

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

C.R.A. 357 of 2016

+

CRAN 1 of 2019 (Old No. CRAN 2387 of 2019)

Sabir Sekh

-Vs-

Central Bureau of Investigation

with

CRA 410 of 2016

+

CRAN 2 of 2019 (Old No. CRAN 2389 of 2019)

Nakfura Mondal @ Bijoy Mondal

-Vs-

Central Bureau of Investigation

For the Appellants : Mr. Souvik Mitter, Adv.
(in both matters) : Mr. Avishek Sinha, Adv.
: Ms. Jonaki Saha, Adv.

For the C.B.I. : Mr. Anirban Mitra, Adv.
(in CRA 357 of 2016)

For the C.B.I. : Mr. Sagar Saha, Adv.
(in CRA 410 of 2016)

For the State : Mr. Santanu Chatterjee, Adv.

Heard on : 24.02.2022

Judgment on : 24.02.2022

Joymalya Bagchi, J. :-

Both the appeals are directed against the judgement and order dated 28.03.2016 passed by the learned Judge, Special (C.B.I.) Court,

Asansol, Burdwan, in Special (C.B.I.) Case No. 01 of 2012 arising out of R.C. No. 06 of 2011 convicting the appellants for commission of offence punishable under Sections 120B/489B/489C of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/- each, in default, to suffer rigorous imprisonment for six months more for the offence punishable under Section 489B of the Indian Penal Code and to suffer rigorous imprisonment for seven years and to pay fine of Rs.10,000/- each, in default, to suffer rigorous imprisonment for six months more for the offence punishable under Section 489C of the Indian Penal Code and further convicting the appellants under Section 120B of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for two years and also to pay a fine of Rs.10,000/- in default to suffer further rigorous imprisonment for six months more; all the three sentences to run concurrently.

The prosecution case as alleged against the appellants is that on 30.09.2010, Prabir Kumar Bhadra, senior intelligence officer, who was attached to DRI, Berhampore, along with other intelligence officers left the office to work out source information to the effect that a person would hand over fake Indian currency notes to another person at the entry point of Farakka Railway Station. The raiding party arrived at the entry point of Farakka Railway Station and kept vigil. Around 3.30a.m., they found a person hand over a black coloured bag to another person. They surrounded the two persons and enquired about the contents of the

bag. Initially they were puzzled but subsequently confessed that the bag contained fake Indian currency notes. The person who handed over the bag was Sabir Sk. (appellant in CRA No. 357 of 2016) and one who received the bag was Nakfura Mondal (appellant in CRA No. 410 of 2016). On reasonable suspicion that the aforesaid persons were trafficking fake Indian currency notes, Prabir Kumar Bhadra and others brought the two persons with the black coloured bag to their nearest office at 3/20, K.K. Banerjee Road, Berhampore. At the office in the presence of independent witnesses, B.K. Tikader (P.W. 5) seized the fake Indian currency notes which were valued at Rs.19,86,000/-. Seizure list (Exhibit 7/3) and Panchnama (Exhibit13) were prepared which were signed by the witnesses as well as the accused persons. Voluntary statements of the appellants were also recorded as Exhibits 3 and 4. The appellants were thereafter arrested and a suo-motu F.I.R. was registered being No. R.C. 220 2011 E 0006 against the appellants, one Nikhil Mondal, Jamal Sk. and unknown others. As per order of learned Chief Judicial Magistrate, Berhampore, P.W. 1 sent the seized fake Indian currency notes in sealed cover packet under cover of forwarding letter (Exhibit 5) to the Revenue Intelligence, Kolkata Zonal Unit with request to send the notes for forensic examination. Forensic examination of the notes were done at the office of the CFSL, Kolkata. Report of the Government examiner (Exhibit 11) was collected in the course of investigation. Co-accused Nikhil Mondal and Jamal Sk. were also arrested in the course of investigation

and charge-sheet was filed against the appellants and the co-accused persons. Charges were framed under Sections 120B read with Sections 489B and 489C of the Indian Penal Code against the appellants and the co-accused persons namely Nikhil Mondal and Jamal Sk. Charges under Sections 489B/489C were framed against the appellants. They pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined 24 witnesses and exhibited a number of documents. Defence of the appellants was one of innocence and false implication. In conclusion of trial, learned trial Judge by the impugned judgement and order dated 28.03.2016 convicted and sentenced the appellants, as aforesaid. By the self-same judgement and order, co-accused persons Nikhil Mondal and Jamal Sk. have been acquitted of the charges levelled against them. Hence the present appeal.

