IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 555 of 2008

Chhammad @ Chamad Mallick
-Vs-
The State of West Bengal & Anr.

For the Appellant	: Mr. Bibhasan Bhattacharya Mr. Mirza Firoj Ahmed Begg Ms. Bindia Pual
For the CBI/O.P. No. 2	: Mr. Amajit De
Heard on	: 19.09.2023, 13.10.2023.
Judgment on	: 31.01.2024

<u>Ananya Bandyopadhyay, J.:-</u>

1. This instant criminal appeal is filed against the judgment and order dated 26.06.2008 passed by the Learned Additional District and Sessions Judge, Fast Track, Court No. II, Bongaon, North 24- Parganas in Sessions Case No. 32(I) of 2004, Sessions Trial No. 12(9) 2005, G.R. No. 836/2003 arising out of C.B.I. Case No. R.C.S.I.U. 2003 E 004, dated 26.11.2003 in which the Learned Judge found the appellant guilty of having committed offence punishable under Sections 489B/489C of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- in default for 3 months for the offence punishable under Section 489B of the Indian Penal Code and the appellant is also sentenced to

suffer rigorous imprisonment for 5 years for the offence punishable under Section 489 of the Indian Penal Code, both the sentenced run concurrently.

2. The Inspector of Police CBI, EOU-V, New Delhi, had filed a complaint on 25.11.03 to the Superintendent of Police, CBI, EOU-VI North Delhi, concerning recovery of counterfeit Indian currency notes worth Rs.49,500/- from the possession of the accused Chamad Mallick, S/o- Yucho Mallick, R/o- Village Bhulot, P.S.- Bongaon, P.O.- Asharu, District- North 24 Parganas, West Bengal.

3. The complaint precisely stated that a secret source information was received on 21.11.03 that the appellant herein was indulging in illicit trade/sale of counterfeit Indian currency notes of various denominations and was likely to deliver large number of counterfeit Indian currency notes of Rs.1000/-, Rs.500/- and Rs.100/- denominations to the prospective buyers near Aramdanga village in the area of P.S.- Bongaon, District- North 24 Parganas, West Bengal on 25.11.03 at about 12:30 hours. The complainant had replicated the information in writing and submitted the same to the aforesaid Superintendent of Police and registered the same as per his order. Pursuant to the source information, after complying the necessary formalities, the de facto complainant along with his associates namely Inspector CBI, ACB Kolkata, Constable, CBI SU Kolkata and a Constable driver along with a vehicle No. WB 02H-4458 reached the place of occurrence at Bank of Baroda Guest House, S. M. Pandit Road, Kolkata-20. Presence of Sh. Matru Prasad Mishra, Deputy Chief Officer, UCO Bank HO (Vig.), Kolkata and Sh. Surya Kumar Roy Choudhury, Chief Manager State

Bank of India (Vig.) L.H.O, Kolkata was also secured through written requisitions and they also reported to him that morning at 07:00 hrs. at Bank of Baroda Guest House, 7, S.M. Pandit Road, Kolkata - 20. All the CBI team members and the independent witnesses Sh. M.P. Mishra and Sh. S.K. Roy Choudhury were briefed about this information in hand. Personal searches of all the CBI team members and search of the CBI vehicle was conducted by the above said independent witnesses and nothing incriminating was found either in the vehicle or on possession of any CBI team members. Thereafter all the above said CBI team members and both the independent witnesses left for the spot i.e. Aramdanga village in the area of P.S Bangaon, District- North 24 Parganas, W.B and reached there at about 11:00 hrs. by use of above said CBI vehicle. The source was already available there and he again confirmed that the suspect Chamad Mallick will be delivering huge quantity of counterfeit Indian currency notes of various denomination to the prospective buyer near passenger shed, Aramdanga Bus stop, opposite Maa Sarla Bhandar and Hardwares, Aramdanga at the ratio of 3:5 i.e Rs. 60/- genuine currency for counterfeit currency note of Rs. 100/-.

Accordingly, in presence of signatories of the Pre Trap Memo dated 25.11.2003, 03 bundles of white paper sheets of the size of Rs. 100/- denominations currency notes, were padded with the help of 03 genuine currency notes of Rs. 100/- denomination bearing number (1) 6SM 723582, (2) 6SM 723583 and (3) 6SM 723584 and signature of both the independent witnesses were obtained on all 03 genuine currency notes as a token of identification. The above said 03 bundles were padded and kept in a manner to look like Rs. 30,000/- to be used as purchase money.

Sh. Surya Kumar Roy Choudhury was requested to act as a decoy customer under cover of a Bank cashier and agreed for the same. The above said purchase money was kept in a white polythene bag captioned as "Book World" and was handed over to Sh. S.K. Ray Choudhury for striking a deal with the suspect for purchase of counterfeit notes. A Pre Trap Memo was prepared at the spot mentioning there in all the aforesaid proceedings which conducted at about 12:00 hrs. Soon after the CBI team members and both the independent witnesses were deployed near the spot. Independent witness Sh. S.K. Roy Choudhury (Decoy customer) was allowed to accompany the source for striking a deal with the suspect. Around 12:15 hrs, the source contacted me and pointed out a person in white shirt and Lungee who was coming towards the passenger shed at Aramdanga bus stand, as the suspect and confirmed the availability of counterfeit Indian currency notes with the suspect and thereafter the source again took his position along with Sh. S.K.Roy Choudhury, at Aramdanga bus stand. The suspect reached at the Aramdanga bus stand passenger shed. The source introduced Sh. S.K Roy Choudhury, independent witness (Decoy customer) to the suspect as prospective buyer and thereafter the source slipped away from the spot. The suspect was seen striking a deal with Sh. S.K. Roy Choudhury. Thereafter, at about 12:30 hrs, the suspect showed counterfeit Indian Currency notes of various denomination to Sh. Choudhury and demanded money. On demand by the suspect, Sh. S.K. Roy Choudhury handed over the white polythene bag containing purchase money as mentioned in the Pre Trap Memo dated 25.11.2003 to the suspect and gave reappointed signal. At this point of time, the defacto complainant along with other CBI team members and independent witness Sh. M.P. Mishra approached the suspect, disclosed their identity and the purpose of interception. The suspect got perplexed and kept mum. The suspect was offered to conduct personal search of all the team members and independent witnesses to which he declined. Thereafter, the white polythene bag containing purchase money was taken into police possession from the right hand of the suspect who disclosed his name and address as Chamad Mallick, S/o- Yuchop, R/o- Village Bhulot, P.O.- Asharu, P.S.- Bangaon, District- North 24 Parganas, W.B. The said polythene bag containing purchase money was opened and checked. The same was found containing the same three bundles padded with 03 genuine currency notes as mentioned in the Pre Trap Memo.

