THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

CRIMINAL APPEAL NOs.180 and 188 of 2015

DATED: 03-02-2017

Criminal Appeal No.180 of 2015:
Between:

Mohd.Anwer Sheik (A.3)
Sajibul Haque (A.4)
Rizavul Haque alias Rizavul (A.13)
Bablu Sheik (A.16)
Mustafa Ali Buddan (A.21) … Appellants/Accused Nos.3, 4, 13, 16 and 21

And

The National Investigation Agency
Rep. by its Special Public Prosecutor
High Court of Judicature at Hyderabad
For the State of Telangana and
the State of Andhra Pradesh … Respondent

Criminal Appeal No.188 of 2015:
Between:

Janab Hassan (A.23)
Imran Khan (A.24) … Appellants/Accused Nos.23 and A.24

And

The National Investigation Agency
Rep. by its Special Public Prosecutor
High Court of Judicature at Hyderabad
For the State of Telangana and
the State of Andhra Pradesh … Respondent

COUNSEL FOR THE APPELLANTS: Mr. Mohd.Muzaffer Ullah Khan
(Crl.A.No.180/2015)
&
Mr. Surepalli Madhava Rao
(Crl.A.No.188/2015)

COUNSEL FOR THE RESPONDENT: Sri P.Vishnuvardhana Reddy
Special Public Prosecutor

THE COURT MADE THE FOLLOWING:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL Nos.180 and 188 of 2015

COMMON JUDGMENT: (per the Hon'ble Sri Justice M.S.K.Jaiswal)

Criminal Appeal No.180 of 2015 is filed by A3, A4, A13, A16 and A21. Criminal Appeal No.188 of 2015 is filed by A23 and A24. They along with others were tried in Special Sessions Case No.2 of 2013 on the file of the I Additional Metropolitan Sessions Judge-cum-Special Judge for the Trial of Cases under National Investigation Agency Act, Hyderabad, for the offences punishable under Sections 489-B, 489-C and 120-B IPC and Sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967 (as amended in the year 2008). The appellants were acquitted of the charges punishable under Section 120-B IPC and Sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967. However, by Judgment, dated 19.02.2015, the learned Special Judge found A.3, A.4 and A23 of the charge under Section 489-C IPC, and sentenced them to undergo rigorous imprisonment for four years. A21 was found guilty of the offence punishable under Section 489-B IPC, and sentenced to undergo rigorous imprisonment for a period of five years and fine of Rs.1,000/-. A13, A16 and A24 were convicted for the charges under Sections 489-B and 489-C IPC, and they were sentenced to undergo rigorous imprisonment for a period of five years and four years respectively together with fine of Rs.1,000/-. Feeling aggrieved thereby, the appellants preferred the present Criminal Appeals.

2. For convenience, the appellants in these two Criminal Appeals shall be referred to hereinafter as A.3, A.4, A13, A16, A21, A23 and A24.

3. Though these appeals are confined to the accused mentioned above, the offences held proved against them are part of a larger transaction involving in all 28 accused. The investigating agency (NIA) has filed separate sets of charge sheets against the accused, grouping them together based on the roles played by them. Since in the present cases, we are concerned with A.3, A.4, A.13, A.16, A.21, A.23 and A.24, it will suffice if the contents of the charge sheet filed by NIA in relation to the said accused are referred to. Each of the allegations contained in the common charge sheet filed against the appellants is stated hereunder:

Prosecution case:

4. On credible information that A-1 and others were circulating Fake Indian Currency Notes (for short 'FICN') of Rs.500/- and Rs.1000/- denominations, the mobile phone numbers of A-1 and others were lawfully intercepted under Section 5 of the Indian Telegraph Act, 1885 after taking necessary permission from the Ministry of Home Affairs, Government of India and the conversations that took place on the intercepted phones were recorded. From the said intercepted conversations on mobile phones, it was revealed that A-1, A-2 - who worked at Ramky Infrastructure (ORR Project), Patancheru, Medak district, Andhra Pradesh, and others formed into a group and indulged in smuggling of FICN of Rs.500/- and Rs.1000/- denominations from hostile country for circulation of the same in India as a part of larger conspiracy to destabilize the monetary system of India. They were allegedly raising funds for terrorist activities by way of earning genuine currency notes against the FICN circulated by them. Vide Order No.11034/36/2011-IS-IV, dated 28-12-2011 the Government of India gave permission for registration of the case and accordingly a case in Cr.No.1/2012/NIA/Hyd

was registered against A-1, A-2 and others under sections 489-B, 489-C r/w. Section 120-B IPC and Sections 15, 17 and 18 of the Unlawful Activities (Prevention) Act 1967.

5. A-1, who was arrested on 6-1-2012 in Malda district, West Bengal State, confessed the offence and revealed the names of other persons apart from A-2 and A-3 to A-22. A-17 is a Pakistan National and he supplied FIC to A-18, who is a Bangladesh National, for circulation in India. A-18, in association with A-1, A-19 and others got the FICN smuggled into India and circulated the same.

6. While the case was under investigation, credible information was received to the effect that A-17 who was residing in Dubai, was smuggling FIC into India for circulation in association with A-24 and A-25. Discreet enquiries were caused and it came to light that A-25 sent a parcel containing FIC from Bengaluru to A-24 who was in Delhi, for collection by the latter from Patel Rail Cargo, Chandni Chowk in Delhi. Basing on the said information, the NIA investigation team was rushed to Delhi. On 27-3-2012, in Delhi, A-23 and A-24 came to Patel Rail Cargo and took delivery of the parcel. The investigation team intercepted A-23 and A-24 in the presence of two independent witnesses and got the said parcel opened. In the said parcel, FIC amounting to Rs.9,85,000/- were found packed in a plastic bag of half white colour beneath tea packets (17 in number) and the same were seized and A-23 and A-24 were arrested. The person who sent the FIC from Bengaluru to A-23 and A-24 was identified as A-25. A-25 is an associate of A-17 and he was maintaining connections with A-1 also. A-25 was procuring the FIC from A-1 and A-17. A-25 was arrested on 29-03-2012 in Bengaluru. A-26 to A-30,

residents of Bengaluru, who were the associates of A-25, were also identified.

7. It is further the case of the prosecution that during the course of investigation it was revealed that A-25 who is originally a native of Mumbai, used to do saree dyeing and trading business and export Banaras silk and fancy sarees to Dubai; that in that connection A-25 came into contact with A-17 who was said to be staying in Dubai; that thereafter A-25 migrated to Bengaluru and started cloth trading business in the name of Al-Nishath Collections at Ibrahim street, Bengaluru by paying rent in the shop owned by A-29; that A-29 was also doing similar business but in a different cloth material; that A-25 was frequently in contact with A-17 and discussed about the export of sarees to Dubai; that during the course of business transactions A-17 told A-25 that if the latter entered in circulation of FIC in India, he would get profit of Rs.50,000/- in original Indian currency against FIC of one lakh; that A-25 agreed to the proposal offered by A-17 and since then he was receiving the FIC from A-17 and was circulating the same in India; that A-25 used to send original Indian currency (proceeds of crime) of Rs.50,000/- for each Rs.1 lakh FIC to A-17 through Hawala route; and that as confessed by A-25, he was in contact with A-17 on his mobile No.971553969854 from his mobile No.9916510221 as well as from landline numbers.

