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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.A. 698 of 2014**

**Bhotto Sk. @ Bhottu Sk. @ Guddu**
**-vs-**
**The State of West Bengal**

**With**

**CRA 699 of 2014**

**Md. Bablu @ Bablu Khan**
**-vs-**
**The State of West Bengal**

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|---|---|
| For the Appellant (In CRA 698 of 2014) | : Mr. Arup Kumar Bhowmick |
| For the Appellant (In CRA 699 of 2014) | : Mr. Bibaswan Bhattacharya |
| For the State (In CRA 699 of 2014) | : Mr. Avishek Sinha |
| For the State (In CRA 698 of 2014) | : Mr. Bidyut Kumar Roy |
| Judgment on | : 05.05.2026 |

**Ananya Bandyopadhyay, J.:-**

1. These two instant appeals are preferred against the judgment and order of conviction dated 19.09.2014 & 20.09.2014 passed by the Learned Additional District & Sessions Judge, 2nd Court, Barrackpore, North 24 Parganas in Sessions Trial No.03(03)2014 arising out of Sessions Case No.522/2013 &

G.R. Case No.6061 of 2014 convicting the appellants under Sections 489B, 489C, 120B of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for 4 years and also to pay a fine of Rs.2,000/- in default to suffer 1 month rigorous imprisonment more for the offence under Section 489B of the Indian Penal Code, 1860 and to suffer rigorous imprisonment for 4 years and also to pay a fine of Rs.2,000/- in default to suffer 1 month rigorous imprisonment more for the offence under Section 489C of the Indian Penal Code, 1860 and both the sentences were directed to run concurrently.

2. The prosecution case was instituted on the basis of a written complaint, as lodged by Inspector Atanu Ghosal of Special Operations Group, C.I.D., West Bengal (PW-1), before the Inspector-in-Charge of the Airport P.S., inter alia stated that on the basis of a secret source information on 11.09.2013, the raiding party was able to apprehend the appellants in front of the flyover from Sarat Colony More on Jessore Road towards Dakshineswar, connecting Belghoria Expressway with Fake Indian Currency Notes (FICN). Then, the matter was recorded in the General Diary and communicated to Superior Officer. On search, Fake Indian Currency Notes (FICN) was found from both the appellants and all the articles were seized under seizure list. Thereafter, the Fake Indian Currency Notes (FICN) were sealed and labeled. The appellants were arrested maintaining all formalities of law and taken to police station. The matter was recorded in the General Diary and communicated to Superior Officer.

3. On the basis of a written complaint lodged by the complainant, Airport Police Station Case No.266 of 2013 dated 11.09.2013 under Sections 489B/489C/120B of the Indian Penal Code was initiated for investigation.
4. Charges were framed against the appellants under Sections 489B/489C/120B of the Indian Penal Code to which they pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 6 witnesses and examined certain documents.
6. The Learned Advocate representing the appellant/Bhotto Sk. @ Bhottu Sk. @ Guddu submitted as follows:-
   i. *"The evidence of the prosecution witnesses i.e. PW-1 revealed that no nil seizure list was prepared by the police personnel's which shows that the appellants were not given any chance to search the complainant and his associates during the time of investigation. As a result the impugned judgment passed by the Learned Judge was palpably wrong in the eye of law and liable to be set aside for interest of justice.*
   ii. *It had escaped the notice of the Learned Judge that the seizure list prepared by the complainant and his associates did not contain any seal of the rank of gazette officer nor any seal of C.I.D., which shows that the said seizure list was manufactured to tag the appellant in the said offence and did not have any evidentiary value in the eye of law.*
   iii. *The Learned Judge did not take into consideration in proper perspective the evidence of PW-1 to specifically deposed that he did not knows that there was many shop rooms at the place of occurrence but curiously*

*enough the investigation officer (PW-6) as well as PW-3, one of the raiding officers specifically deposed during trial that there were many shop rooms nearer to the place of occurrence which reflects that the place of occurrence was doubtful as a result.*

iv. *The Learned Trial Court lost sight of the fact that the evidence of PW-5, who claimed himself as expert of determine counterfeit currency notes but curiously enough he did not possess any official certificate which reflects that there was a question mark in his ability to determine the counterfeit current notes.*

v. *The investigation conducted by the investigating agency was totally in perfunctory manner as observed by the trial court but surprisingly the trial proceeded and the conviction imposed on the basis of such trial which denotes that entire episode was nothing but grave abuse of the process of law and the conviction should be set aside to meet ends of justice.*

vi. *The Learned Trial Court while dealing with the point of sentence should have a judicial approach as regards invoking the provision of either Section 360 of the Code of Criminal Procedure or Probation of Offenders Act in considering the nature of the case and the antecedents of the appellant. Although, it was a discretionary power but if the Learned Judge proposes not to deal under the aforesaid Sections, he had to specify special reasons under Section 361 of the Code of Criminal Procedure. So the Learned acted not in accordance with law which vitiated in his judgment as Section 361 of the Code of Criminal Procedure was mandatory in nature.*

vii. *Considering and judging the entire episode as alleged and also the discrepancies in the evidence of the prosecution witnesses, the entire story as alleged by the prosecution was based on falsehood and should not be relied upon.*

viii. *In view of the aforesaid state of affairs and the evidence as also materials on records, the conviction of the appellant under the said Section was not at all sustainable in law and liable to be set aside for ends of justice as the prosecution had miserably failed to prove the ingredients of the offence as alleged beyond all reasonable doubt coupled with the fact that excepting interested witnesses, no independent witnesses was examined in that case."*

