

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 291 of 2021

With

CRAN 1 of 2022

Imam Hossain

Vs.

The State of West Bengal

For the Appellant : Mr. Manjit Singh, Adv.
 Mr. Gaganjyot Singh, Adv.
 Mr. Biswajit Mal, Adv.
 Mr. Abhishek Bagal, Adv.
 Mr. Akbar Laskar, Adv.

For the State : Mr. Partha Pratim Das, Adv.
 Ms. Manasi Roy, Adv.

Hearing Concluded on : February 23, 2023
 Judgement on : March 22, 2023

DEBANGSU BASAK, J.:-

1. The appellant has assailed the judgement of conviction dated August 2, 2021 and the order of sentence dated August 4, 2021 passed by the Learned Chief Judge, City Sessions Court at Calcutta in Sessions Trial No. 03 (11) of 2018 arising out of Sessions Case No. 47 of 2018.

2. By the impugned judgement of conviction dated August 2, 2021, the appellant has been convicted under Section 489B and 489C of the Indian Penal Code, 1860. By the impugned order of sentence, the appellant has been sentenced to suffer rigorous imprisonment for 10 years for the offence committed by him under Section 489B of the Indian Penal Code, 1860 and pay a fine of Rs. 1 lakh, in default to suffer rigorous imprisonment for a further period of one year and to suffer rigorous imprisonment for 7 years for the offence committed by the appellant under Section 489C of the Indian Penal Code, 1860 and to pay a fine of Rs. 1 lakh, in default to suffer rigorous imprisonment for a further period of one year.

3. The case of the prosecution at the trial has been that, the appellant on June 26, 2018 at about 21:05 hours was at a shop “Ashrafi Service Centre” at 29B, Chandi Chawk Street, Kolkata and purchased goods and paid Rs. 2,000 in fake currency notes generally knowing or having reasons to believe that the same was forged or counterfeit. On the same date, place and time, the appellant had in his possession forged currency notes of Rs. 5 lakh in the

denomination of Rs. 2,000 and Rs. 500 and intended to use the same as genuine.

4. Learned Advocate appearing for the appellant has submitted that, the appellant was falsely implicated. The appellant had been picked up from Malda one day prior to the alleged date of occurrence by police personnel. The appellant had spoken about the same in his examination under Section 313 of the Criminal Procedure Code. Defence Witness (DW) 1 had stated that on June 25, 2018. DW 1 had seen a lorry to be standing on the main road of Khasimari and the driver of such lorry to be picked up by persons arriving on a Bolero car. DW 2 being the father of the appellant, had lodged a missing diary on June 26, 2018 at English Bazar police station with regard to the appellant being missing. DW 2 had come to know that the lorry driven by the appellant had checked at Madipur Check Post by some public servant. DW 2 had tried to contact Border Security Force (BSF) personnel. DW 2 had ultimately been informed that the lorry was parked at Khasimari where he found the lorry lying in a deserted condition. DW 2 had

finally got information of the arrest of the appellant, his son, in Kolkata.

5. Learned advocate appearing for the appellant has submitted that, the defence case of false implication was supported by the fact that there was no investigation with respect to the truck from which the appellant was alleged to have brought the fake currency notes. Moreover, PW 1 was cross-examined at length on various aspects of the defence case of false implication.
6. Learned advocate appearing for the appellant has submitted that, the 2nd investigating officer wrote a letter to his superior officer about the requirement of the truck lying at Malda to be searched. He has referred to Exhibit 10 in this regard. He has submitted that investigation was not done in that regard.
7. Learned advocate appearing for the appellant has submitted that, the claim of the prosecution that the seizure took place at Kolkata on June 26, 2018 was not proved beyond reasonable doubt. According to him, there are several discrepancies in the case of the prosecution which

makes the alleged seizure and the allegation of attempt of using of fake currency, doubtful. In this regard, he has referred to the testimonies of the prosecution witnesses. He has contended that, none of the members of the raiding team had been examined in Court other than two police personnel. None of the raiding team members had been named in the written complaint.

