

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 6464 of 2024

In the matter of:

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

And

In the matter of:

Nil Baran Tripura

...Convict-Appellant

-Versus-

The State and another

...Respondent

Mr. Tapash Kumar Biswas with
Mr. Pratikar Chakma, Advocates

...For the Appellant

Mr. S.M. Iqbal Bahar Bhuiyan, Advocate

...For the Respondent No.2

Mr. Md. Mizanur Rahman, D.A.G and
Mr. Md. Sirajul Karim, A.A.G

... For the State

**Heard on: 18.06.2026, 14.07.2026 , 06.09.2026,
and 09.09.2026**

Judgment on: 14.09.2026

This appeal, preferred under Section 10 of the Criminal Law Amendment Act, 1958 is directed against the judgment and order dated 30.03.2022 passed by the learned Special Judge, Sylhet in Special Case No. 12 of 2011 arising out of Chatak Police

Station Case No. 07 dated 14.04.2010 corresponding to G.R. No. 87 of 2010 convicting the appellant under Section 161 of the Penal Code along with Section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him to suffer rigorous imprisonment for 03 (three) years under Section 161 of the Penal Code and 03 (three) years under Section 5(2) of the Prevention of Corruption Act, 1947 with a fine of Taka 69,000/- in default to suffer imprisonment for 06(six) months as well. Both sentences were directed to run concurrently.

The facts, relevant for disposal of the appeal, in short, are that one S.U.M. Ruhul Amin, Assistant Settlement Officer, Chatak, Sunamgonj lodged a First Information Report (FIR) against Nil Baran Tripura, the then Record Keeper with the Chatak Police Station, Sunamgonj, alleging *inter alia* that the informant had been serving as an Assistant Settlement Officer at the Upazila Chatak Settlement Office, Sunamgonj. The accused served as Record Keeper in the said settlement office from 09.10.1991 to 15.09.2009 and thereafter upon his transfer served at the Bogura Zone Settlement Office. Based on allegations made by witnesses Nos. 1-8 in the FIR, the informant caused an inquiry to be conducted into the said allegations and upon completion

thereof submitted a report on 27.10.2009. Thereafter, based on the said inquiry report, the informant lodged the FIR alleging *inter alia* that during his tenure of service from 09.10.1991 to 15.09.2009, the accused had forged the signature of the informant, issued purportedly false notices and used false appeal numbers and case receipts in respect of witness Nos. 1-8. The inquiry further disclosed that the said case numbers and notices had not been entered or registered in the relevant registers of the office. Witness No. 2 alleged that in 1998, the accused had received Taka 9,000/- from him for the purpose of correction of the relevant record. Similar allegations were made by other witnesses that the accused had received money as illegal gratification by issuing false case receipts and notices. It was alleged that when the witnesses appeared before the office of the informant pursuant to such notices and case receipts, they came to learn that no corresponding entries existed in the official register of the office. The officers and witnesses allegedly came to suspect that the accused issued such false notices and case receipts in consideration of illegal gratification and had thereby misappropriated a huge amount of money. It was further revealed that the accused had issued many forged appeal case numbers by

forging the signatures of the concerned officers, including the informant during his tenure of service. The accused had tampered with many *khatians* (records) maintained in the settlement office by incorporating false names and false plot numbers therein. Furthermore, allegations were made that he had removed many case records and other official documents. In consequence of the aforesaid allegations, the informant lodged the case with the Chatak Police Station. Accordingly, Case No. 7 dated 14.04.2010 was instituted under Sections 406/409/420/467/468 and 471 of the Penal Code, read with Section 5(2) of the Prevention of Corruption Act, 1947.

Thereafter, the police sent the said FIR to the Anti-Corruption Commission, District Office, Sylhet for investigation, whereupon the investigating officer took up the investigation of the case. In the courses of investigation, the investigating officer seized certain documents from the office on 22.06.2010, 23.06.2010 and 05.07.2010, respectively.

