

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

CRIMINAL APPEAL NOS.172, 175 AND 311 OF 2015

DATED:20-1-2017

Criminal Appeal No.172 of 2015:

Between:

Shaik Akram

... Appellant/Accused No.27

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.175 of 2015:

Between:

Mohammed Shafi

... Appellant/Accused No.26

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.311 of 2015:

Between:

Masood Akthar Ansari @ Nayeem

... Appellant/Accused No.25

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. A.T.M. Rangaramanujam, Senior Counsel,
for Mr. T. Prasanna Kumar (CrI.A.172/2015)
&
for Mr. D. Purna Chandra Reddy
(CrI.A.Nos.175 & 311/2015)

COUNSEL FOR THE RESPONDENT: Mr. P. Vishnuvardhan Reddy,
Special Public Prosecutor,
National Investigation Agency

THE COURT MADE THE FOLLOWING:

COMMON JUDGMENT: *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

Accused Nos.25, 26 and 27 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 the National Investigation Agency Act, Hyderabad, are the appellants in these Criminal Appeals. Accused No.26 filed Criminal Appeal No.175 of 2015, accused No.27 filed Criminal Appeal No.172 of 2015, and accused No.25 filed Criminal Appeal No.311 of 2015. They, along with twenty-one other accused were prosecuted for the offences under Sections 489-B, 489-C, 120-B of the Indian Penal Code (IPC) and Sections 16 and 18 of the Unlawful Activities (Prevention) Act 1967 (for short "the UAP Act") as amended upto 2008, by the learned Sessions Judge. They were found guilty for the offence under Section 489-B IPC and accordingly by judgment dt.19.02.2015 were convicted and sentenced to undergo rigorous imprisonment for five years each and also to pay a fine of Rs.1000/- each, in default to undergo simple imprisonment for six months each. Feeling aggrieved thereby, the appellants filed these appeals.

For convenience, the appellants in Criminal Appeal Nos.311, 175 and 172 of 2015 are referred to as accused Nos.25, 26 and 27 respectively.

2. Though these appeals are confined to three accused mentioned above, the offence held proved against them is part of a larger transaction involving in all twenty-eight accused. The National Investigating Agency (NIA) has filed separate sets of charge sheets against different accused, grouping them separately based on the roles played by them. Since in the present cases, we are concerned with accused Nos.25 to 27, it will suffice

if the contents of the charge sheet filed by the NIA against them are referred to.

Prosecution case:

3. On credible information that accused No.1 and others were circulating Fake Indian Currency notes (for short, "FIC notes") of Rs.500/- and Rs.1000/- denominations, the mobile phone numbers of accused No.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 accused Nos.1, and 2 - who worked at Ramky Infrastructure (ORR Project), Patancheru, Medak district, Andhra Pradesh, and others formed into a group and indulged in smuggling of FIC notes 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 FIC notes 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 accused Nos.1, 2 and others under Sections 489-B, 489-C read with Section 120-B IPC and Sections 15, 17 and 18 of the UAP Act.

4. Accused No.1, who was arrested on 6-1-2012 in Malda district, West Bengal State, confessed the offence and revealed the names of other persons, who were arrayed as accused Nos.3 to 22, apart from accused No.2. Accused No.17 is a Pakistan National and he supplied FIC

notes to accused No.18, who is a Bangladesh National, for circulation in India. Accused No.18, in association with accused Nos.1, 19 and others got the FIC notes smuggled into India and circulated the same.

5. While the case was under investigation, credible information was received to the effect that accused No.17, who was residing in Dubai, was smuggling FIC notes into India for circulation in association with accused Nos.24 and 25. Discreet enquiries were caused and it came to light that accused No.25 sent a parcel containing FIC notes from Bengaluru to accused No.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, accused Nos.23 and 24 came to Patel Rail Cargo in Delhi and took delivery of the parcel. The investigation team intercepted accused Nos.23 and 24 in the presence of two independent witnesses and got the said parcel opened. In the said parcel, FIC notes amounting to Rs.9,85,000/- were found packed in a plastic bag of off white colour beneath tea packets (17 in number) and the same were seized and accused Nos.23 and 24 were arrested. The person who sent the FIC notes from Bengaluru to accused Nos.23 and 24 was identified as accused No.25. Accused No.25 is an associate of accused No.17 and he was maintaining connections with accused No.1 also. Accused No.25 was procuring the FIC notes from accused No.1 and 17. Accused No.25 was arrested on 29-03-2012 in Bengaluru. Accused Nos.26 to 30, residents of Bengaluru, who were the associates of accused No.25, were also identified.

6. It is the further case of the prosecution that during the course of investigation it was revealed that accused No.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 accused No.25 came into contact with accused No.17, who was said to be staying in Dubai; that thereafter accused No.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 accused No.29; that accused No.29 was also doing similar business but in a different cloth material; that accused No.25 was frequently in contact with accused No.17 and discussed about the export of sarees to Dubai; that during the course of business transactions accused No.17 told accused No.25 that if the latter entered the activity of circulation of FIC notes in India, he would get profit of Rs.50,000/- in original Indian currency against FIC notes of Rs.1,00,000/-; that accused No.25 agreed to the proposal offered by accused No.17 and since then he was receiving the FIC notes from accused No.17 and was circulating the same in India; that accused No.25 used to send original Indian currency (proceeds of crime) of Rs.50,000/- for each Rs.1,00,000/- FIC notes to accused No.17 through Hawala route; and that as confessed by accused No.25, he was in contact with accused No.17 on his mobile No.971553969854 from his mobile No.9916510221 as well as from landline numbers.

7. That it was further revealed during the investigation that as per the instructions of accused No.17, accused No.25 established contact over phone with accused No.24, and that accused No.25 introduced himself to accused No.24 as Nayeem by concealing his original name; that accused No.25 used to send FIC notes to accused No.24, who in turn circulated the same in Uttar Pradesh and Delhi in association with accused No.23. That in the month of February 2012, accused No.25 received a parcel from accused No.17 containing FIC notes 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 notes contained in the parcel, the same was covered with chocolates, shampoos, toys and dates. That after receiving the said parcel, accused No.25 informed accused No.17 about the receipt of the parcel; that out of Rs.26,00,000/- FIC notes, accused No.25 gave Rs.3,10,000/- to his associate accused No.26, who is a resident of Bengaluru, for circulation; that accused No.26, in turn, gave the FIC notes of Rs.1,00,000/- to accused No.27 for circulation; that accused No.27 circulated the same in local market and paid genuine currency notes of Rs.50,000/- to accused No.26 as proceeds of crime; that accused No.26 circulated the remaining FIC notes and paid proceeds of crime of Rs.1,50,000/- to accused No.25; that accused No.25 also gave FIC notes of Rs.5,00,000/- for circulation to his another associate i.e., accused No.28, who is a resident of Bengaluru and doing saree business; that accused No.28 in turn paid Rs.2,50,000/- in genuine currency to accused No.25 towards the crime proceeds; and that accused No.25 sent Rs.2,50,000/- in genuine Indian currency to accused No.17 through Hawala route as part payment towards the proceeds of circulation of FIC notes given by him.

