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IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present **:**

THE HON'BLE CHIEF JUSTICE THOTTATHIL B. RADHAKRISHNAN

AND

THE HON'BLE JUSTICE ARIJIT BANERJEE

CRA 562 OF 2018
In the matter of: Jubeda chitrakar @ jaba @ zubeda chitrakar
WITH
CRA 592 OF 2018
In the matter of : sunil pramanik @ sonu

-Versus-
The State of West Bengal

For the Appellant in CRA 562 of 2018	:	Mr. Ayan Bhattacharya Mr. Anand Keshari Mr. Sekhar Mukherjee..... Advocates
For the Appellant in CRA 592 of 2018		Mr. Arnab Chatterjee..... Advocate
For the State/Respondent	:	Mr. Saswata Gopal Mukherjee, Ld. Public Prosecutor Ms. Amita Gour
Heard on	:	04.09.2019
Judgment on	:	22.11.2019

Thottathil B. Radhakrishnan, C.J. :

1. These two appeals are by two out of the five accused persons who stood trial in Sessions Case No. 85(12)08, CIS No. 222 of 2009

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in Kasba P.S. Case No. 271(08)08. They stand convicted and sentenced for committing offences found to be punishable under Sections 489B and 489C of the Indian Penal Code; for short, IPC; read with Section 34 of the IPC.

2. Charges were framed alleging commission of offences punishable under Sections 489B/489C and 120B of the IPC against all the accused persons. The court below found that the charge under Section 120B has not been established and in lieu of that, there are sufficient evidence, circumstantially, that the accused persons had the common intention and acted accordingly; and hence, Section 34 IPC is applicable. On such basis, they were found guilty of having committed offences punishable under Sections 489B/489C read with Section 34 of the IPC and were convicted. They were sentenced to undergo rigorous imprisonment for 8 years and to pay a fine of Rs. 8,000/- with default sentence of rigorous imprisonment for 3 months, for the offence found to be punishable under Section 489B of the IPC. They were sentenced to rigorous imprisonment for 6 years for offence found to be punishable under Section 489C of the IPC and to pay fine of Rs. 5,000/- with default sentence of rigorous imprisonment for 2 months. The sentences were ordered to run concurrently.

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3. Heard the Learned Advocate appearing for the appellant in CRA 562 of 2018 and the Learned Advocate appearing for the appellant in CRA 592 of 2018. We have also heard the Learned Public Prosecutor and the Learned Additional Public Prosecutor.

4. The learned advocates appearing for the appellants impeached the findings of the court below on appreciation of evidence and resultant findings as to guilt. They further argued that, even assuming that the legal evidence on record inculpate the appellants, that could be only to the extent of the charge against them under Section 489C and not under Section 489B of the IPC. The conclusion of the court below leading to the conviction of the accused persons on both the counts are contrary to law and the reasons stated by the court below to hand down such order of conviction is unsustainable, it was argued.

5. The learned prosecutors supported the findings and verdict handed down by the court below and argued that necessary ingredients of section 489B have been established over and above the ingredients of section 489C and hence, the appeals be rejected.

6. On the basis of secret source information received on 30.08.2008, P.W. 1, the Sub-inspector made requisite diary entry to the effect that one Mokaram of Bongaon area, accompanied by two or three others, would come to Ruby Hospital at bus-stand in front

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of ECTP under Kasba P.S. for delivering Forged Indian Currency Notes ('FICN' in short) to his agents. P.W. 1, accompanied by P.W. 2 and P.W. 3, raided and apprehended the target persons with FICN. The seizures were witnessed by two independent persons in the locality, including P.W. 4. On the basis of the testimony of the witnesses, the raid, search and seizure were proved to the satisfaction of the court below. It was also supported by the evidence of the local witnesses regarding seizure. The articles which were seized and produced were proved. The court below rightly acted upon such evidence. P.W. 1 gave details about getting the source of information, the raid, recovery of FICN and attendant factors. He stated that he received information from a secret source. Corroborating materials, in the form of testimony of the policemen, are trustworthy. Having gone through the oral evidence, we do not see any material contradiction among any of the witnesses in relation to the information, raid and recovery of FICN. That search and seizure was followed by another raid on 03.09.2008. FICN were seized. The numbers and other details of the FICN are delineated in the judgment of the court below.

7. The material evidence on record in the form of depositions regarding the raid, search and seizure and the documentary evidence as well as the recovered articles are proved through cogent

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evidence. They correlate and connect the material particulars regarding the commission of the crimes charged. The seizures were followed by appropriate preservation, labelling, sealing and other due processes which enabled the recovered articles being preserved tamper-proof and made available for examination by expert. Such examination led to Exhibit B12 report of the expert, which has been admitted in evidence and its contents believed and acted upon, on due examination by the court below. There is no reason to denounce the evidentiary value of the expert's report. In so far as the material witnesses are concerned, there is adequate corroboration and there is no contradiction worthy enough to dislodge the credibility of the testimony of the witnesses. Not only that, the police officials who were involved in the process are not shown to have had any particular interest, hostile to the accused persons. It is only the call of duty that prompted the police officials to raid, search and seize the materials which were brought on record after ensuring their due scientific examination by the expert. The testimony of the witnesses correlate and connect the material particulars regarding the raid, search and seizure as well as the arrest of the accused persons and recovery and preservation of the recovered articles in terms of law. We do not find any legal infirmity or error in the appreciation of the evidence by the court below in that regard.