Mr. Mitter, learned Counsel appearing with Mr. Sinha and Ms. Saha for the appellants argue that the seizure of the fake Indian currency notes from the appellants have not been proved beyond doubt. The appellants were apprehended at the Farakka Railway Station with a black bag. Contents of the bag was not verified. Subsequently, seizure of fake Indian currency notes were made at the DRI office at Berhampore. There is possibility of planting of the fake Indian currency notes in the meantime. P.Ws. 2 and 3, so-called independent witnesses, appear to be stock witnesses of the department. Hence, their deposition cannot be relied upon. Though not formally arrested, appellants were in the control

and custody of P.W 1 and detained at the DRI office. They were not free agents when their statements were recorded under Section 108 of the Customs Act. There is confusion who had recorded their statements. Scribe Sumanta Ganguly has not been examined. There is no endorsement that the appellants had voluntarily made the statements. Thus, the statements are involuntary and were prepared on the dictation of P.W. 1, hence they are inadmissible in evidence. B.K. Tikader (P.W. 5) does not support the prosecution case that he carried the seized fake Indian currency notes to DRI office, Kolkata wherefrom seized fake Indian currency notes were despatched for examination at CFSL, Kolkata. Thus, chain of custody with regard to the seized fake Indian currency notes and those examined by the expert has not been established. Hence, he prays for acquittal of the appellants.

Mr. Anirban Mitra and Mr. Sagar Saha appearing for the DRI argues the factum of seizure of a large volume of FICNs valued over Rs. 19 lakhs has been proved through the evidence of P.Ws. 1 to 6. P.W.1 deposed seized notes had been sent to DRI Kolkata with the permission of CJM, Berhampore and his deposition is corroborated by Exhibit 5. Numbers and particulars of the FICNs were recorded in the seizure list and tallied with the seized notes which were produced in Court. Thus, chain of custody of the seized counterfeit notes and those examined at the office of the CFSL, Kolkata is fully established. Opinion of the expert

(Exhibit 11) proves the seized notes are counterfeit. Hence, the appeal is liable to be dismissed.

P.Ws. 1, 4, 5 and 6 are members of the raiding party. They deposed upon receiving source information under the leadership of P.W.1, the team arrived at the entry point at Farakka railway station and kept watch. Around 3.30 A.M., they saw one person surreptitiously handing over a black bag to another. Upon questioning, the said persons disclosed the bag contained FICNs. Thereupon the said persons with the bag were brought to the DRI office at Berhampore and FICNs were recovered from the bag by Bidyut Kr. Tikader (P.W.5). P.W.5 prepared the seizure list, exhibit 7/3 which was signed by the members of the raiding party, independent witnesses as well as accused persons. Panchnama (Exhibit 13) was also prepared by P.W. 5 and duly signed by the aforesaid persons. It is contended that appellants had been apprehended at the Farakka railway station, but no seizure of counterfeit notes was effected at the P.O. On the other hand, seizure of FICNs were made later on at DRI office. Hence, the possibility of planting FICNs cannot be ruled out.

I am unable to subscribe to such submission. P.Ws, 1, 4, 5 and 6, have unequivocally stated the manner and circumstances in which the appellants had been apprehended at the railway station. On source information, the raiding party had kept watch at Farakka railway station. Around 3.30 a.m., Sabir Sekh handed over a black bag to Nakfura

Mondal. This raised suspicion in the minds of the members of the raiding party who confronted them. Initially they were silent but subsequently they admitted the bag contained FICNs. These circumstances raised reasonable suspicion in the minds of the members of the raiding party and they brought the appellants with the bag to the DRI office for the purpose of search. Search was conducted in the presence of independent witnesses, namely, P.Ws. 2 and 3 and the FICNs were recovered.

