

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

C.R.A. 745 of 2013

**Manu Sk. @ Manowar Ajam
Vs.
The State of West Bengal**

**Amicus Curiae
appointed by the Court: Mr.Mujibar Ali Naskar**

**For the State : Mr. Saswata Gopal Mukherjee,Ld.P.P.
Ms. Faria Hossain
Mr. Sandip Chakraborty**

Heard on : 10.11.2021

Judgment On : 11.11.2021

Bibek Chaudhuri, J.

The instant criminal appeal is directed against the judgment and order of conviction and sentence dated 31st day of July, 2013 passed by the learned Additional Sessions Judge, 5th Court at Malda in Sessions Trial No.7 of 2013 corresponding to Sessions Case No.281 of 2012 arising out of Gazole Police Station Case No.292/12 dated 27th July, 2012 thereby convicting the accused/appellant under Section

489C of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 1 (one) year and to pay a fine of Rs.1,000/- with default clause.

The brief fact of the case is as follows:- Police attached to Gazole Police Station received the information that four persons including the driver of a Bolero car bearing No.WB66-A/1627 was standing at Alampur Chiriadaha side and the movement of the said four persons was suspicious. The information was recorded in the general diary book of the police station and one Rasamay Paul, Assistant Sub-Inspector of police went to the spot to work out the said information. At Alampur they found one Bolero car in stationary condition by the side of the road. One person was sitting in driver's seat. Police interrogated the said person. He failed to state the whereabouts of the passenger of the said car. A.S.I. Rasamay Paul conducted search of his person and recovered 12 pieces of fake Indian currency notes (FICNs) of 500/- denomination from his possession. The said FICNs were properly seized and labelled in presence of local individual witnesses. The said person was arrested and brought to the police station.

A.S.I. Rasamay Paul submitted a complaint to the Officer-in-Charge of Gazole Police Station, on the basis of which a case being Gazole Police Station Case No.292 of 2012 dated 27th July, 2012

under Section 489B and 489C of the Indian Penal Code was registered against the accused. The investigation of the case culminated in filing charge-sheet.

Since the charge-sheeted offence under Section 489B and 489C of the Indian Penal Code are exclusively triable by the Court of Sessions, the case was committed to the learned Sessions Judge, Malda. Subsequently, the case was transferred to the Court of the learned Additional Sessions Judge, 5th Court at Malda for trial. The learned Trial Judge on examination of the witnesses and the accused under Section 313 of the Code of Criminal Procedure found him guilty for committing offence under Section 489C of the Indian Penal Code and convicted and sentenced accordingly.

The said judgment and order of conviction and sentence is under challenged in the instant appeal.

During trial of the case, prosecution examined as many as 7 witnesses, amongst them except P.W.5 and P.W.6, all other witnesses are police personnel.

P.W.1 is the de-facto complainant. He stated on oath that on 27th July, 2012, the Officer-in-Charge of Gazole Police Station got a secret information that some people were suspiciously moving with a Bolero car near Alampur Chiriadaha, P.W.1 was directed to work out the said information. Accordingly, he went to Alampur and found one

Bolero car in stationary condition with a person sitting in the driver's seat. He introduced himself as the driver of the said vehicle but could not say about the whereabouts of its passengers. Then A.S.I. Rasamay Paul conducted search of his person and recovered 12 pieces of FICNs of Rs.500/- denomination each from the possession of the appellant. The FICNs were seized and labelled at the spot in presence of independent witnesses. Then he lodged a written complaint against the accused and three other persons to the police station.

P.W.2, P.W.3 and P.W.4 who are also the members of police force corroborated the evidence of P.W.1. They stated on oath that they were also the members of raiding party.

P.W.5 and P.W.6 are the seizure witnesses who stated on oath that on 27th July, 2012 when he was returning home, he noticed a gathering near Alampur. Being curious he went to the place of occurrence. The police officer requested him to put his signature on the seizure list and FICNs. Accordingly, he put his signature on the said documents. Same is the evidence of P.W.6.

P.W.7 is the Investigating Officer of the case. During investigation he sent the FICNs to the Currency Notes Press, Nasik for examination and report. He also collected the report from the

Currency Notes Press which revealed that the said currency notes were fake.

The seizure list, label, fake currency notes and the report of the concerned officer of Currency Notes Press were marked exhibits.

The learned Trial Judge on examination of the evidence on record both oral and documentary held the accused person/appellant guilty for committing offence under Section 489C of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for further six months.