8. That it was further revealed during the investigation that as per the instructions of A-17, A-25 established contact over phone with A-24; that A-25 introduced himself to A-24 as Nayeem by concealing his original name; that A-25 used to send FIC to A-24, who in turn circulated the same in Uttar Pradesh and Delhi in association with A-23. That in the month of February 2012, A-25 received a parcel from A-17 containing FIC

amounting to Rs.26,00,000/- in denominations of Rs.1000/- and Rs.500/- transported from Dubai via Chennai; and that in order to hide the FIC contained in the parcel, the same was covered with chocolates, shampoos, toys and dates. That after receiving the said parcel, A-25 informed A-17 about the receipt the parcel; that out of Rs.26 lakhs FIC, A-25 gave Rs.3,10,000/- to his associate A-26, who is a resident of Bengaluru, for circulation; that A-26, in turn, gave the FIC of Rs.1,00,000/- to A-27 for circulation; that A-27 circulated the same in local market and paid genuine currency notes of Rs.50,000/- to A-26 as proceeds of crime; that A-26 circulated the remaining FIC and paid proceeds of crime of Rs.1,50,000/- to A-25; that A-25 also gave FIC of Rs.5,00,000/- for circulation to his another associate i.e., A-28, who is a resident of Bengaluru and doing saree business; that A-28 in turn paid Rs.2,50,000/- in genuine currency to A-25 towards the crime proceeds; that A-25 sent Rs.2.5 lakhs in genuine Indian currency to A-17 through Hawala route as part payment towards the proceeds of circulation of FIC given by him.

9. It was further revealed in the investigation that in order to send the FIC to A-24 on 20-03-2012 A-25 with the help of A-28 purchased Tea powder packets from the local market and kept the same in a dark brown cardboard box; that A-25 placed rs.9,85,000/- FIC, all in Rs.1000/- denomination, in a cream coloured polythene cover and kept the same in the said cardboard box and packed it; that later A-25 told A-29 and A-30 that the said parcel belonged to A-28 and that it was to be transported to his relatives in Delhi. That A-25 requested A-29 and A-30 to book the parcel at Patel Parcel Movers stating that he was unable to go to the parcel office as he had some other work; that accordingly A-29 and A-30

booked the parcel at Patel Parcel Movers, Bengaluru on 20-03-2012 vide receipt No.16297, dated 20-03-2012; that on the said parcel, the address of the receiver was mentioned as "KISSAN CHANDNI CHOWK DELHI Mobile-8430852798" and the sender's address was mentioned as "KARNATAKA Tea Agencies, O.P.h. Road/SUC/Bg of Karnataka"; that the original receipt given by Patel Parcel Movers was handed over to A-25 by A-29 and A-30; that as per the receipt, the weight of the parcel was 20 Kgs. and the amount collected towards transport charges was Rs.240/-.

10. That it was further revealed in the investigation that Patel Parcel Movers installed CCTV recording system; that the video footage of 20-03-2012 was seized; that as per the said video footage, A-29 and A-30 carried the parcel and booked the same on 20-03-2012 at about 6 P.M. and that the statements of one Damodar, the Manager and Bhupinder Singh, the Parcel Clerk of M/s. Patel Parcel Movers, Bengaluru were recorded under Section 161 Cr.P.C. That on 21-03-2012, with a view to send the copy of the receipt given by Patel Parcel Movers to A-24 for enabling him to collect the parcel containing the FIC, A-25 went to "SPECTRA HITECH SERVICE" in Bengaluru which deals with Computer Accessories repairs, FAX, Xeros etc., located in the commercial complex called Ashok Plaza on the main Kamaraja Road in Bengaluru and requested its owner B. raja Shekar to fax the original receipt No.16297 dated 20-03-2012 to Delhi; that acdcordingly B. Raja Shekar faxed the receipt to the phone number given by A-25; that as the letters on the copy received through fax were not legible, A-24 asked A-25 to send the receipt to the e-mail ID sapnacomputers@gmail.com; that the said e-mail belonged to one Surender Kumar, proprietor of Sapna Computers, located at Tahsil compound area, Kairana, Prabudhnagar, UP State; that on the

request of A-25, B. Raja Shekar, owner of Specitra Hitech Service scanned the receipt and sent it to the e-mail address sapnacomputers@gmail.com through his office e-mail ID "ssruag@gmail.com"; and that the proprietor of Sapna Computers took a printout of the receipt from the e-mail ID "sapnacomputers@gmail.com" and gave it to A-24. That during the course of investigation, the Hard Disks of the computers were seized from Spectra Hi-tech service, Bengaluru and Sapna Computers, Kairana, Uttar Pradesh state; that the statements of Surender Kumar, Proprietor of Sapna Computers, and B. Raja Shekar, the owner of Spectra Hitech Service, were recorded under Section 161 Cr.P.C.

11. That on 26-03-2012, Kalyan Singh, Regional Manager, Patel Rail Cargo, Chandni Chowk, Delhi, made a call to mobile No.8430852798, which was mentioned on the parcel sent by A-25, and informed that the parcel had arrived in Delhi from Bengaluru; that on 27-03-2012, A-24 along with his half-brother A-23 went to Patel Rail Cargo, Delhi in Indica DI Car bearing registration No.DL 3CY 2647 and collected the parcel containing FIC of Rs.9,85,000/- by presenting the scanned receipt sent by A-25 from Bengaluru; that A-24 signed on the delivery receipt No.4095 dated 27-03-2012 of Patel Rail Cargo, Delhi for having received parcel No.16297/1; that on the said delivery receipt, the signature of A-24 as "Imran" in Hindi along with his phone No.9528875674 were found; that the said parcel was sent by A-25 on 20-03-2012 by booking the same at Patel Parcel Movers, Bengaluru; and that FIC of Rs.9,85,000/- were seized from the possession of A-23 and A-24 in the presence of independent witnesses. That FIC of Rs.1000/- denomination vide Sl.No.JCA888302 was also found during the personal search of A-24 and the same was seized at the time of his arrest on 27-03-2012; that another FIC of

Rs.1000/- denomination vide Sl.No.9BW674802 was also found in possession of A-23 and the same was also seized and that the statement of Kalyan Singh, Regional Manager, Patel Rail cargo, Chandni Chowk, Delhi was recorded under Section 161 Cr.P.C. That the investigation revealed that A-23 and A-24 used to circulate FIC in Uttar Pradesh and Delhi and that both of them were arrested on 27-03-2012.

12. That A-25 was arrested on 29-03-2012 by NIA, Hyderabad in Bengaluru and FIC having face value of Rs.21,500/- were seized from his house at his instance; that original receipt No.16297 dated 20-03-2012 issued by Patel Parcel Movers, Bengaluru in respect of the parcel containing FIC sent by A-25 and A-24 was also seized from the possession of A-25; that A-25 in his confession revealed the names of his associates in Bengaluru and they were arrayed as A-26, A-27, A-28, A-29, and A-30; and that A-25 also confessed that on earlier occasions he had circulated the FIC of Rs.5,00,000/- received from A-1.