8. It was further revealed in the investigation that in order to send the FIC notes to accused No.24 on 20-03-2012, accused No.25 with the help of accused No.28 purchased Tea powder packets from the local market and kept the same in a dark brown cardboard box; that accused No.25 placed Rs.9,85,000/- FIC notes, all in Rs.1000/- denomination, in a cream coloured polythene cover and kept the same in the said cardboard box and packed it; and that later accused No.25 told accused Nos.29 and 30 that the said parcel belonged to accused No.28 and that it was to be

transported to his relatives in Delhi. That accused No.25 requested accused Nos.29 and 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 accused Nos.29 and 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 accused No.25 by accused Nos.29 and 30; and that as per the receipt, the weight of the parcel was 20 Kgs. and the amount collected towards transport charges was Rs.240/-.

9. 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, accused Nos.29 and 30 carried the parcel and booked the same on 20-03-2012 at about 6.00 p.m. and that the statements of one Damodar, the Manager and P.W.24, 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 accused No.24 for enabling him to collect the parcel containing the FIC notes, accused No.25 went to "SPECTRA HITECH SERVICE" in Bengaluru which deals with Computer Accessories repairs, FAX, Xerox etc., located in the commercial complex called Ashok Plaza on the main Kamaraja Road in Bengaluru and requested its owner - P.W.28 to fax the original receipt No.16297 dated 20-03-2012 to Delhi; that accordingly P.W.28 faxed the receipt to the phone number given by accused No.25; that as the letters on the copy

received through fax were not legible, accused No.24 asked accused No.25 to send the receipt to the e-mail ID sapnacomputers@gmail.com; that the said e-mail belonged to P.W.69, proprietor of Sapna Computers, located at Tahsil compound area, Kairana, Prabudhnagar, UP State; that on the request of accused No.25, P.W.28, 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 accused No.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 P.W.69 - Proprietor of Sapna Computers, and P.W.28 - owner of Spectra Hitech Service, were recorded under Section 161 Cr.P.C.

10. That on 26-03-2012, P.W.23, the Regional Manager, Patel Rail Cargo, Chandni Chowk, Delhi, made a call to mobile No.8430852798, which was mentioned on the parcel sent by accused No.25, and informed that the parcel had arrived in Delhi from Bengaluru; that on 27-03-2012, accused No.24 along with his half-brother accused No.23 went to Patel Rail Cargo, Delhi in Indica DI Car bearing registration No.DL 3CY 2647 and collected the parcel containing FIC notes of Rs.9,85,000/- by presenting the scanned receipt sent by accused No.25 from Bengaluru; that accused No.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 accused No.24 as "Imran" in Hindi along with his phone No.9528875674 were found; that the said parcel was sent by accused No.25 on 20-03-2012 by booking the

same at Patel Parcel Movers, Bengaluru; and that FIC notes of Rs.9,85,000/- were seized from the possession of accused Nos.23 and 24 in the presence of independent witnesses. That FIC notes of Rs.1000/- denomination vide Sl.No.JCA888302 were also found during the personal search of accused No.24 and the same were seized at the time of his arrest on 27-03-2012; that another set of FIC notes of Rs.1000/- denomination vide Sl.No.9BW674802 was also found in possession of accused No.23 and the same was also seized and that the statement of P.W.23 was recorded under Section 161 Cr.P.C. That the investigation revealed that accused Nos.23 and 24 used to circulate FIC notes in Uttar Pradesh and Delhi and that both of them were arrested on 27-03-2012.

11. That accused No.25 was arrested on 29-03-2012 by the NIA, Hyderabad in Bengaluru and FIC notes having the 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 notes sent by accused No.25 to accused No.24 was also seized from the possession of accused No.25; that accused No.25 in his confession revealed the names of his associates in Bengaluru and they were arrayed as accused Nos.26, 27, 28, 29 and 30; and that accused No.25 also confessed that on earlier occasions he had circulated the FIC notes of Rs.5,00,000/- received from accused No.1.

12. That accused No.26 took the FIC notes of Rs.3,10,000/- from his associate, accused No.25 and he in turn gave Rs.1,00,000/- out of the same to accused No.27 for circulation; that accused No.27 circulated the same and gave genuine currency notes of Rs.50,000/- to him as proceeds of crime; and that accused No.26 circulated the remaining FIC notes and

paid proceeds of crime to the tune of Rs.1,50,000/- to accused No.25. That accused No.26 was arrested on 29-03-2012 at Bengaluru and FIC notes having the face value of Rs.6,500/- were seized from his house in Bengaluru at his instance.

13. That accused No.27 took the FIC notes of Rs.1,00,000/- from accused No.26 and circulated the same and paid genuine Indian currency of Rs.50,000/- to accused No.26 as proceeds of the crime; that accused No.27 was arrested on 29-03-2012 by the NIA, Hyderabad at Bengaluru and FIC notes having the face value of Rs.4,500/- were seized at his instance from his shop in Bengaluru.

14. To prove its case against accused Nos.25 to 27, the prosecution has examined P.Ws.23, 24, 25, 26, 28, 40, 63, 73, 96, 98, 99 and P.W.104. It has *inter alia* got Exs.P.110 – copy of original parcel receipt, Ex.P.113 – original parcel receipt, Ex.P.118 – seizure panchanama evidencing seizure of FIC notes from accused No.25, Ex.119 – seizure panchanama evidencing of seizure of FIC notes from accused No.26, and Ex.120 – seizure panchanama evidencing seizure of FIC notes from accused No.27 etc., marked.

15. During the hearing, Mr. A.T.M. Ranga Ramanujam, learned Senior Counsel, advanced the following submissions :

- (1) That no valid sanction for prosecution was obtained by the NIA and therefore the entire prosecution has got vitiated due to absence of valid sanction.
- (2) That P.Ws.40 and 73, the two private witnesses turned hostile, and therefore the recovery of FIC notes was not proved.

- (3) That the whole case was based on criminal conspiracy and since the NIA failed to prove the said charge, the entire case of the prosecution must fall to ground.
- (4) That in Ex.P.235 and Ex.P.237, exact reasons for the conclusion that some of the seized notes were FIC notes, are not mentioned and that the oral testimony of PW.61, Assistant Manager (Technical-Currency), wherein he sought to give reasons, cannot be accepted.
- (5) That though there were many inmates at the house of accused No.25, no other person was questioned and therefore it was not safe to suspect only accused No.25.
- (6) That as admitted by P.W.98 and also as can be seen from Ex.P.119 – seizure panchanama, there was no reference to sealing of the seized currency notes and therefore the same casts a serious doubt on the very case of the prosecution.

16. Opposing the above submissions, Mr. Vishnuvardhan Reddy, learned Special Public Prosecutor for NIA, made the following submissions:

- (1) That the prosecution was able to prove the guilt of accused No.25 beyond all reasonable doubt by seizing Ex.P.113, the original parcel receipt for taking the consignment of FIC notes from Bengaluru to New Delhi, from the possession of accused No.25.
- (2) That P.W.5 identified accused No.25, whose confessional statement was also recorded vide Ex.P.114; that P.W.25 and P.W.26 were witnesses to the said confessional statement; and that the said confession led the NIA to the houses of accused Nos.26 and 27.