Thereafter, independent witness Sh. S.K. Roy Choudhury was asked to conduct personal search of the suspect Chamad Mallick. Personal search of the suspect in presence of another independent witness and CBI team members, resulted into recovery of a small Khaki envelope containing counterfeit Indian currency notes of various denomination from the waist portion of the suspect Chamad Mallick. The said notes were taken out and minutely checked. The same were found to be quite distinct in paper quality, printing quality and security thread etc. in comparison to the genuine Indian Currency Notes and appeared counterfeit even from visual appearance. Description of the recovered counterfeit Indian currency notes is as under:-

NOTES	DENOMINATION
1AD 712401	Rs. 500/-
1AD 712403 to 1AD 712439 (37 NOTES)	Rs. 500/-
1AD 712441 to 1AD 712442 (02 NOTES)	Rs. 500/-
1AD 712447 to 1AD 712500 (54 NOTES)	Rs. 500/-
8CN 620869	Rs. 100/-
8CN 620871 to 8CN 620872 (02 NOTES)	Rs. 100/-
8CN 620878	Rs. 100/-
8CN 659032	Rs. 100/-

All the above said counterfeit Indian currency notes were taken into police possession. Signatures of both the above said independent witnesses were obtained on the front portion of each seized note and L.T.I of the suspect Chamad Mallick was also obtained on the reverse portion of each seized notes. Thereafter, all the above said counterfeit Indian currency notes were kept in a yellow envelope and sealed with the CBI brass seal bearing impression CBI VKS 03, 2003 and this envelope was marked as 'A'. Signatures of both the independent witnesses, himself and LTI of accused Chamad Mallick and signatures of CBI team members were obtained on the same.

Thereafter, white polythene bag containing purchase money and small Khaki envelope in which the accused Chamad Mallick had brought Counterfeit Indian currency notes, duly signed by the independent witnesses, small khaki envelope containing also L.T.I. of the accused Chamad Mallick, were kept in a big khaki envelope sealed with the above said CBI brass seal and marked as 'B'. Signatures of all concerned including L.T.I of the accused were obtained on the same.

During the aforesaid proceedings, few persons had gathered on the spot and they were requested to join the proceedings as a witness, but none of them offered himself to act as a witness and they left the spot one by one. Efforts were also made to associate local residents as witness, but none of them came forward because of fear.

Thereafter, a rough site plan indicating the spot of seizure and position of team members/witnesses etc. was prepared and signatures of all concerned and L.T.I of accused were obtained on the same.

The facsimile of CBI brass seal were obtained on two separate sheets. Signatures of all concerned including L.T.I of the accused were obtained on the same. The Brass seal after use was handed over to Sh. S.K. Roy Choudhury under proper acknowledgment with the direction to produce the same before the court as and when required.

At about 14:30 hrs, the accused Chamad Mallick S/o Yuchop, R/o-Village Bhulot, P.O- Asharu, P.S. Bangaon, District- North 24 Parganas, West Bengal was informed the grounds of arrest i.e. Sale / Trafficking in and possession of counterfeit Indian currency notes, knowing the same to be counterfeit and was arrested through a separate Arrest-cum-Personal search Memo.

Contents of the Pre Trap Memo and recovery memo were read over and explained in Hindi & Bengali Languages to all the team members, independent witnesses and to the accused Chamad Mallick by Sh. B. Das, Inspector, CBI, ACB, Kolkata. Signatures of all concerned and L.T.I of the accused were obtained on each page of the memo in token of its correctness. The proceedings mentioned in the Recovery Memo concluded at about 14:40 hrs. Copies of the Pre Trap Memo as well as Recovery Memo were given to the accused Chamad Mallick under proper acknowledgement. Since, the accused Chamad Mallick was illiterate and could not sign, his L.T.I had been obtained on the documents and case property.

The above facts constitute commission of offences under Section 489-B and Section 489-C of IPC on the part of accused Chamad Mallick, S/o- Yuchop Mallick, R/o- Village- Bhulot, P.O.- Asharu, P.S. Bongaon, District- North 24 Parganas, West Bengal.

4. On the basis of written complaint lodged by one V.K. Sukla, Inspector of Police, C.B.I., New Delhi, Sri J.P. Verma, Superintendent of Police, C.B.I./SPE, New Delhi started the Central Bureau of Investigation Case No. RC SIJ 2003 E 2004 dated 26.11.2003 under Sections 489B/489C of the Indian Penal Code before the Sub-Divisional Judicial Magistrate, Bongaon, North 24-Parganas, West Bengal.

5. After completion of investigation, the Investigating Officer, Inspector Narendra Mahato, EOU-VI, C.B.I., New Delhi submitted the charge-sheet under Sections 489B/489C of the Indian Penal Code against the appellant.

6. Subsequently, the case was committed to the Court of Sessions and the case was renumbered as Sessions Case No. 32(1) of 2004 on 14th September, 2005.
7. The Learned Additional District & Sessions Judge, Fast Track, Court No. II, Bongaon, North 24-Parganas, framed the charges against the appellant under Sections 489B/489C of the Indian Penal Code within the cognizance of the Court of Sessions and the case was renumbered as Sessions Trial No. 12(9) of 2005. The appellant pleaded not guilty and claimed to be tried.
8. The prosecution examined as many as 5 witnesses to prove its case and exhibited the following documents.