On closure of the investigation and after obtaining the approval of the Anti-Corruption Commission, Md. Shamsul Alam, Assistant Director of the Anti Corruption Commission, Combined District Office, Sylhet submitted Charge Sheet No. 275 dated

28.12.2010 against the accused under Section 161 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

Subsequently, the case was transferred to the learned Senior Special Judge, Sunamgonj where it was registered as Special Case No. 12 of 2011. On 13.03.2011, the learned Senior Special Judge, Sunamgonj took cognizance of the offence. Subsequently, the learned Special Judge, Sunamgonj transmitted the case record to the learned Special Judge, Sylhet. Thereafter, the learned Special Judge, Sylhet framed charges against the accused under section 161 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 on 05.09.2012. The accused could not be examined as he remained absconding.

In the course of the trial, 13 prosecution witnesses were examined. The accused could not be examined under Section 342 of the Code of Criminal Procedure as he remained absconding.

Upon conclusion of the trial and hearing, the learned Special Judge, Sylhet convicted the accused under Section 161 of the Penal Code and Section 5(2) of the Prevention of Corruption Act and sentenced to suffer rigorous imprisonment for 03 (three) years under Section 161 of the Penal Code and to suffer rigorous

imprisonment for 03(three) years under Section 5(2) of the Prevention of Corruption Act, 1947 along with a fine of Taka 69,000/-. Both sentences were directed to run concurrently.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence, the convict-appellant preferred this Criminal Appeal before this Court.

Mr. Tapash Kumar Biswas, learned Advocate appearing on behalf of the appellant contends that no witness established or proved that the accused received any bribe or illegal gratification.

He further contends that the informant lodged the case against the accused merely to exculpate themselves.

He further submits that PW 6 is the informant but failed to prove the First Information Report (FIR). In his testimony, he deposed a version distinct from and unsupported by the contents of the FIR.

He next submits that there are material contradictions and inconsistencies in the evidence adduced by the prosecution witness. The accused served in the settlement office for more than 20 years, during which period no allegations of illegal gratification were brought against him. The allegations were leveled only after his transfer.

He argues that the trial was conducted in *absentia* without proper issuance or service of summons or process upon the accused.

He finally prays for allowing the appeal and for setting aside the judgment and order of conviction and sentence.

Per contra, Mr. S.M. Iqbal Bahar Bhuiyan, learned Advocate appearing on behalf of the Respondent No. 2, contends that the convict-appellant was a public servant and was not entitled to demand or receive any illegal gratification other than legal remuneration.

He further contends that the prosecution witnesses proved that the accused by illegal means and by abusing his position as a public servant obtained pecuniary advantages. Thus, he committed offences punishable under Section 161 of the Penal Code and 5(2) of the Prevention of Corruption Act, 1947.

He next submits that the accused served in the Chatak Settlement Office, Sylhet from 09.10.1991 to 15.09.2009. It is alleged that in Chatak area BS survey commenced in 1996 and allegations were filed against the accused in 2007. So, it is not correct that the allegations were brought against the accused after his transfer.

He submits that the trial was lawfully conducted in *absentia* as he remained absconding which further demonstrates that the accused had a guilty mind. There is no procedural illegality or infirmity in the trial. Hence, the conviction and sentence ought to be sustained. Accordingly, he submits that the conviction and sentence imposed by the trial Court is lawful and proper and calls for no interference by this Court. Finally, he prays for the dismissal of the appeal.

I have considered the submissions of the learned Advocates for both sides, perused the impugned judgment and order passed by the trial Court and the materials on record.

For proper adjudication of the appeal and to analyse the facts, the evidence of the prosecution witnesses is being reviewed below:

PW 1, Md. Sad Ullah, Head Master of Bara Toka Government Primary School deposed that he instituted 3 appeals before the Chatak Settlement Office. The accused filled up the prescribed forms and collected money towards expenses. Nil Baran issued 3 receipts specifying appeal numbers. In fact, the appeals were never preferred or registered. He informed in writing to the Sylhet Zonal Office regarding the issuance of forged

numbers and submitted written allegations against the accused, Nil Baran Tripura.