13. That A-26 took the FIC of Rs.3,10,000/- from his associate, A-25 and he in turn gave Rs.1,00,000/- out of the same to A-27 for circulation; that A-27 circulated the same and gave genuine currency notes of Rs.50,000/- to him as proceeds of crime; and that A-26 circulated the remaining FIC and paid proceeds of crime to the tune of Rs.1,50,000/- to A-25. That A-26 was arrested on 29-03-2012 at Bengaluru and FIC having face value of Rs.6,500/- were seized from his house in Bengaluru at his instance.

14. That A-27 took the FIC of Rs.1,00,000/- from A-26; that A-27 circulated the same and paid genuine Indian currency of Rs.50,000/- to A-26 as proceeds of the crime; that A-27 was arrested on 29-03-2012 by the

NIA, Hyderabad at Bengaluru and FIC having face value of Rs.4,500/- were seized at his instance from his shop in Bengaluru.

15. The appellants and the other accused who were all involved in Cr.No.1 of 2012 of the National Investigation Agency, Hyderabad, were tried together by the learned I-Additional Metropolitan Sessions Judge-cum-Special Judge for the trial of cases under National Investigation Agency Act, Hyderabad. During the course of trial, the prosecution examined P.Ws.1 to 107 and produced Exs.P.1 to P.403 and M.Os.1 to 258.

16. At the conclusion of the trial, the accused were examined under Section 313 Cr.P.C., where they denied the evidence on record. The appellant/A.3 stated that that he was arrested on 05.01.2012 from his work place and later he was produced before the Court, that no material was seized from his possession, that he was taken to police custody and by using force the police have made him to talk on phone and they have given the text which he was made to talk, that he was not aware of the person on the other side of the phone, and that he has been falsely implicated in this case. The appellant/A.4 stated that he was arrested by the police on 05.01.2012 from his temporary residence at Hyderabad, that he was forced to write on some papers and also in some diary, that no material was seized from his possession, that when he was in police custody, he was given a written script and asked to read the same by the Officers of the National Investigating Agency, and that he was falsely implicated in the case. The appellant/A.13 stated that he has been falsely implicated in this case, that he was never taken to Malda District, West Bengal, that no recovery was made at his instance, that he never made any confession before the National Investigating Agency Officials, and that

the purpose of this case, false recovery has been shown. The appellant/A.16 stated that he does know the facts of this case, that he is innocent, that nothing was seized or recovered from his possession, and that he has been wrongly implicated in this case. The appellant/A.21 stated that he is illiterate, that he has been cultivating lands at the native place since his childhood, and that the police officials of the National Investigating Agency have fabricated evidence against him after bringing him to Hyderabad on Production Transit Warrant. Appellants/A.23 and A.24 have stated that they do not know the facts of the case, that they are innocent, that nothing has been seized or recovered from their possession, and that they have been wrongly implicated in this case.

17. No defence witnesses were examined but however through the evidence of P.W.16, Ex.D.1 was marked.

18. Sri Mohd.Muzaffer Ullah Khan, learned Counsel appearing for the appellants/ A.3, A.4, A.13, A.16 and A.21 (Criminal Appeal No.180 of 2015) submitted has under:-

19. Insofar as A.3 and A.4 are concerned, Ex.P.7 is the search proceedings prepared by PW.99 in the presence of the panch witness-PW.2. From the possession of A.3, one 500 rupee note and from the possession of A.4 one 1000 rupee note were said to have been recovered. Learned Counsel submitted that neither the panch witness PW.2 identify the accused nor the currency notes recovered from him. He has further submitted that the prosecution failed to prove that Ex.P.7 panchanama was prepared at Ramky Project, Medak District, as they have not cited any person who is incharge of the said Ramky Project, and that the Investigating Officer – PW.99 also did not verify whether the quarter No.B-6 was allotted to the accused.

20. With regard to A.13, it is submitted that the house of A.13 was alleged to have been searched on 08.01.2012 and two 1000 rupee notes were recovered by PW.13 in the presence of PW.4 under panchanama-Ex.P.20. In the said panchanama, no descriptive particulars of the house from where the currency notes were seized is mentioned nor any local witness was examined. It is further submitted that on 29.01.2012, PW.107 along with PW.9 are alleged to have gone to Malda District, West Bengal, and on 30.01.2012 and 01.02.2012 forty fake currency notes of 500 denomination were alleged to have been recovered at the instance of A.13, that Ex.P.47 is the panchanama said to have been prepared at that time in the presence of PW.9, and that as per the said panchanama, it is confessed by A.13 that he has concealed the fake Indian currency notes at Modobetpor village of Malda District in West Bengal. It is further contended that as per PW.9, Ex.P.47 was prepared on 29.01.2012 and on the same day they boarded a train at Secunderabad Railway Station along with A.13 and two NIA Officers and went to Calcutta, that thereafter, on 01.02.2012, A.13 is alleged to have led them to Indo-Bangaladesh Border where bamboo plantation was there and there from A.13 produced 40 currency notes of 500 denomination, that the place from where the currency notes were produced will be guarded by Border Security Forces and that no efforts were made to secure the presence of any independent witness.

21. Insofar as the recovery under panchanama Ex.P.20 is concerned, the learned counsel submitted that it is said to have been prepared from the house, the door number of which is not mentioned, that at that time, it is alleged that one Kavita Bibi was in the house, but she was not been examined. It is further submitted that it is admitted by the Investigating

Officer that in order to reach the place from where forty 500 rupee currency notes were seized in Malda District, they have to cross Gate No.11, for which they have to obtain permission from the Border Security Forces, but however, no evidence to that effect has been produced. That apart, submitted by the learned counsel, absolutely no evidence is placed on record to show that PWs.9 and 103 went to Malda District from Hyderabad along with the escort party.

22. The learned counsel submitted that the evidence against A.16 is not convincing and reliable, that PW.32, the panch witness did not support the case of the prosecution, that two 1000 rupee notes and ten 500 rupee notes were said to have been recovered from A.16 on 06.01.2012. He has further submitted that the panch witness – PW.13 categorically asserted that the NIA police never called him and no search was made in his presence and that he cannot even identify A.16. With regard to the other recovery of two 1000 rupee notes, which are said to have been recovered from a trunk box kept in a room which was kept open, the learned counsel submitted that no satisfactory evidence is placed on record, and that at the time of the alleged search and seizure, one Gokul Shaik was said to be in the house but his signatures are not obtained on the panchanama Ex.P.130.

23. Insofar A.21 is concerned, according to the learned Counsel, the panch witness to panchanama-Ex.P.345 did not support the case of the prosecution and denied that the panchanama contains his signature, that PW.95 is the Police Officer who has taken A.21 to Muradabad District in Uttar Pradesh State from Hyderabad on 07.06.2012, but no evidence whatsoever has been produced to show that the Investigating Officer along with the accused traveled from Hyderabad to Uttar Pradesh.

