

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 04th August, 2011
Judgment delivered on: 12th August, 2011

+ **CRL.APPEAL NO.898/2011**

TEJ PRATAP SINGH	Appellant
	Through : Mr.O.P. Mathur, Adv
	Versus
STATE	Respondent
	Through: Ms.Rajdipa Behura,APP
	for State.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment? YES
2. To be referred to the Reporter or not? YES
3. Whether the judgment should be reported in the YES Digest?

SURESH KAIT, J.

1. Vide this appeal, the appellant has challenged the impugned order dated 17.02.2011, whereby the appellant was held guilty under Section 489-B and 489-C of the Indian Penal Code, 1860 (hereinafter referred to as IPC), and vide order dated 21.02.2011 the appellant was sentenced to undergo Rigorous Imprisonment for 03 years u/s 489-B IPC in addition

to payment of ₹5,000/-. Further he was sentenced to RI for 03 years under Section 489C IPC and a fine of ₹5000/-.

2. Briefly, the case of the prosecution is that on 06.04.2005 at about 02:30 PM, a secret information was received that one person, namely, T.P.Singh along with his two-three associates is selling fake currency notes and that he would come to Railway Station, Pahar Ganj. On the same day at about 04:00 PM, where he would deal with one person, namely, Mishra. ASI Gyanender Singh disclosed the secret information with the senior officers and at about 03:30 PM, ASI Gayanender along with Ct.Sunil, Ct. Sanjay, Ct. Arun Kumar, Ct. Krishan and Ct. Bhim reached New Delhi Railway Station in two private cars. They reached near the entry gate of the Railway Station, New Delhi and requested the public persons to join the proceedings, to which they refused.

3. A raiding party was constituted and Ct. Sanjay was deputed as decoy customer. After taking his personal search two currency notes in the denomination of ₹500/- each bearing

Nos.IBS613919 and 8DL63396 were handed over to him and he was directed to represent himself as one Mishra and deal with the accused. Ct. Sunil was deputed as shadow witness.

4. At about 04:10 PM, three persons came to the Railway Reservation Office and the secret informer pointed towards one of them as T.P.Singh. The decoy customer and the shadow witness were given directions to deal with the said person and ASI Gyanendra stood at some distance from there. At about 04:25 PM Ct.Sanjay the decoy customer gave a pre-determined indication upon which ASI Gyanendera along with the raiding party apprehended the three said persons. All of them revealed themselves as T.P.Singh, Anand and Pintoo.

5. Ct. Sanjay deposed that accused T.P.Singh had handed over 04 currency notes in the denomination of ₹500/- each. Accused Anand and Pintoo also disclosed that they had currency notes of ₹40,45,000/- with them.

6. The shadow witness also supported the version of decoy customer. On taking personal search of accused T.P.Singh,

02 currency notes in the denomination of ₹500/- each bearing Nos.IBS613919 and 8DL63396 were recovered from the pant worn by the accused which were handed over to him by decoy customer Ct.Sanjay and upon conducting personal search of accused Pappu Khan, 20 currency notes of ₹500/- each, which appeared to be fake were recovered. The recovered currency notes and the original notes which were handed over to accused T.P.Singh by the decoy customer were taken into police possession after sealing them with the seal of 'JK' and seal after use was handed over to Ct. Sunil.

7. It is the case of the prosecution that during the course of the further investigation and upon disclosure statement and pointing out by accused T.P.Singh, one Iqbal Singh was apprehended. Fake currency notes totaling to the amount of ₹4,78,000/- were recovered. All the recovered notes were sent for expert opinion to Government Press Nasik.

8. The Charges was framed on the accused T.P.Singh, Anand Das and Pappu Khan for the offence punishable u/s 489-B/34 and 120-B IPC on 06.07.2006 and accused Iqbal

Khan was charged for the offence punishable u/s 489-C and 120-B IPC to which all the accused persons pleaded not guilty and claimed trial.

9. The prosecution examined seven witnesses. Duty Officer was examined as PW4, who further proved the registration of FIR EX.PW-4/A.

10. HC Devi Singh was brought into witness box as PW-1, who had received two parcels in the Malkhana and further handed over the same to the concerned official for being sent for expert opinion to Government Press Nasik.

