

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

**Present:**

**Mr Justice Md. Bashir Ullah**

**Criminal Appeal No. 6828 of 2025**

**In the matter of:**

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

**And**

**In the matter of:**

Joarder Elias Rahman

...Convict-Appellant

-Versus-

The State and another

...Respondent

Mr. Mohammad Shishir Manir, Senior Advocate  
with

Mr. Mohammad Abdul Wadud, Advocate

...For the Appellant

Mr. S.M. Iqbal Bahar Bhuiyan, 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: 23.04.2026, 27.04.2026,  
28.04.2026 , 29.04.2026, 30.04.2026,  
03.05.2026, 06.05.2026 and 11.05.2026**

**Judgment on: 20.05.2026**

This appeal, preferred under Section 10 of the Criminal Law Amendment Act, 1958 is directed against the judgment and order dated 29.09.2025 passed by the learned Special Judge, Court No. 5, Dhaka in Special Case No. 6 of 2016 arising out of Special Metro Case No. 448 of 2015 which originated from Mohammadpur Police Station Case No. 4 dated 02.12.2013 corresponding to DUDOK G.R. No. 116 of 2013 convicting the appellant under Sections 409 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him to suffer rigorous imprisonment for 07(seven) years with a fine of Taka 16,35,500/- (Sixteen lac thirty five thousand and five hundred).

The facts relevant for disposal of the appeal, in short, are that on 02.12.2013, A.H.M. Manjur Kader Khan, Branch Manager, Standard Bank Limited, Mohammadpur Branch, Dhaka, lodged a First Information Report (FIR) against one Md. Sumon Khan, contending, *inter alia*, that Mr Sumon Khan served as Assistant Officer (Cash) at their branch. While he was posted at the front desk of the branch he

induced several customers to apply for a debit cards. Subsequently, five customers, namely Md. Idrish Sheikh, Parul Ghosh, Ismail Hossain, Md. Faruk Hossain and Chayan Sengupta submitted written complaints alleging that they had never received their debit cards from the bank, yet an aggregate sum of Taka 16,07,000.50 had been unauthorisedly withdrawn from their accounts between 05.07.2013 and 24.10.2013. The complainants imputed this malfeasance to Md. Sumon Khan. Then the informant informed the higher authority of the matter and requested an investigation into the matter. An internal inquiry was conducted and Md. Sumon Khan was instructed to appear before the inquiry officer but he failed to appear. It was further revealed that he had previously misappropriated utility funds (electricity bill). Subsequently, on 07.10.2013, Md. Sumon Khan resigned from the service, but it was rejected, and he was summarily dismissed from service on 08.12.2013. The accused misappropriated Taka 16,07,000.50 from the bank. Acting on the directives of the bank authority

and pursuant to the inquiry report, PW-1 lodged a criminal case against Md. Sumon Khan alone.

During investigation, the Anti-Corruption Commission duly prepared separate seizure lists on 30.10.2014, 24.02.2015 and 01.03.2015, recovering various incriminating account statements, audit reports, debit cards and other internal bank registers.

On closure of investigation, PW-15, Shahidul Alam Sarkar, Deputy Assistant Director, Anti-Corruption Commission, Dhaka, submitted charge sheet No. 483 dated 25.10.2015 against 3 accused persons, including the appellant, under Sections 409/420/468/471 and 109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

Subsequently, the case was transferred to the learned Special Judge, Court No. 5, Dhaka, for trial and registered as Special Case No. 06 of 2016. The charges were framed under Sections 409/420/468/471 and 109 of the Penal Code with Section 5(2) of the Prevention of Corruption Act, 1947,

on 05.05.2016 against Md. Sumon Khan, Joarder Elias Rahman, while Abdullah Al Mamun was discharged.

In course of the trial, 15 prosecution witnesses were examined while the defence (accused Sumon Khan) examined one witness. The accused was examined under Section 342 of the Code of Criminal Procedure, when he repeated his innocence.

Upon conclusion of trial and hearing the parties the learned Special Judge, Court No. 5, Dhaka convicted the accused under Sections 409 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 and sentenced him to suffer rigorous imprisonment for 07(seven) years with a fine of Taka 16,35,500/- (Sixteen lac thirty-five thousand and five hundred) and acquitted the principal accused, Md. Sumon Khan by judgment and order dated 29.09.2025.

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 29.09.2025.