24. Learned Counsel further submitted that mere possession of the currency notes which are counterfeit, in the absence of there being any *mens rea,* do not constitute the offence punishable under Sections 489-B and 489-C of the Penal Code. Learned Counsel relied upon a decision of the Supreme Court reported in *Umashankar v. State of Chhattisgarh*[1]*,* wherein it is observed that *mens rea* is very essential for conviction of economic offences under Sections 489-B and 489-C of I.P.C., that these provisions are not meant to punish unwary users or possessors of fake currency notes and bank notes. It is also observed that knowledge or having reason to believe that the currency notes or bank notes are forged or counterfeit, is essential as per the provisions of the Code and without the aforementioned *mens rea* selling, buying or receiving from another person or otherwise trafficking in, or using as genuine forged or counterfeit currency notes or bank notes, is not enough to constitute the offence.

25. For the above reasons, learned Counsel submitted that the conviction of the appellants/A.3, A.4, A13, A16 and A21 cannot be sustained and the same is liable to be set aside.

26. Learned Special Public Prosecutor, on the other hand, contended that the learned trial Judge has minutely discussed the oral and documentary evidence on record in respect of each of the appellant/accused, that the appreciation of evidence is based on sound reasoning warranting no interference, that the evidence of the Investigating Officers is supported by material aspects by other evidence on record, more particularly, the documents and that there is no reason whatsoever for disbelieving the voluminous evidence on record.

---

[1] 2001 (4) Crimes 83 (SC)

According to the Special Public Prosecutor on the basis of the confession made by the non-appellant/A.1, the entire conspiracy was discovered and that all the accused were arrested from different places and recovery is effected. The learned Special Public Prosecutor relied upon a decision of the Supreme Court reported in *C.Ronald v. UT of Andaman & Nicobar Islands*[2] wherein it is held that there was no principle of law that a statement made in a Court by a Police Officer has to be disbelieved in the absence of there being any reason for the Police Officer to depose against the accused falsely. The evidence on record being consistent, reliable and trustworthy needs to be accepted and the conviction and sentence recorded against the accused be upheld.

27. Sri Surepalli Madhava Rao, learned Counsel appearing for the appellants/A.23 and A.24 (Criminal Appeal No.188 of 2015) contended as under:-

28. That the charges that are framed against the appellants are defective and it has caused prejudice to them (Charge Nos.27, 28 and 29). According to the prosecution, A.23 and A.24 were apprehended when they were collecting a parcel containing tea powder and also fake currency notes, worth about Rs.9,80,000/- from Patel Road Ways, that the said consignment was said to have been booked by non-appellant/A.25, and that the search and seizure said to have been carried out is illegal since the same is without proper authority. That since the independent panch witnesses turned hostile, the recoveries could not be proved. That the learned trial Judge has not appreciated the evidence on record in proper perspective and without arriving at a finding that the currency notes seized were fake or counterfeit, found the appellants guilty.

---

[2] (2011) 12 SCC 428

29. On the other hand, learned Special Public Prosecutor submitted that the evidence of PWs.23, 24, 28, 46, 61, 69, 99 and 101 coupled with documents – Exs.P.108 to 113 and 173 to 178, and M.Os.41 and 42, proved beyond doubt that the appellants/A.23 and A.24 are the persons who received the parcel from Patel Road Ways at New Delhi which was booked by A.25 at Bangalore, that the said parcel contained Tea powder and another packet containing the fake currency notes, amounting to Rs.9,80,000/-, and that therefore, the conviction of A.23 and A.24 cannot be said to be erroneous warranting any interference.

30. The NIA contains a schedule under which certain Acts have been included. The Unlawful Activities (Prevention) Act, 1967 (UAP Act) is also included at Serial No.2 of the schedule. Under sub-section (4) of Section 6 of the NIA Act, where the Central Government is of the opinion that the offence is a scheduled offence and it is a fit case to be investigated by the agency, it shall direct the agency to investigate the said offence. P.W.74, who was the Under Secretary, Ministry of Home Affairs (Internal Security Division), New Delhi, at the relevant point of time, deposed that on the report given by the National Investigating Agency, the matter was referred to the High Powered Committee headed by a retired Judge of High Court and the Member Secretary, Legislative Department, that the said Committee submitted a report to the Home Ministry recommending sanction for prosecution of the accused, including accused Nos.23 to 27, and that the said Committee examined the material in detail with reference to the material placed before it and satisfied itself with regard to the existence of *prima facie* case to recommend sanction for prosecution. That the said Committee has recommended for according sanction for prosecution under Sections 16 and 18 of the UAP Act, that based on the

said recommendations, the Central Government issued sanction for prosecution of the accused on behalf of the President of India, and that Ex.P.264 sanction proceeding was signed by PW-74 on behalf of the President of India. In his cross-examination made on behalf of accused No.1, the witness has admitted that Ex.P.264 did not note the description of the documents that were placed by the NIA before the Government for according sanction, the material placed before the High Powered Committee for consideration and the documents and the material considered by the Central Government for according sanction. He has also admitted that the said material was not annexed to Ex.P.264 and that the actual details of the recommendations of the Committee and the material and the acceptance of the Central Government to accord sanction were not reflected in Ex.P.264. He has, however, denied the suggestion that there was no application of mind and no consideration of the material in Ex.P.264. In his cross-examination on behalf of accused No.24, the witness admitted that the Central Government has issued sanction orders entirely based on the recommendations of the High Powered Committee and that he is not the decision making authority to accord sanction, but he is authorized to convey the decision of the competent authority for according sanction. He has denied the suggestion that he is not the authorized person to sign Ex.P.264.

31. The learned Counsel relied upon the judgment of the Supreme Court in *Mohd. Iqbal Ahmed v. State of Andhra Pradesh*[3] in support of his submission that it is incumbent on the prosecution to prove that a valid sanction has been granted by the sanctioning authority after it was satisfied that a case for sanction has been made out constituting the

---

[3] (1979) 4 SCC 172

offence. It was laid down in the said judgment that to prove that a valid sanction has been granted, the prosecution must either (i) produce the original sanction which contains the facts constituting the offence and the grounds of sanction, or (ii) adduce evidence aliunde to show that the facts placed before the Sanctioning Authority and the satisfaction arrived at by it.

32. A perusal of Ex.264 reveals that Annexure – A to the sanction order contains the details of entire gist of the evidence comprising both the proposed oral evidence of witnesses as well as the documentary evidence pointing to the involvement of some of the accused, including accused Nos.25 to 27. The sanction order also contains the relevant facts constituting the offences with a clear finding that based on the recommendations of the review committee, the Central Government was satisfied that a *prima facie* case punishable under Sections 120-B IPC read with Section 489-B and 489-C IPC and Sections 16 and 18 of the UAP Act, was committed by the accused. This material in our opinion is sufficient to satisfy the requirements of the law laid down by the Supreme Court in *Mohd. Iqbal Ahmed* (3 supra). Even P.W.74 has referred to the fact that the High Powered Committee headed by a retired Judge of High Court has examined the matter in detail with reference to the material placed before it and after satisfying itself, it has recommended for according sanction. Though the material considered by the High Powered Committee and the Central Government was not enclosed to Ex.P.264, in the light of the said document and the deposition of P.W.74, we have no reason to doubt that the High Powered Committee as well as the Central Government have made proper application of mind for according sanction. We do not

therefore find any reason to arrive at a view different from the one recorded by the lower Court on this aspect.