- 8.** Learned advocate appearing for the appellant has contended that, it is baffling why the senior most officer of the raiding team being PW 4 would cede the leadership in favour of PW 1. According to him, it is evident that, PW 4 was never at the place of occurrence.
- 9.** Learned advocate appearing for the appellant has contended that, a person coming to deliver counterfeit notes in a crowded area would try and remain as discreet and unnoticeable as possible. It is highly unlikely that such person would make a purchase and try and use a fake currency note to make such purchase.
- 10.** Learned advocate appearing for the appellant has submitted that, the prosecution has failed to establish the

existence of the stall from where, the appellant is said to have attempted to make a purchase. He has contended that, no sketch map had been prepared by any of the 3 investigating officers and that such sketch map has not been marked as an Exhibit at the trial. No photographs of the stall had been taken nor any photograph produced in Court. PW 2 who had claimed to be the owner of the stall did not produce any document for running the stall. He had been unable to show any bill of sale in respect of the alleged item claimed to be the subject matter of bargain. The power bank, which the appellant had allegedly tried to purchase was not seized.

11. Learned advocate appearing for the appellant has submitted that, no witnesses other than PW 2 had seen the appellant making the purchase from the shop. The natural witness being the owner/staff of the stall Ashrafi Service Centre was not examined or made part of the seizure operation.

12. Learned advocate appearing for the appellant has contended that there are serious contradictions in relation to public witnesses namely PW 2 and PW 3. He has

highlighted the contradictions in the oral testimonies of such witnesses.

13. Learned advocate appearing for the appellant has contended that, PW 2 and PW 3 are pocket witnesses of Special Task Force (STF) and such fact is supported by the residence of such witnesses. Such witnesses had claimed that they reside on the same road having similar addresses.

14. Learned advocate appearing for the appellant has contended that, the presence of PW 3 at the alleged spot of seizure is doubtful. He has referred to the oral testimony of PW 3 and contended that, PW 3 had made different Statements with regard to his presence at the alleged place of occurrence.

15. Learned advocate appearing for the appellant has submitted that, although, the alleged place of occurrence is a public place and crowded at that point of time, the police did not produce any CCTV footage with regard to the incident. In this regard, he has relied upon **2015 Volume 7 Supreme Court Cases 178 (Tomaso Bruno and another versus State of Uttar Pradesh).**

16. Learned advocate appearing for the appellant has contended that, there are serious discrepancies in the chain of custody of the currency notes from the police personnel to the expert. He has contended that, the seizure took place on June 26, 2018. The State had filed a petition for sending the notes to Bharatiya Reserve Bank Note Mudran, Salboni for testing on the very next date of the seizure. However, PW 7 being the second investigating officer had claimed that the notes were sent on July 12, 2018. Consequently, the notes had been in the custody of the police personnel from June 26, 2018 to July 12, 2018. For this period, no malkhana register had been produced by the prosecution. Non production of such register and non-explanation of the custody of the seized articles for the period from June 26, 2018 to July 12, 2018 vitiates the case of the prosecution and on such ground alone the appellant should be acquitted. In support of such contention, he has relied upon **1995 SCC Online Calcutta 306 (Ali Husain @ Dulal versus State of West Bengal)** and **2005 Volume 3 Supreme Court Cases 59 (State of Rajasthan Versus Gurmail Singh).**

17. Learned advocate appearing for the appellant has contended that the charge framed against the appellant is defective. He has contended that in the written complaint it was said that, the incident occurred at 19:00 hours and not 21:05 hours as claimed in the charge sheet. The purchase had been sought to be made at a stall in front of Ashrafi Service Centre being owned and operated by PW 2 and not at such shop room.

18. Learned advocate appearing for the appellant has contended that, the charge framed against the appellant under Section 489B of the Indian Penal Code, 1860 has not been proved. He has submitted that, the prosecution had failed to establish that a purchase was affected. Consequently, a conviction under such provision of the Indian Penal Code, 1860 was not maintainable when a person did not use a fake currency.

19. Learned advocate appearing for the appellant has submitted that, in the facts and circumstances of the present case, the appellant deserves to be acquitted and should be acquitted.

20. Learned advocate appearing for the State has submitted that, the prosecution has been able to prove the charges against the appellant beyond reasonable doubt. He has referred to the oral testimonies of the prosecution witnesses and the documentary and material evidence placed on record at the trial.