Mr. Md. Shishir Manir, the learned Senior Advocate, assisted by Mr Mohammad Abdul Wadud, Advocate appearing on behalf of the appellant, contends that the appellant is neither named in the FIR nor found blameworthy in the foundational internal audit and inquiry report. The entire matrix of initial allegations targeted Md. Sumon Khan.

He further contends that no prosecution witness testified that the appellant forged signatures, filled out the application forms and issued debit Cards to the customers or withdrew any money.

He next contends that after completion of the departmental inquiry, an FIR was lodged against Md. Sumon Khan, and he was dismissed from service. Taka 38,93,605/- was recovered from the account of Sumon Khan, and the bank authority instituted Money Suit No. 20 of 2023 for realization of misappropriated funds exclusively against Sumon Khan, but the trial Court acquitted him while convicted the appellant illegally. Abdullah Al Mamun was discharged at the time of charge framing.

Mr Manir argues that it is a settled principle of law that where there is similar or identical evidence of witnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. The appellant stands on better footing than Md. Sumon Khan, but the trial Court illegally convicted the appellant and acquitted Md. Sumon Khan ignoring the principle of parity. In support of his contention, he refers to the decisions passed in the case of *Yogarani vs. State by the Inspector of Police*, reported in AIR(2024)(SC)4641; *Shahin vs. The State*, reported in 19 SCOB (2024)148 and *Javed Shaukat Ali Qureshi vs State of Gujarat*, reported in AIR (2023)(SC) 4444.

He further contends that the investigating officer failed to conduct forensic comparisons of signatures on the debit card acknowledgement receipts. Furthermore, the designated custodian of the cards, PW-13, Shamin Ara Tania (General Banking in Charge), was not arraigned as an accused, demonstrating selective prosecution.

He next contends that an internal audit was conducted by the bank, but no allegation was brought against the appellant; rather, the audit team brought an allegation of misappropriation of funds against Md. Sumon Khan and the gross negligence of the branch manager. The manager was asked to explain about the negligence by issuing an office note dated 01.12.2013, but no explanation was asked from the appellant.

Mr. Shishir Manir further argues that the appellant and the branch manager forwarded the application for debit Cards to the Card division by putting joint signatures. The routine process of co-signing application forms alongside the branch manager was an administrative requirement and could not be construed as *mens rea* or criminal conspiracy. Finally, he prays for allowing the appeal.

*Per contra*, Mr S. M. Iqbal Bahar Bhuiyan, learned Advocate appearing on behalf of the respondent No. 2 (Anti-Corruption Commission), contends that the bank Manager was an ornamental post, all banking functions were operated by the second officer, and thus the appellant is liable for the

offence as he was authorised to keep all debit Cards under his custody and he was well aware of the incident.

He further contends that PW-1, PW-2, PW-3, PW-5, PW-6, PW-15 collectively proved that the appellant forwarded the “application for issuance of debit Card” to the Card Division, thereby facilitating the fraudulent chain.

He next submits that the departmental proceedings are distinct from criminal proceeding and do not hamper the criminal case.

Mr. Bhuiyan contends that financial fraud of this nature requires systemic connivance and the appellants’ endorsement on the applications evidenced a shared unlawful design.

He further contends that the manager and second officer (the appellant) were authorised to forward the application for issuance of a debit card, and they did so. Sumon Khan and other officers assisted the appellant and the branch manager.

He next contends that the decisions relied upon by the learned Advocate on behalf of the appellant are factually distinguishable and are not applicable in the instant case.

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 materials on record.

To consider the merit of the case and analyse the facts, let me visit the evidence of the prosecution witnesses.

PW-1, AHM Monzur Kader Khan, Branch Manager and informant, stated that he served as Manager from 14.01.2013 to 27.12.2013. At that time, Md. Sumon Khan served as Assistant Officer (Cash). Subsequently, he was posted to the front desk due to his misbehaviour. He was assigned to general banking and customer service. He motivated a few customers to take debit cards by taking such advantages. All customers liable Md. Sumon Khan was accused, and his name was mentioned to the bank authority.

He further stated that the accused Sumon Khan earlier misappropriated the funds of electricity bills and later he refunded the money on 27.03.2012, he submitted a resignation letter on 07.03.2010, but the authority did not accept the same.