33. According to the prosecution, the appellant/accused along with several other persons have conspired to destabilize the monetary system in India by getting counterfeit currency notes of the denominations of Rs.500/- and Rs.1000/- from Pakistan and Bangladesh by circulating the same in India. This charge of conspiracy against the accused could not be proved, since its basis was the telephonic conversation in between different accused. The trial court has taken into consideration all the relevant aspects and held that the charge of conspiracy was not proved. That was not the subject matter of challenge by the prosecution. However, according to the prosecution, from different accused persons at different places, counterfeit currency notes were seized and the entire *modes operandi* was disclosed by the non-appellant/A1, who is said to be the main conduit in the entire episode. What is therefore required to be seen is as to whether the prosecution could bring home the guilt of the individual appellants/accused with reference to the material placed on record beyond reasonable doubt.

Crl.A.No.180/2015:

34. The appellants herein are A3, A4, A13, A16 and A21. The charges against them are under Section 489-B and 489-C of IPC.

Section 489-B of IPC reads as under:

"489B. Using as genuine, forged or counterfeit currency-notes or bank-notes.—Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 489-C of IPC reads as under:

"489C. Possession of forged or counterfeit currency-notes or bank-notes.—Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

35. As has been held by the Hon'ble Supreme Court of India in *Umashankar v. State of Chhattisgarh* (1 supra) *mens rea* of offences under Sections 489-B and 489-C of IPC is knowing or having reason to believe that the currency notes or bank notes are forged or counterfeited. Without aforementioned *mens rea*, selling, buying or receiving from another person or otherwise trafficking in or use as genuine of any forged or counterfeit currency notes or bank notes is not enough to constitute an offence under Section 498-B IPC. Similarly, possessing or even intending to use any forged or counterfeit currency note or bank note is not sufficient to make out a case under Section 489-C IPC in the absence of knowledge or having reason to believe that the said currency note is forged or counterfeited.

36. The charge against A3 and A4 under Section 489-C IPC, charges under Sections 489-B and 489-C IPC against A13 and A16 and charge under Section 489-B IPC against A21 were held to have been proved by the trial court and they are convicted therefor.

37. For the sake of convenience, firstly, the case against the appellants/A3 and A4 shall be considered.

38. The prosecution relies upon the evidence of PW 2 and PW 99 to prove the charges against A3 and A4. PW 2 is the Village Revenue Officer of Muttangi and Pocharam villages of Pattancheru Mandal. He deposed that on 06.01.2012 at about 3.30 p.m, he along with NIA police went to the Quarters of Ramki Project and entered into Quarter No.B-6, and they searched the same and also the person of A3. From the possession of A3, they took one purse which contain seven Rs.10/- rupee notes, one Rs.50/- rupee note, one Rs.100/- rupee note and one Rs.500/- rupee note. Out of them, one Rs.500/- rupee note is suspected to be fake and it was seized as M.O.177.

39. Similarly, from the same place, the person of A4 was also searched and he was found in possession of one purse containing one 1000/- rupee note, which was suspected to be fake along with some other irrelevant papers and it was seized as M.O.178

40. PW 99 is the investigating officer, whose evidence is similar to that of PW 2. The evidence of these two witnesses proved beyond doubt that the appellants/A3 & A4 are found in possession of fake currency notes of Rs.500/- and Rs.1000/- respectively and they could not explain about its possession. Though the appellants denied that M.Os.177 and 178 were recovered from their possession, but the evidence of PW 2 coupled with that of PW 99 prove beyond doubt that two fake currency notes were seized from A3 and A4. It is not contended by the appellants that they are unwary possessors of M.Os.177 and 178 without having knowledge of their being fake or counterfeit. It may be recalled that the kingpin of the gang is A1, and in his confession, the names of A3 and A4 have been specifically mentioned as the persons who are part of the gang.

41. The learned Special Judge has properly appreciated the evidence on record and accepting the evidence of PW 2 and PW 99, which is cogent, consistent and convincing, found the appellants guilty of the charge under Section 489-C I.P.C. We see no reason to interfere with the same.

42. In so far as the appellant/A13 is concerned, he was found guilty by the trial Court for the offence under Sections 489-B and 489-C IPC. The witnesses who spoke about the involvement of A13 are PWs 4, 9, 103 and 107.

43. According to the prosecution, on 08.01.2012 on the basis of the material gathered, the investigating agency went to the house of A13 at Mohabatpur and in the presence of PW 4 they went to his house and seized two 1000/- rupee notes and at that time one Kabitha Bibi was present in the house.

44. According to the prosecution, subsequently, again on 29.01.2012 when A13 and the non-appellant/A14 were interrogated in the presence of panch witnesses, one of whom was examined as PW 9, they confessed and pursuant to the said confession, A13 led them to India-Bangladesh boarder, Gate No.11 and from bamboo plantations, A13 brought a plastic cover which contained 40 fake Indian currency notes of denominations of Rs.500/- and the same were seized under cover of panchanama Ex.P50.

45. Both the panch witnesses, namely, PWs 4 and 9 gave evidence to the effect that from the house of A13, two Rs.1000/- rupee notes were seized and subsequently on 29.01.2012 forty Rs.500/- rupee notes were seized at the instance of the appellant/A13 from the bamboo plantations which was situated at India-Bangladesh border, Gate No.11. Admittedly, when the first recovery was made on 08.01.2012, the appellant/A13 was

not in the custody of the police and subsequently after his custody was taken and interrogated by the investigating officer, A13 confessed his involvement and led the panch witness PW 9 from Hyderabad to India-Bangladesh border and produced the counterfeit currency notes.

46. The investigating officers are PWs 103 and 107. It is in the evidence of PW 103 that on 08.01.2012 he personally proceeded to conduct house search of A13 and after securing the presence of PW 4, they have proceeded to his house and at that time, his wife Kabitha Bibi was present. They seized two fake currency notes of Rs.1000/- denomination, which are M.Os.13 and 14 along with some other irrelevant articles.

47. When it is the specific case of the prosecution that at that time, the lady by name Kabitha Bibi was present in the house of A13, who claimed to be the wife of A13, that relationship between A13 and Kabhitha Bibi was not denied and what is suggested to the witness is that there is no lady by name Kabitha Bibi and that she is a fictitious person. The proceedings conducted at the house of A13 on 08.01.2012 contained the thumb impression of Kavitha Bibi. It is no doubt true that the said Kabitha Bibi has not been examined as either witness or arrayed as an accused, but however, that do not weaken the case of the prosecution for the reason that PW 4 is a local respectable person, resident of Mohabatpur of Malda District and it is in his evidence that he along with NIA police searched the house of A13 and found M.Os.13 and 14 and at that time one Kabitha Bibi was present in the house.