- (3) That Ex.P.110 – a copy of Ex.P.113, seized from accused No.25, was seized in New Delhi from the possession of accused No.23, showing close nexus in operations between accused Nos.25 to 27 and accused Nos.23 and 24 and that though accused No.25 did not confess initially when he was interrogated on 28-3-2012, on the following day when he was confronted with Exs.P.110 and Ex.P.113 in the presence of P.W.28 from whose shop accused No.25 took photocopies of Ex.P.113, he has confessed to the commission of the offence.
- (4) That a sum of Rs.90,000/- including FIC notes seized from the possession of accused No.25 under Ex.P.118 panchanama following Ex.P.114 confessional statement and the seized notes marked as MOs.165 to 170, clearly prove the involvement of accused No.25.
- (5) That as regards accused No.26, FIC notes in a sum of Rs.6,500/-, were seized under Ex.P.119 seizure panchanama, which was proved through the evidence of P.W.25 and M.Os.172 and 173.
- (6) That FIC notes worth Rs.4,500/- were seized under Ex.P.120 seizure panchanama, from accused No.27 which was also proved through P.W.25.
- (7) That though P.Ws.40 and 73, who are independent witnesses, retracted their statements recorded under Sections 161 Cr.P.C., the statements recorded under Section 164 Cr.P.C. lent corroboration to the evidence of P.W.98 – the Investigating Officer, and the evidence of P.Ws.24 and 25.
- (8) That Exs.P.118 and 119 seizure panchanamas, clearly show that the seized currency notes were properly sealed and the evidence

of P.W.61, the Assistant Manager (Technical – Currency) regarding the fake nature of the currency remained unimpeached and that therefore the prosecution succeeded in proving the seizure of the FIC notes from the possession of accused Nos.25 to 27.

The learned Special Public Prosecutor further submitted that the charge under Section 120-B IPC was held not proved on technicalities rather than on merits and that even if the said charge falls, the appellants were rightly convicted for the offence of being in possession of FICs and properly sentenced not warranting interference by this Court.

17. Before referring to the charges framed by the Court below against accused Nos.25 to 27, we would like to dispose of the primary submission of the learned Senior Counsel regarding the absence of proper sanction by the prosecution.

The National Investigation Agency Act, 2008 (for short, “the NIA Act”) contains the schedule under which certain Acts have been included. The UAP Act is 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 schedul 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 NIA, 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.25 to 27

and that the said Committee examined the matter in detail with reference to the material placed before it and satisfied itself with regard to the existence of *prima facie* case to sanction prosecution. That the said Committee has recommended sanction of prosecution under Sections 16 and 18 of the UAP Act, and that based on the said recommendations, the Central Government issued sanction of prosecution of the accused on behalf of the President of India. That Ex.P.264 sanction proceeding was signed by him 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, the material placed before the High Powered Committee 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.

18. The learned Senior Counsel relied upon the judgment of the Supreme Court in *Mohd. Iqbal Ahmed v. State of Andhra Pradesh*¹ 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 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 the facts placed before the Sanctioning Authority and the satisfaction arrived at by it.

19. A perusal of Ex.264 reveals that Annexure – A to the sanction order contains the details of the 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 Sections 489-B and 489-C IPC read with Sections 16 and 18 of the UAP Act, was made out against the accused. This material in our opinion is sufficient to satisfy the requirements of the law as laid down by the Supreme Court in *Mohd. Iqbal Ahmed* (1 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

¹ (1979) 4 SCC 172

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. Accordingly, we reject this submission of the learned Senior Counsel.

20. We shall now consider whether the prosecution has brought home the guilt of accused Nos.25 to 27/appellants beyond all reasonable doubt. The following are the respective charges framed against accused Nos.25 to 27.

“Thirtiethly: That you Accused No.25 on the 29th day of March 2012 at Bengaluru, a parcel containing counterfeit Indian currency notes amounting to Rs.21,500/- was seized from the possession of Accused No.25 at your instance from your house and also original receipt No.16297 dated 20.3.2012 issued by Patel Parcel Movers, Bengaluru sent to Delhi by sending parcel containing counterfeit Indian currency notes worth Rs.9,85,000/- was also seized from the possession of you Accused No.25 and that thereby you Accused No.25 have committed an offence punishable under Section 489-B of IPC which is within my cognizance.”

Thirty Firstly: That you Accused No.26 on the 29th day of March, 2012 in your house at Bengaluru was arrested and the NIA police have seized fake Indian currency notes amounting to Rs.6,500/- on your confession under Section 27 of Evidence Act and as per the confession of you Accused No.26, you Accused No.26 received fake Indian currency notes from Shareef (A.18) of Bangladesh national through India/Bangladesh porous border, knowing or having reasons to believe the same as counterfeit currency notes and that thereby you Accused No.26 have committed an offence punishable under Section 489-B of IPC which is within my cognizance.

Thirty Secondly: That you Accused No.27 on the 29th day of March, 2012 at your shop in Bengaluru the NIA police have seized fake Indian currency notes amounting to Rs.4,500/- from your shop in Bengaluru on your confession under

Section 27 of Evidence Act knowing or having reasons to believe the same as counterfeit currency notes and that thereby you Accused No.27 have committed an offence punishable under Section 489-B of IPC which is within my cognizance.”

21. To prove the charge against accused No.25, the prosecution has relied upon the confessional statement, the admissible portion of which was marked as Ex.P.114. The said document also evidenced seizure of Rs.10,000/- of currency, one visiting card containing mobile number of Shahbaz Khan as 00971558537162, DBX 00971553969854 and other phone numbers marked as '1' with green ink, Haji Kamil, s/o.Yaseen of Tehsil Karana, Paobindnagar No.29777440 marked as '2' with green ink, scanned copy of receipt dt.20.03.2012 issued by Patel Parcel Movers as Karnataka Tea Agency to Kissan with Cell Phone No.8430852798, from Bengaluru to Delhi Vide Bill No.16297 etc., marked as '3' with green ink, one white paper piece containing hand written letters as sapnacomputers@gmail.com and ssruag@gmail.com and telephone numbers, such as 9733087066, 9980188460, 971553969854, 9341203213, 22917539, 041571348 marked as '4' with green ink, and Pan Card in the name of Masood as AGOBA 5677P. P.Ws.25 and 26 are the witnesses to the said confession-cum-seizure panchanama.

22. P.W.25, a Tax Assistant in the Income Tax Department, (who was working as Clerk in Divisional Office, South Western Railway, Bengaluru at the relevant point of time) deposed in his evidence that on the confession of accused No.25, he and the Police were led to the house of the said accused at Shivaji Nagar, Bengaluru, which was searched by the NIA Police in the presence of both the witnesses. That accused No.25 has produced a small aluminum box containing currency notes of Rs.90,000/- out of which ten notes are of Rs.1,000/- denomination and the remaining

are of Rs.500/- denomination. The witness further stated that while he could not say whether they were fake or genuine currency notes, accused No.25 has informed them that they were fake currency notes. He has further deposed that in the cupboard in the house of accused No.25, the NIA police found a cheque book of HDFC Bank, a photo copy of passport, a courier receipt, and a RC book of a motor cycle and that they were all seized by the NIA Police. The witness identified the courier receipt as Ex.P.113, photo copy of the passport as Ex.P.115, cheque book of HDFC Bank as Ex.P.116, and original RC book of motor cycle No.KA 04 EL 7639 as Ex.P.117 and the admissible portion in the seizure panchanama dt.29.3.2012 marked as Ex.P.118.

