

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 2409 of 2023

Ashadulla Biswas @ Asadullah Biswas.

-vs.-

The State of West Bengal.

Mr. Sobhendu Sekhar Roy,
Mr. Amarendra Chakraborty,
Mr. Argha Banerjee.

...For the Petitioner.

Mr. Rudradipta Nandy,
Ms. Sanjana Saha.

...For the State.

Heard on :09.10.2023, 19.12.2023, 29.01.2024,
16.05.2024, 20.6.2024, 18.07.2024,
22.07.24, 26.07.24, 31.07.24.

Judgment on : 01.08.2024

Tirthankar Ghosh, J:-

The present revisional application has been preferred by the petitioner challenging the order dated 05.06.2023 passed by the learned Sessions Judge, Malda, thereby rejecting the prayer for discharge advanced on behalf of the petitioner under Section 227 of the Cr.P.C. in connection with Sessions Case No. 09 of 2023 arising out of Kaliachak Police Station Case No. 636 of 2016 dated 22.09.2016 under Sections 489B/489C of the IPC and Section 15/16 of the Unlawful Activities (Prevention) Act, 1967.

The brief facts of the case as narrated in the charge-sheet were to the effect that the petitioner while in police custody in connection with Kaliachak P.S. Case No. 05 of 2016 dated 3.01.2016 disclosed regarding the availability of FICN at his native place at Mojampur. Leading to such statement of the accused/petitioner, FICN of Rs.500/- denomination aggregating to 290 pieces were recovered from the wooden cupboard of the bedroom of the accused/petitioner in presence of the witnesses.

The case was thereafter endorsed to the present investigating officer, who examined the witnesses. The investigation was also conducted by two other investigating officers, who concluded the investigation after examining several witnesses and obtaining expert's opinion. Finally, charge-sheet/report under Section 173 of the Cr.P.C. was submitted under Sections 489B/489C of the IPC and Sections 15/16 of the UAPA Act, 1967 (as amended in the year 2008) against the accused/petitioner. A prayer was also advanced for according sanction.

Mr. S. S. Roy, learned advocate for the petitioner, has contended that in view of the reference pending before the Larger Bench and the issues involved therein, the present revisional application may be referred to the Larger Bench. To that effect learned advocate drew the attention of the court to the point of references in CRA 123/2019 (along with other appeals), which are set out as follows:

“1) Whether the aid of ‘presumption’ is available when the seizure of FICN is effected from the possession of an individual?

2) If quantity/volume of FICN is a ground of ‘presumption’, what would be the cut off number for presuming that the ‘possession’ was for the purpose of ‘otherwise traffics in’?

3) When substantial number of FICN are recovered from the possession of a security personnel associated with the Government i.e. Police, CISF, Defence Forces etc. can it be presumed that the ingredients of the term ‘otherwise traffics in’ used in Section 489B of the Indian Penal Code is automatically attracted?

4) Do seizure from the possession of an individual of High Quality Counterfeit Notes (as referred to in the provisions of UAPA, 1967), opined by an Expert automatically attract the provisions of Section 489B of the Indian Penal Code?”

Learned Advocate submits that the issues relating to reference being Nos. 1, 2 and 4 covers his case, so the revisional application may be referred to the Larger Bench.

Mr. Nandy, learned Advocate for the State, has emphasized that the investigating agency forwarded the seized 290 notes to the Bharatiya Reserve Bank Note Mudran (P) Limited, wherein the expert in its opinion dated 07.10.2016 remarked the counterfeit currencies as ‘High Quality Counterfeit Notes’ as per Third Schedule of UAPA Act, 1967. This Court, thereafter, sought for a clarification relating to the issues which led the expert to opine as ‘High Quality Counterfeit Notes’. Based on the aforesaid, a report was submitted

before this court after referring to the Notification issued by the Ministry of Home Affairs dated 18th March, 2014. The said Notification, which is relevant for the purposes of the present revisional application, is set out as follows:

“MINISTRY OF HOME AFFAIRS
NOTIFICATION

New Delhi, the 18th March, 2014

G.S.R. 231(E). – *In exercise of the powers conferred by sub-section (4) of Section 35 of the Unlawful Activities (Prevention) Act, 1967 the Central Government hereby makes the following amendments to the Third Schedule of the aforesaid Act, namely :--*

For the Third Schedule of the Unlawful Activities (Prevention) Act, 1967, the following Schedule shall be substituted, namely:-

