

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 2289 of 2024

Md. Abdur Rahman

...Appellant

-Versus-

The State and another

...Respondents

Mr. Kawsar Mahmud, Advocate

...For the 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. A.K.M. Alamgir Parvez Bhuiyan, Advocate

...For the respondent No. 2

(ACC)

Heard on 28.05.2025, 29.06.2025, 01.07.2025 and
08.07.2025

Judgment delivered on 13.07.2025

The appellant Md. Abdur Rahman was convicted by Divisional Special Judge, Chattogram in Special Case No. 12 of 2021 by impugned judgment and order dated 10.03.2024 under section 161 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947, and he was sentenced to suffer rigorous imprisonment for 3(three) years and fine of Tk. 1,00,000 (one lakh), in default, to suffer rigorous imprisonment for 3(three) months under each section, which will run concurrently.

The prosecution's case, in short, is that the accused Md. Abdur Rahman was the Kanango (In-Charge), Office of the Assistant

Commissioner of Land, Moheshkhali, Cox's Bazar. P.W. 2 Sekandar Badsha filed an application on 27.10.2019 to the Director, Anti-Corruption Commission, Divisional Office, Chattogram, which was recorded as E/R No. 149/2019. During the enquiry of the said E/R, it is found that Nazir Ahmad and Albela Khatun, parents of P.W. 2 Sekandar Badsha, obtained settlement of 20 decimals of land of BS Khatian No. 01, BS Dag No. 3621 vide Settlement Case No. 10/2013-2014 dated 23.07.2018. The parents of P.W. 2 Sekandar Badsha became sick, for which he filed an application to the AC Land, Moheshkhali, for mutation of the said land, but the accused Abdur Rahman, Kanango (In-Charge) of the said office, on different pretext, delayed submitting the report regarding the mutation. Subsequently, he met the accused Abdur Rahman, and he demanded Tk. 20,000 for submitting the report. He expressed his inability to pay the money. Finding no other alternative on 13.10.2019, he paid Tk. 2,500 as bribe to the accused Abdur Rahman, but he refused to accept the money and instructed him to pay Tk. 20,000, failing which he would not submit the report. Again, he expressed his inability to pay the said amount. Under the above circumstances, he filed an application to the ACC regarding the demand for bribe of Tk. 20,000 to the Director, Anti-Corruption Commission, Divisional Office, Chattogram. After that, on 27.10.2019, P.W. 2 Sekandar Badsha went to the office of the Anti-Corruption Commission, Combined District Office, Chattogram-2, and in the presence of 02 witnesses 1. Abul Mansur and 2. Md. Nurul Islam prepared a list of inventory of 20 notes of Tk. 1,000. As First Class Officer, witness Fakhrul Islam countersigned the list of inventory, and the said notes were again handed over to P.W. 2 Sekandar Badsha. On 27.10.2019, Director Md. Mahmud Hasan, Anti-Corruption Commission, Divisional Office, Chattogram, formed a five-member committee headed by informant Md. Humayun Kabir, Assistant Director, Anti-Corruption Commission, Combined District Office, Chattogram-2, and 2. Raton Kumar Das, Assistant Director, 3.

Md. Riaz Uddin, Sub-Assistant Director, 4. Md. Sharif Uddin, Sub-Assistant Director and 5. Mohammad Golam Mostafa, Constable, Anti-Corruption Commission, Combined District Office, Chattogram-2, were the member of the trap team. Subsequently, the Commissioner (Investigation), Anti-Corruption Commission, on 27.10.2019, gave approval to conduct the trap. On 28.10.2019 at 11.00 am was fixed to conduct the trap. At 4.45, the accused Md. Abdur Rahman received Tk. 20,000 from P.W. 2 Sekandar Badsha, and instantaneously, the members of the trap team entered the office of the accused Md. Abdur Rahman and recovered Tk. 20,000 from the 1st drawer of the table of the accused in the presence of witnesses and P.W. 1 Md. Humayun Kabir seized those notes that are identical to the notes mentioned in the list of inventory. The members of the trap team also recovered Tk. 1,88,500 from a CAT Brand Navy Blue handbag used by the accused kept on his chair. The accused could not give any explanation regarding the valid source of Tk. 1,88,500. It has been alleged that he received the said amount as bribe from different persons.

