

Khurshid Ahamed Vs State Of West Bengal

Court: Calcutta High Court

Date of Decision: Nov. 22, 2019

Acts Referred: Code Of Criminal Procedure, 1973 " Section 31, 313
 Indian Penal Code, 1860 " Section 71, 279, 304A, 489B, 489C
 Evidence Act, 1872 " Section 106

Hon'ble Judges: Thottathil B. Radhakrishnan, C.J; Arijit Banerjee, J

Bench: Division Bench

Advocate: Usaf Ali Dewan, Asif Dewan, Saswata Gopal Mukherjee, Mudhu Sudan Sur, Manoranjan Mahata

Final Decision: Disposed Of

Judgement

Thottathil B. Radhakrishnan, CJ

1. This is an appeal against an order of conviction and sentence under Sections 489B and 489C of the Indian Penal Code (for short IPC).

2. Heard the learned Advocate for the appellant and the learned Government Advocate.

3. The material evidence on record consists of the testimony of different witnesses and documentary evidence proving search, seizure and arrest.

PW1, at the relevant point of time was posted as an Officer of the Terror Funding and Fake Currency Cell, National Investigation Agency New Delhi.

He deposed that he obtained information from a source that some persons from Moradabad used to come to Kaliachawak and stay there and return

after collecting Fake Indian Currency Notes (For short FICN). On information, that one person came from Moradabad and is staying at

Kaliachawak, PW1 reached Farakka on 14.10.2013 and stayed at NTPC guest house. On 16.1.2013, at about 6 P.M. he obtained information that the

said person has collected FICN and is prepared to go to Moradabad. Following that, he along with SI Pradip Kumar Mishra (PW 10) and three

constables arrived at Farakka railway station where B.K. Singh (PW7) who is an inspector with BSF and some force also arrived there. They

discussed the action to be taken and identified the person on the basis of the source information. That person was cordoned and on interrogation he did

not give any satisfactory answer. On search, in the presence of witnesses, 39 pieces of 1000/- denomination and 398 pieces of 500/- denomination

FICN amounting to Rs. 2,38,000/- were recovered. Certain other articles including mobile phone, SIM cards were also recovered. The intercepted

person disclosed to PW1 that he had come to collect FICN on the direction of Mustafa. PW1 also deposed that Mustafa is one involved in an NIA

case in Hyderabad. The place of occurrence was near Farakka railway station in front of Hanuman temple. PW1 identified his written complaint and

the seizure list prepared by PW7, the inspector of BSF which also bears the signature of PW1. The arrest memo, the requisition order given to the

Farakka Police Station for assistance and other collected materials were also produced and proved. The seized FICN were identified.

4. The seizure was also supported by the evidence of PW2 who was a witness and had signed the seizure list. The arrest memo was proved to have

been signed by PW3 who also described the interception, search and seizure. PW4 was posted as NVF (National Volunteer Force) at Farakka Police

Station. He said that he, accompanied by constables, was involved in the interception of the accused. He also supported the material evidence on

record in relation to interception, search, seizure and arrest. Similar is the evidence of the other witnesses which relates to the manner in which the

accused was intercepted, searched, seizures effected and arrest recorded. The report of examination of the seized notes (Exhibit-6) collectively was

also proved by PW9. Upon closure of evidence the accused was examined under Section 313 Cr.P.C. He then took the stand of bald denial and also

did not extend any explanation as to how he came to be in possession of FICN in the bag which he had with him. The assimilation of evidence of the

Court of first instance and the conclusion arrived at by it are sustained on the basis of the material evidence on record. We affirm the same.

5. Adverting to the ingredients of Section 489B IPC the court below held that this is a case where the accused cannot escape by contending that mens

rea is not established. We see that the court below rightly applied the judicial precedents in Umashanker v. State of Chhattisgarh, (2001) 9 SCC 642

and of this Court in Baisakhi Sk & anr vs. State of West Bengal (2012)4 CHN 779 to hold that mens rea stands established in terms of law and that

the prosecution has been successful in proving that the accused trafficked the FICN to the place of occurrence for taking the same to Moradabad for

delivering the same or using the same as genuine notes. We affirm the said finding.