21. Learned advocate appearing for the State has contended that, non-examination of all police personnel of the raiding team has no material bearing on the case of the prosecution. Discretion lies with the prosecution to lead such evidence as is necessary to prove the charges. It is not the quantity of the witness as the quality of the evidence that matters. According to him, in the case at hand, prosecution had thought it proper to examine those witnesses which were material to prove the charge against the appellant.

22. Learned advocate appearing for the State has referred to the oral testimonies of the various prosecution witnesses and has submitted that, all the prosecution witnesses are consistent with regard to the commission of the offences by the appellant. He has drawn the attention of the court to the

depositions of the prosecution witnesses as also the cross examination. He has contended that, the defence was unable to extract anything favourable during such cross-examination.

23. Learned advocate appearing for the State has submitted that, non-examination of all police personnel of the raiding party has no material bearing. Non-production of the malkhana register was not fatal in the facts and circumstances of the present case. He has contended that, PW 1 stated that the fake Indian currency notes had been packed on December 20, 2018, sealed and label affixed on the envelopes. Signatures of PW 2 and 3 had been obtained on the label of such envelopes. PW 2 and 3 had proved their respective signatures on the envelopes and the labels. PW 1 had put his signature on the first and the last leaf of the seized fake Indian currency notes. PW 6 being the manager of Reserve Bank Note Mudran Private Limited had identified the relevant fake Indian currency notes which had been tendered in evidence and marked as material exhibits. He has contended that, there can be no doubt in the mind of

the court with regard to the identification of the fake Indian currency notes.

24. Learned advocate appearing for the State has submitted that, the appellant was arrested from the place of occurrence as appearing from the contemporaneous documents like the first information report, arrest memo, seizure list. The plea of alibi sought to be taken by the defence by producing DW 1 and DW 2 was without any basis. The defence witnesses had made such claims for the first time in court. Their evidence has no value and credence.

25. Learned advocate appearing for the State has submitted that, there is no contradiction or embellishment in the deposition of the prosecution witnesses. Minor inconsistencies if there be any, does not make the case of the prosecution untruthful. In such circumstances, he has submitted that, the impugned judgement and order should be upheld.

26. In his deposition, PW 1 had stated that, on June 26, 2018 at about 16:00 hours, he received a call from a reliable source from where he learnt that a Malda based fake

currency racketeer, a driver by profession, was coming to Kolkata in Chandni Chawk area with huge amount of fake currency notes. He conveyed such information to his senior officers and obtained permission for conducting the raid in writing. After obtaining permission, a raiding team consisting of himself, an inspector, a sub-inspector and 3 Constable was formed. After making entry in the General Diary Book being GDE No. 749 dated June 26, 2018, he left his office at about 17:20 hours. He along with the raiding team came to the Chandni Chawk area to work out the information. The raiding team had maintained watch in the area from about 17:50 hours. At about 19:00 hours the raiding team had seen a crowd at the crossing of Chandi Chawk Street and Temple Street. They found the crowd in front of a stall namely Asrafi Service Centre situated at 29B, Chandni Chawk Street. The raiding team had gone to the crowd and found an altercation between the shopkeeper and a person. They had disclosed their identity and thereafter ask the crowd about the reason of the altercation. One person had come out from the crowd and disclosed his name and stated that he was the owner of the stall. He had

also stated that a person with whom he had altercation, came to the stall for purchasing a Samsung Power Bank amounting to Rs. 950. Such person had given note of Rs. 2000. On usual checking, he had a suspicion that such currency note was fake and thereafter he returned the note to such person for changing the same. Such person then avoided purchase and wanted to leave the shop and at that time, the altercation arose when the raiding team had arrived at the spot.

27. PW 1 had stated that, the source with the raiding team pointed out to the person with whom the shopkeeper was in altercation as the person the raiding team was looking for. He had asked such person to disclose his identity when such person disclosed his identity as the appellant. Thereafter, he requested some persons in the crowd to be a witness on the search to be conducted on the appellant. The shop owner and another person agreed to be witness to the search. The raiding team had detained the appellant and offered the appellant to search PW 1. The appellant had refused to search PW 1.