P.W. 11 Md. Zafor Sadek Shibly, Sub-Assistant Director, ACC, Combined District Office, Chattogram-2 was appointed as Investigating Officer vide memo dated 29.10.2019. During the investigation, he visited the place of occurrence, prepared the sketch map and index, and recorded the statements of witnesses. During the investigation, he was transferred. After that, P.W. 13 Muhammad Mahbubul Alam was appointed as Investigating Officer of the case by the Anti-Corruption Commission, Combined District Office, Chattogram vide memo dated 31.12.2019. During the investigation, he also recorded the statement of witnesses, perused the inventory, and the seizure list. After completing the investigation, he found prima facie truth of the allegation made against the accused and submitted the memo of evidence on 30.09.2020. After getting approval, he submitted the charge sheet on 03.11.2020 against the

accused Md. Abdur Rahman under section 161 of the Penal Code, 1860, and section 5(2) of the Prevention of Corruption Act, 1947.

After that, the case record was sent to the Senior Special Judge, Cox's Bazar, who took cognizance of the offence against the accused and sent the case to the Divisional Special Judge, Chattogram, and the case was registered as Special Case No. 12 of 2021. During trial, charge was framed against the accused under section 161 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947, which was read over and explained to him, and he pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 13(thirteen) witnesses to prove the charge against the accused, and the defence cross-examined those witnesses. After examination of the prosecution witnesses, the accused was examined under section 342 of the Code of Criminal Procedure, 1898, and at the time of examination of the accused under section 342 of the Code of Criminal Procedure, 1898, he submitted a written statement.

P.W. 1 Md. Humayun Kabir, Deputy Director, ACC, Head Office, Dhaka is the informant. He stated that on 27.10.2019, while he was discharging his duty as Assistant Director, ACC, Combined District Office, Chattogram-2, one Sekandar Badsha filed a written complaint against the accused Md. Abdur Rahman, Kanango (In-Charge), Moheshkhali to the Director, Divisional Office, Chattogram. The said complaint was registered on 27.10.2019 as ER No. 149/2019. In the complaint petition, it has been alleged that the accused Abdur Rahman demanded Tk. 20,000 as bribe for recording 20 decimals of land in the name of his parents, who obtained settlement of the land from the government. On 27.10.2019, vide memo No. 1375, a proposal was sent for approval of the commission to conduct a trap. On the same date, the commission had approved for conducting the trap. On 27.10.2019, the complainant P.W. 2 Sekandar Badsha went to the office of the ACC, Chattogram, along with 20

notes of Tk. 1,000, and at 12, in the presence of witnesses, a list of inventory was prepared. The Assistant Director, Md. Fakhruul Islam signed the said notes, and thereafter, the said 20 notes were handed over to the complainant Sekandar Badsha. On the same day in the afternoon, the members of the trap team started for Cox's Bazar, and at night, they visited the office of the AC Land, Moheshkhali. Thereafter, they went to Cox's Bazar and stayed there. On 28.10.2019, they reached the office of the AC Land, Moheshkhali, at 11 am. He instructed the complainant, Sekandar Badsha, to inform the trap team after handing over the bribe. At 04.45 pm, the accused handed over bribe amounting to Tk. 20,000 to the accused and informed the matter to members of the trap team. Instantaneously, the members of the trap team entered the office of the accused. The members of the trap team instructed the accused to open the drawer and found a bundle of Tk. 20,000 in the first drawer of the table used by the accused. He found that the recovered notes are identical to the notes mentioned in the list of inventory. They also found a Navy Blue (CAT Brand) handbag kept on the chair used by the accused and Tk. 1,88,500 was recovered from that bag. The accused could not give any satisfactory explanation regarding the source of the said money. The trap team also found the records of the mutation case on the table of the accused. On 28.10.2019 at 06.30 pm, he seized those alams in the presence of witnesses. He handed over the seized drawer to the custody of Chainman Chandu Pal of the said office. The accused Md. Abdur Rahman was handed over to the police of Moheshkhali Thana. He proved the complaint filed by Sekandar Badsha as exhibit 1, which was registered as ER No. 149/2019, approval for conducting the trap as exhibits 2 and 2/1. He proved the list of inventory signed by him as exhibits 3 and 3/1. He proved the seizure list signed by him as exhibits 4 and 4/1. He proved the FIR signed by him as exhibits 5 and 5/1. He proved 20 notes of Tk. 1,000 mentioned in the list of inventory as material exhibit I series. He proved recovered Tk.