PW 2, Matiur Rahman deposed that he approached the accused for correction of his land record. The accused provided him with appeal documents and notices, all of which turned out to be false or fictitious. In fact, no appeal had been preferred. The accused received costs from him and subsequently, left without taking any official step.

PW 3, Abul Kalam Azad deposed that the accused, Nil Baran received 40,000/- to Taka 45,000/- for filing an appeal. Subsequently, the accused became untraceable. Later, he learned that the higher authority lodged a case against the accused.

PW 4, Md. Cherag Ali deposed that accused Nil Baran received a sum of money in connection with filing an appeal and issued a case number. Subsequently, the settlement office was destroyed by fire. Later, he learned that the higher authority lodged a case against the accused.

PW 5, Md. Shamsul Alam, Investigating Officer deposed that he was entrusted with the investigation of the case. He recorded statements of the concerned witnesses under Section 161 of the Code of Criminal Procedure and seized relevant documents.

Investigation revealed that the accused, Nil Baran Tripura accepted illegal gratification by issuing false case numbers, receipts, and notices during his tenure from 01.10.1991 to 15.09.2009. Specifically, the accused received Taka 60,000/- from Abdul Matin Kachi Miah and Taka 9,000/- from Matiur Rahman. Thus, he committed offences punishable under Sections 161/420/467/468/471 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947. He submitted the Charge Sheet upon obtaining the sanction from the Anti-Corruption Commission. He proved this sanction letter as Exhibit 9.

PW 6, S.U.M. Ruhul Amin, the informant deposed that he served as Assistant Settlement Officer before 14.04.2010. The accused served as Record Keeper in his office from 09.10.1991 to 15.09.2009. During his service, he received illegal gratification from various persons to file appeals. He issued forged case numbers and receipts. Upon instruction from higher authorities, PW 6 lodged the case against the accused who had also forged his signature.

He proved the FIR as Exhibit 10.

PW 7, S.M. Mozzemel Haque deposed that he served as Deputy Assistant Settlement Officer before 04.07.2010. The

accused served as Record Keeper from 09.10.1991 to 15.09.2009 during which time he accepted illegal gratification and issued fictitious case numbers and receipts. He also forged the signature of the Assistant Settlement Officer. The Assistant Settlement Officer subsequently lodged the case against the accused.

PW 8, Md. Abul Khair deposed that he served as Peshkar-in- Charge. He is a seizure list witness. He proved the seizure lists as Exhibits 2, 7 and 8.

He deposed that the accused received illegal gratification from numerous individuals.

PW 9, Md. Delwar Hossain deposed that the Investigating Officer seized certain documents. He proved the seizure list as Exhibit 7 and *Jimmanama* as Exhibit 8.

PW 10, Md. Abdus Sattar deposed that he served as Surveyor. The Investigating Officer seized certain documents from Peshkar Abul Khayer in his presence.

He proved the seizure list as Exhibit 7 and *Jimmanama* as Exhibit 8.

PW 11, Md. Sana Ullah and PW 12, Md. Soleman were tendered by the prosecution.

PW 13, Md. Abdul Mannan deposed that on 05.07.2010, the investigating officer seized a few documents and placed him under his custody. He proved the documents as Material Exhibit V.

Upon evaluation of the evidence of PW 1, (Md. Sad Ullah) it appears that he failed to state whether he personally paid any bribe and the quantum of money paid to the accused. Even, he failed to state the date time or place of such payment or filing of the appeal. Thus, his evidence lacks specific, actionable allegations against the accused. The evidence may raise suspicion regarding the regularity of the transactions, but it falls short of establishing, with the requisite degree of certainty, the demand or acceptance of illegal gratification by the appellant.

Upon scrutiny of the evidence adduced by PW 2, Matiur Rahman, it appears that he failed to specify any exact sum allegedly received by the accused. Although the FIR mentions that the accused-appellant took Taka 9,000/-, but this assertion has not been substantiated through oral evidence. PW 2 failed to mention the date, time and place of the alleged payment of Taka 9,000/-. The mere presence of an allegation in the FIR cannot take the place of substantive evidence in establishing the fact alleged.

