies. Notably, PW-1 in his testimony stated that the tender file was not sent to the ministry for approval, whereas PW-2 stated that it was forwarded to the ministry for approval. These irreconcilable contradictions, it was argued, render the prosecution case doubtful. He further submits that the prosecution has singularly failed to prove the case beyond all reasonable doubt. Finally, he prays for allowing the appeal and setting aside the judgment of conviction and sentence.

In support of his contention, he refers to the decisions passed in the cases of ***Shahin Vs. The State***, reported in 19 SCOB [2024] AD 148, ***Javed Shaukat Ali Qureshi Vs. State of Gujarat***, reported in AIR 2023 SC 4444 and ***Yogarani Vs. State by the Inspector of Police***, reported in AIR 2024 SC 4641.

Per contra, Md. Anwarul Islam Badhon, the learned Advocate appearing on behalf of the respondent No. 2 (Anti-Corruption Commission), contends that the prosecution witnesses, particularly PW 1, PW 2, PW 3 and PW 10 have cogently and consistently proved the prosecution case. Their testimonies establish that the appellant was entrusted to publish the tender notice in *The Daily Prothom Alo* and *The Daily Star* but he failed to do so, and instead produced forged tender notices before the Tender Evaluation Committee.

He further contends that the trial Court rightly acquitted Dr. Firoz Miah and M.N. Mallik as the appellant does not stand on the same footing as the acquitted co-accused. The principle of parity is not applicable in the present case as it is ordinarily invoked in matters of bail, appointment, promotion or administrative decision and does not extend to the evaluation of evidence in a criminal trial.

He next contends that although the tender was not ultimately executed, the appellant's actions amounted to an attempt to obtain a valuable thing or pecuniary advantage by illegal means, constituting criminal misconduct.

Mr. Islam contends that the appellant acted with *mens rea* and committed the offences with full knowledge and intent. The acts of the appellant fall squarely within the definition of the offence under the Penal Code.

He submits that the appellant committed forgery of the tender notices and used the same, showing them to have been published in *The Daily Prothom Alo* and *The Daily Star.* This act was perpetrated with the intent to cheat the authorities and the public and as such he is liable to be punished under Section 468 of the Penal Code.

He next submits that as a direct consequence of the appellant's criminal actions, the tender process was vitiated and cancelled. The public was deprived of the essential health service through 1050 community clinics which constitutes a grave public wrong.

He finally submits that there is no illegality, impropriety or infirmity in the impugned judgment and order and as such, the appeal is liable to be dismissed.

I have heard the arguments and submissions canvassed on behalf of the appellant and the respondent and perused the impugned judgment and order, the petition of appeal and the materials on record.

For the proper adjudication of the matter and analysis of the facts on record, the prosecution evidence is reviewed as follows:

PW 1, Md. Mozahar Ali Sardar, Deputy Director, Anti-Corruption Commission, informant stated that a news item was published in *The Daily Jugantor* on 10.05.2011 reporting irregularities in the tender process of the Project of Community Clinic. The Anti-Corruption Commission, Head Office entrusted him with the investigation of the matter. During the investigation, he collected relevant records and documents from the Project Director, Revitalisation of

Community Health Care Initiative, Bangladesh Project. He also procured copies of *The Daily Prothom Alo* and *The Daily Star* newspapers published on 12.02.2011. He visited the place of occurrence and heard the concerned persons. He found that the Ministry of Health and Family Welfare had approved a sum of Taka 19,99,64,000/- for the procurement of M.S.R equipment and Taka 11,98,56,400/- for printing equipment for the financial years of 2010-11. Accordingly, the project authority prepared a schedule. The appellant, Md. Abdul Baset submitted a proposal for the publication of the tender notice in *The Daily Prothom Alo* and *The Daily Star* on 13.02.2011 and it was duly approved. Later, the appellant proposed to convene a meeting of the Tender Evaluation Committee and to that end produced purported copies of the tender notice claiming that those had been published in *The Daily Prothom Alo* and *The Daily Star* on 12.02.2011. The Tender Committee recommended the signing of agreements and the issuance of Notification of Award in favour of JMI Bangla Company Limited for Medical and Surgical Requisites (M.S.R) equipment and M.N. Mallik and

Company for printing equipment. However, the file could be forwarded to the concerned Ministry for final approval, the Detective Branch alerted the project authority regarding the likelihood of forgery. The entire tender process was cancelled. The accused-appellant had not actually published the tender notice in the daily newspaper but had fabricated evidence to show such publication. This conduct, PW 1 opined constituted criminal misconduct.

