

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Crl.A(J). No. 45 of 2024

1. Sri Sikanjoy Reang @ Ramliana @ Sekhenjoy Reang
.....Appellant

-V E R S U S-

1. The State of Tripura.
..... Respondents.

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. T. D. Majumder, Sr. Advocate. Mr. A. Reang, Advocate.
For Respondent(s)	:	Mr. R. Saha, Addl. P.P.
Date of hearing and delivery of judgment and order	:	24.04.2025
Whether fit for reporting	:	NO

JUDGMENT & ORDER [ORAL]

Heard Mr. T.D.Majumder, learned senior counsel assisted by Mr. A. Reang, learned counsel appearing for the appellant also heard Mr. R. Saha, learned Addl. P.P. appearing for the respondent-State.

[2] This is an application filed under Section-374 of Cr. P.C., 1973 against the judgment of conviction and sentence dated 31.01.2024 in connection with Case No. S.T. (Type-1) 11 of 2019 passed by the learned Sessions Judge, North Tripura, Dharmanagar, sentencing the convict appellant with rigorous imprisonment for 3 years under Section-489 (C) of IPC along with fine of Rs.5,000/- and in default of payment to suffer imprisonment of further three months.

[3] The case of the prosecution, in a nutshell, is that the appellant was charged under Section-489(C) of IPC on 21.05.2019 to the effect that on 20.08.2016 at about 5:10 PM at Damcherra market counterfeit Indian currency note of Rs. 10,000/- was found in possession of the appellant with intend to use the same as genuine. The appellant underwent trial and ultimately the learned Sessions Judge, North Tripura held the appellant guilty of the offence and convicted the appellant under Section-489 (C) of

IPC to suffer RI for 3 years and fine of Rs. 5000/- and in default of payment of fine a further RI for 3 months.

[4] The appellant having aggrieved prefers appeal which is pending now. The findings recorded by the trial court are perverse as no independent witness came forward to support the case of the prosecution. There is major contradiction of the evidences of police officials regarding time and search procedure. Nothing was proved that the fake currency note was ever attempted to use it genuinely. The procedure for search of persons on the basis of secret information has not been followed for which possession of the appellant of the contraband cannot be accepted in legal scrutiny.

[5] Hence, the present appeal has been preferred by the appellant before this Court for redress.

[6] Mr. T. D. Majumder, learned senior counsel assisted by Mr. A. Reang, learned counsel appearing for the appellant has submitted that there was no iota of evidence that fake currency note was intended to use genuine by the accused, therefore, ingredient of Section 4890 of the IPC is absent in the prosecution case. On this ground alone convict is entitled to be acquitted. The learned Court below has misread the evidences and thus arrived to a wrong and erroneous finding, causing serious miscarriage of justice. In hot haste relied on the improved versions of the prosecution witnesses related to the case and based on police witnesses the learned Court below convicted and sentenced the appellant herein.

[7] It has been further contended that no independent witnesses have been called for to accompany the raiding party and no Panchnama was prepared by the informant in consonance with the mandate of law. Section-100 of the Code of Criminal Procedure was incorporated in order to build confidence and a feeling of safety and security among the public. Section-100 sub-sections (4) to (8) stipulate the procedure with regard to search in the presence of two or more respectable and independent persons preferably

from the same locality but in the case in no attempt was done making the entire prosecution story fishy. No mandatory conditions culled out from Section-100 of the Code for a valid panchnama has been ignored.

[8] No necessary steps for personal search of officer (inspecting officer) and Panch witnesses have been taken to create confidence in the mind of court that nothing is implanted and true search has been made and things seized were found real. Further, no search proceedings have been recorded by the I.O. or some other officer under the supervision of the Panch witnesses. When the case is based on possession it is mandatory to record very clearly stating the identity of the place to be searched, all the spaces which are searched and descriptions of all the articles seized, and also, if any sample has been drawn for analysis purpose that should also be stated clearly in the panchnama but nothing was done in the instant case making the search and seizure doubtful.

[9] The IO can take the assistance of his subordinates for search of places. If any superior officers are present, they should also sign the panchnama after the signature of the main IO. It is submitted that place, name of the police station, officer rank (IO), full particulars of panch witnesses and the time of commencing and ending must be mentioned in the panchnama but nothing was done in the instant case. If a search is conducted without warrant of court under Section-165 of the Code, the officer must record reasons and a search memo should be issued.

[10] Knowingly the police officer has taken pliable witnesses as seizure witnesses his attempt success therefore the entire raid would become suspect and in such a case it is not desirable to maintain that the evidence of police witnesses by themselves would be sufficient to base conviction. The baggage which was allegedly seized was not produced, proved before the Court. The contrabands have not been seized from the possession of the appellant. The currency notes are still the backbone of the commercial transactions by the multitudes in our country but these provisions are not meant to punish unwary alleged possessors or users.

[11] A conjoint reading of the evidences, recorded in this case, it is established that no contraband was seized from the possession of the appellant. It has been further submitted that there is no *mens rea* of offences under Section 489-C that the convict has knowledge or having reason to believe the currency notes are forged or counterfeit so mere possessing any forged or counterfeit currency notes or banknotes is not sufficient to make out a case under Section-489-C in the absence of the *mens rea*. No material is brought on record by the prosecution to show that the appellant had the requisite *mens rea*. The learned Court below, however, completely missed this aspect. The sentences awarded by the learned Court below, North Tripura, Dharmanagar, is unwarranted in law and the appellant may not be aware of note's history or potential legal or financial implications of possessing it.

[12] In view of the above submissions made at the Bar, this Court is of the view that since, there is no other case pending against the appellant and only on the basis of some counterfeit notes received from the accused appellant when deliberate selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency notes or banknotes by the appellant is not proved, it will not be proper to constitute offence under 489-C IPC against him. In the case in hand, it is seen that another accused in the trial Court from whom the alleged counterfeit notes were said to be received by the appellant herein, has already been acquitted by the learned trial Court for the benefit of doubt.

[13] Considering the facts and circumstances of the case as discussed above, this Court is of the opinion that ends of justice would be met if the benefit of doubt is extended to the appellant. Accordingly, the appellant is acquitted and the impugned order and sentence dated 31.01.2024 passed by the learned Sessions Judge, North Tripura, Dharmanagar in Case No. ST (T-1) 11 of 2029 convicting the appellant under Section 489(C) IPC and sentencing him to suffer rigorous imprisonment for 3 years for the commission of offence punishable under Section 489(C) of IPC with fine of Rs. 5,000/- in default to suffer SI for

three months is hereby set aside. The appellant is already on bail, his bail bond stands discharged.

[14] With the above observations and direction, the instant appeal stands allowed and disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs.

T. AMARNATH GOUD, J

A.Ghash

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