7. The Learned Advocate representing the appellant/Md. Bablu @ Bablu Khan further submitted as follows:-

   i. *"The proceedings in the instant case were instituted on the basis of a Written Complaint, as lodged by Inspector Atanu Ghosal of Special Operations Group, CID, West Bengal i.e., PW-1, before the Inspector-in-Charge of the Airport Police Station, inter alia notifying therein as to how on the basis of a secret source information on September 11, 2013, the Raiding Party herein was able to apprehend the present appellant and another Co-Accused Bhottu Sk. Guddu in front of the flyover from Sarat Colony More on Jessore Road towards Dakshineswar, connecting Belghoria Expressway, and how allegedly from each of them, 100 pieces of FICN, each having denomination of ₹ 500/-was recovered (presumably amounting to 50,000/- from each). Admittedly, it is the Prosecution Story* *herein that upon receipt of the said source information, when the Raiding Party had left for the recovery operation, the said matter was diarized vide S.O.G., C.I.D., W.B., CC. No.343/13 dated September 11, 2013, yet the corresponding seizure list, marked as Exhibit-1, pertaining to the alleged recovery of the F.I.C.N., in connection with the instant proceedings, revealed the same to have been prepared in connection with/reference to an altogether different proceedings, the same being S.O.G., C.I.D., W.B., CC. No. 340/13 dated September 11, 2013. That raises serious questions and dubiety regarding the very alleged recovery of the F.I.C.N., in the instant case, inasmuch as there is every possibility of the same being recovered in connection with some other prior case, as the corresponding reference number would itself suggest, connected in no way with the instant proceedings. What was even more surprising and startling was that, contrary to the settled practice and procedure, the said contended seizure list in question neither bore any stamp and/or seal of any of the Departments of the Investigating Agency/Raiding Agency, in spite of consisting of two pages, only contained the apparent signatures of the accused persons, including the present appellant, only on the second page, did not contain the official stamp or seal of any of the seizure witnesses (all of whom were official police witnesses), and even contained exaggerated and pretentious depictions of the supposed place and manner of recovery of the same from the accused persons, which was not even stated/narrated in the First Information Report (F.I.R.) in the instant case, nor stated by any of the prosecution.*

*Witnesses in course of their respective depositions before the Learned Trial Court. It raises serious doubts and uncertainty regarding the authenticity and genuineness of the said document as well as the corresponding purported recovery of F.I.C.N. from the accused persons, since there appears high probability of the same being created/prepared/manufactured at a much subsequent point of time, with certain fictitious contents, solely to implicate the Accused Persons.*

iii. *A bare perusal of the First Information Report (F.I.R.) in the instant case would reveal that it was contended by the PW-1 (the complainant) that the aforementioned seizure herein was effected under a valid seizure list, in the presence of witnesses as well as the members of the raiding party, yet the aforesaid seizure list would unmask the same to have been effected only in the presence of S.I. Anupam Chakraborty (P.W.-3) and A.S.I. Ritwik Banerjee (not examined during the course of trial in the instant case and not even mentioned either in the written complaint or in the deposition of the PW-1 to be at all present as a member of the said raiding party), both officials of the C.I.D., West Bengal.*

*That further casts a dense cloud of suspicion, disbelief and doubt over the entire prosecution case and the entire process of the corresponding alleged recovery of F.I.C.N. from the purported possession of the accused persons.*

iv. *It was also quite shocking to note that although the alleged recovery of the F.I.C.N. from the apparent possession of the accused persons was effected for over a considerable period of time, from an admittedly densely* *populated/busy and hustling area that too at a reasonable time of the day, yet not a single local/independent witness was ever cited nor the signature of a single respectable person of the locality was ever obtained to further corroborate and validate the Prosecution Case herein, apparently because they had denied to assist and had left the place, but even their names and addresses were never noted by the PW-1, nor were any one of them ever served with any valid notice, requesting them to assist in the concerned operation.*

*It further questions the alleged process of recovery of the F.I.C.N. from the purported possession of the accused persons and renders it highly improbable and unconvincing.*

v. *It was quite astonishing to note that it was not the prosecution case that the alleged F.I.C.N. recovered from the purported possession of the accused persons were of an extremely low quality and as such, quite surprisingly, without admittedly having any prior expertise/specialty in the field, all of them were extremely presumptuous while confidently and assuredly detecting the same to be F.I.C.N. at a moment's glance.*

*That only goes on to further distrust and repudiate the overall case of the prosecution, especially with regard to the alleged recovery of the F.I.C.N. from the supposed possession of the accused persons.*

vi. *PW-1 had categorically stated in his written complaint as well as in course of his testimony before the Learned Trial Court that prior to the searching of the accused persons for the F.I.C.N., the raiding party had apparently offered themselves to be searched, but the same was denied by them, but* *no documents whatsoever were ever produced to validate such claims of offering themselves to be searched before searching the accused persons; additionally, the PW-5, PW-2 & PW-3, who were supposedly also members of the self-same raiding party, never in course of their respective depositions before the Learned Trial Court, ever supported such view of offering themselves to be searched by the accused persons.*

*Gross violation of the settled procedure of law, the accused persons, being laymen, were not even informed of their basic rights to search the members of the raiding party and there remains ever possibility of false implication on the basis of possible articles planted on them, especially since there were no independent witnesses supporting the said alleged recovery of the F.I.C.N. from the apparent possession of the accused persons.*

vii. *A copy of the Log Book Register of the vehicle, apparently used by the members of the raiding party in connection with the instant case, was never placed before the Learned Trial Court.*

