

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 215 of 2013

**Manish Roy @ Monish Roy
-Vs-
The State of West Bengal**

For the Appellant : Mr. Musharraf Alam Sk.
(Amicus Curiae) Mr. Sujay Sarkar
Ms. SusmitaGhorai

For the State : Ms. Sreyashi Biswas
Ms. Puja Goswami

Heard on : 19.09.2023, 29.11.2023

Judgment on : 28.02.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of conviction dated 29th January, 2013 passed by the Learned Additional District & Sessions Judge, 6th Fast Track Court, Malda in Sessions Case No. 148 of 2012, corresponding to Sessions Trial Case No. 39 of 2012, arising out of English Bazar Police Station Case No. 793 of 2011 dated 25.11.2011, (G.R. Case No. 4355 of 2011) whereby convicted the appellant for commission of offence punishable under Section 489(C) of the Indian Penal Code, 1860 and sentenced him to suffer rigorous imprisonment for two years and to pay fine of Rs. 1000/- in default to suffer simple imprisonment for six months more.

2. Prosecution story precisely stated that on 24.11.2011 at about 17.00 hrs. in course of mobile duty the complainant, Soumen Chakraborty, Sub-Inspector of Police attached to English Bazar Police Station, Malda received an information from source that one person of Jhaljhalia was moving at Baluchar for purchasing mobile phone who was carrying fake Indian Currency Notes for using the same for illegal purpose. Accordingly, the complainant accompanied by namely constable Bikash Pathak, NVF Arjun Chowdhry rushed to the spot and arrived there at 17.15 hour and ambushed scatteringly, meanwhile, the complainant contacted two local people viz. Pritam Agarwal and Balai Halder and apprised them about the facts. Thereafter, the complainant and other raiding party apprehended the accused and asked him to search but he refused to do so. The complainant searched the accused and recovered three pieces of Fake Indian Currency Notes (FICN) denomination of Rs.1,000/- and two pieces of FICN denomination of Rs.500/- total amount of Rs.4,000/- from his pocket and the accused confessed that the currencies were fake and came to Baluchar to purchase the mobile phone by using the FICN. The complainant seized the same and labelled in presence of the witnesses after preparing proper seizure list duly attested by the witnesses. The complainant arrested the accused and brought him to the police station and submitted written complaint against the accused person.
3. On the basis of written complaint, English Bazar Police Station started case being No.793 of 2011 dated 24.11.2011 under Sections 489(3)/489(C) of the Indian Penal Code against the accused person.

4. After submission of charge-sheet cognizance of the offence was taken and the case was committed under Section 209 of the Code of Criminal Procedure, 1973.
5. The charge under Sections 489(B)/489(C) of I.P.C was framed to which the appellant pleaded not guilty and claimed to be tried.
6. The prosecution examined as many as seven witnesses and exhibited certain documents.
7. The Learned Amicus curiae submitted that :-
 - i. The alleged incident occurred at a place where the appellant was moving at Baluchar for purchasing mobile phone who was carrying the FICN for using the same as illegal purchase, but the local witness PW-2 Pritam Agarwal in his cross-examination deposed that police brought the accused in his shop room and prepared the seizure list them, which was in contradiction of F.I.R.
 - ii. PW-1 Soumen Chakraborty, who lodged the F.I.R. in his cross examination said he did not interrogate the owner of the Mobile shop or the customers although there were many mobile phone shops around the Dakshin Baluchar area which was vital in disposing the case.
 - iii. There were discrepancies in the evidence of the prosecution witnesses.
 - iv. The conviction was bad in law and should be set aside.
8. The Learned Advocate for the State relied on the testimony of PW-4 and PW-6. The appellant was identified on the dock. The seizure list established the seizure of FICN. Though the essential element to constitute an offence under

Section 489(B) of the Indian Penal Code was absent, the prosecution was successful to prove the commission of offence under Section 489(C) of the Indian Penal Code.

9. A circumspection of the prosecution witnesses revealed as follows:-

- i. PW-1 in his deposition stated that on 24.11.2011 he was posted as A.S.I. at E.B. P.S. on that day at 5.00 p.m. he got an information from a source that an illegal business of FICN was going at DakshinBaluchar, Malda. PW-1 along with Bikash Pathak, Arjun Chowdhury went to the DakshinBaluchar. The source identified the accused. They called two local witnesses namely Pritam Agarwal and BalaiHalder, they detained the accused and asked them to search them but he refused to do, so they searched the accused Manish Roy of Jhaljhalia and recovered 3 FICN denomination of Rs.1,000/- and 2 FICN denomination of Rs.500/-. He prepared the seizure list and witnesses and the accused put their signature on the seizure list. The seizure list dated 24.11.12 was shown to PW-1 and other perusing the same PW-1 admitted the signature and handwriting. The seizure list was marked as Ext.1. He labelled the seized FICN. The seized alamat was shown to PW-1 and after perusing the same he admitted and identified the same. The seized FICN was marked as MAT. Ext. 1. PW-1 arrested the accused and brought him to the police station and submitted complaint. It was the said written complaint which was typed by Akbar Ali as per instruction. It was his signature. The written FIR was marked as Ext. 2. The accused confessed that he

brought the FICN for purchasing the mobile phone. The accused was present and identified in Court.