The witness further stated that with the confession of accused No.25, the NIA Police and the witnesses were led to the house of accused No.26 at Hosting Town, Bengaluru, which is at a distance of about 2 Kms. from the house of accused No.25. The witness added that if accused No.26 is shown to him, he will try to identify, though he was not sure whether he could do it or not, as one year eight months' time had elapsed. It was recorded in the evidence that the witness identified accused No.27 as the person that might be accused No.26. At this juncture, it needs to be observed that reference to accused No.27 in the evidence as having been identified by P.W.25 appears to be a mistake for accused No.26 as, in the immediately following portion of the deposition of P.W.25 he has separately referred to accused No.27. The witness further deposed that accused No.26 has produced Rs.6,500/- worth currency notes describing them as fake notes and the NIA Police have seized them by putting the same into a cover, under a panchanama and

that Ex.P.119 is the admissible portion of the said panchanama prepared on 29.3.2012 at 5.30 p.m.

24. The witness further added that at the instance of accused No.26 he and all others went to a cloth shop adjacent to a commercial area where accused No.27 was present and the NIA Police have seized the fake currency notes worth Rs.4,500/- by keeping them in a cover, under a cover of panchanama, the admissible portion of which was marked as Ex.P.120. He has further referred to Ex.P.121 - visiting card of AL-Nishats Collections, Ex.P.122 - small chit by noting the name as Haji Kamal, Ex.P.123 - the chit noting as Swapna Computers @gmail.com etc., and Ex.P.124 - PAN card of accused No.25 which were seized by the NIA Police. In his cross-examination by the counsel for accused Nos.26 and 28, the witness admitted that no rough sketch of the house of accused No.25 was drawn, and that though three to four persons were present in the house and they were also examined, their statements were not recorded. He has denied the suggestion that as those inmates have denied their connection with accused No.25, their statements were not recorded. The witness added that the son and father of accused No.25 were among the said three or four inmates. He has admitted that no person from the locality was called to witness the proceedings.

In his cross-examination by the counsel for accused No.27, the witness stated that the NIA Police have prepared proceedings at the Central Crime Branch (CCB) office at their convenience, that after reading the contents and verifying the correctness thereof, he has signed on them and that the NIA Police have obtained their signatures as witnesses in the proceedings which were concluded in their presence. He has denied the suggestion that nothing was seized at the instance of accused No.27 in his

presence. He has also denied the suggestion that he was seeing accused No.27 for the first time in the Court and that the NIA Police have shown accused No.27 on the day of his giving evidence and that only due to that reason he could identify him. The witness was not cross-examined on behalf of accused No.26. The witness was treated as hostile for the limited purpose of eliciting the clarification as to the place where the proceedings were prepared. In his cross-examination by the Public Prosecutor, the witness admitted that in Ex.P.120, the admissible portion of confession panchanama under which notes worth Rs.4,500/- were seized from accused No.27, it was noted that the same was prepared at the shop of accused No.27 itself and that it was correct. He has also admitted his signature on Ex.P.125, the personal search memo of accused No.25.

23. P.W.26, another witness to confessional and seizure panchanamas pertaining to accused Nos.25 to 27, deposed that he was working as Clerk in Railways in Bengaluru since the year 2007, and that he knew P.W.25 who also previously worked as Clerk in the Railways in Bengaluru. He has testified that during March, 2012, the NIA Police came to their office and approached the Senior Divisional Personnel Officer with a request to depute two employees to assist them, that thereupon, himself and P.W.25 were deputed by the Senior Divisional Personnel Officer, to assist the NIA Police, that on the same day himself and P.W.25 went to the CCB office, Bengaluru at about 1.00 p.m., and at that time accused No.25 was present in the CCB office. The witness identified the said accused present in the Court. He has further deposed that the NIA Police have shown them some currency notes by stating that they were in the purse of accused No.25 and that they have also shown some papers and visiting

cards seized from the said accused. That in the CCB office, the NIA Police have prepared a panchanama and obtained signatures of the witnesses. The witness referred to Ex.P.114, the said panchanama, and Ex.P.126, personal search memo of accused No.25. He has also deposed that the Police have taken them and accused No.25 to Shivaji Nagar, Bengaluru, where the latter's house is located, and that accused No.25 produced one aluminum box, full of currency notes comprising some Rs.1,000/- notes and Rs.500/- notes, which the witness does not know whether they were genuine or fake. That the family members of the accused were present in the house at the time of the search. He has referred to seizure of documents such as, a cheque book of HDFC bank, a photo copy of passport, a RC of a Pulsor motor bike, and a parcel agency paper, which were put into a cover, under Ex.P.118, and obtaining of the signatures of the witnesses. The witness also referred to their going to the houses of accused Nos.26 and 27 and seizure of the FIC notes from their possession. While the witness was not subjected to cross-examination on behalf of accused No.27, the questions similar to those put to P.W.25 were also put to this witness on behalf of accused Nos.26, and 25 and 28.

24. With regard to the submission of the learned Senior Counsel that as the private witnesses have turned hostile, recovery of FIC notes was not proved, P.Ws.40 and 73 were examined by the prosecution to prove the entrustment of the parcel containing normal as well as FIC notes by accused No.25. It is the case of the prosecution that credible information was received to the effect that accused No.17, a Pakistan National residing in Dubai, was smuggling the counterfeit Indian currency notes into India for circulation in association with accused No.25, a resident of Bengaluru, and accused No.24, a resident of Delhi, that discreet enquiries

were caused and it came to light that accused No.25 sent a parcel containing counterfeit Indian currency notes from Bengaluru to accused No.24 in Delhi, that on 27.3.2012 accused Nos.23 and 24 came to Patel Rail Cargo, Chandni Chowk in Delhi, and took the delivery of the parcel, that the investigation team intercepted those two persons in the presence of two independent witnesses and got the said parcel opened, that in the said parcel FIC notes amounting to Rs.9,85,000/- were found packed in a plastic bag of off white colour beneath the tea packets consisting of seventeen numbers and the same were seized, and that accused No.25 is an associate of accused No.17, who is maintaining connections with accused No.1. It is the further case of the prosecution that in order to send the FIC notes to accused No.24, accused No.25 with the help of accused No.28 purchased tea powder packets from the local market, kept the same in a dark brown cardboard box, placed Rs.9,85,000/- FIC notes (all in Rs.1,000/- denomination) in a cream colour polythene cover, kept in the said cardboard box and packed it. That accused No.25 requested accused Nos.29 and 30 (later examined as prosecution witnesses i.e., P.Ws.40 and 73 respectively) 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, and that accordingly P.Ws.40 and 73 have booked the parcel at Patel Parcel Movers, Bengaluru on 20.03.2012 vide receipt No.16297, dt.20.3.2012, by writing the address on the parcel as "KISSAN, CHANDNI CHOWK DELHI Mob-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 accused No.25 by P.Ws.40 and 73. Both P.Ws.40 and 73 have turned hostile.