He further deposed that upon receipt of the sanction letter, he lodged the FIR on 03.11.2011 with Gulshan Police Station. He proved the First Information Report as Exhibit-1.

In cross-examination, he deposed that the commission had approved the sanction to institute the case.

PW 2, Dr. Makhduma Nargis, Project Director and Additional Secretary deposed that she served in the project from 28.05.2009 to 27.09.2015. The project initiated the procurement of MSR and printing equipment in 2010-11. A committee of seven members including herself, was formed for the procurement process. It was decided that the tender would be conducted in accordance with PPR, 2008. It was also decided to publish the tender notice in *The Daily Prothom Alo* and *The Daily Star*. The accountant, Abdul Baset was entrusted with the responsibility to publish the tender notice. He submitted two copies of that tender notice. He further deposed that 7 firms applied and after evaluation, 4 companies were shortlisted from which 2 companies were selected. Then they forwarded the file to the concerned Ministry for approval which was duly granted. However, before the issuance of the Notification of Award, she was informed that the published tender notices were forged and fabricated. Thereafter, they cancelled the tender procedure.

In cross-examination, she deposed that the responsibility of Abdul Baset was to place the file with the requisite instructions.

She further stated that she bore overall supervisory responsibility for the publication of the tender notice. She stated that she had no personal knowledge as to where the newspaper notice was actually published. She denied the suggestion that the appellant was being implicated to conceal her own responsibilities.

PW 3, Dr. Md. Akramul Hoque, former Deputy Director, Department of Health, Mohakhali stated that he was a member of the departmental inquiry committee. The accused was entrusted with the additional charge of accountant and was responsible for handling matters relating to the alleged tender for printing material and medical surgical equipment. The inquiry committee called to present the tender file and upon perusal of the file, the committee discovered that *The Daily Prothom Alo* and *The Daily Star* containing the tender notice were forged. When confronted, the accused Abdul Baset informed that he had not personally visited the office of the newspapers but had instead sent a security guard. The committee visited the office of the newspapers, where they were informed that no tender notice had been received from the Community Clinic Project. It was revealed that Abdul Baset had fabricated the file to mislead the tender committee. They submitted a report to the Director General.

He proved the enquiry report as Exhibit 6.

In cross-examination, he deposed that the accused was on deputation as an accountant. He further deposed that they have mentioned in the enquiry report that one Partha Sarathi was entrusted with the receipt, despatch and sending the tender notices to the office of the newspapers.

He further deposed that there was more than one sub-committee regarding the tender and the entire file was presented to the Evaluation Committee. It is not described in the enquiry report that the evaluation committee raised any objection.

He further deposed that he did not know who had prepared the tender notice for publication in the daily newspaper. He denied the suggestion that he had submitted the inquiry report at the behest of Dr. Mokhduma Nargis without verifying the data.

PW 4, Abdus Salam, former Accountant, RCHCIB Project deposed that the investigating officer, Mojahar Ali Sardar arrived at their office on 02.05.2012 and seized certain documents in his presence.

He proved the seizure list as Exhibit 4.

PW 5, Amal Kumar Sarker, Accountant, RCHCIB Project deposed that the investigating officer of the Anti-Corruption Commission arrived on 02.05.2012 at their office and prepared a seizure list on which he affixed his signature.

He proved his signature as Exhibit 4/2.

PW 6, Md. Billal Hossain, Proprietor of Billal and Brothers stated that his business concern had participated in the tender. He was aware that a tender notice was published in *The Daily Prothom Alo* and *The Daily Star*. However, approximately one and a half months later a notice was published in the same newspaper stating that no tender notice had been published. Subsequently, he learned that accountant Baset in collusion with Mallik and company had fabricated the tender notice without any actual publication.