Short time gap between the apprehension of the appellants at the railway station and their search at the DRI Office leading to recovery of a huge volume of fake Indian currency notes rule out any possibility of false implication of the appellants. Conduct of the DRI officers to bring the appellants to their office and search them is therefore, neither unnatural nor does it break the chain of circumstances leading to the recovery of the FICNs. It appears such procedure was adopted as a matter of convenience and the search was conducted in presence of independent witnesses within a couple of hours of their apprehension.

It has been argued that the so-called independent witnesses are stock witnesses of DRI and their impartiality is in serious doubt. I have gone through the depositions of the independent witnesses, P.Ws. 2 and 3. Although P.W.2 admits that he was a witness in other cases of the customs department, there is nothing on record to show P.W.3 was a witness on behalf of the department. Mere acquaintance with the officers of DRI without anything more cannot be a ground to infer the witness

was biased or his evidence is tarnished on such score. Thus, I am of the opinion, P.W.3 by no stretch of imagination can be treated as a stock witness of DRI. That apart, mere fact that a witness was examined in an earlier case on behalf of the department by itself cannot be a ground to discard his evidence unless the same suffers from patent bias or does not inspire confidence. Reference may be made to ***Nana Keshav Lagad vs. State of Maharashtra***¹ and ***Mahesh Janardhan Gonnade vs. State of Maharashtra***².

Thus, I am of the opinion evidence of the official witness with regard to the recovery of FICNs from the appellants is clearly established and corroborated by independent witnesses.

Coming to the issue of live link between the seized FICNs and those examined by CFSL, Kolkata. I note P.W.1 deposed on the permission of CJM, Berhampore the seized FICNs were dispatched to DRI Kolkata. His oral deposition is corroborated by Exhibit 5 a covering letter prepared in the ordinary course of business. Seizure list Exhibit 7/3 prepared by Bidyut Kr. Tikader (P.W.5) records the numbers and other particulars of the seized FICN, which had been sent in an envelope under a seal to CFSL, Kolkata. Report of CFSL (Exhibit 11) shows a copy of the seal is endorsed on the report. FICNs were produced in court and their numbers tallied with those recorded in the seizure list. Thus, I am of the

¹ 2013 (12) SCC 721

² 2008 Cr. LJ 3602 (See para 45)

opinion the chain of custody of the seized FICNs with those examined by the Assistant Government examiner has been proved beyond doubt.

P.W.22 is the Assistant Government Examiner who proved his report. He deposed that the notes were examined by him and he came to the conclusion that the notes were counterfeit. He proved the report as Exhibit 11.

In view of the aforesaid evidence on record, I am of the opinion prosecution has been able to prove that the appellants were trafficking a large volume of FICNs valued Rs. 19 lakhs when they were apprehended at Farakka railway station. Conviction of the appellants under Section 489B and 489C is therefore proved beyond doubt.

Coming to the issue of sentence, I note the appellants have been awarded the maximum sentence of life imprisonment. It is true the offence is very grave and involves the large volume of FICNs. However, the role of the appellants as transpiring from the evidence on record is one of mere carriers. They are poor persons having meagre income. No prior conviction of the appellants have also been placed on record. Balancing the aggravating and mitigating circumstances, I hold interest of justice demands the maximum sentence of life imprisonment for the offence under Section 489B of the Indian Penal Code be modified and the appellants be directed to suffer rigorous imprisonment for 10 years and to pay fine of Rs.10,000/- each, in default, to suffer rigorous imprisonment for six months more for the offence punishable under

Section 489B of the Indian Penal Code. Sentence imposed on the count of Section 489C of the Indian Penal Code shall remain unaltered and both sentences shall run concurrently.

With the aforesaid modifications as to sentence, appeals and connected applications are disposed of.

Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellants in terms of section 428 of the Code of Criminal Procedure.

Let a copy of this judgment along with the lower Court records be sent down to the trial court immediately for necessary action and execution of the sentence.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)