

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. 272 of 2019

***Pradip Ghosh
versus
The State of West Bengal***

With

C.R.A. 260 of 2019

***Mithun Chakraborty
versus
The State of West Bengal***

With

C.R.A. 374 of 2019

***Mohidul @ Mohibul Sk.
versus
The State of West Bengal***

For the Appellants : Mr. Y. J. Dastoor,
Mr. Prabir Majumder,
Mr. Snehansu Majumder,
Mr. Debraj Shil,
Ms. Sangeeta Chakraborty.

For the State : Mr. Debasish Roy, Ld. P.P.,
Mr. Saryati Datta,
Ms. Rita Datta.

Heard On : 26.06.2024 & 07.08.2024.

Judgement On : 07-08-2024.

Tirthankar Ghosh, J. :

The present appeal has been preferred against the Judgment and order of Conviction and sentence dated 15.03.2019 and 18.03.2019 passed by the learned Additional District & Sessions Judge, 3rd Court, Krishnagar, Nadia in Sessions Trial No. 2(09)/2018 arising out of Sessions Case No. 236(8) of 2018, wherein the ld. Trial court was pleased to convict the appellants under Sections 489C of the Indian Penal Code and sentenced them to suffer R.I. for four years and to pay fine of Rs. 5,000/- i.d., S.I. for two months.

That Kotwali P.S. case No. 125 of 2018 dated 17.04.2018 was registered for investigation under Sections 489B and 489C of IPC against the appellants Mithun Chakraborty and Pradip Ghosh on the basis of an information submitted by one Ripon Deb, Sub-Inspector of Police of Kotwali P.S. to the Inspector in charge of Kotwali P.S.

The allegations made in the complaint was that on 16.04.2018, while the informant along with force were on patrolling night duty, vide GDE No. 1047 dated 16.04.2018 at about 4.30 hours, a secret information was received by him that illegal procurement and transportation of fake Indian currency notes may take place at Saktingar Panch Matha More. As such, the said information was sent to the Inspector in charge of Kotwali P.S. and, as per his directions a raiding team was constituted to work out the information. At about 4.50 hours, the raiding team reached Saktingar Panch Matha More area and noticed that two persons were standing at Saktingar Panch Matha More.

On being identified by source, the two persons were followed, surrounded and detained. The raiding team offered for being searched, but in spite of the offer, the two persons declined to search the police party and thereafter, the police searched Mithun Chakraborty, from whom six number of fake Indian currency notes were seized from his right pocket and from the other person/accused, namely, Pradip Ghosh, four number of fake Indian currency notes were seized from the left side pocket of his pant. Each counterfeit notes were of Rs.2,000/- denomination and the accused persons brought the same from Chapra to circulated them at Krishnagar area as genuine.

The FICN were seized under proper seizure list duly signed by the witnesses labeled and the accused were arrested under proper seizure memo. The informant, thereafter, requested the Inspector- in-charge to register the case.

Pursuant to the aforesaid information, Kotwali P.S. Case No. 125/2018 dated 17.04.2018 was registered as stated earlier and, the case was assigned to Sub-Inspector, namely, Prakash Guha (P.W.13) for investigation.

The Investigating Officer on being endorsed with the investigation visited the place of occurrence, prepared rough sketch map with index and on the basis of the statement of the accused persons was able to locate another accused, namely, Mohibul Sk. The said accused Mohibul Sk was arrested from Chapra P.S. area and three FICN of Rs.2000/- denomination were seized from him under proper seizure list.

On further statement of said Mohibul Sk search was conducted at his house and two FICN of Rs.2,000/- denomination were recovered beneath his bed cover. The investigating officer, thereafter, recorded the statement of the witnesses and also sent 15 pieces of FICN of Rs.2,000/- denomination to the Bharatiya Reserve Bank Note Mudran (P) Limited.

On receipt of the report, charge-sheet was submitted against all the accused persons, namely, Mithun Chakraborty, Pradip Ghosh and Mohidul @ Mohibul Sk. under sections 489B and 489C of IPC. Pursuant to the charge-sheet being submitted before the jurisdictional court, the case was committed to the court of sessions and the records were finally transmitted to the learned Additional District and Sessions Judge, 3rd Court, Krishnagar, Nadia for consideration of charges, trial and disposal.