It is submitted by Mr.Mujibar Ali Naskar, learned *Amicus Curiae* who was appointed to assist the Court on behalf of the appellant that in order to bring home a charge under Section 489C of the Indian Penal Code, the prosecution is required to prove that the accused had in his possession forged or counterfeited currency notes or bank notes; secondly, the accused knows or has the reason to believe the said currency notes to be forged or counterfeited; the said currency notes are intended to be used as genuine or may be used as genuine, then only the accused/appellant is liable to be convicted under Section 489C of the Indian Penal Code.

Coming to the instant case, it is urged by Mr.Naskar with reference to the evidence on record that the witnesses stated that 12

number of FINCs were seized from the possession of the accused. On interrogation he admitted that he had the said FICNs for the purpose of as samples. The learned Trial Judge disbelieved the defence plea and held that the accused had failed to explain as to why he was possessing the counterfeit currency notes. The Court has every right to infer from the possession of FICNs by the accused that the accused was possessing counterfeit currency notes knowing them to be shown with intention of using the same as genuine.

However it is urged by the learned *Amicus Curiae* that except the police personnel, nobody, even the seizure witnesses stated that FICNs were recovered from the possession of the appellant.

In the F.I.R., the de-facto complainant stated that he received an information that four persons including the driver with one Bolero car were standing at Alampur Chiriadaha side and the movement of the said passengers and driver were suspicious. He then recorded the information in General Diary Book and left the police station to work out the said information. However, in evidence the de-facto complainant (P.W.1) stated that Officer-in-Charge of Gazole Police Station received the said information and directed him to work out the same. There is a discrepancy between the statement of P.W.1 made in the F.I.R. and the evidence.

It is further submitted by the learned *Amicus Curiae* that except the police personnel, no individual witness corroborated the prosecution case. In the absence of individual witnesses, it is not proper to hold the appellant guilty for committing the offence.

He also submits that in case of examination under Section 313 of the Code of Criminal Procedure, the appellant stated that the said Bolero car on which they were travelling had met with an accident. After the accident, police arrested him and took him to the police station. Then he was falsely implicated in a case under Section 489B and 489C of the Indian Penal Code. Such defence plea was not contraverted by the prosecution. Therefore, the appellant is entitled to be acquitted from the charge.

Learned Advocate for the State, on the other hand submits that the rule of appreciation of evidence never held that witnesses belonging to the police force are to be disbelieved on each and every circumstances. The de-facto complainant and all other witnesses unequivocally stated on oath that the accused was in possession of FICNs. The said FICNs were seized under proper seizure list. Scientific report was obtained from the Government Currency Notes Press, Nasik. The concerned Authority opined that the seized FICNs were fake and counterfeit. The learned Trial Judge on proper appreciation of evidence and legal provisions as to the ingredients of

offence held the accused guilty under Section 489C of the Indian Penal Code and there is no reason to take a contrary view in the instant appeal.

Having heard the learned Counsels for the appellant and the respondent and on perusal of the evidence on record, this Court finds that on 27th July, 2012, the appellant was apprehended by police while possessing fake currency notes. The said fake currency notes were seized and labelled in presence of P.W.5 and P.W.6 who are local persons not connected with police force. The said currency notes were sent to the Currency Notes Press, Nasik for scientific examination. The learned *Amicus Curiae* has raised a question that after seizure of FICNs, the fake currency notes were allegedly kept in the Malkhana of the Police Station. But during trial, the prosecution failed to produce Malkhana Register to prove that the seized articles were kept in Malkhana and those were sent to Government Currency Notes Press for scientific opinion.

This argument has no leg to stand because at the time of seizure, the witnesses including P.W.5 and P.W.6 put their signature on FICNS. From the report of the Government Note Press (Exhibit.8) it is found that the said currency notes were sent for examination and report. The same currency notes were produced in Trial Court and were marked material exhibit. Therefore, there is no reason to raise

any question to the fact that the currency notes that were seized from the possession of the accused was not sent to the Government Note Press for report or not produced in Court during trial.

The witnesses on behalf of the prosecution clearly proved that fake currency notes were recovered from the possession of the accused/appellant. It is inferred that the accused was in possession of the said currency notes intending to use the same as genuine.

For the reasons stated above, I do not find any reason to spill ink over the judgment passed by the learned Trial Judge.

Accordingly, the instant appeal is dismissed on contest, however, without costs. The judgment passed by the learned Additional Sessions Judge, 5th Court at Malda is affirmed.

The bail bond of the appellant is forfeited. The appellant is directed to surrender before the Trial Court for suffering sentence within 15 days from the date of communication of the order.

If the appellant fails to surrender voluntarily before the Trial Court to suffer sentence, the learned Trial Judge would issue warrant of arrest against him on the expiry of the aforesaid period.

(Bibek Chaudhuri, J)