

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 19 of 2014

**Imam Hossain @ Emam Hossain
-Vs-
The State of West Bengal**

For the Appellant : Mr. Soham Banerjee
(Amicus Curiae)

For the State : Mr. Bidyut Kumar Roy
Ms. Rita Dutta

Heard on : 05.03.2024, 02.05.2024, 04.09.2024

Judgment on : 22.04.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment of conviction dated 21.12.2013 and order of sentenced dated 23.12.2013 passed by Learned Additional Sessions Judge, 2nd Court, Malda in Sessions Case No.111/2013, corresponding to Sessions Trial No.16/2013 in G.R. Case No.5330/2012, arising out of Baishnabnagar P.S. Case No.307/2012 dated 11.12.2012, thereby convicting the appellant for commission of offence under Section 489C of the Indian Penal Code, 1860 and thereby sentencing the appellant to suffer rigorous imprisonment for 4 years and a fine of Rs.30,000/- in default to suffer rigorous imprisonment for a further period of 1 year for commission of offence under Section 489(C) of the Indian Penal Code.

2. The prosecution case precisely stated that complainant P.S.I. Bitul Paul attached to the Baishnabnagar P.S. arrested the appellant with two bundles of 200 pieces of Indian Fake Currency Notes of denomination of Rs.1000/- each along with one white colour poly carry bag and one red colour ZEN Mobile Phone fitted with Vodafone Sim Card being no.9734827499 with battery in running condition, one Voter Identity Card in the name of Imam Hossain, son of Majibur Rahaman, one Motor Cycle *YAMAHAALBA 106 Black and Blue colour bearing registration no.WB66G/6187* and one Coffee colour full sleeve winter jacket which had been seized as alamt under proper seizure list. T complaint against the accused person named Imam Hossain stated that on 11.12.2012 at 13:15 hrs., on receipt of a source information of illegal procurement and transportation of large amount of FICN might occur through Telipara Ghat under Baishnabnagar P.S., the said fact was noted in General Diary vide G.D.E. No.449 dated 11.12.2012 and the matter was informed to the I.C., Baishnabnagar P.S. at 13:25 hrs. The complainant along with force of Baishnabnagar P.S. left Fort Telipara Ghat area in a Govt. vehicle bearing Registration no.WB24/1239 to act on the information, which referred to Baishnabnagar P.S. GDE No.450 dated 11.12.12 and at about 14:25 hrs., they reached near at Telipara Ghat Side and laid on ambush near around Telipara Bridge. At 15:05 hrs., they noticed one person coming from Deonapaur Side towards Telipara Ghat by motor cycle which was duly identified by the source. As he came near the police, he was restrained and detained and eventually disclosed his identity. Four available chance witnesses namely 1) Dibyendu Sarkar, son of Anil

Sarkar of Sabdalpur, 2) Prokash Ch. Ghosh, son of Montu Ghosh of Nurnagar, 3) Lalchand Singh, son of Late Bhusan Singha of Sabdalpur and 4) Kalipada Mondal, son of Late Schindra Nath Mondal of Sabalpur, all of P.S. Baishnabnagar, District – Malda were summoned and on being asked the said detained person disclosed his identity. Observing all formalities, the complainant commenced search in respect of his person in presence of the said available chance witnesses. During search of Imam Hossain in respect of his person complainant recovered one bundle of Indian Currency which seemed to be fake in denomination valued of Rs.1000/- each total 100 pieces valued Rs.1,00,000/- (one lakh) and another bundle of Indian Currency seemed to be fake in denomination valued of Rs.1,00,000/- (one lakh) both wrapped in a white colour poly carry bag concealed in left side up-per inner pocket of the jacket worn by him and recovered red colour zen Mobile Phone fitted with Vodafone SIM Card no. 9734827499 and one voter Identity card in the name of Imam Hossain. On preliminary interrogation the accused person admitted that he procured or brought or trafficked the FICN from Sovapur Side in lieu of genuine Indian Currency to sell the huge amount of recovered FICN as genuine Indian Currency Notes at different places of West Bengal and other States for wrongful gain.

3. On the basis of the aforesaid complaint, the Police initiated Baishnabnagar P.S. Case No.307/2012 dated 11.12.2012 under Sections 489(B)/489(C)/120B of Indian Penal Code.

