

(2022) 08 CAL CK 0084
In the Calcutta High Court

Case No : Criminal Appeal No. 189 Of 2017, 702 Of 2018, 37, 123 Of 2019

Anikul @ Anikul Islam & Anr.

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 29-08-2022

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 489A, 489B, 489C, 489D, 489E
Unlawful Activities (Prevention) Act, 1967 — Section 15
Code Of Criminal Procedure, 1973 — Section 313, 342, 482
Evidence Act, 1872 — Section 4, 106
Customs Act, 1962 — Section 108, 138B, 138B(1)(a)

Citation : (2022) 08 CAL CK 0084

Hon'ble Judges : Tirthankar Ghosh, J

Bench : Single Bench

Advocate : Tapan Dutta Gupta, Parvej Anam, Sourav Chatterjee, Sabyasachi Banerjee, Arnab Saha, Abhimanyu Banerjee, Nahid Ahmed, Sabir Ahmed, Mujibar Ali Naskar, Shraman Sarkar, Saswata Gopal Mukherjee, Partha Pratim Das, Manasi Roy

Judgement

Tirthankar Ghosh, J

The four appeals relate to cases registered under the provisions of Section 489B and 489C of the Indian Penal Code. In course of hearing of these appeals the interpretation of the term 'otherwise traffics in' used in Section 489B of IPC vis-a-vis the word 'possession' used in Section 489C of IPC fell for consideration and as such all the four appeals were taken up together. The facts of each appeal are briefly set out initially and thereafter the issues raised by the appellants and the State have been considered.

In Re: CRA 123/2019 with CRA 37 of 2019.

The facts of the case relate to Suti Police Station case no. 431/17 dated 08.08.2017 under Sections 489B/489C of the Indian Penal Code which was initiated on the basis of a complaint lodged with the Officer-in-charge, Suti Police

Station by Ram Prasad Halder, Inspector of Police attached to the same police station. It has been alleged that on 08.08.2017 at 15.45 hrs., a secret information was received that three persons are loitering at Chander More at the side of NH 34 for exchanging huge amount of forged currency notes. The said information was diarized and a team was formed which arrived at about 16.15 hrs. The three persons were intercepted and were searched. On search from the three persons fake Indian currency notes were recovered which were as follows:

- i) From the possession of Anikul Islam – 46 number of fake Indian currency of Rs.2,000/- denomination,
- ii) From the possession of Rafikul Islam – 30 number of fake Indian currency of Rs.2,000/- denomination,
- iii) From the possession of Maharom Mandal – 24 number of fake Indian currency of Rs. 2,000/- denomination were recovered.

The learned trial Court on completion of investigation of the case and after hearing the final argument was pleased to convict the three appellants under Section 489B/489C of the Indian Penal Code and sentenced them to suffer five years rigorous imprisonment and fine of Rs.10,000/- in default rigorous imprisonment for 6 months for the offence under Section 489B of the Indian Penal Code and rigorous imprisonment for three years and fine of Rs.5,000/- in default rigorous imprisonment for three months for the offence under Section 489C of the Indian Penal Code.

Mr. Sourav Chatterjee learned Advocate appeared for the appellant in CRA 37 of 2019 and Mr. Tapan Dutta Gupta learned Advocate appeared for the appellants in CRA 123 of 2019. Both the learned Advocates contended in the same tune regarding the non-applicability of the provisions of Section 489B and 489C of the Indian Penal Code.

Mr. Chatterjee learned advocate filed written notes of argument in order to buttress the contention of the State (which will be dealt with later) relating to the applicability of Section 489B of the Indian Penal Code and drew the attention of the Court to the following factual circumstances:

- (a) The complainant, Sub-Inspector of police Ram Prasad Halder during his examination-in-chief could not recollect the name of the 2nd independent witness available at the time of recovery.
- (b) The two independent witnesses of search and seizure being the prosecution witness no.4 and 5 could not recollect the name of the accused and also could not identify the appellant in Court.
- (c) The Expert (PW10) who examined the FICN and produced his report being Ext.27 during trial, in his deposition was completely silent regarding what was examined by him, the nature and extent of examination and the process followed in respect thereof. The opinion of the Expert is cryptic, sketchy and as such

unreliable.

(d) The ingredients of the offence punishable under Section 489B and 489C of the Indian Penal Code were not proved beyond reasonable doubt.

