IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 759 of 2012

Aitulla Sheikh
-Vs-
The State of West Bengal

For the Appellant	: Mr. Tapan Dutta Gupta
For the State	: Mr. Debashish Roy Mr. Saryati Dutta
Heard on	: 07.02.2024, 23.02.2024, 03.05.2024
Judgment on	: 24.07.2024

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

1. This appeal is preferred against judgment dated 29.08.2012 and order dated 30.08.2012 passed by the Learned Additional Sessions Judge, 5th Court, Krishnagar, Nadia in Sessions Trial No. IV(August), 2011 arising out of Sessions Case No. 15(8) 2010 convicting the appellant under Section 489C of the Indian Penal Code and sentenced imprisonment for 5 years and to pay a fine of Rs.5,000/- in default to suffer imprisonment for 1 year.

2. The prosecution case narrated on 03.05.2010 Officer-in-Charge of Chapra Police Station PW-10 S.I. Anupam Chakraborty on secret telephonic information went to Bangaljhi Chowrasta with other police people and apprehended the appellant who stood at the side of Krishnagar Karimpur

Road at Bangaljhi Chowrasta. The body of the appellant was searched 95 numbers of Indian Currency Notes of denomination of Rs.500/- each from the left pocket of the trouser of the appellant were recovered. The complainant S.I. Anupam Chakraborty seized the said recovered currency notes at the spot under seizure list in presence of the local witnesses after obtaining the signatures of the appellant and the witnesses on the said currency notes. On return to Chapra Police Station along with the appellant and the Officer-in-Charge of the Police Station (PW-10) S.I. Anupam Chakraborty lodged a suo-moto complaint at the police station against the appellant and initiated Chapra Police Station Case No. 202/2010 dated 03.05.2010 under Section 489B/489C of the Indian Penal Code.

3. The Investigation Officer (PW-11) S.I. Anup Kumar Samanta after completion of investigation submitted charge-sheet under Section 489B/489C of the Indian Penal Code against the appellant.
4. Charges under Section 489B/489C of the Indian Penal code were framed against the appellant who pleaded not guilty of the charge and claimed to be tried.
5. Considered the rival contentions of the Learned Advocate for the appellant as well as the State.
6. A circumspection of the prosecution witnesses revealed as follows:
    i. PW-10, the S.I. of Police, posted at Chapra P.S. as O/C deposed that on 03.05.2010, he lodged a suo motor written complaint at Chapra P.S. in connection with recovery of 95 fake currency notes of denomination of Rs.500/- each from the possession of the appellant Aitulla Sheikh. PW-10 received a source information and

proceeded to Bangaljhi Chowrasta accompanied by PW-1, PW-2, PW-5, PW-6, PW-7 and PW-8. On their arrival at the spot, the source identified the accused person from a distance. They apprehended the appellant at the spot in the presence of local witnesses and issued him a notice. The said notice was marked as Exhibit-4. The body of the accused was searched in presence of the witnesses and recovered 95 number of fake currency notes of denomination of Rs.500/- each from his possession. On interrogation, the accused confessed the recovered currency notes to be fake which he collected from Bangladesh through Hridaypur Indo Bangladesh Border, further confessing his endeavour to circulate the said currency notes as genuine. PW-10, thereafter, seized the said fake currency notes in presence of the witnesses under a seizure list at the spot. He obtained the signatures of the appellant and the witnesses on the seizure list as well as on the seized fake currency notes. PW-10 arrested the appellant, and returned to Chapra P.S. along with the alamats. The said seizure list was marked as Ext.-1/14. The currency notes were marked as Mat. Ext. XCIV. The written complaint was marked as Ext.5. The formal F.I.R. was marked as Exhibit-6. PW-10 endorsed S.I. Anup Kumar Samanta to investigate the case. PW-10 further deposed the local witnesses, who helped them to seize the said currency notes from the possession of the accused, were Siraj Sheikh and Bablu Garai, who went to the spot by police jeep.

ii. During his cross-examination it was not possible for PW-10 to disclose the details of source informer as it was a confidential issue. G.D.E. in respect of details of informer was not conveyed to the I.O. PW-10 informed the extent of the source informer to the I.O. as was necessary.

iii. PW-1, PW-2, PW-5, PW-6, PW-7 and PW-8 accompanied PW-10 on the raid as aforesaid and corroborated in essence the evidence of PW-10 in terms of the manner in which the appellant was apprehended, searched and 95 fake currency notes of denomination of Rs.500/- recovered from the left pocket of his trouser.

iv. The aforesaid prosecution witnesses in unison admitted the preparation of seizure list at the spot along with the signature of the witnesses on the same.

v. PW-1 in his cross-examination stated he had no document to show that he was on duty at the P.S. on the date of the incident. He was aware G.D.E to be recorded at the time of leaving the P.S. for conducting raid. He returned his command certificate to the O/C after returning to the P.S. Any panchayat member, B.D.O., Executive Officer, Medical Officer or any other gentleman of the locality at the P.O was not summoned. It took about an hour to sign 95 fake currency notes by ball pen. The age and address of the person who identified the accused person to the O/C was unknown to him. He could not say the exact place of preparation of the seizure list and other police papers. The I.O. had not examined him after the date of the incident.

