

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. 612 of 2019

***Manirul Sk.*
versus
*The State of West Bengal***

For the Appellant : Mr. Kushal Kumar Mukherjee

For the State : Mr. Debasish Roy, Ld. P.P.
Ms. Faria Hossain,
Ms. Baisali Basu.

Heard On : 31.07.2024, 05.08.2024 & 08.08.2024.

Judgement On : **21.08.2024**

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order of conviction and sentence dated 07.09.2019, 09.09.2019 and 11.09.2019 passed by the learned Additional District and Sessions Judge, 2nd Fast Track Court, Jangipur, Murshidabad, in connection with Sessions Trial No. 1(1)2015 arising out of S.Sl. No. 150 of 2014 CIS No. 135/2014 wherein the learned Court was pleased to convict the appellant under Sections 489B/489C of the Indian Penal Code and sentenced him as follows :

- (i) For the offence punishable under Section 489B of the Indian Penal Code – Rigorous Imprisonment for 7 years and fine of Rs.10,000/-, i.d. to suffer Rigorous Imprisonment for 6 months.

- (ii) For the offence punishable under Section 489C of the Indian Penal Code – Rigorous Imprisonment for 5 years and fine of Rs.5,000/-, i.d. to suffer Rigorous Imprisonment for 3 months.

Samsherganj Police Station case no. 351 of 2013 dated 17.10.2013 was registered for investigation under Sections 489B/489C of the Indian Penal Code on the basis of an information submitted by one Amit Bhakat, Sub-inspector of Police attached to Samsherganj police station with the Officer-in-charge, Samsherganj police station, Murshidabad. On 17.10.2013 at about 17.15 hrs. an information was received, that a person was suspiciously roaming at Dhuliyān Ferry Ghat area with Fake Indian Currency Notes and was attempting to use the same as genuine. So, an information was diarized vide Samsherganj Police Station GDE No. 788 dated 17.10.2013. A raiding team was constituted along with two constables namely, Sk. Yeasin Ali and Biswajit Purti along with Home Guard Tapas Das. The raiding team left the police station to work out the said information vide Samsherganj Police Station GDE No. 789 dated 17.10.2013 and M.C.C. No. 3320/13 dated 17.10.2013 with the police station vehicle bearing no. WB-58U/3214. At about 17.35 hrs. the raiding party reached at Dhuliyān Ferry Ghat and on being identified by the source found that the accused person was standing suspiciously at Dhuliyān Ferry Ghat but on seeing the police team he tried to flee away but was apprehended in front of four independent local witnesses. Two of the witnesses namely, Lutu Sk and Ashok Basak agreed to be witnesses and in their presence search of the person was conducted and a bundle containing 71

pieces of notes of Rs.500/- denomination wrapped in a black plastic carry packet was recovered from the exclusive possession of the accused which was concealed in the left side waist line of his wearing lungi. On being questioned the accused disclosed his identity and confessed that he had full knowledge about the notes which were forged and confessed that he came there to circulate the fake notes as genuine in the local market. The accused was involved in dealing, possessing and business of Fake Indian Currency Notes, as such in presence of the witnesses the Fake Indian Currency Notes were seized as alamt of the case, the details whereof were incorporated in the seizure list which were signed by the witnesses as also the accused person. The entire process of the search, seizure and labelling continued from 17.45 hrs. to 19.15 hrs. and then the accused was arrested. The complainant thereafter prayed for a specific case being registered under Sections 489B/489C of the Indian Penal Code against the accused namely, Manirul Sk. for being investigated.

After the registration of Samsherganj Police Station case no. 351 of 2013 dated 17.10.2013, Sub-inspector Santanu Mukherjee (PW8) of the said police station was endorsed to investigate the case. The Investigating officer visited the place of occurrence, prepared rough sketch map along with index, examined the available witnesses under Section 161 of Code of Criminal Procedure, sent the seized FICN to the Expert and on receipt of the Expert's opinion submitted charge-sheet before the Jurisdictional Court under Sections 489B/489C of the Indian Penal Code. The case was thereafter committed to

the learned Additional District and Sessions Judge, Jangipur, Murshidabad who took cognizance of the offence and transferred the case to the learned Additional District and Sessions Judge, 2nd Fast Track Court, Jangipur, Murshidabad. On 15.01.2015, learned trial Court was pleased to frame charges against the accused under Sections 489B/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 8 witnesses which included PW1, Tapas Das, Home Guard of Samsherganj Police Station and a member of the raiding team; PW2, Amit Bhakat, Sub-inspector of police and informant/complainant of the case; PW3, ASI Prabir Das of Samsherganj Police Station who filled up the formal FIR after receipt of the written complaint; PW4, Sk. Yeasin Ali, constable who was also member of the raiding team; PW5, Biswajit Purti, constable, who was also member of the raiding team; PW6, Lutu Sk., seizure list witness; PW7, Ashok Basak, seizure list witness and PW8, Santanu Mukherjee, Investigating Officer of the case.

