

Public Prosecutor

AND

**Mir Altaf Ahmed
Mir Basharat Ahamed**

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 13 of 2018)**

Muhammed Faisal bin PDJLD Kol (B) DSP Hj Kefli, Judge

Date of Sentencing: 21st January, 2025

Headnote: Criminal Law – Sentencing – Section 409 Penal Code – Criminal breach of trust by a public servant – defendant found guilty after trial – defendant sentenced in *absentia*

DPP Hjh Rozaimah Bte Hj Abd Rahman for the Public Prosecutor.

Defendant absent.

Cases cited:

Ramzidah binti Pehin Datu Kesuma Diraja Kol(B) Hj Abdul Rahman & Anor v Public Prosecutor (Court of Appeal) (Criminal Appeal Nos. 3, 4, & 6 of 2020)

Razimi bin Hj Tajudin v Public Prosecutor (Court of Appeal) (Criminal Appeal No. 8 of 2017)

Mohd Noor bin Litoh v Public Prosecutor (Court of Appeal) (Criminal Appeal No. 3 of 2005)

Statutes:

Section 409 of the Penal Code

Section 372 of the Criminal Procedure Code, Chapter 7

SENTENCING

Muhammed Faisal, Judge:

I. INTRODUCTION

The Defendant, Mir Altaf Ahmed (D2) was charged on 3 counts under section 409 Penal Code and has been found guilty after trial to all of the charges.

II. BACKGROUND

At the Prima facie stage D2 was acquitted on all charges. After having given evidence for his brother D1, D2 subsequently left Brunei Darussalam. Following a successful appeal against the acquittal, I found that there was a prima facie case against him, and accordingly ordered for D2 to enter his defense. However, since his exit from Brunei Darussalam, D2 was unable to be located. Upon application by the prosecution, the Honourable Chief Justice invoked his powers under section 372 of the Criminal Procedure Code, Chapter 7, to allow the hearing to proceed in absentia of the respondent.

On 9 November 2024, D2 was duly convicted on all of the charges.

III. PUNISHMENT

D2 offences were committed before the amendments to section 409. At that time, the offence carries a punishment of imprisonment for a term not exceeding to 10 years imprisonment and fine.

Currently, the punishment for this section is for imprisonment for a term not exceeding 20 years and fine.

The Defendant will receive a sentence in accordance with the pre-amendment section.

IV. MITIGATING FACTORS

Given that the Defendant was trial in absentia, no plea in mitigation was submitted. However, I would consider that the Defendant is a first offender since the prosecution has not submitted otherwise.

V. AGGRAVATING FACTORS

The Defendant, Mir Altaf Ahmed (D2) was charged on 3 counts under section 409 Penal Code and has been found guilty after trial to all of the charges.

Aggravating factors for this case are as follows:

1. Premeditation

The Defendant (D2) misled others into believing he had the authority to execute tenancy agreements and collect rental payments on behalf of PW1. He acted without

PW1's knowledge or approval and intentionally kept PW1 unaware of tenants occupying the Sufri Complex. The premeditation served one purpose, that is to financially benefit D2 while he was in a position of trust.

2. Gross Abuse of Trust

D2's long-standing service created deep trust from PW1, which D2 exploited. D2 misappropriated rental payments and used PW1's property without authorisation. He also conducted personal business activities using PW1's property and benefited from this misuse of trust.

3. Position as a Public Servant Entrusted to Serve a Wazir of Brunei Darussalam

As a public servant attached to PW1's office, D2 was expected to maintain the highest level of integrity and competence. D2's deceitful actions violated the high degree of trust and expectations associated with serving a senior member of the Royal Family.

4. Timespan

The offences were committed over a significant period, from November 2014 to January 2017, reinforcing D2's representation of authority and systematically diverting funds.

5. Multiple Offences

D2 committed 3 distinct offences of criminal breach of trust, each instance involving rental payments that were not deposited into PW1's bank account.

6. Amount of Monies Dishonestly Misappropriated

A total sum of BND\$119,000 was misappropriated over the years, constituting a significant amount.

The Prosecution submitted that the offences were separate, deliberate, and warranted consecutive sentences. A total custodial sentence of not less than 4 years was proposed, emphasizing public interest and deterrence

VI. **CASE AUTHORITIES**

The Prosecution referred to the following cases:

In *Ramzidah binti Pehin Datu Kesuma Diraja Kol(B) Hj Abdul Rahman & Anor v Public Prosecutor* (Court of Appeal) (Criminal Appeal Nos. 3, 4, & 6 of 2020). For multiple distinct offences, partly consecutive sentences are warranted when aggravating factors are present.

The Court highlighted four circumstances when consecutive sentences are appropriate:

1. Persistent or habitual offending.
2. Public interest concern in discouraging the offence.
3. Multiple victims.
4. Other cumulative aggravating features.

In *Razimi bin Hj Tajudin v Public Prosecutor* (Court of Appeal) (Criminal Appeal No. 8 of 2017), the Defendant had misappropriated BND\$458,106.88 over a period of 9 months.

The Court set a starting point of 6 years for offences involving significant sums, a breach of trust, and prolonged duration. The sentence was reduced to 4 years on appeal due to the guilty plea.

In *Mohd Noor bin Litoh v Public Prosecutor* (Court of Appeal) (Criminal Appeal No. 3 of 2005) the Defendant an accounts clerk misappropriated BND\$327,094.18 over a period from 1999 to 2002 through unauthorised collection of funds. Sentences of 4 to 6 years are appropriate for misappropriations involving substantial sums, extended durations, and breaches of trust.

VII. SENTENCE

Having considered the nature and circumstances of this case, a starting point of six years is appropriate for each of the charges.

Looking at the totality of sentence, I further order that the sentences to run concurrently, to run when the Defendant is back in the custody of the authorities, minus any time that he may have served in remand.

MUHAMMED FAISAL BIN PDJLD KOL (B) DSP HJ KEFLI
Judge, Intermediate Court