4. After completion of investigation, the Police submitted charge- sheet vide no.42/13 dated 03.03.2013 the appellant under Section 489(B)/489(C)/120(B) of Indian Penal Code.
5. The charge was framed against the accused person under Sections 489(B)/489(C) of Indian Penal Code.
6. In order to prove its case, the prosecution examined as many as 11 witnesses and exhibited certain documents.
7. The alleged search and seizure was made near Telipara Ghat area and there is residential house in that area but prosecution has failed to collect any Independent witness of that area.
8. PW-6, PW-7, PW-8 and PW-10 were not residents of Telipara Ghat area being residents of Sabdalpur and Nurnagar area.
9. The independent witnesses deposed in their evidences that as per instruction of police they only signed one blank paper out of fear.
10. PW-1 who was the complainant of this case admitted witnesses were not the resident of Telipara Ghat area and the family members of the accused was not informed prior to his arrest and notes were not put in the envelope by him, nor there was any special identification mark, more over the packet was not labeled at the time of seizure.
11. PW-2, PW-3, PW-4, PW-5 and PW-9 corroborated the evidence of PW-1 and PW-11.
12. Every counterfeit note was subjected to permissible limit of 1/33% of connection but the forensic report speaks nothing of such correction.

13. The forensic expert was not produce so it was not proved that the notes seized were at all counterfeit or not and conviction without this evidence is bad in law.

14. Learned Amicus Curiae representing the appellant submitted as follows:-

- i. During the cross-examination the PW-1 admitted there were shops situated at about 100/150 meters from the place of occurrence and residential houses at about 200 meters from the place of occurrence. He further admitted the villagers projected to be independent witnesses resided 2 kilometres away from the place of occurrence, and further admitted he had not mentioned why the residents of Telipara Ghat were not called as witnesses.

A conjoint reading of Section 165(4) and Section 100 revealed that it was the duty of the officer who was conducting search and seizure should call upon two or more inhabitants of the locality, or of any other locality if no such inhabitant of the said locality was available.

It was not the case of the prosecution that no inhabitant of the locality was available to be the witnesses, and the prosecution story suffered from an uncanny silence regarding the explanation for citing calling witnesses from other localities. Such gross violation of the procedural safeguards cast a shadow of doubt on the story of the prosecution.

- ii. The independent witnesses turned hostile.
- iii. PW-6 stated when he was on his way back to his home from market, the Police asked him to go inside “Kumbhira” outpost and asked him

to sign the seizure list. He also failed to identify the Appellant on dock. During the cross examination he said no FICN was shown to him and he did not sign on the notes.

- iv. PW-7 deposed to have been asked by Police to go inside Kumbhira outpost and he was dictated to sign on certain papers. He also failed to identify the appellant on dock.
- v. PW-8 stated he went to the camp as asked by the police and signed on papers as per instruction. He also failed to identify the appellant on dock.
- vi. PW-10 also revealed the same version of PW-7 and PW-8.
- vii. All of the independent witnesses turned hostile, failed to identify the appellant on dock and revealed that police obtained their signatures inside Kumbhira outpost.
- viii. During the cross-examination it was suggested to the arresting officer that labels and seizure list were manufactured by him sitting at the Police Station, which he denied, but the versions of the independent witnesses revealed the fact that the labels and seizure list were in fact prepared at 'kumbhira' outpost and not at the place of occurrence.
- ix. PW-2 stated that he could not recollect how many pockets were there in the jacket, inside which the appellant was allegedly carrying the FICN. He could not remember if the jacket was labelled or not.
- x. PW-3 stated L.T.I. of the Appellant was taken on all of the notes, whereas it was admitted fact the notes bore the signature of the accused person, not LTI.

- xi. PW-9 could not remember the colour or the brand of the motorcycle. He could not recollect if the jacket was labelled or not. He could not recollect in which types of papers the recovered bundles were wrapped. Command Certificate was necessary for going outside from the Police Station but on that day no such command certificate was issued.
- xii. It was revealed during the trial that the arrest of the appellant was an illegal one. It was categorically stated by the Investigating Officer that the family members of the accused were not informed and no explanation had been endorsed in the arrest memo. The arrest memo was signed by PW-8 who not only turned hostile but also revealed that his signatures were obtained by the police at 'Kumbhira' outpost and not at the place of occurrence, and he failed to identify the appellant on dock.

