

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

IA No: CRAN/3/2021

In

C.R.A 461 of 2019

Md. Saddam Hossain

Vs.

The State of West Bengal

For the appellant: Ms. Sreyashee Biswas, Adv.,
Mr. Benajir Hasna, Adv.

For the State: Ms. Faria Hossain, Adv.,
Ms. Baisali Basu, Adv.

CRA 479 of 2019

Rubel Sk

Vs.

The State of West Bengal

For the appellant: Mr. Subrata Karmakar, Adv.,

For the State: Ms. Faria Hossain, Adv.,
Ms. Baisali Basu, Adv.

Heard on: 15 February, 2022.

Judgment on: 09 June, 2022.

BIBEK CHAUDHURI, J. : –

1. Criminal Appeal No.461 of 2019 has been filed by Md. Saddam Hossain assailing the judgment and order of conviction passed by the learned Additional Sessions Judge, Fast Track 2nd Court at Jangipur in Sessions Trial No.2(2)/2018 arising out of Sessions Case No.133 of 2017 thereby convicting the appellant for committing offence under Section 489B and 489C of the Indian Penal Code as well as Section 14 of the Foreigners Act and sentencing him to suffer rigorous imprisonment for seven years with fine and default clause for the offence punishable under Section 489B of the IPC. The above named appellant was also sentenced to suffer rigorous imprisonment for five years with fine and default clause for the offence punishable under Section 489C of the IPC. The appellant was also sentenced to suffer rigorous imprisonment for three years with a fine and default clause for the offence punishable under Section 14 of the Foreigners Act.

2. The jail appeal filed by Rubel Seikh assailing the judgment and order of conviction and sentence passed by the court below in the above mentioned case, is registered as Criminal Appeal No.479 of 2019. It is the case of the prosecution that on 29th July, 2017, a police party attached to Samsherganj P.S conducted raid at a place near Dhuliyar Ferry Ghat to work out on a source information. At about 4.30 pm they apprehended two persons on suspicion. A search was conducted and S.I Md. Meser Ali recovered two bundles of Fake Indian Currency Notes (FICN) containing 25 numbers of notes in each bundle of Rs.2000/- denomination from

each of the said two apprehended persons. Both of them disclosed their names and identity as Md. Saddam Hossain and Rubel Sk. The Sub-Inspector of Police seized the FICN under proper seizure list in presence of the witnesses at the spot. The seized FICN were labeled and sealed at the spot. It is also learnt that Rubel Sk is a Bangladesh National and he entered Indian territory without any valid passport or visa. The above named accused persons were arrested and brought to the police station. S.I Md. Meser Ali Submitted a written complaint before the Officer-in-Charge of the jurisdictional police station and a case was registered against the above named appellants in Samsherganj P.S Case No.251 of 2017 under Section 489B/489C of the IPC and Section 14 of the Foreigners Act.

3. Subsequently, police submitted charge sheet against both the appellants under Section 489B/489C and Section 14 of the Foreigners Act.

4. The case was transferred to the court of the learned Additional Sessions Judge, Fast Track 2nd Court at Jangipur for trial. The learned trial judge on consideration of the charge sheet and other materials on record framed charge against both the accused persons under Section 489B/489C of the IPC and Section 14 of the Foreigners Act. Be it mention here that while accused Rubel Sk was charged for illegal entry into the territory of the Indian republic from Bangladesh without valid passport and visa, charge under Section 14 of the Foreigners Act was also framed

against the accused Saddam Hossain for abating the offence of illegal entry by accused Rubel Sk.

5. In order to prove the charge against the appellants, prosecution examined six witnesses. Amongst them PW1 Sk. Yiasin Ali and PW5 Ananda Debansi are the constable of police attached to Samsherganj Police Station at the relevant point of time. PW3 Tapas Kumar Das is a home guard attached to Samsherganj P.S. PW4 SI Md. Meser Ali conducted raid, search and seizer in respect of FICNs and arrested the accused persons. He also submitted written complaint against the accused persons before the Officer-in-Charge of Samsherganj Police Station. PW2 Biswajit Ghoshal was posted as Sub-Inspector of Police at Samsherganj P.S on 29th July, 2017. He received the complaint from PW4. PW6 SI Srimanta Kumar Dutta is the Investigating Officer of this case.

6. Series of documents, viz., written complaint, seizer list label, formal FIR etc were marked exhibits. The seized FICNs were marked material exhibits during trial of the case.