25. P.W.40 has denied his knowing accused No.25 and the latter working in his shop. He has also denied that he knows P.W.73. He has denied the booking of any consignment through Patel Parcel Movers and entrustment of consignment to him. He has however admitted that the NIA Police have recorded his statement, that he was brought to Hyderabad to a Magistrate and his signatures were obtained, that the Magistrate has ascertained his name and address and questioned him in Telugu, that he has stated that he does not know Telugu language, and that the typist typed on a paper and his signatures were obtained on the paper. The witness however admitted in his cross-examination to his regularly going to Patel Parcel Movers. He has admitted his two signatures in Section 164 Cr.P.C. statement marked as Ex.P.167. The prosecution suggested to the witness that he has employed accused No.25 and P.W.73 and that he has stated before the NIA Police as in Section 161 CrPC statement marked as Ex.P.168. The witness however denied these suggestions. While denying that he has gone to Patel Parcel Movers, Avenue Road, Bengaluru, on 20.3.2012 along with P.W.73, he has however admitted that he alone went to the Patel Parcel Movers to enquire about the arrival of a parcel to him. He was shown M.O.39 containing M.O. 42, which contains M.O.41 and FIC notes. He has denied that cell number 9916510221 belongs to accused No.25. He has denied the suggestion that he was deposing falsely in order to help the accused as they were doing business jointly.

The prosecution got M.O.43 - Hard disk sent to Central Forensic Science Laboratory, Hyderabad, and received expert report dt.18.6.2014, of three pages, along with two DVDs marked as "CCH5512@614DVD1" & "CCH5512@614DVD2". The two DVDs were played with the permission of

the Court during the cross-examination of P.W.40. While the first DVD did not contain any video footages, the second DVD was played. The witness denied that the person in the video footages at 17.02 hours and 18.14 hours on 20.3.2012 shown to him was him or any person known to him. He also denied that the video footages at 18.20 hours and 18.23 hours on the said date shown to him, of a person wearing helmet was also him or any other person known to him. A specific suggestion was put to the witness that the person wearing helmet in the video footages at 18.20 hours and 18.23 hours on 20.3.2012 shown to him as himself and that he is deposing falsely. He denied the suggestion that the video footage pertaining to a person carrying a box at 17.02 hours on 20.3.2012 pertains to P.W.73 and he is deposing falsely.

26. P.W.73, who has allegedly accompanied P.W.40, also did not support the case of the prosecution. Therefore he was treated hostile. He has denied his statement under Section 161 CrPC marked as Ex.P.262, and admitted his two signatures in his statement under Section 164 CrPC marked as Ex.P.263. He has also denied his going to Patel Parcel Movers office for booking the consignment. He has denied his signature on Ex.P.113, parcel receipt. He has also denied entrustment of M.O.39, containing MOs 41 and 42, by accused No.25 and his going to Patel Parcel Movers along with P.W.40 and booking the consignment to Delhi. He has denied the suggestion that P.W.40 entered the Patel Parcel Movers by wearing helmet and he entered the said parcel service by carrying the consignment parcel in M.O.39 with his both hands. While denying the video footage at 17.02 hours on 20.3.2012 shown to him as belonging to him or any person known to him, he has admitted the video footage at 18.14 hours on the said date as that of himself. He however admitted

that on that day he went to the Patel Parcel Movers to receive his consignment from Kerala, that at that time one aged person was sitting at the entrance of the parcel service office by holding a parcel and he was facing difficulty in carrying the said parcel into the parcel booking office and therefore he has taken the parcel into the parcel booking office to help him. He has denied the suggestion that the consignment that was carried by him into the Patel Parcel Movers was given to him by accused No.25. He has further deposed that M.O.39 shown to him is not the parcel that was carried by him and also denied the suggestion that in order to help accused Nos.25 and 27 he is deposing falsely.

27. Though the aforementioned witnesses have turned hostile, they made some significant admission, namely, their visiting Patel Parcel Movers on 20.3.2012. Though they have taken the stand that their visiting to the parcel service office was to enquire about the parcels that they were expecting to arrive, they have not adduced any evidence to show the details of such parcels. As noted above, P.W.73 has indeed admitted the video footage at 18.14 hours as belonging to him and has clearly admitted that he carried a parcel to help an old man.

28. Dealing with the private independent witnesses turning hostile, the Supreme Court in *Periyasami v. State of Tamil Nadu*² held as under:

“15. At the outset, we must deal with the submission that the prosecution has not examined any independent witnesses. It is common knowledge that when the terrorists unleash a way of terror, no independent witnesses are ready to come forward and depose against them. The prosecution case cannot be rejected on this ground. In any case, the evidence on record is cogent and reliable and, therefore, non-examination of independent witnesses does not have any adverse impact on the prosecution case. We may also note that the evidence of defence witnesses does not inspire confidence and has rightly not been taken into consideration by the trial Court. P.W.14, Candra, wife of P.W.15

² (2014) 6 SCC 59

Sevi Periyasamy turned hostile. Some other formal witnesses also turned hostile. This, however, has not affected the core of prosecution case which is established by reliable evidence.”

Indeed, the Supreme Court relied upon the confessional statement of accused No.1 in that case and referred to and relied upon its earlier judgment in *Yakub Abdul Razak Memon v. State of Maharashtra*³ on the evidentiary value of confessional statement, under Section 15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), and reproduced the relevant part of the said judgment as under:

“180. To sum up, it can easily be inferred that the position of law on the evidentiary value of confession is as under:

180.1. If the confessional statement is properly recorded satisfying the mandatory provision of Section 15 TADA and the Rules made thereunder, and if the same is found by the court as having been made voluntarily and truthfully then the said confession is sufficient to base conviction on the maker of the confession.

180.2. Whether such confession requires corroboration or not, is a matter for the court to consider on the basis of the facts of each case.

180.3. With regard to the use of such confession, as against a co-accused, it has to be held that as a matter of caution, a general corroboration should be sought for but in cases where the court is satisfied that the probative value of such confession is such that it does not require corroboration then, it may base conviction on the basis of such confession of the co-accused without corroboration. But this is an exception to the general rule of requiring corroboration when such confession is to be used against a co-accused.

180.4. The nature of corroboration required both in regard to the use of confession against the maker as also in regard to the use of the same against a co-accused is of a general nature, unless the court comes to the conclusion that such corroboration should be on material facts also because of the facts of a particular case. The degree of corroboration so required is that which is necessary for a prudent man to believe in the existence of facts mentioned in the confessional statement.”

With reference to the legal position on this aspect, the Supreme Court summed up that a confessional statement recorded under Section

³ (2013) 13 SCC 1

15 of the TADA, if found to be voluntarily made and is truthful and properly recorded, can form the basis of conviction. Though the present cases on hand does not arise under the TADA, we find no reason for not considering the confessional statements for the limited purpose of corroborating with the oral testimony of the prosecution witnesses, more so, when the genuineness of the confessional statements remains unimpeached, as the defence failed to bring out anything to doubt the correctness of the contents of the confessional statements of the accused.

