

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA 123 of 2018

SAMSAD ANSARI @ MD. SAMSAD @ MITHUN
VS.
THE SUPERINTENDENT OF POLICE, C.B.I.

For the Appellant : Mr. Arnab Saha, Adv.
Mr. Abhimanyu Banerjee, Adv.
Mr. Partha Sarathi Das, Adv.

For the CBI : Mr. Kallol Mondal, Adv.

Hearing concluded on : 28th February, 2023

Judgement on : 23rd March, 2023

Siddhartha Roy Chowdhury, J.:

1. This criminal appeal challenges the judgement and order of conviction passed by learned Additional Sessions Judge, 2nd Court, Malda in Sessions Trial No. 46 of 2015 arising out of Sessions Case No. 51 of 2015. On 30th November, 2017 Samsad Ansari @ Samsad @ Mithun stood convicted for committing the offence to be punishable under Section 489B and 489C of the Indian Penal Code.
2. Briefly stated, Rajesh Bishnoi, D.S.P., CBI, EOU-VI, New Delhi (Camp Malda) informed the S.P. CBI, EOU-VI in writing that Samsad Ansari @ Mithun, Son of Late Tawaraf Hossain of Damodarpur, P.S. Kati, District-Muzaffarpur, Bihar, aged about 22 years, a slum dwelling young man of 5'2", who is engaged in the illegal activities of

trafficking and smuggling of fake Indian Currency Notes (herein after referred to 'FICNs'), would be carrying huge quantity of FICNs from Muzaffarpur, Patna for its circulation and onward delivery to some unknown person in Malda on 27th September, 2014. With the approval of his superior authority the informant along with Ajaid Singh, ASP, CBI and A.D. Prasad, DSP, CBI, EOU-VI, New Delhi reached New Farakka on 26th September, 2014 where Ashish Kr. Pandey, Sub-Inspector was already camping. Jagdish Prasad, Constable also came on 27th September, 2014 at New Farakka. Both these officials were associated with the CBI Team. The informant confirmed that either on 27th September, 2014 or 28th September, 2014, the suspect would be carrying huge quantity of FICNs and reaching Malda Station by Patna-Malda Intercity Express in order to deliver the FICNs to his unknown associates. CBI team was camped at the Guest House of NTPC at New Farakka where the source came and met them and confirmed that the suspect would be arriving on 28th September, 2014. DRM, Malda was requested to depute two railway officials to witness the proceeding of the CBI team on 28th September, 2014. Sri Sunirmal Mondal, Chief Commercial Supervisor and Biswajit Dutta, Chief Parcel Clerk, Malda town were deputed. Both of them were requested to remain present at Malda, Eastern Railway Station at about 7.30 hours on 28th September, 2014. On the usual date Patna-Malda Intercity Express reached the Malda Railway Station at about 8.25 a.m. Passengers after detraining were proceeding towards the Exit Gate. The source then pointed out a

person proceeding towards the Exit Gate wearing blue coloured jeans pants and blue & black check shirt with a black pittu bag. He was intercepted by the informant and other CBI officials and he was asked to disclose his identity. The man introduced himself as Samsad Ansari @ Mithun of Damodarpur, Muzaffarpur, Bihar and admitted that he was carrying FICNs. He was asked to take out the FICNs and to produce before the CBI Officials. Samsad Ansari took out a green colour polythene from the pittu bag he was carrying, opened the polythene packet containing six bundles of currency notes. Meanwhile many passengers assembled there but none of them was interested to be a witness to the proceeding. Having found it difficult to carry out further legal proceeding at the platform no. 1, the suspect Samsad Ansari was asked to keep the bundles of FICNs back in his pittu bag and was taken to VIP room of Malda Railway Station along with witnesses. Samsud Ansari was asked to take out all the contents from his bag and he obliged the CBI officials. Total six bundles of FICNs, five bundles of Rs. 1000/- and one bundle of Rs. 500/-, were found along with two lungies, railway ticket no. 68379780 for Patna-Maldah Town dated 27th September, 2014. One modern black colour Samsung duel SIM mobile phone containing SIM no. 8991671443779174467HLR1 and a sum of Rs. 700/- including FICNs were also recovered from the possession of Samsad Ansari. Samsad Ansari admitted his involvement in trafficking and circulation of FICNs from Muzaffarpur to Malda and also admitted his guilt. He also admitted the monetary benefits he was deriving being associated

with Manoj Kumar of Muzaffarpur. He further disclosed that he received the consignment from said Manoj Kumar. Recovery cum seizure list was prepared at the VIP room at platform no. 1 in presence of independent witnesses. Written information was given and pursuant to such information CBI/EOU-VI/2014 RC 220/2014 E0012 dated 28th September, 2014 was registered under Section 154 of the Indian Penal Code at 17.15 hours and the FIR was forwarded to the Jurisdictional Magistrate on 1st October, 2014.

