IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.18 of 2017

Arising Out of PS. Case No.-2 Year-2014 Thana- A.T.S District- Patna

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Jitendra Singh Son of Chandrama Singh Resident of Village- Yado Pipra, P.S.- Hathua, District- Gopalganj.

... ... Appellant

Versus

The State Of Bihar

... ... Respondent

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Appearance :

For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Mr. Rajiv Ranjan, Advocate
For the Respondent : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE KHATIM REZA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 08-08-2022

In the present criminal appeal, the sole appellant has put to challenge, the judgment of conviction and the order of sentence dated 18.11.2016 and 24.11.2016 passed by the learned Additional Sessions Judge-VIII, Patna in Sessions Trial No. 358 of 2015 as under:-

Conviction under Section	**Sentence**		
	Imprisonment	**Fine (Rs.)**	**In default of fine**
489-B of the Indian Penal Code	For life	7,50,000/-	3 years simple imprisonment
489-C of the Indian Penal Code	No separate punishment in the light of Section 71 of the Indian	-	-

	Penal Code		
16 of the Unlawful Activities (Prevention) Act	10 years	50,000/-	1 year simple imprisonment

2. Ashwani Kumar Chaturvedi, a Sub-Inspector of Anti Terrorism Squad ("A.T.S." for short) Varanasi, Uttar Pradesh is the informant (P.W.-2), whose written report is said to be the basis for registration of the first information report with A.T.S. Police Station, Patna as A.T.S. P.S. Case No. 02 of 2014 dated 16.10.2014 leveling allegation of commission of the offence punishable under Sections 489-B/489-C read with Section 34 of the Indian Penal Code and Sections 16 and 17 of the Unlawful Activities (Prevention) Act, 1967.

3. The prosecution's case, as unfolded in the said written report, is that the A.T.S. Uttar Pradesh, Lucknow Headquarters was getting continuous feedback regarding presence at large scale counterfeit currency notes in North India brought from Malda (West Bengal) *via* Bihar which were being used up in the Indian market. Thereafter, the informant was authorized by the Headquarter at Lucknow to collect further inputs. Accordingly, two personnel, namely, Head Constable Dhirendra Thakur (P.W.-3) and Junior Inspector Ranvijay Tiwari (not examined) were deputed to collect the information in this connection from Malda (West Bengal). In the night of

15/16.10.2014, the informant received an information from them that someone was likely to carry huge quantity of counterfeit Indian currency notes from Malda to Patna via rail. Based on the said information, the informant proceeded to Patna Railway Station with Sub-Inspector Alok Kumar Singh (not examined) in a government vehicle and driver Sushil Kumar (not examined). While leaving Varanasi for Patna *via* road, the informant instructed Junior Inspector Vijendra Rai (not examined), Commando Vinod Kumar Singh and Jai Prakash (not examined) to reach Patna Junction *via* rail. He also shared the information with the Inspector A.T.S. Patna, Md. Irshad Alam (P.W.-10) with a request to him to extend due assistance in the operation. Acting upon the information received from the informant, the Inspector Irshad Alam of A.T.S. Bihar (P.W.-10) asked Assistant Sub-Inspector Dhanraj Kumar (P.W.-5), Sub-Inspector Mintullha (P.W.-7), Junior Sub-Inspector (female) Sneha Kumari (not examined), Junior Inspector (female) Swati Singh (P.W.-1), Junior Inspector Ravikant Mishra (P.W.-9), Junior Inspector Chandan Ram (not examined), Junior Inspector Bhibhuti Kumar (P.W.-6), Junior Inspector Vikram Kumar (not examined) with driver Junior Inspector Birendra Singh (P.W.-8) to join Head Constable Dhirendra Thakur (P.W.-3) and Junior Inspector

Ranvijay Tiwari (not examined) of Varanasi A.T.S., who had come from Malda for the joint operation. The A.T.S. Varanasi team and the A.T.S. Bihar team were present at platform No. 5 where the informant also reached. At 5:45 am, four persons de-boarded Farakka Express, out of whom, two were males and two were females. The spy signalled towards the appellant, who was carrying a backpack, as the person who, according to the secret information, was in possession of counterfeit Indian currency notes. The spy thereafter left the place. The informant, though, requested various persons present there to assist the A.T.S. team in search and seizure after disclosing the purpose of their operation, none of them except one Sudhir Kumar agreed to be the seizure list witness.