"THE THIRD SCHEDULE

[(see clause (b) of Explanation to Section 15(1)]

**SECURITY FEATURES TO DEFINE HIGH QUALITY COUNTERFEIT
INDIAN CURRENCY NOTES**

Watermark(s), Security thread and any one of the following features:

- (a) Latent image;*
- (b) See through registration;*
- (c) Print quality sharpness;*
- (d) Raised effect;*
- (e) Fluorescent characteristics;*
- (f) Substrate quality;*

- (g) Paper taggant;*
- (h) Colour shift effect in OVI;*
- (i) Colour shift effect in security thread."*

On the basis of the aforesaid Notification, the classification in the present case has been done by the expert of the Bharatiya Reserve Bank Note Mudran (P) Ltd to categorise the 290 seized notes as High Quality Counterfeit FICN and the features which were revealed from the said FICN as referred by the experts are as follows:

"The FICN has following features, hence it is categorised as High Quality Counterfeit FICN.

- *Watermark(s) and Security Thread simulation*
- *Latent Image simulation*
- *See Through Close to matching*
- *Raised Effect simulation*
- *Fluorescent Characteristics simulation*
- *Color Shift effect in OVI simulation"*

This Court after obtaining the clarification from the expert, sought for further clarification from the State by an order dated 16.05.2024 regarding the sanction granted under Section 45(2) of UAPA Act, 1967, wherein there was no reflection relating to the seizures and/or opinion of the expert and only referred to the report and recommendation of the Reviewing Authority of the Government of West Bengal. Subsequently, the learned advocate appearing for the State has placed on record before this Court the order relating to sanction

issued by the Special Secretary, Government of West Bengal dated 15th July, 2024, the relevant part of which reads as follows:

“.....Now, therefore, after consideration of the report of the investigating Officer; the expert opinion of the Bharatiya Reserve Bank Note Mudran (P) Limited and the recommendation made by the Reviewing Authority, constituted under the Unlawful Activities (Prevention) Act, 1967, in the matter of the said Kaliachak Police Station Case No. 636 dated, 22.09.2016; the Governor, in exercise of the powers conferred by clause (ii) of sub-section (1) of section 45 of the Unlawful Activities (Prevention) Act, 1967, is satisfied that the charges framed against the said accused person is justified and proper and is therefore pleased to accord sanction for prosecution of the said accused person for allegedly committing offences punishable under section 16 of the said Act.

This issue in supersession of this Department's earlier Order No. 591-I.S.S/2P-08/17 dated 10.04.2017:-.....”

The subject matter of the revisional application for which the petitioner approached this Court relates to the issue relating to reference pending before the Larger Bench. The cases which were referred were all appeals where the trial Court passed their verdict and in some of the cases after framing of charges under Section 489B of IPC, there were acquittal under the said provision because of conflicting judgments of this Court. So the issues relating to reference must have relevance so far as the stage of the present case is concerned. Another issue which needs to be addressed is whether reference

before a Larger Bench would preclude the Court on adjudicating subsequent litigation?

In Harbhajan Singh & Anr. –Vs. – State of Punjab & Anr., (2009) 13 SCC 608 in paragraph 15 it has been observed by the Hon'ble Supreme Court as follows:

“15. Even if what is contended by the learned counsel is correct, it is not for us to go into the said question at this stage; herein cross-examination of the witnesses had taken place. The Court had taken into consideration the materials available to it for the purpose of arriving at a satisfaction that a case for exercise of jurisdiction under Section 319 of the Code was made out. Only because the correctness of a portion of the judgment in Mohd. Shafi [(2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : (2007) 4 SCR 1023 : (2007) 5 Scale 611] has been doubted by another Bench, the same would not mean that we should wait for the decision of the larger Bench, particularly when the same instead of assisting the appellants runs counter to their contention.”

Similar issue was addressed by the Hon'ble Supreme Court in Ashok Sadarangani & Anr. v. Union of India & Ors., (2012) 11 SCC 321, paragraph 29 of the said judgment is relevant which reads as follows:

“29. As was indicated in Harbhajan Singh case [Harbhajan Singh v. State of Punjab, (2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135], the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh case [(2010) 15 SCC 118] need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.”

