

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 11661 of 2023

Md. Monirul Islam Monir

...Convict-appellant

-Versus-

The State and another

...Respondents

Mr. Jamal Uddin Ahmad, Advocate with

Mr. Mohd. Abdus Sattar Miah, Advocate

...For the convict-appellant

Mr. Md. Anichur Rahman Khan, D.A.G with

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

Mr. Mir Moniruzzaman, A.A.G

...For the State

Mr. ASM Kamal Amroohi Chowdhury, Advocate

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

Heard on 19.05.2025, 30.07.2025 and 06.08.2025

**Judgment delivered on 13.08.2025**

This appeal under section 10(1)(a) of the Criminal Law Amendment Act, 1958 is directed against the impugned judgment and order dated 30.10.2023 passed by Divisional Special Judge, Dhaka in Special Case No. 07 of 2018 convicting the appellant under section 165A of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 2(two) years and fine of Tk. 10,000, in default, to suffer imprisonment for 3(three) months and confiscating Tk. 1,00,000 in favour of the state.

The prosecution's case, in short, is that on 15.11.2007 at 2.05 pm 1. Mahbub and 2. Abu Mia were detained along with foreign currency in Kanchpur Highway Police Fari. At that time, the accused Md. Monirul Islam Monir had given an illegal proposal of bribe amounting to Tk. 1,00,000 to release said detainees, restraining the informant S.I. Md. Nazrul Islam from discharging his official duty. Instantaneously, he informed the matter to ASP Md. Touhidul Islam, B-Circle, Narayanganj, and OC Khondaker Shafiqul Alam of Sonargaon Thana, Narayanganj, and 02(two) bundles of notes of Tk.

500 total Tk. 1,00,000(one lakh) was seized in the presence of witnesses, Abdul Mannan Member, Md. Anisul Islam Babul, Monir Hossain Monu, and they signed the seizure list. The accused admitted that the said two persons are his cousins, for which he proposed to bribe the informant to release them from the custody of the police.

P.W. 5 K.M. Misbah Uddin, Assistant Director, Anti-Corruption Commission, Combined District Office, Dhaka-2, was appointed as Investigating Officer. During investigation, he visited the place of occurrence, prepared the sketch map and index, recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898, seized documents and after completing the investigation, he found the prima-facie truth of the allegation made against the accused and submitted the memo of evidence against him and the Anti-Corruption Commission vide memo No. 3992 dated 07.03.2010 had given sanction for submitting charge sheet against the accused and accordingly, submitted charge sheet on 18.03.2010 against the accused Md. Monirul Islam Monir under section 165(ka) of the Penal Code, 1860.

After that, the case was sent to the Senior Special Judge, Narayanganj, who took cognizance of the offence against the accused Md. Monirul Islam Monir under section 165A of the Penal Code, 1860, and also framed charge against him under section 165A of the Penal Code, 1860, which was read over and explained to the accused, and he pleaded not guilty to the charge and claimed to be tried following the law. After that, by order dated 09.01.2018, the case was sent to the Divisional Special Judge, Dhaka. The prosecution examined 10(ten) witnesses to prove the charge against the accused. After examination of the prosecution witnesses, the accused was examined under Section 342 of the Code of Criminal Procedure, 1898, and he declined to adduce any D.W. After concluding the trial, the Divisional Special Judge, Dhaka, by impugned judgment and

order, convicted the accused and sentenced him as stated above, against which he filed the instant appeal.

P.W. 1 Syed Md. Shahidullah is the Deputy Director, ACC, Combined District Office, Chattogram-2 (now retired). He stated that from 25.02.2008 to 23.04.2009, he discharged his duty as Assistant Director, Anti-Corruption Commission, Combined District Office, Dhaka-2. He was appointed as Investigating Officer of the case. During investigation, he visited the place of occurrence. The informant S.I. Nazrul Islam seized Tk. 1,00,000, which was offered as bribe. After lodgment of the FIR, S.I. Mazharul Haque, Inspector of Police Abul Khayer, Officer-in-Charge Younus Ali investigated the case. Thereafter the case was sent to ACC. He perused the report submitted by the previous Investigating Officers. During investigation, he was transferred and handed over the records to Investigating Officer Mezbah Uddin. The defence declined to cross-examine P.W. 1.