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8. The court below held that this is not a case where the accused persons could plead that they did not have the *mens rea* to commit the offences. The non-examination of any defence witness and the fact that no specific statement was made by any of the accused persons, when questioned under Section 313 of Cr.P.C., were factors which weighed with the court below to hold that the accused persons, including the appellants, possessed the FICN being aware of the fact that they were not genuine. Thus *mens rea* was clearly established. This is not one of those cases where the court would assume the absence of *mens rea* on the premise that the possession of FICN by the accused persons was innocent, accidental or in any other such manner which would lead the court to hold that the *actus reus* of possession of FICN was not coupled with *mens rea*. The component of *mens rea* for offence falling under Section 489B and/or 489C is the knowledge or having reason to believe that the currency note or bank note is forged or counterfeit, coupled with the intention to use the same as genuine or the knowledge that it may be used as genuine.

9. The question that would, however, arise for decision is as to whether possession of any forged or counterfeit currency note is sufficient to inculpate the accused for offence punishable under Section 489B. The argument advanced on behalf of the appellants is

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that possession by itself does not amount to the activities which fall under Section 489B of the IPC.

10. Sections 489B and 489C are among those provisions which were added to the Penal Code by Act 12 of 1899, in a bunch, under a new sub heading "Of Currency-Notes and Bank-Notes" in Chapter XVIII. Section 489B was further amended through act 26 of 1965 with effect from 01.01.1956 whereby punishment of transportation for life which was earlier prescribed was substituted with the punishment of imprisonment for life.

Sections 489B and 489C as they stand after the aforesaid, read as follows:-

Section 489B:

Using as genuine, forged or counterfeit currency-notes or bank-notes- Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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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.

Those provisions were brought in simultaneously and punishments, which can be differentiated in terms of types and terms have been prescribed under those two sections. That being so, clear distinction has to be maintained regarding the ingredients of the offence which is to be treated as a larger count and it has to be decided whether an accused has committed such offence, to inculpate that person with such higher offence.

11. Section 489B uses the phrase “or otherwise traffics in or uses as genuine”. This phrase assumes importance in the context of the fact that the term “traffics” is not defined for the purpose of Section 489B or for the IPC generally. The phrase “or otherwise traffics in or uses as genuine” is added on to a string of phrases which results in the sentence that delineates the ingredients of the offence as

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defined in Section 489B; the punishment for which is prescribed in that section. The activities which would amount to an offence punishable under Section 489B of the IPC are firstly, selling, buying or receiving. The provision to this effect in the section is "whoever sells to, or buys or receives from, any other person". Therefore, the involvement of at least two persons is necessary for performing the activity of selling, buying or receiving which would amount to an offence for the purpose of Section 489B. If that be so, an important issue for consideration would be as to whether any activity which falls into the concept "or otherwise traffics in or uses as genuine" could be anything that could be treated differently from selling, buying or receiving or whether the term "traffics" has to be read *ejusdem generis* with "sells", "buys" or "receives". It was argued on behalf of the appellant on the basis of the decision of the Apex Court in Parakh Foods Limited vs. State of Andhra Pradesh and Anr. (2008) 4 SCC 584 that the term "traffics" has to be read *ejusdem generis* with the phrases "sells to", "buys" and "receives from any other person" and that the junction of another person is necessary to accomplish such acts. It is here that use of the word "otherwise" gains critical importance. The word "otherwise" is used to indicate the opposite of, or contrast to, something already stated when used as part of a phrase as "or otherwise" (see Oxford Dictionary of English-3rd Edition). Even when

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the word "otherwise" is used not as part of a phrase as "or otherwise", but as an adverb or an adjective, such usages are also resorted to, to draw a contrast or distinction. The word "traffics" as well as the word "trafficking" and "trafficked" are used to describe the action of dealing or trading in something illegal. The activity or activities which would amount to "sells to", "buys" or "receives from" any other person, may require the participation of two persons to complete any such transaction. However, any activity which would fall within the phrase "otherwise traffics in" does not indispensably require active participation of more than one person if noticeably sizable quantity of FICN is found to be in the possession of that person and such concealed possession cannot be treated as dormant possession. It is active transportation which amounts to trafficking. Any other mode of interpreting the phrase "or otherwise traffics" would dilute the rigour of law. A strict and literal interpretation of the penal provision contained in Section 489B of the IPC does not lead us to any other conclusion. Thus, the phrase "or otherwise traffics" in Section 489B of the IPC would take within its sweep, the action of dealing or trading in forged counterfeit currency note or bank note even otherwise than by selling, buying (purchase) or receiving. Therefore, the word "traffics" and the phrase "or otherwise traffics in" in Section 489B of the IPC are not to be read *ejusdem generis* with the words "sells", "buys" or

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"receives"; but ought to be read to understand that activities other than selling, buying or receiving would also fall into the basket of the incriminating factors which constitute the ingredients of the acts and omissions which is an offence as per that Section.