28. PW 1 had stated that, the appellant was carrying a black coloured side bag. PW 1 had searched the body of the appellant and also his side bag. On searching of the appellant, he had recovered one currency note of the denomination of Rs. 2000 from the chest pocket. He had also recovered 9 pieces of Rs. 2000 notes and one black and yellow coloured mobile phone from the right side pocket of the trouser of the appellant. He had recovered genuine currency notes of Rs. 630 from the left side pocket of the trouser of the appellant. Thereafter, PW 1 had searched the black coloured side bag. On opening such bag, he had found some bundle of notes wrapped in a towel and such notes were kept in a black coloured polythene carry bag. On opening the black colour carry bag, he found four bundles of notes. On counting, he had found 100 pieces of Rs. 2000 denomination notes in the bundle, 90 pieces of Rs. 2000 denomination notes in another bundle and hundred pieces of Rs. 500 denomination notes in the next 2 bundles. He had also found 2 keys from the bag.

29. PW 1 had stated that, on June 26, 2018, he prepared one seizure list in front of the appellant and 2 witnesses

maintaining all legal formalities. Thereafter, he had read over and explain the contents of the seizure list to the appellant and 2 witnesses. He had obtained the signatures of the 2 witnesses and the appellant on the seizure list. He put his signature on the seizure list. He also obtained the signature of the appellant and 2 witnesses on the first and last leaf of each of the bundles and also in the tendered Notes amounting to Rs. 2000. He had also put his signature on the first and the last leaf of the bundles of the notes. He had kept all the bundles of each notes and also the keys in separate envelopes. He had taken the signature of the appellant and 2 witnesses on the label of each and every envelope over which he had also put his signatures. Thereafter, he had arrested the appellant on the same day at about 21:05 hours after maintaining all legal formalities. He had recorded the statements of the 2 witnesses on the spot on the same day. He had examined the appellant who stated that he brought Rs. 25 lakhs from one person of Bangladesh. Thereafter, he had gone back to the STF police station along with the appellant, the raiding team and the seized articles. After returning to the STF police station, he

had made a general diary entry and handed over the appellant along with the documents and seized articles to the officer in charge of STF police station. On the same day he had submitted a typed letter of complaint before the officer in charge of STF police station narrating the entire incident and seeking permission to take necessary action. He had identified the written complaint which was attended in evidence and marked as Exhibit 1. Thereafter, the officer in charge of STF police station had directed a sub- inspector of police to institute a case on the basis of the written complaint submitted by him. Such sub- inspector of police had instituted the present police case by drawing up a formal first information report where he had put his signature. He attended the formal first information report in evidence which was marked as exhibit 2. He had tendered the letter seeking permission for conducting the raid from the Assistant Commissioner of Police which was marked as Exhibit 3. He had identified his signature on the permission letter which was marked as Exhibit 3/1. He had identified the endorsement of the Asst Commissioner of police of STF police station which was tendered in evidence and marked

as Exhibit 3/2. GD entry No. 749 dated June 26, 2018 had been shown to the PW 1 and he identified the same. Such general diary entry was tendered in evidence and marked as exhibit for.

30. PW 1 had identified the appellant in court. He had stated that on June 26, 2018 he had seized all the articles that is four bundles of fake currency notes of the denominations of Rs. 5000 and Rs. 2000, one piece of fake currency of denomination of Rs. 2000, 9 pieces of fake currency of denomination of Rs. 2000, genuine currency notes of Rs. 630 and one mobile phone, one black colour side bag, 2 keys and one black coloured polythene carry bag from the possession of the appellant under prover seizure list. He had packed all the seized articles in separate envelopes and thereafter sealed the same and also affixed label on such envelopes. He had tendered the seizure list dated June 26, 2018 in evidence and the same was marked as Exhibit 5. He had also identified the signatures on the labels of the envelopes of fake currency notes.

31. PW 1 had been cross-examined at great length on behalf of the appellant. The appellant had been unable to

extract anything favourable to him by such cross-examination of PW 1.

