

(2014) 11 CAL CK 0089

Calcutta High Court

Case No: C.R.A. No. 141 of 2014

Abu Sajed

APPELLANT

Vs

The State of West Bengal

RESPONDENT

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**Date of Decision:** Nov. 28, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 428
- Penal Code, 1860 (IPC) - Section 489, 489B, 489C

**Hon'ble Judges:** Joymalya Bagchi, J**Bench:** Single Bench**Advocate:** Swapan Kr. Mallick and Ramdulal Manna, Advocate for the Appellant; Subir Banerjee, Advocate for the Respondent

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**Judgement**

Joymalya Bagchi, J.

The appeal is directed against the judgment and order dated 22.01.2014 passed by the learned Additional Sessions Judge, Jangipur, Murshidabad convicting the appellants for commission of offence punishable under section 489B and 489C of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for five years each and to pay a fine of Rs. 5,000/- each, in default, to suffer rigorous imprisonment for six months each for the offence punishable under section 489B of the Indian Penal Code and to suffer rigorous imprisonment for four years each and to pay a fine of Rs. 3,000/- each, in default, to suffer rigorous imprisonment for three months each for the offence punishable under section 489C of the Indian Penal Code, both the sentences to run concurrently.

2. Prosecution case, as alleged, against the appellants is that on 26.06.2010 at about 16.05 hours one Ranjit Kr. Das, SI of Police attached to Samserganj Police Station (PW 6) received secret information that the appellants were moving suspiciously in front of main gate of Tarapur Central Hospital with Fake Indian Currency Note (FICN for short) amounting of Rs. 1 lac with an intention to distribute them to agents. On

receipt such secret information, PW 6 diarised the information as Samserganj GD Entry No. 1376 dated 26.06.2010 and intimated the matter to Officer-in-Charge, Samserganj Police Station. As per direction of Officer-in-Charge, Samserganj Police Station, PW 6 along with other police personnel left the police station and proceeded for Tarapur Central Hospital's main gate. When reached to the aforesaid place around 16.25 hours as per identification of the source the above noted Police Officer apprehended the appellants and on interrogation they disclosed that they were carrying FICNs for distribution to agents. PW 6 called local witnesses, namely, Moklesur Rahaman and Samir Sk. and in their presence the appellants were searched and one bundle of currency notes suspected to be fake of denomination Rs. 500/- each consisting 100 pieces in each bundle were recovered from each of the appellants. The currency notes suspected to be fake were seized under a proper seizure list, sealed and labeled in the presence of witnesses and the appellants.

3. On interrogation, the appellants admitted that they were aware of the currency notes were fake and they were intended to be used as genuine. After returning to the police station de facto complainant handed over the appellants and the seized notes to the Duty Officer and lodged written complaint resulting in the registration of Samserganj P.S. Case No. 179/2010 dated 26.06.2010 under section 489 and 489C of the Indian Penal Code against the appellants.

4. In course of investigation, Investigating Officer recorded the statements of witnesses, sent the seized notes to General Manager, Currency Notes Press at Nasik for examination and submitted charge sheet against the appellants under section 489B and 489C of the Indian Penal Code. Upon receipt of expert's report, supplementary charge sheet was filed.

5. The case, being a sessions triable one was committed to the Court of the learned Additional Sessions Judge, Jangipur, Murshidabad for trial and disposal.

6. Charges were framed under section 489B and 489C of the Indian Penal Code. The appellants pleaded not guilty and claimed to be tried.

7. In the course of trial, the prosecution examined as many as 9 witnesses and exhibited a number of documents. The defence of the appellants was one of innocence and false implication.

8. In conclusion of trial, learned trial Judge by judgment and order dated 22.01.2014 convicted the appellants for commission of offence punishable under 489B and 489C of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for five years each and to pay a fine of Rs. 5,000/- each, in default, to suffer rigorous imprisonment for six months each for the offence punishable under section 489B of the Indian Penal Code and to suffer rigorous imprisonment for four years each and to pay a fine of Rs. 3,000/- each, in default, to suffer rigorous imprisonment for three months each for the offence punishable under section 489C of the Indian Penal Code, both the sentences to run concurrently.

9. Hence, the present appeal.

10. Mr. Mallick, appearing for the appellants submitted that there is no evidence on record that the appellants were buying, selling or using as genuine fake currency notes. He further submitted that the search and seizure has not been proved in accordance with law. He accordingly prayed for acquittal of the appellants.

11. Mr. Banerjee, learned Additional Public Prosecutor appearing for the State submitted that the evidence of the prosecution witnesses were consistent and proved the seizure of FICNs from the appellants. Exhibit 2, report of the expert has proved the currency notes seized from the appellant were fake. Accordingly, he prayed for dismissal of the appeal.

