

Present
Justice Sk. Tahsin Ali

Criminal Appeal No. 7712 of 2014

Md. Omar Faruk
.....Convict-Appellant

-Versus-
The State and others
----- Respondents

Mr. Mokarramus Saklan with
Mr. Sk Siraj Uddin, Advocates
.... for the convict-appellant

Mr. Md. Omar Farook, Senior Advocate
.... For the Anti-Corruption
Commission

Mr. Md. Mizanur Rahman, DAG with
Mr. Md. Ahidul Islam, AAG
Mr. Abdullahil Maruf Fahim, AAG
Ms. Nasima Khatun, AAG
----- For the State

**Heard on: 19.05.2026, 21.05.2026,
08.06.2026, 23.06.2026, 24.06.2026,
25.06.2026, 28.06.2026, 05.07.2026,
12.07.2026, 16.07.2026, 23.07.2026,
28.07.2026, 04.08.2026, 16.08.2026 and
Judgment on: 10.09.2026**

This appeal was directed against the judgment and order of conviction and sentence dated 23.10.2014 passed by the learned Special Judge (in charge), Lalmonirhat in Special Session Case No. 02 of 2012 arising out of Aditmari Police Station Case No. 08 dated 12.01.2011 corresponding to G.R. No. 08 of 2011(Adit), convicting the appellant under Section 409 of the

Penal Code and sentencing him to suffer rigorous imprisonment for a period of 5(five) years and pay a fine of Tk. 50,000/- (fifty thousand) in default to suffer simple imprisonment for 3(three) months more and also convicted under Section 5 of the Anti-Corruption Commission Act, 1947 and sentencing him to suffer further imprisonment for a period of 2(two) years and fined at tk. 20,000/-(twenty thousand) in default to suffer simple imprisonment for a period of 1(one) month more and also directed to convict-appellant to despoil worth at tk. 4,12,750.94 only in the Government Treasury within the period of 6(six) months from the date of executing warrant of conviction and both sentence to be run concurrently.

The prosecution case, in brief, is that Md. Amber Ali, Post Office Inspector, Lalmonirhat Sub-Division, lodged a written complaint alleging that Md. Omar Faruk, Postal Operator and Additional Duty Upazila Post Master, Aditmari Upazila Post Office, was entrusted with the charge of the said office during the leave of the regular Upazila Post Master, Md. Ekramul Haque. On 11.01.2011, after Ekramul Haque resumed office and requested Omar Faruk to hand over charge, and he assured him that he would do so later in the day but thereafter remained absent.

Subsequently, an inventory was conducted at the post office, when a shortage of Tk. 13,12,750.94 was detected against the expected cash balance. It was alleged that Omar Faruk, while entrusted with the government money, had dishonestly misappropriated the said amount and absconded. On such allegation, Aditmari Police Station Case No. 17 dated 12.01.2011 was instituted against him under section 409 of the Penal Code and section 5 of the Prevention of Corruption Act, 1947.

After investigation submitted charge sheet being No. 148 on 15.12.2011 under section 409 of the Penal Code read with section 5(2) of the Anti-Corruption Act, 1947 against the appellant.

The learned Special Judge, Lalmonirhat accepted the police report transferred the record to the Sessions Judge for trial and renumbered as Special Case No. 02 of 2012 and sent the record to the Special Judge, Lalmonirhat.

The learned Special Judge, Lalmonirhat framed charge against the appellant. On 23.10.2014 the learned trial court passed the judgment convicting the appellant under Section 409 of the Penal Code read with Section 5(2) of the Anti-Corruption Act, 1947.

Being aggrieved by the judgment and order dated 23.10.2014 the appellant filed this appeal before this Court.

The prosecution as many as 12 prosecution witnesses produced before the trial for prove the case.