In cross-examination, he stated that it is not a fact that Sumon Khan was not assigned the responsibility of debit card receipt, entry or activation and Sumon Khan maintained a secret delivery register. In cross-examination, he stated that the accused Joardar is continuing in service and there is no allegation against him in the departmental enquiry.

PW-2, Shahinur Md. Oliul Islam, who is a member of the Audit team, stated that the accused Md. Sumon Khan misappropriated Taka 16,07,000.50 by forging 5 debit cards.

He produced the Audit Report before the trial Court.

In cross-examination, he stated that during the investigation, it was not scrutinised as to which officers were assigned and responsible for issuing debit cards.

He stated in his cross-examination that during the investigation, he found specific proof against Sumon Khan

in the debit card fraud. He found the writing of Sumon Khan in the application for the debit card of Chayan Sen Gupta. He next stated that the cards were sent from the Card Division, Head Office, and those were received by Sumon Khan, through acknowledgment register.

PW-3, Md. Abu Sayeed, former manager, is the seizure list witness. He proved the seizure list as Exhibits 3 and 6.

In cross-examination, he stated that there is no name in Exhibit 5(ka) to 5(ja). He further stated that the desk officer processed the application for debit Card, second officer or assigned officer verified the signature. When the debit card reaches the branch, the second officer distributes the debit card. The manager finally approves.

He further stated that he did not know who forwarded the application for issuance of debit cards, and he did not know who verified it.

PW-4, Chayan Kumar Sengupta, a customer of the bank who deposed that he came to know from the bank on 08.10.2013 that Taka 13,50,486.44 was misappropriated from his account. He gave a written complaint to the

manager of the bank on 08.10.2013. The bank authority refunded the money which was misappropriated.

PW-5, S. Tanjim Hamid, Executive Officer of Standard Bank, who was a member of the inquiry committee. He deposed that they prepared the inquiry report. He proved the report as Exhibit 2.

In cross-examination, he deposed that Gouranga Babu filled out the debit card opening form of Chayan Babu. He found the signature of Chyan Babu in the debit card register. The manager kept the key to the vault with Tania Rahman. Sumon Khan filled out the form of Debit Card.

He stated in cross-examination that during the investigation, the officers of the bank stated that the accused, Sumon Khan, signed the application for debit card activation.

PW-6, Mostafizur Rahman, Head of Cards Division, stated that the debit card is a product of the branch. When the customer applies for a debit card, the branch manager sends the application with a recommendation to the Head Office.

PW-7, Md. Idrish, a customer of the Bank, stated that it was Md. Sumon Khan, who induced him to open the account. He did not receive a debit card from the bank. Sumon Khan received a photograph from him.

In cross-examination, he deposed that he gave a photograph and NID at the time of opening the account. Md. Sumon Khan induced him to open the bank account.

PW-8, Sabiha Islam, Senior Executive Officer, Standard Bank Limited, is seizure list witness. She proved the seizure list as Exhibit-3.

In cross-examination, she stated that she signed the seizure list at the instruction of the manager.

PW-9, Sabiha Mostafa, Senior Executive Officer, is also a seizure list witness. She proved the seizure list as Exhibit-5.

In cross-examination, she stated that she does not know about the preparation of cards.

PW-10, Sharmin Sirazi, Senior Executive Officer, is another seizure list witness. She proved the seizure list as Exhibit-5.

PW-11, Md. Kabir Uddin, Senior Executive Officer, is another seizure list witness. He proved seizure list as Exhibit-3.

He stated that, according to his present records, 4(ka) to 4(uma) were seized.

PW-12, Md. Shahabuddin Alam, Officer, Janata Bank Limited, stated that he served at the card division from 29.11.2012 to 02.12.2018. Abdullah Al Mamun activated the cards.

PW-13, Shamim Ara Tania, Senior Executive Officer, stated that one customer, namely Eva Akter, brought an allegation against Md. Sumon Khan.

In cross-examination, she stated that she did not know whether Eva Akter filed any case.

PW-14, Ashikul Haque Chowdhury, stated that he served as Assistant Officer. He is a seizure list witness. He proved his signature as Exhibit 6/2.

PW-15 Md. Shahidul Alam Sarker, the investigating officer, stated that he was assigned on 18.01.2025 to investigate the matter. He proved the application for debit

cards, forwarding the opinion of handwriting experts, and a photograph as Exhibit 8 series.

He also proved the signature cards of Md. Sheikh Idrish, Chayan Kumar Sen Gupta, Faruk Hosssain, Ismail Hossain Bhuiya and Parul Gosh as Exhibit- 9 series.