*Leaves behind more shortcomings and/or defects in the entire prosecution case and raises serious doubts over the motivated manner in which the investigation was obviously conducted by the investigating agency.*

viii. *Although the PW-2 (apparently a member of the raiding party) had spoken about the presence of A.S.I. Ritwik Banerjee in the concerned raiding party on the fateful date, yet he did not at all speak about the presence of the PW-1 and gives an absolutely vague description about the apparent* *recovery of the F.I.C.N. from the alleged possession of the accused persons both in terms of quantity and manner.*

*That further raises serious questions over the veracity of the entire prosecution case, as the testimonies of those official police witnesses appear to have been subsequently arbitrarily incorporated, solely to superficially fill up the obvious lacunae in the Prosecution Story.*

*ix. PW-5, being the Manager (Production), Bharatiya Reserve Bank Note Mudran Private Limited, had apparently received the alleged F.I.C.N. on September 16, 2013 from A.S.I. Ritwik Banerjee (not examined) and along with other members of his team (none of whom were even named in the corresponding expert's report or even examined on behalf of the prosecution in course of the instant trial, he had examined the same in their Forgery Note Detective Cell at Salboni and had apparently found them to be fake in respect of its design, signature of the Governor and serial numbers. He had gone on to admit that he did not possess any official certificate designating him to be an expert to determine the authenticity of counterfeit currency notes and for reasons, best known only to him, he had refused to disclose the methodology and the process of identifying the contented F.I.C.N., at their laboratory.*

*Substantially reduces the evidentiary value and reliability of the said arbitrary Report, predominantly owing to the utter lack of transparency and clarity in the process behind its preparation. It was his categorical version that the corresponding report, prepared by him in his official capacity, was submitted under Reference No.839/(S)*

*21.02.02/2013-2014 dated November 11, 2013 and was marked as Exhibit-4, nonetheless, a physical perusal of the said report would reveal that the Reference number was appearing as /(S) 21.02.02/2013-2014 (blank) and in the subsequent page, the Reference No. for the information of the Investigating Agency was also found to be dissimilar, i.e., 839A/(S) 21.02.02/2013-2014.*

*In the absence of any conclusive proof, a reasonable question quite obviously remains whether the report exhibited before the Learned Trial Court was at all in connection with the instant case or not.*

*x. PW-6 being the Investigating Officer of the instant case, in course of his deposition before the Learned Trial Court, had stated that after taking up investigation on September 11, 2013, he had taken charge of the accused persons along with the seized alamats and had sent the same for expert's opinion, but without re-seizing the same.*

*Not only he absolutely silent about the actual date when the said seized alamats were actually sent for expert's opinion, additionally the prosecution was totally mum with regard to the whereabouts of the said seized alamats in the instant case for about 5 (five) whole days and no malkhana register or other allied documents were ever placed before the Learned Trial Court to conclusively establish the continuous and uninterrupted custody of the F.I.C.N., apparently recovered from the possession of the accused persons, which only gone on to render the prosecution case highly dubious, evasive and questionable, Additionally, as per the version of the PW-5, it was A.S.I. Ritwik Banerjee, who had* *personally handed over the concerned F.I.C.N. from the custody of the Investigating Agency for chemical examination and verification thereof, but for reasons only best known to the prosecution, even in the face of flagrant discrepancies, irregularities and inconsistencies, he was never examined in course of the instant trial proceedings to further corroborate the prosecution case, which only gone on to leave behind even greater loopholes, deformities and blemishes in the entire prosecution story.*

xi. *The Examination of the accused persons under the provisions of Section 313 of the Code of Criminal Procedure, 1973 also demonstrates a glaring example of utter and outright violation of the said statutory and procedural provisions, inasmuch as, the testimonies of all the prosecution witnesses, including the PW-6 (being the Investigating Officer of the instant case), were never placed before the accused persons at all and a few restricted portions of the depositions of the PW-1, PW-3 & PW-5 only were placed before them, thereby flagrantly denying and depriving them of a legitimate opportunity of understanding and properly explaining, answering and/or defending the various circumstances attempted to be established against them by the prosecution.*

*Various vital incriminating circumstances, inter alia including offering the accused persons to search the members of the raiding party prior to the search operation, non-availability of independent seizure witnesses, the sending of the allegedly recovered F.I.C.N., for its chemical examination and the receipt of the corresponding expert's report by the Investigating Officer, the specific contents of the corresponding chemical* *expert's report and the methodology etc., applied therein, etc., were never placed before the accused persons and hence, they never got the opportunity to aptly explain and/or rebut such contentions of the Prosecution.*

*Furthermore, in course of such examination, the accused persons had distinctively claimed innocence and had outright asserted and averred that the various documents relied upon by the prosecution, were unequivocally fabricated, misguided and subsequently manufactured ones and were consciously prepared in collusion, to immorally and unjustly implicate them in the alleged offences.*

*xii. It was a settled principle of law that if a point in evidence was important and vital against an accused and the conviction was intended to be based upon the same, it was just and proper that the accused should always be questioned about the matter and be given an opportunity of explaining it and where no specific question had been put to the accused on an inculpatory material in the prosecution evidence, it would unconditionally vitiate the entire trial proceedings and in case the court fails to put the needed question, it would result in a handicap, disadvantage and prejudice to the accused and he can always legitimately claim that no evidence, without offering him an opportunity to explain, can be used against him.*