Similarly, the contents of the FIR are not corroborated by the testimony of PW 3, namely Abul Kalam Azad who failed to state the date, time and place of the alleged transaction. He deposed in his examination-in-chief that “আসামী নীল বরন আমার কাছ থেকে ৪০/৪৫ হাজার টাকা নেয় ৩১ ধারায় আপীল করার জন্য। পরবর্তীতে আসামীকে আর পাওয়া যায় নাই। পরবর্তীতে গুনি আসামীর উদ্বর্তন অফিসার তার বিরুদ্ধে মামলা করিয়াছে।”

It appears from the above-mentioned evidence that the witness did not state the precise amount allegedly paid. The date and time of alleged receipt of money was not stated. No other prosecution witness has corroborated the material allegation. The FIR also does not contain any specific allegation regarding receipt of money by the appellant from the said Abul Kalam Azad (PW3). Such material omission assumes significance when the prosecution seeks to establish a specific act of acceptance of illegal gratification.

PW4 likewise failed to depose as to the specific sum allegedly paid to the accused and no prior complaint had been lodged by him before any competent authority regarding the alleged demand or acceptance of an illegal gratification. Thus, his evidence also does not furnish sufficiently specific proof of the essential element of acceptance of illegal gratification.

The Investigating Officer (PW5) deposed that the accused received Taka 60,000/- from one Abdul Mukit Kachi Miah but he was not examined as a prosecution witness. However, in this regard, nothing was stated in the First Information Report. Moreover, no other prosecution witness corroborated that the accused took illegal gratification from Abdul Mukit Kachi Miah. No satisfactory explanation has been offered for withholding this material witness, particularly when the Investigating Officer relied upon the alleged payment of Taka 60,000/- as an incriminating circumstance against the appellant.

The evidence of the Investigating Officer as to what he learnt during investigation cannot, by itself, prove the fact of payment of alleged illegal gratification by the appellant. Such evidence, insofar as it merely reproduces information allegedly received from an unexamined person, cannot constitute substantive proof of the alleged transaction.

It is thus apparent from an overall assessment of the prosecution evidence that the allegations regarding illegal gratification remain substantially uncertain and uncorroborated. The prosecution witnesses have not consistently specified the

amount allegedly paid, the date and place of such payment, the circumstances in which the demand was made, or the particular official act for which the gratification was allegedly demanded or accepted. The evidence regarding forged notices, fictitious case numbers and irregularities in official records may create a degree of suspicion against the appellant, but suspicion, however grave, cannot take the place of proof beyond reasonable doubt.

It is also significant that the prosecution case itself attributes several acts to the appellant extending over a considerable period of time. Yet the evidence led at trial does not satisfactorily connect any particular alleged receipt of illegal gratification with a particular official act performed or intended to be performed by the appellant. The prosecution was required to establish the charge by reliable and legally admissible evidence and not merely by the cumulative effect of allegations, official irregularities and suspicion.

The trial Court, in convicting the appellant, appears to have attached considerable significance to the allegation that the appellant remained absconding during the trial. Such conduct, however, cannot independently furnish a safe basis for conviction.

The record indicates that the appellant had joined in the Settlement Office on 14.11.1988. He had served at the Chatak Settlement Office from 09.10.1991 to 15.09.2009. Thereafter, he had been transferred to Zonal Settlement Office, Bogura, when he joined on 18.10.2009. He served there until 24.12.2021, when he retired from service. Meanwhile, the informant lodged the FIR against the accused-appellant on 14.04.2010. It is the specific case of the appellant that neither the Investigating Officer nor the concerned office took effective steps to secure his presence from his known place of employment or residence.

The record, as placed before me, does not demonstrate that any warrant of arrest was executed upon him at his place of service or that such effective process was served upon him there. There is also no material showing that proclamation under Section 87 of the Code of Criminal Procedure or the consequential proceeding contemplated under Section 88 thereof was duly undertaken against him.

