

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.A. 137 of 2021

***Rabiul Sk. @ Rabi.*
versus
*The State of West Bengal.***

For the Appellant : Mr. Pinak Kumar Mitra.

For the State : Mr. Debasish Roy, Ld. P.P.,
Mr. Sandip Chakraborty,
Mr. Saryati Dutta.

Heard on : 29.07.2024, 21.08.2024

Judgement On : **21.08.2024**

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order of conviction and sentence dated 29.09.2020 and 30.09.2020 passed by the learned Sessions Judge, Murshidabad, in connection with Sessions Trial No. 03 of December, 2019 arising out of Sessions SL No. 613/2019 wherein the learned Trial Court after holding the appellant guilty for commission of offence under Section 489C of the Indian Penal Code was pleased to sentence him to suffer Rigorous Imprisonment for 7 (seven) years and to pay fine of Rs.5,000/-, i.d. to suffer Simple Imprisonment for 6 (six) months.

Berhampore Police station case no. 53/2018 dated 16.01.2018 was registered for investigation under Section 489B /489C of the Indian Penal Code on the basis of a complaint lodged by Subodh Mondal, Sub-Inspector of Police associated with the same police station. The complainant alleged that on receipt of information of Fake Indian Currency Notes (FICN) would be brought by a person at Panchanantala in front of main gate of Murshidabad Zilla Parishad Office, Berhampore, he recorded the information which was diarized being Berhampore police station GDE No. 1164 dated 16.01.2018. The same was informed to the Inspector-in-charge, Berhampore Police Station and as per his direction a raiding team was constituted. The raiding team left with the police vehicle and arrived at the main gate of Murshidabad Zilla Parishad Office. After waiting for about half an hour at about 21.15 hours a person was seen as per the description received. Immediately the said person was apprehended at the spot and a search was carried out wherefrom 150 pieces of FICN of Rs.2,000/- denomination was found in the right pocket of the wearing pant of the accused namely, Rabiul Sk. @ Rabi along with one red colour Zen X 34 mobile phone, three fare tickets of NBSTC bus. The accused failed to give any clarification for possessing the FICN and on interrogation he admitted that he was aware that the currency notes were forged and that the said FICN was obtained from his relative namely, Sirajul Mia on 15.01.2018 during the morning hours. A seizure list was prepared in respect of the 150 FICN of Rs.2,000/- denomination, one red coloured Zen X 34 mobile phone, three fare tickets of NBSTC bus and the same was signed by the accused person,

witnesses and there were labels pasted on them. The accused was thereafter arrested and the complainant along with accused and the raiding team returned to the police station and handed over the seized articles. Thereafter request was advanced to the Inspector-in-charge, Berhampore Police Station for registration of the case.

On the basis of the aforesaid complaint as earlier stated Berhampore Police Station case no. 53/2018 dated 16.01.2018 was registered for investigation under Section 489B/489C of the Indian Penal Code. The case was endorsed by the Inspector-in-charge to Sub-Inspector Binoy Sarkar for investigation. The investigating officer after being assigned the investigation compared the seized articles in the Malkhana, visited the place of occurrence, prepared rough sketch map with index, recorded the statement of the witnesses, sent the FICN to Bharatiya Reserve Bank Note Mudran (P) Limited, Salboni and on receipt of the report submitted charge-sheet before the jurisdictional Court. The case was committed to the Court of Sessions who was pleased to take cognizance of the offence and fixed date for consideration of charges. The learned Sessions Judge being the trial Court by its order dated 17th December, 2019 was pleased to frame charges against the accused/appellant under Section 489B/489C of the Indian Penal Code. The contents of the charges were read over to the accused person to which he pleaded not guilty and claimed to be tried.

Prosecution in order to prove its case relied upon six witnesses which included PW1 Subodh Mondal, Sub-inspector, Berhampore Police Station and the complainant; PW2, Tusher Mishra, Constable of Berhampore Police Station who was also member of the raiding team; PW3, Sanat Das, Inspector-in-charge, Berhampore Police Station; PW4, Md. Sadekul Khan, ASI Berhampore Police Station and member of the raiding team; PW5, Sengupta Sardar, Constable of Berhampore Police Station who received the report from the Bhartiya Reserve Bank Note Mudran (P) Limited and PW6, , Sub-Inspector Binoy Sarkar and the Investigating Officer of the police.

P.W.1, Subodh Mondal complainant of the case was attached as Sub-Inspector of Police, Berhampore Police Station who narrated the incident in the same manner as has been stated by him in the letter of complaint addressed to the Inspector-in-Charge of the Berhampore Police Station. The witness identified the seizure list which was signed by him and also identified the envelope in which the FICN was kept. On the complaint being shown to him he identified his signature as also the complaint which was admitted in evidence.

P.W.2, Tushar Mishra, Constable of Berhampore Police Station who was a member of the raiding team and also accompanied the complainant Subodh Mondal. He narrated the incident similarly as P.W.1 and further identified his signature in the seizure list which was admitted in evidence. He identified the accused on dock. He also identified the envelope which was sealed with the

label containing his signature. He identified his signature on the label which was pasted and the same was admitted in evidence.