7. After examination of the witnesses on behalf of the prosecution, the accused persons were examined under Section 313 of the Cr.P.C. Defence case has disclosed from the trend of cross examination of the witnesses on behalf of the prosecution and examination of the accused persons under Section 313 of the Cr.P.C appears to be complete denial of the prosecution case. The accused persons pleaded their innocence during trial of the case. The learned trial judge on due consideration of the evidence on record held both the accused persons guilty for committing

offence under Section 489B/489C of the IPC and Section 14 of the Foreigners Act. They were convicted and sentenced accordingly.

8. Learned Advocate for the appellants has assailed the judgment passed by the court below on the ground that PW4 Md. Meser Ali under whose leadership alleged search and seizure was conducted failed to conduct search of the accused persons in presence of the independent witnesses of the locality. In the instant case all the witnesses are police personnel. Though PW1, PW2 and PW5 claimed that they were in the raiding party along with PW4 SI Md. Meser Ali, their evidence suffers from serious contradictions and discrepancies raising a suspicion as to whether they actually conducted raid or the appellants were implicated in a false case. It is also submitted by the learned Advocate for the appellants that expert who examined the seized FICNs and submitted a report to the effect that the seized currency notes are fake currency notes, was not examined during trial of the case. Expert opinion was marked exhibits through the Investigating Officer of this case, though he had no knowledge about the authenticity of the report.

9. The learned Advocate on behalf of the appellant impeached the findings of the trial court on the ground that even assuming that the legal evidence on record inculcate the appellant, that could be only to the extent of the charge against him under Section 489C and not under Section 489B of the IPC. The decision of the trial court on the basis of which conviction of the accused was recorded on both the charges is

contrary to law and the reasons stated by the trial court to note down such order of conviction is unsustainable, it is argued.

10. The learned P.P-in-Charge, on the other hand, has supported the judgment passed by the court below. It is submitted by him that the rule nowhere states that the evidence of the police officers shall be discarded altogether. The police officer who conducted raid and arrested the accused left the police station after recording a GD entry. They conducted search and finally apprehended the accused with huge amount of fake Indian currency notes. Possession of huge number of fake Indian currency notes prima facie establishes not only charge under Section 489C but also charge under Section 489B of the IPC. The materials on record shows that on the basis of secret source information received by PW4 SI Md. Meser Ali, he made requisite diary entry vide Samserganj P.S GD Entry No.1098 dated 29th July, 2017. Then under the instruction of Officer-in-Charge of Samserganj Police Station he along with the numbers of police force who deposed in this case as PW1, PW2, PW3 and PW5 went to Dhuliyān Ferryghat commonly named as “Bhatoghat” at 3.30 pm. It also appears from his evidence that in course of raid the raiding party found two persons coming towards Dhuliyān Ferryghat from Malda side. They apprehended the said two persons at about 4.25 pm and recovered 25 pieces of FICN of denomination of Rs.2,000/- each from the left side west concealing inside the lungi from the possession of the appellant. They also recovered 25 pieces of FICN from the possession of accused Rubel Seikh.

11. The material evidence on record in the form of deposition regarding the raid, search and seizure and the documentary evidence as well as recovered articles are proved through cogent evidence. They correlate and connect the materials particulars regarding commission of the crime. Seizure of FICN, labelling, sealing and other due process for proper preservation without being tampered in any manner are proved by the witnesses. There is no reason to denounce the evidentiary value of the witnesses only because they are police personnel. The seized fake currency notes were examined by the expert and he submitted a report stating, inter alia, that the said articles recovered from the possession of the appellant are fake Indian currency notes.

12. It is true that the prosecution failed to examine any independent witnesses in the locality. From the evidence of the witnesses on behalf of the prosecution it is ascertained that the place of seizure is a crowded place having shops and other establishments. It is also stated by the witnesses that at the time of apprehension of the accused persons and during search and seizure number of persons of the said locality surrounded the place of occurrence. The learned Advocate for the appellant has raised question as to why during search and seizure any two of such local persons were not called for to be the witnesses of such procedure. From the evidence of PW4 it is found that in spite of his request none of the persons who assembled at the PO agreed to be the witnesses of search and seizure. It is not uncommon that the numbers of general public do not want to involve themselves in a criminal trial by

being a witness on behalf of the prosecution. In such case a reasonable question arose as to whether in the absence of search and seizure in presence of the local witnesses to lend cooperation to the evidence of the witnesses on behalf of the prosecution the evidence of the raiding party shall be discarded altogether or not.

13. During cross examination of the witnesses on behalf of the defence, no question was put challenging reliability of the witnesses who deposes in this case on behalf of the prosecution. It is not the law that in all cases the evidence of police officer shall be discarded on the ground of failure on the part of the prosecution to examine any independent witnesses. In such cases, the courts have to adopt a greater degree of care while scrutinizing the testimonies of the police officers. If they are found reliable, they can form the basis of conviction. PW4 who was the leader of the raiding party stated in his evidence that he requested the person who assembled at the place of occurrence to be the witnesses of search and seizure but nobody agreed. Under such circumstances, police authority had no other alternative but to seize the contraband article in presence of the members of the police force and arrest the accused. Viewing the entire incident under the circumstances stated above, I do not find any legal infirmity or error in appreciation of evidence by the court below in that regard.