11. On 06.04.2005 ASI Gyanender Singh (PW-2) on receipt of a secret information, he along with Ct. Sunil, Ct. Sanjay, Ct. Krishan, Ct. Arun and Ct. Bhim Singh reached at the parking of New Delhi Railway Station at about 03:30 PM where the secret informer joined in the raiding party. He deposed that he asked five-six persons at the entry gate of the Railway Station to join the raiding party but none agreed to join. He deposed that he deputed Ct. Sanjay (PW-3) as a decoy

customer and after taking his personal search, he was handed over two currency notes of ₹500/- denomination each having Nos.IBS613919 and 8DL63396 vide memo Ex. PW-2/A. Ct. Sanjay (PW-3) was directed to deal with the said person by the name of Mishra and Ct. Sunil (PW-6) was deputed as a shadow customer with directions to overhear the conversation of the deal between Ct. Sanjay and him.

12. PW-2 further deposed that thereafter he along with other staff reached at Main Gate of Reservation Office and at about 04:10 PM, three persons reached there, out of which secret informer identified one as T.P.Singh. Ct. Sanjay (PW3) and Ct. Sunil (PW6) shadow witness dealt with the said three persons and at about 04:25 PM Ct. Sanjay gave pre-appointed signal and all the three persons were overpowered by the members of the raiding party. He identified all the accused persons correctly in the court and stated that Ct. Sanjay told him that accused T.P.Singh had given him four currency notes in lieu of two currency notes of ₹ 500/- denomination each.

13. On search of accused T.P.Singh, two currency notes which were recovered from the front pocket of his shirt. On further search 20 fake currency notes in the denomination of ₹ 500/- each were recovered from the pocket of the pant worn by him. He further deposed that on search of accused Anand Das, 40 fake currency notes in the denomination of ₹500/- were recovered from right side pocket of his worn pant and on search of accused Pappu Khan @ Pintoo, 20 fake currency notes in the denomination of ₹ 500/- each were recovered from the right side pocket of his worn pant. The recovered currency notes were kept in separate pullandas and sealed with the seal of 'JK'. The seizure memo Ex.PW-2/B of two currency notes were handed over to Ct. Sanjay. Seizure memo of 20 fake currency notes recovered from accused T.P.Singh was proved as Ex.PW-2/C. Seizure memo of 40 fake currency notes recovered from accused Anand Dass is Ex.PW-2/D. Seizure memo of 20 fake currency notes Ex.PW-2/E were recovered from accused Pappu Khan @ Pintoo.

14. ASI Gayanender Singh (PW-2) further deposed that decoy customer Ct. Sanjay (PW-3) also handed over four fake currency notes which had been given to him by accused T.P.Singh, were sealed in separate envelopes and seized vide memo Ex.PW-2/F. Sealed exhibits were handed over to Ct. Sunil (PW6), who also corroborated this fact. Further deposed, he prepared rukka Ex.PW-2/G and handed over the same to Ct. Sunil who got registered the case.

15. Thereafter, investigation was handed over to SI Suresh Kumar(PW-7).

16. The witness further correctly identified the case property when it was produced before the court. Head Ct. Sanjay (PW-3) corroborated the testimony of PW-2 ASI Gyanender Singh and deposed that he dealt with accused T.P.Singh pretending to be as one Mishra and handed over two genuine currency notes in the denomination of ₹500/- in lieu of four fake currency notes of ₹ 500/- denomination. He also deposed regarding recovery of the fake currency notes from the possession of all the three accused persons and corroborated

the testimony of PW-2. He also identified the case property when it was produced before the Court.

17. Head Ct. Sanjay, who was the decoy customer was examined as PW-3 and he also supported the testimony of PW-2 and PW-3.