29. P.W.24, Bhupender Singh Rajawath, is a crucial witness. He was a Supervisor in Patel Parcel Movers, MB Road, Avenue Road Cross, Bengaluru. He has deposed that on 20.3.102 at about 6.15 p.m. two persons came on a Pulsor motor cycle to their parcel office while bringing a parcel box, that one person was wearing a helmet and the other person was not wearing helmet at that time, that they wanted to send the parcel to Delhi and that when he has enquired about the contents of the parcel they have stated that it contains tea packets. He has further deposed that there were two CC cameras at their office and that when he asked the address to which the parcel has to be sent, the person wearing the helmet has given a slip containing the address and the person who was not wearing helmet has written as 'Kissan, Chandini Chowk, Delhi', with mobile number, and the from address as 'Karnataka Tea Agency'. That he has received the parcel and prepared LR receipt bearing No.16297 on 20.3.2012 and the person who was not wearing the helmet has paid the said amount. He has expressed his inability to identify the two persons even if they were shown to him as two years time has elapsed. That four or five days later, they came to know through their company personnel in Delhi that the said parcel was containing fake currency notes. That on

16.4.2012 DSP, NIA, Hyderabad, came and recorded his statement and seized the receipt book of their office along with items of CC TV camera. The witness identified Ex.P.111, as receipt book, Ex.P.112, as relevant office copy of receipt No.16297 as contained in Ex.P.111, and Ex.P.113 as the original of Ex.P.112, dt.20.3.2012, by noting the sender's name as Karnataka Tea Agency, Bengaluru to Kissan, Delhi - cell No.8430852798. He has also identified M.O.39 - dark brown colour carton box, with black colour printed letters as 'NAA(P) Ltd.', in which the parcel that was booked by the two persons stated above under Ex.P.113. In his cross-examination made on behalf of accused Nos.25 and A.28 while admitting that the column in Ex.P.113 pertaining to the description of the goods was kept blank, he has added that he has forgotten to note the description of the goods. He has denied the suggestion that at the instance of the NIA Police they have prepared Exs.P.111 to P.113 and that the NIA Police have not seized any dispatch records from their office.

30. Though P.Ws.40 and 73 have not supported the prosecution as noted above, their admission of visiting the parcel service office at the relevant time, their failure to prove their stand that they have gone to the parcel office for enquiring about the parcels expected to be received by them coupled with the categorical and unimpeachable evidence of P.W.24 would amply prove the case of the prosecution that accused No.25 has entrusted the parcel to P.Ws.40 and 73 to book the same in Patel Parcel Movers, Bengaluru, and obtained Ex.P.113 receipt. The seizure of Ex.P.113 from the possession of accused No.25 and M.O.39 box which was sent by Patel Parcel Movers further proves the involvement of accused No.25.

31. This apart, P.W.28 is another crucial witness. He deposed that he was running Spectra Hi-tech Services in Ashoka Plaza, Kamraj Road,

Bengaluru. He deposed that P.W.29 was working as Assistant in his office and they were undertaking the photo copy job work, scanning of documents and sending fax, e-mails etc., in their shop. He has further deposed that in the month of March 2012 one person came to his shop for sending fax of one lorry receipt to Delhi and the said person has given a landline number. The witness has tried to send the fax to that number, but he could not get the receiver on the other side. He has identified accused No.25 as the person who came to his shop for sending the fax. That accused No.25 has contacted the person on the other end and obtained e-mail ID from him and asked the witness to send the said receipt to the said e-mail ID by taking scan of it. When the witness asked accused No.25 to give his e-mail ID, the latter stated that he was not having any ID proof and asked him to send the mail, with the witness's e-mail ID. Then, this witness asked P.W.29 to scan the said lorry receipt and send the same to the e-mail ID given by accused No.25 by giving their office e-mail ID ssruag@gmail.com. That accordingly PW.29 scanned the lorry receipt and sent the same to the e-mail ID given by accused No.25. The witness identified Ex.P.113 lorry receipt which was sent through e-mail. He has also identified Ex.P.110 as the scanned copy of the lorry receipt which was sent by his office to the e-mail address furnished by accused No.25. Nothing significant could be elicited in the cross-examination of this witness to discredit his testimony. P.W.29, Assistant of P.W.28, also fully corroborated the evidence of the former.

32. P.W.98, the Investigating Officer, graphically explained the entire investigation process. He has deposed that on 27.3.2012 when he was in Bengaluru he has received a telephone call from the Investigating Officer, I.R.S. Murthy, in connection with the information on circulation of fake

Indian currency notes and he has caused enquiries. He has suspected certain persons and after securing P.Ws.25 and 26, two independent witnesses, he has taken them to the CCB and explained the facts of the case where he has produced accused No.25 and interrogated him in their presence. That initially accused No.25 denied his links with FIC notes activities and when he has produced P.W.28 (who has scanned the receipt Ex.P.113 at the request of accused No.25 and sent the same through e-mail to the e-mail ID given by the said accused) before him, accused No.25 has voluntarily given his confessional statement. That on personal search, the witness has seized the money purse containing Rs.10,000/-, a visiting card containing phone numbers etc., marked as Ex.121, a scanned copy receipt of Patel Parcel Movers, marked as Ex.P.110, and a white paper piece containing hand written letters and phone numbers as Sapnacomputer@gmail.com etc., marked as Ex.123. He has also got the confessional statement and personal search memo prepared, and Ex.P.114 is the admissible portion of confessional statement and Ex.P.126 is the personal search memo.

The witness also referred to accused No.25 leading the Police party along with panchyatdars to his house at Bengaluru, production of a small aluminum box containing cash of Rs.90,000/- by accused No.25, which comprises some genuine notes and ten leaves of Rs.1,000/- FIC notes and twenty three leaves of Rs.500/- FIC notes, totaling Rs.21,500/- etc. The witness has also deposed about accused No.25 leading them to the house of accused No.26 where the latter has produced a bundle of FIC notes on the instructions of accused No.25. The witness has recorded the confessional statement of accused No.26, seizing thirteen leaves of FIC notes of Rs.500/- each, the details of which were mentioned in Ex.P.119

panchanama. He has referred to M.O.171, a FIC note of Rs.500/-, four FIC notes of Rs.500/- marked as M.O.172, and seven FIC notes of Rs.500/- marked as M.O.173. He has further referred to the confession of accused No.26 leading the Police party to the shop of accused No.27, who has taken out a white cover which was concealed under readymade garments in the said shop, and the seizure of nine FIC notes of Rs.500/- denomination, which were seized under Ex.P.120 - seizure panchanama, one FIC note of Rs.500/- marked as M.O.174, three FIC notes of Rs.500/- marked as M.O.175, and four FIC notes of Rs.500/- marked as M.O.176. He has referred to Ex.P.120 duly attested panchanama by panchayatdars as well as accused Nos.25 and A.26. Nothing adverse from the cross-examination of this witness was pointed out by the learned Senior Counsel to discredit his evidence.

33. The only submission regarding the seizure of the FIC notes from the possession of accused No.25 advanced by the learned Senior Counsel is that when there were four more inmates in the house of accused No.25, fixing the responsibility on him alone is not proper. In support of his submission, the learned Senior Counsel has placed reliance on the judgment of the Supreme Court in *Radha Kishan v. State of U.P.*⁴ We are afraid, we cannot accept this submission.

34. It has come out clearly in the evidence of P.Ws.25, 26 and 98 that accused No.25 produced a small aluminum box containing cash of Rs.90,000/-. It is not the case of the accused that the cash did not belong to him or that the same was jointly possessed by his other family members. The mere fact that accused No.25 was living with his other family members does not warrant a presumption that the cash produced

⁴ AIR 1963 SC 822

by him is in joint possession of other family members also. The judgment in *Radha Kirhan* (4 supra) turned on its own facts, wherein certain registered postal articles were found in the almirah of the accused - postman who lived jointly with his other family members and those postal articles were found mixed along with the articles belonging to the father of the accused who handed over the key to the investigating agency. On those facts, the Supreme Court held that exclusive possession of the postal articles by the accused postman was not proved. As noted hereinbefore, though there were three or four other family members present in his house it was only accused No.25 who has produced the aluminum box containing the cash of Rs.90,000/-. Hence, we find no merit in this submission of the learned Senior Counsel.