1,88,500 as material exhibit II series. He proved the seized handbag as material exhibit III. He proved the records of the mutation case as material exhibit IV. During cross-examination, he stated that the complaint had been filed for mutation before 4/5 months. The accused was assigned to submit the report regarding the mutation. He is not aware of the fact that 2 months before the occurrence, the mutation khatian was prepared. He could not say whether the BS Khatian No. 1528 was recorded in the name of the father of the complainant. He denied the suggestion that the accused did not demand the bribe of Tk. 20,000. The complainant visited their office on 27.10.2019. At the time of filing the complaint, he was present there. At that time, D.D. Mahbub and A.D Riazuddin were also present there. Inventory was prepared at 12 noon. He prepared the seizure list sitting in the office of the accused. At that time, Chandu Pal, an employee of the said office, and the local Kaisarul Islam were present there. The accused, Kaisarul, Chandu Pal, Nur Box, and he signed the seizure list. He denied the suggestion that after the beating, the signature of the accused was taken. He denied the suggestion that the accused was falsely implicated in the case.

P.W. 2 Sekandar Badsha is the complainant. He stated that his father obtained the settlement of 20 decimals of land from the government. He went to the office of the accused Abdur Rahman for mutation. He was the Kanango and Surveyor. He delayed the matter on different pretext. He paid Tk. 2,500 to the accused, but he returned the money. He demanded Tk. 20,000. Subsequently, on 27.10.2019, he went to the office of ACC and informed them about the demand for bribe amounting to Tk. 20,000 to the ACC. They prepared the inventory. On next day at 4/4.30 pm, he went to the office of the accused and handed over the said money to the accused. He kept the said money in his desk. At that time, the officers of ACC recovered the money. The ACC also found money in a bag kept on the chair used by the accused. The accused was arrested. He proved his

signature on as exhibit 3/2. He proved his signature on the complaint as exhibit 1/1. During cross-examination, he stated that his father Nazir Ahmmed, and mother Albela, got the settlement of the land. He filed an application for mutation. His father is sick. Before 5/6 months of the occurrence, he filed an application. He admitted that land was mutated in the name of his parents after the occurrence. He could not say whether the AC Land mutated the land on 15.09.2019. He also admitted that the complaint was written in the office of the ACC. He could not remember who wrote his complaint. He took the money after signing at 12 noon and stayed there till 1 pm. At 8/9 am, he went to the office of the AC Land and stayed there till Esha prayer. At 9 am, he entered the room of the accused. Many people were present in his room. Lastly, he entered the room of the accused at 4.30 pm. He did not see anyone except the staff in the room of the accused. He admitted that he came out, but there was pain in his leg. At the time of handing over the money to the accused, 3/4 staff of the office of the accused were present there. At that time, it was 4 pm. While he was sitting in the room, the officers of the ACC entered the room of the accused. At that time, there were many people.

P.W. 3 Chandu Pal is the Chainman of the Office of the AC Land, Moheshkhali. The accused Abdur Rahman was the Kanango and Surveyor of the said office. On 28.10.2019, he was sitting to the right side of the accused. At 4.30 pm, a disabled person, Sekandar Badsha, came to the accused. At that time, he handed over money to the accused. The accused kept the money in his drawer. Suddenly, 5/6 people entered the room of the accused. They were wearing the jacket of the ACC. They searched the drawer and found the money. They kept the money on the table of the accused. They also found the money in a bag kept on the chair of the accused. They also kept that money on the table. After counting, they found that Tk. 20,000 was recovered from the drawer and Tk. 1,88,500 was recovered from the bag. The recovered money was seized. He signed the seizure list. The

seized drawer was handed over to his custody. He proved his signature on the seizure list as exhibit 4/2. He took custody of the alamat and signed the jimmanama. He proved his signature on the jimmanama as exhibit 4/3. During cross-examination, he stated that the BS Khatian is known to him. After preparing the khatian, the order was passed, and thereafter, the mutation khatian was prepared. He is not aware whether the Mutation Khatian No. 1528 dated 15.09.2019 was prepared in the name of the father of the complainant. At that time, he and 8/9 other persons, including AC Land, were present, but AC Land was not present on that day. At 9.30 am, he went to the office and he stayed there till 6.30 pm. On that day, from lunch to afternoon, the accused received money from a person. The accused received the money from Sekandar Badsha. Sekandar Badsha entered the room of the accused at 4.30 pm. At that time, 5/6 people were also present there. The accused, Nur Box, Zafor Alam (Cleaner), and some other public were also present there. Sekandar Badsha entered the room at 2/2.30 pm. When the officers of ACC entered the room, he went out of the room. At 4.30 pm, officers of the ACC entered the room. At that time, he was also present there. After entering the room, there were total 9/10 persons. Total 6/7 persons from ACC were present there. The Officers of the ACC took his signature. He signed, sitting in the room of Nazir. 1 month and 4 days before, he joined the said office, and before that, the accused was also known to him. He denied the suggestion that there was an enmity between him and the accused or that the accused did not receive any money, or that he deposed falsely.

