

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

Present:

The Hon'ble Justice Tirthankar Ghosh

***C.R.A. (SB) 103 of 2022
with
CRAN 2 of 2022***

***Md Israil
versus
The State of West Bengal***

For the Appellant : Mr. Ayan Bhattacharjee,
Mr. A. Choudhury.

For the State : Ms. Amita Gaur.
Ms. Jonaki Saha.

Heard On : 20.06.2024 and 16.07.2024.

Judgement On : 16-07-2024.

Tirthankar Ghosh, J. :

The present appeal has been preferred challenging the judgement and order of conviction and sentence dated 22.02.2022 passed by learned Additional Sessions Judge, Islampur, Uttar Dinajpur in Sessions Case No. 150/2013 (Sessions Trial No. 27/2014) convicting the appellant for offences punishable under Section 489C of the Indian Penal Code and thereafter sentencing the appellant to suffer rigorous imprisonment for a period of four

years and to pay a fine of Rs.10,000/-, in default to suffer simple imprisonment for one month.

The genesis of the case was on the basis of a communication made by one Keshav Dutt, Deputy Commandant, SHQ BSF KNJ, Panjipara, Uttar Dinajpur to the Officer-in-Charge, Goalpokhar Police Station. It was alleged that Md. Israil was intercepted after being suspected of carrying Fake Indian Currency Notes (FICN) and on search the following 12 numbers of suspected FICN of denomination of Rs.500/- each were recovered/seized from him :

9CN865045, 9CN865046, 9CN865051, 9CN865052, 9CN865053,
9CN869892, 9CN869893, 9CN871401, 9CN871540, 9CN871541,
9CN871542 and 9CN871543.

Consequently a written complaint was lodged with the police station on 18.11.2009.

On receipt of such information and on being assigned, the Investigating Officer of the case commenced the investigation and after collecting materials submitted charge-sheet under Sections 489B and 489C of the Indian Penal Code against the appellant.

Records reflect that that the learned Additional Sessions Judge, Islampur, Uttar Dinajpur was finally assigned to conduct the trial being Sessions Case No. 150/2013 (Sessions Trial No. 27/2014). The learned trial court framed charges against the appellant under Sections 489B and 489C of the Indian Penal Code. The contents of the charges were read over to the appellant to which he pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon the following nine witnesses :

PW-1, Shri Pada Roy, ASI of Police attached to Panjipara Outpost; PW-2, Md. Abbas who was also a constable at Panjipara Outpost on the relevant date; PW-3, Md. Jahid Hussain, seizure witness; PW-4, Indrajit Kumar, BSF Personnel who was a member of raiding team; P.W.5, Anand Kr. Rai, ASI of BSF Intelligence Branch, was a member of the reading team; P.W.6, Surendra Kumar, one of the BSF Personnel, was a member of the reading team; P.W.7, B.V. Syam Prasad, an officer attached with the office of the Bharatiya Reserve Bank Note Mudran Pvt at Mysore was a member of the reading team; P.W.8. Keshab Dutta, one of the BSF Personnel, who lodged the complaint, was a member of the reading team also and P.W.9, is the investigating officer of the case.

The prosecution in order to prove its case has relied upon the follows documents:

1. Signature of Jahid Hussain on seizure list which has been marked as Exhibit-1. Signature of Indrajeet Kumar on seizure list which has been marked as Exhibit-1/1. LTI of Israil on seizure list which has been marked as Exhibit-1/2. The seizure list dated 18-11-2009 has been marked as Exhibit-1/3:

2. Signatures of Jahid Hussain on 12 currency notes been marked as Exhibit-2 series i.e. Exhibit-2 to Exhibit-2/11.

3. Signatures of Indrajeet Kumar on 12 currency notes been marked as Exhibit-3 series i.e. Exhibit-3 to Exhibit-3/11.

4. LTIs of apprehended person on 12 currency notes been marked as Exhibit-4 series i.e. Exhibit-4 to Exhibit-4/11.

5. The written complaint has been marked as Exhibit-5.

6. Report of Bharatiya Reserve Bank Note Mudran (P) Limited has been marked as Ext-6. Envelope of Report of Bharatiya Reserve Bank Note Mudran (P) Limited has been marked as Ext-6/1.

