

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

Present:

The Hon'ble Justice Tirthankar Ghosh

CRA 606 of 2019

***Jakaria Ali alias Jakir*
versus
The State of West Bengal**

For the Appellant : Mr. Sandip Bandyopadhyay

For the State : Mrs. Anasuya Sinha

Heard On : 13-08-2024

Judgment On : 13.08.2024

Tirthankar Ghosh, J. :

The present appeal has been preferred against the Judgment and Order of conviction and sentence dated 28-08-2019 and 29-08-2019 passed by the learned Additional District and Sessions Judge, 5th Court, Malda in Sessions Trial No. 34 of 2018 arising out of Sessions Case No. 141 of 2018 wherein the learned trial court was pleased to convict the appellant and sentenced him to suffer rigorous imprisonment for 5(five years) and to pay a fine of Rs.10,000/- i.d., rigorous imprisonment for another six months for the offence punishable under Section 489C of the Indian Penal Code.

English Bazar P. S. Case No. 1143 of 2017 dated 21-12-2017 was registered for investigation under Sections 489B/489C of the Indian Penal Code pursuant to a complaint submitted by the S.I. of Police, namely, Shyam Sunder Saha with the Inspector-in-Charge, English Bazar Police Station on 21-12-2017.

The allegations made in the communication made to the Inspector-in-Charge, English Bazar PS were to effect that on receipt of telephonic information, the informant proceeded along with the force at around 16-10 hrs., and reached at Himalaya Tibetan Market within the jurisdiction of English Bazar PS. The raiding team disclosed their identity to local witnesses namely, Jayanta Mahalder (PW-5) & Karan Harijon @ Kiron (PW-6) for witnessing the seizure. On being identified by source, the suspect was surrounded and he confessed that he was possessing Fake Indian Currency Notes. The raiding team searched the suspect and on searching 13 pieces of Fake Indian Currency Notes of Rs.2000/- denomination were recovered from the possession of the suspect along with the Rs.540/- Indian Currency Notes (valid Indian Currency Notes). The Fake Indian Currency Notes, along with the Indian Currency Notes were seized under a proper seizure list which was labeled at the spot. The contents of the same were explained to the accused and thereafter he was arrested after issuing memo of arrest. He

was informed about the grounds of his arrest and after informing his relative he was taken into custody.

On the basis of the aforesaid information being furnished before the Inspector-in-Charge, English Bazar Police Station as aforesaid, English Bazar P. S. Case No. 1143 of 2017 dated 21-12-2017 was registered for investigation and the case was entrusted to lady Inspector, Kandara Rai (PW-7).

The Investigating Officer on being endorsed with the case examined the complainant and recorded the statement of the witnesses including those who signed the seizure list and handed over the seized alamats to the Malkhana-in-charge. The members of the raiding team were also examined. The Investigating Officer thereafter visited the place of occurrence, prepared the rough sketch map with index and thereafter recorded the statement of the seizure witnesses u/s.161 Cr.P.C in its own handwriting. The seized currency notes were sent to Bharatiya Reserve Bank Note Mudran Pvt. Ltd., Salboni and after receipt of the report, charge-sheet was submitted before the jurisdictional court. The case was thereafter committed to the court of sessions and thereafter the proceedings along with the materials/records were transmitted to the learned Additional District Judge, 5th court, Malda who after considering the materials collected by the Investigating Agency proceeded to frame charges under Sections 489B and 489C of the Indian

Penal Code against the present appellant. The contents of the charge 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 PW-1, namely, Md. Khairul Alam, constable of police and a member of the raiding team ; PW-2, namely Naresh Thakur, Home Guard of English Bazar Police Station who was part of the raiding team ; PW-3, Biswanath Chakraborty, constable of police attached to the English Bazar Police Station who went to submit the seized FICN at Bharatiya Reserve Bank Note Mudran Private Limited ; P.W-4, Shyam Sundar Saha, complainant of the case and Sub-Inspector of Police of English Bazar Police Station ; PW-5, Jayanta Mahalder, seizure list witness ; PW-6, Karan Harijan, seizure list witness ; PW-7, Kandara Rai, Investigating Officer of the case.