Exhibit No.	**Documents**
1	Pre Trap Memo
2	Recovery Memo
3	Rough Site Plan
4	Facsimile
5	Receipt
6	Carbon Copy of arrest/personal search memo
7	Written complaint
8	F.I.R.
1/1	Signature of PW-2 over pre trap memo
2/1	Series of Signature of PW-2 over recovery memo
IV/1	Signature of PW-2 over khaki envelop
3/1	Signature over site plan
4/1	Signature over facsimile
5/1	Signature over receipt
2/2	Signature of PW-3 over recovery memo 9L signature of PW-3 over fake currencies
IV/2	Signature of PW-3 over khaki envelop
3/2	Signature of PW-3 over site plan
4/2	Signature of PW-3 over facsimile
5/2	Signature of PW-3 over receipt
6/1	Signature of PW-3 over arrest memo
1/3	Signature of PW-4 over pre trap memo

	9 A series signature of PW-4 over genuine currency
2/2A	Series signature of PW-4 over recovery memo
3/3	Series signature of PW-4 over site plan
4/3	Series signature of PW-4 over facsimile
6/2	Series signature of PW-4 over arrest memo
9X	Statement of accused
10	Nil seizure list
11	Forwarding letter to Nasik Press
12	Copy of Fax message
13	Forwarding report at Nasik Press
14	Series Report of experts
15	Charge-sheet

9. The Learned Advocate for the appellant submitted as follows:-

    a. A bare perusal of the written complaint treated as the First Information Report (F.I.R.) in the instant case, and the formal part thereof, would categorically reveal that the quantum and denominations of the Counterfeit (Fake) Indian Currency Notes, allegedly recovered from the possession of the present appellant, as reported in the written complaint in the instant case and in the report dated November 25, 2003 of the PW-1 herein, varied considerably and substantially, inasmuch as, while the former spoke about Rs. 49,500/- being recovered from the present appellant, the latter reported an alleged recovery of around Rs. 47,500/- from him, which undoubtedly cast a thick shadow of ambiguity, doubt, incredulity and hesitation over the entire prosecution case herein.

    b. Quite shockingly, while framing charge in the instant case under Sections 489B/489C of the Indian Penal Code, 1860, the Learned

Additional District and Sessions Judge, Fast Track Court – II at Bongaon, North 24 Parganas had arraigned him under Section 489B of the Indian Penal Code, 1860 “for possessing Counterfeit (Fake) Indian Currency Notes of different denominations, i.e. 1000, 500 and 100, to the tune of Rs. 49,500/-, knowing the same to be forged” and also under Section 489C of the Indian Penal Code, 1860 “for having in possession Counterfeit (Fake) Indian Currency Notes of different denominations, as noted earlier, knowing the same to be forged and intending to use the same as genuine”. [Thus, it was quite apparent that the accused/appellant herein was never called to answer a charge of “otherwise trafficking in” Counterfeit (Fake) Indian Currency Notes by transporting the same through a public thoroughfare for commercial use and accordingly, to convict him on such score at the appellant stage without reframing the charges would unquestionably cause undue prejudice to the accused/appellant herein and occasion utter failure of justice and as such, the accused/appellant herein was definitely entitled to an order of acquittal from the offence punishable under Section 489B of the Indian Penal Code, 1860. In this regard, reference was placed in the matter of HODA Sk. Vs. The State of West Bengal in CRA 321 of 2015, as reported in 2020 (SCC OnLine Cal 1478: (2020) 207 AIC 309: (2020) 1 Cal LJ 152, Paragraph Nos. 12 to 20 therein).]

c. It is a settled proposition that in a case of this nature, the most vital aspect is always the recovery and/or seizure of the Counterfeit (Fake)

Indian Currency Notes from the possession of the accused person, which must imperatively be conducted in due accordance with principles of justice, equity and good conscience and must be proved beyond all reasonable doubt before a Court of law. Nonetheless quite regrettably, in the case at hand, the entire raid and/or recovery process of the Counterfeit (Fake) Indian Currency Notes was conducted in a rather blear, obscure, far-fetched, shady and questionable manner, which raises serious debates and uncertainly about the veracity, genuineness and verisimilitude of the prosecution story herein.

d. In course of his deposition before the Learned Trial Court, although the PW-1 herein had categorically stated that before leaving for conducting their raid, the vehicle and personal search of all the members of the Raiding Party of the CBI was conducted by the PWs 3 & 4 herein, the self-professed independent witnesses in the instant case, yet no corroborating and substantiating material was ever put forth on behalf of the prosecution herein to verify and/or corroborate such fact, which undeniably raises serious doubts over the entire prosecution case herein as well as the purported recovery and/or seizure of the Counterfeit (Fake) Indian Currency Notes from the possession of the accused/appellant herein.

e. PWs – 1 & 2 herein, in course of their respective depositions before the Learned Trial Court, had specifically admitted that neither the local Police Station nor the concerned Jurisdictional Magistrate were ever informed before conducting the raid in the instant case, which only goes on to render the case of the prosecution herein highly dubious, debatable and suspicious.

f. The depositions of the various prosecution witnesses herein, especially the PWs-1 & 2 herein, revealed that the alleged place of occurrence in the instant case was in a small market area, around which there were several residential houses and a few shops, including a hardware store and a bus-stop on the opposite side, but for reasons best known to the members of the Raiding Party herein, not a single housekeeper or shopkeeper were ever examined in course of investigation in the instant case or the corresponding trial which followed, who, being independent witnesses, ought to have given an impartial, dispassionate and unbiased account of the sequence of events that actually transpired on the fateful date.

g. Additionally, it is the versions prosecution witnesses herein that when they reached the alleged place of occurrence, certain persons were apparently present there, but supposedly none were ever present at the time of the present appellant's apprehension, which only goes on raise serious doubts and questions over the very narrative of the prosecution case herein.