In the instant case, having regard to the nature and specific allegations in the FIR, the prosecution must prove beyond reasonable doubt not only the existence of the alleged shortage, but also that the money was entrusted to, dominion of, the accused by virtue of his official capacity and that he dishonestly misappropriated or converted the same to his own use, thereby committing criminal breach of trust under section 409 of the Penal Code. The prosecution must also establish the requisite ingredients of the offence under section 5(2) of the Prevention of Corruption Act, 1947. The crucial question, therefore, is whether the evidence on record establishes a clear and reliable nexus between the alleged shortage and the accused's dishonest misappropriation or conversion of the money.

For the purpose of disposing of the appeal, I shall now examine the evidence on record.

P.W.1, Md. Ambar Ali, Post Office Inspector, Lalmonirhat District, in his examination-in-chief, stated that on 12.01.2011 he was serving in the said capacity. At the relevant time, accused

Md. Omar Faruk was working as an Operator at Tushbhandar Post Office, while Md. Ekramul Haque, Operator, was in charge of Aditmari Upazila Post Office. As Ekramul Haque had proceeded on leave for an operation, Omar Faruk performed the duties of Upazila Post Master from 24.10.2010 to 11.01.2011.

On 11.01.2011, after joining the office upon recovery, Ekramul Haque asked Omar Faruk to hand over charge. Omar Faruk replied that he would do so the following morning. At about 2:00 p.m, Omar Faruk left the office for lunch but did not return during office hours. Ekramul Haque thereafter informed the Post Master, Lalmonirhat, over telephone and reported the matter to the authorities. P.W.1, subsequently went to the Aditmari Upazila Post Office and, finding Omar Faruk absent, informed the UNO. At about 10:00 p.m, DPMG, Rangpur, Abul Kalam Azad, accompanied by Inspector (Administration) Altaf Hossain, Noor Nabi and other officers and employees, arrived at the post office. The UNO and the Officer-in-Charge of Aditmari Police Station also attended. An inventory of the cash, stamps and other articles was prepared. It revealed a shortage of Tk. 13,12,750.94, although Tk.52,526/- in cash and stamps and Tk.27,313.68 as the balance of the branch offices were found. The cash balance ought to have been Tk. 13,92,590.62.

He further stated that, convict-appellant had absconded with the missing amount after misappropriating it in his capacity as a government employee. On the instruction of the DPMG, he lodged the written complaint, marked as Exhibit-1, and proved his signature thereon as Exhibit-1/1. He also produced the inventory list, marked as Exhibit-2, and proved his signature thereon as Exhibit-2/1.

He also stated that on 09.01.2011 Omar Faruk had received Tk. 9,00,000/-from the Lalmonirhat Head Post Office for payment of liabilities, but the amount was not reflected in the cash balance. On 11.01.2011, customer Kamini Kant Roy deposited Tk.3,00,000/- as a fixed deposit, besides other money-order and financial transactions, but the requisite cash was unavailable. He stated that these circumstances indicated that Omar Faruk had misappropriated more than Tk.13 lakh and absconded. On 12.01.2011, Ekramul Haque took charge of the office.

In cross-examination, P.W.1, stated that he had served in the postal department for about 34 years. Cash was supplied to a sub-post office/upazila post office on the basis of requisition and daily accounts were submitted to the Head Post Office. He stated that the regular report dated 06.01.2011, received at the Head

Office on 08.01.2011, contained a demand for cash, and that the report dated 08.01.2011 also contained a demand relating to liabilities.

He stated that the authorized cash balance of Aditmari Upazila Post Office was Tk.1,00,000/- and that cash could ordinarily be transmitted through an authorized carrier, Inspector, Assistant Inspector, postman or peon, whereas the Post Master or acting Post Master was not authorized to carry cash. He admitted that he had not supplied the Investigating Officer with the Memo of Authorized Balance.

He denied the defence suggestions that Omar Faruk had neither submitted a requisition for Tk.9,00,000/- nor received the amount on 09.01.2011, or that the requisition had not been approved or sanctioned. He further stated that the charge-taking document allegedly signed by Ekramul Haque on 11.01.2011 was not genuine, as the name and signature appearing therein did not correspond to those of the actual Ekramul Haque.