The precedents in support of acquittal relied upon by the appellants are:

Jiban Sasmal –Vs. – State of West Bengal 1987 SCC OnLine Cal 114;

Sarvesh Pathak @ Kallu –Vs. – State of West Bengal, 2014 SCC OnLine Cal 18497;

Chhotelal Thakur –Vs. – Union of India, 2020 SCC OnLine Cal 2149;

Hoda Sk –Vs. – State of West Bengal, 2020 SCC OnLine Cal 1478;

Umashankar –Vs. – State of Chhattisgarh (2001) 9 SCC 642;

M. Mammutti –Vs. – State of Karnataka, (1979) 4 SCC 723;

Md. Morful Haque –Vs. – State of West Bengal, 2017 SCC OnLine Cal 3380;

Sanskrit Jayantilal Salia –Vs. – The State of Maharashtra, 2018 SCC OnLine Bom 2969.

Learned Advocate also contested the decisions cited on behalf of the State of West Bengal being Jubeda Chitrakar –Vs. – State of West Bengal reported in 2019 SCC OnLine Cal 8924 and Habibur Rahaman –Vs. – State of West Bengal an unreported judgment which was delivered on 24.02.2022 in CRA 277 of 2016. The arguments advanced for distinguishing the judgments relied upon by the State would be dealt with subsequently.

In Re: CRA 189 of 2017

The present appeal arose out of judgment and order of conviction dated 30.01.2017 passed by the learned Additional District & Sessions Judge, 4th Court, Malda in connection with the Sessions Trial No.55(11)14 wherein the appellant was convicted only under Section 489C of the Indian Penal Code.

The genesis of the case relates to Kaliachak Police Station case no. 365/14 dated 17.05.2014 under Section 489B/489C of the Indian Penal Code. The case was registered pursuant to a complaint lodged with the Inspector-in-charge Kaliachak Police Station by ASI Ram Chandra Saha of the said police station. The peculiarity of this case is that the appellant/accused is a CISF Police personnel posted at NTPC Ltd. Farakka, district Murshidabad. The complainant alleged that on 17.05.14 at about 15.45 hrs. he received an information that a person was coming towards Kaliachak, Chowrangee from Silampur and was carrying good amount of fake Indian currency notes. The information was diarized and after being informed to the Inspector-in-charge, a team of police personnel were formed and the seizure was carried out at 17.45 hrs. and from the appellant 100 number of fake Indian currency notes of Rs.500/- denomination were seized. The place of seizure was a State Highway.

In this case the learned trial Court on an appreciation of the materials placed by the prosecution was pleased to acquit the accused/appellant under the charges of Section 489B of the Indian Penal Code, however, he was convicted under Section 489C of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years and to a fine of Rs.5,000/- in default rigorous imprisonment for six months.

Mr. Sabyasachi Banerjee learned Advocate appearing for the appellant submitted that there is no scope for applicability of the Section 489B of the Indian Penal Code in the instant case as prayed for the by the State for issuance of rule as the learned trial Court acquitted the appellant under Section 489B of the Indian Penal code. However, while contesting the issues relating to Section 489B of the Indian Penal Code learned Advocate relied upon the following precedents for distinguishing the two Division Bench judgments (referred to earlier) and relied upon by the State.

The precedents so relied upon are:

- M. Mammutti –Vs. – State of Karnataka, (1979) 4 SCC 723;
- Umashankar –Vs. – State of Chhattisgarh (2001) 9 SCC 642;
- Md. Morful Haque –Vs. – State of West Bengal, 2017 SCC OnLine Cal 3380;
- Habibur Rahaman –Vs. – State of West Bengal in CRA 277 of 2016;
- Hoda Sk –Vs. – State of West Bengal, 2020 SCC OnLine Cal 1478;
- Md. Muktarul Islam @ Suman –Vs. – State of West Bengal; Md. Tousif – Vs.- State of West Bengal in CRA 163/2019;
- Chhotelal Thakur –Vs. – Union of India, 2020 SCC OnLine Cal 2149.

In Re: CRA 702 of 2018

This appeal has been preferred against judgment and order of conviction dated 06.12.2018 passed by the learned Additional Sessions Judge, 1st Court, Jangipur, Murshidabad in Sessions Trial No. 03(01)2016 arising out of Sessions Case no. 286/2015 wherein the appellant was convicted under Section 489B/489C of the Indian Penal Code. The genesis of the case relates to Raghunathganj Police Station case no.744/15 dated 06.08.2015 under Section 489B/489C of the Indian Penal Code. The said case was registered on the basis of a complaint by Sourav Mojumdar, SI of police of Raghunathganj police station where he alleged that from the appellant 49 number of fake Indian currency notes of Rs.500/- denomination were seized at Jangipur Bridge near Jangipur side staircase. The police team had to chase and intercept the appellant and the fake currency were recovered from his left side trouser pocket. The learned trial Court was pleased to convict the appellant/accused at the end of the trial and sentenced him to suffer rigorous imprisonment of five years and fine of Rs.20,000/- in default

simple imprisonment for one year for the offence under Section 489B of the Indian Penal Code and rigorous imprisonment for three years for the offence under Section 489C of the Indian Penal Code.