48. Subsequently, the custody of A13 was taken and upon interrogation, he is said to have made confession in the presence of PW 9 and led the panch witness and the police to Indo-Bangladesh border and

from the bamboo plantations, he brought out a plastic cover, which contained forty Rs.500/- rupee notes. PW 9 was working as a Section Officer in GHMC, Kukatpally and his evidence is convincing. His evidence is substantially corroborated by the evidence of the investigating officer, namely, PW 107, who along with PW 9 proceeded to the place as pointed out by A13, which was near Gate No.11, Pillar No.179/M and 179/3S at India-Bangladesh boundary. It is further in the evidence of PWs 107 and PW 9 that A13 produced the Indian fake currency notes, valued at about Rs.20,000/- from the said plantations which was recovered under panchanama Ex.P50.

49. Ex.P47 which is the disclosure memo made by A13 and Ex.P50 seizure panchanama prove beyond doubt that in pursuance of the confession made by A13, he led the investigating officer for recovery of the fake Indian currency notes from India-Bangladesh border. The involvement of A13 is also related to the confession made by A1.

50. The contention of the learned counsel appearing for the appellant/A13 is that even though PWs 9 and 107 claimed to have proceeded from Hyderabad to Malda District and reached Bangladesh border, no evidence other than the oral claim made by them is produced. Similarly, it is admitted by the investigating officer that for going to the spot from where A13 is said to have produced fake Indian currency notes, the permission of the border security force need to be obtained, but no permission is however obtained. In view of this, the learned counsel submitted that the entire story of the prosecution that A13 made confession at Hyderabad and they proceeded to Malda and went to the India-Bangladesh border and recovered FIC notes cannot be believed. This submission of the learned counsel is no doubt has some substance,

but if the totality of the entire case is taken into consideration, that cannot be made the basis from throwing out the oral evidence of PWs 4, 9, 103 and 107.

51. It is submitted by the learned Special Public Prosecutor that since the investigation was carried out by the National Investigating Agency in the tight security zone and since there were not much of hostilities with the neighbouring country, the investigating agency has not secured or procured any documentary evidence with regard to their going to the restricted area of India-Bangladesh border. However, the oral testimony of PW 7, more particularly, PW 9 who is a respectable Government servant and who has got nothing against the appellant/A13, their evidence needs acceptance which prove that A13 made the confession leading to the recovery of FIC notes, worth of Rs.20,000/- which were all in Rs.500/- notes denomination. The learned trial Judge has considered the entire evidence on record in proper perspective and held that the appellant/A13 is guilty of charges under Sections 489-B and 489-C I.P.C. The said finding does not warrant any interference.

52. In so far as the appellant/A16 is concerned, he was found guilty by the trial Court for the offence under Sections 489-B and 489-C IPC. The witnesses who spoke about the involvement of A16 are PWs 30, 32, 82 and 97. The evidence led against A16 can be split into two. First is with regard to recovery of FIC notes from the house of A16 on 06.01.2012 and at that time, admittedly A16 was not present in the house. The house of A16 is situated in Debtalla village of Jhikartati panchayat, Pakur District, Jharkand State. The witnesses who spoke on this aspect are PWs 30 and 82. It is in the evidence of PW 30, who was working as District Supply Officer at Pakur in Jharkand State that on the directions of her superior,

namely, the Deputy Commissioner-cum-District Manager, Pakur district, she and her colleague Md.Zia-u-Ansari along with PW 82 went to the house No.104 of Debtalla village of Jhikartati Panchayat, Pakur District, that at that time they were accompanied by two women constables, the said house belong to A16, who was not present by that time, that the said house was searched and they found one rusty trunk box unlocked, kept in a room, and on verification, they found there were two Rs.1000/- rupee notes which are M.Os.44 and 45, and ten Rs.500/- rupee notes which are M.O.46 and twenty six Rs.100/- notes-Mo.47 and other papers which are marked as Exs.P131 to P146. It is further in the evidence of PW 30 that all these notes and papers were seized under cover of Ex.P130 panchanama.

53. PW 82 is the then Deputy Superintendent of Police of NIA and he deposed that he was deputed to Pakur in Jharkand State by DIG, NIA on 05.01.2012, and on 06.01.2012 he along with two panch witnesses, namely PW 30 and another went to the house No.104 of A-16 in Debthalla locality, that after giving notice to the occupants of the house, search proceedings were conducted, that at that time, one Zainath Bibi, Rafeeq Ul Islam and Gokul Sheik who claimed to be the brother of A16 were present in the house. In the presence of the family members and panch witnesses, the house of A16 was searched and M.Os.44, 45, 47 and Ex.P131 to 146 were seized. It is further in the evidence of PW 82 that they returned to Hyderabad and handed over Exs.A131 to A146 and M.Os.44 to 47 to the investigating officer.

54. PW 30 is a responsible officer of Jharkand State. Her evidence is cogent and convincing. Nothing concrete is elicited from her for disbelieving her claim that she along with PW 82 and others searched the

house of A16 and in the presence of the family members of A16, the counterfeit currency notes were seized. The evidence of the investigating officer PW 82 is substantiated and corroborated by PW 30.

55. The other limb of the case against A16 is that on 15.05.2012 A16 was arrested in West Bengal and upon interrogation, he confessed being in possession of FIC notes which were seized. The witnesses on this aspect are PW 32 and PW 97. PW 32 is a resident of Mahesh Tala village, Murshidabad District, West Bengal, and he deposed that in his presence, the investigating officer interrogated A16 and in his presence, it was found that A16 was in possession of nine Rs.500/- rupee notes, three Rs.100/- rupee notes and three Rs.10/- rupee notes in his shirt pocket. It is also in the evidence of PW 32 that nine Rs.500/- rupee notes that were seized from the pocket of A16 were fake notes. He also identified A16 as a person from whom the fake Indian currency notes were seized. Even though PW 32 initially could not identify A16, but on further searching cross examination by the prosecution, he stated that the FIC notes were seized from the pocket of A16, who was in the custody of the investigating agency at New Dag Bangla near Dhullan point, Murshidabad District, West Bengal.

56. The Investigating Officer PW 97 deposed that as per the directions of his superiors, he camped at Shamshergunj, West Bengal and on 15.05.2012 he arrested A16 at New Dag Bangla in the presence of PW 32 and one Kabir Sheik. A16 was searched and he was found in possession of nine Rs.500/- rupee fake Indian currency notes. These notes and other papers in the possession of A16 were seized under panchanama Ex.P158. It is also in the evidence of PW 97 that a copy of the search proceedings was also handed over to A16 under acknowledgment, that A16 was

produced before the local Magistrate and that after obtaining transit warrant, he was produced before the Special Court for NIA at Hyderabad.

57. It is submitted by the learned Special Public Prosecutor that since the involvement of A16 is linked to the confession made by A1, the investigating officer proceeded against A16 which led to recovery of fake Indian currency notes. Even though A16 was not present when his house was searched on 06.01.2012, his family members whose names have been specifically mentioned were present and the search proceedings were conducted in the presence of independent panch witness, who is PW 30, a local respectable Government employee. Nothing was brought on record for disbelieving the evidence of recovery on two occasions, implicating A16 and the evidence on record is reliable. The learned trial Judge has taken into consideration all material aspects and held that the charges levelled against A16 are proved, which does not warrant any interference.