The learned trial court on consideration of materials presented by the prosecution by its order dated 29.09.2018 was pleased to frame charges against all the three accused persons under Section 489B and Section 489C of the Indian Penal Code. The contents of the charge were read over to the accused persons to which they pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon 13 witnesses which include PW-1, Gouranga Mondal, is a constable and member of the raiding team; PW-2, Sri Kumar Das, is a constable and member of the raiding team; PW-3, Paritosh Majhi, was a member of the raiding team; PW-4, Anup Kr. Samanta, SI of Police who accompanied the raiding team along with

accused persons, pursuant to their statement and apprehended Mohidul Sk.; PW-5, Prosenjit Sen, is a constable who went to arrest Mohidul Sk.; PW-6, Ripan Deb, is SI of Police who was informant/complainant of the case; PW-7, Sukanta @ Sukanta Bardhan @ Babla, is a seizure list witness in respect of Mohidul Sk.; PW-8, Sahida Sk., is a seizure list witness in respect of Mohidul Sk.; PW-9, Kartick Mandal, is a NVF who accompanied the police force at the time of apprehending Mohidul Sk.; PW-10, Mane Ravindra Dnyanashwar, is Manager of Bharatiya Reserve Bank Note Mudran (P) Limited; PW-11, Paresh Nath Paul, is ASI of Police who received the complaint from PW-6; PW-12, Sk. Matiur Rahaman Sk., is a seizure list witness and PW-13, Prokash Kr. Guha, is the Investigating Officer of the case.

Mr. Dastoor, learned senior advocate appearing on behalf of the appellants contended that the prosecution has failed to prove the case so far as the present appellants are concerned and in fact throughout the trial the appellants have been prejudiced as the charge was framed wrongly/incorrectly, to that effect learned senior advocate pleaded that charge as well as the contents of the charge were running contrary to the same appearing in the contents of FIR/letter of complaint.

According to the appellants, the seizure in this case has not at all been proved. In fact, none of the independent witnesses supported the prosecution case and because of political vendetta the present appellants have been falsely implicated. Additionally, it has been submitted that the learned sessions

court/trial court while delivering the judgement did not consider the principles of law and after conviction erroneously sentenced the appellants for a period of four years.

The learned Public Prosecutor appearing on behalf of the State opposes the contentions and submitted that only because the independent witnesses have turned hostile, the same cannot be a ground for holding the appellants innocent, if the seizures conducted by the police authorities are found to be believable. Further the accused at the time of cross-examination could not create any doubt regarding the seizure being effected from them.

According to the prosecution no probable defence was taken by the accused persons in spite of the court affording ample opportunity regarding the possession of Fake Indian Currency Notes and at the time of examination under Section 313 of Cr.P.C. in routine manner accused persons answered as 'false' or 'innocent'. The accused persons have failed to create any circumstance from where it can be inferred that the accused were not in possession of the counterfeit notes which were seized from them and further notes which were seized were held to be counterfeit notes by the expert i.e., Bharatiya Reserve Bank Note Mudran Private Limited.

Having taken into account the evidence of the witnesses in this case, 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 no interference is called for in respect of the issue relating to the order of conviction of the

accused/appellants are concerned. As such, the finding of guilt of the accused/appellants are confirmed. However, so far as the period of sentence is concerned the same requires consideration in view of the fact that 6 FICN were recovered from Mithun Chakraborty, 4 FICN were recovered from Pradip Ghosh and 5 FICN were recovered from Mohidul @ Mohibul Sk.

The Investigating authority did not carry out further investigation in respect of the source of such recovery, neither charges were framed in that respect. Having considered the number of notes which were seized in connection with the instant case, I am of the view that the accused persons can merely be termed as “carriers”.

In view of the observations made by the Hon’ble Supreme Court in Sk. Mustafa –Vs. – State of Maharashtra, reported in (2019) 16 SCC 726, I am of the opinion that paragraph 7 of the said judgment is applicable to the facts of the present case, which is set out as follows:

“7. After going through the entire record, we find no reason to disagree with the judgment rendered by the trial court or of the High Court. We, therefore, uphold the conviction of the appellants. However, as far as sentence is concerned, it is submitted by the learned counsel for the appellants that the appellants are very poor and they are daily wagers and rickshaw pullers. On examination of the record, it appears to us that the appellants are not the masterminds but are mere carriers used to exchange the counterfeit notes. It is submitted by the learned counsel for the appellants that all the accused have undergone sentence of more than 18 months. We are, therefore, of the view that the sentence already undergone

by the appellants is more than sufficient keeping in view the nature of offence and the role of the appellants.”

Taking into account that the appellant Mithun Chakraborty and Pradip Ghosh were arrested on 17.04.2018 and the appellant Mohidul @ Mohibul Sk was arrested on 20.04.2018 and were in custody till were granted bail on or about 20th September, 2019, thus it is found each of the appellants have undergone custody for a period of 17 months.

Referring to the observations which have been made by the Hon'ble Supreme Court in the aforesaid judgment, I am of the view that the sentence so imposed against the appellants in the facts and circumstances of the instant case requires modification to the extent that the sentence of four years which were imposed by the learned Additional District & Sessions Judge, 3rd Court, Krishnagar, Nadia in Sessions Trial no 02(09)/2018 be reduced to the sentence already undergone by each of them.

The appellants are on bail, they may be discharged from their bail bonds.

Thus, the appeals being CRA 272 of 2019, CRA 260 of 2019 and CRA 374 of 2019 are **partly allowed**.

Pending connected application, if any, is consequently disposed of.

Department is directed to send back the lower court records along with a copy of this judgment immediately to the learned trial court.

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

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

(Tirthankar Ghosh, J.)