4. Afterwards, in presence of the said Sudhir Kumar (not examined) and Constable Ravikant Mishra of A.T.S. Bihar, the members of police team allowed themselves to be searched so as to ensure that they were not in possession of any objectionable material. Subsequently, the A.T.S. personnel encircled the aforesaid four persons and asked them to stop, whereafter, the appellant attempted to flee away. He was immediately apprehended, who disclosed his name and other details. A search was, thereafter, conducted of his person leading

to recovery of Indian currency notes from the said backpack, which the appellant was carrying. From the possession of other three persons, who were accompanying the appellant, no incriminating material was recovered. The appellant, in his reply, disclosed to the A.T.S. team that the notes were genuine currencies. He however did not disclose the purpose for carrying such huge amount of currency notes. The entire occurrence had taken place in the presence of the crowd which had collected at the place of occurrence. Subsequently, on intense interrogation, the appellant confessed that the currency notes were counterfeit and he used to bring such notes from one Khan Shahab of Malda, who would supply to him counterfeit currency notes of Rs. 1,00,000/- (One Lakh) as exchange against genuine currency notes worth Rs. 32,000/- (Thirty Two Thousand). The appellant is said to have further disclosed that, previously also, he had brought counterfeit currency notes and had expended them. He disclosed the name with the mobile number of the person who had arranged his association with said Khan Shahab. Nine hundred notes, each of Rs. 500 denomination (Rs. 4,50,000/-) and three hundred notes each of Rs. 1000 denomination (Rs. 3,00,000/-) were recovered from the appellant's possession. The first information report was registered at 11:15 am with the

A.T.S. Police Station.

5. Upon completion of investigation, the Investigating Officer submitted his charge-sheet on 31.03.2015 for commission of offences punishable under Section 489-B, 489-C of the Indian Penal Code ('I.P.C.' for short) and Sections 16 and 17 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the 'UAP Act'), based on which the learned Chief Judicial Magistrate, after taking cognizance committed the case for trial to the Court of Sessions by order dated 17.05.2015. The charges were thereafter framed against the appellant for commission of the offences punishable under Sections 489-B and 489-C of the I.P.C. and Section 17 of the U.A.P. Act.

6. During the course of trial, altogether 13 witnesses were examined, all of whom were the members either of A.T.S. Varanasi or of Patna except P.W.-11, the Senior Scientist, Forensic Science Laboratory, Patna to prove the F.S.L. report to the following effect:-

> *"1. Examinations of all the notes marked as A_1 to A_{900} of denomination Rs. 500/- and B1 to B300 of denomination Rs. 1000/- as described above reveal that all the notes are not genuine Indian Currency Notes but* ***COUNETERFEIT.***
>
> *2. Preliminary Report on* ***High Quality Counterfeit Indian Currency*** *was already sent to the*

I.O., A.T.S. Bihar, Patna."

7. Further, the prosecution got exhibited documentary exhibits (Exhibit-1 to Exhibit-7) and material exhibits (Exhibit-I to Exhibit-XVI) to substantiate the charge framed against the appellant. Learned Trial Court after having appreciated the evidence adduced at the trial, including oral and documentary evidence as well as the material exhibits, has recorded conviction of the appellant of the offence punishable under Section 489-B/489-C of the I.P.C. and Sections 16 of U.A.P. Act. The appellant has, however, been acquitted of the offence punishable under Section 17 of the U.A.P. Act giving him benefit of doubt.

8. We have heard Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellant and Mr. Ajay Mishra, learned Additional Public Prosecutor for the State.

9. Mr. Thakur, learned counsel for the appellant, at the very outset, has drawn the Court's attention to the seizure list and has submitted, with reference to the oral evidence on record, that the entire case of the prosecution of recovery of counterfeit notes from the possession of the appellant becomes doubtful. He has firstly submitted that the independent seizure list witness Sudhir Kumar was not enlisted as a prosecution witness, let

alone his examination at the trial and there is no explanation put forth by the prosecution as to why it did not name him in the charge-sheet as a prosecution witness. This Court's attention has been drawn to the evidence of Ravikant Mishra (P.W.-9), an A.T.S. personnel and a seizure list witness to question the genuineness of the seizure list itself and truthfulness of the prosecution's case that the seizure list was prepared at the place where the seizure was made. During his examination-in-chief, though, he proved his signature available on the seizure list, he deposed that seizure list was prepared on a plain paper and not in a format. Mr. Thakur submits that the seizure list, as exhibited at the trial, is in a printed format which contradicts the deposition of P.W.-9, the seizure list witness, that the same was prepared on a plain paper at the Railway Station. P.W.-10, the team leader of Patna A.T.S., Md. Irshad Alam, in his evidence has deposed that the seizure list was prepared in three copies in a computerized format. The seizure list exhibited at the trial thus falsifies the prosecution's case that it was the same seizure list which was prepared at the Railway Station. Referring to the evidence of P.W.-1 and P.W.-4, he has submitted that apparently all the documents including the seizure list were prepared at the A.T.S. Police Station and not Railway Station, as is being claimed by the prosecution. He has argued that, based on the evidence of the prosecution witnesses, all of whom are members of A.T.S. teams, the prosecution has miserably failed to establish recovery of counterfeit notes from the possession of the appellant and, therefore, conviction of the appellant under Section 489-C of the I.P.C. itself is not sustainable, much less the offences punishable under Section 489-B and Section 17 U.A.P. Act. He has doubted the very initiation of the prosecution's case with reference to the first information report and has submitted that, though, *fardbayan* of the informant has been mentioned as the basis for registration of first information report at Page No. 4, a written report, subsequently prepared, has been made the basis for registration of first information report. According to him, there are patent contradictions in the evidence of the prosecution witnesses with reference to the time when the Patna A.T.S. received the information first. Submissions have also been made doubting the prosecution's case about presence of Ranvijay Tiwari and Dhirendra Thakur (P.W.-3), who had gone to Malda in the absence of any proof that they had come from Malda and got down at Patna Railway Station. According to him, the essential ingredients of the offence punishable under Section 489-B of the I.P.C. have not been proved by the evidence of the witnesses, inasmuch as, there is no proof of selling, buying or receiving or otherwise trafficking or using counterfeit currency notes as genuine notes by the appellant. Though, in the F.I.R. it has been alleged that the appellant used to deal with one Khan Shahab of Malda in receiving counterfeit currency notes, there appears to be no investigation at all in the said direction, he contends.