In cross-examination, he stated that he had not seen any official document of the Community Clinic Project. He participated in the tender with Mallik and Company and others. Al Medina Printing Press also participated in the tender. He deposed that he had no personal knowledge as to which project officer of the community clinic had communicated with the newspapers.

PW 7, Sukhendru Shekhar Roy, Senior System Analyst, Department of Health deposed that in 2011 a notice was issued for the procurement of MSR and printing materials under the Community Clinic Project and he was a member of the Evaluation Committee. After evaluation, one Firm/company was recommended by the committee. However, he learned that the tender notice had not been published properly in the newspaper. Consequently, the committee cancelled the recommendation.

PW 8, Md. Shamsul Haque, Proprietor, Priyankon Printing and Publication deposed that he participated in the tender. Subsequently, he heard that the tender had been cancelled.

PW 9, Dr. Engineer Md. Anowar Hossain, Technical Manager (Repair), Ministry of Health and Family Welfare deposed that he was a member of the Evaluation committee for the tender for printing material. They evaluated the tenders received. Subsequently, the tender was cancelled and they recommended cancellation.

PW 10, Md. Mojahar Ali Sarder, Deputy Director, Anti-Corruption Commission deposed that he was appointed as the investigating officer by memo No. 2378 dated 27.11.2011. He visited the place of occurrence and seized the documents (Exhibit 4) on 02.05.2012 placing them under the custody of Abdus Salam. He proved his signature on the *Jimmanama* (custody receipt) as Exhibit 5/2. He collected original copies of *The Daily Prothom Alo* and *The Daily Star* published on 12.02.2011 from the respective offices of the newspaper. During the investigation, he recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure. The investigation revealed that the Ministry of Health and Family Welfare had approved Taka 19,99,64,000/- for purchase of MSR (Medical Surgical Requisites) and Taka 11,98,56,400/- for the purchase of printing materials. Abdul Baset placed a proposal to publish the tender notice in *The Daily Prothom Alo* and *The Daily Star* on 10.02.2011. The Project Director approved the proposal and assigned the task to the Additional Director (Administration and Finance) and member-secretary of the tender committee, Dr. Md. Firoj Miah. Accused Dr. Firoj Miah signed the file and returned it to Abdul Baset, though he had provided an incorrect address for the editors of the newspapers. Accused Abdul Baset made an entry in the despatch register and purported to have despatched the letters. However, without actually sending the letters to the office of the newspapers, he printed forged tender notices by the proprietor, Mahbub Mallik of MN Mallik and Company, showing them to have been published on pages 11 and 14 of *The Daily Prothom Alo* and pages 25 and 28 of T*he Daily Star*. He placed these forged copies in the official file. Accused Dr. Firoj Miah presented the entire documents to the tender committee which evaluated the tenders and found M.N. Mallik and Company became the second lowest bidder for MSR and the lowest bidder for supplying printing materials. The Project Director cancelled the entire tender procedure upon discovering forgery. It is revealed from the investigation that accountant Abdul Baset in collusion with Dr. Firoj Miah and contractor Mahbub Alam

Mallik attempted to obtain illicit benefit and secure the work order/award of tender in favour of the contractor MN Mallik and Company thereby committed criminal misconduct punishable under section 5(2) of the Prevention of Corruption Act, 1947 and the sections 467/468/420 and 109 of the Penal Code.

Accused Dr. Firoj Miah also attempted to secure an award of tender in favour of MN Mallik and Company to obtain an illegal benefit.

Accused Mahbub Alam Mallik printed the forged tender notice and provided it to Abdul Baset intending to obtain the work order of the tender. Thus, he committed an offence under Section 5(2) of the Prevention of Corruption Act and Sections 467/468/420 and 109 of the Penal Code.

Upon receiving the sanction, he submitted charge sheet No. 403 dated 08.10.2012.

He proved the sanction letter as Exhibit 7.

In cross-examination, PW 10 deposed that Zakir Hossain, Bellal Hossain, Shamsul Haque Khan knew that the notice was printed in the press of the accused Mahbub. 13

persons participated in the tender and they had learned about the tender notice from the office copy.

He admitted that he had not mentioned in the charge sheet that the accused had taken any financial benefit nor had any witness stated that the appellant had received the financial benefit. He conceded that the tender was cancelled before any purchase was made. He also admitted that the signature on the despatch register was not sent for expert verification. He also stated that the tender was called through an online/website.