He stated that the manager and second officer forwarded the letter to the card division for issuing debit cards in the name of Sheikh Md. Idrish and 12 other persons.

He further stated that on 02.07.2013, Senior Officer Abdullah Al Mamun activated the alleged debit cards without verifying the signatures through Stealer Software.

He deposed that the accused Md. Sumon Khan, Joardar Eliash Rahman and Abdullah Al Mamun misappropriated Taka 16,35,500/- (Sixteen lac thirty-five thousand and five hundred) withdrawing from the five debit card accounts.

He proved the sanction letter as Exhibit-7.

In cross-examination, he stated that the application for a debit card of Chayan Sen Gupta was forwarded by the second officer, Joardar Eliash Rahman.

In cross-examination, he stated that Md. Sumon Khan operated an individual savings account where unexplained cash volumes totalling Taka 38,93,605.94 were found.

PW 2, Sahanur Md. Oliul Islam, a member of the audit team, produced the office note dated 01.12.2013 before the trial Court, which was marked as Exhibit 2, wherein it has been stated that "... Mr Sumon Khan is habitually immoral.

... it is evident that Mr Sumon Khan, Ex-Assistant Officer (Cash) of Mohammadpur Branch, had direct involvement in the debit card fraudulence. His abusive strategy of using goodwill and trust of Standard Bank Limited put the bank into heavy financial loss and created an image crisis in the eyes of the general people as well as in the eyes of society, which undoubtedly jeopardises the interest of the bank as a commercial entity. As such, management may dismiss Mr Sumon Khan, Ex-AO (Cash) of Mohammadpur Branch, from the services of SBL according to the Service Rules of Standard Bank Limited with effect from the date of his resignation, i.e. 07.10.2013. And Mr Sumon Khan may be instructed strictly by

forwarding an explanation letter to pay the total amount of fraudulence of Taka 16,35,500/- including up-to-date interest at the applicable rate by December 15, 2013. If it fails, we may take strong disciplinary action/legal action against him. Further, we may threaten him to forward a copy of disciplinary action/legal action to his present employer in the event of failing to pay the claimed amount, i.e. Taka 16,35,500/- with interest. Mr AHM Manzur Quader Khan, SVP and Manager of Mohammadpur Branch, may be called for an explanation for lack of awareness/lack of supervision on overall activities of the Branch.”

On perusal of Exhibit 2 (the internal Audit Report), it reveals that the investigative panel focused all blame directly upon Md. Sumon Khan.

It appears that PW-2, Sahanur Md. Oliul Islam, a member of the audit team, specifically opined that Sumon Khan forged the aforesaid 5(five) debit cards. In cross-examination, he stated that “ গ্রাহকদের লিখিত অভিযোগ ও ব্যাংকের কাগজপত্র পর্যালোচনায় দেখা যায় যে, আসামী সুমন খান, Assistant Officer (Cash) বর্ণিত ৫ জন গ্রাহকদের ডেবিট কার্ড জাল করে বর্ণিত পরিমাণ টাকা

আত্মসাৎ করেছে। উপরে বর্ণিত ৫ জন গ্রাহক তাদের বক্তব্যে আসামী সুমন খানকে কার্ড জালিয়াতির জন্য অভিযুক্ত করে আমাদের নিকট বক্তব্য দেয়। Audit কালে ঐ আসামীর বিরুদ্ধে নানা অসদাচরণের অভিযোগ আমরা পাই। In cross-examination he further deposed that “আমার তদন্তে আসামী সুমন খান Debit Card জালিয়াতি ইস্যু এর ক্ষেত্রে সুনির্দিষ্ট তথ্য প্রমাণ পেয়েছি। গ্রাহক চয়ন সেন গুপ্তের Debit Card সংক্রান্ত আবেদনপত্র আসামী সুমন খানের লেখা পেয়েছি। Head Office, Card Division থেকে Card গুলো কুরিয়ার সার্ভিসের মাধ্যমে Delivery দেওয়া হয়। আসামী সুমন খান Acknowledgment Register এ স্বাক্ষর করেন। আসামী সুমনকে জিজ্ঞাসাবাদ করেছিলাম। আসামী সুমন খান লিখিত বক্তব্য দিয়েছিল। Debit Card –Head Office থেকে আসার পর Vault এ রাখার কথা। কিন্তু তদন্তকালে সেটা আমরা পাইনি। Front Desk এর Drawer এর ভিতর পেয়েছি।”

Crucially, neither the audit text nor the testimonial depositions of PW 2 ascribe any active role, conspiracy or knowledge to the appellant. The internal report recommended the dismissal and financial prosecution of Md. Sumon Khan alone, while calling for a simple explanation from the Branch Manager for structural oversight.