PW-1, Tapas Das, who was Home Guard of Samsherganj Police Station and a member of the raiding team, deposed that on 17.10.2013 he along with Amit Bhakat and constables Sk. Yeasin Ali and Biswajit Purti went to ferry ghat and after arrival found that a person started to flee away. However, he was apprehended. There was a gathering from whom two persons were called as witnesses. The person was searched in presence of the witnesses and 71

numbers of FICN of Rs.500/- denomination were recovered from his possession. The accused was thereafter arrested and brought to the police station. The witness identified the accused in court. The witness was confronted and in his cross-examination, he deposed that the accused at the relevant point of time was wearing lungi with black and green print and he was examined by the Investigating Officer of the case on the same day.

PW-2, Amit Bhakat, who was the complainant and SI of Police of Samsherganj Police Station narrated the incident in the same manner as was informed by him to the Inspector-in-Charge in his letter of complaint relating to the receipt of the information, formation of the raiding team for arriving at the spot, apprehending the accused, recovery of 71 numbers of FICN of Rs.500/- denomination, preparation of the seizure list and bringing the accused after arresting him to the police station. In cross-examination he categorically stated that on being satisfied he took signatures on the FICNs in front of the witnesses. The witness denied the suggestion in respect of such witnesses being earlier known to him personally.

PW-3 Prabir Das, ASI attached to Samsherganj Police Station who on receipt of written complaint filled up the formal FIR which was admitted in evidence and as per direction of the Officer-in-Charge entrusted the case to SI Santanu Mukherjee.

PW-4, Sk. Yiasin Ali, and PW-5, Biswajit Purti, who were constables of Samsherganj Police Station at the relevant point of time and members of the

raiding team, narrated the incident in the same manner as PW-1 starting from formation of the raiding team till the accused was arrested and brought back to the police station along with the seized FICNs.

PW-6 is Lutu Sk., is the seizure list witness, who identified his signature in the seizure list, but stated that he signed the seizure list as per instructions of the police authorities and as such, he was declared hostile.

PW-7, Ashok Basak, is also a seizure list witness who identified his signature in the seizure list but added that he signed the seizure list as per instructions of the police officer and as such, he was also declared hostile.

PW-8, Santanu Mukherjee, is the Investigating Officer of the case who narrated the manner in which he conducted the investigation after the same was entrusted to him. The chronology in which he deposed before the court in respect of the steps taken in course of investigation relating to preparation of rough sketch map with index, recording of the statements of the available witnesses under Section 161 of the Code of Criminal Procedure, sending the seized FICNs to Bharatiya Reserve Bank Note Mudran (P) Ltd., Salboni for obtaining expert's opinion. He identified the report which included four sheets and was admitted in evidence. He also deposed that he examined both the independent seizure list witnesses and on completion of investigation, he submitted charge-sheet before the jurisdictional court.

Mr. Mukherjee, learned advocate for the appellant drew the attention of the court to the charges which were framed by the learned trial court on 15-01-2015 and submitted that the ingredients under Section 489B of the Indian Penal Code is missing in the present case and the same has seriously prejudiced the appellant.

Learned advocate submitted that the learned trial court failed to appreciate the importance of charge and in a causal manner recorded the charge which did not enable the accused to know the case against him.

It was also pointed out that two independent witnesses namely, PW-6, Lutu Sk. and PW-7 (Ashok Basak) turned hostile and from the examination-in-chief it would be transparent that they were asked by the police authorities to sign the paper. It was further submitted that if the evidence of these two witnesses are not taken into account then rest of the witnesses on whom prosecution has relied upon are all police witnesses who cannot be relied upon for arriving at a finding of guilt primarily because of the fact that they had interest in the success of the litigation/investigation and as such deposed in the same spirit before the court.

Additionally, it was submitted that even if the prosecution case is accepted to be true only a case relating to possession of F.I.C.N is made out and the same attracts only the provisions of Section 489C of IPC.