Although, the conviction was under Section 489B of the Indian Penal Code for different reason but Ext.5 which is the report prepared by the Expert of BRBNM Pvt. Ltd. Salboni which reflects that the fake Indian currency notes which were seized from the appellant were described to be 'high quality counterfeit Indian currency'. Section 15 of the Unlawful Activities (Prevention) Act, 1967 defines terrorist acts. Sub-section (1)(a)(iia) of the Unlawful Activities (Prevention) Act, 1967 is set out as follows:

"S.15. Terrorist act. — (1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security [economic security] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

(a)

(i)

(ii)

(iii)

(iia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material;

(iv).....

(b)

commits a terrorist act.

Explanation – For the purpose of this sub-section, -

(a)

(b) "high quality counterfeit Indian currency" means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule."

For convenience the 'Third Schedule is set out as follows:

"[THE THIRD SCHEDULE

[See clause (b) of Explanation to section 15(1)]

SECURITY FEATURES TO DEFINE HIGH QUALITY COUNTERFEIT

INDIAN CURRENCY NOTES

Watermark(s), Security thread and any one of the following features:

- (a) Latent image;
- (b) See through registration;
- (c) Print quality sharpness;
- (d) Raised effect'
- (e) Fluorescent characteristics;
- (f) Substrate quality;
- (g) Paper taggant;
- (h) Colour shift effect in OVI;
- (i) Colour shift effect in security thread.]”

The amendments were incorporated by the 2012 Amendment Act. The present case was registered on 6th August, 2015, naturally the question arose whether there should be any presumption in the present case for trafficking.

Submissions on behalf of the State:

On behalf of the State Mr. Partha Pratim Das learned advocate appearing in CRA 123 of 2019 and CRA 37 of 2019 at the very inception drew the attention of this Court to two judgments of Division Bench relating to the term ‘trafficking’, its interpretation as used in Section 489B of the Indian Penal Code.

Learned advocate drew the attention of this Court to Jubeda Chitrakar –Vs. – State of West Bengal reported in 2019 SCC OnLine Cal 8924 and relied upon paragraph 15 which is set out as follows:

“15. 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 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."

Learned advocate also drew the attention of this Court to *Habibur Rahaman –Vs. – State of West Bengal* in CRA 277 of 2016 and emphasis was made on internal page 8 of the said judgment which is set out as follows:

"Lastly, it is argued ingredients of offence under section 489B IPC have not been proved. Prosecution evidence clearly shows that the appellant and the co-accused was apprehended in front of a tailor shop while carry counterfeit currency notes totaling to Rs 10 lakhs. When the appellant was found carrying a large volume of FICNs in a public place and he is unable to give any explanation for the said possession, one can safely held the appellant was knowingly trafficking in counterfeit currency notes. Section 489B of the Indian Penal Code makes selling, buying, receiving or trafficking in counterfeit currency notes culpable. In this regard, it may be apposite to refer to the charge framed against the appellant under section 489B of the Indian Penal Code which reads as follows:- "that you on 4.11.2014 at township More on NH 34, under Baisnabnagar PS DistMalda attempted to use/traffic forged or counterfeit Indian currency notes of Rs. 9,76,000/- of denomination of Rs. 1,000/- each (976 pieces) and Rs. 24,000/- of denomination of Rs. 500/- each (48 pieces) and totalling Rs 10,00,000/- knowing the same to be counterfeit and as per seizure list dated 4.11.2014, a copy of which was served to you, knowing the same to be forged or counterfeit." Plain reading of the aforesaid charge shows the prosecution had put the appellant on notice that he was being accused of "attempt to sell/trafficking" in counterfeit notes. As discussed above, evidence on record unequivocally shows the appellant and co-accused were apprehended while carrying a large volume of counterfeit notes in a public place. Thus, transportation of counterfeit notes by the appellant is clearly established."

Submissions on behalf of the appellants in respect of the issue raised by the State:

Mr. Sourav Chatterjee learned advocate appearing for the appellant in CRA 37 of

2019 and Mr. Sabyasachi Banerjee learned advocate appearing in CRA 189 of 2017 resisted the contentions advanced by the State. Both the learned advocates strenuously argued for rebutting the version of the State and distinguished the two judgments regarding the interpretation of 'trafficking' or 'otherwise traffics in'.