10. Mr. Ajay Mishra, learned Additional Public Prosecutor representing the State, *per contra,* has argued that the prosecution, on the basis of evidence adduced at the trial, has been able to establish a case beyond all reasonable doubts, recovery of counterfeit currency notes from the appellant's possession and, thus, the offence punishable under Section 489-C of the I.P.C. has rightly been held to be proved beyond all reasonable doubts. He has submitted that once the prosecution was able to establish its case of commission of offence by the appellant under Section 489-C of the I.P.C., in the absence of any satisfactory explanation put forth by the appellant, his conviction under Section 489-B is also justified and he has further submitted that his conviction under Section 16 of the U.A.P. Act by the Trial Court is also sustainable as the act of the appellant proved at the trial amounts to threatening the

economic security of India which falls within the definition of Terrorist Act under Section 15 of the U.A.P. Act. He has, thus, submitted that since the recovery of counterfeit currency notes has been made from the appellant's conscious possession, the conviction of the appellant under the Unlawful Activities (Prevention) Act, 1967 is justified. He has relied on a Supreme Court's decision in case of ***Durga Prasad Gupta v. State of Rajasthan*** reported in ***(2003) 12 SCC 257*** to bolster his contention.

11. We have carefully gone through the impugned judgment and order of the Trial Court, the oral and documentary evidence adduced at the trial as well as the material exhibits produced at the trial in support of the prosecution's case. We have given our anxious consideration to the rival submissions made on behalf of the appellant and the State.

12. The appellant is in custody sincethe date of occurrence.

13. Before dealing with the evidence adduced at the trial by the prosecution and the submissions advanced on behalf of the appellant and the State, we consider it apt to reproduce Sections 489-B and 489-C of the Indian Penal Code, which read as under:

"***489B. Using as genuine, forged or counterfeit***

currency-notes or bank-notes.*—Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with 2 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

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.*"

14. It would also be beneficial to take note of the provision under Section 16 of the Unlawful Activities (Prevention) Act, 1967, which read as under:

"***16. Punishment for terrorist act.****—(1) Whoever commits a terrorist act shall,—*

(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."

15. It has been considered apt to firstly discuss on the point as to whether based on the evidence adduced at the

Trial, the prosecution has been able to establish beyond all reasonable doubts the charge framed against the appellant of commission of offence punishable under Section 489-C of the I.P.C.. Stated differently, whether the prosecution can be said to have established beyond all reasonable doubts, that the appellant was in possession of counterfeit currency notes. The charge to the effect that the appellant was found in possession of counterfeit currency notes can be said to have been proved, if the recovery of said notes is established beyond all reasonable doubts with reference to the seizure memo and evidence of witnesses at the Trial, most importantly, the witnesses to the seizure list. The question of going into the legality of conviction of the offence punishable under Section 489-B of the I.P.C. and Section 16 of the U.A.P. Act will arise only if the finding of conviction against the appellant by the Trial Court of the offence punishable under Section 489-C is sustained. If the prosecution fails to establish charge under Section 489-C of the I.P.C., the charges under Section 489-B of the I.P.C. and Section 16 of the U.A.P. Act shall also fail.

16. Be it noted that the currency notes, which according to the prosecution, were sent to the scientific examiner have been found to be counterfeit. The question which

needs to be examined in the present appeal is as to whether the prosecution has successfully established its case at the trial that the currency notes which were duly recovered from the appellant's possession were the ones sent for scientific examination.