In order to substantiate his contention, learned advocate for the appellant has relied upon the judgement of Maya Devi and Anr. -vs- Union of India reported in AIR Online 2020 Cal 564; two unreported judgments being Hoda Sk. Vs. State of West Bengal (CRA 321 of 2015) and Dolon Sk. @ Tuhin & Ors -vs- State of West Bengal (CRA 571 of 2018).

Mr. Roy, learned Public Prosecutor appearing on behalf of the State has opposed the contentions advanced by the appellant and submitted that in the present case there has been seizure of huge quantity of fake Indian currency notes of Rs500/- denomination and the nature of the currency notes which were seized itself would reflect that there were three (3) series being maintained in the 71 pieces of Fake Indian Currency Notes which were seized from the possession of the appellant. The report of the expert of Bharatiya Reserve Bank Note Mudran (P) Ltd., would go to show that all 71 notes were counterfeit notes.

The appellants in course of cross-examination or throughout the trial did not raise any issue regarding the language of the charges and was well aware of facing the trial under both the relevant sections i.e., 489B and 489C of the Indian Penal Code. In fact relevant questions were asked under Section 313 of the Code of Criminal Procedure in respect of the counterfeit currency and no plausible explanation was offered by the appellant.

Learned Public Prosecutor also relied upon the judgments of this Court in Jubeda Chitrakar @ Jaba @ Zubeda Chitrakar -vs- State of West Bengal,

(CRA 562 of 2018) with Sunil Pramanik @ Sonu –vs-state of W.B, (CRA 592 of 2018) as also in Turakka Nagaraju –vs- The State of West Bengal, (CRA 144 of 2016).

Before proceeding further the relevant paragraphs so relied upon by the petitioner/appellant in respect of the judgments relied upon by him are required to be dealt with. In Maya Devi and Anr. (supra) it was observed:

“26. On an appreciation of the settled position of law, keeping in mind the background of the present case which is presently an appeal against conviction for commission of offence under Section 489B and 489C of the IPC, the following issue emerge that whether the confessional statement of the accused persons can be made foundation of their guilt. Needless to state that it is only in the statements under Section 108 of the Customs Act of the three appellants it is found that one Rahul @ Ikram @Ikramul of village Mojampur, P.O.- Harchi, P.S.- Kaliachak, District- Malda was the person who obtained the notes from Bangladesh and handed over the same in presence of Chhotelal to Umesh Sha and Maya Devi.

27. Throughout the evidence there is no corroboration by any prosecution witness in respect of such evidence and there is neither any other documentary evidence to substantiate the same. Further no materials relating to such fact was brought in evidence by the prosecution and surprisingly the petition of complaint also did not implicate the said Rahul @ Ikram @Ikramul as an accused. The prosecution case is silent whether in course of investigation any process was issued or any attempt was made to apprehend the said Rahul. Additionally the seizures were effected at the office of the revenue authorities and thereafter the statements under Section 108

of the Customs Act were recorded. Relying upon the judgment of the Hon'ble Supreme Court in the case of Noor Aga (supra) this court is of the opinion that the confessional statements so recorded under Section 108 of the Customs Act solely cannot be a foundation for arriving at the conclusion of guilt of the accused appellants.

28. *In Hoda Sk vs. State of West Bengal 2020 SCC Online Cal 1478, relying upon the Hon'ble Supreme Court, it has been held:-*

"14. Analysis of the aforesaid section shows whoever sells, buys or receives from any other person or otherwise traffics in or uses as genuine any forged or counterfeit currency notes or bank notes with the knowledge or reasonable belief that the said notes are forged or counterfeit is said to have committed the offence. Hence, sale, purchase or receipt from any person, or otherwise trafficking in counterfeit currency notes as genuine is a sine qua non of such offence. There is no evidence that the appellants had sold, received or used any counterfeit notes. However, it has been argued on behalf of the prosecution that the appellant was "otherwise trafficking in" counterfeit notes by knowingly transporting a large volume of forged currency notes in a bag through a public road and had reached the ferry ghat when they were apprehended. Hence, he had committed the offence under section 489B of the Penal Code, 1860.