Mr. Sourav Chatterjee learned advocate appearing for the appellant in CRA 37 of 2019 argued that the decision of Jubeda Chitrakar (supra) cited by the State is distinguishable for the reason that the existing decision of Benches of equal strength passed by this Hon'ble Court as well as the decision of the Hon'ble Supreme Court in Umashankar (supra) were not considered while delivering such decision. Moreover, no charge was framed against the appellant to the effect that the possession of large quantity of FICN was in a concealed manner and was not dormant possession to show active transportation which amounted to trafficking. Further the meaning and purport of the expression 'traffics' so arrived at was by referring to Parakh Foods Ltd. -Vs. - State of Andhra Pradesh reported in (2008)4 SCC 584, which is a decision relating to Prevention of Food Adulteration Act. Learned advocate also distinguished the case of Habibur Rahaman -Vs. - State of West Bengal (supra) by submitting that the earlier judgments of this Hon'ble High Court as well as the law laid down by the Hon'ble Supreme Court in Umashankar (supra) and M. Mammutti (supra) were never considered.

Mr. Sabyasachi Banerjee learned Advocate appearing for the appellant in CRA 189 of 2017 distinguished the judgments of Jubeda Chitrakar (supra) by referring to CRA 163 of 2019 in Md. Tousif -Vs. - State of West Bengal wherein it was held that as the prosecution failed to produce the minimum evidence in support of the charge, the fact and circumstances of the case completely differed and as such the precedent laid down in Jubeda Chitrakar (supra) was not acceptable. The judgment in Habibur Rahaman's case (supra) was distinguished by the learned advocate for the appellant by referring to Umashankar (supra) and it was submitted that the Court while delivering the said judgment did not take into consideration the requisite mens rea and gave undue importance to the charge of trafficking in counterfeit notes against the appellant and upheld his conviction.

Both the learned advocates for the appellants relied upon the following judgments for advancing their contentions in respect of the acquittal as well as the in-applicability of Section 489B of the Indian Penal Code. Relevant paragraphs so relied upon in respect of each of the judgments are accordingly dealt with.

Attention of the Court was drawn to paragraph 9 of Jiban Sasmal -Vs. - State of West Bengal 1987 SCC OnLine Cal 114

"9. Although it is in evidence led on behalf of the prosecution that five currency notes were recovered from the possession of the present appellant but mere possession of those counterfeit currency notes will not be sufficient to uphold the charge framed against the appellant under s. 489C and, as such, the conviction

thereunder cannot be sustained inasmuch as from a plain reading of the said Section, it is clear that mere possession of any forged or counterfeit currency notes or bank notes, knowing or having reason to believe the same to be so will not be sufficient inasmuch as the Section itself provides that possession occupied with intention to use the same as genuine is required to be satisfied before a conviction can be upheld under s. 489C. In the charge framed against the appellant under the said section, it has been stated that under s. 489C, he had in his possession five currency notes of ten rupee denomination, full particulars whereof had been given, together with the charge that he intended to use the same as genuine, whereas from an analysis of the evidence led for and on behalf of the prosecution, it is clear that it does not support such charge inasmuch as all the five counterfeit currency notes were no doubt found in his possession but there is no evidence that he intended to use the same as genuine.

15. In the facts and circumstances of the present case, it appears that the conviction of the appellant, Jiban Sasmal, cannot be upheld both under ss. 489B and 489C of the Penal Code, 1860. It is true that under s. 116 of the Penal Code, 1860 abetment of offence is punishable with imprisonment even if the offence is not committed. But, in view of the fact that the appellant, Jiban Sasmal, has been charged under s. 109 of the Penal Code, 1860 and not under s. 116 of the said Code, he cannot be held guilty in the present case. In the judgement in the case of Madan Raj Bhandari v. State of Rajasthan, reported in AIR 1970 SC 436. It was held that the accused was charged under s. 314 read with s. 109, Penal Code, 1860 and he was notified that he would only be tried for an offence of having abetted and throughout the trial the accused was asked to defend himself against the charge on which he was tried. The conviction for abetting was held not to be proper on the ground that the accused was likely to have been prejudiced by such charge. In the facts and circumstances of this case, when the accused-appellant was only found in possession of the five counterfeit currency notes but no evidence having been led on behalf of the prosecution that he was intending to use the same as genuine, this Court is not inclined to convict the appellant under s. 116, Penal Code, 1860."

Reliance was placed on the following passage of Sarvesh Pathak @ Kallu -Vs. - State of West Bengal, 2014 SCC OnLine Cal 18497:

"Therefore, if anybody possesses fake currency notes intending to use the same as genuine, he will only be liable for an offence under section 489C IPC and in order to make out an offence punishable under section 489B IPC, there must be some material to show that those fake notes were actually used or trafficked meaning thereby there was a transaction involving those forged notes."