The version of the prosecution gave no explanation regarding the envelopes in which the seized notes were put into, the white carry bag/plastic inside which the notes were primarily kept by the appellant. The PW-1 stated that the notes were not put in the envelope by him and stated that the seized articles were under his custody till he reached Police Station..

It was further submitted that:-

- a) the appellant was subjected to an illegal arrest,

- b) no independent witnesses were present at the place of occurrence at the time of the alleged arrest, search and seizure,
- c) the procedural safeguards were violated by the concerned officer during the alleged search procedures,
- d) the arresting team completed their entire task incredibly fast,
- e) the chain of custody of the seized articles are broken.

15. A circumspection of the prosecution witnesses revealed as follows:-

- i. PW-1 deposed that on 11.12.2012 he was posted as P.S.I. Baishabnagar P.S. On that day around 13:15 hrs., he received a source information of impending transaction of FICN near Telipara Ghat under their P.S. Thereafter, he noted down the information in the G.D.E. No.449 dated 11.12.2012 and communicated the same to I.C. As per order of I.C. he along with five other police personnel including a driver left P.S. and reached the place of occurrence around 14:45 hours. Thereafter, around 15:05 hours they noticed a person was coming from the side of Deunapur on a motor cycle. As per identification of the source they detained that person. They disclosed their identity being the police personnel of Baishabnagar P.S.

Thereafter, four local persons were called out of them; three had their residence of Sabdalpur and one Neoginagar. On being interrogated in presence of the local witnesses he disclosed his name

as Imam Hossain S/o – Majibur Rahaman of Dakshin Baidyanathpur, P.S. – Baishabnagar. They intimated Imam Hossain that he was possessing FICN and they had the information that he dealt in FICN. Thereafter, they disclosed their intention to search his person but they also offered him to search their person prior to search of their body but he denied. He searched the body of the accused person in presence of four local witnesses.

On being searched two bundles of FICN of the denomination of Rs.1000/- wrapped in a plastic packet was detected and recovered from the left side of the inner pocket of the coffee coloured jacket which was wore by the accused. On being interrogated he admitted the same were FICN and he dealt with those notes and he had brought the notes from the side of Sovapur. Apart from his Voter ID card, one mobile was recovered from his possession. Thereafter, he seized FICN with plastic packet, voter ID card, one mobile, jacket and the 'Yahama Alba' motor cycle by preparing one seizure llist, marked as Exbit.-1.

He labeled the notes marked as Exbt.-2 and Exbt.-3. The notes which were seized from the possession of the accused persons were marked as Mat. Exbt.-I and II collectively. The mobile and Voter ID card seized from the possession of the accused person were marked as Mat. Exbt.-III and Mat. Exbt.-IV respectively.

On being interrogated accused person disclosed that he dealt in FICN and he previously dealt with FICN. He also disclosed that certain

Bangladeshi people associated with the business to be known to him and he could identify them. Thereafter, accused person was arrested and taken to P.S. He lodged the complaint in the P.S. which was marked as Exbt.-4.

- ii. PW-1 in his cross-examination stated he entered the outgoing G.D.E. No.450 when he left the P.S. He left the P.S. at 13:25 hours and returned at 17:50/18:00 hours. The distance in between the P.O. and P.S. was 30 k.m. It took about 1/1:15 hours to reach P.O. from P.S. and to return P.S. from P.O.

Search and seizure was done during day hour. The family members of the accused was not informed prior to his arrest and no explanation had been endorsed on the arrest memo. He at first arrested the accused and thereafter made seizure. Two envelopes in which the notes were produced were not used by him at the time of seizure. The notes were not put in the envelope by him. The seized materials were kept in his custody after its seizure till he reached P.S. It had not been mentioned in the F.I.R. what was done by him with the seized materials and labels after reaching the P.S. The notes bore no special identifying mark.

- iii. PW-2 deposed that on 11.12.2012 he was posted as Constable at Baishabnagar P.S., he accompanied PW-1 and other force to Telipara Ghat. It was around 3:00 p.m., they saw one motor cycle approaching which was apprehended along with the rider.

Thereafter, PW-1 enquired about his name and address. They searched the body of the person on which two bundles of FICN of the denomination of Rs.1000/- each were recovered from the inner pocket of the jacket worn by the accused person. On being interrogated the accused disclosed that the same was FICN. In total Rs.1000 X 100 in two bundles amounting to Rs.2,00,000/- were recovered from the possession of the accused person.