3. Police took up investigation which culminated into submission of charge sheet against the accused persons. Trial was commenced on 21st May, 2015 and being charged under Section 489B and 489C of the Indian Penal Code, the accused person pleaded his innocence and stood the trial. Prosecution examined as many as 10 witnesses and learned Trial Court after considering the evidence of prosecution witnesses, was pleased to record the order impugned.
4. Assailing the impugned judgement, Mr. Arnab Saha, learned Counsel for the appellant submits that learned Trial Court failed to appreciate evidence on record and the impugned judgment is manifestation of absolute misreading of the evidence adduced on behalf of the prosecution. Drawing my attention to the testimony of P.W. 1, learned Counsel for the appellant submits that admittedly P.W. 1 is an employee of Railways who stated that CBI officers got one person and brought before him and P.W. 2. All of them went to VIP waiting room on platform no. 1. He could not say whether the CBI officials interrogated that person or not. During cross-examination

P.W. 1 stated that at about 8.05-8.10 a.m. Arjun Singh and 4/5 other persons brought the accused person before them and at that time in all 20-25 persons were present. The person was caught on platform no. 1 and all of them went to the VIP waiting room. Arjun Singh, according to learned Counsel for the appellant, was not examined as prosecution witness. It is contended that according to P.W. 1, CBI officials used the seal of CBI on each page of the seizure list and handed over the seal to P.W.1 which was admitted as MAT Exhibit-I. It is contended that P.W. 1 being railway official had no business keeping the seal of CBI with him. Drawing my attention to the testimony of P.W. 2, Biswajit Dutta, it is contended that testimony of P.W. 2 is not in conformity with the testimony of P.W. 1. According to P.W. 2 he was asked to wait at the main gate on 28th September, 2014 at about 8.10 a.m. when CBI officials would arrive. After the Patna Intercity Express reached the station, the Baro Babu indicated three persons who reached at the main gate and they had a young boy whom they caught. They asked a few questions and the boy during interrogation stated that he was carrying FICNs in his bag. CBI officials then opened the bag and brought out FICNs. CBI officials then requested the passengers to be the witnesses but none agreed. Then VIP room was opened. The CBI officials seized the notes, sealed and packed the same, and obtained his signature on FICNs amounting to Rs. 4,98,000/- together with the Indian Currency notes of Rs. 700/-. One Samsung mobile also was recovered and seizure list was prepared. Indian Currency Notes and lungi were given to the boy

and he put his signature on the seizure list. Drawing my attention to the testimony of P.W. 7, P.W. 8 and P.W. 9, learned Counsel for the appellant tried to point out discrepancies. P.W. 7 stated that they were told to move to Farakka on 28th September, 2014 while P.W. 8 stated that he was camping in Kolkata with Ajit Singh and Rajesh Bishnoi. P.W. 9 stated that within 10 minutes the suspect was taken to platform no. 1. His pittu bag did not have any special identification mark. The said pittu bag was produced before the learned Trial Court; and identified as the bag from which the FICNs were recovered and seized.

5. Mr. Arnab Saha, learned Counsel for the appellant further submits that the appellant was apprehended at the platform after he de-boarded the train and the search was conducted on the platform itself but the seizure was made at the VIP waiting room after a gap of 10-15 minutes, minimum, as stated by P.W. 2 and P.W. 9, when the Station Manager came and opened the VIP waiting room. The P.W. 1 categorically stated that the Appellant was brought before the witnesses after he was apprehended by the CBI officers and hence, he (P.W. 1) did not know about the questioning of the appellant by the CBI officers at the time of his detention. Though all of the CBI officers involved were posted in Delhi in the year 2014, at the relevant point of time, P.W. 8 and P.W. 9 were curiously camping in West Bengal but none of the witnesses (be it independent witnesses or the raiding party members) could produce a single scrap of paper regarding their movement/ deployment/ deputation/Office Leaving Certificate before

the Learned Trial Court. Investigation was not done properly and the I.O. did not even produce any document to prove that he visited the place of occurrence. Independent witnesses were not even examined by the I.O. Official seal of CBI was lying with a railway employee and same was produced before Court. The "Pittu bag" could not be identified properly in Court, though exhibited, due to the lack of label or special identification mark. The prosecution did not even try to prove the basic ingredients of offence within the meaning of Section 489C of the Indian Penal Code, 1860. Prosecution failed to discharge the burden of proving the case. There is a presumption of innocence until the accused is proved to be guilty beyond reasonable doubt. The depositions of independent witnesses directly contradict the claim of the prosecution and for that reason alone, learned Trial Court ought to have recorded an order of acquittal.

