

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.404 of 2022

Arising Out of PS. Case No.-2 Year-2015 Thana- A.T.S District- Patna

RIPUN SHEIKH Son of Insaan Sheikh Resident of Babu Munna Tola P.O.-
Johnpur, P.S.- Vaishnav Nagar, District - Malda (West Bengal)

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 729 of 2021

Arising Out of PS. Case No.-2 Year-2015 Thana- A.T.S District- Patna

PARAS NATH CHAUBEY Son of Saryu Chaube Resident of Village-
Rohiya, P.S.- Ramgarh, District- Kaimur at Bhabua.

... .. Appellant/s

Versus

The State of Bihar through Superintendent of Police, ATS, Bihar, Patna. Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 802 of 2021

Arising Out of PS. Case No.-2 Year-2015 Thana- A.T.S District- Patna

PRABHAT KUMAR @ PRABHAT AGARWAL Son of Arun Kumar
Resident of Village and P.S.- Belaganj, District- Gaya, Bihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 404 of 2022)

For the Appellant/s : Mr. Saket Anand, Advocate
Mr. Alok Kumar, Advocate
Mr. Shambhu Kumar, Advocate

For the Respondent/s : Mr. Satya Narayan Prasad, APP

(In CRIMINAL APPEAL (DB) No. 729 of 2021)

For the Appellant/s : Mr. Ashok Kumar Garg, Advocate
Mr. Sanjiv Kumar, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 802 of 2021)

For the Appellant/s : Mr. Dharendra Kumar Sinha, Advocate
Mr. Ajay Kumar Sinha, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and

**HONOURABLE JUSTICE SMT. G. ANUPAMA
CHAKRAVARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date : 04-01-2024

All these three criminal appeals arise out of same criminal trial i.e. Sessions Trial No. 326(A)/2016 (CIS No. 8006589/2016) before the learned Additional Sessions Judge-XIII, Patna in which the appellants were charged of commission of the offences punishable under Sections 489-B, 489-C read with Section 34 of the IPC and Section 16(1)(b) and Section 17 of the Unlawful Activities (Prevention) Act, 1967 ('UAP Act' in short).

2. By a judgment dated 22.10.2021, the trial court has recorded conviction of all these appellants for the offences punishable under Sections 489-B, 489-C of the IPC and Section 16(1)(b) of the UAP Act. They have, however, been acquitted of the charge of offence punishable under Section 17 of the UAP Act. From the judgment of conviction, it transpires that though the appellants, Ripun Sheikh in Cr. APP (DB) No. 404 of 2022 and Prabhat Kumar @ Prabhat Agarwal in Cr. APP (DB) No. 802 of 2021, were before the Court on the date when judgment was pronounced. The appellant Paras Nath Chaubey had absented himself. The trial court, after having recorded conviction of the appellants, placed the matter for awarding sentence against the

appellant Ripun Sheikh and Prabhat Kumar only. Accordingly, by an order dated 28.10.2021, the trial court passed the order of sentence against the appellants Ripun Sheikh and Prabhat Kumar as under:

Cr. Appeal (DB) No. 404 of 2022				
Appellant	Penal Provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Ripun Sheikh	Under Section 489-B of the IPC	R.I. for life	1,00,000/-	S.I. for one year
	Under Section 489-C of the IPC	R.I. for seven years	50,000/-	S.I. for six months
	Under Section 16(1)(b) of the UAP Act	R.I. for ten years	1,00,000/-	S.I. for one year
Cr. Appeal (DB) No. 802 of 2021				
Appellant	Penal Provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Prabhat Kumar @ Prabhat Agarwal	Under Section 489-B of the IPC	R.I. for life	1,00,000/-	S.I. for one year
	Under Section 489-C of the IPC	R.I. for seven years	50,000/-	S.I. for six months
	Under Section 16(1)(b) of the UAP Act	R.I. for ten years	1,00,000/-	S.I. for one year

3. Subsequently, a separate order of sentence was passed, upon conviction of the appellant Paras Nath Chaubey, on 02.11.2021 in following terms: -

Cr. Appeal (DB) No. 729 of 2021				
Appellant	Penal Provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Paras Nath Chaubey	Under Section 489-B of the IPC	R.I. for life	1,00,000/-	S.I. for one year
	Under Section 489-C of the IPC	R.I. for seven years	50,000/-	S.I. for six months
	Under Section 16(1)(b) of the UAP Act	R.I. for ten years	1,00,000/-	S.I. for one year

4. The aforesaid judgment of conviction and the orders of sentences are under challenge in the present three appeals. This is the background in which all the three appeals have been heard together and are being disposed of by present common judgment and order.

