

Form No.J(1)

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A.554 of 2019

***Monoruddin Mallick @ Monir Sk.
versus
The State of West Bengal***

For the Appellant : Ms. Sreyashee Biswas

For the State : Mr. Debaish Roy, Ld. P.P.
Ms. Faria Hossain
Ms. Sujata Dase

Heard On : 26.07.2024

Judgement On : 26.07.2024

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order of conviction and sentence dated 27.08.2019 passed by the learned Additional Sessions Judge, 1st F.T.C., Kandi, Murshidabad in connection with S.T. No. 07(01)/2019 arising out of S.Sl. (CIS) No.274 of 2018 wherein the learned trial court on conclusion of trial was pleased

to convict the appellant guilty for the offence punishable under Sections 489B and 489C of the IPC and sentenced him as follows:

1. For the offence under Section 489B of the IPC – rigorous imprisonment for four years and fine of Rs.5,000/- i.d., S.I. for six months.
2. For the offence under Section 489C of the IPC – rigorous imprisonment for three years and fine of Rs. 5,000/- i.d., S.I. for six months.

The genesis of the case relates to Burwan P.S. Case No. 494 of 2018 dated 14.08.2018. The case was registered for investigation on the basis of an information lodged by ASI Aminul Islam with the Officer-in-charge, Burwan Police Station, Murshidabad. The gist of the allegations against the appellant was that on receipt of information, the informant proceeded to work out on the same and on 14.08.2018 at about 21.45 hours, he found a person coming from the Duckbanglow side and as per instructions he was intercepted in presence of the witnesses and on search, few notes of Rs.2,000/- denomination were recovered from his trousers. On completion of search, 12 pieces of FICN each of denomination of Rs.2,000/- were recovered. Accordingly, the said 12 pieces of FICN of Rs.24,000/- were seized and the accused was arrested and taken to the police station. On the basis of such complaint, the

aforesaid case was registered for investigation under Sections 489B and 489C of the Indian Penal Code.

The investigating agency on conclusion of investigation submitted charge-sheet under Sections 489B and 489C of the Indian Penal Code. The case was thereafter committed to the court of sessions and the records were transmitted to the learned Additional Sessions Judge, 1st F.T.C, Kandi, Murshidabad. Charges were framed under Sections 489B and 489C of the Indian Penal Code and the charges were read over to the accused/appellant who pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon seven witnesses which included P.W.1- Aminul Islam, complainant; P.W. 2 – Prasanta Mondal, ASI of Police and member of the raiding team; P.W.3 – Atul Singha, constable and the member of the raiding team; P.W.4- Sosti Das, seizure list witness; P.W.5- Tapas Das, seizure list witness; P.W.6 – Assistant General Manager of Bharatiya Reserve Bank Note Mudran (P) Ltd.; P.W. 7 – Tanmay Guita, S.I. of Police and Investigating officer of the case.

I have considered the evidence of the 7 witnesses so relied upon by the prosecution and I find that 12 FICN of Rs.2000/- were seized which according to the report of Bhartiya Reserve Bank Note Mudran (P) Ltd

which is marked as ext. 7 reflects that “they are low quality counterfeit currency notes”.

The prosecution evidence do not reflect that any efforts were taken by the Investigating Agency to unearth as to wherefrom such notes were obtained.

Having considered the quantity of FICN so recovered from the possession of the appellant and the manner in which it was obtained, the same, according to this court, do not satisfy the requirements of Section 489B of the Indian Penal Code.

Accordingly, the appellant is acquitted of the charges under Section 489B of the Indian Penal Code.

I have also taken into account the judgement of the Hon’ble Apex Court in Sk. Mustafa -vs- State of Maharashtra reported in (2019) 16 SCC 726. Paragraph 7 of the said judgment aptly applies to the facts of the present case which is set out below:-

“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.”

In view of the findings of the Hon’ble Apex Court, I am of the opinion view that the judgment of the trial court so far as it relates to

finding of guilt under Section 489C IPC cannot be interfered with. Further, records reflect that the appellant was in custody from 14th August, 2018 till 27th August, 2019 when the judgment was delivered by the learned trial court and was continuing in custody till he was granted bail by the appellate court on 8th July, 2021.

Having considered the time period for which in connection with the instant case the appellant has been detained i.e., for a period of two years nine months, I am of the view that the period so suffered by the appellant is sufficient and is reduced to the sentence already undergone. The appellant is on bail. Accordingly, he is discharged from his bail bonds.

Thus, the instant appeal being CRA (SB) 554 of 2019 is 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.

Department is directed to communicate this order to the concerned learned trial court immediately.

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 judgement, if applied for, be given to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)