18. Prosecution also examined SI Jagdish Kumar as PW-5 besides the aforesaid witnesses. He deposed that on 10.04.2005, accused T.P.Singh who was in police custody lead them to House No.D-105, Sector 10, Noida, U.P. where they along with SI Suresh Kumar (PW-7), Ct. Sunil (PW-6) and Ct. **Arun Kumar**, at the instance of accused T.P.Singh, accused Iqbal Singh was arrested vide seizure memo PW-5/A. His disclosure statement Ex.5/B was recorded and pursuant to his disclosure nine wads of currency notes in the denomination of ₹500/- each and 56 loose currency notes in the domination of ₹500/- i.e. total 956 currency notes in the denomination of ₹500/- each were recovered from the house of accused Iqbal Singh. All the said currency notes were found to be fake. They were converted into ten separate parcels and sealed

with the seal of 'SK' and seized vide seizure memo Ex.PW-5/C. One mobile phone Nokia 2280 was also seized vide seizure memo Ex.PW-5/D from the possession of accused Iqbal Singh. The witness correctly identified the case property when it was produced before the Court. His testimony was corroborated by the Statement of Ct. Sunil Kumar (PW-6), who had accompanied him on 10.04.2005 and in whose presence accused Iqbal Singh got recovered 956 currency notes in the denomination of ₹ 500/- each from his house i.e. House No.D-105, Sector-10, Noida, U.P.

19. Inspector Suresh Kumar (PW-7), to whom investigation was subsequently handed over by ASI Gyanender Singh was also brought in the witness box as PW-7.

20. The statement of all the accused persons were recorded under Section 313 Cr.P.C. All the accused persons pleaded innocence and stated that they have been falsely implicated in this case.

21. Accused T.P.Singh stated that he wants to examine one witness in his defence. However, despite several opportunities,

no defence evidence was led and the opportunities for leading evidence was finally closed vide order dated 01.11.2010 by the trial Judge.

22. As discussed above and as per the prosecution case, on 06.04.2005, accused T.P.Singh, Pappu Khan and Anand Das were apprehended from near Railway Reservation Office, Pahar Ganj, on receipt of secret information.

23. Mr. O.P.Mathur, learned counsel for the appellant has argued that secret informer has not been examined by the prosecution and in view of the judgment of Supreme Court titled as **Bhugdomal Gangaram Vs. The State of Gujarat 1984 (1) SCC 319** wherein it was held that, since secret informer has not been examined on recording of the evidence to this effect is inadmissible in evidence.

24. On the other hand, Ms.Rajdipa Behura learned APP submitted that the prosecution witnesses have duly established the recovery of fake currency notes from the possession of the accused person. She also submitted that

the report from the Government Press Nasik duly established that the said recovered notes are fake and that there is evidence on record to establish that the accused person had entered into a criminal conspiracy acquire fake currency notes with an intention to use them as genuine and that prosecution has proved its case.

25. Further, learned APP also placed the reliance on the testimonies of PW2 ASI Gyaneder Singh and PW3 Head Ct. Sanjay in support of the arguments that the allegations against accused T.P.Singh, Pappu Khan and Anand Das duly stand established on record by way of testimonies of these witnesses.

26. Learned counsel for the appellant submitted that prosecution witnesses have failed to prove the case of the prosecution inasmuch as even the place of apprehension of the accused persons at Mark A in the site plan Ex.PW-7/A has also not been proved on record.

27. Further submitted that as per cross examination of PW-2

ASI Gyanender Singh, aforesaid three accused persons were apprehended at the main gate of Railway Reservation Office, whereas point shown in the site plan Ex. PW-7/A is not near the distance between parking and reservation counter is about 400-500 meters and both of them fall on the same side.

28. On considering the above arguments advanced before this Court and gone through the statements of PW-2 and PW-7 Inspector Suresh Kumar who prepared site plan PW-7/A at the instance of PW2 Gyanender Singh. ASI Gyanender Singh deposed in his examination-in-chief that the accused persons were apprehended near Railway Reservation Office, Pahar Ganj. He clearly identified all the accused persons and correctly identified currency notes, which were recovered from their possession. The testimony of PW-2 ASI Gyanender and PW-3 Head Ct. Sanjay also establishes that two genuine currency notes of ₹500/- denomination each bearing Nos.IBS613919 and 8DL633963, which had been handed over by the decoy customer to accused T.P.Singh and were also recovered from his possession the decoy customer were also

recovered from his possession, the fake four currency notes which were handed over the decoy customer were recovered from his possession. The other two accused persons namely Pappu Khan and Anand Das were also apprehended and were found in possession of fake currency notes as per seizure memo Ex.PW-2/C, PW-2/D and PW-2/E.