5. An Inspector, working in Anti Terrorism Squad (ATS), Patna, Arjun Lal (PW 1) is the informant, whose self-statement dated 13.10.2015 at 13:30 is the basis for registration of the concerned ATS P.S. Case No. 02 of 2015, disclosing the commission of offence punishable under Sections 489-B, 489-C and 489-C read with Section 34 of the IPC. Subsequently, Sections 16 and 17 of the UAP Act was added under an order of the Court below dated 23.12.2015.

6. According to the said self-statement, he received a secret information from a spy at the ATS headquarters about expected transaction of a huge lot of counterfeit Indian currency notes at the Mithapur Bus Stand. After transmitting the aforesaid information to the senior officials, a team was constituted for raid. The team departed from the ATS headquarters at 10:45 AM with other police personnel including Md. Shekh Sabir, a Police Inspector (PW4), Dharmendra Kumar Singh, Constable, (PW-5), Ramashish Yadav, Constable (PW-2), Jitendra Kumar Singh,

Constable (not examined) Vinod Kumar, Constable (not examined), Govind Kumar, Constable (not examined), Rakesh Kumar Sahani, Constable (not examined) and Virendra Singh, Driver (not examined). They reached the Bus Stand at 10:55 AM and, in the meanwhile, he noticed at Gate No. 2 presence of persons of the same description as was furnished with the secret information by the spy, who was carrying a plastic bag. His movements were put under surveillance by the raiding team. In the meanwhile, at 12:05 PM, two other persons also joined him. The three of them went inside the campus of the State Bank of India and engaged themselves in dealing with currency notes. All the three were surrounded by the police team, who disclosed their names. Upon search, currency notes, which appeared to be counterfeit, were recovered from the possession of all the three persons. The informant asserted in his self-statement that the searches were made in the presence of two independent witnesses, namely, Rohan Kumar and Vilash Yadav (both not examined).

7. According to the informant, from the possession of the appellant Ripun Sheikh, 200 pieces of counterfeit Indian currency notes each of 500 denomination were recovered. The FIR contains the description of the counterfeit currency notes said to have been recovered from the appellant Rupan Sheikh.

Similarly, from the possession of appellant Prabhat Kumar, the ATS team is said to have recovered 150 pieces of counterfeit Indian currency notes, each of 1000 denomination in blue bag and 100 pieces of such notes of 500 denomination kept in a blue bag. From the appellant Paras Nath Chaubey, the team is said to have recovered 200 pieces, in two bundles, counterfeit Indian currency notes each of 500 denomination.

8. The FIR contains the description of the serial numbers, printed on each of the currency notes. Apart from the currency notes, the ATS team also recovered from these appellants, according to the FIR, Mobile Phones, ATM Cards and Aadhar Cards etc. From the possession of appellant Ripun Sheikh, a Mobile Phone with Idea SIM No. 08609092560 was recovered and seized. From the possession of appellant Prabhat Kumar, a Debit Card of State Bank of India, a Mobile Phone with two SIM cards were recovered and seized. Similarly, from the possession of the appellant Paras Nath Chaubhey, an ATM Card of Punjab National Bank, an Aadhar Card and two Mobile Phones were recovered.

9. The informant mentioned in the FIR that the person, so apprehended, accepted that the currency notes which were recovered from their possession, were fake. The appellants were

arrested thereafter. The Investigating Agency, i.e., ATS, in the present case filed charge-sheet after completion of investigation on 09.03.2016 against these appellants for the offences punishable under Section 489-B, 489-C read with Section 34 of the IPC and Section 16 and 17 of the UAP Act, whereupon, cognizance was taken of the said offences on 09.03.2016. The appellants were subsequently charged of commission of the offences punishable under the provisions of the IPC and UAP Act, as has been noted hereinabove. The appellants denied the charges and claimed to be tried.