Reference was made to the following paragraphs of Chhotelal Thakur - Vs. - Union of India, 2020 SCC OnLine Cal 2149:

"26. On the other hand as the view expressed in the case of Noor Aga, (2008) 16

SCC 417, has been approved by the larger bench it would be apposite to take into account the following paragraphs:—

"83. There is another aspect of the matter which cannot also be lost sight of. A search and seizure or an arrest made for the purpose of proceeding against a person under the Act cannot be different only because in one case the authority was appointed under the Customs Act and in the other under another Act. What is relevant is the purpose for which such arrest or search and seizure is made and investigation is carried out. The law applicable in this behalf must be certain and uniform.

84. Even otherwise Section 138B of the 1962 Act must be read as a provision containing certain important features, namely:

(a) There should be in the first instance statement made and signed by a person before a competent customs official.

(b) It must have been made during the course of enquiry and proceedings under the Customs Act.

Only when these things are established, would a statement made by an accused become relevant in a prosecution under the Act. Only then, it can be used for the purpose of proving the truth of the facts contained therein. It deals with another category of case which provides for a further clarification. Clause (a) of sub-section (1) of Section 138B deals with one type of persons and clause (b) deals with another. The Legislature might have in mind its experience that sometimes witnesses do not support the prosecution case, as for example panch witnesses, and only in such an event an additional opportunity is afforded to the prosecution to criticize the said witness and to invite a finding from the court not to rely on the assurance of the court on the basis of the statement recorded by the Customs Department and for that purpose it is envisaged that a person may be such whose statement was recorded, but while he was examined before the court, it arrived at an opinion that his statement should be admitted in evidence in the interest of justice which was evidently to make that situation and to confirm the witness who is the author of such statement, but does not support the prosecution although he made a statement in terms of Section 108 of the Customs Act. We are not concerned with such category of witnesses. The confessional statement of an accused, therefore, cannot be made use of in any manner under Section 138B of the Customs Act. Even otherwise such an evidence is considered to be of weak nature."

27. On an appreciation of the settled position of law, keeping in mind the background of the present case which is presently an appeal against conviction for commission of offence under Section 489B and 489C of the IPC, the following issue emerge that whether the confessional statement of the accused persons can be made foundation of their guilt. Needless to state that it is only in the statements under Section 108 of the Customs Act of the three appellants it is found that one Rahul @ Ikram @Ikramul of village- Mojampur, P.O.- Harchi,

P.S.- Kaliachak, District-Malda was the person who obtained the notes from Bangladesh and handed over the same in presence of Chhotelal to UmeshSha and Maya Devi.

28. Throughout the evidence there is no corroboration by any prosecution witness in respect of such evidence and there is neither any other documentary evidence to substantiate the same. Further no materials relating to such fact was brought in evidence by the prosecution and surprisingly the petition of complaint also did not implicate the said Rahul @ Ikram @Ikramul as an accused. The prosecution case is silent whether in course of investigation any process was issued or any attempt was made to apprehend the said Rahul. Additionally the seizures were effected at the office of the revenue authorities and thereafter the statements under Section 108 of the Customs Act were recorded. Relying upon the judgment of the Hon'ble Supreme Court in the case of Noor Aga (supra) this court is of the opinion that the confessional statements so recorded under Section 108 of the Customs Act solely cannot be a foundation for arriving at the conclusion of guilt of the accused appellants."

The appellants also relied upon Hoda Sk -Vs. - State of West Bengal, 2020 SCC OnLine Cal 1478 for advancing their arguments in respect of non- applicability of S.489B of IPC. Reliance was placed upon the following paragraphs:

"14. Analysis of the aforesaid section shows whoever sells, buys or receives from any other person or otherwise traffics in or uses as genuine any forged or counterfeit currency notes or bank notes with the knowledge or reasonable belief that the said notes are forged or counterfeit is said to have committed the offence. Hence, sale, purchase or receipt from any person, or otherwise trafficking in counterfeit currency notes as genuine is a sine qua non of such offence. There is no evidence that the appellants had sold, received or used any counterfeit notes. However, it has been argued on behalf of the prosecution that the appellant was "otherwise trafficking in" counterfeit notes by knowingly transporting a large volume of forged currency notes in a bag through a public road and had reached the ferry ghat when they were apprehended. Hence, he had committed the offence under section 489B of the Penal Code, 1860.