P.W. 2 Abdul Mannan (Member) stated that on 15.11.2007 at 2.15 pm, S.I. Md. Nazrul Islam seized total 2 bundles of notes of Tk. 500. He proved the seizure list as exhibit 1 and his signature as exhibit 1/1. During cross-examination, he stated that he did not see the recovery of the goods. The police called him over the mobile phone. He was not present at the time of the occurrence. He signed on white paper.

P.W. 3 Abdul Monir Hossain is a local, and he was tendered by the prosecution. During cross-examination, he stated that Nazrul Islam called him and instructed him to sign. He is not aware of the writing on the paper.

P.W. 4 Md. Aminul Islam Babul stated that on 15.11.2007, he was present in the Police Fari. S.I. Nazrul Islam instructed him to sign the seizure list. He proved his signature on the seizure list. He saw the money and signed. During cross-examination, he stated that he did not witness the recovery. He is not aware of the occurrence.

P.W. 5 K.M. Misbah Uddin is the Deputy Director, Anti-Corruption Commission, Head Office, Dhaka. He stated that in 2010, he discharged his duty as Assistant Director, Combined District Office, Dhaka-2. He is the Investigating Officer. Earlier, Officer-in-Charge Shafiquel Alam was the Investigating Officer. He received the CD on 25.06.2009 from the Officer-in-Charge Shafiquel Alam. During investigation, on perusal of the records, he found the prima facie truth of the allegation made against the accused Md. Monirul Islam Monir and submitted memo of evidence against him. After that, the Anti-Corruption Commission, Head Office, Dhaka vide memo No. 3992 dated 07.03.2010 had given sanction for submitting charge sheet, and accordingly on 18.03.2010, he submitted charge sheet against the accused. He proved the sanction letter as exhibit 2. During cross-examination, he admitted that he did not investigate the case. He only perused the documents submitted by the previous Investigating Officers. He denied the suggestion that he deposed falsely.

P.W. 6 Khondaker Md. Shafiquel Alam stated that on 15.11.2007, he discharged his duty as Officer-in-Charge of Sonargaon Thana, Narayanganj. S.I Md. Nazrul Islam is the informant of the case. On 15.11.2007 at 2.05 pm, at the time of transferring the foreign currency notes, one Mahbub and Abu Mia were detained in Kanchpur Highway Police Fari. At that time, the accused Md. Monirul Islam Monir had given a proposal to release the said detainees on payment of bribe amounting to Tk. 1,00,000 for which S.I Md. Nazrul Islam lodged the FIR with Sonargaon Thana. He seized Tk. 1,00,000. He recorded the FIR and took up investigation of the case. He proved the FIR as exhibit 3. He proved his signatures on the FIR as exhibit 3/1 and exhibit 4/1. During investigation, he visited the place of occurrence, prepared the sketch map and index, he recorded the statements of the informant and others under section 161 of the Code of Criminal Procedure, 1898. He handed over the seized Tk. 1,00,000 to the custody of the Bangladesh Bank and forwarded the accused to

the Court. Since the offence alleged in the FIR is a scheduled offence under the Anti-Corruption Commission Act, he sent the case to the Anti-Corruption Commission for investigation of the case. He proved the money receipt issued by the Bangladesh Bank as Exhibit 5. On 04.07.2008, he was transferred and handed over the records to S.I Mazharul Karim. The defence did not cross-examine P.W. 6.

P.W. 7 Md. Younus Ali was the Officer-in-Charge, Sonargaon Thana. He stated that on 04.09.2009, he discharged his duty as Officer-in-Charge of Sonargaon Thana. He took up investigation of the case, visited the place of occurrence, and perused the documents seized by the previous Investigating Officer. He did not record any statement of witness under section 161 of the Code of Criminal Procedure, 1898. Since the alleged offence is a scheduled offence under the Anti-Corruption Commission Act, he handed over the case docket to the subsequent Investigating Officer.

