

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

CRA (DB) 174 of 2022

With

CRAN 1 of 2022

Suman Kumar & Anr

-Vs-

The State of West Bengal

For the Appellant : Mr. Arun Naskar, Adv.,
Mr. Girish Chandra Gupta, Adv.

For the State : Mr. Debasish Roy, Id. P.P.,
Ms. Sreyashee Biswas, Adv.

Heard on : 22.01.2024

Judgment on : 22.01.2024

Joymalya Bagchi, J. :-

1. Appeal is directed against the judgment and order dated 09.03.2022 (wrongly described as 09.03.2020) passed by the learned Additional District and Sessions Judge, Fast Track Court, Calcutta in Sessions Trial No. 01 (January) 2020 arising out of Sessions Case No. 41 of 2019 convicting the appellants for commission of offence punishable

under Sections 489B/489C/120B of the Indian Penal Code and under Section 25(1B)(a) of the Arms Act and sentencing them to suffer rigorous imprisonment for nine years each and to pay fine of Rs.50,000/- each, in default, to suffer simple imprisonment for one year more for the offence punishable under Section 489B of the Indian Penal Code, to suffer rigorous imprisonment for five years each and to pay fine of Rs.10,000/- each, in default, to suffer simple imprisonment for one year more for the offence punishable under Section 120B/489C of the Indian Penal Code, to suffer simple imprisonment for three years each for the offence punishable under Section 25(1B)(a) of the Arms Act.

2. The charges framed against the appellants are as follows:-

CHARGES WITH FIVE HEADS

[No.XXVIII (II), SCHEDULE V, Act V, 1998]
(Sections 221, 222, 223, Code of Criminal Procedure)

(1) Name and office of Magistrate, & etc.	I, Annada Sankar Mukhopadhyay, Additional District & Sessions Judge, 1 st Fast Track Court, Bichar Bhawan, Calcutta hereby charge you
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(2) Name of accused person	1) Rishi Kumar and 2) Suman Kumar as follows :
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Firstly – that on or before 04.04.2019 or before you along with other accused persons, entered into a criminal conspiracy, amongst yourselves and with other racketeers and pursuant to the said criminal conspiracy trafficking high quality counterfeit Indian Currency Notes knowing fully well that the same are to be forged and counterfeit and with intention to use the same as genuine.

and thereby committed an offence punishable under **Section 489B read with section 120B of Indian Penal Code**, and within the cognizance of this Court of Sessions.

Secondly – that on the same date, time and place you along with others had entered into a criminal conspiracy and procured and possessed from your two companions namely Md. Terjan and Sadequat Ansari total 20,000/- and Rs.18,000/- of High Quality Counterfeit Indian Currency Notes of Rs.2,000/- denomination each.

and thereby committed an offence punishable under **Section 489C read with section 120B of Indian Penal Code**, and within the cognizance of this Court of Sessions.

Thirdly – That you, on the same date, time and place were carrying 10 pieces of unfinished .32(7.65 mm) semi automatic pistol recovered from your possession at Dharmatala Bus Stand and failed to produce any license for carrying the said fire arms.

and thereby committed an offence punishable **under Section 25(1a)/25(1B)(a) of Arms Act**, and within the cognizance of this Court of Session

3. Appellants pleaded guilty to the said charges and were accordingly convicted and sentenced, as aforesaid.

4. Learned Advocate for the appellant assails the judgment and order only on the point of sentence. He contends that no Fake Indian Currency Notes (for short FICNs) were recovered from the appellants.

Recovery was made from one Md. Tarjan and Sadaqat Ansari who were sentenced to suffer rigorous imprisonment for three years and two years respectively for the charges under Sections 489B/120B and 489C/120B of the Indian Penal Code respectively.

5. It is also argued though the sentences were directed to run concurrently in respect of earlier convictions, no such direction has been passed in the impugned judgment.

6. Learned Public Prosecutor with Ms. Biswas appears for the State. They contend in absence of specific direction the sentences are to run consecutively.

7. I have considered the materials on record. Charges framed against the appellants show they had accompanied the other accused viz., Md. Tarjan and Sadaqat Ansari from whom 20,000 and 18,000 high quality counterfeit Indian Currency Notes of 2000 denominations each were recovered. Firearms were recovered from the appellants.

8. It may be pertinent to note the said Md. Tarjan and Sadaqat Ansari had pleaded guilty and were sentenced to suffer three years rigorous imprisonment and fine of Rs.5,000/- each, in default, to suffer rigorous imprisonment for two months more for the offence punishable under Section 489B/120B of the Indian Penal Code and rigorous imprisonment for two years and a fine of Rs.5,000/- each, in default to suffer rigorous imprisonment for two months more for the offence punishable under Section 489C/120B of the Indian Penal Code. Similar

sentences were imposed on other convicts viz., Sk. Ali Hossain @ Munna and Md. Samim Alam and Md. Sonu.

9. However, appellants on similar charges have been saddled with much heavier sentences.

10. I have scanned the impugned judgement. No aggravating circumstance justifying enhanced sentence upon the appellants is discernible therefrom. It is also relevant to note the sentences in respect of other convicts were directed to run concurrently. Under such circumstances, we are of the opinion sentences imposed on the appellants in respect of the self-same offences are disproportionately high in comparison to those imposed on the other convicts.

11. Hence, I am inclined to modify the sentences imposed upon the appellants.

12. Accordingly, it is directed that the appellants shall suffer rigorous imprisonment for three years each and to pay fine of Rs.5,000/- each, in default, to suffer simple imprisonment for one year more for the offence punishable under Section 489B of the Indian Penal Code, to suffer rigorous imprisonment for three years each and to pay fine of Rs.5,000/- each, in default, to suffer simple imprisonment for one year more for the offence punishable under Section 120B/489C of the Indian Penal Code, to suffer simple imprisonment for three years each for the offence punishable under Section 25(1B)(a) of the Arms Act. All the sentences shall run concurrently.

13. The appeal is allowed to the aforesaid extent.

14. Connected application being CRAN 1 of 2022 is also disposed of.

15. Period of detention suffered by the convicted appellants during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon them in terms of Section 428 of the Code of Criminal Procedure.

16. As the appellants have served out the substantive sentence, in the event they pay the fines awarded, they shall be released forthwith, if not wanted in any other case.

17. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once.

18. Photostat certified copy of this judgment, if applied for, shall be made available to the appellant within a week from the date of putting in the requisites.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

as/ss