h. The depositions of the various prosecution witnesses revealed that apparently although the various members of the Raiding Party herein stayed at the alleged place of occurrence for about $4\frac{1}{2}$ hours, yet they failed to convince even a single local and independent person, especially respectable members of the society from being witness to the contended recovery and seizure procedure, as the locals purportedly refused to participate therein and rather let one by one. No rational or reasonable man of ordinary prudence would ever support or approve such frivolous excuse/explanation advanced on behalf of the prosecution herein in order to cover-up the inherent loopholes in its procedures.

i. In course of their respective depositions before the Learned Trial Court, the members of the Raiding Party herein had tried to make out a scenario wherein apparently, contrary to their own earlier assertions, they had requested the locals to search them prior to the alleged recovery of the Counterfeit Indian Currency Notes from the possession of the accused/appellant, which they declined. This is specifically contrary to their earlier contention that none of the locals ever approached them, rather left one by one and under such obvious circumstances, there remains every possibility of the alleged Counterfeit Indian Currency Notes being planted on him.

j. Apart from the sceptical fact that not a single independent witness had seen/supported the recovery and/or seizure of the alleged Counterfeit Indian Currency Notes from the possession of the accused/appellant even the corresponding Arrest Memo and Seizure List neither had any reference of the G.D. Case No. nor was any official rubber stamp of the Investigating Agency ever affixed to any of the said documents. This raises serious doubts regarding the very sanctity and genuineness of the alleged recovery of Counterfeit Indian Currency Notes from the possession of the present accused/appellant.

k. It was the unanimous testimony of the PW-1, 2 & 3 herein that following the purported recovery of the Counterfeit Indian Currency Notes from the possession of the present appellant, his LTI was taken on the reverse side of each of the said seized Counterfeit Indian Currency Notes, but quite interestingly, there was no mention anywhere as to who had taken the said LTI thereon or to whom the said LTI belong. Totally renders the alleged recovery of the Counterfeit Indian Currency Notes from the possession of the present appellant highly doubtful.

l. In course of their respective depositions before the Learned Trial Court, the PWs-2, 3 & 4 herein had outright contended that prior to the instant alleged case, none of them had ever gone in any other raid in collaboration with the Investigating Agency, but what remains totally unanswered is as to how they got acquainted with the Investigating Agency in the first place and became part of the said Raiding Party, especially since none of them could ever produce a single piece of evidence substantiating their being requisitioned to be members of the said Raiding Party. Raises serious questions regarding the apparently unbiased approached of the members of the said Raiding Party, especially the PWs – 3 & 4 herein, who claimed themselves to be utterly independent and having no prior nexus to the operations of the Investigating Agency.

m. While passing the impugned order of conviction and sentence, the Learned Trial Court had *inter alia* momentously relied upon the deposition of the PW-4, being a self-professed independent witness for the prosecution, without appreciating and comprehending the fact that the witness was deposing for the very first time at the time of instant trial, thereby rendering his testimony highly suspicious and mistrustful, with every possibility and immense probability of incorporation of subsequent embellishments and exaggerations therein to blindly and frantically support the prosecution story at a belated stage.

n. While arriving at a finding with regard to the genuineness of the supposedly recovered Counterfeit Indian Currency Notes, the Learned Trial Court had extensively relied upon the report of Deputy Works Manager, Mr. C. R. Karnik marked as Exhibit-14 series, while disregarding the fact that the maker thereof was never examined in Court and no opportunity was ever afforded to the Defence to question, catechize and contradict the said witness and the corresponding report prepared by him.

o. While considering the present appellant's prayer for suspension of sentence pending the disposal of the instant appeal, vide CRAN No. 1016 of 2010 by an order dated 4th May, 2010, this Court observed that the accused/appellant was taken into custody on 25th November, 2003, whereafter he had been in custody all along and had already undergone incarceration for a period of more than 89 months, i.e.

about 7 years and 5 months, which is even more than the sentence that was actually imposed upon him by the Learned Trial Court and was accordingly, granted bail.

p. Thus, although a bare inspection of the case records would downright reveal and affirm that the accused/appellant had already undergone the entire sentence imposed upon him by the Learned Trial Court, nonetheless, the various loopholes, defects, irregularities and shortcomings of the prosecution case would evidently expose and unmask the fact that the prosecution had blatantly and veraciously failed to properly establish the very recovery/seizure of the alleged Counterfeit Indian Currency Notes from the possession of the present appellant in the instant case and had accordingly, failed to bring home the charges so framed against him in the instant case beyond all reasonable doubt, thereby rendering him qualified and entitled to an order of acquittal from the supposed charges.

10. The Learned Advocate for the CBI stated that the corroborative evidence of the prosecution witnesses supported by the documentary evidence mainly the report of the expert of the Indian Security Press, considering the seized currency notes to be counterfeited. The Learned Trial Court had rightly convicted the appellant without any scope of interference from this Court.

11. The Hon'ble Supreme Cort in ***K. Hashim v. State of T.N.***[1]**,** held the following: -

> ***"48.*** *Similarly Section 489-B relates to using as genuine forged or counterfeited currency notes or banknotes. The object of the*

[1](2005) 1 SCC 237

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.

49. *Section 489-C deals with possession of forged or counterfeit currency notes or banknotes. It makes possession of forged and counterfeited currency notes or banknotes punishable. Possession and knowledge that the currency notes were counterfeited notes are necessary ingredients to constitute offence under Sections 489-C and 489-D. As was observed by this Court in State of Kerala v. Mathai Verghese [(1986) 4 SCC 746 : 1987 SCC (Cri) 3 : AIR 1987 SC 33] the expression "currency notes" is large and wide enough in its amplitude to cover the currency notes of any country. Section 489-C is not restricted to Indian currency note alone but it includes the dollar also and it applies to American dollar bills.*

51. *Section 28 defines the word "counterfeiting" in very wide terms. The main ingredients of counterfeiting as laid down in Section 28 are:*

(1) causing one thing to resemble another thing;

(2) intending by means of that resemblance to practise deception; or

(3) knowing it to be likely that deception will thereby be practised.