32. PW 2 had witnessed the incident. He had stated that, he used to run a stall in Chandni Chawk for selling electronic articles in front of the shop in the name and style of Asrafi Service Centre. On June 26, 2018 at about 6:45 PM, he was in a stall and talking with his friend when a person came to his shop for purchasing electronic goods, such person had picked up a Samsung Power Bank and asked the price of such article. They had bargained on the price and ultimately, the customer had agreed to pay a sum of Rs. 950 for the same. After the customer had agreed to the price, he started to pack the article. At that time, the customer had brought out a note of Rs. 2000 denomination from his chest pocket. On receiving such note, he had a doubt and asked the customer to change such note. Instead of changing such note, such customer stood in front of his shop for a while and then without purchasing the article began to go away. He had called such person for purchasing the article and at that time, 5 to 6 persons in civil dress detained the customer. Such persons in civil dress asked

the reason for his shouting when he narrated the incident. Such persons then disclosed that they were police officers. Such officers then enquired from the customer and disclosed his name as the appellant. Such police officers had told him that they had information from reliable sources to keep a watch in the area. At that time, many people gathered there and the police officers asked somebody to volunteer from the crowd to be the witness of the search of the appellant to which most of the persons in the crowd disagreed. He along with his friend agreed to be witness to the search. Police officers had then told the appellant that the police officers wanted to search the appellant and prior to the search, the appellant can search the police officers to which, the appellant denied. Thereafter the police officers had began to search the appellant.

- 33.** During search, 9 pieces of currency notes of Rs. 2000 denominations, one mobile phone, 2 keys and cash of the Rs. 630 had been recovered from the right pocket of the trouser of the appellant. One piece of currency notes of Rs. 2000 denomination had also been recovered from the chest pocket of the shirt of the appellant. The appellant had

possessed one black colour side bag and on searching the black colour side bag, one black colour carry bag wrapped in a towel was found. On opening the black colour carry bag, 2 bundles of notes, one containing hundred pieces and another containing 90 pieces of Rs. 2000 denomination each had been found. There were also 2 bundles of hundred pieces of Rs. 500 denomination each aggregating to Rs. 5 lakhs had been recovered from the bag which was under the possession of the appellant.

34. PW 2 had stated that, the police officers had prepared a list of the articles seized, read over and explain the contents of such list and on being satisfied, he put his signature on such seizure list along with his friend. He had identified his signatures on the various documents including the fake currency notes. He had identified his signatures on the material exhibits also.

35. PW 3 is a friend of PW 2. He had stated that, on June 26, 2018 at about 6 PM, he was on his way to his friend's house. While going to his friend's house, he found a gathering in front of a mobile shop of PW 2. On seeing the gathering and out of curiosity he went to know what had

happened. One person in the gathering had disclosed himself as a police personnel. He heard that the person had entered the shop and tried to buy articles with fake currency. Police personnel had requested the gathering to be a witness and that he and PW 2 agreed to the same. He thereafter went on to corroborate the statements made by PW 2 in his deposition with regard to search and seizure. PW 3 had identified his signature on the various documents and the material exhibits which were attended in evidence.

- 36.** PW 4 is a police personnel. He was a part of the raiding team that had raided the place of occurrence on June 26, 2018. He had stated that on June 26, 2018, in the afternoon, PW 1 had informed him that PW 1 had received an information from a source informer that one Malda based fake currency racketeer was likely to come to Kolkata with a lump sum amount of fake currencies to supply the same to his associates. After receiving the information, they had conveyed the same to their superior officer and on getting his permission, a raiding team had been constituted. He had described the composition of the raiding team. He had stated that, after constitution of the raiding team, they

had left the police station and went to Chandni Chawk Market. On reaching such market, the source informer met PW 1 and thereafter, the raiding team began to keep watch over the area. During watch, PW 1 identified one person and asked him to catch and detain such person. At that time, the raiding team found that such person whom they were trying to apprehend was engaged in an altercation with a hawker. Later, the raiding team came to know that they were searching for the same person who was having the altercation with the hawker. In the meantime a crowd had gathered at the spot. PW 4 had been controlling the crowd so PW 1 detained the appellant. Later PW 1 stated to PW 4 that the appellant was searched by PW 1 and fake currencies had been recovered from the possession of the appellant. PW 1 had told him that maintaining all formalities, PW 1 had arrested the appellant and search and seizure was concluded in presence of 2 witnesses. Thereafter, the raiding team had returned to the STF office along with the appellant and the recovered articles. PW 1 had informed him that the appellant disclosed his name. He had identified the appellant in court.