The members of the committee were assigned to verify the documents.

He deposed that he mentioned in the charge sheet that Dr. Firoj Miah described the wrong address, but the wrong address was not mentioned in the charge sheet.

He stated that he did not know who drafted the letter to be sent to the newspaper, nor did he obtain expert opinion on the writing on the envelope containing the newspaper address. He did not allege any misappropriation of funds but limited his charge to forgery.

PW 11, Md. Zakir Hossain, Proprietor, Al Medina Pharmaceutical, deposed that he had participated in the tender. He later learned that the tender notice had not been published in the newspapers namely, *The Daily Prothom Alo* and *The Daily Star* and thus the process was vitiated by forgery, leading to its cancellation. He was the third lowest bidder.

It appears from the evidence of PW 1, Md. Mojahar Ali Sardar that the tender notice was published on the Website and accordingly, 7 bidders submitted tenders for M.S.R and 13 bidders submitted tenders for printing materials. PW 1 stated that "তাহার প্রস্তাব অনুযায়ী দরপত্র কমিটি ওয়েবসাইটে প্রকাশিত বিজ্ঞপ্তির আলোকে এম এস আর সামগ্রীর জন্য ৭(সাত)টি এবং প্রিন্টিং সামগ্রীর জন্য ১৩(তের) টি প্রস্তাব মূল্যায়ন করে। এম এস আর সামগ্রীর জন্য জে এম আই বাংলা কোম্পানী লিমিটেড এবং প্রিন্টিং সামগ্রীর জন্য এম এন মল্লিক এন্ড কোম্পানী সর্বনিম্ন দরদাতা হওয়ায় তাহাদের অনুকুলে নোটিফিকেশন অব এওয়ার্ড প্রদান পূর্বক পারফরমেনস গ্রান্টি প্রদান সাপেক্ষে চুক্তি সম্পাদনের সুপারিশ করে। কিন্তু প্রকল্প কর্তৃপক্ষের নিকট গোয়েন্দা সংস্থা কর্তৃক টেন্ডার বিজ্ঞপ্তি জালিয়াতির তথ্য উপস্থাপন করায় উক্ত দরপত্র অনুমোদনের জন্য মন্ত্রণালয়ে প্রেরণ করা হয়নি এবং পরবর্তীতে টেন্ডার প্রক্রিয়া বাতিল করা হয়।"

PW 10, the investigating officer, in cross-examination stated that "Online এ টেন্ডার আহবান করা হয়েছিল। প্রিন্টিং এর জন্য ২২টি প্রতিষ্ঠান এবং MSR এর জন্য ২৭টি প্রতিষ্ঠান সিডিউল পার্সেল করে সত্য। যোগ্যতমদের প্রাথমিক বাছাই করা হয়। আঃ বাছেদ এর কোন প্রিন্টিং প্রেস নাই। আমি আমার C/S এ টাকা আত্নসাৎ এর অভিযোগ করি নাই। তবে জাল জালিয়াতির অভিযোগ করেছি।"

In cross-examination, PW 10 Stated that আসামী আর্থিক সুবিধা নিয়েছে কিংবা তার হিসাবে দূনীর্তির টাকা পাওয়া গেছে এমন বক্তব্য সি/এস এ বলি নাই। কোন সাক্ষী ১৬১ ধারার জবানবন্দীতে বলে নাই আসামী আর্থিক সুবিধা নেয়।

In view of the above testimonies, it is evident that the tender was ultimately cancelled and no financial loss was occasioned to the State exchequer and no misappropriation of funds has been proved by the prosecution.

It is well settled that under Section 5(2) of the Prevention of Corruption Act, actual misappropriation is not a *sine qua non* for conviction. However, in the instant case, the prosecution has failed to prove that the appellant derived or intended to derive any pecuniary advantage, nor has it proven that the other accused who is the member-secretary of the

Tender Evaluation Committee acted in conspiracy with the appellant beyond a reasonable doubt.