Thus, if one thing is made to resemble another thing and the intention is that by such resemblance deception would be practised or even if there is no intention but it is known to be likely that the resemblance is such that deception will thereby be practised, there is counterfeiting. (See State of U.P. v. Hafiz Mohd. Ismail [AIR 1960 SC 669 : 1960 Cri LJ 1017 : (1960) 2 SCR 911] .)

52. *In the said case it was observed that there is no necessity of importing words like "colourable imitation" therein. In order to apply Section 28, what the court has to see is whether one thing is made to resemble another thing and if that is so and if the resemblance is such that a person might be deceived by it, there will be a* *presumption of the necessary intention or knowledge to make the thing counterfeit, unless the contrary is proved.*

53. *"Counterfeit" in Section 28 does not connote an exact reproduction of the original counterfeited. Explanation 2 of Section 28 is of great significance. It lays down a rebuttable presumption where resemblance is such that a person might be deceived thereby. In such a case the intention or the knowledge is presumed unless the contrary is proved."*

12. The Hon'ble High Court of Delhi held the following in **Chet Ram Yadav v. State (NCT of Delhi)**[2]**:-**

> ***"9. …****To constitute an offence under Section 489B mere possession of counterfeit notes is not sufficient and mens rea or intention to use the counterfeit notes is an essential ingredient of the offences. In Umashanker v. State of Chhattisgarh, (2001) 9 SCC 642, the Supreme Court unequivocally observed that mens rea of offences under Sections 489B and 489C is knowing or having reason to believe that the currency notes are forged or counterfeit. In the absence of establishing mens rea, selling, buying or receiving from another person or otherwise trafficking in or using as genuine, forged or counterfeit currency notes or bank notes is not enough to constitute an offence under Section 489B. So also possessing or even intending to use any forged or counterfeit currency is not sufficient to make out the commission of offence under Section 489C, in absence of mens rea. Therefore, to convict an accused under Section 489C, possession, knowledge of notes being counterfeit and intention to use as such, are the essential ingredients but in the present case prosecution has failed to lead any evidence to prove that appellants had knowledge of the notes being counterfeit and/or had an intention to use them as genuine. [Ref : Panna Lal Gupta v. State of Sikkim, 2009 SCC OnLine Sikk 19]. Similarly, to invoke provisions of*

[2] 2024 SCC OnLine Del 3243

Section 489B, there has to be a transaction/sale and mere possession is not enough to shift the burden on the accused to prove innocent possession or use….

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14. *…In Anis v. State of NCT of Delhi, 2009 SCC OnLine Del 4098, Court observed that under Section 106 of Evidence Act, when any fact is especially in the knowledge of any person, the burden of proving that fact is upon him and therefore, if the person found in possession of currency notes does not disclose how he came in possession and chooses to deny the possession of such currency notes completely, Court would be justified in inferring that he had received notes from someone. Appellants were found in possession of the counterfeit currency and failed to disclose the source. Adverse inference has been rightly drawn against them by the Trial Court. Recovery of huge quantity of fake currency notes from the Appellants as well as from the house of Akil, at his instance, establishes mens rea and the fact that they had knowledge that the currency notes were counterfeit and conviction under Sections 489B and 489C IPC, deserves to be upheld. It cannot be overlooked that Appellants are habitual offenders and previously involved in over 80 cases respectively as per the SCRB Report, out of which there are convictions in several cases….*

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25. *…**46.** In order to bring the case within the ambit of Section 489C IPC, it has to be proved that the accused kept the counterfeit currency notes in their possession knowingly or having reason to believe the same to be counterfeit and intending to use the same as genuine. It is established from the evidence on record that appellant Kripa Shankar was apprehended in the market having in his possession 50 fake Indian currency notes of the denomination of Rs. 100/-0/- each and 500 fake Indian currency notes of the denomination of Rs. 500/-/- each. Similarly huge number of fake* *currency notes were recovered from the other two appellants. In their statements under Section 313 Cr. P.C., the appellants have simply pleaded their false implication. They have neither taken the defence that they had no knowledge of the currency notes in their possession being fake nor have they explained as to how these currency notes came into their possession. In such cases as it is difficult to adduce direct evidence to establish the knowledge of the appellant, the Court can take into consideration the attending circumstances in order to arrive at the conclusion. The evidence of the prosecution is to the effect that at the time when appellant Vikas Chaudhary was apprehended, he was found in possession of a total of Rs. 2,99,000/- fake Indian currency notes and on his disclosure statement, appellant Kripa Shankar was apprehended from a market which led to the recovery of another Rs. 3 Lakhs fake Indian currency notes. If there had been any valid explanation with the appellants that they have come in possession of these currency notes, which are found to be fake innocently, they had all the liberty to disclose the same. All the appellants merely pleaded their false implication. Mere possession, in the absence of explanation in that regard, would be sufficient to establish that the possession of these fake currency notes were consciously with the appellants."*

26. *It is also relevant in this context to allude to the observations of this Court in Anis (supra) as follows:—*

"14. This is not the case of the appellants that though the currency notes were in their possession, they did not know and had no reasons to believe that the same were counterfeit currency. This is also not their case that these currency notes were given to them by someone and they had accepted the same without suspecting them to be counterfeit currency. Their case is that these currency notes were not at all recovered from their possession. If a person found in possession of counterfeit currency, instead of giving any explanation

for such counterfeit currency possession, chooses to altogether deny the possession and such a defence is found to be false, the inevitable inference is the he had reasons to believe that the currency notes recovered from him were counterfeit currency and that precisely was the reason why he is denying the recovery from him. The knowledge and intention are state of mind which cannot be proved by direct evidence and have to be inferred from the attending circumstances. Possession of counterfeit currency, coupled with denial of possession and no attempt to explain as to how the appellants came into possession of such currency is sufficient to infer the requisite knowledge and intention on the part of the appellants. No doubt, the fundamental principles of criminal jurisprudence is that it is for the prosecution to prove all the ingredients of the offence alleged to have been committed by the accused, but, when the prosecution has proved all that it could have and the circumstances proved by it point unerringly towards the guilt of the accused, in that case if there exists a fact which is only in the knowledge of the accused and that fact is compatible with his innocence, it is for the accused to bring such a fact in the notice of the court….