15. What would the expression "otherwise traffics in" mean in the context of aforesaid offence?

16. In K. Hasim v. State of Tamil Nadu, (2005) 1 SCC 237 : AIR 2005 SC 128, the Apex Court interpreted the object of section 489B of the Penal Code, 1860 as follows:—

"42. Similarly Section 489B relates to using as genuine forged or counterfeited currency notes or bank notes. The object of Legislature in enacting this section is to stop the circulation of forged notes by punishing all persons who knowing or having reason to believe the same to be forged do any act which could lead to their circulation."

17. Expression "otherwise traffics in" when interpreted in the light of the aforesaid object would include any act undertaken by the accused which would lead to circulation of notes.

18. In Black's Law Dictionary, 10th edition, p. 1725, the word 'traffic' is defined as follows:—

"traffic-1. Commerce; trade; the sale or exchange of such things as merchandise, bills, and money. 2. The passing or exchange of goods of commodities from one person to another for an equivalent in goods or money. 3. People or things being transported along a route. 4. The passing to and fro of people, animals, vehicles, and vessels along a transportation route."

The appellants also relied upon Umashankar -Vs. - State of Chhattisgarh (2001) 9 SCC 642, attention was drawn to the following paragraphs:

"7. Sections 489-A to 489-E deal with various economic offences in respect of forged or counterfeit currency notes or banknotes. The object of the legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency notes and banknotes. The currency notes are, in spite of growing accustomedness to the credit card system, still the backbone of the commercial transactions by the multitudes in our country. But these provisions are not meant to punish unwary possessors or users.

8. A perusal of the provisions, extracted above, shows that mensrea of offences under Sections 489-B and 489-C is "knowing or having reason to believe the currency notes or banknotes are forged or counterfeit ". Without the aforementioned mensrea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency notes or banknotes, is not enough to constitute offence under Section 489-B IPC. So also possessing or even intending to use any forged or counterfeit currency notes or banknotes is not sufficient to make out a case under Section 489-C in the absence of the mensrea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mensrea. The High Court, however, completely missed this aspect. The learned trial Judge on the basis of the evidence of PW 2, PW 4 and PW 7 that they were able to make out that the currency note alleged to have been given to PW 4 was fake, "presumed" such a mensrea. On the date of the incident the appellant was said to be an eighteen-year-old student. On the facts of this case the presumption drawn by the trial court is not warranted under Section 4 of the Evidence Act. Further it is also not shown that any specific question with regard to the currency notes being fake or counterfeit was put to the appellant in his examination under Section 313 of the Criminal Procedure Code. On these facts, we have no option but to hold that the charges framed under Sections 489-B and 489-C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Sections 489-B and 489-C IPC and acquit him of the said

charges (see: M. Mammutti v. State of Karnataka [(1979) 4 SCC 723 : 1980 SCC (Cri) 170 : AIR 1979 SC 1705]).”

Appellants also relied upon M. Mammutti -Vs. - State of Karnataka, (1979) 4 SCC 723, to strengthen their arguments for culpability and complicity in respect of counterfeit currency. Reference was made to the following paragraph:

“S. Murtaza Fazal Ali, J.— The appellant has been convicted in this appeal under Sections 489-B and 489-C and has been sentenced to RI for one year and to RI for six months respectively and fine of Rs 500. The sentences have been directed to run concurrently. The learned counsel appearing for the appellant has stated that it is true that the appellant was found in possession of a counterfeit two rupee note and the accused handed over the note to a friend to purchase a ticket for a circus show. The booking clerk on seeing the note got suspicious. He immediately informed the Sub-Inspector of Police and on search of the Appellant 99 two rupee notes were recovered. The appellant in his statement under Section 342 stated that two days ago he sold three quintals of tamarind fruits to a person whom he did not know and that person gave him a sum of Rs 390. These currency notes have been given to him by the purchaser. He also said that he did not know that these currency notes were counterfeit and he came to know of it for the first time when he was interrogated by the police. There is no evidence of any witness to show that the counterfeit notes were of such a nature or description that a mere look at them would convince any person of average intelligence that it was a counterfeit note. Nor was any such question put to the accused under Section 342 CrPC. The High Court has affirmed the judgment of the learned Sessions Judge on the ground that in his statement under Section 342 made before the committing Court the accused has made a statement different from that made in the Sessions Court and therefore the appellant had reason to believe that notes in his possession were counterfeit notes. Here the High Court is not correct because even in the statement before the committing Court in Ex. P-13 which appears at p. 154 of the paper-book, the appellant has stuck to the same statement which he made before the Sessions Court that he had sold three quintals of tamarind fruits and from the purchaser he received a sum of Rs 390 in two rupee notes. We are not able to find any inconsistency between the answer given by the accused in his statement under Section 342 before the Sessions Judge and that before the Committing Court specially on the point that the appellant had the knowledge or reason to believe that the notes were counterfeit. Mr Nettar submitted that once the appellant is found in possession of counterfeit notes, he must be presumed to know that the notes are counterfeit. If the notes were of such a nature that mere look at them would convince anybody that it was counterfeit such a presumption could reasonably be drawn. But the difficulty is that the prosecution has not put any specific question to the appellant in order to find out whether the accused knew that the notes were of such a nature. No such evidence has been led by the prosecution to prove the nature of the notes also. In these circumstances, it is impossible for us to sustain the conviction of the appellant. For these reasons, therefore, the

appeal is allowed, conviction and sentences passed on the appellant are set aside, and the appellant is acquitted of the charges framed against him.”