Therefore, the absence of financial loss, while not a complete defence, supports the general weakness of the prosecution's case regarding the appellant's specific role. Under Section 5(2) of the above-mentioned Act, mere "attempt" without proof of "obtaining" or accepting a valuable thing is weak without corroborative evidence of intent.

It is revealed that there are inconsistencies and contradictions in the evidence. PW-1 stated that উক্ত দরপত্র অনুমোদনের জন্য মন্ত্রণালয়ে প্রেরণ করা হয়নি এবং পরবর্তীতে টেন্ডার প্রক্রিয়া বাতিল করা হয়। On the other hand, PW-2 stated that "তন্মধ্য হইতে MSR এর জন্য সর্বনিম্ন দরদাতা জে এম আই বাংলা কোম্পানী লিঃ এবং প্রিন্টিং এর জন্য এস এন মল্লিক এন্ড কোম্পানীকে নির্বাচন করি। কমিটি একমত হয়ে মন্ত্রণালয়ে অনুমোদনের জন্য পাঠাই।"

Such contradictions create doubt regarding the credibility and veracity of the evidence adduced by the prosecution witnesses. This benefit of doubt goes in favour of the accused.

On consideration of the entire evidence and materials on record, it appears to the Court that the prosecution case is doubtful, the benefit of doubt must be given to the accused and he should be acquitted of the offence. This view gets support from the decision passed in the case of ***Mahbub Hassan Vs. The State***, reported in 33 BLD (2013) 83.

It appears from the testimony of the investigating officer, Md. Mojahar Ali Sardar (PW 10) who stated in his examination-in-chief that the accused, Abdul Baset, made a specific entry in the despatch register, purporting to have despatched the subject letters. However, during cross-examination, material infirmities in the investigation were brought to light.

PW 10 categorically admitted that the disputed signature appearing in the despatch register was never forwarded to a handwriting expert for forensic verification. Furthermore, he conceded that no expert opinion was sought regarding the handwriting on the envelope bearing the newspaper address.

The failure of the investigating agency to secure a forensic expert opinion under the relevant provisions of the law of evidence leaves the authorship of the disputed handwriting unestablished. Such an omission constitutes a grave lacuna in the investigation. By failing to scientifically corroborate these critical links, the investigation suffers from material irregularity and is deemed inherently defective. Consequently, a reasonable doubt is cast upon the prosecution’s assertions, vitiating the reliability of the investigative process in the eye of law.

In Criminal jurisprudence, when a case heavily relies on documentary entries and signatures, failing to send disputed handwriting to a forensic expert (such as a questioned document examiner) creates a fatal gap. Without it, the prosecution’s claim rests solely on circumstantial or oral assertions, which has been easily shaken in cross-examination.

PW 2, Project Director, in his cross-examination stated that, “আঃ বাসেতের দায়িত্ব ছিল নির্দেশপ্রাপ্ত হয়ে নথি উপস্থাপন করা। She further deposed that টেন্ডার বিজ্ঞপ্তি প্রকাশ সংক্রান্তে over all Monitoring দায়িত্ব ছিল আমার।”

She also deposed that "১২.০২.২০১১ তারিখের প্রথম আলো ও Daily Star পত্রিকা দুইটি কে কোথায় ছাপে তা জানি না।"

The investigating officer (PW-10) deposed that "আসামী মোঃ আব্দুল বাসেত ১০/০২/২০১১ তারিখ বৃহস্পতিবার উক্ত MSR এবং প্রিন্টিং সামগ্রী ক্রয়ের দরপত্র বিজ্ঞপ্তি দৈনিক প্রথম আলো ও The Daily Star তে ১৩/০২/২০১১ তারিখের পত্রিকায় প্রকাশের জন্য কর্তৃপক্ষের অনুমোদনসহ পত্রিকার সম্পাদক বরাবর উপস্থাপিত চিঠি স্বাক্ষরের জন্য উপস্থাপন করেন। প্রকল্প পরিচালক তা অনুমোদন করে প্রকল্পের অতিরিক্ত পরিচালক (প্রশাসন ও অর্থ) এবং অত্র দরপত্র কমিটির সদস্য সচিব ডাঃ ফিরোজ মিয়াকে দায়িত্ব প্রদান করেন। আসামী ডাক্তার ফিরোজ মিয়া পত্রিকাদ্বয়ের সম্পাদক বরাবরে ভুল ঠিকানায় লিখিত স্বাক্ষর করে প্রকল্পের হিসাব রক্ষক আসামী আব্দুল বাসেতকে প্রদান করেন।"