15. What would the expression "otherwise traffics in" mean in the context of aforesaid offence?

16. In K. Hasim Vs. State of Tamil Nadu, AIR 2005 SC 128, the Apex Court interpreted the object of section 489B of the Penal Code, 1860 as follows:-

"42. Similarly Section 489B relates to using as genuine forged or counterfeited currency notes or bank notes. The object of Legislature in enacting this section is to stop the circulation of

forged notes by punishing all persons who knowing or having reason to believe the same to be forged do any act which could lead to their circulation."

17. Expression "otherwise traffics in" when interpreted in the light of the aforesaid object would include any act undertaken by the accused which would lead to circulation of notes.

18. In Black's Law Dictionary, 10th edition, p. 1725, the word 'traffic' is defined as follows:-

"traffic- 1. Commerce; trade; the sale or exchange of such things as merchandise, bills, and money.

2. The passing or exchange of goods of commodities from one person to another for an equivalent in goods or money.

3. People or things being transported along a route.

4. The passing to and fro of people, animals, vehicles, and vessels along a transportation route.""

In order to substantiate his contention regarding the maintainability of the charges under Section 489B of the Indian Penal Code, learned advocate referred to a judgement of this Hon'ble Court in Hoda Sk. Vs. State of West Bengal (CRA 321 of 2015) and relied on the following paragraphs :

"Analysis of the aforesaid section shows whoever sells, buys or receives from any other person or otherwise traffics in or uses as genuine any forged or counterfeit currency notes or bank notes with the knowledge or reasonable belief that the said notes are forged or counterfeit is said to have committed the offence. Hence, sale, purchase or receipt from any person, or otherwise trafficking in counterfeit currency notes as genuine is a sine qua non of such offence. There is no evidence that the appellants had sold, received or used any counterfeit notes. However, it has been argued on behalf of

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Expression “otherwise traffics in” when interpreted in the light of the aforesaid object would include any act undertaken by the accused which would lead to circulation of notes.

In Black's Law Dictionary, 10th edition, p. 1725, the word ‘traffic’ is defined as follows:—

“traffic-1. Commerce; trade; the sale or exchange of such things as merchandise, bills, and money. 2. The passing or exchange of goods of commodities from one person to another for an equivalent in goods or money. 3. People or things being transported along a route. 4. The passing to and fro of people, animals, vehicles, and vessels along a transportation route.”

(emphasis supplied)

Lexicographically the expression ‘traffic’ means transportation or movement of goods through a route or public road. Interpreting the expression “otherwise traffics in” in section 489B of the Penal Code, 1860 in that perspective, transportation of a large volume of fake currency notes with the knowledge or reasonable belief that such notes are forged would definitely fall within the penal ambit of section 489B IPC. However, in the present case no charge of transportation of fake currency notes has been framed. On the other hand, charge framed under the head of section 489B of the Penal Code, 1860 is as follows:—

“Firstly, that you on 10.10.2013 at about 11 : 05 am at Dhuliyan ferry Ghat under P.S. Samserganj, Dist. Murshidabad you were found possessing fake Indian currency notes of Rs. 4,00,000/- consisting of 400 pieces of such notes of denomination of Rs. 1,000/- and also found possessing 597 pieces of FICN of denomination of Rs. 500/- with knowledge that the said currency notes are fake Indian Currency Notes and thereby committed the offence punishable u/s 489B of I.P.C. and which is within the cognizance of this court of sessions.”

Hence, the appellant had not been called to answer a charge of “otherwise trafficking in” fake currency notes by transporting such notes through a public thoroughfare for commercial use. To convict the appellant on such score at the appellate stage without reframing the charge would cause prejudice to them and occasion failure of justice. In this factual backdrop, I am constrained to hold that the appellant is entitled to an order of acquittal under section 489B of the IPC in the present case.”

Reiterating his contention relating to maintainability of the charges under Section 489B of the Indian Penal Code, reference was made to *Dolon Sk. @ Tuhin & Ors.* (supra) and it was emphasised that as the language of the charge do not incorporate within it, the phrase 'otherwise trafficking in' the appellant cannot be held to be guilty of the said offence.

So far as the authority relied upon by the Id. Public Prosecutor is concerned in *Jubeda Chitrakar @ jaba @ Zubeda Chitrakar* (supra) the attention of this court was drawn to paragraphs 12 & 13 of the said judgment, which are set out as follows:

“12. Those provisions were brought in simultaneously and punishments, which can be differentiated in terms of types and terms have been prescribed under those two sections. That being so, clear distinction has to be maintained regarding the ingredients of the offence which is to be treated as a larger count and it has to be decided whether an accused has committed such offence, to inculcate that person with such higher offence.