PW-1, Khairul Alam deposed that he was Constable of Police attached to English Bazar Police Station and on 21-12-2017 along with Sub-Inspector of Police, Shyam Sundar Saha (PW-4) he had been to the Himalaya Tibetan Market to work out information. On reaching the aforesaid place, they found that on seeing them a person attempted to flee away when he was chased and apprehended. Thereafter, the person was searched and on his search, 13 pieces of FICN were recovered, a seizure list was prepared and the seized currency notes were seized and

labeled and thereafter sealed. He identified his signature which was marked as Ext.-1/a. The sealed packet was shown to the witness which contained the seal of Bharatiya Reserve Bank Note Mudran Pvt. Ltd., and after opening the same, a report and another sealed packet could be found. The second packet contained a label and 13 pieces of Rs.2000/- denomination. The said FICN were marked as MAT Ext. I. On perusal of the label, the signature of the witness was found, he identified his signature and the same was marked as MAT Ext-II/a. The witness identified the accused in court.

PW-2, Naresh Thakur, is Home Guard attached with the English Bazar PS and he deposed that he accompanied the raiding team with the SI of Police, Shyam Sundar Saha (PW-4) and had been to the Himalaya Tibetan Market. On reaching there they apprehended a person and he was taken to the police station. He also deposed that on searching the person, 13 pieces of FICN were recovered from his possession. A seizure list was prepared and thereafter he signed the seizure list. He identified his signature which was marked as Ext-1/b. On perusal of the label which is bearing his signature, he identified the same which was marked as MAT Ext-II/b. He identified the accused in court.

PW-3, Biswanath Chakraborty, is Constable of Police attached to English Bazar Police Station who deposed that he was directed by the Investigating Officer of the case to bring the articles which were Fake

Indian Currency Notes and were earlier sent to Bharatiya Note Mudran Private Limited, Salboni along with the report. He was authorized for the said purpose and Command certificate was issued.

PW-4, SI of Police namely Shyam Sundar Saha is the complainant of the case. He narrated the incident in the same manner as was submitted along with the written complaint. Additionally, in course of evidence he identified the MAT Ext.I which related to the seized FICN. He identified his signature in the labels which he claimed that to have been prepared in his own handwriting and as such was marked as MAT Ext.II. The witness also identified the seizure list which was prepared and signed by him which was marked as Ext.-1. He identified his signature in the letter of complaint addressed to the English Bazar PS which was marked as EXT. -2. He identified the accused in court.

PW-5 is Jayanta Mahalder. He identified his signature in the seizure list which was marked as Ext. 1/c and submitted that he signed the document as per request of the police authorities and he was never interrogated by them. He was declared as hostile witness by the prosecution.

PW-6 is Karan Harijon @ Kiron. He identified his signature in the seizure list which was marked as Ext. 1/d. He deposed that a person was caught along with the FICN and then this document was prepared which contained 13 pieces of Rs.2000/- denomination of FICN. The

occurrence took in and around Bhutiya Market. The witness further stated that police interrogated him in respect of the incident which had taken place. He identified MAT Ext I i.e., 13 pieces of Rs.2000/- Fake Indian Currency Notes. He also stated that Indian Currency amounting to Rs.540/- was also seized from the accused.

PW-7, Kandara Rai, is a lady Sub-Inspector of police who referred to the chronology in which the investigation was carried out and identified the formal FIR as well as the letter of complaint, the report received from Bharatiya Reserve Bank Note Mudran Private Limited which was marked as Exhibit-5 and gave a narration regarding the witnesses who were examined in course of investigation as well as relied upon the sketch map along with index which was prepared in connection with the instant case in respect of the place of occurrence.

Learned advocate appearing for the appellant submits that in the present case, the prosecution has failed to prove the case as the evidence which has surfaced is basically from the witnesses who belonged to the police department and/or interested witnesses. In fact, a neutral person was made a seizure list witness who has turned hostile. According to him, as the appellant has been convicted under Section 489C of the Indian Penal Code, there must be emphasis on possession in this case. According to the learned advocate, possession has not been proved. It has further been submitted that so far as the factum and

preparation of the seizure list is concerned, different witnesses relied upon by the prosecution has narrated the events in a separate manner and as such, the chronology of the fact which has been narrated by the prosecution witnesses do not inspire confidence to hold that the present appellant was involved with the alleged offence. It has also been submitted that the learned trial court failed to ask any incriminating materials regarding the counterfeit currency notes to the appellant at the stage of Section 313 of the Code of Criminal Procedure thereby depriving the appellant of his right to answer the evidence appearing against him including the charges for which he has been asked to face the trial. Lastly, it was submitted that the prosecution having failed to prove the case beyond reasonable doubt, the accused/appellant is entitled to be acquitted.