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29. *Insofar as the offence under Section 489B IPC is concerned, prosecution has succeeded in proving that the counterfeit currency notes were recovered from the Appellants in huge numbers and therefore, as per Section 106 of the Evidence Act, the burden was on them to disclose the source of these notes. Mens rea which is an essential ingredient of Section 489B IPC can be gathered from the circumstance of recovery of huge currency from the Appellants, which also demonstrates their knowledge and reason to believe that the currency was counterfeit, particularly in the absence of any explanation of possessing such large volumes of notes with same* *numbers. It can also not be overlooked that the recovery of currency notes was not only from their personal search but was also from the house of Akil and at his instance. Therefore, in my view, the learned Trial Court has correctly rendered a finding that both the Appellants had knowledge that the currency notes recovered from their possession were fake and the charge under Section 489B IPC was rightly held to be proved.*

xxx

***30.** …It is a settled law that if the testimony of a police official is consistent and of sterling quality and does not give rise to any doubt or suspicion, it cannot be discarded merely on the ground that the witness belongs to a police force. In Baldev Singh v. State of Haryana, (2015) 17 SCC 554, the Supreme Court observed as under:—*

"10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness."

***31.** In Tahir v. State (Delhi), (1996) 3 SCC 338, the Supreme Court observed that no infirmity attaches to the testimony of the police officials merely because they hold that position. In Aner Raja Khima v. State of Saurashtra, AIR 1956 SC 217 the Supreme Court held that the presumption that a person acts honestly and legally applies as much in favour of police officers as to others. It is not proper and permissible to doubt the evidence of police officers unless* *strong reasons exist to do so. Judicial approach must not be to distrust and suspect their evidence without good and sufficient reasons. I may also allude to the judgment of the Supreme Court in Om Parkash v. The State, 1982 Cri LJ 751.*

32. *In the present case, nothing has been brought on record before the Trial Court to show that the prosecution witnesses had an enmity with or ill-will towards the Appellants so as to depose falsely to implicate them in a false case. Their evidence cannot be discarded merely because the prosecution witnesses were police officials. Insofar as the contention of non-joining of public witnesses is concerned, it is a hard reality that public does not want to be dragged into criminal cases and/or other matters involving the police for reasons of long drawn trials, unnecessary harassment etc. In Appabhai v. State of Gujarat, 1988 Supp SCC 241 : AIR 1988 SC 696, the Supreme Court observed that prosecution case cannot be thrown out only on the ground that independent witnesses were not examined. It was also observed that people are generally insensitive when a crime is committed even in their presence and like to keep themselves away from the Courts unless inevitable. It is pertinent to mention that PW-9 had stated that efforts were made by PW-2 to join the public persons but none agreed and left the spot by stating that they had some urgent work. Therefore, merely because independent witnesses were not associated and/or examined by the prosecution cannot itself be a ground to render the testimonies of the police witnesses unworthy of credence or create a dent in the prosecution case."*

13. In the case of ***Shabbir Sheikh and Ors. vs. State of Madhya Pradesh[3]***, the High Court of Madhya Pradesh held the following:-

[3]MANU/MP/0112/2018

*"**11.** Before we proceed to discuss the evidence of the present case, it is apposite to refer the provisions of Section 489-B and 489-C. The provisions of Section 489-A to 489-C deal with various economic offences in respect of forged or counterfeit currency notes or banknotes. The object of the legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency notes and banknotes. The currency notes are, in spite of growing accustomedness to the credit card system, still the backbone of the commercial transactions by the multitudes in our country. The provisions of Sections 489-B and 489-C are quoted as under :*

"489B. 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 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.

"489C. 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.

An ordinary reading of both the above quoted sections would go to show that to constitute an offence under Section 489B, following essential ingredients are necessary:-

(i) The note in question is a currency note or a bank note;

(ii) It was forged or counterfeited;

(iii) The accused sold to, or bought from, or received it from any person;

(iv) That the accused knew or had reason to believe it to be forged or counterfeited.

Similarly, the ingredients which are required to constitute an offence under Section 489C are as follows:

(i) The note in question is a currency note or bank note;

(ii) Such note was forged or counterfeited;

(iii) The accused was in possession of the currency note or bank note;

(iv) The accused intended to use the same as genuine;

(v) the accused knew or had reason to believe the note to be forged.

12. *On behalf of the appellants their conviction and sentence under Section 489-B IPC has been challenged on the ground that mere possession would not be enough to convict them under Section 489-B IPC. On behalf of the appellants in support of this argument following cases have been referred :-*

(i) K. Hasim v. State of Tamil Nadu [MANU/SC/0967/2004 : 2005(1) Supreme Court Cases 237]. In paras 48 and 49 of the report difference between the ingredients constituting offence punishable under Section 489-B & 489-C IPC have been enumerated. We can refer these two paras gainfully for our consideration, they read as under:

"48. Similarly Section 489-B 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.

49. Section 489C deals with possession of forged or counterfeit currency notes or bank notes. It makes possession of forged and counterfeited currency notes or bank notes punishable."

(ii) Umashanker v. State of Chhattisgarh [MANU/SC/0618/2001 : 2001 (9) Supreme Court Cases 642]. In support of his argument learned counsel for the appellants has placed reliance on para 7 of the report, which reads as under:

"7. Sections 489-A to 489-E deal with various economic offences in respect of forged or counterfeit currency-note or bank-notes. The object of Legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency-notes and bank-notes. The currency-notes are, in spite of growing accustomedness to the credit cards system, still the backbone of the commercial transactions by multitudes in our country. But these provisions are not meant to punish unwary possessors or users."