He stated that Kamini Kant Roy's F.D.R. of Tk.3,00,000/- was withdrawn in the morning and that the withdrawal had been approved by Ekramul Haque. He denied that Omar Faruk had not misappropriated the said amount. He also stated that Shamsujoha was authorized to withdraw money from Treasurer Shahidul

Islam and that Shamsujoha was then under suspension, though he was unaware whether such suspension was connected with the present case.

He further admitted that Ekramul Haque and Omar Faruk had previously worked together at Hatibandha Post Office in 1990, where another Ekramul Haque had been implicated in an incident involving forged stamps. He, however, stated that the actual offender was Moslem Uddin, a packer and mail carrier, who had confessed and faced departmental action. He denied any suggestion of a prior dispute between Omar Faruk and Ekramul Haque.

He also denied the defence suggestions that he had adjusted Tk.9,00,000/-in the balance sheet on the verbal instruction of a superior officer, that Omar Faruk had neither requisitioned nor received the said amount, or that P.W.1, in collusion with Ekramul Haque, had misappropriated the money and falsely implicated the accused. He maintained that the document subsequently produced by the accused purporting to show handing over of charge on 11.01.2011 was a fabricated document.

The evidence of P.W.2, being the Assistant Deputy Postmaster General, is principally formal and corroborative in

nature. He deposed that, upon receiving information regarding the incident, he went to Aditmari Post Office from Rangpur and participated in the preparation of the inventory. He identified his signature on the inventory, marked as Exhibit-2/2, and supported the finding that Tk. 13,12,750.94 was found short.

PW-3, Kamini Kant Roy, aged about 60 years, in his examination-in-chief stated that after receiving his pension, he deposited Tk. 3,00,000 at the Aditmari Post Office on 11.01.2011, which was recorded in his deposit book (Exhibit-3). Subsequently, he came to know that the said amount has not been deposited and had been misappropriated by the appellant. He proved his signature appearing in the deposit book as Exhibit-3/1.

In cross-examination, he stated that he could not remember when he made his statement. He further stated that he had withdrawn the entire deposited amount.

PW-4, Md. Shahedul Haque, in his examination-in-chief stated that-that he was serving as a cashier at the relevant time. On 09.01.2011, at about 11:00 a.m.. accused Omar Faruk, Postmaster, Aditmari, came to the Head Post Office and requested money for payment of monthly interest of savings bonds. Thereafter, he was instructed by the Postmaster to pay Tk.

9,00,000/-(Nine lac) which he did by signing the cash book. The accused took Tk. 9,00,000 and left for Aditmari. On 11.01.2011, he came to know that the accused had also taken Tk. 13,12,150.94 and absconded. He subsequently gave his statement to the Investigating Officer, and the cash book was seized. He identified his signature on the seizure list.

In cross-examination, he stated that he had no knowledge of the rules regarding remittance of money from the Head Post Office to a Sub-Post Office and that, for large amounts, money was required to be sent through a bank.

P.W-5, Md. Amzad Hossain, stated that he was an employee of the Lalmohanirhat Head Post Office, on 09.01.2011, the then Aditmari Upazila Postmaster. Omar Faruk, signed the cash book and received Tk. 9,00,000 from him. However, he had no knowledge of the subsequent events at the S.O.

In cross-examination, PW-5 stated that the S.O. slip was prepared on plain paper without any particulars or name and that the defendant's signature was not required thereon. He further stated that any amount exceeding Tk. 50,000 was required to be sent through D.D. upon payment of the prescribed cost and that an ordinary Sub-Postmaster was not authorized to carry such

amount. He denied the allegations of improper maintenance of accounts, embezzlement and false deductions from his salary.

PW-6, Md. Yunus Ali, in his examination-in-chief, stated that he signed the seizure list dated 29.09.2011 as an inventory witness and proved his signature as Exhibit-4/1. He claimed knowledge of the relevant postal procedures and stated that he had given a statement to the Investigating Officer.