37. Another police personnel had deposed as PW 5. He had stated that, on June 26, 2018 he was posted at STF Kolkata. On June 26, 2018, PW 1 had submitted a letter of complaint before STF, Kolkata stating inter alia that the PW 1 had arrested one person namely the appellant with fake Indian currency notes. The then officer in charge, STF, Kolkata had endorsed the letter of complaint and handed over the appellant along with the seized articles which had been recovered from the possession of the appellant. After going through the letter of complaint, he had lodged general diary entry with the STF police station No. 761 dated June 27, 2018. Such GD entry had been tendered in evidence and marked as Exhibit 6. Thereafter, PW 5 had filled up the formal first information report and recorded the case being STF police station case No. 10 dated June 27, 2018 under Sections 120B/489B/489C of the Indian Penal Code, 1860 against the appellant. He had tendered the formal first information report which was marked as exhibit 2. He had interrogated the appellant and sent the appellant for medical check-up. He had kept the recovered articles in the

Malkhana of Detective Department, Lalbazar, Kolkata. He had identified the appellant in court.

38. A manager of Bharatiya Reserve Bank Note Mudran Private Limited, Salboni had deposed as PW 6. He had stated that, his office received 200 pieces of currency notes of the denomination of Rs. 2000 from STF, Kolkata and thereafter as per direction, they had verified the notes and on verification they had found all the currencies to be low quality counterfeit notes. He had prepared the report in his official capacity. He had tendered the report in evidence and the same was marked as Exhibit 7. He had tendered the analysis report prepared in his official capacity in evidence and the same was marked as Exhibit 8. He had tendered the list of exhibits that had been supplied by STF along with 200 pieces of currency. The list of exhibits had been marked as Exhibit 9. He had identified the signature and official seal on various material exhibits.

39. A police personnel had deposed as PW 7. He had stated that, on June 27, 2018, Deputy Commissioner, STF had endorsed the case to him. He had been to Malda on June 28, 2018 for conducting search. On July 3, 2018 he

had submitted requisition before the Officer in Charge, Scientific wing for sketch map of the place of occurrence. On July 10, 2018 he had made a prayer before the learned Court for remanding the appellant to judicial custody. On July 12, 2018, he had sent the sealed envelopes containing the suspected fake Indian currency notes to Bharatiya Reserve Bank Note Mudran Private Limited for examination. He had identified the document by which the case had been endorsed to him for investigation. Such document had been marked as exhibit.

- 40.** The investigating officer had deposed as PW 8. He had stated that, he had taken up the investigation of the case as per direction of the Officer in Charge, STF police station on July 21, 2018. Thereafter, after receiving the case diary, he had discussed the matter of the case with the Officer in Charge, STF and thereafter on the next date that is on July 22, 2018, he had visited the place of occurrence and also contacted some of his sources. He had prayed before the learned Court for judicial remand of the appellant and Court granted the same. During the course of investigation, he had examined one inspector of STF on June 30, 2018 and

recorded the statement as he was the raiding team in charge. Thereafter on August 30, 2018 he had received orders from the Deputy Commissioner, STF to proceed to New Delhi to examine one of the FIR named accused persons in the case who was detained in Indira Gandhi International Airport, Delhi.

- 41.** PW 8 had stated that, he received another accused and proceeded to IGI police station with such accused. He had interrogated such accused and recorded a statement. Finding incriminating information from such statement, he had arrested such accused on September 2, 2018 and produced the accused before the Delhi court. He had brought the accused to Kolkata and produced such accused before the jurisdictional court on September 3, 2018. On the basis of the statement of such accused, some raids had been conducted including some search and seizure at several places but no further seizure or arrest took place. He had collected the report from the Bharatiya Reserve Bank Note Mudran Private Limited. He had deposited the fake currency notes with the Detective Department Malkhana. He had submitted the charge sheet before the jurisdictional

court against the appellant by charge sheet No. 12/2018 dated September 22, 2018 and also prayed for no charge sheet against 2 other co-accused for want of evidence against them.

42. In cross-examination, PW 8 had stated that, he did not enter into Ashrafi Service Centre and did not enquire about the owner and the employee of such shop. He did not prepare any hand sketch map and did not take photograph of such shop. He did not record the statement of the witnesses who had deposed as prosecution witnesses. He had never been to the village and house of the appellant at Malda.