29. I note, the learned Trial Judge has considered evidence on record i.e. testimony of ASI Gyanender and decoy customer Head Ct. PW-2 Sanjay Singh, the recovery of currency notes from the possession of accused T.P.Singh, Anand Dass and Pappu Khan had been duly established on record. Ct. Sunil who was examined as PW-6, who was deputed as shadow customer has also corroborated the testimonies of PW-2 and PW-3.

30. As arguments advance by the learned counsel for appellant that the secrete informer has not been examined on record.

31. I am of the opinion, it do not effect the case of the prosecution inasmuch as the recovery of currency notes were

in the possession of the accused persons has been duly proved on record. Further said, mere in admissibility of the evidence regarding receipt of information from the secrete informer would not established the entire case of the prosecution as argued by learned defence counsel.

32. Further argued by learned counsel for the appellant, the substance of FIR Ex.PW4/A has not been recorded in corresponding to DD No.14A which has neither been placed nor proved on record by the Prosecution.

33. In my opinion it loses importance in view of the factum of registration of FIR. Even Duty Officer PW4 has not been cross examined. Thus, FIR EX.PW4/A stand duly proved on record.

34. Learned counsel further argued that it is the case of the prosecution that accused Iqbal Singh was arrested and his personal search was conducted vide memo Ex.PW7/E. It is further the case of the prosecution that the lock of the shop/godown was opened from the key in possession of the accused. Further, a perusal of personal search memo

Ex.PW7/E shows that nothing was recovered from his personal

search. He argued that this cuts the entire fabric of the prosecution and suggest that nothing incriminating was recovered from the shop/godown of house No.D-105, Sector-10, Noida, UP and that the recovery in question has been planted upon the accused Iqbal Singh.

35. On the other hand learned APP submitted that it is not a case of prosecution that the key which was carried by the accused Iqbal Singh was used to open the house. He submitted that in these circumstances the fact that nothing was recovered from his personal search is not relevant. Learned APP has drawn the attention to the Trial Judge to the testimony of PW5 SI Jagdish who deposed that pursuant to the disclosure statement of accused Iqbal Singh ExPW-5/B, nine wads of currency notes in the denomination of ₹ 500/- and 56 loose currency notes in the denomination of ₹ 500/- were recovered. The case property was duly identified by the witness in court. PW-9 Inspector Suresh Kumar also deposed regarding the recovery of 956 fake currency notes in the denomination of ₹500/- at the instance of accused Iqbal Singh and the case

property duly identified by the witness in the Court.

36. I have gone through the record and the judgment passed by the Trial Judge. The learned Trial Judge has observed that it is not a case of the prosecution that the key of the godown/house bearing No.D-105, Sector 10, Noida, UP was with the accused Iqbal Singh. Further, the fact reveals the currency notes were recovered at the instance of Iqbal Singh and were found to be fake. Thus, the mere fact that the personal search memo of accused was 'nil' cannot be said to imply that the recovery has been planted.

37. The Trial Judge has also detailed the submission of the learned counsel for the accused Iqbal Singh that prosecution witnesses did not offer their search to accused Iqbal Singh or his family members despite the fact that admittedly mother, sister and brother of accused Iqbal Singh were residing in the premises of D-105, Sector-10, Noida, U.P.

38. The learned counsel for the appellant has relied upon a judgment of High Court of Orissa titled as **Ravinder Nath Prusty Vs. The State (1984) CrI.L.J.1392.**

39. However, a perusal of cross-examination of PW-7 Inspector Suresh Kumar reveals that before entering the house of accused Iqbal Singh, they offered their search to mother of accused Iqbal Singh but she refused to take their search. In the light of the said testimony of PW-7, the arguments of learned Defence counsel to this effect cannot be sustained.

40. As regards the submissions of learned counsel that no independent public person joined the proceedings. On perusal of the deposition of the witnesses, I find that all the witnesses had consistently deposed that despite their efficient efforts no public persons volunteered to join the proceedings. Even otherwise, it is well settled law that any irregularity or even illegality during the investigation should not be treated as a ground to reject the prosecution's case. This issue is no more res-integra and has already been decided in the following cases:-

(i) AIR 2001 Supreme Court 142 "State of U.P. Vs. Hari Mohan".