10. At the trial, prosecution examined altogether seven witnesses including the informant (PW-1), two Investigating Officers (PW-6 and PW-7) and three Constables (PW-2, PW-4 and PW-5) who were members of the ATS raiding team. The Senior Scientific Officer of Forensic Science Laboratory, who had examined the currency notes, said to have been recovered from the possession of these appellants, and certified the same to be counterfeit currency notes was examined as PW-3.

11. In addition to the oral evidence of these prosecution witnesses, in order to substantiate the charges against the appellants, the prosecution brought on record following documentary evidences:

Sl. No.	Description	Exhibit Number
1.	Seizure list of recovered Indian counterfeit currency notes	Exhibit-1
2.	Self statement of ATS Case No. 02/2015 filed by the informant	Exhibit-2
3.	Kaman letter issued to Hawaldar Shankar Pandey and Constable Ajay Kumar Sah	Exhibit-3
4.	Preliminary report issued by Forensic Science Laboratory, Bihar, Patna	Exhibit-4
5.	Final report No. 1727/15 dated 21.12.2015 issued by Directorate of Forensic Science Laboratory, Bihar, Patna	Exhibit-5
6.	Signature of the assistant at the level of object display.	Exhibit-6
7	Formal FIR	Exhibit-7
8	Confessional statement of Paras Nath Chaubey	Exhibit-8
9	Confessional statement of Ripun Sheikh	Exhibit-9
10	Confessional statement of Prabhat Kumar	Exhibit-10
11	Order for sanction of prosecution issued by Law Department, Government of Bihar	Exhibit-11

12. The prosecution also produced before the trial court, following material exhibits:

Sl. No.	Description	Material Exhibit Number
1.	Rs. 500/- = 200 piece (500x200)	Material Exhibit-1
2.	Rs. 500/- = 300 piece (500x300)	Material Exhibit-II
3.	Rs. 1000/- = 150 piece (1000x150)	Material Exhibit-III
4.	Zen Mobile company's mobile	Material Exhibit- IV
5	White bag	Material Exhibit-V
6.	Mobile, P.N.B. ATM card and Aadhar Card	Material Exhibit- VI
7	Mobile, SBI Debit card and bag of	Material Exhibit-VII

	white-blue colour	
8	Three opened envelopes	Material Exhibit- VIII

13. Upon closure of the evidence of the prosecution’s witnesses, the appellants were questioned by the trial court under Section 313 of the CrPC so as to give them an opportunity to explain the incriminating circumstances emerging against them. The appellants denied the incriminating circumstances and pleaded their innocence again. Three defense witnesses were also examined, each for each of the appellants, i.e., DW-1 Soni Kumari for Prabhat Kumar, DW-2 Shiv Kumar Singh for Ripun Sheikh and DW-3 Rajesh Tiwary for Paras Nath Chaubey.

14. The appellant Paras Nath Chaubhey brought on record following documentary evidence in support of his defense, which came to be marked as exhibits, as under:

Sl. No.	Description	Exhibit Number
1.	A letter issued by the Directorate of Integrated Child Development Services, Social Welfare Department, Government of Bihar dated 15.10.2015	Exhibit-A
2.	Passbook of Punjab National Bank	Exhibit-B

15. After having appreciated the evidence adduced at the trial, the trial court reached at a conclusion that the prosecution

was able to establish the charges against the appellants of having committed the offences punishable under Section 489-B, 489-C and Section 16(1)(b) of the UAP Act, as has been noted above. The appellants were acquitted of the charge of offence punishable under Section 17 of the UAP by the trial court. After having recorded the finding of conviction, the trial court sentenced them to imprisonment and fine by the orders, as has been noted above.