6. There is no defense case, even in the statement of the accused under Section 313 of Cr.P.C. as to how the bag seized from him came to contain

the counterfeit notes. No explanation is given by the accused which would satisfy his obligation to the extent, the burden of proof stands squarely on

such accused in terms of Section 106 of the Evidence Act. By his mute response while being questioned under Section 313 of Cr.P.C. by merely

stating that he is innocent does not disclose any defense. The accused has not shown that he did not have the mens rea to commit the offence

charged.

7. The possession of FICN that has been established in this case is to the extent of Rs. 2, 38,000/-. Such possession cannot be treated as dormant

possession but is essentially active transportation which is integrally a part of trafficking to be a culpable act covered by Section 489B IPC. The

conviction of the appellant for commission of offence punishable under Section 489B IPC, therefore stands. For support, see the decisions in CRA 562

of 2018 of this Court (Jubeda Chitrakar vs. The State of West Bengal) and the decision of Gujarat High Court in Rayab Jusab Sama vs. State of

Gujarat reported in 1998 Cri LJ 942 and High Court of Madhya Pradesh(Jabalpur Bench) in Shabbir Sheikh vs. The State of Madhya Pradesh CrI.

Appl. Nos. 162, 452 and 453/2015. The possession of such FICN necessarily inculcates the appellant on count of Section 489C IPC. For the aforesaid

reasons we do not see any reason to interfere with the finding of guilt and conviction handed down by the court below under Sections 489B and 489C

IPC.

8. Coming to the question of sentence, we see that the court below has awarded the sentence of imprisonment and fine under Sections 489B and

489C IPC but has not passed any order as to whether those sentences will run concurrently or consecutively. The learned Advocate appearing for the

appellant made reference to Section 71 of IPC and 31 of Cr.P.C. to contend for the position that the fundamental ingredients of an offence punishable

under Section 489C IPC would necessarily fall to be a part of those which amount to offences punishable under Section 489B IPC and, therefore, the

accused was not liable to be punished for more than one offence. Reference has been made to the judgment of the Apex Court in Gagan Kumar vs.

The State of Punjab: 2019(2) Crimes 41 (SC) which deals with the requirements to ensure compliance of Section 31 Cr.P.C. while convicting a person

under two different counts. Nonetheless we may immediately note that the said decision was rendered in a case where the accused was found guilty

of offence punishable under Sections 279 and 304A of IPC.

9. Be that as it may, Section 71 of IPC provides that where anything which is an offence is made up of parts, any of which parts is itself is an offence,

the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided. Where anything is an

offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or where

several acts, of which one or more than one would by itself or themselves constitute when combined, a different offence, the offender shall not be

punished with a more severe punishment than the Court which tries him could award for any one of such offences. As far as Sections 489B and 489C

IPC are concerned, all ingredients of the offence punishable under Section 489B IPC need not always fall as part of the offence defined through

Section 489B IPC. Therefore, it will not be safe in all cases to say that what is an offence punishable under Section 489C IPC is part of what is made

offence of Section 489B or that an act which is itself an offence under Section 489C would, in all cases form a part of that which is made an offence

as part of Section 489B. That position notwithstanding, in the case in hand, the activity attributed to the accused is such that ends of justice would

stand satisfied if the substantive sentences of imprisonments imposed on the accused are ordered to run concurrently. For the aforesaid reasons, this

appeal succeeds to that extent.

10. In the result, the finding of guilt, the conviction of the accused and the sentence imposed on him for the offences punishable under Sections 489B

and 489C IPC are confirmed. However, it is ordered that the substantive sentences of imprisonments shall run concurrently.

11. Appeal ordered as above. Application, if any, shall be treated as disposed of.

12. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

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