7. Signature of PW-8 seizure in the list in respect of re-seizure which has been marked as Ext-7.

8. Requisition for police assistance marked as Ext-8.

9. Formal FIR has been marked as Ext-9.

10. Endorsement of R.O. on written complaint has been marked as Ext-10 -

11. Second seizure list dated 18-11-2009 in respect of re-seizure has been marked as Ext-11.

12. Rough sketch map and index of the P.O have been marked as Ext-12 and Ext-12/1.

Indian Fake Currency Notes (12nos) have been marked as Mat. Exhibit-I.

I have considered the submissions advanced by Mr. Bhattacharjee, Id. Advocate appearing on behalf of the appellant, who challenged the search and seizure which was effected at the instance of the BSF personnel and the subsequent investigation having been carried on.

According to the Id. Advocate for the appellant, so far as the search and seizure is concerned, the independent witness did not support the

prosecution's case and there is nothing on record to prove the issue relating to search and seizure which will inspire the confidence of the Court.

Further, the report of the expert has been challenged by the appellant on the ground that if the same was deceptively similar and the number of FICN being only 12 (twelve), there is every possibility of an individual being mis-lead in course of transaction.

Ld. Advocate emphasises that the prosecution has failed to prove its case, and, as such, the appellant is entitled to be acquitted of the charges.

Ms. Gaur, ld. Advocate for the State, opposed the contentions advanced by the ld. Advocate for the appellant and submitted that the prosecution has proved the case beyond reasonable doubt and there are clinching evidences which proves the case against the present appellant. The search and seizure itself reflects that the appellant was in possession of FICN at a place which is commercially viable and he was intercepted on the basis of secret information. No plausible reason was offered by the appellant when he was intercepted or at any stage of the trial. Even, at the stage of Section 313 of the Cr.P.C., the plea of the appellant was one of innocence and that nothing was recovered from him.

I have considered the submissions advanced by the ld. Advocate appearing for the appellant as well as the ld. Advocate appearing on behalf of the State. On an assessment of the evidence, I am of the view that so far as the issue relating to search and seizure is concerned, the same has been proved by the prosecution beyond reasonable doubt, as, there has been consistent

evidences regarding search and seizure being effected and the issue relating to prejudice which has been raised by the appellant was not of such nature that it would overcome the balance of convenience for disbelieving the case of the prosecution.

Consequently, the judgment and order of conviction under section 489C of the IPC so passed by the learned Additional Sessions Judge, Islampur, Uttar Dinajpur in Sessions Trial No. 27/2014 arising out of Sessions Case No. 150 of 2013, is hereby affirmed.

However, after going through the overall facts of the case, I find that 12 currency notes were seized from the possession of the present appellant and there is nothing on record to show that he was not more than a carrier.

Having taken the same into consideration and the decision of the Hon'ble Supreme Court, *Sk. Mustafa -vs.- State of Maharashtra* reported in (2019) 16 SCC 726, where, in similar set of circumstances, the Hon'ble Apex Court was pleased to consider the issue relating to sentence, I am of the view that the sentence so imposed by the ld. Trial court to suffer R.I. for a period of four years and fine of Rs.10,000/- should be reconsidered in view of the observations made in the aforesaid judgment. The relevant part of said judgment 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.”

The records of the case reflect that the judgment was delivered by the Id. Trial Court in the year 2022 and since February, 2022 the appellant is in custody. In course of investigation the appellant was in custody from 19.11.2009 to 18.12.2010 i.e. for four months. So the appellant overall has been detained for a period of more than two years and eight months.

Having taken the period of sentence already undergone by the present appellant in the background of the facts of the case, I am of the view that further detention of the appellant is unwarranted.

In view of the aforesaid discussions, this court arrives at the following decisions:

- (1) The order of conviction and sentence under section 489C passed by the Id. Addl. Sessions Judge, Islampur, Uttar Dinajpur in Sessions Trial No. 27/2014 arising out of Sessions Case No. 150 of 2013 is hereby affirmed.

(2) So far as the sentence so imposed by the Id. Trial court to suffer rigorous imprisonment for four (4) years and pay fine of Rs.10,000/- in default, to suffer S.I. for one month, is reduced to the sentence already served by the present appellant.

Accordingly, if the appellant is not wanted in connection with any other case or cases, the State Authorities/Jail Authorities are directed to release the appellant immediately.

The appeal being CRA (SB) 103 of 2022 is **partly allowed**.

The application being CRAN 1 of 2022 & CRAN 2 of 2022 have become infructuous in view of the observations made above.

Department is directed to send back the lower court records immediately.

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.)