PW-1, AHM Manzur Kader Khan, Informant and the branch manager of Standard Bank, deposed in his examination-in-chief that “সেই সমস্ত কারণে আমার পূর্ববর্তী ম্যানেজার তাকে (সুমনকে) সেখান থেকে বদলী করে Front Desk জেনারেল ব্যাংকিং এর দায়িত্ব দিয়ে Customer Service এর দায়িত্ব প্রদান করে। ঐ সুযোগে সে আমাদের বিভিন্ন গ্রাহককে ব্যাংক থেকে ডেবিট কার্ড নেয়ার জন্য উদ্বুদ্ধ করে।”

PW-15 in his examination-in-chief stated that “মামলাটি তদন্তকালে স্ট্যান্ডার্ড ব্যাংক লিমিটেড, মোহাম্মদপুর শাখা, ঢাকার এজাহার নামীয় এবং তদন্তে আগত আসামী সুমন খানের নামে পরিচালিত সঞ্চয়ী হিসাব নং ০৬৬৩৪০০০০৭৪ এর হিসাব বিবরণী পর্যালোচনায় দেখা যায় যে, উক্ত হিসাবে গত ২৯/১২/২০১১ খ্রিঃ হতে ০৯/০১/২০১৪ খ্রিঃ তারিখ পর্যন্ত ৩৮,৯৩,৬০৫.৯৪ টাকা জমা ও উত্তোলন হয়। উক্ত হিসাবে তার বেতন ভাতার টাকা ছাড়াও অন্যান্য টাকা জমা হয়। অন্যান্য কিসের টাকা উক্ত হিসাবে জমা প্রদান করেছেন তদন্তকালে উক্ত জমার ব্যাখ্যা দিতে পারেন নাই।”

PW-5, S. Tanjim Hamid, Senior Officer in cross-examination stated that “...তদন্তের সময় অন্যান্য অফিসাররা বলেছেন যে, আসামী সুমন খান মার্কেটিং এর সাথে জড়িত থাকায় বিভিন্ন debit Card Activation করার দরখাস্তে এই আসামী (সুমন খান) সই করত।”

PW-7, Md. Idrish, a customer of the bank deposed that “আমি Standard ব্যাংক, মোহাম্মদপুর শাখায় ২০১২ সনে একটি চলতি হিসাব

খুলি। মোঃ সুমন খান নামক এক ব্যক্তি আমাকে বার বার ঐ শাখার হিসাব খুলতে বলায় আমি ২০১২ সনে ঐ হিসাব খুলি। আমি ব্যাংক থেকে কোন Debit Card নেই নাই বা ব্যবহার করি না। সুমন খান Debit Card এর জন্য আমার ১ কপি ছবি চেয়ে নেয়। আমি কার্ড এর জন্য কোন দরখাস্ত করি নাই বা উহা পাই নাই।”

Md. Sumon Khan was dismissed from his service of the bank on 08.12.2013 after receiving the inquiry report, which is the internal audit report. It reveals that Standard Bank Limited, Mohammadpur Branch, Dhaka, accepted Sumon Khan's guilt and instituted Money Suit No. 20 of 2023 before the Senior Assistant Judge, 1<sup>st</sup> Court, Dhaka, exclusively against Md. Sumon Khan for realization of misappropriated Taka 16,35,500/- which is pending.

In view of the above, it is evident that Md. Sumon Khan committed the offence, but the trial Court arbitrary acquitted him of the offences alleged. 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. The Court should not convict one accused and acquit the other 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.”

The present appellant stands on an incomparably better footing than the acquitted co-accused Md. Sumon Khan. 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.

It appears from the judgment that C.I.D opined that there is no signature of the aforesaid 5 customers in the acknowledgement receipts, however unfortunately, the

investigating officer failed to obtain a forensic examination to ascertain whether the signatures appearing on the disputed documents were made by the officers of Standard Bank, Mohammadpur Branch including the appellant. So, it was not possible to ascertain who received the debit cards. In the absence of such forensic link, the chain of custody and authorship of the forged documents remains incomplete.