*In that regard, reliance was humbly placed upon the findings of the Hon'ble Apex Court of India in the matter of Asraf Ali vs. The State of*

*Assam, reported in (2008) 16 SCC 328, most specifically to paragraph numbers 21, 22, 23 and 24 thereof.*

xiii. *The Charges in the instant case were framed under Sections 4898/489C/120B of the Indian Penal Code, 1860 and the conviction was ultimately handed to the Accused Persons herein under Sections 489B/489C of the Indian Penal Code 1860 for the alleged offence of carrying and/or having in possession F.I.C.N. for its selling and/or using as genuine, despite having knowledge of the same to be counterfeit; however, even if for the sake of arguments only, we are to accept the prosecution story to be the gospel truth, then also it was quite apparent that the prosecution in the instant case has utterly failed to indicate, bring on record and/or establish the fact that the accused persons, had in their possession and/or carried the said F.I.C.N., for the purpose of its selling or for using the same as genuine, being fully aware and knowing the fact that the same were not genuine, but counterfeit.*

*Evidently, such question was also never put to the accused persons, inter alia with regard to their intention, purpose or knowledge of carrying/possessing such purported F.I.C.N., in course of their respective examinations under the provisions of Section 313 of the Code of Criminal Procedure, 1973. As such, in the absence of any conclusive or proved mens rea, intention or active knowledge on the part of the accused persons whatsoever, they ought not to have been convicted for the commission of the alleged offences.*

xiv. *It was rather concerned to note that while evidently delivering the impugned order and judgment of conviction and sentence in the instant case, for reasons best to known to the Learned Trial Court, contrary to the entirety of the materials-on-record, the very first point for consideration before it was whether the accused persons were guilty of committing offences punishable under Sections 376(2)(f) (g)/511,323, 506/34 of the Indian Penal Code, 1860.*

*The apprehension remains as to the nature and credibility of the materials-on-record actually appreciated, considered and relied upon by the Learned Trial Court, while arriving at the conclusion of guilt of the Accused Persons herein, including the present appellant.*

xv. *While delivering the impugned order of conviction and sentence, it was further inter alia observed therein by the Learned Trial Court that the accused persons were not offered to search the police personnel at the place of occurrence and no efforts on the part of the investigating agency were found to clarify wherefrom the accused persons were came and how they meet to gauge the mens rea and apparently, in the absence of any direct evidence regarding criminal conspiracy, they were acquitted of the Charges under Section 120B of the Indian Penal Code, 1860.*

*Therefore, where the Learned Trial Court was itself satisfied that there was utter dearth and/or absence of any admissible evidence to establish any criminal conspiracy, mens rea and/or knowledge on the part of the accused persons with regard to the alleged offences, which was one of the most vital ingredients for sustaining a conviction under Sections*

*489B/489C of the Indian Penal Code, 1860, there ought not to have been any conviction under the said provisions of law.*

xvi. *The sum total of all the materials-on-record in the instant case would unambiguously and conclusively go on to reveal that the prosecution had miserably failed to bring on record any independent or admissible evidence to establish the guilt of the present appellant in the alleged offences beyond all reasonable doubt and had solely relied extensively upon the uncorroborated, dubious and inconsistent depositions of the PWs-1, 2 & 3 (all being members of the Raiding Party herein) for the same, which did not even receive any form of support/substantiation from any independent source or witness, as even the alleged recovery of the contented F.I.C.N. from the supposed possession of the accused persons was substantially flawed, fallacious and questionable, inconsistent and contradictory to established principles of law and the customary doctrines of law were repeatedly outright violated, desecrated and defiled in every step of the instant trial proceedings, thereby resonantly rendering it a mistrial in the eyes of law.*

xvii. *Under such foregoing circumstances, it was most humbly and respectfully prayed that this Hon'ble Court may, after going through the entirety of the materials-on-record and after considering the rival submissions and arguments, as advanced on behalf of the respective parties, most graciously be pleased to set aside the impugned order of conviction and sentence, thereby acquitting the appellant of all the alleged charges and/or pass such other incidental and/or consequential orders, as this*

*Hon'ble Court may deem fit and proper in the interest of justice, equity and good conscience."*

8. The Learned Advocate representing the State submitted as follows:-

i. *"PW-1 has deposed that on 11.09.2013 he received information from a secret source that the present appellant was arriving at Airport area at Jessore Road with fake currency. Following which PW-2 and PW-3 accompanied him to Airport. The same has been corroborated by PW-2 and PW-3.*

ii. *According to PW-1's statement as well as from the seizure list it is evident that the present appellant has signed in the seizure list which at least marks his presence during the seizure, which cannot be denied by any means. The same has been corroborated by PW 2 and 3 respectively. Even PW-1 and PW-3 were signed the same as witness corroborating the fact that the appellant was present and FICN amounting to four bundles of 50 pieces of Rs.500/- was found, amounting to Rs.1,00,000/- which was seized from his possession which was later on marked as Mat. Exbt.-1. The presence of the appellants at the place of occurrence thus suggests the probability that the F.I.C.N. so seized was inherently in the appellant's possession.*

iii. *PW-1 identified the appellants in the Court and deposed that the written complaint marked as Exbt.-2 was signed by him as the complainant in the official capacity.*

iv. *PW-1 acknowledged in his cross examination that the CC no. was 340, but the written complaint bearing no.343 was a clerical mistake. Hence he* *cleared up the possible air of confusion relation to the reference of the appellants in terms of certain other case. Thereby he rejected the contention of presence of two CCs for one case and clarified the prosecution stratum that no unnecessary cases were intermingled with the one in which the present appellant were roped in.*

