

Form J(2)

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

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

CRA 573 of 2018

With

CRAN 1 of 2018 (Old CRAN 3130 of 2018)

**Santi Bypari
Vs.
The State of West Bengal**

**For the Appellant : Mr. Debasis Kar
Mr. Husen Mustafi
Mr. Subhajit Chowdhury**

**For the State : Ms. Faria Hossain
Ms. Baisali Basu**

Heard on : 08.04.2021

Judgment On : 08.04.2021

Bibek Chaudhuri, J.

This is an appeal under Section 374(2) of the Code of Criminal Procedure assailing the judgment and order of conviction and sentence dated 20th March, 2018 and 21st March, 2018 respectively

passed by the learned Additional Sessions Judge, 5th Court, Malda in Sessions Case No.62 of 2017 (Sessions Trial No.34 of 2017) thereby convicting the appellant for committing offence punishable under Section 489C of the Indian Penal Code and sentencing her to suffer rigorous imprisonment for six years and also to pay fine of Rs.10,000/-, in default, to suffer further rigorous imprisonment for six months.

English Bazar P.S. Case No.887 of 2016 was registered under Section 489(B)/489C/120B of the Indian Penal Code on the basis of a suo motu complaint to the effect that on 20th October, 2016 at about 14.25 hrs. police attached to the said P.S. conducted a raid to verify a source information at Milky Bus Stand and apprehended a lady with a bag in her hand. On search 100 pieces of Rs.500/- denomination and 50 pieces of Rs.1,000/- denomination were found from the possession of the appellant. A.S.I. Ansarul Hoque seized the said fake currency notes, levelled the same and arrested the accused. Then he lodged a complaint against the appellant on the basis of which the above mentioned police case was started. P.W.8 took up the case for investigation and on completion of investigation submitted charge sheet against the accused under Section 489B/489C /120B of the Indian Penal Code.

The case was committed to trial to the Court of Sessions and the trial was taken up by the learned Additional Sessions Judge, 5th Court at Malda. On conclusion of trial the learned trial Judge held the accused/appellant guilty for committing offence under Section 489C of the Indian Penal Code and convicted and sentenced her accordingly.

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

It is submitted by the learned advocate for the appellant that in order to bring home the charge against the accused/appellant prosecution examined as many as eight witnesses. Amongst them two witnesses are independent witnesses and rest witnesses are police personnel. It is further submitted by the learned advocate for the appellant that there are glaring contradictions between the evidence of the witnesses and the oral testimony of none of the witnesses can be believed. In order to substantiate his contention he first refers to the evidence of P.W.1 Sk. Muktar who is a constable of police and on the relevant point of time was attached to Milky Outpost under English Bazar P.S. From his evidence it is found that a raid-in-party was present at the P.O. for about ten minutes, within which period entire search and seizure was completed. On the contrary, P.W. 3 Bablu Mandal who was a Home Guard and a member of the

raid-in-party stated that it took about one and half hours to complete search and seizure.

P.W. 2, A.S.I. Ansarul Hoque led the raid on 20th October, 2016. In his cross-examination he stated that he received the information over telephone but he could not state the telephone number over which he received the source information. He also did not mention the telephone number in the F.I.R. The names of persons who accompanied P.W.2 in the raid were not also mentioned in the F.I.R. Thus, it is submitted by the learned advocate for the appellant that presence of the witnesses who claimed themselves to be the members of the raid-in-party is doubtful and the learned trial Court failed to consider the aspect in his judgment.

It is further pointed out by the learned advocate for the appellant that according to the prosecution case 50 pieces of fake currency notes of Rs.1,000/- denomination and 100 pieces of fake currency notes of Rs.500/- denomination were allegedly recovered from the appellant but P.W. 2 got the signature of P.W.5 who is an independent witness. Therefore, it is doubtful as to whether remaining fake currency notes were actually recovered from the appellant or not.

Last but not the least it is urged by the learned advocate for the appellant that the prosecution has failed to produce forensic report of

the seized currency notes and, therefore, it is not proved that the said articles which were allegedly recovered from the appellant were actually fake currency notes or not. In view of such circumstances, it is submitted by the learned advocate for the appellant that the impugned judgment of conviction and sentence cannot be sustained and the same should be set aside.

It is also submitted by him that the appellant is in custody from 20th October, 2016. Thus, she is in custody for about four years and six months. He invites the Court to consider such aspect also.

Learned P.P.-in-Charge, on the other hand, has supported the judgment on the ground that the rule of evidence does not suggest that the police witnesses cannot be believed. Evidence of police officer cannot be discarded only because he belongs to the police force. In the instant case, there is no enmity between the police personnel and the accused. Therefore, the police officers had no reason to give false evidence against the appellant. It is found from the evidence of all the witnesses that huge number of fake Indian currency notes were recovered from the possession of the accused/appellant and the learned Court below rightly held her guilty for committing offence under Section 489C of the Indian Penal Code.

Section 489C of the Indian Penal Code runs thus:-

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

Thus, possession of forged and counterfeit currency-note with the intention to use the same as genuine as an offence under Section 489C of the Indian Penal Code. In order to prove the charge under Section 489C it is the bounden duty of the prosecution to establish that the articles that were seized from the possession of the appellant were actually fake currency-notes. This evidence is only available from forensic report. In the instant case though the seized articles were sent to Forensic Science Laboratory but the prosecution did not take any attempt to produce and prove the forensic report in respect of the seized articles during trial of the case.

If we discard the contradictions as pointed out by the Learned Advocate for the appellant in course of argument, non-production of forensic test report of the seized articles will surely go against the prosecution and without such report the Court cannot hold the

appellant guilty for committing offence under Section 489C of the Indian Penal Code.

In view of the above discussion, I find that the impugned Judgement and order of conviction and sentence passed by the Learned Additional Sessions Judge, 5th Court at Malda in Sessions Case No. 62 of 2017 is liable to be set aside.

Accordingly, the instant criminal appeal is **allowed** on contest, however, without cost. The impugned judgement and order of conviction is set aside. The accused be released at once if she is in custody.

Let a plain copy of this order be sent to the Learned Additional Sessions Judge, 5th Court at Malda for communication and issuance of released order in favour of the appellant forthwith. The Learned Advocate for the appellant is also at liberty to act upon the server copy of this Judgement.

(Bibek Chaudhuri, J.)