In the job description, the responsibility of issuing debit cards was assigned to the General Banking In-Charge, Senior Officer, Shamim Ara Tania, but she was not arraigned as an accused in the instant case but was examined as PW-13. The findings of the trial Court are as follows:

“ডেবিট কার্ডের প্রাপ্তি স্বীকারপত্রে গ্রাহক মোঃ শেখ ইদ্রিস, পারুল ঘোষ, ইসমাইল হোসেন, মোঃ ফারুক হোসেন এবং চয়ন কুমার সেনগুপ্ত এর স্বাক্ষর নেই মর্মে সিআইডি হতে মতামত নেওয়া হলেও উক্ত স্বাক্ষর স্ট্যান্ডার্ড ব্যাংক, মোহাম্মদপুর শাখায় কর্মরত কোন কর্মকর্তার কিনা উহা যাচাই করার জন্য তদন্তকারী কর্মকর্তা কোন পদক্ষেপ গ্রহন করেননি। ফলে ডেবিট কার্ডসমূহ গ্রাহক মোঃ শেখ ইদ্রিস, পারুল ঘোষ, ইসমাইল হোসেন, মোঃ ফারুক হোসেন এবং চয়ন কুমার সেনগুপ্ত এর পরিবর্তে কোন ব্যক্তি গ্রহণ করেছে উহা নির্ণয় করা যায়নি। আবার Job Description সংক্রান্ত অফিস অর্ডার অনুসারে জেনারেল ব্যাংকিং ইন

চার্জ সিনিয়র অফিসার শামীম আরা তানিয়া ডেবিট কার্ড ইস্যু করার দায়িত্বে থেকে সঠিকভাবে তার দায়িত্ব পালন না করা সত্ত্বেও তদন্তকারী কর্মকর্তা বিস্ময়করভাবে তাকে এ মামলার আসামী করেননি।”

PW-5, S. Tanjim Hamid, Senior Officer, in cross-examination stated that তর্কিত শাখায় কর্মরত অফিসার গৌরাজ বাবু গ্রাহক চয়ন বাবুর debit card opening form পূরণ করে দেন। However, the said Gouranga Babu was not made accused or prosecution witness.

He further stated in his cross-examination that the Manager kept the key of the vault to the Senior Officer, Tania Rahman. He stated that “ব্যাংকিং প্রাকটিস অনুসারে ম্যানেজার, 2<sup>nd</sup> Officer এবং Cash in Charge এর কাছে যৌথভাবে ভল্টের চাবি থাকার নিয়ম। ম্যানেজার সাহেব নিজে চাবি Carry করতেন না। তিনি উহা তানিয়া রহমান নামক একজন সিনিয়র অফিসারের কাছে রাখতেন। উহা authorized ছিল না। ঐ ব্যাপারে জিজ্ঞাসা করা হলে ম্যানেজার সাহেব কোন সদুত্তর দিতে পারেন নাই। মেইল রেজিস্ট্রারে inward and outward তিনি Follow করতেন না। Debit Card রাখার জন্য কোন authorized officer ছিল না। উহা Joint Custody ভল্টে রাখা হতো। সাধারণত Card activation করার আগে তা Verify করে প্রধান কার্যালয়ে পাঠানোর কথা থাকলেও ম্যানেজার সাহেব তা করেন নাই।”

PW-15, investigating officer in his examination-in-chief stated that “কার্ড ডিভিশনের তৎকালীন সিনিয়র অফিসার জনাব আব্দুল্লাহ আল মামুন হিসাবধারীর প্রাপ্তি স্বীকারপত্রের স্বাক্ষর নমুনা স্বাক্ষরের সাথে স্টিলার সফট ওয়ারের মাধ্যমে পরীক্ষা/যাচাই না করেই এবং টেলিফোন/মোবাইলে গ্রাহকের সাথে কোন প্রকার যোগাযোগ ছাড়াই গত ০২/০৭/১৩ খ্রি. তারিখ মোঃ ইদ্রিস শেখ নামীয় ডেবিট কার্ড, ২১/০৭/১৩ খ্রি. তারিখ পারুল ঘোষ এর নামীয় ডেবিট কার্ড, ১৯/০৭/১২ খ্রি. তারিখ ইসমাইল হোসেন ভূইয়ার নামীয় ডেবিট কার্ড, ১১/০৭/১২ খ্রি. তারিখে ফারুক হোসেন নামীয় ডেবিট কার্ড এবং ১০/০৭/২০১৩ ইং তারিখে চয়ন কুমার সেনগুপ্ত এর নামীয় ডেবিট কার্ড এক্টিভেটেড করেন।”

It is evident from the above-mentioned testimony that the investigating officer conceded that the card division official Abdullah Al Mamun, who was discharged on 05.05.2016 at the stage of framing of charge, activated those fraudulent debit cards using specialised stealer software without conducting basic verification of client signature or completing telephone verifications.