16. Learned counsel appearing on behalf of the appellants have submitted that the prosecution miserably failed to prove seizure of the counterfeit currency notes alleged to have been recovered from the possession of these appellants. He submits that non-examination of independent seizure list witnesses creates serious doubt about the prosecution's case of recovery of any incriminating material from these appellants. It has been argued that the prosecution deliberately withheld the seizure list witnesses inasmuch as they were not even cited as witnesses in the charge-sheet. Further, the seizure list list witnesses are said to have put their signatures on the said seizure memo, but it is evident from the seizure list (exhibit-1) that the identity, parentage or the address of the said witnesses are not there. It has been argued that it would be highly unsafe to rely upon such seizure list and the prosecution's case of seizure of

counterfeit currency notes from the possession of these appellants based only on the depositions of the informant and two others Constables, who were members of the raiding team. It has been argued that there has been non-compliance of the requirements of search and seizure under Section 100 of the CrPC. Referring to the Exhibit-1 (seizure list). It has also been argued that though LTI/signature of the appellants is there on the front pages of each of the sheets, but they are absent on the back pages of the sheets of the seizure list, which also contain description of the articles said to have been seized.

17. With the aforesaid submissions, it has been argued that the seizure list is not at all reliable and, therefore, the prosecution miserably failed to prove beyond doubt the factum of recovery of counterfeit currency notes from the possession of the appellants. It has also been argued that according to the case of the prosecution itself, the raid was conducted and searches/seizure were made within the premises of a branch of State Bank of India. There is no clue as to why neither the Branch Manager nor any employee of the said branch was informed about action of the ATS and search and seizure were not carried out in their presence. It has also been argued that the prosecution has failed to prove the place of occurrence for the failure on their part to examine the

employees of the Bank as they had conducted the raid at about 01:00 PM in the afternoon, which was working hours for the Bank. Reference has been made in this regard to sub-section (6) of Section 100 of the CrPC.

18. It has further been argued that it will be evident from the evidence adduced at the trial that the packet said to be bundles of the currency notes were exhibited at the trial and it has been argued that the trial court has not duly considered the evidence of the defense witnesses. It has been contended that Prabhat Kumar was, in fact, apprehended by ATS team at Dhanbad and he was brought to Patna and an imaginary place of occurrence has been created by the police, showing presence of these appellants in possession of counterfeit currency notes. It was in this background that the application was filed by the said appellant Prabhat Kumar before the trial court for calling for the call details reports (CDR). The CDR of his phone number, which was seized by the police, according to the prosecution's case at the place of occurrence, which could have given some clarity on the point of movement of the appellant and his presence at the place of occurrence. The said application was wrongly rejected by the trial court. It is submitted with reference to the evidence of the prosecution's witnesses that no attempt was made to obtain CCTV

footage of the place of occurrence, though it has come in the evidence that CCTV cameras were installed outside the Bank office. Argument has also been advanced that the finding of conviction for the offences punishable under Sections 16(1)(b) of UAP Act, recorded by the trial court, is wholly unsustainable as the essential ingredient of commission of 'Terrorist Act' is completely absent in the evidence led at the trial. In any event, the prosecution failed to follow the requisite procedure laid down under the High Quality Counterfeit Indian Currency Offences Rules, 2013, framed in exercise of the powers conferred by sub-section (1) and clause (f) of sub-section (2) of Section 52 of the Unlawful Activities (Prevention) Act, 1967, inasmuch as the currency notes were not sent for examination to the Forensic Science Laboratory within 48 hours of seizure, which is an essential condition laid down under Rule 6(2) of the said Rules. It has also been argued that it is evident from the deposition of PW 3 that the Forensic Science Laboratory did not duly carry out the examination of fake currency notes in accordance with the IIIrd Schedule of the UAP Act, which lays down the security features to define high quality counterfeit Indian currency notes, namely, latent image, see-through registration, fluorescent characteristic etc.. Reliance has been placed on behalf of the appellants on a co-

ordinate Bench decision of this Court, rendered on 08.08.2022 in Cr. APP (DB) No. 18 of 2017 (*Jitendra Singh Vs. State of Bihar*) to bolster the contention.