12. The Division Bench of the Gujarat High Court in Rayab Jusab Sama vs. State of Gujarat, reported at *1998 Cri LJ 942,* held the possession of large number of fake currency notes to be a case of active transportation of such notes. That precedent was followed by the High Court of Madhya Pradesh(Jabalpur Bench) in Shabbir Sheikh vs. The State of Madhya Pradesh Crl. Appl. Nos. 162, 452 and 453/2015 decided on 10.02.2018, holding that such cases cannot be treated as those of mere dormant possession but are of active transportation of fake currency notes which would fall within the sweep of Section 489B of the IPC. In holding so, it was stated that when the accused person is found carrying sizeable quantity of fake currency notes on a public road, or otherwise, in a concealed manner, it would amount to active transportation of such currency notes at the time when the accused person is apprehended. No explanation being offered by the accused person when questioned under Section 313 of Cr.P.C. regarding the possession of the counterfeit currency, the burden of proof of facts within the knowledge of such person was held as not discharged by that

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person in terms of Section 106 of the Evidence Act. We completely agree with those judicial precedents and follow them, they being applicable on the facts of these appeals, as we would elaborate hereunder.

13. Adverting to the material evidence on record and the findings of the court below, it can be seen that the raid, interception and recovery were on the basis of secret information, the reception of which, and the modality of the raid and recovery have been noticed by us. 500 pieces of 100 rupees denomination FICN, 7 pieces of 1000 rupees denomination FICN and 9 pieces of 500 rupees denomination FICN wrapped in a newspaper and kept in a polly bag were recovered from Mokaram Mondal (one of the accused). Sunil Pramanick (one of the appellants) was also searched and 27 pieces of 500 rupees denomination FICN were recovered. Jubeda Chitrakar (one of the appellants) whose house was also raided led to recovery of 20 pieces of 500 rupees denomination FICN and 5 pieces of 1000 rupees denomination FICN. Thereupon, Jubeda was arrested. Again search and seizure was conducted leading to recovery of FICN from different other accused persons who are not amongst the appellants. They were also convicted. The appellants did not offer any explanation when questioned under Section 313 Cr.P.C. regarding the possession of FICN. Nor was any evidence adduced in

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defense to explain the possession of FICN. Section 106 of the Evidence Act enjoins that when any fact is especially within the knowledge of any person, the burden of proving the fact is upon him. In terms of Section 106 of the Evidence Act the burden of proof of facts within the knowledge of the appellants regarding the nature of possession of FICN was not discharged. Hence, the possession of such large quantity of FICN in concealed manner is not dormant possession but active transportation amounting to trafficking. It amounts to commission of offences punishable under Section 489B of the IPC. The possession of FICN of such quantity is trafficking, and, therefore, falling under the incriminating activity which made the accused/appellants offenders punishable under Section 489B as well, apart from the liability for committing offences punishable under Section 489C. For the aforesaid reasons the conviction of the appellants under Sections 489B as well as 489C stands. We approve the findings of the court below on the issue that the accused persons are liable to be convicted under Sections 489B and 489C of the IPC. Accordingly, we affirm the finding of guilt and the conviction of the appellants by the court below.

14. Now, we come to the question of sentence. The court below has imposed rigorous imprisonment of eight years and fine of Rs. 8,000/- in default rigorous imprisonment for three months under

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Section 489B of the IPC and rigorous imprisonment of six years with a fine of Rs. 5,000/- in default rigorous imprisonment for two months under Section 489C of the IPC. All the sentences are ordered to run concurrently.

15. The offences which are described and punishment prescribed in the sections which are grouped under the Heading "Of Currency-Notes and Bank Notes" in Chapter XVIII of IPC are those, the commission of which would impact the authority of the State or Sovereign Power as well as the economic well being of the society. It is the solemn duty of the court to strike a proper balance while awarding sentence because awarding lesser sentence encourages any criminal and, as a result of the same, the society suffers. Imposition of sentence must be commensurate with the gravity of the offence. The court must keep in view rights and needs of the society at large while considering the imposition of appropriate punishment. One should keep in mind the social interest and conscience of the society while considering the determinative factors to decide on the sentence *qua* the gravity of the crime found to have been committed. Bearing these principles in mind, and having regard to the quantity of FICN which has been recovered upon it being found to have been concealed and trafficked, we do not find any legal infirmity in the sentence imposed by the court below. We

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also do not see that the sentence by court below to the accused persons is one which can be termed as wrong or excessive, warranting interference to modify and taper it down. Taking into consideration the totality of the facts and circumstances, we are satisfied that different sentences of imprisonment and fine as well as default sentences imposed on the appellants do not call for interference.

16. In the result, the conviction and sentence imposed on the appellants under the different counts are confirmed and the appeals are dismissed.

Urgent Photostat certified copy of this judgment/order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Arijit Banerjee, J.) (Thottathil B. Radhakrishnan, C.J.)