In cross-examination, he explained the relevant postal procedures concerning maintenance of daily accounts, cash handling, requisitions and withdrawal of money, and stated that an Upazila Postmaster could carry cash in special circumstances. He could not decipher the handwriting on the relevant document but denied that the signature therein was not that of the accused. He further stated that cash withdrawal required authorization and that the concerned branches operated separately.

He also stated that he was a member and President of the approval committee, though he could not remember whether he had submitted the relevant report to the Investigating Officer. He denied the defence suggestions regarding unauthorized deductions, collusion, misappropriation, unauthorized remittance of money, and false testimony.

PW-7 neither examined nor cross-examined.

P.W-8, Parvez Hasan, in his examination-in-chief stated that on the date of occurrence, he was a TNO of Aditmari Police Station and came to know of the incident at about 5:00 p.m. He informed the Officer-in-Charge, pursuant to which the police inspector proceeded to the place of occurrence.

He further stated that an investigation team came from Rangpur and, with his assistance, conducted the inventory in his presence. He stated that Tk. 13,12,750/- had been embezzled by the accused, Omar Faruk, and identified his signature on the inventory as Exhibit-2/4,

In cross-examination, PW-8 admitted that he did not prepare the inventory himself, but was present when it was prepared. He further stated that he had no knowledge of the postal office the alleged embezzlement. He denied the suggestion that he had given false evidence.

P.W-9, Md. Altab Hossain, in his examination-in-chief stated that at the relevant time he was serving as an Inspector in the Postal Department. On 11.01.2011 at about 5:00 p.m., he was informed by the Rangpur office that Md. Omar Faruk, Postmaster of Aditmari Post Office, had absconded with postal money. Thereafter, an investigation committee was constituted, which inquired into the matter and reported the incident to the

concerned authorities. According to him, Tk. 13,12,750/- had been embezzled.

He further stated that the Postal Manual prescribed specific rules and procedures for handling and remitting postal money and that no money could be withdrawn or taken without proper authorization. In the instant case, no written authorization had been issued, and the procedure followed at Aditmari Post Office was contrary to the Postal Manual. He also referred to the involvement of other persons and stated that a case had been instituted against accused Omar Faruk.

In cross-examination, he denied the suggestion that the accused had not embezzled the money in collusion with others and maintained his testimony regarding the irregularities committed in handling the postal money.

PW-10, S.M Shahadat Sultan, in his examination-in-chief stated that after the occurrence he joined at Rangpur. He was arrested on 14.06.2011 at about 11:30 a.m. and was taken into custody.

He stated that the relevant guarantee/bond was signed and marked as Exhibit-4/2. He further stated that he returned the opened packet at its original value and accepted responsibility for the same. He also stated that there was no signature on the

deposit document, the opened packet bore no seal, and there was no signature of the concerned officer. He further stated that the deposit slip has not been supplied.

In cross-examination, he stated that he did not know about the alleged irregularities and that he was not posted at the concerned office at the time of the occurrence.

P.W-11, Md. Zakir Hossain, aged about 33 years, in his examination-in-chief stated that he served as an Assistant at Rangpur Sadar from 02.02.2010 to 23.01.2014. He stated that, in connection with Aditmari Police Station Case No. 8 dated 12.01.2011, he went to the office of the Deputy Postmaster General to assist Director A. Kalam. He further stated that on 29.09.2011 at about 3:00 p.m., Deputy Director A. Salam seized the articles listed in the seizure list in the presence of Md. Syed Shah Alam, Post Operator. He identified his signature on the seizure list, which was marked as Exhibit-4/3.

In cross-examination, he admitted that the Deputy Postmaster General was not present at the alleged seizure and that the articles were not seized in his presence. He further stated that he had not produced any articles before Md. Shah Alam and that his statement under section 161 of the Code of Criminal Procedure did not mention that the seized articles had been

handed over to him for custody. He admitted that he merely signed the seizure list prepared by the Investigating Officer and had no personal knowledge of the occurrence.