P.W. 8 Md. Mazharul Karim is the Officer-in-Charge, Chattogram Railway Thana, Chattogram. He stated that at the time of the occurrence, he discharged his duty as S.I. of Sonargaon Thana, Narayanganj. The previous Investigating Officer Khondaker Md. Shafiqul Alam was transferred, and on 04.07.2008, he took up investigation of the case. During investigation, he perused the case docket. On 12.07.2008, he handed over the CD to OC Abul Khayer. He affirmed that 2 years ago, Abul Khayer died. He discharged his duty along with the informant Md. Nazrul Islam and his handwriting and signature are known. He proved the FIR lodged by Nazrul Islam as exhibit 4 and the signature of S.I. Nazrul Islam as exhibit 4/2. The defence did not cross-examine P.W. 8.

P.W. 9 Md. Touhidul Islam is the Superintendent of Police, C.I.D, Dhaka. He stated that on 15.11.2007, he discharged his duty as ASP, B-Circle, Narayanganj. On that day at 01.00 pm, S.I Nazrul Islam informed him that he detained two accused persons along with the foreign currency from the place of occurrence. He, along with the

Officer-in-Charge, visited the place of occurrence. S.I Nazrul informed them that one person had given proposal to release two accused-persons. After that, he went to the Kanchpur Highway Police Fari to detain that person. At that time, he attempted to hand over two bundles of notes of Tk. 500 to S.I. Nazrul, and he detained him. Mannan Member, Anisul Islam Babul, Monir Hossain, and other locals were present there. After that, the FIR was lodged. During cross-examination, he stated that the accused was detained at 02.05 pm, and he obtained the message 30/45 minutes before the arrest of the accused. Abu Mia and Mahbub were detained along with foreign currency. They are not accused of this case. S.I Nazrul recovered Tk. 1,00,000 from the accused. At the time of recovery, the body of the accused was not searched in the presence of neutral witnesses. He denied the suggestion that nothing was recovered from the possession of the accused or that S.I Nazrul falsely implicated the accused in the case, or that he was not involved with the occurrence, or that he deposed falsely.

P.W. 10 S.I. Md. Nazrul Islam (retired) is the informant. He stated that on 15.11.2007, he was discharging his duty as S.I of Sonargaon Thana. On that day, while he was searching the transport at the Kanchpur area, Mahbub and Abu Mia were detained at 2.05 pm along with the foreign currency. They were taken to the office of the OC, Kanchpur Highway Police. The accused Monirul Islam Monir had given a proposal to receive bribe to release them. He informed the matter to the ASP Md. Touhidul Islam, B-Circle, Narayanganj, and Officer-in-Charge Khondaker Shariful Alam. When they came to police fari, the accused Md. Monirul Islam Monir handed over two bundles of notes of Tk. 500 total Tk. 1,00,000 as bribe. Instantaneously, he seized Tk. 1,00,000 in the presence of witnesses, Abdul Mannan Member, Md. Anisul Islam Babul, Monir Hossain, and others. The accused Monirul Islam was arrested, and he was handed over to the local Police Station. He proved the FIR as exhibit

4 and his signature on the FIR as exhibit 4/2. He proved the seizure list as exhibit 1 and his signature on the seizure list as exhibit 1/3. He handed over Tk. 1,00,000 to the Bangladesh Bank by chalan. He denied the suggestion that the accused was arrested from the Meghla Transport near the Tropical Shoe Factory situated beside the Dhaka-Sylhet Highway. He did not make any enquiry regarding the profession of the accused at the time of arresting him. He is not aware of the fact that the accused was an employee of the Biplob Enterprise, who was the agent of the Grameenphone to sell the SIM. He denied the suggestion that Tk. 1,00,000 for purchasing the SIM was recovered from the accused, or he told him that if he paid the money, he would not be implicated in the case, or that since the accused refused to pay the money, he was taken to the police Fari. He affirmed that he recovered the money. He denied the suggestion that the accused did not influence him or that he created an imaginary story for non-payment of the money, or that he deposed falsely.