vi. During cross-examination, PW-2 stated he could not show his command certificate for conducting raid on that day. The police constables were required to obtain command certificate at the time of leaving the P.S. The numbers of the command certificate were required to be mentioned in the outing G.D.E. He had no document to show that he went to raid on that day except the command certificate.

vii. PW-5 stated in his deposition that source identified one miscreant. During cross-examination, PW-5 could not state the details of the case as 95 fake currency notes of denomination of Rs.500/- each were recovered from the possession of the accused person. He did not note in his personal diary as regards the date, month, time etc. of the case. About 400/500 persons assembled at P.O. at that time. He could not state if any shop-keeper of Bangaljhi Chowrasta was called by them. About 30/35 minutes were consumed for preparation of police papers.

viii. PW-6 in his deposition stated that the O/C S.I. Anupam Chakraborty then served a notice to Aitulla Sheikh and he permitted them to search his body. The O/C S.I. Anupam Chakraborty searched the body o Aitulla Sheikh and recovered one packet covered with poly pack from the left pocket of his full-pant. The O/C S.I. Anupam Chakraborty opened the said packet and found 95 fake currency notes of denomination of Rs.500/- each. On interrogation, Aitulla Sheikh disclosed that he brought the sake fake currency notes from Bangladesh. The O/C S.I. Anupam Chakraborty seized the said fake currency notes at the spot under a seizure list in presence of PW-6 and other witnesses.

ix. During cross-examination, PW-6 stated he had no document to show that he was present at the time of search and seizure. The said full-pant was not produced in the court. He did not remember the colour of the said full-pant. It took about 2/3 minutes time for counting the said 95 fake currency notes.

x. During cross-examination, PW-7 stated that he had not mentioned the date and time under his signature in the fake currency notes. All other persons who signed on the fake currency notes did not mention the date and time under their signatures in the fake currency notes. About 200/400 persons assembled at the spot at that time. He could not say the age group of the persons assembled there. He did not remember as to the nature of the shirt wore by the miscreant, who did not possess arms. The wearing apparels of the accused person were not produced in the court. They returned to the P.S. at about 04:10 p.m. He had not noticed the presence of any Gram-Panchayet member at the spot.

xi. PW-8 in his cross-examination stated their bodies and wearing apparels were not searched by public prior to the search of the accused person.

xii. PW-9 in his deposition stated that he was the Manager of Currency Printing Press namely Bharatiya Reserve Bank Note Mudran Private Limited, Salboni in the District of Paschim Midnapore. He examined the said currency notes and submitted a report along with the said notes. On examination, he found that all the said 95 currency notes of denomination of Rs.500/- were fake. The report bearing his signature, official seal and date, was marked as Ext.3.

xiii. During his cross-examination PW-9 stated that he had not mentioned in his report as to where the said currency notes were kept in his office, but they maintained registers in that respect and that was their internal official matter. They kept the currency notes received from the police authority in the locker having double keys. One of the keys remained with him and another key remained with the Printing Officer. They maintained "In Register" and "Out Register". He had not mentioned the serial numbers of the fake currency notes in his report. He had not made any signature of initial in the said currency notes examined by him. He had not mentioned the time of examination of the said currency notes. There was no mark on the said fake currency notes to show that he examined the same. There was no note in his report as to the nature of the machine by which the said fake currency notes were examined. There was no note in his report as to the date on which he examined the said fake currency notes.

xiv. PW-11 was the Investigating Officer who on completion of the investigation submitted the charge-sheet against the appellant.

7. Section 489C of the Indian Penal Code states as follows:-

> ***"Section 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."*

8. The complainant Police Officer stated that the appellant had confessed of possessing the fake currency notes from Bangladesh through Hridaypur Indo Bangladesh Border. Such confession of the appellant before a police officer is an inadmissible piece of evidence. The prosecution witnesses forming the raiding team mentioned about an assembly of local villagers more than 100 in number. However, none of the villagers were cited as witnesses. PW-10 in his evidence mentioned one Siraj Seikh and Bablu Gorai to have reached the spot by police jeep who could not be considered as independent local witnesses. The trouser of the appellant, the plastic bag containing the fake currency notes were not produced before the Court. The signature of the witnesses as well as the appellant was not imprinted on the fake currency notes. The command certificate was not seized along with the G.D. Entry to notify the commission of the raid. The ingredients of Section 489C namely the knowledge of the appellant with regard to the fake currency notes and to utilize the same for his wrongful gain with an ulterior motive could not be established by the prosecution.

9. In ***Umashanker v. State of Chhattisgarh***[1], the Hon'ble Supreme Court held the following:-

> *"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.*

[1](2001) 9 SCC 642

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..."

10. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.
11. Accordingly, the criminal appeal being CRA 759 of 2012 stands disposed of.
12. There is no order as to costs.
13. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
14. 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.)