13. Section 489B uses the phrase “or otherwise traffics in or uses as genuine”. This phrase assumes importance in the context of the fact that the term “traffics” is not defined for the purpose of Section 489B or for the IPC generally. The phrase “or otherwise traffics in or uses as genuine” is added on to a string of phrases which results in the sentence that delineates the ingredients of the offence as defined in Section 489B; the punishment for which is prescribed in that section. The activities which would amount to an offence punishable under Section 489B of the IPC are firstly, selling, buying or receiving. The provision to this effect in the section is “whoever sells to, or buys or

receives from, any other person". Therefore, the involvement of at least two persons is necessary for performing the activity of selling, buying or receiving which would amount to an offence for the purpose of Section 489B. If that be so, an important issue for consideration would be as to whether any activity which falls into the concept "or otherwise traffics in or uses as genuine" could be anything that could be treated differently from selling, buying or receiving or whether the term "traffics" has to be read ejusdem generis with "sells", "buys" or "receives". It was argued on behalf of the appellant on the basis of the decision of the Apex Court in Parakh Foods Limited v. State of Andhra Pradesh (2008) 4 SCC 584 that the term "traffics" has to be read ejusdem generis with the phrases "sells to", "buys" and "receives from any other person" and that the junction of another person is necessary to accomplish such acts. It is here that use of the word "otherwise" gains critical importance. The word "otherwise" is used to indicate the opposite of, or contrast to, something already stated when used as part of a phrase as "or otherwise" (see Oxford Dictionary of English-3rd Edition). Even when the word "otherwise" is used not as part of a phrase as "or otherwise", but as an adverb or an adjective, such usages are also resorted to, to draw a contrast or distinction. The word "traffics" as well as the word "trafficking" and "trafficked" are used to describe the action of dealing or trading in something illegal. The activity or activities which would amount to "sells to", "buys" or "receives from" any other person, may require the participation of two persons to complete any such transaction. However, any activity which would fall within the phrase "otherwise traffics in" does not indispensably require active participation of more than one person if noticeably sizable quantity of FICN is found to be in the possession of that person and such concealed possession cannot be treated as dormant possession. It is active transportation which amounts to trafficking. Any other mode of interpreting the phrase "or

otherwise traffics” would dilute the rigour of law. A strict and literal interpretation of the penal provision contained in Section 489B of the IPC does not lead us to any other conclusion. Thus, the phrase “or otherwise traffics” in Section 489B of the IPC would take within its sweep, the action of dealing or trading in forged counterfeit currency note or bank note even otherwise than by selling, buying (purchase) or receiving. Therefore, the word “traffics” and the phrase “or otherwise traffics in” in Section 489B of the IPC are not to be read ejusdem generis with the words “sells”, “buys” or “receives”; but ought to be read to understand that activities other than selling, buying or receiving would also fall into the basket of the incriminating factors which constitute the ingredients of the acts and omissions which is an offence as per that Section.”

The attention of this court was also drawn to a Division Bench judgment of this Hon’ble Court in *Turakka Nagaraju @ Turaka Nagaraju* (*supra*), wherein a different view was taken on analyzing of the volume of the notes seized and on an interpretation of the word “*trafficking*”.

So far as the judgment relied upon by the appellant in the case of *Maya Devi & Anr. -vs- Union of India*, an investigation was carried out by the Customs Authority, on which the Court decided to allow the appeal, as a statement under Section 108 of the Customs Act cannot be the sole basis of foundation to arrive at a conclusion of guilt, and, as such, acquitted the appellant therein.

In the case of *Hoda Sk.*, the Hon’ble Division Bench of this court on an interpretation of the facts of the case in the background of the word

‘possessing’ as used in the charge framed under Section 489B by the learned trial Court was displeased with the language as used in the charge and, as such, decided to acquit the appellant under Section 489B of the IPC. Although, it upheld the conviction under Section 489C of the IPC.

In the case of *Dolon Sk.*, the Hon’ble Division Bench took into account the words ‘traffic’ and ‘otherwise trafficking in’ and compared the same with the charges which were framed therein, thereby, acquitting the appellant under Section 489B of the IPC and sentenced him to suffer imprisonment for the offence under Section 489C of the IPC.