Learned Advocate Mr. Jamal Uddin Ahmad, appearing along with learned Advocate Mr. Mohd. Abdus Sattar Miah on behalf of the appellant Md. Monirul Islam Monir submits that no address of Abu Mia and Mahbub is mentioned in the charge sheet, who were allegedly detained by P.W. 10 S.I Md. Nazrul Islam along with foreign currency and the accused Md. Monirul Islam Monir was arrested from the bus along with Tk. 1,00,000. When P.W. 10 S.I Md. Nazrul Islam made an attempt to snatch away said money, he illegally detained him and created a false story of handing over bribe to release fake persons Abu Miah and Mahbub in connivance with P.W. 9 Md. Touhidul Islam, the then ASP, B-Circle, Narayanganj. P.W. 5 K.M. Misbah Uddin, without any investigation submitted false charge sheet against the accused. During the trial, the prosecution failed to prove the charge against the accused beyond all reasonable doubt. He prayed for allowing the appeal by setting aside the impugned judgment and order passed by the trial Court.

Learned Advocate Mr. ASM Kamal Amroohi Chowdhury, appearing on behalf of the respondent No. 2 (ACC), submits that the accused had given a proposal to release two detainees, Abu Mia and Mahbub, who were detained for illegal possession of the foreign currency, and P.W. 9 ASP Md. Touhidul Islam detained the accused Md. Monirul Islam Monir at the time of handing over the bribe amounting to Tk. 1,00,000 to P.W. 10 S.I. Nazrul Islam, and during the trial, the prosecution proved the charge against the accused beyond all reasonable doubt, and the trial Court, on proper assessment and evaluation of the evidence of the prosecution witnesses, legally passed the impugned judgment and order.

I have considered the submission of the learned Advocate Mr. Jamal Uddin Ahmad, who appeared along with learned Advocate Mr. Mohd. Abdus Sattar Miah, on behalf of the appellant Md. Monirul Islam Monir 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.

P.W. 10 informant S.I Md. Nazrul Islam stated that on 15.11.2007 at 2.05 pm, while he was discharging emergency duty, he searched the vehicles at the Kanchpur area and arrested 1. Mahbub and 2. Abu Mia, along with foreign currency and they were taken to Highway Police Fari, Kanchpur. At that time, the accused Monirul Islam Monir had given an illegal proposal of bribe to release those persons, and instantaneously, he informed the matter to P.W. 9 Md. Touhidul Islam, ASP, B-Circle, Narayanganj, and Khondaker Shariful Alam, Officer-in-Charge, Sonargaon Thana, and in their presence, the accused Monirul Islam Monir handed over two bundles of notes of Tk. 500, total Tk. 1,00,000. P.W. 9 Md. Touhidul Islam, ASP, B-Circle, Narayanganj, stated that on 15.11.2007 at 1.00 pm, S.I Nazrul Islam (P.W. 10) informed him that two persons were arrested along with the foreign currency, and one person had given proposal to pay



bribe to release those persons. After that, he went to the Kanchpur Highway Police Fari along with officer-in-charge and while he was handing over bribe of Tk. 1,00,000, two bundles of notes of Tk. 500, to S.I Nazrul Islam, he detained him in the presence of Abdul Mannan Member, Md. Anisul Islam Babul, Monir Hossain, and other locals. P.W. 6 Khondaker Md. Shafiqul Alam, the then Officer-in-Charge of Sonargaon Thana, did not say that he, along with P.W. 9 went to the Kanchpur Highway Police Fari and detained the accused at the time of handing over bribe of Tk. 1,00,000. The alleged recovery of Tk. 1,00,000 at the time of handing over bribe by the accused Md. Monirul Islam Monir to P.W. 10 is a material fact which is not corroborated by P.W. 6. Any material omission in the evidence of witness is a contradiction.