Seizure list was prepared and the notes were also labeled marked as Exbt.-1/1.

- iv. PW-2 in his cross-examination stated that they were in total six persons in the team including the driver and all were in plain clothes. Search was made by PW-1. He did not notice to put any special identifying mark on the notes by PW-1. He could not recollect the serial number of the notes. He identified the notes as it was examined by expert but he did not notice any mark of identification on the notes by which the notes could be identified.
- v. PW-3 corroborated the evidence of PW-2 in essence.
- vi. PW-3 in his cross-examination stated that the notes were specially marked by procuring signature of the accused on the notes. LTI of the accused was also taken but he could not recollect whether all the notes or not. No separate special identification mark was appended on the notes. The notes were labeled but not put inside any packet and sealed. He did not sign on any paper in the P.S.
- vii. PW-4 reiterated the deposition of PW-1, PW-2 and PW-3.

- viii. PW-5 conceding to the deposition of PW-1 to PW-4, in his cross-examination stated that he was not interrogated by the I.O. earlier. He disclosed about the incident for the first time before the court. He signed on the seizure at the place of occurrence but without going through the same. He did not sign on the jacket.
- ix. PW-6, PW-7, PW-8 and PW-10 were declared hostile by the prosecution.
- x. PW-9 deposed that on 11.12.2012 he was posted as a police driver under Baishabnagar P.S. PW-1 asked him to keep the vehicle at a place so that the vehicle could not be seen easily and asked them to scatter in the area in order to apprehend one person as and when he was instructed for the same. Thereafter, on being searched by PW-1 two bundles of notes of the denomination of Rs.1000/- each were recovered from the pocket of the jacket of Imam Hossain. Then, seizure was made by preparing seizure list and he signed on the seizure list, marked as Exbt.-1/8. He also signed on the labels on the notes. At that stage labels were produced before the witness and he identified his signature on the same marked as Exbt.-2/5 and 3/5. He was interrogated by the I.O. of that case and he made statement before the I.O.
- xi. PW-9 in his cross-examination stated that they make entry in the logbook but ultimate control was on the I.C. of the P.S. Logbook was inspected by I.O. but he did not sign on the same. Logbook of the vehicle will reflect the journey in details with time. Seizure and

- preparation of seizure list and other documents were made on the culvert of Telipara ghat and not at the P.S. He did not sign on the notes.
- xii. PW-11 deposed that on 11.12.2012 he was posted as A.S.I. of Police, Baishabnagar P.S. On the basis of the written complaint formal F.I.R., was drawn by Shri Manik Debnath, I.C. of the P.S. He was conversant with his signatures and handwriting on the formal F.I.R., marked as Exbt.-5. In course of investigation of the case he drew the rough sketch map of the P.O. with index which bore his signature marked as Exbt.-6. He prepared seizure list relating to the papers of the motor cycle marked as Exbt.-7. He sent the alleged FICN to the Bhartiya Reserved Bank Note Mudran (P) Ltd., Salboni for examination of the notes and subsequently collected report, marked as Exbt.-8. He also examined witnesses Kalipada Mondal, Lalchand Singh, Dibendu Sarkar and Prakash Ch. Ghosh.
- xiii. PW-11 in his cross-examination stated first he examined the accused person. Thereafter, he examined complainant at 19:35 hours but his statement was not reduced into writing as he corroborated the F.I.R. Thereafter, he examined the other accompanying force but their names had not been mentioned in the F.I.R. He identified the accompanying force from the seizure list and they were solely examined by him.
- xiv. He received the seizure list along with the seized material from complainant on 11.12.2012 at 19:05 hours and he did not peruse the

notes by breaking the seal. He did not record the statement of the complainant regarding the condition of the seized articles at the time of handing over the same. It had not been mentioned in the C.D. that the notes were in sealed condition. The notes were sent to Salboni through Constable No.74 Shankar Prasad whose name had been mentioned in the C.D. but his statement was not recorded by him.