In such circumstances, the mere fact that the appellant was not present during the trial cannot, without proof that he had knowledge of the proceeding and deliberately evaded it, be

converted into an incriminating circumstance. Absence from trial and conscious evasion of the process of law are not synonymous. The surrounding circumstances must establish that the accused was aware of the proceeding and intentionally avoided the process of the Court before any adverse inference can safely be drawn from such conduct.

The subsequent conduct of the appellant also assumes relevance. According to the materials on record, he came to know about the judgment on 05.09.2023, thereafter he surrendered before the trial Court on 03.10.2023 and subsequently preferred the present appeal. Such conduct is not wholly consistent with an inference that he had deliberately remained beyond the reach of law with knowledge of the pending trial. In any event, even if his absence during trial is taken into consideration, such circumstance cannot cure the fundamental deficiency in the substantive evidence relating to the alleged demand and acceptance of illegal gratification.

In this regard, reliance may be placed upon the decision passed in the case of *State Vs. Lalu Miah and another*, reported in 39 DLR(AD)(1987)117 wherein it has been held that:

‘Absconsion by itself is not an incriminating matter, for, even an innocent person, if implicated in the *ejahar* for a serious crime, sometimes absconds to avoid harassment during investigation by the police.’”

The significance of abscondence, therefore, depends upon the facts and circumstances of each particular case.

Similarly, in the case of *State Vs. Balai Chandra Sarker*, reported in 47 DLR(1995)467 wherein it has been held that:

“... abscondance cannot be presumption or inference of guilt without any supporting evidence or conclusive circumstance. From the conduct of a person for absconding after commission of the offence may sometimes be evidence to show that he was concerned with the offence. But it is usually a very small item in the evidence on which a conviction can be based.”

The prosecution must first establish substantive evidence connecting the accused with the offence.

It is also material that the prosecution has not produced the person from whom the alleged payment of Taka 60,000/- was said to have been received by the appellant, while the alleged payment of Taka 9,000/- attributed to PW2 has not been proved with the requisite specificity. The alleged payment of Taka 40,000/- to Taka 45,000/- spoken to by PW3 is likewise uncertain as to the precise amount, date, time and place of payment and remains uncorroborated. These deficiencies are not merely peripheral discrepancies; they go to the root of the prosecution case concerning the essential ingredient of acceptance of illegal gratification.

It is a settled principle of criminal jurisprudence that where two views are reasonably possible on the evidence, the view favourable to the accused must prevail. More importantly, before a person can be convicted, the prosecution must establish the charge beyond reasonable doubt by legally admissible, reliable and convincing evidence. The Court cannot sustain a conviction

merely because the conduct of the accused appears suspicious or because certain irregularities are established in the official records.

Upon a careful and anxious consideration of the entire evidence on record, I find that the prosecution has failed to prove beyond reasonable doubt that the appellant demanded or accepted illegal gratification as alleged. The evidence regarding the alleged payments is vague, inconsistent, uncorroborated or based upon information not proved through the persons concerned. The evidence concerning forged notices, fictitious case numbers and irregularities in the official records, even if accepted, does not by itself establish the charge under Section 161 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

In view of the foregoing discussion, I am of the considered opinion that the trial Court failed to appreciate the evidence in its proper perspective and that the conviction is not founded upon evidence of such quality as would satisfy the standard of proof required in a criminal case and the judgment and thus the order of conviction and sentence cannot be sustained in law and is liable to be set aside.

I find merit in the appeal and substance in the submission advanced by the learned Advocate appearing on behalf of the appellant.

In the result, the appeal is allowed.

The judgment and order dated 30.03.2022 passed by the learned Special Judge, Sylhet in Special Case No. 12 of 2011 arising out of Chatak Police Station Case No. 7 dated 14.04.2010 corresponding to G.R. No. 87 of 2010 is hereby set aside.

The appellant is acquitted of the charge levelled against him.

The convict-appellant is released from his bail bond.

Let the judgment along with the Lower Court Records (LCR) be communicated to the Court concerned forthwith.

(Md. Bashir Ullah, J.)