P.W. 4 A K M Kaisarul Islam Chowdhury is a local. He stated that on 28.10.2019 at 4.30 pm, he was present in the room of the accused Abdur Rahman. The officers of the ACC came there and recovered 20 notes of Tk. 1,000. He saw a disable person. He heard that his name was Sekandar Badsha. He also stated that Tk. 1,88,500 was recovered from the accused. In his presence, the money was

seized. He signed the seizure list. He proved his signature on the seizure list as exhibit 4/4. During cross-examination, he stated that he filed the case for corruption against Deputy Commissioner Ruhul Amin, Cox's Bazar. He denied the suggestion that he filed 20/30 cases in his locality. Sekandar Badsha was known to him. He entered the room of the accused at 2:30/3:00 pm and stayed there till 5/6 pm. At that time, the accused, Chandu, Nur Box, Sekandar Badsha were present there. Entering the room, he saw that Sekandar Badsha was sitting beside the accused. At that time, Sekandar Badsha was not known to him. He came back at 6 pm. He could not say whether Sekandar Badsha was present there till 6 pm. He did not see the accused to receive money. The officers of the ACC entered the room of the accused at 4.30 pm. At that time, 8/10 people were present there. The ACC took his signature on each page. He signed at 6/6.30 pm. At that time, DD Mahmud was present there, and other persons also signed the seizure list. Nazir and the accused used to sit beside each other. He denied the suggestion that he went along with the complainant to the office of the ACC or that he deposed falsely.

P.W. 5 Nur Box is a businessman. He stated that on 28.10.2019, he went to the office of the AC Land for khatian. He entered the room of the accused Abdur Rahman after 2 pm. After 15 minutes, the officers of the administration entered the room. He heard that money was recovered from the accused. He did not witness the recovery of money. He also did not see the money. He signed the papers at the instruction of the ACC. He proved his signature as Exhibit 4/5. He was declared hostile by the prosecution. During cross-examination, made on behalf of the prosecution, he stated that he was threatened to sign the paper. He left the office in the evening. He denied the suggestion that under the influence of the accused, he deposed falsely. During cross-examination on behalf of the defence, he stated that he signed at 4/4.30 pm. He was taken to the room of AC, Land at 2/2.30 pm. Mir Kashem Ali was also in the room. Nazir

Mridul Babu and Peon Jasim were also there. He signed, sitting in the office of the AC land at 5 pm. He affirmed that he did not see the occurrence.

P.W. 6 Abul Mansur is the Office Assistant of the Meteorology Department. He stated that on 27.10.2019 at 11.30 am, the office of the ACC instructed the office of the Local Meteorology Department to send a staff to the office of the ACC. Under the instruction of the head of the office at 11.45 am, he went to the 9th floor of the office of the ACC. He saw DAD Nurul Islam and 3/4 others in the room of Assistant Director Humayun Kabir. A list of inventory of 20 notes of Tk. 1,000 was prepared. He signed the list of inventory. He proved his signature on the inventory as Exhibit 3/3. During cross-examination, he stated that the head of the office, Mr. Asaduzzaman, instructed him to go to the ACC. No written order was passed. He returned from the office of the ACC at 12.10 p.m. At 12 noon, he signed. Nurul Islam also signed at that time. Fakhrul countersigned in his presence. He signed the written paper. The complainant Sekandar Badsha was present there. He denied the suggestion that no inventory was prepared, or he did not sign, or he did not see the money, or he deposed at the instruction of the ACC.

P.W. 7 Nurul Islam is the Assistant Director, Combined District Office, ACC, Chattogram-2. He stated that on 27.10.2019, he was posted as Sub-Assistant Director of the ACC, Combined District Office, Chattogram-1. At the instruction of the Head of the office, he went to the room of AD Humayun Kabir. Sekandar Badsha produced 20 notes of Tk. 1,000, and Humayun Kabir prepared the inventory and signed. AD Fakhrul countersigned, and he signed the inventory. The notes were handed over to the Sekandar Badsha. He proved his signature as Exhibit 3/4. During cross-examination, he stated that DD Lutful Kabir Chandon was the Head of the Combined District Office-1, Chattogram. He entered the room at 11.50 am and came back at 12.30 pm. He signed at 12 noon. He counted the notes. He denied the

suggestion that no inventory was prepared or that he did not sign or that he did not see the money, or that he deposed falsely.