19. Learned Additional Public Prosecutor, appearing on behalf of the State, defending the finding of conviction recorded by the trial court, submits that there is no reason why this Court would discard the evidence of the PW-1, PW-4 and PW-5 for the sole reason that all of them were officials of ATS and were members of the raiding team. She contends that they are reliable witnesses and since they have proved recovery of counterfeit currency notes from the possession of these appellants, the seizure made in their presence was proved at the trial by the prosecution. She contends that non-examination of the seizure list witnesses, in the facts and circumstances of the case, cannot be said to be fatal. She has further argued that the currency notes recovered from the possession of these appellants were found to be counterfeit upon examination by the Forensic Science Laboratory. The Senior Scientific Officer (PW-3) deposed at the trial and proved that the currency notes, which were sent for examination, were found to be counterfeit upon due examination. She contends that the prosecution having been able to prove that the currency notes sent for examination were counterfeit, which were recovered from the

possession of these appellants by the ATS team, the finding of conviction for the offence punishable under Section 489-C of the IPC cannot be said to be suffering from any legal infirmity. She has further argued that the ATS team members proved at the trial that these appellants were transacting among themselves the counterfeit currency notes, which were subsequently seized by the appellants and, therefore, the finding of conviction for the offence under Section 489-B of the IPC is also justified. She has further submitted that the act of the appellants of dealing with counterfeit currency notes comes within the definition of 'Terrorist Act' as their act intended to threaten or likely to threaten the economic security of India, and, therefore, the trial court rightly held the appellants guilty of the offence punishable under Section 16(1)(b) of the UAP Act.

20. We have perused the impugned judgment and order of the trial court as well as the lower court's records. We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties.

21. It can be easily noticed from the prosecution's case, as set up in the FIR, and the evidence adduced at the trial, that recovery and subsequent seizure of counterfeit currency notes from the possession of these appellants in the premises of a

Branch of State Bank of India is at the core of the controversy. The entire prosecution's case is based on the recovery of and the fact that the appellants were dealing in counterfeit currency notes among themselves. In the said background, it has been submitted on behalf of the appellants that since the prosecution has miserably failed to establish beyond doubt the factum of recovery and seizure of counterfeit currency notes from the possession of these appellants, conviction under Section 489-C of the IPC is unsustainable and in consequence thereof, there would be no question of culpability for the offences punishable under Sections 489-B of the IPC and Section 16(1)(b) of the UAP Act.

22. In the background of the aforesaid submission, we intend to consider this aspect first. Learned counsel for the appellants have rightly placed reliance on the decision of a Coordinate Bench of this Court in the case of ***Jitendra Singh*** (supra), wherein after having noted the provisions under Section 489-B and 489-C of the IPC and Section 16 of the UAP Act has observed in paragraph 15 is as under:

"...15. It has been considered apt to firstly discuss on the point as to whether based on the evidence adduced at the Trial, the prosecution has been able to establish beyond all reasonable doubts the charge framed against the appellant of commission of offence

punishable under Section 489-C of the I.P.C.. Stated differently, whether the prosecution can be said to have established beyond all reasonable doubts, that the appellant was in possession of counterfeit currency notes. The charge to the effect that the appellant was found in possession of counterfeit currency notes can be said to have been proved, if the recovery of said notes is established beyond all reasonable doubts with reference to the seizure memo and evidence of witnesses at the Trial, most importantly, the witnesses to the seizure list. The question of going into the legality of conviction of the offence punishable under Section 489-B of the I.P.C. and Section 16 of the U.A.P. Act will arise only if the finding of conviction against the appellant by the Trial Court of the offence punishable under Section 489-C is sustained. If the prosecution fails to establish charge under Section 489-C of the I.P.C., the charges under Section 489-B of the I.P.C. and Section 16 of the U.A.P. Act shall also fail...."

23. Before dealing with the evidence adduced at the trial, it would be useful to reproduce Sections 489-B, 489-C of the IPC and Section 16 of the UAP Act, which read as under:

489-B. Using as genuine, forged or counterfeit currency-notes or bank-notes.—
Whoever sells to, or buys or receives from, any other

person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with 479 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.]

489-C. 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.]