It is alleged that the accused took responsibility to make the tender notice published in the daily newspaper, whereas PW 2, Project Director stated in her cross-examination that "স্বেচ্ছাধীন দায়িত্ব পালনের কোন সুযোগ প্রজেক্টে ছিল না।"

Being the member secretary of the tender committee, the responsibility of printing the tender notice was entrusted to him but he wrote the wrong address.

It also appears from the testimony of PW-10 that "তদন্তে দেখা যায় যে, কমিউনিটি ক্লিনিক প্রকল্পের অতিরিক্ত প্রকল্প পরিচালক আসামী ডাঃ

ফিরোজ মিয়া টেন্ডার মূল্যায়ন কমিটির সদস্য সচিব হিসাবে দায়িত্বপালন করে প্রকল্পের হিসাব রক্ষক আসামী মোঃ আব্দুল বাসেত কর্তৃক টেন্ডার মূল্যায়ন কমিটির সভায় জালিয়াতি পূর্ণ রেকর্ডপত্র উপস্থাপন করে টেন্ডার মুল্যায়ন কমিটির সভায় সভার মূল্যায়নে ঠিকাদার MN মল্লিক এর মালিক আসামী মাহবুব আলম মল্লিক এর সহযোগীতায় MSR সামগ্রী ক্রয়ের ২য় সর্বনিম্ন এবং প্রিন্টিং সামগ্রী ক্রয়ের ১ নং সর্বনিম্ন দরদাতা বিবেচিত হয়ে প্রিন্টিং সামগ্রী ক্রয়ের নিমিত্তে ১১,৯৮,৫৬,৪০০/- টাকার কার্যাদেশ দেয়া/নেয়া প্রক্রিয়ায় সম্পন্ন করে।”

The investigating officer (PW-10) deposed that “এ কাজে প্রকল্পের অতিরিক্ত পরিচালক ও টেন্ডার কমিটির সদস্য সচিব আসামী ফিরোজ মিয়া টেন্ডার কমিটির নিকট এই জালিয়াতিমূলক টেন্ডার বিজ্ঞপ্তি সম্বলিত পত্রিকার কপি টেন্ডার কমিটির নিকট উপস্থাপন করে। বিধি অনুযায়ী সদস্য সচিব টেন্ডার সংক্রান্ত নথি সংরক্ষণ ও উপস্থাপন করেন। আসামী ডাক্তার ফিরোজ মিয়া যাবতীয় রেকর্ডপত্র টেন্ডার কমিটির নিকট উপস্থাপন করিলে টেন্ডার কমিটির সদস্য সচিব হিসাবে কমিটি তার উপর আস্থা রেখে টেন্ডার মূল্যায়ন করে। মূল্যায়নে ঠিকাদার MN মল্লিক এন্ড কোম্পানী MSR এর ক্রয়ের দ্বিতীয় সর্বনিম্ন দরদাতা এবং প্রিন্টিং সামগ্রী ক্রয়ের সর্বনিম্ন দরদাতা বিবেচিত হল।”

It is undisputed fact that Dr. Makhduma Nargis, (PW-2) was the Project Director who herself acknowledged in cross-examination that “টেন্ডার বিজ্ঞপ্তি প্রকাশ সংক্রান্তে overall monitoring এর দায়িত্ব ছিল আমার।” She also stated in cross-examination that

আমি এই প্রজেক্টের প্রধান ছিলাম। প্রধান হিসাবে প্রজেক্টের সমুদয় কার্যক্রম তদারকের দায়িত্ব ছিল আমার। However, she failed to perform her duty and responsibility. Despite this, she was not implicated as an accused. Furthermore, the head of the departmental inquiry committee was not examined.