P.W. 8 Md. Riaz Uddin is the Assistant Director, ACC, Combined District Office, Cox's Bazar. He stated that on 27.10.2019, he discharged his duty as Sub-Assistant Director, ACC, Combined District Office, Chattogram-2. On that day, Sekandar Badsha made a written complaint, and the Director sent the complaint to the Combined District Office, Chattogram-2, for necessary action. A trap team was formed, and the Commission had approved. On 27.10.2019, he was a member of the trap team. On that day at 12 noon, the complainant handed over 20 notes of Tk. 1,000, and AD Humayun Kabir prepared the inventory. Fakhurul Islam, Officer of ACC, countersigned the notes. The notes were handed over to the complainant. On that day, they started for Moheshkhali. After visiting the Land Office, Moheshkhali, they stayed at Cox's Bazar at night. On 28.10.2019 at 11 am, they reached the Land Office, Moheshkhali. At 4.45 pm, the accused Abdur Rahman received the bribe. Instantaneously, they entered the room of the accused. At that time, Tk. 20,000 was recovered from the drawer of the accused. The notes were mentioned in the list of inventory. They searched a handbag kept on the chair of the accused and found Tk. 1,88,500. At 6.30 pm, AD Humayun Kabir seized money and the mutation khatinan and arrested the accused. During cross-examination, he stated that Humayun Kabir, Raton Kumar, Sharif Uddin, Constable Mostafa, and he were members of the trap team. On 27.10.2019 at 11.45, he entered the room of Humayun and he came out of the room at 12.10 noon. Abul Mansur, Nurul Islam, and Humayun Kabir signed the inventory. He did not see any public except Sekandar Badsha in the room. At 11 am, he went to the place of occurrence. He did not see that the accused received the bribe. The members of the trap team entered the office of the accused. At that time, 3/4 people were present in the room of the accused. Kaisarul, Chand Gopal, Nur Box, and Sekandar Badsha were

present there. He denied the suggestion that no occurrence took place, as stated by him.

P.W. 9 Raton Kumar Das was tendered by the prosecution and declined by the defence.

P.W. 10 Md. Fakhrul Islam is the Deputy Director, ACC, Head Office, Dhaka. He stated that on 27.10.2019, he was posted as Assistant Director of ACC, Combined District Office, Chattogram-1. On that day at 11.45 am, at the instruction of the head of the office, he went to the room of the Assistant Director, ACC, Combined District Office, Chatogram-2. At that time, complainant Sekandar Badsha handed over 20 notes of Tk. 1,000, and Humayun Kabir made the inventory of the said notes. He signed the notes. He proved his signature. He stated that he signed each note. During cross-examination, he stated that Nurul Islam was also present at the time of the inventory. Subsequently, Nurul Islam went there. He came out of the room at 12.05 p.m. He countersigned at 12.01 or 12.02.

P.W. 11 Md. Zafor Sadek Shibly is the Investigating Officer. He stated that on 29.10.2019, he was discharging his duty as Sub-Assistant Director, ACC, Combined District Office, Chattogram-2. He was appointed as Investigating Officer. He proved the letter of appointment as exhibit 6. During the investigation on 03.11.2019, he visited the place of occurrence, prepared the sketch map, and index. He proved the same as exhibits 7 and 7/1. He recorded the statements of Chandpal and Nur Box. On 11.11.2019, he recorded the statements of Sekandar Badsha and Kaisarul Islam. After that, he was transferred. On the date of occurrence, Raton Kumar, Riaz Uddin, Sharif Uddin, and Golam Mostafa went to the place of occurrence. He visited the place of occurrence twice on 03.11.2019 and 11.11.2019. He did not investigate regarding the handing over the charge of surveyor. He affirmed that, sitting in the office of the AC Land, he recorded the statement of witnesses. He did not cite the AC Land as a

witness. He denied the suggestion that he did not visit the place of occurrence, or that he did not make any investigation.

P.W. 12 Mohammad Golam Mostafa is the Investigating Officer. He stated that on 27.10.2019, he was selected as a member of the trap team. On that day, the complainant, Sekandar Badsha, presented 20 notes of Tk. 1,000 in the office of the ACC. The Assistant Director Humayun Kabir made the inventory of those notes. The Assistant Director Fakhrul Islam countersigned the notes. Thereafter, the notes were handed over to the complainant. On that day at noon, they started from the office and visited the office of the AC Land, Moheshkhali, at night and stayed at Cox's Bazar at night. On 28.10.2019 at 10.00 am, he went to the office of the AC Land, Moheshkhali. On that day at 04.45 pm, the accused Abdur Rahman received Tk. 20,000 from the Sekandar Badsha. Sensing the signal of the complainant, the members of the trap team entered the room of the accused and recovered Tk. 20,000 from the upper drawer of the table used by the accused. They also found a bag on the chair used by the accused and found Tk. 1,88,500 in the said bag. At 6.30 pm, the head of the trap team, Humayun Kabir, seized that money. The accused was handed over to the Moheshkhali Thana. During cross-examination, he stated that he did not sign the inventory and the seizure list. The place of occurrence is the tinshed office of AC Land. There are 4-5 rooms in the tinshed. There was a nameplate beside the room of the accused. He used to sit alone in his room. Before entering the room of the accused, he took his position beside the room of the accused. The complainant entered the room before 01 hour of their entry. The head of the trap team entered the room first, and the others entered the room following the head of the trap team. At that time, except the accused, no other persons were present there. He did not hear any conversation between the accused and Sekandar Badsha. He did not see that the accused received the money or kept the money in

