

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

CRA 135 of 2019

In

CRAN 2 of 2019

Mr. Ohidul Sk.

Vs.

The State of West Bengal

For the Appellant	:	Mr. Avik Ghatak, Adv. Mr. Salman Hassan, Adv. Mr. Amit Ranjan Pati, Adv.
For the State	:	Mr. Saswata Gopal Mukherje, Ld. P.P. Mr. Saryati Dutta, Adv.
Heard on	:	23 rd December, 2021
Judgment on	:	23 rd December, 2021

Joymalya Bagchi, J. :-

The appellant has assailed his conviction under Sections 489B & 489C of the Indian Penal Code and the corresponding sentence of 10 years

and a fine of Rs.10,000/- in default to suffer simple imprisonment for six months for the offence punishable under Section 489B and rigorous imprisonment of seven years for the offence punishable under Section 489C of the Indian Penal Code.

Appellant was called upon to answer the following charges:-

“Firstly – That you, on or before 20.06.2015 bought 100 numbers of F.I.C.N. having denomination of Rs.1000/- each in total Rs. 100,000/- from some person / persons knowing or having reason to believe the same to be forged / counterfeit and on 20.06.2015 came to Dhulian Ferryghat under P.S. Samsherganj, District- Murshidabad with said FICN, out of which you circulated FICN of Rs.1000/- there as genuine and on that day i.e. on 20.06.2015 in between 15:55 to 17:35 hrs in the same place, mentioned above, 99 numbers of FICN having denomination of Rs.1000/- in total Rs.99000/- were recovered from your possession and that you thereby committed an offence punishable under Section 489B of I.P.C. and within the cognizance of this Court.

Secondly – That you, on 20.06.2015 in between 15:55 to 17:35 hrs in the same place, mentioned above, had in your possession of 99 numbers of F.I.C.N. having denomination of Rs.1000/- each in total Rs.99000/- knowing or having reason to believe the same to be forged / counterfeit and intending to use the same as genuine and thereby committed an offence punishable under section 489C of I.P.C. and within the cognizance of this Court.”

Prosecution examined seven witnesses to prove its case.

P.W. 1 is the de facto complainant and the leader of raiding party. He deposed that on 20.06.2015 he was posted as ASI at Samsherganj Police Station. At about 03:05/03:10 PM he received source information that someone was standing at Ferry Ghat, Dhulian taking Fake Currency Note.

He informed the matter to the O.C. of Police Station. As per his direction, he along with three constables proceeded to the spot. Prior to leaving the police station, he diarized such information. On the way he requested two persons namely, Fitu Sk. (P.W. 3) and Abdul Rashed (P.W.5) to join them. When they reached the ferry ghat, they apprehended the appellant and seized ninety-nine currency notes of denomination of Rs.1000./- each suspected to be fake from his possession. He proved the seizure list. He took the appellant to the police station along with seized articles. He lodged the F.I.R. (Ext. 2). He also identified the FICNs in Court.

Evidence of the aforesaid witness is corroborated by members of the raiding party namely, PWs. 2, 4 and 7. Independent witnesses were declared hostile. They, however, admitted their signatures in the seizure list. They were confronted at length with their previous statements to police during cross-examination.

P.W. 6 is the investigating officer of the case. He interrogated the appellant. He recorded the statement of the appellant & other witnesses. He sent the seized FICN for examination and received the report from Bharatiya Reserve Bank – Note Mudran Bibhag- Salboni (Ext. 7). Report opined that the seized currency notes are faked. He submitted a charge sheet.

Evidence on record particularly that of P.Ws, 1, 2, 4 and 7 clearly establishes seizure of ninety nine currency notes suspected to be fake from the possession of the appellant.

It is argued that independent witnesses have not supported the prosecution case. The said witnesses were declared hostile and were confronted with their previous statements. They admitted their signatures on the seizure list. From the materials on record it appears the independent witnesses had been won over and were not telling the truth. Hence, I do not wish to discard the consisted evidence of the official witnesses who seized the currency notes from the possession of the appellant on the prevaricating stance of untruthful witnesses. Charge under Section 489C of the Indian Penal Code appears to have been proved beyond doubt.

Mr. Ghatak strenuously, argues that evidence of user of the notes has not been established. Referring to the charge framed under Section 489B of the Indian Penal Code he submits that the purported user of currency notes is founded on the confessional statement of the appellant before the police.

I find much substance in his submission. Evidence with regard to user of the currency notes is based on inadmissible evidence of the appellant before the police. No charge of trafficking of fake notes by way of transportation or otherwise has been framed in the instant case.

In view of the aforesaid circumstances, I am inclined to acquit the appellant from the charge under Section 489B of the Indian Penal Code.

Accordingly, conviction and sentence of the appellant is upheld under Section 489C while conviction and sentence of the appellant is set aside under Section 489B. The appeal is partly allowed.

Period of detention, if any, undergone by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of Section 428 of the Code of Criminal Procedure.

Lower court records along with a copy of this judgement be sent down at once to the learned trial court for necessary action.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I Agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi J.)

Sb/PA