14. The accused persons did not plead absence of mens rea while huge quantities of FICNs were recovered from them. Non-examination of any defence witnesses and fact that no specific averment was made by the

appellant when questioned under Section 313 of the Cr.P.C, were factors which wade with the court below to hold that the accused persons, including the appellant possessed the FICNs being aware of the fact that they were no genuine. In **CRA 562 of 2018 (Jubeda Chitrakar @ Jaba Chitrakar vs. The State of West Bengal)** the Division Bench of this Court presided over by the Hon'ble Chief Justice Thottathil B. Radhakrishnan as His Lordship then was held that the component of mens rea for offence falling under Section 489B and/or 489C is the knowledge or having reason to believe that the currency note or bank note is forged or counterfeit, coupled with the intention to use the same as genuine or the knowledge that it may be used as genuine. In the aforesaid judgment the Division Bench of this Court had dealt with the question as to whether conscious possession of huge quantity of fake currency notes 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 attracts the offences under Section 489C of the IPC.

15. Section 489B uses the phrase "or otherwise traffics in or uses as genuine." The Division Bench of this Court was pleased to hold that the above phrase in Section 489B assumes importance in the context of the fact that the term "traffics" is not defined for the purpose of Section 489B or for the IPC generally. The phrase "or otherwise traffics in or uses as genuine" is added on to a string of phrases which results in the sentence that delineates the ingredients of the offence as defined in Section 489B. The activities which would amount to an offence

punishable under Section 489B of the IPC are firstly, selling, buying or receiving. The second limb of the offence is “or otherwise traffics in or uses as genuine.” This phrase ought to be treated differently from selling, buying or receiving and the term traffics have to read ejusdem generis falls for consideration at this stage. In **Parakh Foods Limited vs. State of Andhra Pradesh & Anr.** reported in **(2008) 4 SCC 584**, the Apex Court held that the term "traffics" has to be read ejusdem generis with the phrases "sells to", "buys" and "receives from any other person" and that the junction of another person is necessary to accomplish such acts. It is here that use of the word "otherwise" gains critical importance. The word "otherwise" is used to indicate the opposite of, or contrast to, something already stated when used as part of a phrase as "or otherwise" (see Oxford Dictionary of English-3rd Edition). Even when the word "otherwise" is used not as part of a phrase as "or otherwise", but as an adverb or an adjective, such usages are also resorted to, to draw a contrast or distinction. The word "traffics" as well as the word "trafficking" and "trafficked" are used to describe the action of dealing or trading in something illegal. The activity or activities which would amount to "sells to", "buys" or "receives from" any other person, may require the participation of two persons to complete any such transaction. However, any activity which would fall within the phrase "otherwise traffics in" does not indispensably require active participation of more than one person if noticeably seizable quantity of FICN is found to be in the possession of that person and such concealed possession cannot be treated as dormant

possession. That the above reason the Division Bench of this Court in the aforementioned case held that the word "traffics" and the phrase "or otherwise traffics in" in Section 489B of the IPC are not to be read ejusdem generis with the words "sells", "buys" or "receives" from any other person.

16. Finally the Division Bench of this Court relying on the decision of the Gujarat High Court in **Rayab Jusab Sama vs. State of Gujarat**, reported in **1998 Cri LJ 942**, as well as the decision of High Court of Madhya Pradesh (Jabalpur Bench) in **Shabbir Sheikh vs. The State of Madhya Pradesh (Crl. Appl. Nos.162, 452 and 453/2015)** decided on 10.02.2018 was pleased to hold that conscious possession of huge number of fake currency notes also conscience the penal provision under Section 498B of the IPC.

17. This Court does not find any contrary reason on the facts and circumstances to hold otherwise than what has been decided by the Division Bench of this Court.

18. For the reasons stated above, the learned trial judge correctly hold the accused guilty for committing offence under Section 489B and 489C of the IPC.

19. Therefore, I do not find any reason to interfere with the impugned judgment and order of conviction and sentence passed by this Court.

20. The appeal is accordingly dismissed on contest and the judgment and order of conviction and sentence passed by learned Additional

Sessions Judge, Fast Track 2nd Court at Jangipur in Sessions Trial No.2(2)/2018 arising out of Sessions Case No.133 of 2017 is affirmed.

(Bibek Chaudhuri, J.)