

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Siddhartha Roy Chowdhury

CRA 51 of 2019

Amirul Laskar & Anr.
Vs.
State of West Bengal

For the Appellants : Mr. Pinaki Bhattacharyya
Mr. Amartya Mohan Bhattacharyya
Ms. Indrani Roy

For the State : Mr. B.K. Roy
Ms. Sima Biswas

Heard on : 14th December 2022

Judgment on : 14th December 2022

The Court:

This appeal assails the judgement and order dated 17.12.2018 passed by the learned Additional District and Sessions Judge, Fast Track Court, Baruipur, South 24 Parganas in S.T. Case No. 32(9) 2016 (S.C. Case No. 08(7) 2015) regarding an order of conviction under Section 489B / 489C of the Indian Penal Code sentencing convicts to suffer rigorous imprisonment for four years and to pay fine of Rs.30,000/- each in default to suffer rigorous imprisonment for six months.

Briefly stated S.I. Panchu Sur Ray of Baruipur P.S. went to Baruipara station road near Milan Cinema Hall to work out a source information after registering a

general diary vide G.D. No. 3051 dated 01.04.2012 accompanied by other police personnel. At about 18.15 hours he found two unknown persons standing with Hero Honda motor-cycle. He searched those two persons and found twenty six numbers of currency notes in the denomination of Rs.500/- (24 nos.) and Rs.1000/- (2 nos.), PAN Card, one Samsung duo mobile phone and one Nokia mobile phone. Giasuddin Mondal and Saidul Mondal were requested to accompany them as witness being shown by the source police personnel cordoned them and disclosed their identity. Then S.I. Panchu Sur Roy offered them to search the police personnel which they refused observing all formalities in presence of accompanying witnesses and police personnel he examined them, they disclosed their identities and made discordon statement but ultimately they disclosed. They brought large number of Fake Indian Currency Notes (FICN) in the denomination of Rs.1000/- and Rs.500/- in presence of accompanying witnesses he searched their presence and recovered currency notes in the denomination of Rs.1000/- and Rs.500/- from their possession. Both the accused persons admitted that those were counterfeit and fake currency notes. They failed to explain their possession and admitted that they use FICN as genuine for purchasing the goods. Accordingly, S.I. Panchu Sur Roy seized those currency notes, motorcycle, mobile phones and a sum of Rs.8,000/- was seized from Amirul Laskar and a sum of Rs.6,000/- was seized from Firoz Molla. The accused persons were brought to the police station and S.I. Panchu Sur Roy submitted a formal information in writing based on which Baruipur P.S. Case No. 297/2017 dated 01.4.2012 was registered under Sections 489B and 489C of the Indian Penal Code. Police took up investigation which culminated into submission of charge sheet. The accused persons

stood trial pleading their innocence to bring home charges. Prosecution examined seven witnesses.

S.I. Panchu Sur Roy (P.W.1) who stated that on 01.4.2012 at about 18.00 hours he received an information that two persons were standing near Baruipur Milan Cinema Hall having in their possession some FICN. He diarised the information and left the police station together with S.I. Debasis Sarkar, S.I. Biswajit Ghosh, A.S.I. Monoj Pal, and Constable Dipak Sardar. At the relevant he picked up two witnesses who volunteered to accompany the police personnel. At about 18.15 hours they reached the spot. The informer indicated those two persons whom he detailed and disclosed identity. He asked those two persons to cause search of the police personnel but they refused. On search two numbers of currency notes in the denomination of Rs.1,000/- were found together with 24 numbers of currency notes in the denomination of Rs.5,00/-. He also recovered PAN Card of Amirul Laskar, one Nokia phone, one Samsung phone and one blue colour Hero Honda Motor Cycle under seizure memo in presence of two witnesses. The carbon copy of the seizure list is marked as Ext. -1. He came back to the police station. He proved the seized the FICN in course of trial admitted as MAT Ext. I, II, III & IV. He denied the suggestion put to him during cross-examination.

Saidul Mondal (P.W.2) is one of the seizure witnesses who stated to have attended Baruipur police station. On asking of police officer who shown the currency notes and he put his signature on the seizure list.

S.I. Debasish Sarkar (P.W. 3) stated that 01.4.2012, S.I. Panchu Sur Roy of Baruipur Police Station seized FICN and he put his signature in the seizure list. Signature was admitted as Ext. 1/3.

A.S.I. Monoj Pal (P.W.4) claimed to have accompany S.I. Panchu Sur Roy and other police officer on 01.4.2015. From his evidence it appears that after chasing police apprehended two persons and 26 nos. of FICN of different denominations were recovered from them. S.I. Panchu Sur Roy seized the same in his presence and he put his signature in the seizure as witness to seizure.

Dipak Sarkar (P.W. 5) is a constable of police and paroted in the other prosecution witnesses regarding recovery of FICN.

Abhay Singh (P.W.6) who gave a report as to the genuineness of the FICN forwarded by police and he did not have any direct knowledge about the incident.

Sibnath Bagchi (P.W.7) is the Investigating Officer of this case.

No other witness was examined.

Section 489C of Indian Penal Code reads as follows:-

"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'."

From the written information it appears that the appellants allegedly made certain statement before S.I. Panchu Sur Roy and other police personnel about their possession of FICN as well as their intention to use the same. Such statement obviously is inadmissible in law. Testimony of prosecution witnesses indicate that police recovered 26 numbers of FICN from the possession of the police but that factum of seizure is not sufficient to make the appellants culpable for committing an offence within the meaning of Section 489C of the Indian Penal Code, in absence of any lawful evidence regarding knowledge or intention of the appellants it cannot be said that charge under Section 489C has been established beyond doubt.

Consequently, the appeal is accepted. The order of conviction is set aside.

The appellants may be discharged from bail bonds and to execute bond under Section 437A of the Cr.P.C. for six months before the learned Trial Court. The application, if any, thus disposed of.

The copy of the order be sent down to the learned Trial Court for information and necessary action.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon completion of requisite formalities.

(Siddhartha Roy Chowdhury,J)