16. Punishment for terrorist act.—(1)

Whoever commits a terrorist act shall,—

(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

24. We have carefully perused Exhibit-1, the seizure list, which bears the signature of these appellants and two other persons, namely, Rohan Kumar and Vilash Yadav. Rohan Kumar and Vilash Yadav are, thus, the seizure list witnesses. Except for their signatures, there is no detail mentioned about their identity, status and address, though their parentage etc. have been

mentioned in the FIR. From the records, it further transpires that in the charge-sheet filed by the Investigating Agency, the said seizure list witnesses were not named as the witnesses to prove the recovery and seizure of the articles from the possession of these appellants at the trial. In such circumstances, we find substance in the submission advanced on behalf of the appellants that the act of the prosecution to withhold the seizure list witnesses, who could have deposed at the trial, without any justification, is fatal to the prosecution's case. The entire case of the prosecution of recovery of counterfeit currency notes from the possession of these appellants cannot be said to be beyond any shadow of doubt in the wake of the circumstance that the prosecution withheld two important seizure list witnesses in whose presence, according to the FIR, the searches were carried out and upon recovery from the appellants, the counterfeit currency notes were seized.

25. We consider it highly unsafe in such circumstance to uphold the finding of the trial court that the prosecution was able to establish beyond all reasonable doubts that the counterfeit currency notes were recovered from the possession of these appellants from the place of occurrence.

26. When possession of an incriminating material itself constitutes an offence, the duty to prove such possession is heavy

upon the prosecution. It is peculiar to note in the present case that the prosecution claimed to have seized from the possession of these appellants counterfeit currency notes in the presence of the seizure list witnesses, but opted not to get them examined at the trial by not citing them as witnesses in the charge-sheet.

27. Since, in the Court's opinion, the prosecution failed to establish offence punishable under Section 489-C of the IPC by not proving recovery of the counterfeit currency notes, in the facts and circumstance of the present case, as discussed above, the offence punishable under Section 489-C of the IPC cannot be said to have been proved. We have reproduced Section 489-B of the IPC hereinabove, from which it can be easily inferred that either of the following must be proved to make out an offence under the said provision :-

- (i) Sells to any other person
- (ii) Buys from any other person
- (iii) Receives from any other person
- (iv) Otherwise traffics in,
- (v) Uses as genuine;

any forged or counterfeit currency note or bank-note, knowing or having reason to believe the same to be forged or counterfeit.

28. There is no evidence that the appellants were selling to or buying from any other person or trafficking in or using as genuine, the said counterfeit currency notes said to have been seized by the ATS Team. The FIR, in the present case, is descriptive and discloses the circumstances in which, according to the ATS Team, the counterfeit currency notes were recovered from the possession of these appellants and subsequently seized. According to the prosecution's own case, these appellants were seen exchanging amongst themselves some currency notes, which were found to be counterfeit subsequently, on examination. The fact that the currency notes were with the appellant Ripun Sheikh, which he was giving to the other appellants, is based on his own confession to the ATS personnel. The prosecution has relied on the confessional statements of these appellants, when they were in custody. The said confessional statement has no evidentiary value at all. We are accordingly of the view that the conviction of the appellants for the offences punishable under Sections 489-B and 489-C of the IPC cannot be sustained. For the same reason that the prosecution failed to prove recovery of the counterfeit currency notes from the possession of these appellants, in our opinion, the appellants' conviction for the offence punishable under Section 16(1)(b) of the UAP Act cannot be sustained.

29. We consider it proper, at this juncture, to deal with the requisite conditions for making out an offence punishable under Section 16 of the UAP Act. Section 16 of the UAP Act lays down punishment for terrorist act. ‘Terrorist act’ has been defined under Section 15 of the UAP Act, which reads as under:

15. Terrorist act.—25[(1)] *Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security 26[, economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—*

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause
—

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

[(iii-a) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]

(iv) damage or destruction of any property in India or in a foreign country used

or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or 28[an international or inter-governmental organisation or any other person to do or abstain from doing any act; or]

commits a terrorist act.

[(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.]”