It would be convenient to quote the language of Section 489B of the IPC as is appearing in the statute:

“489-B. Using as genuine, forged or counterfeit currency-notes or bank-notes.—Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with 479[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489-C. Possession of forged or counterfeit currency-notes or bank-notes.—Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be

punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

Here, it would be apposite to rely upon the findings of the Hon’ble Division Bench in the judgment of *Zubeda Chitrakar (supra)*, wherein while interpreting Section 489B of the IPC relying upon the judgment of Gujrat High Court as well as the Madhya Pradesh High Court, it was held that when an accused person is carrying sizeable quantity of fake currency notes on a public road or otherwise in a concealed manner, it would amount to active transportation of such currency notes at the time when the accused person is apprehended. As such, while no explanation is offered by the accused, when questioned, under Section 313 of the Code of Criminal Procedure. regarding the possession of the fake currency note, the burden of proof of facts within the knowledge of the person which is to be discharged in terms of Section 106 of the Evidence Act – calls for an explanation.

Reverting back to the facts of the present case, I find from the factual circumstances that the appellant was at a public place being Dhuliyani Ferry Ghat, where he was found to be in possession of 71 pieces of FICN of Rs. 500/- denomination which were recovered from his waist.

The accused was granted opportunity at the stage of Section 313 of the Indian Penal Code by the learned trial court and in question numbers 6 and 13 specific incriminating materials were confronted to him, which are as follows:

“Q-6) on Searching from your possession 71 number of FICN of denomination Rs.500/- was found?”

Ans. – No”

“Q-13) The said PW-1 searched you in presence of the said witnesses and on searching one bundle containing 71 number of FICN of denomination Rs.500/- kept concealed in the left side waist line of your wearing lungi was recovered

Ans. – No”

Having considered the nature of counterfeit currency which has been recovered in this case which were maintaining a continuous serial in respect of three (3) series and the appellant was at a ferry ghat the concept of active transportation of such FICN in the present case is established as the appellant did not respond to the questions which were asked at the stage of Section 313 Cr.P.C in respect of the seizure of the counterfeit currency notes.

The burden of proof at this stage is upon the appellant to divulge regarding his personal knowledge or information relating to the manner he at least received the FICN. The concept of trafficking is not the only concept under Section 489B IPC. There are other terms which are also embedded in the said Section being ‘sells to, or ‘buys’ or ‘receives from, any other person’.

As such the appellant had ample scope to explain as to how he obtained the FICN. The learned trial court in the charge has used the term ‘you brought and for circulating’. The said two phrases is enough to cover the meaning and interpretation as also the spirit incorporated under Section 489B IPC as there

is no hard and fast rule that in the contents of charge, the specific words of the Section is to be used.

It is sufficient if the charge is in a language which enables the accused or the appellant to know as to what he is supposed to answer or in respect of which offence he is facing the trial. No prejudice has been caused to the accused in this case in respect of the language of the charge which has been used by the learned trial court while framing the charges under Section 489B IPC.

Taking into account the contents of the charges relating to Section 489B and Section 489C IPC, I am of the view that the language which has been used by the learned trial court while considering and framing the charges were justified with the spirit of the Code and the accused was in a position to understand the difference between the charges for which he is facing the trial.

As has been observed earlier, the appellant was not only in conscious possession but was also having sizeable quantity of FICN in a public place i.e., the ferry ghat and as such, as the seizure in this case has been proved he is liable to be convicted both under the provisions of Section 489B and Section 489C of the Indian Penal Code.

As such no interference is called for in the finding of guilt as well as the order of conviction so passed by the learned Additional Sessions Judge, FTC-II, Jangipur, Murshidabad in Sessions Trial No. 1(1)2015.

However, having considered that the incident is of the year 2013 and the appellant has already suffered almost 12 months in custody during the stage of investigation, trial and during the pendency of the appeal, I am of the view that the sentence of seven years so imposed in respect of the offence charged under Section 489B of the Indian Penal Code be reduced to five years of rigorous imprisonment and fine of Rs.10,000/-. The sentence in respect of Section 489C of the Indian Penal Code is also modified to a period of three years with fine of Rs.5000/-. The fine amount in respect of both the offences are unaltered and in respect of default of payment of fine for both the offences, the appellant shall be directed to suffer further rigorous imprisonment for three months. As directed by the learned trial Court, both the sentences would run concurrently.

The appellant is on bail. As such his bail bonds are cancelled. The appellant is directed to surrender before the learned trial court immediately.

With the aforesaid observations, the appeal being CRA 612 of 2019 is **partly allowed** by modifying the sentence without interfering with the order of conviction.

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 judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)