Appellants also relied upon paragraph 24 of Md. Morful Haque –Vs. – State of West Bengal, 2017 SCC OnLine Cal 3380, which is set out as follows:

24. From the above provisions of law it was evident that without mensrea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit notes or bank notes is not enough to constitute offence under section 489B IPC. So also possessing or even intending to use any forged or counterfeit currency notes or bank notes is not sufficient to make out a case under section 489C IPC in the absence of mensrea. Criminality of mind and/ intention must be there to constitute the offence under those sections but on critical analysis of the evidence of the prosecution witnesses on record we do not find any such evidence to the effect that the appellant had the requisite mensrea.

Appellants also relied upon the judgment of the Bombay High Court in Sanskrit Jayantilal Salia –Vs. – The State of Maharashtra, 2018 SCC OnLine Bom 2969 and referred to the following paragraphs:

“15. The Hon'ble Apex Court in the case of M. Mammutti v. State of Karnataka² has observed thus:

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

“7. Sections 489-A to 489-E deal with various economic offences in respect of forged or counterfeit currency-note or bank-notes. The object of Legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency-notes and bank-notes. The currency-notes are, inspite of growing accustomedness to the credit cards system, still the backbone of the commercial transactions by multitudes in our country.

But these provisions are not meant to punish unwary possessors or users.

8. A perusal of the provisions, extracted above, shows that mensrea of offences under Sections 489B and 489C is, “knowing or having reason to believe the currency-notes or bank-notes are forged or counterfeit”. Without the afore-

mentioned mensrea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency-notes or bank-notes, is not enough to constitute offence under Section 489B of I.P.C. So also possessing or even intending to use any forged or counterfeit currency-notes or bank-notes is not sufficient to make out a case under Section 489C in the absence of the mensrea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mensrea. The High Court, however, completely missed this aspect. The learned trial judge on the basis of the evidence of P.W. 2, P.W. 4 and P.W. 7 that they were able to make out that currency note alleged to have been given to P.W. 4, was fake "presumed" such a mensrea. On the date of the incident the appellant was said to be 18 years old student. On the facts of this case the presumption drawn by the trial court is not warranted under Section 4 of the Evidence Act. Further it is also not shown that any specific question with regard to the currency-noted being fake or counterfeit was put to the appellant in his examination under Section 313 of Criminal Procedure Code. On these facts we have no option but to hold that the charges framed under Sections 489B and 489C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Sections 489B and 489C of I.P.C. and acquit him of the said charges [see: M. Mammutti v. State of Karnataka]."

16. In light of aforesaid authoritative pronouncements wherein has been categorically held that mere possession of the counterfeit notes is not punishable under law and it must be established by prosecution that possession was with a knowledge that the said currency notes are fake or counterfeit. In such circumstances, in absence of any evidence brought on record by the prosecution as a part of charge-sheet to demonstrate that possession of the Petitioner of the alleged currency notes which were deposited by her in the bank on 19th December, 2016 was with a knowledge that the same were counterfeit, Petitioner cannot be tried for an offence under Section 489(B) in absence of any material to attribute such a knowledge on her part.

17. Continuation of the proceedings against the Petitioner would be nothing but would amount to abuse of process of law and in such circumstances we are of the opinion that this is a fit case where we should exercise our inherent jurisdiction under Section 482 of Code of Criminal Procedure and in any contingency even on culmination of a trial, the charge leveled against the Petitioner cannot be proved and would result into an acquittal. In such circumstances, we are inclined to invoke our inherent power and we allow the Writ Petition and quash and set aside the Sessions Case No. 699 of 2017, pending before the Additional Sessions Judge, Greater Bombay, Mumbai, arising out of CR No. 22 of 2017 registered with Parksite Police Station, Vikhroli, Mumbai, for the offence punishable under Section 489(B) of IPC."