(iii) M. Mammutti v. State of Karnataka [MANU/SC/0160/1979 : 1979 (4) Supreme Court Cases 723]. This case has been referred in support of the argument that the appellants were not specifically asked about their knowledge whether recovered currency notes were fake or not.

***13.** In support of his argument, learned Government Advocate has referred the provisions contained in Sections 106 and 114(h) of the Evidence Act. Before proceeding further we would like to reproduce the provisions contained in Sections 106 and 114(h) of the Evidence Act, they read as under:*

Section 106 - When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Section 114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

The illustration(h) reads as under:

"(h) That, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him.

As to illustration (h) - A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;"

14. The Hon'ble High Court of Bombay held the following in ***Kiran Kumar K. Khanda v. State of Maharashtra***[4]:-

> ***"8.*** *… As per Section 489-B whoever sells to, or buys or receives from, anhy 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 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. Both these offences are cognizable, non-bailable, non-compoundable and triable by Court of Session. As per Section 489-C 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. The offence under this Section is cognizable, bailable, non-compoundable and triable by Court of Session.*
>
> ***9.*** *Under Section 489-B of I.P.C., the burden is on the prosecution to prove that at the time when the accused was passing the counterfeit notes, he knew that they were forged one and the mere possession of such notes by him does not shift the burden of the accused to*

[4] 2011 SCC OnLine Bom 280

prove his innocent possession of such notes. The knowledge or reason to believe that the note was forged has to be proved to fix the liability under Sections 489-B and 489-C of I.P.C. In the case of Golo Mandla Ram Rao v. State of Jharkhand [2004 Cri LJ 1738 (Jhar.), the counterfeit currency notes and incriminating articles were recovered from the possession of the accused and only the counterfeit coins from the possession of the co-accused. It was held that the persons in possession of counterfeit coins were having the mensrea and were liable to be convicted under Section 489-B and 489-C of I.P.C. An offence under Section 489-B has the following essential ingredients:—

(i) seelling, buying or receiving from any person or otherwise trafficing currency note or bank note;

(ii) any forged or counterfeit currency note or bank note;

(iii) knowing (or having reason to believe) that such note was forged or counterfeit.

10. *To bring home an offence u/s.498-B, I.P.C. (a) the prosecution is to prove that the relevant currency note or Bank note was forged or counterfeit; (b) that the accused sold to or received from, some person, or trafficked in, or used as genuine the aforesaid currency note or Bank note; (c) that when the accused did so he had knowledge or reason to believe about its being forged or counterfeit. In order to sustain the conviction of an accused, the prosecution has not only to prove that he had the possession of counterfeit note, having reason to believe it as such, but also to prove circumstances which lead clearly, indubitably and irresitably to his intention to use/circulate the notes in the public. Such intention can be proved by a collateral circumstance that he had palmed off such notes before, or that he was in possession of such notes in such large a number, that his possession for any other purpose was inexplicable."*

15. The Hon'ble Supreme Court held the following in ***Ponnusamy v. State***[5]:-

> *"The verdict of the three courts below is similar in convicting and keeping maintained the convictions of the appellant under Sections 489-B and 420 of the Penal Code, 1860. The case of the prosecution against the appellant is that he had purchased paddy from a peasant on payment of 130 forged currency notes of Rs 100 denomination. On the arrest of the appellant, further forged currency notes were alleged to have been found in his possession for which he had to face a trial separately. All the same, the appellant had no explanation to offer as to wherefrom had he obtained those forged currency notes. Silence on the part of the appellant in such circumstances would by itself be a telling circumstance which would weigh against him in the consideration of the prosecution evidence led against him. In these circumstances, we are of the view that the convictions recorded deserve no alteration and equally there is no scope for reduction of sentence. Maintaining the convictions and sentences of the appellant, we dismiss this appeal."*

16. In ***Dipakbhai Jagdishchandra Patel v. State of Gujarat***[6], the Hon'ble Supreme Court held the following:-

> ***"9.*** *It is the further case of the appellant that the ingredients of Sections 489-B and 489-C IPC have not been established. In regard to Section 489-C, he sought support from the judgment of the Lahore High Court in Bur Singh v. Crown [Bur Singh v. Crown, 1930 SCC OnLine Lah 61 : ILR (1930) 11 Lah 555 : 1931 Cri LJ 351] . Still further, he sought some support from the judgment of the learned Single Judge of the Punjab and Haryana High Court viz. M.M. Punchhi, J. (as his Lordship then was), in Bachan Singh v. State of Punjab [Bachan Singh v. State of Punjab, 1981 SCC OnLine P&H 47] . The Court held as follows: (Bachan Singh case [Bachan*

[5]1997 SCC (Cri) 217
[6](2019) 16 SCC 547

Singh v. State of Punjab, 1981 SCC OnLine P&H 47] , SCC OnLine P&H paras 10-11)

"10. In order to sustain the convictions of Joginder Kaur, appellant, the prosecution has not only to prove that she had the possession of counterfeit note, Ext. P-1, ensuring it or having reason to believe it as such, but further to prove circumstances which lead clearly, indubitably and irresistibly to her intention to use the notes on the public as has been held in Bur Singh v. Crown [Bur Singh v. Crown, 1930 SCC OnLine Lah 61 : ILR (1930) 11 Lah 555 : 1931 Cri LJ 351] . It has further been held that such intention could be proved by a collateral circumstance that she had palmed off such notes before, or that she was in possession of such notes in such large numbers, that her possession for any other purpose was inexplicable. The facts as found are that she had on her person only one made-up note, that she was an illiterate lady and that anybody as Shri Darshan Kumar Ahluwalia, PW 2, would have us believe could be misled to treat it as a genuine note. She gave the note to Kundan Lal, PW 2 and he told her that it was not a genuine note and his belief was confirmed when he showed it to others as well. It has nowhere been asserted that the note was ever returned to her and having known fully well or having reason to believe the same to be forged for counterfeit she yet made another attempt to palm it off. Thus, tendering alone such note to Kundan Lal, PW, unless the prosecution could prove that it was with dishonest intention so as to cause wrongful loss to him and wrongful gain to herself would not make her act to fall squarely within Sections 420/511, Penal Code, or to have come within the mischief of Section 489-B or 489-C, Penal Code. The inference sought to be drawn that she must have known or reason to believe the note, Ext. PI, to be counterfeit because her husband accompanying her was found to be in possession of similar notes is entirely misplaced for no common intention has been attributed to them and they have not been charged with the aid of

Section 34, Penal Code. For the individual act of Joginder Kaur she cannot be convicted for the above-named offences and must be extended the benefit of doubt.