58. The other appellant is A21. He is also said to be part of the gang and he was connected with the network as per the confession said to have been made by A1. The case of the prosecution is that when A21 was arrested, he confessed his involvement in the crime and led the police and the panchas to his village in Utter Pradesh and at his instance, fake Indian currency notes were seized under panchanama in the presence of independent panch witnesses. The confession part is made in Hyderabad in the office of NIA. The witnesses who spoke on this aspect are PWs 50, 76, 92, 95 and 102.

59. PW 50 is the then Intelligence Officer in the office of DG-CEI, Hyderabad . He deposed that on 06.06.2012 on instructions of the Deputy Director, he and his colleague B.Sangameshwar Rao went to NIA

office where PW 102 took them to a room and introduced A21, and in their presence, the Superintendent of Police interrogated A21, who confessed that if they accompany him to the outskirts of his native village near Moradabad, Utter Pradesh, he will show the FIC notes.

60. PW 102, the Superintendent of Police deposed that he interrogated A21, who was in their custody in the presence of panch witnesses, namely PW 50 and Sangameshwar and PW 95 and A21 confessed about his concealment of FIC notes at the outskirts of his village.

61. It is in the evidence of PWs 76 and 92 that they were present at the time of seizure of FIC notes at the outskirts of Adalpur, Sarlapur village at the instance of A21.

62. The Inspector of Police, PW 95 deposed that A21 confessed his guilt in the presence of panch witnesses and led them to the outskirts of his village and on 08.06.2012 they seized four Rs.1000/- Indian currency notes and twenty seven Rs.500/- Indian currency notes from the place where A21 concealed them under cover of Ex.P345. Out of four Rs.1000/- notes, three are FIC notes, and out of 27 Rs.500/- notes, 26 are FIC notes.

63. The above evidence is trustworthy and reliable and there is no motive whatsoever to implicate A21 who was stranger, and the evidence on record establishes the involvement of A21 in the chain of link of confession of A1.

64. Since the confession and recovery are proved, the trial Judge has rightly found A21 guilty of the charge under Sections 489-B and 489-C IPC and convicted him accordingly.

65. In view of the foregoing discussion and upon carefully perusing the oral and documentary evidence on record, we find that the prosecution

could establish beyond doubt that the appellants/A3, A4, A13, A16 and A21 have indulged in the offences alleged and that they have been rightly convicted by the court below. We see no reason to interfere with the said findings, which are based on legally acceptable evidence. Therefore, the Criminal Appeal is liable to be dismissed.

Crl.A.No.188 of 2015:

66. The appellants herein are A23 and A24. The gravamen of the charge against A23 and A24 is that they have received a parcel from Patel Rail Cargo, New Delhi, which was sent by the non-appellant/A25 from Bangalore. When they received the said parcel from the transport company, they were apprehended by the investigating agency in the presence of respectable panch witnesses, and the parcel was opened, which contained 17 packets of tea powder and Rs.9,85,000/- of fake Indian currency notes. It is alleged that the appellants/A23 and A24 were circulating fake currency notes in New Delhi and Utter Pradesh. According to the prosecution, on 20.03.2012 the non-appellant/A25 booked the consignment in the Patel Parcel Movers, Bangalore and it was addressed to Kisan, Chandini Chowk, New Delhi. It was purported to have been sent by Karnataka Tea Agency. The telephone number of the addressee who was to receive the parcel at New Delhi was furnished. PW 24 is the Supervisor in Patel Parcel Movers, Bangalore, whose evidence proves that it is the non-appellant/A25 who booked the parcel, for which, a receipt bearing No.16297 was issued charging Rs.280/- for transportation.

67. In so far as the role of A23 and A24 is concerned, it started after the parcel reached the transport company at New Delhi. PW 23 is the Manager of Patel Rail Cargo parcel Services, Chandini Chowk, New Delhi.

He deposed that on 25.03.2012 they received a parcel from their Bangalore Branch, booked by Karnataka Tea Agency and he called the addressee through the mobile number as furnished on the consignment. The person receiving the call, informed PW 23 that he will come on the next day. Accordingly, on 27.03.2012 at about 1.30 p.m two persons came to PW 23 and produced a scanned copy of receipt bearing No.16297. He further deposed that it is A23 and A24, namely, Imran and Janab Hussain, who came to collect the consignment. Immediately thereafter, the NIA police came and red handedly caught A23 and A24 and seized FIC notes, worth of Rs.9,85,000/-. He further deposed that Ex.P108 is the seizure memo and Ex.P109 is the delivery receipt, prepared by his office employee by name Jetender Jain and it was signed by A24. He further identified Ex.P110 as the scanned copy of the receipt dated 20.03.2012, issued by Patel Parcel Movers, Bangalore.

68. The other crucial witness on this aspect is PW 46. He is an Officer of Union Bank of India and at that time, he was working as such in Chandini Chowk Branch, New Delhi, which was located opposite to Patel Rail Cargo. He deposed that the NIA police took him along with one Mukesh Kumar to Patel Rail Cargo, which was situated opposite to their branch and they found A23 and A24 and in his presence, the NIA police seized the currency notes and parepared panchanamas on which he signed. Exs.P108, 109, 173, 174 and 175 are the proceedings which contained his signature. He also identified the material objects that were seized in his presence.

69. PW 99 is the Investigating Officer and he was assisted by PW101. It is in the evidence of PW 99 that a surveillance team was formed at New Delhi and the said team made surveillance in Chandini Chown area, and

that they had information that a consignment containing tea packets and some bundles of FIC notes are also being consigned. He further deposed that on 27.03.2012 at about 2 p.m one stone blue colour Indica D-1 model car bearing No.DL 3CY 2647 came in front of the godown of Patel Rail Cargo with two persons were in that car, and that while one person stood near the car, the other person went inside the Patel Rail Cargo to the delivery section to receive the consignment received from Bangalore. He further deposed that the person who went to the delivery section has shown the receipt and tried to take delivery of the consignment, that when they questioned the said person, he tried to escape from there, that he was however detained, that two officials of the Union Bank of India, Chandini Chowk branch, which is situated opposite to the said Patel Cargo, were called for and in their presence, when the said consignment was opened, it was found that it contained 17 tea bags, packed in white colour plastic bag and another half white colour plastic bag contained currency notes, and that when questioned, they revealed their names as Imran (A24) and Janab Hussain (A23). That the consignment was found to contain 10 bundles of suspected fake Indian currency notes of one thousand rupee denomination and the same were seized in the presence of panch witnesses. It is further in the evidence of PW 99 that A23 and A24 confessed that they received the said consignment from their associates at Bangalore. He identified A23 and A24. The fact that the seized currency notes are FIC notes is confirmed by PW 61, who is the Assistant Manager, Technical in Currency Notes Press, Nasik.