35. The next important submission made by the learned Senior Counsel for the accused is the non-sealing of the seized notes. He has referred to Exs.P.118, 119 and 120, the seizure panchanamas evidencing seizure of FIC notes from the three accused Nos.25, 26 and 27 respectively and also the deposition of P.W.98 – the Investigating Officer in support of his submission that the seized FIC notes were not sealed. In the absence of sealing of the seized notes, the Counsel argued, there was a possibility of planting of the FIC notes by the investigating agency.

A perusal of Exs.P.118 to 120 seizure panchanamas makes it evident that series numbers of the denomination of the seized notes were clearly mentioned therein. The last paragraph of Ex.P.118 panchanama contains the following statement:

“The above articles have been seized under the cover of seizure panchanama prepared with the help of computer and a print out duly attested by the panchayathdars, accused and the I.O and kept the items in an envelop cover duly attested by the panchayathdars, accused and the IO and properly sealed.”

Similar statements have been recorded in Exs.P.119 and 120. Nothing could be elicited by the defence to throw serious doubt on the correctness of the aforementioned statements contained in the seizure panchanamas. Therefore, we do not find any basis for the submission of the learned counsel for the accused that the seized notes were not sealed.

36. As regards the submission of the learned counsel that the prosecution failed to prove that some of the notes seized from the accused were FIC notes, he referred to Exs.P.235, 236 and 237, expert opinions of P.W.61, and argued that no reasons have been mentioned in the said opinions in support of the conclusion that some of the seized notes were FIC notes. He has alleged that in the absence of such reasons in Exs.P.235 to P.237, oral testimony of P.W.61 which contains reasons is liable to be eschewed. In support of his submissions he has relied upon the judgment of the Apex Court in *Central Bureau of Investigation v. Ashok Kumar Aggarwal*⁵.

37. It is true, Exs.235 to 237 do not contain the reasons in support of the opinion of P.W.61 regarding the nature of the seized notes. However, elaborate explanation has been offered by P.W.61 in his evidence. It is appropriate to reproduce the relevant portion of the evidence of the witness hereunder:

“After doing the examination in our forgery detention lab we found 35 notes as genuine, and 170 notes were found as counterfeit notes. ...

...With regard to the 170 notes which are found to be counterfeit currency notes are concerned, they are found to be counterfeit because as we mention in our report no.170/12(B), Dated 02.4.2012. After examination all the referred suspected notes were examined in detail by comparing with genuine specimen notes with the help of modern scientific instruments and our observations/conclusions is (are) as under:-

⁵ (2014) 14 SCC 295

Out size of the notes, length – correct, width – correct, paper is not genuine, water mark – imitated, security thread – imitated, paper thickness – same as that of genuine note paper, printing ink colours – Ink shade are not matching. Colour registration – It is not correct, numbering – not as per genuine note.

Again we have compared with quality of printing, i.e., front side of the notes:-

- 1) The Intaglio printing for the text is absent.*
- 2) Optical Variable Ink (OVI) effect for the numerical 500/1000 in the center is absent on respective denomination.*
- 3) RBI seal lack sharpness and fine details of Ashoka pillar are missing.*

On the back of the notes:-

- 1. Tint design lack sharpness and printing ink colours do not match with the genuine notes.*

Therefore the referred suspected notes of Rs.100/- denomination, Rs.500/- denomination and Rs.1,000/- denomination are counterfeit notes to the above mentioned reasons and absence of other convert security features of relevant design.

.....

With regard to next consignment we received CNP diary No.201, Dated: 23.4.2012 and the receipt was signed by one of our officer by name Sri J.K. Chaudhary at 10.15 a.m. from the agency through Hon'ble FAC IV Addl. Metropolitan Sessions Judge-cum-Special Judge for NIA, Hyderabad. We have received in sealed envelop. One paper envelop bearing two seals received by hand through Sri Y. Sudhakar Rao, Sub-Inspector of Police and Sri Ankaiah PC 571. The said envelop contains i.e., 7 numbers of Rs.500/- denomination and 7 numbers of Rs.1,000/- denomination. Opinion on examination is given by me on the dated 24.4.2012. There we find result as counterfeit. We have mentioned my examination in detail as:-

- 1) Out size of the notes: - Length – correct, width – correct, paper – not genuine, Main water mark – imitated, Security thread – imitated, paper thickness – same as that of genuine note paper, printing ink colours – ink shades are not matching, colour registration – not correct, numbering – not as per genuine notes.*

Again we have compared with quality of printing i.e., front side of the notes:-

- 1) The Intaglio printing for the text is absent.*
- 2) Optical Variable Ink (OVI) effect for the numerical 500/1000 in the center is absent on respective denomination.*
- 3) RBI seal lack sharpness and fine details of Ashoka pillar are missing.*

On the back of the notes:-

2. Tint design lack sharpness and printing ink colours do not match with the genuine notes,

The referred suspected notes of Rs.500/- and Rs.1000/- denomination are counterfeit notes, due to the above mentioned reasons and absence of other covert security features of relevant design.

.....

The third case that we received on the date of 23.4.2012 our CNP diary no.202/2012 by Sri J.K. Chaudhary, Assistant Works Manager at around 10.15 a.m. received from Hon'ble FAC IV Addl. Metropolitan Sessions Judge-cum-Special Judge for NIA Cases, Hyderabad. We received in one paper envelop bearing three seals received by hand through Sri Y. Sudhakar Rao, Sub-Inspector of Police for NIA and Sri Ankaiah PC 571. 45 numbers of Rs.500/- denomination and 997 numbers of Rs.1,000/- denomination and the total number of notes received is 1042 notes. Regarding this opinion given by me on the date of 25.4.2012, all are found counterfeit.

As per my examination details all referred suspected notes are examined here in detail by comparing by genuine specimen notes with the help of modern scientific instruments. Our observations/conclusion is as under:-

1) Cut size of the notes:- Length – correct, width – correct, paper – not genuine, Main water mark – imitated, Security thread – imitated, paper thickness – same as that of genuine note paper, printing ink colours – ink shades are not matching, colour registration – not correct, numbering – not as per genuine note,

Again we have compared with quality of printing ie., front side of the notes:-

1) The Intaglio printing for the text is absent.

2) Optical Variable Ink (OVI) effect for the numerical 500/1000 in the center is absent on respective denomination.

3) RBI seal lack sharpness and fine details of Ashoka pillar are missing.

On the back of the notes:-

Tint design lack sharpness and printing ink colours do not match with the genuine notes,

Conclusion:- The referred suspected notes of Rs.500/- and Rs.1,000/- denomination are counterfeit notes due to the above mentioned reasons and absence of other covert security features of relevant design. The rubber stamp of CNP is affixed on each note in token of examination and signed intermittently and on top and bottom note of each exhibit. Ex.P.237 is my examination report dated:25.4.2012 and it was dispatched on 3.5.2012 by hand through Sri Raja B.K. Sub Inspector of Police.