The trial Court opined that Abdullah Al Mamun illegally activated the cards. It opined in its judgment that “পি.ডব্লিউ-১৫-এর অকাট্য সাক্ষ্য হতে প্রমাণিত হয় যে স্ট্যান্ডার্ড ব্যাংকের প্রধান শাখার কার্ড ডিভিশনের সিনিয়র অফিসার জনাব আব্দুল্লাহ আল মামুন অন্যায়াভাবে

ও আইন বহির্ভূতভাবে তার দায়িত্ব যথাযথভাবে পালন না করে গ্রাহক মোঃ শেখ ইদ্রিস, পারুল ঘোষ, ইসমাইল হোসেন, মোঃ ফারুক হোসেন এবং চয়ন কুমার সেনগুপ্ত-এর নামীয় ভুয়া ডেবিট কার্ডসমূহ বেআইনীভাবে সচল (activate) করেছিলো।

নথি হতে দৃষ্ট হয় যে, আসামী আব্দুল্লাহ আল মামুনকে এ আদালতের ০৫/০৫/২০১৬ খ্রি. তারিখের আদেশে অব্যাহতি প্রদান করা হলেও কোন এক অজ্ঞাত কারণে দুদকের তৎকালীন পাবলিক প্রসিকিউটর উক্ত আদেশের বিরুদ্ধে মাননীয় হাইকোর্ট বিভাগে রিভিশন দায়েরে কোন ব্যবস্থা গ্রহণ করেননি।”

The trial Court also opined that “ডেবিট কার্ডের জন্য কোন আবেদন না করা সত্ত্বেও তারা আবেদন করেছে মর্মে উল্লেখ করে ০৫ টি জাল ডেবিট কার্ড আবেদন ফরম (ATM/DEBIT CARD APPLICATION FORM) সৃজন করে তারা ডেবিট কার্ড গ্রহণ করেছে মর্মে তাদের স্বাক্ষর জাল করে ০৫ টি জাল প্রাপ্তি স্বীকারপত্র (ACKNOWLEDGEMENT SLIP) সৃজন করে তাদের ভুয়া ডেবিট কার্ড বিতরণ করতঃ উক্ত কার্ডসমূহ এক্টিভেইট করে উক্ত কার্ডসমূহের মাধ্যমে তাদের একাউন্ট হতে ১৫/১১/১২ খ্রি. হতে ২৪/১০/১৩ খ্রি. সময়ের মধ্যে ১৬,৩৫,৫০০ (ষোল লক্ষ পঁয়ত্রিশ হাজার পাঁচশত) টাকা উত্তোলনে ব্যাংকের মোহাম্মদপুর শাখার ম্যানেজার এএইচএম মঞ্জুর কাদের, ২য় কর্মকর্তা আসামী জোয়ারদার ইলিয়াস রহমান, জেনারেল ব্যাংকিং ইন চার্জ ও ডেবিট কার্ড

ইস্যু করার দায়িত্ব প্রাপ্ত সিনিয়র অফিসার শামিম আরা তানিয়া ও কার্ড ডিভিশনের কর্মকর্তা আব্দুল্লাহ আল মামুন জড়িত ছিলো।”

The trial Court also opined that “তবে আসামী জোয়ারদার ইলিয়াস রহমান এককভাবে তার হস্তলিপিতে উক্ত ০৫ টি জাল ডেবিট কার্ড আবেদন ফরম (ATM/DEBIT CARD APPLICATION FORM) ও ০৫ টি জাল প্রাপ্তি স্বীকারপত্র (ACKNOWLEDGEMENT SLIP) সৃজন করেছে মর্মে প্রমাণিত হয়নি। ফলে আসামী জোয়ারদার ইলিয়াস রহমানের বিরুদ্ধে উক্ত জাল কাগজপত্র সৃজন করা প্রতারণার উদ্দেশ্যে ব্যবহার করার অভিযোগ তথা পেনাল কোডের ৪৬৮ ধারার অভিযোগ সন্দেহাতীতভাবে প্রমাণিত হয়নি।