6. It is argued that mere possession is not sufficient to record an order of conviction for committing offence punishable under Section 489B and 489C of the Indian Penal Code. There is no evidence to show that the appellant had the requisite mens rea and in support of his contention learned Counsel relied upon the judgement of Hon'ble Apex Court in the case of ***Umashanker vs. State of Chhattisgarh*** reported in **AIR 2001 SC 3074** and ***M. Mammutti vs. State of Karnataka*** reported in **AIR 1979 SC 1705**.
7. Refuting such contention Mr. Kallol Mondal, learned Counsel representing the CBI submits that the appellant admittedly was apprehended while he was going out of the railway platform no. 1

after detraining Patna-Malda Intercity Express with a bag. He was taken to the VIP room by the arresting officer and other CBI officials, and in presence of witnesses P.W. 1 and P.W. 2 fake currency notes were brought out from the said bag of the appellant. There were six bundles of currency notes which appeared to be fake and this fact was further established by the expert who examined the currency notes and submitted the report. Therefore, the prosecution can be said to have established fact that huge quantity of FICNs were recovered from the possession of the appellant. It is true that there are certain discrepancies in prosecution case but such discrepancies being minor in nature can be ignored. It is further contended that when large quantity of FICNs were recovered from the possession of the appellant, it becomes obligatory on the part of the appellant, in course of trial, to explain and justify such possession. During his examination under Section 313 of the Cr.P.C. he was given the opportunity to give such explanation but he simply pleaded to be innocent. Therefore, such possession should be considered to be the conscious possession of the appellant. When the appellant failed to give a cogent explanation it should be presumed that he had the knowledge that he was possessing fake currency notes and such knowledge is sufficient, in absence of any explanation to draw the presumption that he was carrying the FICNs knowing that those might be used as genuine. Thus, learned Counsel for the CBI supports the impugned judgement.

8. From the attending facts of the case, it is admitted that the appellant was arrested by CBI officials, on 28th September, 2014 while he was moving out of Malda Railway Station. He was subsequently found to have been possessing FICNs amounting to Rs. 4,98,000/-. There were six bundles of such FICNs. The same were seized in presence of witnesses including P.W. 1 and P.W. 2. Though the learned Counsel for the appellant strenuously argued that the prosecution case is full of discrepancies as to the presence of P.W. 1 and P.W. 2 at the place of occurrence, P.W. 2 was never introduced to the CBI officials prior to the interception of the accused person as stated by him which runs contrary to the content of the FIR. P.W. 1 was entrusted with the seal of the CBI officials. The testimony of P.W. 7 that the appellant was asked to take out FICNs from his pittu bag and he opened the bag and six bundles of FICNs brought out and, thereafter, he was taken to the VIP room is contrary to what was stated by P.W. 2. According to P.W. 1 the young man was intercepted in front of the main gate, he was brought before P.W. 1 and others, then all of them went to the VIP room on platform no. 1. He could not say that if the man was interrogated immediately after he was arrested. P.W. 2 stated that after apprehending the man, CBI officials opened the bag and brought out FICNs, which according to learned Counsel for the appellant makes the room to plant the FICNs into the bag of the innocent appellant. CBI officials are public servants. Hence, in the absence of any evidence to show that there was previous enmity between the CBI officers and the appellant, there is

no reason to presume that CBI officials falsely implicated the accused person, particularly when the appellant did not make such statement in course of examination under Section 313 of the Cr.P.C.

9. It is true that the appellant being accused had right to maintain silence but the object of examination under Section 313 of the Cr.P.C. is to give an opportunity to the accused person to explain incriminating circumstances. The appellant did not avail that opportunity which he could have.
10. In *M. Mammutti (supra)* only three currency notes were found from the possession of the accused person and in the case of *Umashankar (supra)* also the quantum of notes recovered were negligible.

In view of difference in factual matrix between the case at hand and judgements cited as precedent, judgement of Hon'ble Supreme Court, relied upon by learned Counsel for the appellant is of no help.

11. It is argued that no material was brought on record to show that the appellant had requisite mens rea but in the present case huge number of FICNs were recovered from the possession of the appellant from a bag where he also kept two lungies and Rs. 700/- worth Indian currency notes. This is sufficient to hold that the appellant was carrying huge quantity of FICNs which fact, in absence of any cogent explanation, is sufficient to hold that he was possessing the FICNs consciously having requisite knowledge and intention. Under such circumstances, I do not find any reason to interfere with the order impugned.

12. In every criminal trial discrepancies are bound to happen and this case is also no exception. Considering the discrepancies as minor in nature, I am inclined to ignore the same.
13. The impugned judgement does not warrant any interference. Consequently, the appeal fails.
14. Let a copy of this judgment along with LCR be sent down to the learned Trial Court for information and necessary compliance.
15. Urgent photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)