70. The evidence of these three witnesses i.e., PWs 23, 99 and 61, prove beyond doubt that the consignment that was booked by the non-appellant/A25 at Bangalore was received by A23 and A24 at New Delhi

and they were caught red handed while taking delivery thereof by producing the proof, which is necessary for delivery of consignment. It is also in the evidence of PW 69 that one Imran (A24) came to his shop at Delhi and wanted his Fax number, since a receipt was supposed to have been received by him. He gave his identity card which contains his fax number. He deposed that one fax was received from Bangalore, but it was not legible, that at the request of A24, PW 69 gave his e-mail ID and on e-mail he received a receipt on which it was noted as Kisan Karnataka Tea Company. PW 69 identified Ex.P110 as the scanned copy of the said receipt.

71. The learned counsel appearing for the appellants submitted that PW 69 failed to produce the hard disc of his computer to show that he received e-mail from Bangalore at the request of A24. PW 69 is the person, running Sapna Computers at New Delhi, and it was not a special event for him so as to preserve the material connected thereto. In usual course a customer i.e., A24 came to him and asked his fax number so that a fax intended to A24 will be received, and since the fax was not coming properly, A24 asked for the e-mail address of PW-69 and the same was furnished. All these are part of routine transactions being conducted by PW 69. Therefore, non-preserving the hard disc does not in any way falsify the claim of PW 69 that he received the copy of the consignment note from Bangalore at the instance of A24. The fact that fax was not being received properly, e-mail address was given to A24, and to his e-mail address a copy of consignment note was sent by A25 are established. The evidence of these witnesses clearly show that the consignment that was sent by A25 through Patel Transport company was received by PW 23, and as per usual practice, the cell phone number of the addressee

was furnished on the consignment and accordingly, he called on the said phone number which was responded to by Imran (A24). The evidence clearly proves that A23 and A24 went to the Transport Company at Chandini Chown, New Delhi on 27.03.2012 and produced proof to the satisfaction of PW 23 that he is the addressee to whom the consignment was intended. It is in the evidence of PW 23 that even when A24 was standing before him, he called on the mobile phone as furnished in the consignment and in his presence A24 responded to the call which establishes that A24 is the person to whom the consignment was intended.

72. The learned counsel appearing for the appellants submitted that the charge as framed against the appellants is defective. The relevant charges that are framed against A23 and A24 are charge Nos.27, 28 and 29 are reproduced hereunder:

> Twenty Seventhly: That you Accused No.24 on the 27th day of March, 2012 at Patel Rail Cargo Parcel Service, Chandini Chowk, Delhi, a parcel containing counterfeit Indian currency notes amounting to Rs.9,85,000/- was seized from the possession of Accused No.24 when accused No.23 have received the said parcel from that parcel service by detaining scanned receipt sent by Accused No.25 by name Masood Aktar Ansari of Bengaluru and that thereby you Accused No.24 have committed an offence punishable under Section 489-B of IPC which is within my cognizance;
>
> Twenty Eighthly: That you Accused No.24 on 27th day of March, 2012 at Patel Rail Cargo Parcel Service, Chandini Chowk, Delhi was searched in your person and found one counterfeit Indian currency note amounting to Rs.1,000/- denomination intending to use the same as genuine or it may be used as genuine and that thereby you accused No.24 have committed an offence punishable under Section 489-C of Indian Penal Code which is within my cognizance;

Twenty Ninthly: That you Accused No.23 on 27th day of March, 2012 at Patel Rail Cargo Parcel Service, Chandini Chowk, Delhi was searched in your person and found one counterfeit Indian currency note amounting to Rs.1,000/- denomination intending to use the same as genuine or it may be used as genuine and that thereby you accused No.23 have committed an offence punishable under Section 489-C of Indian Penal Code which is within my cognizance;

73. A careful perusal of the charges framed by the trial court shows that there is no material defect as such in the said charges so as to hold that the charges were so defective that it caused prejudice to the case of the appellants. A reading of the charges clearly show that what is alleged against them is that A23 and A24 have received the parcel sent by A25 and they were apprehended while they were in possession thereof and consequently they are charged with the offence punishable under Sections 489-B and 489-C I.P.C.

74. The charges framed by the trial court cannot be said to have vitiated the trial unless it is shown that the charges are erroneous and that the appellants were not put on notice as to what are the allegations made against them so as to articulate their defence. In the absence of there being any material to show that the charges as framed against A23 and A24 have caused any prejudice to them, they cannot be heard saying that the charges as framed are defective which denied them an opportunity to effectively meet the same.

75. The entire evidence available on record has been properly appreciated by the learned trial Judge and found A23 and A24 guilty of the charges leveled against them. We see no ground to interfere with the same and the appeal is liable to be dismissed.

76. The entire case revolves round the apprehension and confession of A.1 which led to identifying the other accused who are involved in the operation of transporting, circulating or being in possession of the fake currency notes, worth lakhs of rupees. Even though the confession made by the non-appellant/A.1 is not made the basis of the charge against the other accused, but the genesis of the crime is traced to that confession. As a general rule and as a matter of caution, the courts shall look into the corroborative evidence before putting to use the confession made by a co-accused inculpating others. However, if the court is satisfied that the probative value of such confession is such that it does not require corroboration, then the court can base conviction on the basis of such confession of the co-accused without corroboration.

77. As stated, in so far as the accused other than A.1 is concerned, there are individual confessions made by them leading to the recovery of the incriminating material. Only on the basis of the leads which the investigating agency obtained on the basis of confession by A.1, the entire racket was unearthed and arrest and recoveries are made.

78. In cases of this nature and this magnitude, it is difficult to expect that the prosecution should prove its case with hundred percent certainty. In *Lal Singh v. State of Gujarat*[4] in paragraph-84, the Supreme Court observed as under:

> "84. The learned Senior Counsel Mr.Sushil Kumar submitted that prosecution has not proved beyond reasonable doubt all the links relied upon by it. In our view, to say that prosecution has to prove the case with a hundred per cent certainty is a myth. Since last many years the nation is facing great stress and strain because of misguided militants and cooperation to the militancy, which has affected the social security, peace and stability. It is common knowledge that such terrorist activities are

---

[4] (2001) SCC (Cri) 472

> carried out with utmost secrecy. Many facts pertaining to such activities remain in personal knowledge of the person concerned. Hence, in case of conspiracy and particularly such activities, better evidence than acts and statements including that of co-conspirators in pursuance of the conspiracy is hardly available. In such cases, when there is confessional statement it is not necessary for the prosecution to establish each and every link as confessional statement gets corroboration from the link which is proved by the prosecution. In any case, the law requires establishment of such a degree of probability that a prudent man may on its basis, believe in the existence of the facts in issue….."

79. When international gangs operate the crimes, they will not leave behind more evidence than that is procured by to the prosecution. In the instant case, the investigating agency on its part has placed before the court best possible evidence and there is no room to doubt that the allegations made against the accused are well founded and substantiated by oral and documentary evidence available on record.

80. For the foregoing discussion, we do not find any merit in these two appeals and the same are accordingly dismissed.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date: 03.02.2017
Dsr/smr