আসামী জোয়ারদার ইলিয়াস রহমান একজন ব্যাংকের কর্মকর্তা হয়ে ব্যাংকের ০৫ জন গ্রাহকের নামে ভুয়া ডেবিট কার্ড বিতরণ দেখিয়ে তাদের একাউন্ট হতে ১৬,৩৫,৫০০ (ষোল লক্ষ পঁয়ত্রিশ হাজার পাঁচশত) টাকা উত্তোলন করতঃ আত্মসাতে জড়িত ছিলো মর্মে প্রমাণিত হওয়ায় আসামী প্রতারণার আশ্রয় নিয়ে উক্ত টাকা গ্রহণ করেছে মর্মে দাবী করার সুযোগ নেই। ফলে ইহা সুস্পষ্ট যে প্রসিকিউসনপক্ষ আসামী জোয়ারদার ইলিয়াস রাহমান-এর বিরুদ্ধে পেনাল কোড এর ৪২০/৪২১ ধারার অভিযোগ প্রমাণ করতে সক্ষম হয়নি।”

It appears that 05(five) debit cards were issued in the name of Md. Sheikh Idrish, Parul Gosh, Ismail Hossain, Md. Faruk Hossain and Chayan Sen Gupta and those who used and misappropriated Taka 16,35,500/-. It appears from the

record that the Bank Authority has already refunded the misappropriated money to the customers, as admitted by PW-15.

Exhibit- 8 provides that there is no signature as dealing officer or authorized signature but the form was forwarded to the card division from Mohammadpur branch.

Exhibit-5 provides that the application for debit cards was forwarded by the joint signature of the Manager and Second Officer. P.W-5, in his cross-examination, stated that the Manager kept the key of the vault with the Senior Officer, Tania Rahman. However, the Manager was not made accused.

It appears from the record that the appellant is still in service and no allegation was found against the appellant in the Departmental proceeding. PW-1, the informant in his cross-examination deposed that “এই আসামী এখনও আমাদের ব্যাংকে চাকুরীরত আছেন। বিভাগীয় তদন্তে তার বিরুদ্ধে কোন অভিযোগ প্রতিষ্ঠিত হয় নাই।” This is validated and corroborated by certificate dated 13.03.2016 issued by the Executive Vice President and Head of HRD of Standard Bank Limited which states as follows:

**“To Whom It may Concern**

This is to certify that Mr. Joarder Elias Rahman has been serving in SBL since 01 July 1999. Presently, he is working at Head Office, Recovery Division as FAVP. As per the internal inquiry report dated 27.10.2013 on Debit Card fraud at Mohammadpur Branch, Dhaka, he was not found involved in the said fraud incident. In this regard, no departmental or disciplinary action whatsoever has been initiated or is pending against him. Moreover, no records of misconduct or fraudulent activities have been found against him so far as his service to the bank is concerned.”

In view of facts unveiled I come to conclude that the appellant’s sole alleged overt act was the joint signing of the application forms for debit cards alongside the Branch Manager, as a routine administrative requirement for forwarding documents to the Card Division. An act performed in the ordinary course of banking business, without any independent evidence of knowledge of forgery or conspiracy, cannot constitute the *mens rea* required for an offence under Section 409 of the Penal Code. Criminal

intent cannot be inferred from the mere discharge of an administrative formality.

The prosecution has failed to prove the guilt of the appellant beyond a reasonable doubt. The judgment of the trial Court suffers from a patent illegality by convicting the appellant while acquitting the principal accused, Md. Sumon Khan, in violation of the settled principle of parity. The appellant's act was part of routine administrative functions, unsupported by any evidence of criminal conspiracy, fraudulent intent or direct participation in the alleged misappropriation. The investigation was incomplete, lacking forensic verification of signatures and the prosecution was selective, failing to arraign key responsible officers.

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 29.09.2025 passed by the learned Special Judge, Court No. 5, Dhaka, in Special

Case No. 6 of 2016 arising out of Mohammadpur Police Station Case No. 4 dated 02.12.2013 corresponding to DUDOK G.R No. 116 of 2013 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)***