12. PW 6 SI (Rajat Kumar Das) is the de facto complainant and the most vital witness in the instant case. He deposed that on 26.06.2010 he was posted as SI of Police at Samserganj Police Station. On that day around 16.05 hours he received secret information which he diarised as Samserganj GD Entry No. 1376 dated 26.06.2010. He intimated his superior officer and upon his instruction he along with other police personnel went to Tarapur Central Hospital to work out the aforesaid secret information. On reaching the said spot at about 16.25 hours he found two persons who disclosed their identities as Abu Sajed and Rejaul Haque. They confessed that they had come to Tarapur with fake currency notes of Rs. 1 lac. Two local witnesses, namely, Muklesur Rahaman and Samir Sk were called. In the presence of the said witnesses, the appellants were searched and one bundle of currency notes suspected to be fake was recovered from the waist of the appellant No. 1 and another bundle of currency notes suspected to be fake was recovered from waist of the appellant No. 2. Upon interrogation, the appellants admitted that they were aware that the currency notes were fake and the said currency notes were seized under a seizure list. The appellants were arrested and they were taken to Samserganj Police Station. Written complaint was lodged by him which was marked as Exhibit 6. Seizure list was marked as Exhibit 7. He identified the seized currency notes as material Exhibit 1. The bundle of currency notes bore the LTIs of the appellants on the front and on the rear of each bundle.

13. PW 1 (ASI Amal Das) was posted at Samserganj Police Station. On 26.06.2010 he accompanied PW 6 to Tarapur Central Hospital to work out secret information. They detained two persons who identified themselves as Abu Sajed and Rejaul Haque. Two passers by were requested to be present at the time of search. In their presence the appellants were searched and two bundles of currency notes of denomination 500 rupees each were recovered from the waist of each of the appellant. PW 6 seized the said currency notes under a seizure list on the suspicion that they were fake. Appellants as well as other police personnel and others signed on the seizure list. Seized currency notes were put in an envelope. The envelope was sealed and labeled. Envelope containing letter of SI Ujjal Kumar Saha (PW 10), copy of order dated 18.11.2010 of learned ACJM, Jangipur and forwarding letter of

Assistant Manager, Currency Notes Press, Nasik Road were opened in Court and marked as Exhibit 2 series. Another envelope was opened and the seized currency notes were produced along with torn envelope addressed to General Manager, Currency Notes Press, Nasik Road and the same were marked as Exhibit 3 series. Currency notes were marked as material Exhibit 1.

14. PW 2 (ASI Abdul Jalar) and PW 3 (Constable Nagendra Murmu) were posted at Samserganj Police Station at the relevant time. They were the members of the raiding party. They have corroborated the evidence of PW 1 and 6.

15. PW 4 (Gurupada Saha) has been declared hostile.

16. PW 5 (Narayan Pal) was tendered for cross-examination.

17. PW 8 (Samir Sk) is an independent witness of the search resulting in recovery of two bundles each containing 100 pieces of currency notes in denomination of Rs. 500/- each from each of the appellants. He proved his signature on the seizure list as Exhibit 9. In cross-examination, he stated that his house is situated 5 kilometers from Tarapur Hospital.

18. PW 9 (SI Ujjal Kumar Saha) is the Investigating Officer of the case. He recorded statement of witnesses. He despatched the seized currency notes for examination of Expert at Nasik. He filed charge sheet against the appellants. Upon receipt of Expert's report he filed supplementary charge sheet. He proved Expert's report which was marked as Exhibited 2.

19. From the evidence of PW 1, 2, 3 and 6 it is evident that the appellants were intercepted by the police party in the course of a search which they had undertaken pursuant to secret information which was diarised as Samserganj General Diary Entry No. 1776 dated 26.06.2010. The appellants were apprehended and upon search two bundles each containing 100 pieces of currency notes suspected to be fake of denomination Rs. 500/- each were recovered from waist of each of the appellants. The currency notes were seized under a seizure list and they were sealed and labeled. Thereafter the appellants were arrested. The appellants along with seized all mats were taken to the police station where the criminal case was registered.

20. Evidence of the aforesaid witnesses have remained unshaken in cross-examination. That apart, the evidence of the aforesaid police witnesses have received corroboration from the evidence of independent witness, namely, PW 8.

21. I find that one of the independent witnesses, namely, PW 8 has corroborated the prosecution case. Accordingly, I am of the opinion that the search and seizure of the currency notes from the possession of the appellants have been established beyond reasonable doubt. It has also come out in evidence that the seized currency notes were sent for examination by the expert at Nasik and the report of the expert has been marked as Exhibit 2.

22. It appears from the said report that the said currency notes seized from the appellants are fake. Accordingly it is clear that the appellants were in conscious possession of FICNs which were seized from their possession.

23. Hence the conviction of the appellants under section 489C of the Indian Penal Code is established.

24. I, however, do not find any evidence on record to show that the appellants were buying, selling or using as genuine FICNs which were seized from their possession. As there is nothing on record to establish that the appellants were indulging in such activities the ingredients of the offence under section 489B of the Indian Penal Code cannot be said to be established.

25. In the aforesaid factual matrix conviction of the appellants under section 489B of the Indian Penal Code is unmerited and liable to be set aside. Conviction and sentence of the appellants under section 489C of the Indian Penal Code is upheld. Conviction and sentence of the appellants under section 489B of the Indian Penal Code is set aside.

26. The appeal is partly allowed.

27. The detention of the appellants during investigation, enquiry and trial shall be set off under section 428 Cr.P.C.

28. In the event the appellants have already served out the substantive sentence of imprisonment imposed upon them and paid the fine, as aforesaid, and they are not wanted in any other case they shall be forthwith released from custody.

29. Lower court records along with a copy of the judgment be sent down to the trial Court at once.