the drawer. He denied the suggestion that he did not visit the office of the AC Land, Moheshkhali.

P.W. 13 Muhammad Mahbubul Alam is the Investigating Officer of the case. He stated that after the investigation, he submitted the charge sheet. He took up the investigation of the case on 31.12.2019. He recorded the statement of Md. Fakhrul Islam, Md. Nurul Islam, Mohammad Golam Mostafa, Raton Kumar Das, Mohammad Riaz Uddin, Md. Sharif Uddin, Abul Mansur, and the informant Humayun Kabir. He perused the inventory and the seizure list. During the investigation, he found the truth of the allegation made against the accused and submitted charge sheet. He proved his appointment as exhibit 8. During cross-examination, he stated that the room of the accused and AC Land were different. He did not enter the room of the AC Land. None of the Investigating Officers recorded the statement of AC Land. At the relevant time, no one was posted as Kanango. The accused was the Surveyor. He is not aware whether there was more than one surveyor in the said office. Before 4-5 months of the occurrence, the complainant applied for mutation. The AC Land passed an order directing the accused to submit the report. Subsequently, he stated that he did not make any enquiry regarding this matter. He saw the order of the AC Land. The application for mutation filed 4/5 months ago is not available with the seized document (material exhibit IV). There was an order of the AC Land for creating a separate khatian. He is not aware whether the Khatian No. 1528 was prepared in the name of Nazir Ahmad and his wife. He admitted that he could not identify the persons from whom the accused received a bribe. The nathi No. 1081(1)/19 is the seized record of the case. The AC Land and Kanango were not cited as witnesses in the case. He denied the suggestion that the accused did not receive any bribe or that he deposed falsely.

Learned Advocate Mr. Kawsar Mahmud appearing on behalf of the appellant submits that the proceeding of the trap was initiated

without any approval of the Commissioner under Rule 16 of the Anti-Corruption Commission Rules, 2007 and the alleged occurrence took place on 28.10.2019 and the 20 decimals of land was recorded in the name of the parents of the complainant P.W. 2 Sekandar Badsha on 15.09.2019 by the AC Land and the prosecution failed to prove that the AC Land directed the accused to submit report regarding the mutation of the said land and no official work was pending to the accused Md. Abdur Rahman at the time of the alleged occurrence. He further submits that except P.W. 3 Chandu Pal, Chainman of the AC Land, Moheshkhali, none corroborated the evidence of P.W. 2 regarding the handing over bribe to the accused, although admittedly 7/8 persons, including the staff of the office of AC Land, were present there. P.W. 11 recorded the statement under section 161 of the Code of Criminal Procedure, 1898 of the witnesses sitting in the office of the AC Land, but the AC Land, Moheshkhali, and the Kanango were not examined in the case. Having drawn the attention of this Court to the evidence of P.W. 13, the learned Advocate submits that the informant did not identify the person from whom the accused allegedly received the bribe amounting to Tk. 1,88,500 and he illegally seized Tk. 1,88,500 belonged to the accused, collected by selling the gold of his wife for purchasing the land from his brother. He also submits that there is a contradiction in the evidence of the prosecution witnesses regarding the handing over bribe by P.W. 2, and the prosecution failed to prove the charge against the accused beyond all reasonable doubt, and the trial Court, without correct assessment and evaluation of the evidence of the prosecution witnesses, illegally passed the impugned judgment and order. He prayed for setting aside the impugned judgment and order passed by the trial Court.