v. *PW-5 who happened to be the expert concluded that after examination of all the 200 notes of Rs.500/- as found by PW-1 was found to be fake and false. Following which he submitted his report dated 11.11.2013 bearing the official seal and his signature, marked as Exbt.-4.*

vi. *Taking charge of the present case the investigating officer, i.e., PW-6 sent the seized alamat for expert opinion which was delivered given by PW-5. He submitted the charge-sheet and deposed that the appellant was identified.*

vii. *In a case of seizure of F.I.C.N. from the possession of an accused, the two things which are necessary to attract the provisions under Indian Penal Code are seizure and forensic report that the recovered currencies were fake. In the instant case, both are prover beyond reasonable doubt. Further, there are decisions of this Hon'ble Court which holds that in the event large amount of F.I.C.N. were seized from the possession of an accused it would be presumed that the accused was not only liable for possession but also actively involved with trafficking. It was also trite law as has been held in catena of decisions of the Hon'ble Apex Court, that evidence of police witnesses can be relied so far as the seizure was* *concerned and it was not necessary to look for corroboration from independent witnesses.*

viii. *Hence, in the backdrop of aforesaid discussion it can be argued that the prosecution has been able to prove that the notes seized were fake. Presence of the appellant at the place of occurrence and seizure from his possession was corroborated by PWs-1, 2 & 3 as such the case was proved beyond reasonable doubt and it did not require any interference by this Hon'ble court."*

9. The evidence of the prosecution witnesses revealed that the prosecution case emanated from a source information received by the officers attached to the Special Operation Group, C.I.D., West Bengal regarding transportation of Fake Indian Currency Notes in the Airport area at Sarat Colony More on Jessore Road. The prosecution sought to establish that acting upon such information, the raiding team proceeded to the place of occurrence, intercepted the appellants and recovered counterfeit currency notes amounting to Rs.1,00,000/- consisting of 200 pieces of Rs.500/- denomination from their possession.

10. PW-1 deposed that on 11.09.2013 he was posted in the Special Operation Group, C.I.D., West Bengal. On that date he received source information that one Bablu Ali Khan would arrive at the Airport area carrying Fake Indian Currency Notes. According to the witness, after receiving such information he communicated the matter to his superior authority and, acting on the direction received from the superior officer, proceeded towards the Airport area accompanied by PW-2, PW-3 and other members of the raiding party in

a government vehicle. The witness stated that after reaching Airport Police Station at about 4:45 p.m., the information was diarised vide G.D.E. No.891 dated 11.09.2013. Thereafter, the raiding team reached Sarat Colony More near the flyover where, on being identified by the source person, two persons namely Bablu Ali Khan and Bhottu Sk. @ Bhottu were detained.

11. PW-1 further stated that upon interrogation the detained persons admitted that they were carrying Fake Indian Currency Notes procured from Bishnab P.S. area under Malda district for delivery to another person. The witness stated that efforts were made to secure independent witnesses from the locality though none expressed willingness to participate in the search and seizure process. According to him, the detained persons were first offered an opportunity to search the members of the raiding party though they declined. Thereafter, search of the appellants led to recovery of 200 pieces of Rs.500/- denomination currency notes arranged in four bundles amounting in aggregate to Rs.1,00,000/-. A seizure list was prepared in respect of the recovered articles and the seized notes were labelled and sealed. The seizure list was marked Exhibit-1 and the packets containing the seized notes were marked Mat. Exhibit-I collectively. PW-1 stated that thereafter both accused persons were arrested and a written complaint was lodged before Airport Police Station, which was marked Exhibit-2.

12. During cross-examination PW-1 admitted that the seizure list reflected C.C. No.340 whereas the written complaint referred to C.C. No.343, which according to him might have occurred due to clerical oversight. He stated that he did not lodge any separate G.D.E. on his arrival at Airport Police

Station with the seized articles and accused persons and expressed lack of familiarity with the expression “working G.D.E.”. The witness admitted that no statement under Section 161 Cr.P.C. was recorded from local persons and no notice had been served upon them. He stated that the entire process of search and seizure consumed nearly ninety minutes. PW-1 also admitted that the seizure list did not bear any seal of a Gazetted Officer. He further stated that the written complaint did not contain reference to the presence of A.S.I. Rittwik Banerjee during the raid and also did not specify that the counterfeit notes had been recovered from the pockets of the appellants. According to the witness, no nil seizure list had been prepared. He further stated that although he received telephonic instruction from his superior officer for endorsing the case for investigation, such fact did not find place in the written complaint. The witness admitted that the log book of the vehicle used during the raid had not been produced before the Court. He further stated that several shops were situated near the place of occurrence.

13. PW-2 deposed that on the relevant date he was attached to the Special Operation Branch, C.I.D., West Bengal as Sub-Inspector of Police. According to him, acting upon source information he accompanied the raiding team consisting of S.I. Anupam Chakraborty, A.S.I. Rittwik Banerjee and other police personnel to the Airport area where two persons namely Bablu Ali Khan and Bhutto Sk. @ Guddu were detained and Fake Indian Currency Notes were recovered from them. The witness stated that the officers prepared seizure documents, arrested the appellants and lodged the FIR.