16. 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.*”

17. In **Umashankar v. State of Chhatisgarh**¹, the Hon'ble Supreme Court observed as follows:-

“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. The High Court, however, completely missed this aspect. The learned trial Judge on the basis of the evidence of PW 2,*

¹ (2001) 9 SCC 642

PW 4 and PW 7 that they were able to make out that the currency note alleged to have been given to PW 4 was fake, “presumed” such a mens rea. On the date of the incident the appellant was said to be an eighteen-year-old student. On the facts of this case the presumption drawn by the trial court is not warranted under Section 4 of the Evidence Act. Further it is also not shown that any specific question with regard to the currency notes being fake or counterfeit was put to the appellant in his examination under Section 313 of the Criminal Procedure Code. On these facts, we have no option but to hold that the charges framed under Sections 489-B and 489-C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Sections 489-B and 489-C IPC and acquit him of the said charges.”

18. In ***M. Mammutti Vs. State of Karnataka***², the Hon’ble Apex Court observed as follows:-

“... Mr. Nettar submitted that once the appellant is found in possession of counterfeit notes, he must be presumed to know that the notes are counterfeit. If the notes were of such a nature that mere look at them would convince anybody that it was counterfeit such a presumption could reasonably be drawn. But the difficulty is that the prosecution has not put any specific question to the appellant in order to find out whether the accused knew that the notes were of such a nature. No such evidence has been led by the prosecution to prove the nature of the notes also. In these circumstances, it is impossible for us to sustain the conviction of the appellant. For these reasons, therefore, the appeal is allowed, conviction and sentences passed on the appellant are set aside, and the appellant is acquitted of the charges framed against him.”

19. Weirdly the complainant and the accompanying police officers in their secret mission could not cite any independent witness from the locality surrounding the place of occurrence. The presence of the prosecution

² (1979) 4 SCC 723

witnesses apart from the police of the raiding party comprised of people being distant residents, who eventually turned hostile before the Trial Court.

20. Inconsistencies in the versions of the police witnesses writ large contextually to the event of the search and seizure of the FICN. The place and time of seizure were contested and variant.

21. In **Akil vs. State (NCT of Delhi)**, reported in **2024 SCC Online 3242** it was observed as follows:-

“30. It was strenuously contended by counsel for the Appellants that all witnesses examined by the prosecution were interested witnesses being police officials and although the spot from where the alleged recovery was made and Appellants were apprehended was a crowded market place, no public witness was joined in investigation either at the stage of apprehending the Appellants or conducting their personal search. This argument in my view has no merit. 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.”

22. The evidence of police witnesses can be relied upon provided it is unflawed and trustworthy. The prosecution failed to establish the *mens rea* on the part of the appellant to have possessed the FICNs with knowledge of the same to be fake coupled with the intention to utilize it for wrongful gain.
23. Mere possession of the FICN in absence of plausible reason to execute mal-intention with a guilty motive cannot be accepted. The prosecution fortified on the confession of the appellant which is legally discredited in view of Section 27 of the Indian Evidence Act. Moreover, the investigating agency did not record his statement and even endeavoured to trace his illegal connection with Bangladeshi Nationals to embolden the imputation and implication in exactitude.
24. Specific question under Section 313 of the Cr.P.C. was not directed to extract a reply as to whether he had the knowledge counterfeit notes were in possession which he intended to avail of illegally for wrongful gain. A negative reply to such question could have entailed a possibility of presumption and rebuttal. An entire paragraph consisting several episodes was posed as a question leading to obfuscation and an evasive reply on the part of the appellant as *“I am innocent”*. The Trial Court should have

maintained discretion in being discreet, specific and direct in framing the question in conducting the process under Section 313 of the Cr.P.C. The manner of paraphrase adopted in complying the provision under Section 313 Cr.P.C. was mechanical, incoherent and undiscerning.

25. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal being CRA 19 of 2014 is allowed.

26. Under such facts and circumstances, the judgment of conviction dated 21.12.2013 and order of sentenced dated 23.12.2013 passed by Learned Additional Sessions Judge, 2nd Court, Malda in Sessions Case No.111/2013, corresponding to Sessions Trial No.16/2013 in G.R. Case No.5330/2012, arising out of Baishnabnagar P.S. Case No.307/2012 dated 11.12.2012 is set aside.

27. Accordingly, the Criminal Appeal being CRA 19 of 2014 stands disposed of.

28. There is no order as to costs.

29. I record my appreciation for the able assistance rendered by Learned Advocate Mr. Soham Banerjee as Amicus Curiae, appearing for the appellant, in disposing of this appeal.

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

31. 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.)