At the time of examination we have compared the notes received in three consignments with each other and found similarities for the counterfeiting of the notes such as for CNP diary no.173 against CNP diary no.202 for the denomination of Rs.1,000/- and the number of the note are 6CC 564397 against 6CC 564399.

Prefix also matching both notes are having inset letter "R" in one bundle notes of 100 in number of Rs.1,000/- denomination. (That belongs to one hundred bundle packet).

Again we have compared CNP diary no.201 against CNP diary no.202 for the Rs.1,000/- denomination and the note numbers are 9BW 687856 against 9BW 675501. Inset letter "L" is matching in both the notes, prefixing is also matching. These notes were obtained from Chief Metropolitan Magistrate, Delhi, by the Investigation agency.

We received one questionnaire for clarification for further opinion from the Investigation Officer and we have given further opinion for that questionnaire, in our letter no.39/FD/CORR/152, Dated:02.5.2012. There is possibility of printing these notes by a group of persons, provided that huge set up requirement is essential. The same reasons are mentioned in our further opinion. The level of counterfeiting is very high and these notes are printed on high end printing machine requiring huge capital investment."

Though the witness has given detailed reasons in support of his opinion regarding the FIC notes, the defence failed to elicit anything from the witness suggesting that his opinion was not technically sound or scientifically incorrect. The defence has literally given up any challenge to the opinion of P.W.61 on the fake nature of the FIC notes seized from the possession of the accused. In the judgment in *Ashok Kumar Aggarwal* (5 supra) relied upon by the learned Senior Counsel, the Supreme Court was considering the proceedings relating to sanction of prosecution and declined to look into the supporting material and the reasons which were sought to be supplemented to sustain the sanction for prosecution. The Supreme Court relied upon the judgments in *Commissioner of Police v. Gordhandas Bhanji*⁶, *Mohinder Singh Gill v. Chief Election Commissioner*⁷

⁶ AIR 1952 SC 16

and *All India Railway Recruitment Board v. K. Shyam Kumar*⁸ holding that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of the explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. We are unable to see how this judgment has application in the present context of the case, for, Exs.P.235 to 237 are only opinions of an expert and not public orders. The law does not bar an expert from explaining the reasons for his opinion as a witness before the Court when such opinion is sought to be relied upon by either party. Therefore, we perceive this submission of the learned Senior Counsel as wholly without any merit.

38. The learned Senior Counsel further contended that to convict a person under Section 489-C of IPC the prosecution must prove knowledge that the accused persons are in possession the FIC notes and that it has failed to prove such knowledge on the part of the accused. In support of his submission, he placed reliance on the judgments in *Umashanker v. State of Chhattishgarh*⁹, *Madan Lal Sarma v. State of West Bengal*¹⁰, *M. Mammutti v. State of Karnataka*¹¹ and *Javed Abdul Aziz Shaikh v. State of Maharashtra*¹². Apart from Exs.167 and 168 (Sections 164 and 161 statements of P.W.40 respectively) and Exs.263 and 262 (Sections 164 and 161 statements of P.W.73 respectively), the confessional statements of the accused clearly prove the knowledge that the accused were in possession of the FIC notes. P.W.40 has admitted in his evidence that the NIA Police have recorded his statement and he was brought to

⁷ (1978) 1 SCC 405

⁸ (2010) 6 SCC 614

⁹ (2001) 9 SCC 642

¹⁰ 1990 CrL LJ 215

¹¹ AIR 1979 SC 1705

¹² 2010 Law Suit (Bom.) 915

Hyderabad, to a Magistrate. He has also admitted his signatures in Ex.168 statement recorded under Section 161 CrPC by the NIA Police, and in Ex.P.167 statement recorded under Section 164 CrPC, by the II Metropolitan Magistrate (For Railways), Secunderabad. P.W.73 also deposed on similar lines admitting his signatures in Ex.P.262 statement recorded under Section 161 CrPC by the NIA Police, and in Ex.P.263 statement recorded under Section 164 CrPC by the said Magistrate.

39. In Ex.P.167 recorded by the II Metropolitan Magistrate (For Railways), Secunderabad, P.W.40 has clearly stated that accused No.25 has handed over a Tea carton box to himself and P.W.73 for being sent to Delhi instructing them that if anybody enquires about the box they should tell that the box belongs to Anees, and that subsequently he came to know that the carton entrusted to them for booking contained duplicate currency. In Ex.P.168 also P.W.40 has made a similar statement. The statements of P.W.73 recorded under Sections 161 and 164 CrPC marked as Exs.P.262 and 263 respectively are also of similar nature.

40. Dealing with the object of recording of statements under Section 164 Cr.P.C., their effect and the question whether such statements constitute substantial evidence, the Supreme Court in *R. Shaji v. State of Kerala*¹³ held as under:

“Evidence given in a court under oath has great sanctity, which is why the same is called substantive evidence. Statements under Section 161 CrPC can be used only for the purpose of contradiction and statements under Section 164 CrPC can be used for both corroboration and contradiction. In a case where the Magistrate has to perform the duty of recording a statement under Section 164 CrPC, he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must disclose in his statements under Section 164 CrPC. Hence, the Magistrate should ask the

¹³ (2013) 14 SCC 266

witness explanatory questions and obtain all possible information in relation to the said case.

So far as the statement of witnesses recorded under Section 164 is concerned, the object is twofold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement; and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in court should be discarded, is not at all warranted [vide, Jogendra Nahak v. State of Orissa : (2000) 1 SCC 272, and Collector of Central Excise v. Duncan Agro Industries Ltd. : (2000) 7 SCC 53].

Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 CrPC can be relied upon for the purpose of corroborating statements made by witnesses in the committal court or even to contradict the same. As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 CrPC, such statements cannot be treated as substantive evidence.

During the investigation, the police officer may sometimes feel that it is expedient to record the statement of a witness under Section 164 CrPC. This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced [vide, Mamand v. Emperor : AIR 1946 PC 45, Bhuboni Sahu v. R. : AIR 1949 PC 257, Ram Charan v. State of Uttar Pradesh : AIR 1968 SC 1270, and Dhanabal v. State of Tamil Nadu : AIR 1980 SC 628].

41. The contents of the statements recorded under Section 164 CrPC, of P.Ws.40 and 73 stand corroborated by the evidence of P.Ws.25, and 26, and P.W.98 – the Investigating Officer. The conduct of P.Ws.40 and 73 would clearly reveal that they have retracted their earlier statements given before the Police as well as the Magistrate with a view to help the accused because of their close association with the latter. However, through the afore discussed evidence, the prosecution was able to bring out the guilt of the accused beyond all reasonable doubt that they were in possession of the FIC notes as a part of larger conspiracy, though the charge of conspiracy could not be proved by the prosecution, because of its failure to prove the electronic evidence, such as interception of

telephonic conversation in terms of Section 65-A of the Indian Evidence Act, 1872.

42. For all the aforementioned reasons, we do not find any merit in these appeals and the same are accordingly dismissed.

C.V. NAGARJUNA REDDY, J

M.S.K. JAISWAL, J

20-01-2017

am/bnr

*Note: LR copies to be marked.
(B.O)
am/bnr*