- ii. During his cross-examination PW-1 stated that it was not mentioned in the FIR that Akbar Ali typed the same as per his instruction. On that day he was on mobile duty near Jhaljhalia. After getting the information he lodged G.D. That a fact that he did not prepare the seizure list in the place of occurrence. He did not mention in the Shyam Sunder Satyam Communication in the FIR. The place of occurrence in their crowded area. There were many shops nearby the place of occurrence. He did not call on Ray Kr. Agrawala, Mohan Paul, Pampa Saha to become witness in the S/L. He did not interrogated the owner of the mobile shop or their customer. There were many mobile phone shops around the DakshinBaluchar area. Malanchya Pally was about 5/6 k.m. away from the place of occurrence. Sharazu Prasad Road was elongated about $\frac{3}{4}$ k.m. The exact address of Pritam Agarwal had not been mentioned in S/L. Not a fact that no FICN was recovered from the accused or that he did arrest the accused or that he seized the articles in the police station or that the witness did not sign on the S/L or he had falsely implicated the accused.
- iii. PW-2 in his deposition stated that on 24.08.11 he was posted at EB P.S. on that day he went to DakshinBaluchar with PW-1 in connection with an information regarding FICN. They went to the place of occurrence and remained in ambush condition. The source

pointed out the accused and they detained the accused. PW-1 called on to local witnesses. PW-1 asked the accused to search them but he refused to search. PW-1 searched the accused and recovered 3 FICN denomination of Rs.1,000/- and 2 FICN denomination of Rs.500/-. The accused confessed that he brought the FICN for purchasing the mobile phone. PW-1 prepared paper and brought the accused to the police station. The accused was present and identified in Court.

- iv. During cross-examination PW-2 stated that he had no paper to show that on day he was on duty. He was for the first time disclosed the fact to the Court. They reached at the place of occurrence at 5.00 p.m. and left the place of occurrence on 7.00 p.m. PW-1 searched the accused, recovered the FICN and prepared the paper. PW-1 called on two witnesses. However, PW-2 could not remember their names. He could not state the number of the seized FICN without going through the same. On the day of incident he was interrogated. They brought the accused to the police station and submitted paper in the police station. He put his signature at the police station. He did not tell the Investigating Officer that PW-1 had told to the accused to search but the accused had referred to do the same. He could not state the name of the accused. Not a fact that they did not detain the accused or that they did not search the accused or that PW-1 did not recovered the FICN from the accused. Not a fact that he was addressing false evidence to satisfy his senior officer.

- v. PW-3 in his deposition stated that on 24.11.11 he was in-charge of the EB P.S. On that day he received one written complaint and stated EB P.S. Case No. 793/11 dated 24.11.11 under Section 489B and 489C of the Indian Penal Code. He prepared the formal FIR and signed therein. It was formal FIR which was marked Ext. 3. He also made endorsement and the written complaint. It was his endorsement and signature which was marked as Ext. 2/1.
- vi. During cross-examination PW-3 stated that he had no personal knowledge about the incident except the written FIR.
- vii. PW-4 in his deposition stated that on 24.11.2011 in the evening he was standing outside of his shop. Three police officers came and requested him to be witness of FICN case. He went with them. Police interrogated and searched one person and recovered 3 FICN denomination of Rs.1,000/- and 2 FICN denomination of Rs.500/-. The police prepared the seizure list and he put his signature thereon. The seizure list (Ext.1) was showed to PW-4 and after perusing the same PW-4 identified his signature. The signature was marked as Ext. 1/1. PW-4 identified the accused in the court. That Col. 1 was shown to the witness and after perusing the same PW-4 admitted and identified the same. Police brought the accused to the police station. The accused introduced himself as Manish Roy of Jhaljhalia.
- viii. During his cross-examination PW-4 stated that he was interrogated by the police of EB P.S. He could not state the name of the police officer. At the time of search and seizures he was present. After

search police brought the accused to his shop and prepared the seizure list in his shop room. The seized paper did not have the signature of the witness.