17. For appreciating the submission made on behalf of the appellant as noted above, as regards the seizure list (Exhibit-1), we have perused the same from the original records which bears the signature of Ravikant Mishra (P.W.-9), one of the members of the A.T.S. team and an LTI of one Sudhir Kumar, whose parentage nor the address is available in the seizure List. Visibly, the search-cum-seizure list (Exhibit-1) has been prepared on a printed format which contradicts the evidence of P.W.-9, who in his cross-examination has deposed that the seizure memo was prepared on a plain paper. Contrary to his evidence, the seizure list was in fact prepared on a printed format. Curiously, the police in its charge-sheet, did not mention the name of Sudhir Kumar, seizure list witness as one of the witnesses to establish the case of the prosecution. There was, thus, no occasion for his examination at trial for the prosecution. Non-disclosure of the parentage or other details for identification of Sudhir Kumar in the seizure list raises a

reasonable doubt as to whether the seizure list was prepared in the presence of an independent witness who, it is said, had put his LTI in the seizure list. In any view of the matter, the independent seizure list witness was an important independent witness to have stated the truth at the trial, who was withheld by the prosecution.

18. As has been noticed above, all prosecution witnesses are officials of A.T.S. who attempted to prove recovery of counterfeit currency notes from the possession of the appellant. We are not unmindful of the legal position that merely on the ground that all the witnesses are officials of the A.T.S., their evidence cannot be altogether brushed aside. However, we notice material contradiction in the evidence of P.W.-9 and other witnesses on the point of preparation of seizure list including the place where the seizure list was prepared.

19. In our considered view, the act on the part of the prosecution in withholding the seizure list witness creates serious doubt in relation to the manner of recovery and the preparation of seizure list. Withholding the independent important witness, who according to the prosecution was present at the place of occurrence and who was a seizure list witness raises reasonable suspicion. The evidence of the other seizure

list witness, a member of A.T.S. team (P.W.-9) also raises a doubt on the point of preparation of seizure list, inasmuch as, his evidence that the seizure list was prepared on a plain paper is contrary to Exhibit-1, the seizure memo, which is in a printed format. The doubt is thus re-enforced in the background of evidence of the P.W.-9.

20. There is another crucial aspect of relevance, which cannot be lost sight of and goes to the root of the matter. The *fardbayan* of the informant has been mentioned as the basis for registration of F.I.R. at page-4. At page-1 of the F.I.R. there is a tick (✓) mark of "*likhit"* (written) as the 'type of information' received for registration of F.I.R.. Page5-7 of the F.I.R. is a written report prepared by the informant (P.W.-2). The written report is not addressed to the officer-in-charge of the police station which has just made a part of the F.I.R.. On the one hand, *fardbayan* is said to be the basis for the registration of F.I.R., a written report not addressed to the officer-in-charge of a police station is disclosed as the basis for registration of F.I.R.

21. Taking into account all facts and circumstances noted above, cumulatively, particularly with reference to the manner of preparation of seizure list to prove recovery of counterfeit notes from the appellant's possession, in our opinion,

the prosecution failed to establish the charge punishable under Section 489-C of the I.P.C. against the appellant beyond all reasonable doubts. Contrary finding recorded by the Trial Court, in our opinion, is not tenable since it has not taken into account the apparent contradictions in the evidence *vis-à-vis* the seizure list and the manner of registration of the F.I.R..

22. One must not forget that one of the important facet and goal of criminal justice system is to ensure that the disgrace of criminality is not inflicted upon in an individual which is crucial for maintaining public confidence in legal system.

23. Situated thus, in our considered opinion, it is not safe to uphold the conviction against the appellant of the offences punishable under Section 489-C of the I.P.C. based on the evidence of A.T.S. officials only, particularly when the evidence of one of the two seizure list witnesses and A.T.S. official was not found to be in consonance with the preparation of seizure list as is evident from Exhibit-1 and the second seizure list witness was not examined at the trial.

24. In our view, since conviction of the appellant under Section 489-C itself is unsustainable, the finding recorded by the Trial Court of conviction of the offence punishable under

Section 489-B of the I.P.C. and Section 16 of the U.A.P. Act is also unsustainable.

25. For the reasons discussed hereinabove, the appeal is allowed.

26. Consequently, the appellant stands acquitted of the charges punishable under Section 489-B and 489-C of the I.P.C. and Section 16 of the U.A.P. Act. The impugned judgment and order passed by learned Additional Sessions Judge,VIII, Patna in Sessions Trial No. 358 of 2015 is hereby set aside.

27. Let the appellant be released from jail forthwith.

(Chakradhari Sharan Singh, J)

I agree
Khatim Reza, J:

(Khatim Reza, J)

K.K.RAO/-

AFR/NAFR	N/A
CAV DATE	28.07.2022
Uploading Date	08.08.2022
Transmission Date	08.08.2022