On perusal of the evidence of P.W. 10, it reveals that Mahbub and Abu Mia were detained on 15.11.2007 at 2 pm along with foreign currency at the time of searching the transport at Kanchpur area while he was discharging the emergency duty, but no address of Mahbub and Abu Mia is given in the charge sheet or stated by P.W. 10. In the charge sheet, it has been mentioned that the accused Md. Monirul Islam Monir made an attempt to release Mahbub and Abu Mia, who were accused of Sonargaon PS Case No. 68(10)2007. In the FIR, it has been stated that on 15.11.2007 at 2.05 pm, one Mahbub and Abu Mia were detained in the office of the Kanchpur Highway Police Fari along with the foreign currency under Sonargaon Thana, and at that time, the accused Md. Monirul Islam Monir had given a proposal to release them, paying a bribe of Tk. 1,00,000. The P.W. 10 S.I Md. Nazrul Islam corroborated his statement made in the FIR that Mahbub and Abu Mia were detained on 15.11.2007 at 2.00 pm in the office room of Kanchpur Highway Police Fari along with the foreign currency. In the charge sheet, it has been mentioned that the said Mahbub and Abu Mia are accused of Sonargaon PS Case No. 68(10)2007. Therefore, the statement made by P.Ws 9 and 10 that

Mahbub and Abu Mia were detained on 15.11.2007 along with the foreign currency is a got-up and afterthought story.

No explanation has been given as to why Mahbub and Abu Mia were implicated in Sonargaon PS Case No. 68(10)2007 as accused, which was allegedly lodged in the month of October 2007. The learned Deputy Attorney General Mr. Md. Anichur Rahman Khan submits that he talked to Officer-in-Charge of Sonargaon Thana, Narayanganj, who informed him that there is no existence of Sonargaon PS Case No. 68(10)2007, and the serial number of the last FIR registered with the Sonargaon Police Station was 59, dated 31.10.2007.

P.W. 10 stated that at the time of searching the transport at Kanchpur area, Mahbub and Abu Mia were arrested on 15.11.2007 at 2.05 pm, but none of the police personnel who were present at the time of the alleged search of the vehicle was examined in the case. P.Ws 2, 3, and 4 are the witnesses of the seizure list. P.W. 2 Abdul Mannan (Member) is a local, and he stated that police called him over the telephone, and at the time of the occurrence, he was not present, and he did not see the recovery of the goods, and signed the white paper. P.W. 3 was tendered by the prosecution. During cross-examination on behalf of the accused, he stated that Nazrul Islam called him to sign. He was not aware of the writing on the seizure list. P.W. 4 Md. Aminul Islam Babul stated that on 15.11.2007, he was present in the Police Fari. At that time, S.I Nazrul instructed him to sign. He saw the money and signed the seizure list. During cross-examination, he stated that he is not aware, who recovered the money. P.Ws 2, 3, and 4 did not say that Mahbub and Abu Mia were detained on 15.11.2007 in the Police Fari. Although they signed the seizure list sitting in the Police Fari.

No explanation has been given by the prosecution as to why no addresses of Mahbub and Abu Mia were given in the charge sheet. Abu Mia and Mahbub were allegedly arrested and detained on

15.11.2007 at 2.00 pm in the office of the Kanchpur Highway Police Fari. Therefore, there is no scope to implicate the accused Md. Monirul Islam Monir in a case registered in the month of October 2007 with Sonargaon Police Station for illegal proposal of the payment of bribe. I am of the view that there is no existence of said Mahbub and Abu Mia. They are fake persons.

P.W. 9 admitted that Abu Mia and Mahbub are not accused of this case. During cross-examination, a suggestion was given to P.W. 10 that the accused was arrested from the bus of Meghla Paribohan near the Highway Tropical Shoe Factory situated beside the Dhaka-Sylhet Highway, which has been denied by P.W. 10. The defence suggested to P.W. 10 that he is not aware of the fact that the accused Md. Monirul Islam Monir is an employee of Biplob Enterprise who was an agent for selling SIMs of Grameenphone. He also denied the suggestion that at the time of searching, Tk. 1,00,000, sale proceeds of the sim, kept in the bag of the accused was recovered and the accused refused to pay the said amount for which he was detained and taken to the Police Fari. It is found that Mahbub and Abu Mia are fake persons, and there is no existence of Sonargaon PS Case No. 68(10)2007. Abu Mia and Mahbub are also not the accused in this case. Therefore, the prosecution's case that the accused had given an illegal proposal of bribe to P.W. 10 to illegally release Mahbub and Abu Mia is a got-up and afterthought story, and the accused is an innocent person, and he was falsely implicated in the case by P.Ws 9 and 10 creating a false, got-up and afterthought story.