- ix. PW-5 in his deposition stated that on 24.11.2011 he was posted at English Bazar Police Station as constable. On that date he was on mobile patrol duty with PW-1. On getting source information they went to Baluchar. After arrival at the place of occurrence the source pointed out the accused person. Accordingly, they detained him. They called on two local witnesses. On being asked the accused disclosed his name as Manish Roy. They offered the accused person to search them. The accused refused to do so. PW- searched the accused and recovered 3 FICN denomination of Rs.1,000/- and two FICN denomination of Rs.500/-. Thereafter, the complainant prepared the seizure list and the witnesses put their signatures on the seizure list. Then they took them to the police station. PW-5 identified the accused in Court. Mat Exhibits were shown to PW-5 and after perusal of the same the witness identified the same.
- x. During cross-examination PW-5 stated that the seized articles did not bear any signature, seal or any identification mark. He was interrogated by the Investigation Officer after the incident. He could not state the date of his interrogation by the I.O. Not a fact that he did not tell the I.O. that on the date of incident he was on mobile patrol duty and on getting source information they went to Baluchar. Not a fact that he did not tell the I.O. to that effect that they called on

two local witnesses. The entire area of UttarBaluchar was about 4 or 5 k.m. There were many houses, shop rooms were situated in that area. He did not have any document to show that on that day he was on patrol duty.

- xi. PW-6 in his deposition stated that on 24.11.2011 in the evening near S.P. Road Baluchar he and his friend Pritam were chatting. At that time a police vehicle came to them and the police requested him to become the witness in connection with fake currency notes. The accused was standing nearby the said place and the police started interrogating the said accused. The accused disclosed his name as Manish Roy of Jhaljhalia. The police searched the accused person and recovered two FICN denomination of Rs.500/- and three FICN denomination of Rs.1,000/- from the accused. The police prepared the seizure list and he put his signature on the seizure list. The seizure list dated 24.11.2011 was shown to PW-6 and after perusing the same PW-6 identified his signature. The signature of the PW-6 was marked as Ext. 1/2. The Mat Exts. were shown to PW-6 and after perusing the same he identified the same. PW-6 identified the accused in Court.
- xii. During his cross-examination PW-6 stated that the Mat Ext. did not bear any identification mark. It was not possible for him to state that the Mat. Ext. was recovered from the custody of the accused person. The place of occurrence was about 3-4 k.m. away from Mahananda Pally. He was residing at Malanchya Pally. Place of occurrence was

about 2.5 k.m. away from his house. There were so many buildings and shop rooms situated nearby the place of occurrence.

- xiii. PW-7 in his deposition that on 24.11.11 he was posted at English Bazar Police Station as S.I. On that day he was entrusted with the investigation of the case. He visited place of occurrence, prepared rough sketch map with index. It was the said rough sketch map with index which were marked as Ext. 4, 4/1. He recorded the statement of available witnesses. He sent the FICN to Govt. Press, Nasik Road for examination. He collected the report of Currency Note Press, Nasik Road and forwarded letter. It was the said forwarding letter and report which are marked as Ext. 5 and 5/1. The Mat Exts. were shown to PW-7 and after perusing the same he identified the same. He forwarded the accused person to the Court. After completion of investigation he submitted charge-sheet against the accused person under Sections 489B/489C of the Indian Penal Code. PW-7 identified the accused in Court.
- xiv. During cross-examination PW-7 stated that PW-2 did not tell him that they had offered to the accused for searching them but the accused refused to do so. PW-5 did not tell him that on the day of incident PW-5 was on mobile duty and after getting source information they went to the place of occurrence. PW-5 told him that on 14.11.11 in the evening he went to the DakshinBaluchar with police personnel and apprehended one Manish Roy. PW-5 did not tell him that they called on two witnesses. PW-6 did not tell him that at

the time of incident he and Pritam were chatting nearby the place of occurrence. The Mat Exts. did not bear any kind of identification mark, seal and signature of anybody else. Suraj Prasad Road was about 1/2 k.m. long. He did not mention the name in the sketch map. He did not examine RajkumarAgarwala whose shop room is shown in the sketch map. He did not examine the mobile shop owner nearby the place of occurrence. He did not examine Pampa Saha, Madan Paul and ShyamSundarSarda. The S.P. Road was a very thick populated area.

10. In the instant appeal the search and seizure were improper. The confession the appellant being extra-judicial is unsustainable. The FICN were not sent for examination. There were several contradictions and inconsistencies in the evidence of the prosecution witnesses.
11. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal is allowed.
12. The judgment and order of conviction dated 29th January, 2013 passed by the Learned Additional District & Sessions Judge, 6th Fast Track Court, Malda in Sessions Case No. 148 of 2012, corresponding to Sessions Trial Case No. 39 of 2012, arising out of English Bazar Police Station Case No. 793 of 2011 dated 25.11.2011, (G.R. Case No. 4355 of 2011) whereby convicted the appellant for commission of offence punishable under Section 489(C) of the Indian Penal Code, 1860 is set aside.
13. Accordingly, the instant criminal appeal stands disposed of.

14. There is no order as to costs.

15. I record my appreciation for the able assistance rendered by Mr. Sujoy Sarkar, Learned Advocate, as *Amicus Curiae* in disposing of the appeal.

16. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

17. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)