In this regard, PW 2, Dr. Makhduma Nargis deposed that "বিষয়টি সম্পর্কে আমরা একটি তদন্ত করি DG অফিস আলাদা তদন্ত করে। ডাঃ বরেন্দ্র নাথ মন্ডলকে প্রধান করে আমাদের অফিস তদন্ত করে আমাকে রিপোর্ট দেয়। রিপোর্ট মোতাবেক ১২/০২/২০১১ ইং তারিখে প্রথম আলো ও ডেইলি স্টারে আমাদের বিজ্ঞাপন প্রকাশিত হয় নাই।" Dr. Barendra Nath was a crucial witness, and he ought to be examined to prove the inquiry report. This omission is a fatal lacuna in the prosecution case.

The investigating officer (PW 10) in his examination-in-chief brought allegations against Dr. Firoz Miah and Mahbub Alam Mallik stating that "আসামী ডাঃ ফিরোজ মিয়া কমিউনিটি প্রকল্পের MSR ও প্রিন্টিং সামগ্রী ক্রয়ের দরপত্র কমিটির সদস্য সচিব হিসাবে দায়িত্বপ্রাপ্ত থেকে জেনে বুঝে টেন্ডার বিজ্ঞপ্তি পত্রিকায় প্রকাশের জন্য ভুল ঠিকানায় সম্পাদক বরাবর চিঠি স্বাক্ষর ও প্রেরণসহ আসামী আঃ বাসেতকে প্রদান করে। টেন্ডার মূল পত্রিকায় প্রকাশ না হওয়া সত্ত্বেও জালিয়াতিমূলক পত্রিকার কপি টেন্ডার মূল্যায়ন কমিটির সভায় উপস্থাপন করে অপরাধমূলক বিশ্বাসভঙ্গের মাধ্যমে অবৈধ সুবিধা

লাভের আশায় ঠিকাদার আসামী মাহবুব আলম মল্লিকের প্রতিষ্ঠান MN মল্লিক এন্ড কোং এর অনুকুলে প্রিন্টিং সামগ্রী সরবরাহের কার্যাদেশ প্রদান প্রক্রিয়া সম্পন্ন করে আসামী ডাঃ ফিরোজ মিয়া ১৯৪৭ সালের দূর্নীতি প্রতিরোধ আইনের ৫(২) ধারা তৎসহ কার্যবিধির ৪৬৭/৪৬৮/৪২০/১০৯ ধারায় এবং আসামী মাহবুব আলম মল্লিক স্বাস্থ্য অধিদপ্তরের EPI সহ বিভিন্ন দপ্তরে পূর্ব থেকেই MSR ও প্রিন্টিং সামগ্রী সরবরাহের সুবাদে হিসাব রক্ষক আসামী আঃ বাসেতের সাথে সখ্যতার সুবাদে প্রায় ১২ কোটি টাকার প্রিন্টিং সামগ্রী সরবরাহের কার্যাদেশ নেয়ার জন্য আসামী আঃ বাসেত ও ডাঃ ফিরোজ মিয়ার সহযোগীতায় ১২/২/২০১১ ইং তারিখের দৈনিক প্রথম আলো ও The Daily Star পত্রিকায় জালিয়াতিপূর্ণভাবে দরপত্র বিজ্ঞপ্তি ছাপিয়ে আসামী হিসাব রক্ষক আঃ বাসেতের নিকট প্রদান করে।"

It is revealed from the testimonies of PW 10 that the forged newspapers were printed in the press that belongs to the proprietor of MN Mallik and Company. PW 10, the investigating officer deposed in examination-in-chief that "তিনি ঠিকাদার MN মল্লিক এন্ড কোম্পানী এর প্রোপাইটার মাহবুব আলম মল্লিককে দিয়ে ১২/০২/২০১১ তারিখে দৈনিক প্রথম আলোর ১১ তম ও ১৪ তম পৃষ্ঠায় এবং *The Daily Star* এর ২৫ তম ও ২৮ তম পৃষ্ঠায় জালিয়াতিমূলে উক্ত দরপত্র দুটি ছাপান।"

In cross-examination once again, PW 10 deposed that "আমি জাকির হোসেন, বেলাল হোসেন, শামসুল হক খানকে সাক্ষী করেছি যারা জানে আসামী মাহবুবের প্রেস হতে ছাপানো হয়েছে।"