43. On conclusion of the evidence of the prosecution, the appellant had been examined under Section 313 of the criminal procedure code. In such examination, the appellant had claimed that he was innocent. He had claimed that he was falsely implicated. He had wanted to adduce evidence in support of his defence.

44. On behalf of the appellant, DW 1 had been examined. He had claimed that, he dealt in horticulture, especially mangoes at Khasimari under English Bazar police station

district Malda. He had stated that on June 25, 2018 at about 5:30/6 PM one incident happened in his presence. At that material point of time he had been standing on the main road of Khasimari. He had noticed a Bolero vehicle and a truck proceeding in the same direction. Thereafter, both the vehicle stopped and 3 persons alighted from the Bolero vehicle and took the lorry driver into the Bolero vehicle and went away. He had noticed that the Bolero vehicle had no number plate. He had identified the appellant as the lorry driver involved in such incident.

45. In reply to a query of the court, DW 1 had stated that, the appellant was not previously known to him and that, he did not recollect as to whether he possessed the railway ticket as claimed in his examination in chief and that, it was a fact that he did not narrate the incident as stated in his examination in chief to anyone. He had narrated about the incident for the first time in court.

46. The father of the appellant had deposed as DW 2. He had stated that, he was the owner of a lorry and that the appellant used to drive such lorry. Such lorry basically used to run within a diameter of 15 km of his residence for the

purpose of transporting goods. Since the appellant was not traceable, he had lodged a missing diary with the English Bazar police station on June 26, 2018. On June 25, 2018 at about 7 PM he had come to learn from another lorry driver that his lorry was checked at a particular check post by some public servant. He had started enquiries thereafter. He had received information on the night of June 26, 2018 that the appellant was in custody of BSF official. He had stated that he got no information from the police about the arrest of the appellant. He had claimed that, he received information about the arrest of the appellant by the police from the Internet. In cross-examination, when he had been asked that such information was not available in the Internet, he said that he did not know about the same.

- 47.** In the present case, prosecution had examined 8 witnesses to bring home the charges against the appellant. PW 1, being police personnel posted at STF, Lalbazar, Kolkata had received source information with regard to movement of fake currency at a particular area. He had made an entry in the general diary book before he left the STF office. Such GD entry had been marked as Exhibit 4.

Subsequent to the conclusion of the raid, he had lodged a written complaint which had been marked as Exhibit 1. A formal first information report had been drawn which was marked as exhibit 2. The letter seeking permission for conducting the raid had been tendered in evidence and marked as Exhibit 3.

- 48.** A raid had been conducted by police personnel of STF on June 26, 2018 in which, the appellant had been arrested with currencies suspected to be fake at that point of time. The currencies recovered from the possession of the appellant had been inventoried. Signature of the appellant along with other witnesses had been obtained on the first and the last leafs of the currencies seized. Such currencies had been sent to the Bharatiya Reserve Bank Note Mudran Private Limited who had by a report being exhibit 8 had reported that the currencies were fake. The seizure list pertaining to the seizure of the fake currencies had been tendered in evidence and marked as Exhibit 5. All signatures on such seizure list had been proved in evidence and marked as exhibits.

- 49.** A manager of Bharatiya Reserve Bank Note Mudran private Limited had deposed as PW 6. He had identified the confidential report which was marked as Exhibit 7 and the analysis report as Exhibit 8. He had also proved the list of exhibits that had been supplied by the STF along with 200 pieces of currencies which had been marked as Exhibit 9 collectively.
- 50.** The confidential report and the analysis report being Exhibit 7 and 8 had conclusively proved that, the 200 pieces of currency notes of denomination of Rs. 2000 received by Bharatiya Reserve Bank Note Mudran Private Limited from STF were low quality counterfeit notes.
- 51.** The low quality counterfeit notes had been seized from the possession of the appellant in presence of witnesses being PW 2 and 3. The first and the last leaf of the bundles of notes seized had been seized by the appellant along with others. Both such witnesses had corroborated each other and corroborated the case of the other prosecution witnesses with regard to the raid being conducted at a particular place and the occurrence of the incident. Therefore, the prosecution has been able to establish that,

the appellant was in possession of low quality counterfeit notes and that, the appellant had tried to use one of such low quality counterfeit notes to purchase an article in the market knowing it to be counterfeit.