Learned Advocate Mr. A.K.M. Alamgir Parvez Bhuiyan, appearing on behalf of the respondent No. 2 (ACC), submits that the trap proceeding was initiated with the approval of the Director of the

ACC, Combined District Office, Chattogram, and subsequently Commissioner (Investigation) also approved, and the members of the trap team recovered Tk. 20,000 received by the accused from the first drawer of the table used by the accused, handed over by P.W. 2 Sekandar Badsha for giving a report regarding mutation of the 20 decimals of land in the name of the parents of P.W. 2 Sekandar Badsha. The evidence of P.W. 2 regarding handing over bribe is corroborated by P.Ws 1, 8, 9, and 12, and the prosecution proved the charge against the accused beyond all reasonable doubt and the trial Court, on correct assessment and evaluation of the evidence of the prosecution witnesses, legally passed the impugned judgment and order. He prayed for the dismissal of the appeal.

I have considered the submissions of the learned Advocate Mr. Kawsar Mahmud, who appeared on behalf of the appellant, and the learned Advocate Mr. A.K.M. Alamgir Parvez Bhuiyan, who appeared on behalf of the respondent No. 2 (ACC), perused the evidence, impugned judgment and order passed by the trial Court, and the records.

On perusal of the evidence, it appears that P.W. 2 Sekandar Badsha filed an application to the Director, Anti-Corruption Commission, Divisional Office, Chattogram, regarding the demand of bribe amounting to Tk. 20,000 by the accused Md. Abdur Rahman, Kanango (In-Charge), AC Land, Moheshkhali. The said application was registered as ER No. 149 of 2019 on 27.10.2019 (exhibit 1). In the said application, it has been alleged that on 13.10.2019, he paid Tk. 2,500 to the accused in his office, but he returned the said amount and demanded Tk. 20,000, failing which he would not submit the report. After that, Md. Mahmud Hasan, Director Anti-Corruption Commission, Divisional Office, Chattogram, by office order dated 27.10.2019, formed a five-member trap team headed by P.W. 1 informant Md. Humayun Kabir and P.Ws 1, 8, 9, 12, and Constable No. 419 Mohammad Golam Mostafa were members of the trap team,

and they conducted the trap. In the said order, there is a column of the approving authority, but there is no signature of the approving authority i.e Commissioner (Investigation) on the office order dated 27.10.2019. No order of the Commissioner (Investigation) is proved regarding the approval of the trap team. Therefore, I am of the view that there was no approval of the Commissioner (Investigation), ACC regarding the conducting trap against the accused Md. Abdur Rahman under Rule 16 of the Anti-Corruption Commission Rules, 2007.

P.W. 2 stated that his parents obtained settlement of 20 decimals of land from the government, and he went to the office of the accused Md. Abdur Rahman. He did not make any statement that he filed any application to the AC Land, Moheshkhali. During cross-examination, P.W. 13 affirmed that the application filed before 4/5 months of the occurrence for mutation is not available with the seized records (material exhibit IV). In the absence of any application for mutation of the land of the parents of the accused, it cannot be said that P.W. 2 applied for mutation of the land of his parents to the AC Land. The alleged occurrence took place on 28.10.2019. The AC Land, Moheshkhali, passed an order on 05.09.2019 for creating a separate khatian in the name of the parents of the P.W. 2 Sekandar Badsha. Therefore, it is crystal clear that no official act was pending to the accused on 28.10.2019 to be discharged by him regarding the mutation of the land of the parents of P.W. 2.

The prosecution proved the office order dated 05.09.2019 as material exhibit IV. On perusal of the said order dated 05.09.2019 passed by the AC Land, Moheshkhali, it reveals that the Kanango was directed to create a separate khatian in the name of Nazir Ahmed and others. No order has been passed by the said AC Land directing the Kanango to submit any report. Therefore, the statement made by P.W. 2 that the accused demanded bribe of Tk. 20,000 for giving a report regarding mutation of the land in the name of his parents is untrue.

On scrutiny of the evidence of P.W. 2, it reveals that no date has been mentioned by P.W. 2 as to the demand of bribe by the accused for submitting the report. P.W. 2 stated that on 28.10.2019 at 4/4.30 pm, he handed over the bribe to the accused, and thereafter, the members of the trap team, i.e, P.Ws 1, 8, 9, 12, and Constable Mohammad Golam Mostafa entered the room of the accused and recovered Tk. 20,000 from the first drawer of the table used by the accused. P.W. 12 Mohammad Golam Mostafa stated that when the members of the trap team entered room of the accused, except the accused, none was present in his room, Presence of P.W. 3 in the room of the accused before entering the members of the trap team is excluded by P.W. 12.