PW 6, Md. Billal Hossain, also deposed that Mallik and Company is involved in printing the forged tender notice. He deposed in his examination-in-chief that "জানতে পারি যে, উক্ত অফিসের একাউনটেন্ট বাসেত এবং মল্লিক এন্ড কোম্পানী নামক প্রতিষ্ঠান মিলে নিজেরা লাভবান হওয়ার জন্য টেন্ডার বিজ্ঞপ্তি প্রকাশ না করে নিজেরা টেন্ডার সৃজন করেছে।"

In view of the above, it is evident that Dr. Md. Firoj Miah, despite being the member-secretary of the tender committee, wrote the wrong address of the newspaper and Mahbub Alam Mallik, proprietor of MN Mallik and Company printed the forged tender notices in his press and thus they committed the offence, but the trial Court arbitrarily acquitted them of the offences alleged. The record shows that Dr. Firoz Miah was acquitted despite having a higher supervisory role and being entrusted with the responsibility of printing and publishing the tender notice. The conviction and order of sentence imposed against the appellant alone cannot be sustained, or in other words, it has to be held that the prosecution had failed to prove the guilt of the appellant beyond reasonable doubt.

A criminal Court cannot convict one accused and acquit another when there is similar or identical evidence pitted against two accused persons. In this connection, reliance may be placed upon the decision passed in the cases of ***Yogarani Vs State by Inspectore of Police*** (supra) and ***Jabed Shaukat Ali Qureshi Vs State of Gujarat*** (supra) wherein it has been held:

> "When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This Principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two

> accused, which will amount to discrimination."

A similar view was taken by the Apex Court in ***Shahin Vs. The State***, reported in 21 ADC (2024) 654, wherein it has been held:

> "However, according to the prosecution, regarding the active participation of the appellant in committing the murder of the deceased, he is on the same footing with the other accused. So, it will be a matter of outright injustice to the appellant if the same benefit of doubt is not granted to him. On a careful consideration of the evidence on record, we are inclined to give the benefit of doubt to the present appellant."

In the instant case, the appellant stands on same footing as acquitted co-accused Dr. Md. Firoj Miah and Mahbub Alam Mallik. It is a foundational rule of law that where the evidence against a co-accused is identical, or where the principal actor is exonerated, the Court cannot selectively convict an auxiliary employee on the same set of facts.

The trial Court acquitted Dr. Firoz Miah but the State did not prefer any appeal against the acquittal. Since the State or the Anti-Corruption Commission has not challenged the acquittal of the principal officer, Dr. Firoz Miah, the substratum of the prosecution case against the subordinate officer collapses. To uphold the conviction of the appellant while the principal architect of the alleged scheme stands exonerated on identical evidence would constitute a manifest injustice.

It appears that PW 10, Deputy Director, Anti Corruption Commission in his sworn testimony patently admits that he in the charge sheet submitted had not mentioned that the appellant received any financial benefit. If it is so, it may be justifiably presumed that the appellant was not engaged in processing alleged forgery of publishing tender notice. It thus adds justification not to find him guilty of alleged offence. He thus deserves acquittal.

On scrutiny of the entire evidence and materials on record, this Court finds that the prosecution is doubtful. The prosecution has failed to establish the guilt of the appellant beyond all reasonable doubt. There are glaring contradictions and inconsistencies in the prosecution evidence, material witnesses have not been examined, and the principle of parity has been grossly violated by the trial Court, which acquitted the co-accused who played a more significant role in the alleged offence.

Considering the gravity of the alleged offence and the facts and circumstances of the case, I am of the view that the judgment and order of conviction and sentence are unsustainable in the eye of law and are liable to be set aside.

In the result, the appeal is allowed.

The judgment and order dated 25.09.2023 passed by the learned Special Judge, Court No. 7, Dhaka, in Special Case No. 5 of 2013 arising out of Gulshan Police Station Case No. 9 dated 03.11.2011 corresponding to ACC G.R No. 107 of 2011 is hereby set aside.

The appellant is acquitted of all charges levelled against him.

The convict-appellant is released from his bail bond.

Let a copy of the judgment along with the lower Court's records (LCR) be communicated to the Court concerned forthwith.

(Md. Bashir Ullah, J)

Md. Ariful Islam Khan
Bench Officer