11. With regard to the case of Bachan Singh [Bachan Singh v. State of Punjab, 1981 SCC OnLine P&H 47] it is to be noted that he was found in possession of 13 counterfeit ten rupee notes. He is an ironsmith by profession and barely literate. How could he have the knowledge or reason to believe the same to be counterfeit is one part but the other important part is whether he intended to use the same as genuine or that they may be used as genuine has further to be proved by the prosecution. It was held in Bur Singh v. Crown [Bur Singh v. Crown, 1930 SCC OnLine Lah 61 : ILR (1930) 11 Lah 555 : 1931 Cri LJ 351] , that mere possession of a forged note is not an offence under the Penal Code and in order to bring a case within the purview of Section 489-C, Penal Code, it was not only necessary to prove that the accused was in possession of forged notes but it should further be established that:

(a) at the time of his possession he knew the notes to be forged or had the reason to believe the same to be forged or counterfeit; and

(b) he intended to use the same as; genuine. No further collateral circumstances in the case have been brought forth such as the accused had palmed off such notes before, or that he was in possession of such and similar notes in such large numbers, that his possession for any other purpose was inexplicable."

10. *Finally, he also drew attention to the judgment of this Court in Umashanker v. State of Chhattisgarh [Umashanker v. State of Chhattisgarh, (2001) 9 SCC 642 : 2002 SCC (Cri) 758] wherein he emphasised on paras 7 and 8, which read as follows: (SCC pp. 643-44)*

"7. Sections 489-A to 489-E deal with various economic offences in respect of forged or counterfeit currency notes or banknotes. The object of the legislature in enacting these provisions is not only to

protect the economy of the country but also to provide adequate protection to currency notes and banknotes. The currency notes are, in spite of growing accustomedness to the credit card system, still the backbone of the commercial transactions by the multitudes in our country. But these provisions are not meant to punish unwary possessors or users.

8. A perusal of the provisions, extracted above, shows that mens rea of offences under Sections 489-B and 489-C is 'knowing or having reason to believe the currency notes or banknotes are forged or counterfeit'. Without the aforementioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency notes or banknotes, is not enough to constitute offence under Section 489-B IPC. So also possessing or even intending to use any forged or counterfeit currency notes or banknotes is not sufficient to make out a case under Section 489-C in the absence of the mens rea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mens rea."

17. The evidence of the prosecution witnesses being the members of the raiding party had been corroborative from the inception till the end of the investigation. The manner in which the process of Pre Trap was accomplished followed by the confiscation of the counterfeit notes from the possession of the appellant indubitably justify his illegal action in dealing with the counterfeit notes. The manner in which the statement under Section 313 of the Code of Criminal Procedure had been recorded in the instant sessions trial case had been exemplary and impeccable. The appellant did not rebut the possession of the counterfeit notes to the contrary that he had knowledge that the notes were counterfeit and he

wanted to deal with the same against a certain sum of money as aforementioned for wrongful gain to objectify the mens rea or the criminal intent. It was incumbent upon the appellant to nullify the claim of the prosecution by citing appropriate rebuttal as a criteria under Section 106 of the Indian Evidence Act. Apart from denial, the appellant did not explain the possession of the counterfeit notes to be for any other purpose or to have been gleaned the same from a particular source for certain act which he consciously felt and believed to be legal. The appellant intentionally being aware that the notes to the extent of Rs.49,500/- were fake tried to exchange the same against original currency notes at a cost of Rs.60/- against the denomination of Rs.100/- fake currency notes. The appellant was aware and had adequate knowledge that the currency notes were fake and with an ulterior motive tried to transact the same against genuine notes believing its consequences to be illegal affecting the economy of the country intending to use the same against the genuine notes for his wrongful profit. The Learned Advocate for the appellant submitted the absence of independent witnesses and the evidence of the raiding party to be unreliable on the ground of false implication.

18. The raiding party discharged its duties on the basis of a source information to apprehend the appellant and institute a complaint against the same based on documentary as well as oral evidence.

19. In the instant case, there had been absolutely no iota of possibility whereby the raiding party can be manipulative, unscrupulous and self-interested. The evidence of the raiding party cannot be shrugged off or be unacceptable

merely on the ground of being police officers. The raiding party had endeavoured to travel from place to place to trap the appellant unknown to them not for any illegal gratification or self-aggrandisement. There was no incident of previous enmity between the parties to have occasioned the culpability of the present appellant. Moreover, the reports of the India Security Press, Nashik Road marked as Exhibit 14, 14/1 and 14/2 corroborated the prosecution case absolutely.

20. The considerable number of notes which the appellant tried to siphon off with his knowledge to be forged intending to use the same as genuine notes against a certain consideration had been sufficient to prove his guilt and had been rightly indicted.

21. Barring the lapses on the part of the raiding party, the fabric of the prosecution evidence could not be fettered. The failure on the party of the raiding party to cite independent witnesses cannot be termed to be an evasively deliberate act to frame the appellant with criminality.

22. The general public uninterested and uninvolved with such cases as a matter of proclivity refrains to get himself or herself involved in criminal cases and a refusal to get themselves cited is believable and not unnatural. The Pre Trap Memorandum and the process thereafter along with the unanimously corroborative evidence of the prosecution witnesses being the raiding party ascribing their role, knowledge, search and seizure are reliable and trustworthy.

23. In view of the above discussions, the Criminal Appeal being CRA 555 of 2008 is accordingly dismissed.

24. There is no order as to costs.

25. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

26. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)