P.W-12, Shekh Abdus Salam, Assistant Director of the ACC, in his. examination-in-chief, stated that he was entrusted with the investigation of Aditmari Police Station Case No. 08 dated 16.01.2011 and took charge on 24.05.2011. On 14.06.2011, in presence of S.M. Shahadat Sultan, Post Inspector, Rangpur Sadar, he seized the relevant documents and articles and prepared seizure lists, which were marked as Exhibits-4 and 5, with his signatures marked as Exhibits-4/3, 5/1 and 5/2. The seized documents included the relevant account books, registers, cash books, cash lists for 09.01.2011 to 11.01.2011, demand letter, documents relating to the Sub-Registrar's Office, information book, account-related papers and documents concerning Ekramul Haque. He also prepared the sketch map and index of the place of occurrence and recorded the statements of witnesses. Upon completion of the investigation and examination of the relevant documents, he found the allegations prima-facie true and submitted charge-sheet No. 148 dated 15.12.2011.

In cross-examination, he stated that although Tk. 9,00,000/- was received at Lalmonirhat Main Post Office on

09.01.2011, there was no specific entry showing its receipt at Aditmari Post Office, nor any document showing its dispatch. He stated that the accused had withdrawn Tk.1,00,000/- from Lalmonirhat Main Post Office but had not deposited the amount at Aditmari Post Office. He admitted that he did not know how many other persons were working at the Aditmari Post Office at the relevant time. He further stated that, under the relevant rules, money could be remitted by the Postmaster/Postman, Assistant Inspector or Inspector, and amounts exceeding the prescribed limit could be sent by demand draft. He admitted that there was no written authorization for payment of Tk.9,00,000/-, though there was allegedly a verbal order, and that the relevant handwriting had been sent for expert examination. He also admitted that he could not say whether the money had actually been paid and could not remember the details. He denied the suggestion that the inventory was defective or that he had submitted a defective charge-sheet under the influence of others.

Mr. Mokarramus Saklan, learned Advocates on behalf of the convict appellant submits that mens rea or dishonest intention is an essential ingredient of the alleged offence and the prosecution must prove it by cogent evidence. He further submits that there is no evidence that the appellant intended to cause wrongful gain to himself and no money was recovered from him.

He further submits that the conviction was based mainly on the appellant's signature in the cashbook, his absence from the office after 2.00 p.m. and a shortage found in an inventory prepared in his absence. These circumstances, without proof of dishonest intention, cannot sustain the conviction.

He further submits that there was no lawful entrustment of Tk. 9,00,000/- upon the appellant in his capacity as Upazila Post Master. The prosecution witnesses admitted that the alleged payment was made in violation of the Post Office Manual and departmental rules, without any written approval and on the basis of an oral instruction. He further submits that the learned trial Court itself excluded the said amount from the appellant's liability, observing that the amount was being recovered from the salaries of the concerned postal employees who were found guilty in the departmental proceedings. Therefore, the appellant cannot be held liable for the said amount.

He further submits that the 2(two) seizure lists were prepared regarding of the seized item on 14.06.2011 and 29.09.2011 respectively long after 5and 8 months of the date of occurrence dated 11.01.20211. Moreover, two vital signatory seizure list witnesses namely 1. Sowmen Kumar Chakrabarti and 2. Muhammod Nurnnabi never been produced before the trial

court by the prosecution to exhibit the seizure list of this case, which is a gross discrepancy on the part of the prosecution to prove the case beyond all reasonable doubt.

Mr. Omar Farook, learned Advocate for the Anti-Corruption Commission submits that the occurrence was took place on different two dates e.i. 14.06.2011 and 29.09.2011 and at the relevant time the convict-appellant was in the charge of the said post office. Hence, it appears on the face of the record that the appellant was responsible for the alleged misappropriation of the funds in question.

Heard the learned advocates for the respective parties and perused the documents on record.

Having considered the evidence of P.Ws. 1-12 and the documents exhibited by the prosecution, I find that the prosecution has been able to establish the existence of a shortage of postal money amounting to Tk. 13,12,750.94 at Aditmari Upazila Post Office after the accused left the office without handing over charge. P.Ws.1, 2, 8 and 9 support the preparation of the inventory and the detection of the shortage. P.Ws.4 and 5 stated that the accused received Tk.9,00,000/- from the Lalmonirhat Head Post Office on 09.01.2011, while P.W.3 stated that Tk.3,00,000/- was deposited at the Aditmari Post Office.