(ii) AIR 1999 Supreme Court 3717 "Leela Ram Vs. State of Haryana".

(iii) AIR 1996 Supreme Court 3035 "State of Rajasthan Vs. Kishore"

(iv) AIR 2004 Supreme Court 1920 "Dhanaj Singh Vs. State of Punjab".

41. Learned counsel for the appellant has taken the plea that there is nothing on record to suggest that recovery effected from the jurisdiction of Police Station Noida from house No. D-105, Sector 10, Noida, U.P. was ever reported to the police officials of Noida and thus provisions of Section 166 Cr.P.C have not been complied with. He further argued that non-compliance of this provision also renders the investigation as suspect. Reliance has been placed in judgment passed by this Court in case titled as **Chaman Lal Vs. The State** reported as **RCR 1987 (1) 208.**

42. In this regard, learned APP submitted that PW-7 deposed in his cross-examination that before proceeding in Noida, which is in U.P., ACP, Dr.Ashok Malik, Anti Extortion

Cell had granted permission though admittedly no such permission was placed on record. He further explained that ACP was in contact with the senior officials in Noida regarding the case. He denied the suggestion that no such fact was mentioned in the statement of any of the witnesses.

43. Even otherwise, even if it is held that provisions of Section 166 Cr.P.C. appears to have not been complied with by the Investigating Officer, however, recovery of the currency notes has been duly established on record, as is evident from the consistent testimony of PW-6 and PW-7.

44. It was also discussed above, it has been laid down by the Apex Court in a catena of judgments that any defect in investigation or any irregularity or illegality committed by the Investigating Officer will not thereby render Prosecution's case untrustworthy nor it is a ground for acquittal of appellant. Thus, there is no force in the said argument, nor can it be said to be fatal to the case of the prosecution.

45. The issue raised by the learned counsel for the appellant

that seizure memo Ex.PW2/E, where it is mentioned. A careful perusal of cross examination of PW-1 Devi Singh, MHC(M) does reveal that he deposed about a relevant entry in the malkhana register as per seizure memo Ex.PW2/E. Moreover, this fact has been explained by two Prosecution witnesses namely PW-2 ASI Gyanender Singh and PW-3 Ct. Sanjay in his cross-examination. Both the prosecution witnesses have stated that though at Point X, seal impression of 'SK' is written. Both the prosecution witnesses stated that the though at point X, seal impression of 'SK' is written, but the same was written by mistake. Further, as per the case of the prosecution, 1040 currency notes were recovered. However, as per record only 1038 currency notes were received in Government Press Nasik implying that there is tampering with the case property.

46. In this regard PW-7 Inspector Suresh Kumar who was asked to clarify in his cross-examination about number of currency notes. He stated in his cross examination that on 10.04.2005, they recovered 09 wads of fake currency notes

and on wads containing and 56 loose currency notes. He stated that notes were hurriedly counted and inadvertently, while counting it may have been possible that one or two currency notes may have been less in one or two wads.

47. Even otherwise, there are sufficient evidence on record to establish the recovery of currency notes from the accuse persons. There is also evidence on record to establish that the said currency notes were not genuine.

48. After going through the evidence on record and discussion above, I am of the view that there is no infirmity in the judgment by the learned Trial Judge. Therefore, I am not inclined to interfere with the same. However, the learned counsel for the appellant has argued on the sentence of the appellant having already undergone nearly 03 years and the unexpired period of sentence is only 04 months and 02 days as on 19.03.2011 as per the Nominal Roll dated 30.07.2011.

49. I found force in this contention. Therefore, while maintaining the conviction of the appellant, the sentence of

the appellant is modified to the sentence already undergone.

50. Appeal is partially allowed.

51. Vide order dated 18.03.2011 passed by the learned Trial Judge, the appellant was released on bail.

52. The personal bond of appellant cancelled and his surety stands discharged.

53. No order as to costs.

SURESH KAIT, J

AUGUST 12, 2011
RS