Mrs. Sinha, learned advocate appearing for the State, on the other hand, refuted the contentions advanced on behalf of the appellant and submitted that from the inception since receipt of the secret information, the police authorities were vigilant and adhered to the provisions of law which would be reflected from the complaint itself when in respect of the independent witnesses also police authorities offered for searching them. The accused was also offered for searching the raiding team. The seizure list witnesses did not dispute their signatures and there were labels in the 13 FICNs which were seized and sent to the expert. The expert's

report categorically states that the seized FICNs were low quality counterfeit notes which were of Rs.2000/- denomination. The seizure list was also marked as exhibit and there was no objection from the side of the defence in respect of the seizures so effected. Learned advocate drew attention of the Court to the contents of the seizure wherein she submitted that most of the numbers appearing in the counterfeit currency are of the same number in three series. Attention of the Court was drawn to the examination of the accused under Section 313 of the Code of Criminal Procedure particularly with regard to the questions being asked while confronting the witness in respect of the evidence which has been deposed before the court by the complainant PW-4 viz. Shyam Sundar Saha. Attention of the Court was drawn to question number 6 as also question number 8 wherein reference was made in respect of the report also submitted by the expert of Bharatiya Reserve Bank Note Mudran Private Limited. It was also pointed out before this Court that the learned trial court also referred to the evidence of PW-1 and PW-2 relating to the seizure list and in question numbers 3 and 4 of Section 313 of the Code of Criminal Procedure. However, the witness did not prefer to give any specific answer, but in a stereotype manner only said that he was innocent.

It was submitted on behalf of the State that having regard to the nature of evidence which has surfaced in the present case, there is no

scope of interfering with the order of conviction and sentence passed by the learned trial court and as such, the same should be affirmed.

I have considered the submissions advanced by the learned advocates for the appellant and the State and on an assessment of the same, I am of the view that no plausible defence was taken in respect of the seizure of 13 pieces of FICN of Rs.2000/- denomination which were recovered from the possession of the present appellant. No objection was raised when the documents connected with the instant case were admitted in evidence. Having considered the report of the expert of Bharatiya Reserve Bank Note Mudran Private Limited also, I am of the view that there is no scope for interfering with the order of conviction so passed by the learned trial court under Section 489C of the Indian Penal Code.

However, having taken into account that only 13 pieces of FICN were seized from the present appellant, I am of the view that the present appellant at best can be referred to as a carrier. Having considered the judgement of the Hon'ble Supreme Court in **Sk. Mustafa Vs. State of Maharashtra** reported in **(2019) 16 SCC 726**, I am of the view that paragraph 7 of the said judgement do squarely apply to the facts of the present case. The relevant paragraph 7 is set out hereunder :

“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.”

Having regard to the observations made by the Hon’ble Supreme Court in **Sk. Mustafa** (supra), I am of the view that the sentence so imposed by the learned trial court upon the appellant requires consideration. Accordingly, the sentence of five years and fine of Rs.10,000/- i.d. rigorous imprisonment for six months which has been imposed for commission of offence under Section 489C of the Indian Penal Code by the learned Additional District and Sessions Judge, 5th Court, Malda in Sessions Trial No. 34 of 2018 is reduced to a period of rigorous imprisonment of one year and six months (18 months) with fine of Rs.10,000/- i.d. rigorous imprisonment for a period of three months. The sentence is accordingly modified.

The appellant is on bail. His bail bonds stand cancelled. The appellant is directed to surrender immediately before the learned Additional District and Sessions Judge, 5th Court, Malda to serve out

rest of the sentence. The period of sentence already undergone by the appellant would be set off from the sentence so imposed by this Court.

With the aforesaid observations, the appeal being CRA 606 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.

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.)