14. In cross-examination PW-2 stated that a Sub-Inspector could obtain Command Certificate as per procedure. He stated that though he was not an expert in counterfeit currency detection, he had undergone training to identify Fake Indian Currency Notes. According to him, the seizure list did not bear any seal of the C.I.D. He further stated that the raiding party remained at the place of occurrence for nearly two hours.

15. PW-3 deposed that on 11.09.2013 he was posted at the S.O.G. Section, C.I.D., West Bengal at Bhawani Bhawan as Sub-Inspector of Police. According to him, acting on source information Inspector Atanu Ghosal, A.S.I. Rittwik Banerjee, S.I. Krishnendu Ghosh and other police personnel travelled in a vehicle bearing registration no. WB-26R-1534 to Airport Police Station where the information was diarised vide G.D.E. No.891 dated 11.09.2013. Thereafter, they proceeded towards Sarat Pally near the flyover. The source person identified Bablu Ali Khan and another individual who were allegedly carrying Fake Indian Currency Notes. According to the witness, the appellants were detained and upon search counterfeit currency notes were recovered from their possession. The seized articles were taken into custody under a seizure list and the witness placed his signature thereon. The seizure list was marked Exhibit-1/1 and the seized notes were marked Mat. Exhibit-I collectively.

16. During cross-examination PW-3 stated that he was not an expert in counterfeit currency detection. He admitted that his movement had not been entered in the movement register. He stated that the seizure list had been written at the spot on a writing pad or support board and that the raiding

team remained at the place of occurrence for nearly one hour and forty-five minutes. According to him, the place of occurrence was a busy thoroughfare surrounded by several shops. The witness admitted that he had not affixed his official seal beneath his signature on the seizure list and that the seizure list contained no official seal of any department. He stated that the appellants voluntarily signed the seizure list. He further admitted that after returning to Airport Police Station no separate G.D.E. had been lodged by him and his return to office at about 11:15 p.m. had not been entered in the movement register.

17. PW-4 deposed that on 11.09.2013 he was posted at Airport Police Station as Assistant Sub-Inspector of Police. According to him, upon receiving the written complaint from Inspector Atanu Ghosal he initiated the instant case by making endorsement on the written complaint, marked Exhibit-2/1, and thereafter prepared the formal FIR, marked Exhibit-3. The Officer-in-Charge thereafter endorsed the case to S.I. Sougata Ghosh for investigation. During cross-examination the witness stated that he had no personal knowledge regarding the occurrence.

18. PW-5, who was examined as an expert witness, deposed that at the relevant time he was serving as Manager (Production) at Bharatiya Reserve Bank Note Mudran Pvt. Ltd. According to him, pursuant to requisition made in connection with Airport P.S. Case No.266/13 dated 11.09.2013, four sealed envelopes containing 200 currency notes of Rs.500/- denomination suspected to be counterfeit were received through Court challan. The witness stated that he, along with other members of the Forgery Note Detective Cell,

examined the notes by comparing them with authentic specimen notes with the aid of scientific instruments and technical parameters. Upon examination of eighteen distinct parameters relating to design, signature of the Governor and serial numbers, the team concluded that all 200 notes were counterfeit. He prepared a report in official capacity and submitted the same before the Court. The report was marked Exhibit-4 and the seized notes were identified by the witness as Mat. Exhibit-I collectively.

19. During cross-examination PW-5 stated that before examining the currency notes he had not received a copy of the formal FIR. He asserted that he possessed expertise in identification of counterfeit currency though he did not hold any official certificate to that effect. The witness also stated that the names of the other members of the examining team were not reflected in the report and he declined to disclose the detailed methodology adopted in the laboratory for identification of counterfeit notes.

20. PW-6, the Investigating Officer, deposed that on 11.09.2013 he was posted at S.O.G., C.I.D., West Bengal as Sub-Inspector of Police and was entrusted with investigation of the case by his superior authority. According to him, he visited Airport Police Station, took charge of the accused persons and seized articles, interrogated the available witnesses and the appellants, visited the place of occurrence and prepared a rough sketch map with index marked Exhibit-5. He stated that the seized articles were forwarded for expert opinion and after collection of the expert report marked Exhibit-4, he submitted charge-sheet upon completion of investigation.

21. During cross-examination PW-6 stated that though he was not an expert, he had undergone departmental training enabling him to identify counterfeit currency notes. He could not readily produce documents relating to such training. The witness admitted that he did not obtain signature of any local respectable person during investigation though shops and establishments were situated near the place of occurrence. He stated that statements under Section 161 Cr.P.C. were recorded at Airport Police Station between 9:35 p.m. and 10:30 p.m. The witness could not recollect the G.D.E. number reflecting receipt of the seized documents and articles. He further stated that he had not re-seized the seized articles and that he had not produced the movement register before the Court.The evidence adduced by the prosecution, when examined in the backdrop of the statutory ingredients of Sections 489B, 489C and 120B of the Indian Penal Code, does not inspire the degree of assurance necessary for sustaining the conviction of the appellants. The materials on record reveal deficiencies in the manner of search, seizure, investigation and proof of conscious possession which strike at the foundation of the prosecution case. The cumulative effect of such infirmities renders the conviction unsafe.

22. To bring home a charge under Section 489B IPC, the prosecution is required to establish not merely possession or recovery of counterfeit currency notes, but active use, trafficking, delivery or circulation of such notes coupled with knowledge or reason to believe that the notes were counterfeit. Section 489C IPC similarly postulates conscious possession accompanied by the requisite mens rea that the currency notes were forged or counterfeit and intended to

be used as genuine. Suspicion, however grave, cannot substitute proof of such foundational ingredients.