Public servants discharged their holy duty on behalf of the state. In the instant case, P.Ws 9 and 10 created an untrue and afterthought story falsely implicating the accused in the case to misappropriate the sale proceeds of the SIM amounting to Tk. 100,000 recovered from his possession. Thereby, P.Ws 9 and 10 committed serious misconduct, falsely implicating the accused in a

false case. Therefore, a departmental proceeding should be initiated against them for committing misconduct.

P.W. 6 Khondaker Md. Shafiqul Alam, the then Officer-in-Charge, Sonargaon Thana, P.W. 7 Md. Younus Ali, another Officer-in-Charge of Sonargaon Thana, and P.W. 8 Md. Mazharul Karim, S.I of Sonargaon Thana, were the Investigating Officers of the case. Since the alleged offence is a scheduled offence under the ACC Act, the case was sent to the Anti-Corruption Commission, and P.W. 5 K.M Misbah Uddin, the then Assistant Director, Anti-Corruption Commission, Combined District Office, Dhaka-2, was appointed as Investigating Officer of the case. During cross-examination, P.W. 5 K.M. Misbah Uddin admitted that he did not investigate the case, and perusing the documents submitted by the previous Investigating Officers, he submitted the charge sheet. In the charge sheet, it has been mentioned that Mahbub and Abu Mia were accused of Sonargaon PS Case No. 68(10)2007, which has no existence. P.W. 5 K.M. Misbah Uddin submitted charge sheet against the accused, making a false statement in the charge sheet that Mahbub and Abu Mia are accused of Sonargaon PS Case No. 68(10)2007, without giving any address of those persons in the charge sheet.

It is already found that there is no existence of Mahbub and Abu Mia, and they are fake persons. I am of the view that P.W. 5 K.M. Misbah Uddin failed to discharge his official duty following the law, and he submitted charge sheet against innocent accused Md. Monirul Islam Monir without investigation of the case and committed serious misconduct.

The evidence discussed hereinabove depicts that the accused Md. Monirul Islam Monir is an innocent person, and he was falsely implicated in the case by P.Ws 9 and 10, creating an untrue and afterthought story.

The trial Court is not a machinery of conviction. A Court is not legally empowered to pass any judgment and order of conviction

carelessly without applying the judicial mind. All trial judges should consider the evidence of the prosecution witnesses carefully. In the instant case, the trial Court totally failed to consider that there is no existence of Mahbub and Abu Mia, and the accused Md. Monirul Islam Monir was falsely implicated in the case.

The impugned judgment and order of conviction and sentence passed by the trial Court against the accused Md. Monirul Islam Monir is hereby set aside.

The IGP, Police, is directed to initiate departmental proceedings against P.W. 9 Md. Touhidul Islam, the then Assistant Superintendent of Police, B-Circle, Narayanganj and P.W. 10 S.I. Md. Nazrul Islam (retired), the then Sub-Inspector of Police, Sonargaon Thana, Narayanganj, who falsely implicated the innocent accused Md. Monirul Islam Monir in the case.

The Chairman, Anti-Corruption Commission, is also directed to initiate departmental proceedings against the Investigating Officer P.W. 5 K.M Misbah Uddin, the then Assistant Director, Anti-Corruption Commission, Combined District Office, Dhaka 2 who submitted charge sheet against the accused Md. Monirul Islam Monir without investigation of the case.

The order passed by the trial Court confiscating Tk. 1,00,000 recovered from the possession of the accused Md. Monirul Islam Monir is hereby set aside.

The trial Court is directed to allow the accused Md. Monirul Islam Monir to withdraw Tk. 1,00,000.

I find merit in the appeal.

In the result, the appeal is allowed with the above directions.

However, there will be no order as to costs.

Send down the lower Court's records at once.