In *P. Sudhakar Rao & Ors. –Vs. – U. Govinda Rao & Ors*, (2013) 8 SCC 693, the same issue was dealt with by the Hon'ble Apex Court and paragraph 55 of the said judgment held as follows:

“55. Be that as it may, the pendency of a similar matter before a larger Bench has not prevented this Court from dealing with the issue on merits. Even on earlier occasions, the pendency of the matter before the larger Bench did not prevent this Court from dealing with the issue on merits. Indeed, a few cases including Pawan Pratap Singh [(2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] were decided even after the issue raised in Asis Kumar Samanta [(2007) 5 SCC 800 : (2007) 2 SCC (L&S) 262] was referred to a larger Bench. We, therefore, do not feel constrained or precluded from taking a view in the matter.”

Mr. Roy, learned advocate appearing for the petitioner has relied upon *Prahalad Prabhudas Patel & Ors. –Vs. – State of Gujarat*, (2007) 3 SCC (Cri) 157 and drawn the attention of this Court to paragraphs 4 and 5 of the said judgment which reads as follows:

“4. In criminal appeal arising out of SLP (Crl.) No. 1357 of 2006 the appellants have impugned the order of the High Court dated 9-3-2006 dismissing their application for discharge under Section 227 of the Code of Criminal Procedure. We notice that criminal appeals giving rise to SLPs (Crl.) Nos. 1357 of 2006, 1568 of 2006 and 1570 of 2006 were heard together by the High Court but the appeal giving rise to SLP (Crl.) No. 1357 of 2006 was disposed of by a separate judgment. If criminal appeals arising out of SLPs (Crl.) Nos. 1568 of 2006 and 1570 of 2006 are ultimately decided in favour of the appellants, nothing may survive for consideration in the criminal appeal arising out of SLP (Crl.) No. 1357 of 2006. However, if the appellants do not succeed in the

aforesaid two appeals, the Court may consider the merit of criminal appeal arising out of SLP (Crl.) No. 1357 of 2006.

5. *In these circumstances, we direct that criminal appeal arising out of SLP (Crl.) No. 1357 of 2006 may also be heard by a larger Bench along with appeals arising out of SLPs (Crl.) Nos. 1568 of 2006 and 1570 of 2006 or soon after the disposal of those two appeals, as the Hon'ble the Chief Justice may direct.”*

I have taken into consideration all the four judgments of the Hon'ble Apex Court particularly the judgment relied upon by the petitioner which involved the question relating to the effect of recommendation made by the Revenue Committee under the provision of Prevention of Terrorism Act, 2002 as amended by Ordinance, 2003. Similar question was involved in the case relating to Prahalad Prabhudas Patel (supra) and as such the same was referred to the Larger Bench. However, the present revision application deals with a separate set of situation. To deal with the same relevant provision of the UAPA, 1967 (as amended) is to be taken into account in the background of the present case.

Section 15 of UAPA, 1967 defines Terrorist Act wherein Sub-section (1)(a)(iii-a) set out as follows:

“15. Terrorist act.— (1) (a).....

[(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]”

Explanation (b) to the said Section reads as follows:

“Explanation.—For the purpose of this sub-section,—.....

(b) “high quality counterfeit Indian currency” means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates compromises with the key security features as specified in the Third Schedule.]”

Further, “The Investigation of High Quality Counterfeit Indian Currency Rules, 2013”, in Rule 5 (a) states that:

“5. Damage to the monetary stability of India.—.....

(a) seizure is of high quality counterfeit Indian currency of face value of such threshold amount as may be decided by the Central Government from time to time, not being less than Rupees One lakh:.....”

In the instant case there has been seizure of 290 pieces of Rs. 500/- denomination FICN which the expert opined as ‘High Quality Counterfeit Indian Currency’ and the reasons for the same has been dealt with earlier. So the seized quantum of FICN under such circumstances being more than ceiling limit under the Rules do attract the provision of UAPA, 1967.

The issue then raised relate to the sanction order which has been lately granted on 15th July, 2024 in supersession of the earlier order dated 10.04.2017. The earlier sanction order and its contents with regard to the provision of Section 45 of the UAPA, 1967 has been dealt with earlier. However, as the sanction order has been lately granted and Section 465 Cr.P.C. provide that irregularity in any sanction for prosecution should not affect any finding

or sentence, I am of the view that as the evidence in the case has not commenced, no prejudice has resulted for causing any failure of justice.

Consequently, no interference is called for in respect of order dated 05.06.2023 passed by the Learned Sessions Judge, Malda.

Thus, CRR 2409 of 2023 is dismissed.

Pending connected applications, if any, are consequently dismissed.

Interim order, if any, is stands vacated.

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

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities. .

(Tirthankar Ghosh, J.)