23. In the present case, the prosecution evidence proceeds substantially on the testimony of police personnel attached to the raiding team. No member of the public was associated with the alleged search and seizure although the evidence of PW-1, PW-3 and PW-6 clearly discloses that the place of occurrence was a busy thoroughfare surrounded by shops and establishments. The prosecution witnesses admitted that several shop rooms existed near the place of occurrence. Even then, no sincere endeavour appears to have been made to secure participation of local persons in the search and seizure process. The explanation furnished that none agreed to become witness remains a bare assertion unsupported by any contemporaneous record or notice. No written refusal of any local person was obtained. No action was initiated against any person declining to assist the police. The absence of independent witnesses in a case resting entirely upon official testimony assumes significance particularly when the alleged recovery forms the fulcrum of the prosecution case.

24. The seizure process itself suffers from conspicuous irregularities. PW-1 admitted that the seizure list did not contain the seal of any Gazetted Officer. PW-2 stated that the seizure list bore no seal of the C.I.D. PW-3 also admitted that neither his official seal nor any departmental seal was affixed upon the seizure documents. The evidence further reflects divergence regarding the duration and manner of the search operation. PW-1 stated that the process consumed nearly ninety minutes, PW-2 stated that they

remained at the place of occurrence for about two hours, whereas PW-3 stated that they remained there for nearly one hour and forty-five minutes. These discrepancies, though apparently peripheral, assume relevance in a prosecution founded entirely on an alleged roadside recovery unsupported by independent corroboration.

25. The prosecution version also suffers from procedural discontinuities which weaken the sanctity of the seizure. PW-1 admitted that no separate G.D.E. was lodged upon return to the police station with the accused persons and seized articles. PW-3 similarly admitted that no G.D.E. was lodged after return from the place of occurrence and that his movement was not reflected in the movement register. PW-6, the Investigating Officer, could not recollect the G.D.E. number reflecting receipt of the seized articles and documents. The prosecution also failed to produce the movement register or log book of the vehicle used during the raid. Such omissions create a visible gap in the chain relating to movement, custody and handling of the seized articles.

26. The written complaint also does not fully correspond with the oral evidence tendered before Court. PW-1 admitted that the written complaint did not mention the presence of A.S.I. Rittwik Banerjee during the raid and further omitted reference that the alleged counterfeit notes were recovered from the pockets of the appellants. The witness also admitted discrepancy regarding the Command Certificate number appearing in the seizure list and the written complaint. Though the prosecution attempted to explain the discrepancy as clerical in nature, the inconsistency acquires significance

when viewed cumulatively with the other shortcomings in the prosecution case.

27. The prosecution also failed to establish the essential ingredient of conscious possession with the requisite knowledge contemplated under Sections 489B and 489C IPC. The evidence merely establishes alleged recovery of counterfeit currency notes from the possession of the appellants. There is no material demonstrating that the appellants attempted to circulate the notes or intended to pass them as genuine. No transaction involving use of such currency notes was brought on record. No conduct attributable to the appellants indicating awareness regarding the counterfeit nature of the notes was proved through cogent evidence.

28. The prosecution witnesses themselves admitted lack of expertise in identification of counterfeit currency. PW-2 and PW-3 specifically stated that they were not experts though they had received certain training. PW-6 similarly stated that he was not an expert though he had undergone departmental training, documents relating to which could not be produced readily. The alleged confession made by the appellants before the police personnel regarding transportation of counterfeit notes cannot be accorded substantive evidentiary value in view of the embargo contained in Sections 25 and 26 of the Evidence Act. Once such alleged disclosure is excluded from consideration, the prosecution case rests solely on recovery evidence whose reliability already stands impaired by procedural deficiencies and absence of independent corroboration.

29. The prosecution further sought to invoke Section 120B IPC. Yet, beyond the assertion that the appellants were found together carrying counterfeit notes, no material has been brought on record indicating prior meeting of minds, agreement or concert between the accused persons to commit an illegal act. Criminal conspiracy cannot be inferred merely from association or simultaneous presence. The prosecution must establish circumstances revealing a conscious and pre-arranged plan. The evidence on record falls short of that threshold.
30. The expert evidence of PW-5 undoubtedly establishes that the seized notes were counterfeit. However, proof that the currency notes were fake does not by itself establish the culpability of the appellants under Sections 489B or 489C IPC unless the prosecution further proves conscious possession and requisite knowledge. The expert report cannot bridge the evidentiary deficiencies surrounding recovery, custody and intention.
31. The investigation also reflects notable omissions. PW-6 admitted that no signature of any respectable person of the locality was obtained during investigation despite existence of shops and establishments near the place of occurrence. No attempt appears to have been made to ascertain the alleged source from where the counterfeit notes were procured or the intended recipient to whom delivery was allegedly to be made. No material was collected showing linkage of the appellants with any larger racket relating to counterfeit currency circulation. Such gaps assume significance when the prosecution sought conviction for serious offences carrying stringent punishment.

32. Criminal jurisprudence proceeds on the principle that where two views are reasonably possible on the evidence, the view favourable to the accused must prevail. In the present case, the deficiencies in search and seizure, absence of independent witnesses, discontinuity in documentary safeguards, lack of convincing proof regarding conscious possession and failure to establish the essential ingredients of conspiracy create substantial doubt regarding the prosecution version. The appellants are therefore entitled to the benefit arising from such doubt. An additional aspect which deserves notice is that offences under Sections 489B and 489C of the Indian Penal Code are not attracted merely upon recovery of counterfeit currency notes from the possession of an accused person. The statutory scheme consciously incorporates the element of *mens rea*. The prosecution is required to establish that the accused had knowledge or reason to believe that the currency notes were counterfeit and further intended to use the same as genuine or facilitate such use. The mental element is therefore not ancillary but constitutes the core of the offence itself.