P.W.3, is Sanat Das, Inspector-in-Charge Berhampore Police Station, who deposed that on 16.01.2018 he received the written complaint from Subodh Mondal, SI (P.W.1) and on the basis of the said complaint Berhampore PS Case No. 53/2018 was registered for investigation. The case was thereafter endorsed to SI Binoy Sarkar for investigation. The formal FIR was filled up as per his instruction by ASI Sujay Biswas. He identified his signatures in the formal FIR as well as the letter of complaint which were admitted in evidence.

P.W.4, Md. Sadekul Khan, ASI of Police was a member of the raiding team, narrated the incident in the same manner as P.W.1 and P.W.2 regarding the seizure of 150 pieces of FICN of Rs.2,000/- denomination from the accused/appellant. He also identified his signature in the seizure list.

P.W.5, is Sengupta Sardar Constable of Berhampore Police Station attached to Gorabazar Fari, he was sent to the Office of Bharatiya Reserve Bank Note Mudran (P) Limited, Salboni with the FICN for being examined. He also received the report from the said Office subsequently, at the time of receipt he had to sign on the report.

P.W.6, is Binay Sarkar, the Investigating Officer of the case. He deposed that on being endorsed with the Berhampore Police Station Case No. 53/2018 dated 16.01.2018. He conducted the investigation of the case and narrated the

chronology of events. On receipt of the report from Bharatiya Reserve Bank Note Mudran (P) Limited he submitted charge-sheet before the jurisdictional Court.

Mr. Pinaki Mitra learned advocate appearing for the appellant submitted that the prosecution has failed to prove the case as no independent witnesses have been produced in support of the seizures and whole of the case is based on the evidence of the police authorities. Learned advocate further submitted that there were material discrepancies in the narration of the facts by the members of the raiding team which raises serious doubt regarding the seizure and the learned trial Court without appreciating the same convicted the appellant, as such, the judgment and order of conviction so passed by the trial Court calls for interference and is required to be set aside.

Learned advocate appearing for the State on the other hand has supported the judgment passed by the learned trial Court and submitted that it is a settled proposition of law that if the evidence of the police witnesses are reliable and consistent then in that case there is no reason to disbelieve them. It was further submitted that sufficient opportunity was granted to the accused during cross-examination of the seizing officer as well as the members of the raiding team, who could not be shaken in their cross-examination and were consistent in their version regarding the search and seizure which was conducted. Further so such issue relating to prejudice was raised at the stage of examination under Section 313 of Cr.P.C. by the accused. As such no

interference is called for in respect of the judgment and order of conviction so passed by the learned trial Court and the same should be affirmed.

I have taken into account the materials produced by the prosecution and I find that the police authorities on receipt of specific information apprehended the present appellant and from whom 150 notes of Rs.2,000/- denomination being FICN were recovered. So far as the recovery of the FICN is concerned each of the members of the raiding team have supported the version not only of the seizure but the manner as to how they reached the place, time for which they had to wait for the accused to arrive near the Murshidabad Zilla Parisad Office as also the right pocket of the wearing trouser of the accused/appellant from where the seizure was effected. The said notes were also sent to the Expert at Bhartiya Reserve Bank Note Mudran (P) Limited and on examination the Expert opined the same to be "Low Quality Counterfeit Notes".

Having regard to the manner in which the evidence has been presented by the prosecution in the instant case and a categorical statement being made by the informant/complainant that at the relevant point of time no persons in the locality were available for being a witness, I am of the opinion that the police authorities have to work under different trying circumstances and if they are unable to produce any individual, it would be a duty during the course of cross-examination to shake the version of the witnesses concerned. I also find from the examination under Section 313 of the Code of Criminal Procedure wherein incriminating materials were placed by the learned trial

Court to the accused/appellant, particularly, with regard to the counterfeit currency and except routine denial no specific answers were offered by the accused/appellant. Having considered the same, I am of the view that the prosecution has been able to prove the charges under Section 489C of the Indian Penal Code. As such the finding of the learned trial Court to the extent that the accused is convicted for the offence under Section 489C of the Indian Penal Code is hereby affirmed.

However, the learned trial Court has sentenced the present appellant for a period of 7 (seven) years Rigorous imprisonment and a fine of Rs.5,000/-, i.d. to suffer Simple Imprisonment for 6 (six) months.

Considering that the accused/appellant has already served out 5 (five) years and 7 (seven) months in custody, I am of the view that the sentence so imposed by the learned Trial Court is required to be modified to the extent of the period of custody already suffered by the accused/appellant. However, the fine amount would remain unaltered.

As such if the petitioner is on bail he be discharged from the bail bonds after fine amount is deposited.

Accordingly, CRA 137 of 2021 is **partly allowed**.

Pending connected applications, if any, are also disposed of.

Department is directed to send back the LCR immediately. A copy of the judgment be forwarded to the learned Trial court immediately for compliance regarding the directions given above.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)