P.W. 1 stated that the complainant P.W. 2 Sekandar Badsha handed over Tk. 20,000 at 4/4.30 pm and came out of the room of the accused and informed the trap team about the handing over bribe. P.W. 2 stated that at 4/4.30 pm, he handed over the bribe to the accused, and he kept the money in his drawer, and the officers of the ACC recovered the said amount. P.W. 2 did not corroborate the evidence of P.W. 1 that after handing over bribe, he came out of the room and reported the matter to the trap team. Except P.W. 3, none of the officials and the locals who were present at the time of alleged handing over bribe to the accused and recovery of the alleged money from the drawer of the table used by the accused corroborated the evidence of P.W. 2. There is also contradiction in the evidence of P.Ws 1, 8, 9 and 12 regarding the handing over and recovery of the alleged money from the first drawer of the table used by the accused. There is no scientific proof regarding the recovery of alleged bribe money from possession of the accused Md. Abdur Rahman.

At this stage, it relevant here to rely on a decision made in the case of Mirza Saifur Rahman vs The State and another passed in Criminal Appeal No. 5788 of 2024, judgment dated 14.01.2025, in which, this bench (Md. Shohrwardi, J) has held that;

“A trap is a pre-planned proceeding. Nowadays science has developed to its highest pick. The audio and video evidence is available everywhere and it is very easy to take the audio or video or picture of any trap proceeding. Therefore, at the time of conducting the trap, the members of the trap team should record the entire trap proceeding in a video or audio or picture. No audio, video, picture or any scientific proof regarding the handing over bribe of Tk. 2,00,000 by P.W. 4 to accused Mirza Saifur Rahman was proved. No phenolphthalein powder test or latest print test of the alleged A-4 khaki envelope (material exhibit-I) wherein Tk. 2,00,000 (materials exhibit-II & III) were kept by the accused Mirza Saifur Rahman is done in the instant case. It is unsafe to convict a person in a trap case without scientific proof.”

P.W. 11 stated that he recorded the statement of witnesses sitting in the office of the AC Land, Moheshkhali, but he was not cited as a witness in the case. None of the staff of the AC Land, except P.W. 3, corroborated the evidence of P.W. 2 regarding the handing over bribe and the recovery of the money from the possession of the accused. Furthermore, P.W. 12 excluded the presence of P.W. 2 in the room of the accused at the time of alleged handing over bribe. At the time of examination of the accused under section 342 of the Code of Criminal Procedure, 1898, he stated that there was an enmity with P.W. 3 Chainman Chandu Pal regarding the taking over charge of the Kanango. Furthermore, P.W. 4 A K M Kaisarul Islam Chowdhury, who was present at the time of handing over the alleged bribe, stated that he did not see the handing over bribe by P.W. 2 to the accused Md. Abdur Rahman. The accused also stated that he collected Tk. 1.88,500 by selling the gold of his wife to purchase the land from his brother. P.W. 13 stated that he did not find the persons

who handed over the bribe amounting to Tk. 1,88,500 to the accused. In the absence of any evidence regarding the payment of bribe amounting to Tk. 1,88,500 to the accused, I am of the view that the statement made by the accused at the time of examination under section 342 of the Code of Criminal Procedure, 1898 regarding false implication cannot be ruled out.

The evidence discussed hereinabove depicts that before the alleged occurrence on 28.10.2019, the land was mutated by order dated 05.09.2019 by the AC Land, Moheshkhali in the name of parents of P.W. 2 Sekandar Badsha and no order was passed by the AC Land, Moheshkhali directing the accused to submit a report regarding the mutation of the land of the parents of P.W. 2. I am of the view that no official act was pending on 28.10.2019 to the accused to be discharged by him. Therefore, the defence case that the accused was falsely implicated at the instance of P.W. 3 cannot be ruled out.

In view of the above evidence, facts and circumstances of the case, findings, observation, and the proposition, I am of the view that the prosecution failed to prove the charge against the accused Md. Abdur Rahman beyond all reasonable doubt. The trial Court failed to assess and evaluate the evidence of the prosecution witnesses and without considering the statement made by the accused at the time of examination under section 342 of the Code of Criminal Procedure, 1898 arrived at a wrong decision as to the guilt of the accused and illegally passed the impugned judgment and order.

I find merit in the appeal.

In the result, the appeal is allowed.

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

The seized Tk. 1,88,500(one lakh eighty eight thousand five hundred) forfeited by the trial Court is released from the forfeiture.

The trial Court is directed to hand over Tk. 1,88,500(one lakh eighty eight thousand five hundred) to the accused Md. Abdur Rahman, within 30(thirty) days from the date of filing the application by the accused Md. Abdur Rahman, if any.

Tk. 20,000(twenty thousand) allegedly recovered from the accused is forfeited by this Court. The trial Court is directed to deposit seized Tk. 20,000(twenty thousand) in the public exchequer.

However, there will be no order as to costs.

Send down the lower Court's records at once.