30. It is manifest on reading of Section 15 of the UAP Act that damage to monetary stability of India by production or smuggling or circulation or high quality counterfeit Indian paper currency, coin or any other material falls within the definition of ‘terrorist act’. ‘High Quality Counterfeit Indian Currency’ has been defined by explanation (b) to sub-section (1) of Section 15. Further, on reading of Section 16 of the UAP Act, all terrorist acts, except such which have resulted in death of any person, is punishable under clause-b of sub-section (1) of the said Section. It

will be worthwhile mentioning that the Central Government has framed the Rules in exercise of the powers conferred by sub-section (1) and clause (f) of sub-section (2) of Section 52 of the Unlawful Activities (Prevention) Act, 1967, Rule 6 of which, lays down the procedure for applying the provisions of sub-clause (iii-a) of clause (a) of sub-section (1) of Section 15 read with Section 16 of the UAP Act. Sub-rule (1) of Rule 6 provides that when a case has been registered upon seizure of currency suspected to be high quality counterfeit Indian currency, Investigating Officer 'shall forthwith' send the seized currency and sample thereof to the authorized or notified forensic authority and the said authority shall forward a preliminary report as to whether the seized currency is high quality counterfeit Indian currency, within 15 days of receipt of such samples. We emphasize the expression 'shall forthwith' used in sub-rule (1) of Rule 6 in the light of the provision in sub-rule (2), which mandates the Investigating Officer to forward the seized currency by the quickest means to the notified forensic authority 'not later than 48 hours of seizure' and the notified authority to communicate the result of the examination to the requisitioning officer by the quickest possible means including e-mail or facsimile.

31. In the present case, registered in 2015, according to the Investigating Officer, he had received the inputs from a spy that certain persons were going to deal with huge amount of counterfeit Indian currency notes. Based on the said input, the seizure was said to have been made from the possession of these appellants on 13.10.2015. It has come on record that the bundles of currency notes, said to have been seized from the possession of these appellants, were sent to the Forensic Science Laboratory 17 days thereafter on 30.10.2015. Apparently, the Investigating Officer did not follow that statutory mandate under sub-rule (2) of Rule 6, which required him to send the seized currency to the notified forensic authority within 48 hours. The expressions 'shall forthwith' under sub-rule (1) of Rule 6 and 'not later than' under sub-rule (2) of Rule 6 needs to be read conjointly to appreciate the true Legislative intent under the Rules.

32. In our considered view, the provisions under UAP Act could not have been invoked because of the failure on the part of the Investigating Officer to carry out strictly the requirement under sub-rule (1) and sub-rule (2) of the Rules. Our view is strengthened by the second *proviso* to Rule 6 of the Rules, which reads as under.: -

“Provided further that the procedure referred to in sub-rule (1) shall not preclude the

continuation of investigation under any law for the time being in force”.

33. In the court's opinion, thus, in view of the second *proviso* to Rule 6 of the Rules, once the Investigating Officer failed to transmit the seized high quality counterfeit Indian currency to the notified forensic authority within the time stipulated thereunder, they could have proceeded to investigate the case under any other provision of law, i.e., in the present case, Section 489-B and 489-C of the IPC.

34. We have no hesitation in recording our definite opinion that the provisions under Rule 6 of the Rules are mandatory in character and are required to be strictly adhered to for a prosecution in relation to any offence punishable under Section 16 of the UAP Act read with Section 15 thereof.

35. In view of the discussions, as above, the conviction of the appellants for the offence punishable under Section 16(1)(b) of the UAP Act also cannot be sustained. Resultantly, the appellants stand acquitted of the charges of commission of offence punishable under Section 489-B and 489-C of the IPC and Section 16(1)(b) of the UAP Act, by giving them benefit of doubt.

36. Accordingly, the impugned judgment of conviction dated 22.10.2021 and order of sentences dated 28.10.2021/02.11.2021, passed by learned Additional Sessions

Judge-XIII, Patna arising out of A.T.S. Patna P.S. Case No. 02 of 2015, in Sessions Trial No. 326 of 2016, CIS No. 408 of 2016 [(Sessions Trial No. 326(A)/2016 (CIS No. 8006589/2016)] are hereby set side.

37. These appeals are allowed.

38. Let the appellants namely, Ripun Sheikh of Criminal Appeal (DB) No. 404 of 2022, Paras Nath Chaubey of Criminal Appeal (DB) No. 729 of 2021 and Prabhat Kumar @ Prabhat Agarwal of Criminal Appeal (DB) No. 802 of 2021 be released from jail forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(G. Anupama Chakravarthy, J)

Nishant/Shanu-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.01.2024
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