The remaining witnesses are mainly formal, procedural or investigating witnesses.

The crucial question, however, is not merely whether there was a shortage, but whether the prosecution has proved beyond reasonable doubt that the alleged missing money was entrusted to, or was within the dominion of, the accused in his capacity as a public servant and that he dishonestly misappropriated or converted the same to his own use.

On this material point, the prosecution evidence falls short of the required standard. None of the witnesses saw the accused taking, retaining, converting or misappropriating the alleged missing money. Although P.Ws.4 and 5 stated that the accused received Tk.9,00,000/- from the Lalmonirhat Head Post Office, the prosecution failed to establish its subsequent delivery to or receipt at Aditmari Post Office. Significantly, P.W. 12, the Investigating Officer, admitted that there was no specific entry showing receipt of the said amount at Aditmari Post Office, no document evidencing its dispatch, and that he could not say whether the money had actually been paid. Thus, the evidence regarding receipt of Tk.9,00,000/- does not, by itself, establish that the amount came into the possession or dominion of the

accused at Aditmari Post Office and was thereafter dishonestly misappropriated by him.

Likewise, although P.W.3 proved the recording of Tk.3,00,000/- in his deposit book, his evidence does not establish that the accused personally received or appropriated the said amount. The mere existence of a transaction, followed by a subsequent shortage, cannot dispense with proof of the accused's possession or dominion over the particular money and his dishonest conversion thereof.

The evidence further discloses material deficiencies concerning the authorized cash balance, the mode of remittance, requisitions, authorizations and the custody and movement of the alleged missing cash. P.W.1 admitted that he did not furnish the Memo of Authorized Balance. P. Ws.4 and 5 also referred to procedural restrictions concerning the transmission of substantial amounts of cash. P.W.11 failed to establish the alleged seizure of incriminating articles, while the evidence of P.W.12, though relevant to the investigation and seizure of documents, does not provide substantive proof of the actual misappropriation.

Mere proof of shortage or loss of public money does not, by itself, establish criminal breach of trust. The prosecution must independently prove the foundational fact of entrustment or

dominion and thereafter establish dishonest misappropriation or conversion by the accused. In the present case, the evidence, taken at its highest, establishes a shortage and raises suspicion against the accused, particularly because he left the office without handing over charge. Suspicion, however strong, cannot take the place of proof.

The fact that the accused was absent from the office, failed to hand over charge, or was found to have been associated with the handling of postal money may constitute circumstances requiring explanation, but such circumstances cannot, in the absence of reliable evidence connecting him with the particular missing amount, establish the essential ingredients of the offence. The prosecution was required to bridge the evidentiary gap between the existence of the shortage and the accused's dishonest appropriation of the money. That essential link is absent in the present case.

Accordingly, I find that the prosecution has failed to prove beyond reasonable doubt that the alleged missing amount was entrusted to, or was within the dominion of the accused and that he dishonestly misappropriated or converted the same to his own use. Consequently, the essential ingredients of Section 409 of the Penal Code and Section 5(2) of the Prevention of Corruption

Act, 1947, have not been established by substantive and reliable evidence.

In view of the foregoing discussion, I am of the considered view that the prosecution has failed to prove the charge against the accused beyond reasonable doubt. The finding of guilt recorded by the learned trial Court is therefore not sustainable in law.

In the result, the appeal is allowed and the impugned judgment and order of conviction and sentence dated 23.10.2014, passed by the learned Special Judge, Lalmonirhat, in Special Case No. 02 of 2012 is hereby set aside. Consequently, the accused, Md. Omar Faruk, is acquitted of the charges. The bail bond stands discharged.

The Lower Court Records be sent down at once.

Let a copy of this judgment be communicated to the Court below forthwith.