52. Credential, of the evidence of PW 2 and 3 has been questioned on behalf of the appellant on the ground that, such prosecution witnesses stated that their residential addresses were near to one another and that they were pocket witnesses of STF. Both PW 2 and 3 had claimed that they were friends of each other. Therefore, their residential addresses being near to each other would not be unnatural. Nothing had been placed on record to suggest that any of the prosecution witnesses Nos. 2 and 3 were pocket witnesses of STF.

53. It has been contended that, the appellant was picked up from a different area and not from where he had been shown arrested. Although, the defence had examined two witnesses at the trial, none of those 2 witnesses had conclusively established that, the appellant was picked up by the police on June 25, 2018 from Malda. DW 1 had stated that, he made the claim for the first time in court and

that he did not inform any other person about the incident that he claimed happened in court. DW 2 is the father of the appellant and he had claimed that, BSF personnel were involved. Nothing had been placed on record at the trial to suggest involvement of any BSF personnel. The learned trial judge had rightly disbelieved the case of the defence.

54. *Tomaso Bruno (supra)* has dealt with a case of murder. In the facts of that case, it had been found that, nonproduction of CCTV footage, non-collection of old records details and SIM details of mobile phones seized from the accused cannot be said to be made instances of faulty investigation but amounts to withholding of best evidence. In the facts of the present case, all prosecution witnesses had corroborated each other with regard to the development of the incident. Prosecution had produced eyewitnesses who had witnessed the entire incident from the stage of the appellant being accosted by police personnel till the completion of the search and seizure and his arrest. Currency notes recovered from the possession of the appellant had been sent for examination and conclusively established to be counterfeit.

55. In *Ali Hossain @ Dulal (supra)*, the High Court had found that the articles were lying at the Malkhana from July 1, 1988 to July 4, 1988 with such register not being exhibited and the officer in charge of the register not being examined.

56. In *Gurmail Singh (supra)*, the Supreme Court has considered a case under the Narcotic Drugs and Psychotropic Substances Act, 1985 and found that, in the facts of that case, the link evidence produced by the prosecution was not at all satisfactory.

57. In the facts of the present case, PW 6 had received 200 currency notes of the denomination of Rs. 2000 from STF on September 10, 2018. PW 7 had sent the 6 sealed envelopes containing suspected counterfeit notes to Bharatiya Reserve Bank Note Mudran Private Limited for examination on July 12, 2018. All the envelopes had been sealed and labelled in presence of the appellant. The label had the signature of the appellant along with other prosecution witnesses. The envelopes and the levels had been identified in court by PW 1. Therefore, in our view, the chain of custody of the

envelopes containing the counterfeit currency notes had been established by the prosecution.

58. We have not found any substance in the contention that, a senior police personnel being present at the spot was trying to manage the crowd while, a junior was conducting the search and seizure and therefore, the search and seizure stood vitiated. The incident had occurred at a crowded marketplace. We have no reason to suspect that the process of search and seizure stood vitiated as a police personnel senior to that of PW 1 was controlling the crowd while PW 1 was conducting the search and seizure.

59. The appellant had been found trying to buy an article by using a counterfeit currency. The attempt to buy an article by using a counterfeit currency had been established by PW 2 and PW 3. This attempt to use counterfeit currency for the purpose of buying an article is sufficient to constitute an offence under Section 489B of the Indian Penal Code, 1860. Therefore, we are unable to accept the contention of the appellant that, the charge under Section 498B of the Indian Penal Code, 1860 had not been established by the prosecution.

- 60.** In view of the discussions above, we have not found any ground to interfere with the impugned judgement of conviction or the impugned order of sentence.
- 61.** The sentences awarded shall run concurrently.
- 62.** CRA 291 of 2021 is dismissed.
- 63.** In view of the dismissal of the appeal, CRAN 1 of 2022 is also dismissed.
- 64.** A copy of this judgement and order along with the trial court records be sent to the appropriate court forthwith.
- 65.** Urgent Photostat certified copy of this judgement and order be supplied to the parties, if applied for, in accordance with law.

[DEBANGSU BASAK, J.]

- 66.** I agree.

[MD. SHABBAR RASHIDI, J]