33. In cases involving counterfeit currency, Courts have consistently maintained that mere physical possession divorced from surrounding incriminating circumstances cannot automatically lead to conviction. The prosecution is expected to place before the Court reliable circumstances demonstrating conscious and informed possession. Such circumstances may emerge from conduct of the accused, attempt to circulate the notes, recovery during an actual transaction, prior association with counterfeit currency rackets, incriminating communication, concealment indicating awareness, or other

surrounding facts capable of establishing the requisite state of mind. In absence of such connecting circumstances, recovery alone remains insufficient to sustain conviction.

34. The distinction between possession simpliciter and conscious possession assumes particular importance in prosecutions under Section 489C IPC. A person may come into custody of counterfeit notes without knowledge regarding their nature. Criminal liability arises only when the prosecution establishes awareness regarding the counterfeit character of the notes coupled with intention that they be used as genuine. The burden of establishing these foundational facts always rests upon the prosecution and never shifts merely because counterfeit notes were allegedly recovered.

35. The evidence on record in the present case does not disclose any circumstance showing that the appellants attempted to put the notes into circulation or engaged in any transaction involving use of the seized notes as genuine currency. No shopkeeper, trader or member of the public was examined to show that the appellants attempted to pass the notes as genuine. No material demonstrating prior involvement of the appellants in counterfeit currency circulation was brought on record. Even the alleged source and intended recipient of the notes remained beyond the sweep of investigation. Such omissions leave the prosecution case resting upon bare recovery unsupported by surrounding incriminating circumstances.

36. The charge under Section 489B IPC stands on an even higher footing. The expression “uses as genuine”, “traffics in” or “delivers to another” occurring in the provision contemplates an overt act relating to circulation or

movement of counterfeit currency with the requisite knowledge. The prosecution evidence in the present case does not disclose any completed transaction, attempted delivery, negotiation or circulation of the alleged counterfeit notes. There is no evidence that the appellants were apprehended while offering the notes in a commercial transaction or while attempting to induce any person to accept them as genuine currency. The foundational ingredients of Section 489B IPC therefore remain absent.

37. So far as the charge under Section 120B IPC is concerned, conspiracy is essentially an agreement to commit an illegal act. Such agreement may indeed be proved through circumstantial evidence, since direct evidence of conspiracy seldom becomes available. Yet the circumstances relied upon must form a coherent chain pointing towards a meeting of minds. Mere companionship, simultaneous presence or joint possession, without additional material suggestive of concerted design, cannot by itself justify conviction for criminal conspiracy. In the present matter, the prosecution did not recover communication devices, records of contact, prior transactions or any material suggestive of coordinated planning between the appellants. The allegation of conspiracy therefore remains in the realm of assumption rather than proof.

38. The Court must also remain mindful that procedural safeguards attending search and seizure acquire heightened importance where the prosecution case is founded substantially upon recovery evidence. The requirement of associating independent witnesses, maintaining contemporaneous records, preserving chain of custody and ensuring documentary continuity are not

empty formalities. These safeguards lend authenticity and transparency to the investigative process. When such safeguards remain absent and the entire prosecution case rests solely upon official witnesses, the evidence requires careful judicial scrutiny before conviction may safely follow.

39. The inconsistencies relating to G.D.E. entries, absence of movement register, omission of departmental seals, non-production of log books and failure to secure independent witnesses collectively affect the evidentiary assurance ordinarily expected in a criminal trial involving serious penal consequences. The Court cannot overlook such deficiencies merely because counterfeit notes were ultimately opined by the expert to be fake. Proof regarding the counterfeit nature of the notes constitutes only one limb of the prosecution burden. The remaining and equally vital component relates to conscious possession, knowledge and intended circulation, which have not been established through cogent and reliable evidence.

40. In such circumstances, continuation of the conviction would rest more upon conjecture than upon legally admissible proof satisfying the standard required in criminal law.

41. Accordingly, the conviction and sentence imposed upon the appellants under Sections 489B, 489C and 120B of the Indian Penal Code do not merit affirmation. The appeal deserves to be allowed. The judgment of conviction and order of sentence are liable to be set aside. The appellants are acquitted of the charges levelled against them and be discharged from their bail bonds, if not wanted in connection with any other case.

42. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and as such the instant criminal appeals being CRA 698 of 2014 with CRA 699 of 2014 are allowed.
43. Under such facts and circumstances, the judgment and order of conviction dated 19.09.2014 and 20.09.2014 passed by the Learned Additional District and Sessions Judge, 2nd Court, Barrackpore, North 24 Parganas in Sessions Trial No.03(03)2014 arising out of Sessions Case No.522/2013 & G.R. Case No.6061 of 2014, is set aside.
44. It transpires from the record that appellant Bhutto Sk. @ Guddu @ Bhottu Sk. in CRA 698 of 2014 had served out the sentence was released on 154.06.2017 as per the report dated 13.09.2023 of the Dum Dum Central Correctional Home.
45. Accordingly, the instant criminal appeals being CRA 698 of 2014 with CRA 699 of 2014 stand disposed of.
46. There is no order as to costs.
47. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
48. 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.)**