

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

**RESERVED ON : 27th APRIL, 2017
DECIDED ON : 18th MAY, 2017**

+ CRL.A. 611/2013 & CRL.M.B. 935/2013

IMRAN ABDULLA SYED Appellant
Through : Mr.Vipul Sharma, Advocate.

versus

STATE OF DELHI Respondent
Through : Ms.Rajdipa Behura, SPP with
Ms.Garima S.Yadav, Mr.Philomon
Kani & Ms.Kriti Handa, Advocates.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present appeal is directed to impugn the legality and correctness of a judgment dated 07.01.2013 of learned Addl. Sessions Judge in Sessions Case No.04/2011 arising out of FIR-RC-SIJ-2010 E0006 PS CBI/EOU-VI/New Delhi by which the appellant was held guilty for committing offences punishable under Sections 489B/489C IPC. By an order dated 10.01.2013, he was awarded various prison terms with fine. The sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 30.08.2010, the appellant was found in possession of Fake

Indian Currency Notes (hereinafter referred as 'FICN') amounting to ₹11,21,500/- concealed in the walls of his black colour suitcase. The appellant had travelled to Delhi by Pakistan International Airlines, Flight No.PK 0272 to arrive at IGI Airport, Delhi at about 12.44 hours. Specific information was received by Directorate of Revenue Intelligence Office (hereinafter referred as 'DRI') that the appellant would bring with him FICN concealed in his baggage. On receipt of this information, discreet surveillance was mounted at the exit gate of Terminal – III. The appellant was intercepted while he was walking out of the airport gate. On search of his baggage, FICNs, amounting to ₹11,21,500/- were recovered. After recording statement under Section 108 of the Customs Act, 1962, the appellant was arrested. Statements of the witnesses conversant with the facts were recorded. During investigation, one Usman Mohd. Ali Memon was found to have hatched a conspiracy with the appellant and one Bilal @ Talha in trafficking the FICNs from Paskistan to India. Upon completion of investigation, a charge-sheet was filed against the appellant and his associate Usman Mohd. Ali Memon in the Court. In order to establish its case, the prosecution examined six witnesses. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication. It is relevant to note that by an order dated 07.10.2011 Usman Mohd. Ali Memon was discharged and the said order remained unchallenged. The appellant did not produce any evidence in defence. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. I have heard the leaned counsel for the parties and have examined the file. At the outset, it may be mentioned that learned counsel

for the appellant, on instructions, informed that the appellant has opted not to challenge the findings of the Trial Court on conviction. The appellant, however, prayed to take lenient view and to modify the sentence order due to mitigating circumstances whereby he had remained incarcerated for sufficient duration in this case. Learned SPP for CBI has no objection to take into consideration the mitigating circumstances (if any).

4. It is not in dispute that the appellant is an Indian citizen. It is informed that the appellant had left Mumbai on 22.07.2010 by train to reach Jodhpur on 23.07.2010. From there, he crossed over to Pakistan through Munabao / Khokhrapar check-posts on 25.07.2010 and reached Karachi Railway Station on 26.07.2010. He returned to India on 30.08.2010 by Pakistan International Airlines Flight No.PK 0272 scheduled to arrive at IGI Airport at 12.44 hours. He did not deny his travel from Pakistan to India by the said flight. He was found in possession of his Boarding Card and ticket. In 313 Cr.P.C. statement, he did not deny his apprehension at IGI Airport. He, however, claimed that he was arrested outside the gate by the officials of the DRI and thereafter was taken to the office. In statement recorded under Section 108 of the Customs Act, he disclosed that the purpose of his visit to Pakistan was to bring certain ladies suit in lieu of supplying cosmetics.

5. Recovery of the FCINs from the bag in the appellant's possession is not suspect. In the cross-examination of PW-2 (B.K.Banerjee), member of the raiding team, suggestion was put that the appellant was not 'aware' as to how the FICNs came in his suitcase. Apparently, appellant did not deny recovery of FICNs from the suitcase in his possession but pleaded that he was ignorant as to who had put the same in his suitcase. In the cross-examination of PW-3 (Deepak Khatri), another member of the raiding team,

an entirely different and conflicting suggestion was put stating that the suitcase was planted and the DRI officers had manipulated the baggage tag. In 313 Cr.P.C. statement, again, the appellant took the plea that he was arrested outside the gate by the officials of DRI and was taken to the office where he was shown certain currency notes. Apparently, the appellant has taken conflicting and different suggestions regarding the FICNs found in his possession. He did not deny if the suitcase recovered did not belong to him. The suitcase contained his personal belonging too. Under Section 106 Evidence Act, it was within the appellant's special knowledge as to how and under what circumstances, the fake currency notes in huge quantity were concealed in his bag. The appellant has failed to explain or offer any plausible explanation. No valid reason exists to disbelieve the statements of PW-2 (B.K.Banerjee) and PW-3 (Deepak Khatri) coupled with appellant's statement under Section 108 of the Customs Act.

6. The Trial Court has discussed all the relevant aspects and the reasoning based upon fair appreciation of the evidence deserves no intervention. Since the currency recovered from the appellant was huge and he was also found in possession of a fake currency note of ₹500/- in his pocket, it can be inferred that the appellant had requisite mens rea and was in conscious possession of the FICNs. He did not reveal as to what had prompted him to carry the huge fake currency and from where he had procured it. He also did not reveal as to who was the king-pin and to whom the FICNs were to be delivered. Needless to say, the prosecution was able to establish its case beyond reasonable doubt. In the absence of any prior animosity or ill-will, PW-2 (B.K.Banerjee) and PW-3 (Deepak Khatri) who were not acquainted with the appellant before the incident were not expected

to falsely implicate him in this case. Conviction under Sections 489B/489C IPC cannot be, thus, faulted.

7. Nominal Roll dated 27.05.2016 reveals that the appellant has undergone five years, eight months and five days incarceration besides remission for ten months and four days as on 27.05.2016. He is a first time offender and is not involved in any other criminal case. He was aged around 32 years. For this crime, he has also been prosecuted and convicted in CC No.131/1/2010 under Sections 132/135(1)(A) of the Customs Act. He was sentenced to undergo SI for three years with fine ₹50,000/- on 11.01.2013. Sentence order records that the appellant had lost his father 12 days prior to conviction and he and his younger brother were looking after the family and widow mother. The appellant has no criminal antecedents. The prosecution was unable to establish as to from where FICNs were procured and who was the king-pin / master-mind. It was also not ascertained as to whom the FICNs were delivered. Possibility of the appellant to be a 'carrier' in the whole transaction on acceptance of certain monetary consideration cannot be ruled out.

8. Taking into consideration all the mitigating circumstances, the Sentence Order is modified and the substantive sentence of the appellant under Section 120B IPC is reduced to RI for eight years with fine ₹50,000/-, default sentence being SI for two months; under Section 489B IPC RI for eight years with fine ₹50,000/-, default sentence being SI for two months; and, under Section 489C IPC RI for five years with fine ₹25,000/-, default sentence being SI for one month. All the substantive sentences shall run concurrently. The appellant shall, of course, be entitled to the benefit under Section 428 Cr.P.C.

9. The appeal stands disposed of in the above terms.
10. Pending application also stands disposed of.
11. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent jail for information.

(S.P.GARG)
JUDGE

MAY 18, 2017 / *tr*