Appellants submitted that the concept of mensrea was admitted in Md. Mukhtarul Islam @ Suman -Vs. - State of West Bengal, (2014) 2 Cal LT 260 and relied

upon the following paragraphs:

"13. Section 489B of the IPC speaks about the use of forged or counterfeit notes or bank notes as genuine with knowledge or having reason to believe the same to be forged or counterfeit. Similarly, 489C is attracted when a person is in possession of forged or counterfeit currency notes or bank notes having the knowledge or a reason to believe that they are forged or counterfeit. No presumption can be drawn about the mensrea of the accused as held in M. Mammutti (supra) and Umashanker (supra). In fact, the conduct of the accused is to the contrary. Had the accused the knowledge or any reason to believe that the currency notes were forged or counterfeit he would not have continued sitting in the bank till the police arrived there."

The manner of application of the provisions of Section 489B and Section 489C of the Indian Penal Code was referred in Md. Tousif –Vs.- State of West Bengal in CRA 163/2019 and attention was drawn to the following passage:

"In other words, if the prosecution is able to prove search, seizure, raid and recovery of FICN by adducing credible evidence in support of the prosecution case, the judicial precedents to the fact that illegal possession of huge quantity of FICN does not only attract Section 489C of the Indian Penal Code but the offence under Section 489B is also held to be proved.....

.... Therefore, the prosecution has failed to prove the basic ingredients of offence under Section 489C of the Indian Penal Code and accordingly, the charge under Section 489B also fails. This Court further fails to understand as to why and how a charge under Section 120B of the Indian Penal Code was framed in the absence of any material of criminal conspiracy against the accused. The allegation that the accused wanted to hand over FICN to two other persons is not sufficient, there must be certain prima facie evidence to frame charge under Section 120B of the Indian Penal Code against the accused. The prosecution failed to produce the minimum evidence in support of the said charge."

I have considered the judgments relied upon by the appellants as well as that of the State and I find that the word 'possession' used in Section 489C of the Indian Penal Code has been given an extended meaning and interpreted to be equivalent to the term 'otherwise traffics in' used in Section 489B of the Indian Penal Code. One of the interpretations given is regarding volume of seized Fake Indian Currency Notes.

Obviously, the issue arises that whether the attending circumstances are to be considered in a case of possession, in interpreting the phrase 'otherwise traffics in', in the background of the facts relating to the four appeals. In CRA 37 of 2019 with CRA 123 of 2019, 100 FICN of Rs.2,000/- denomination were recovered from the three appellants. In CRA 189 of 2017 the recovery from the possession of the appellant was 100 numbers of Fake Indian Currency Notes of Rs.500/- denomination but the appellant happens to be a CISF personnel. In CRA 702 of 2018, 49 number of Fake Indian Currency Notes of Rs. 500/-denomination were

seized from the appellant but the opinion of the Expert was high quality counterfeit notes as specified in the third schedule of Unlawful Activities (Prevention) Act, 1967 and its Amendment Act, 2012.

In the decision of Jubeda Chitrakar (supra) while interpreting the term 'otherwise traffics in' as appearing in Section 489B of the Indian Penal Code, the Court framed issue in relation to the factum of possession. Relevant part of paragraph 9 of the said judgment is set out as follows:

"The question that would, however, arise for decision is as to whether possession of any forged or counterfeit currency note is sufficient to inculcate the accused for offence punishable under Section 489B...."

In CRA 277 of 2016 Habibur Rahaman (supra) the relevant facts are set out as follows:

"....Upon search, eight bundles of currency notes suspected to be fake in denomination of Rs.1000/- (each bundle containing 800 pieces) valued at 8 lakhs wrapped in a coffee colour cloth bag was recovered from the appellant, Habibur Rahaman and two bundles of fake Indian currency notes in denomination of Rs.1,000/- and Rs. 500/- (one bundle containing 176 pieces and another containing 48 pieces respectively) valued at Rs. 2 lakhs was recovered from his nephew, Nasiruddin Sheikh, who was a juvenile at the time of occurrence...."

And the interpretation made by the Court at inner page 8 of the said judgment is set out as follows:

"....When the appellant was found carrying a large volume of FICNs in a public place and he is unable to give any explanation for the said possession, one can safely held the appellant was knowingly trafficking in counterfeit currency notes...."

Apart from the aforesaid two judgments in Ponusamy -vs.- State reported in 1997 SCC (Cri) 217, the Hon'ble Supreme Court was pleased to hold as follows:

"The verdict of the three courts below is similar in convicting and keeping maintained the convictions of the appellant under Sections 489-B and 420 of the Penal Code, 1860. The case of the prosecution against the appellant is that he had purchased paddy from a peasant on payment of 130 forged currency notes of Rs 100 denomination. On the arrest of the appellant, further forged currency notes were alleged to have been found in his possession for which he had to face a trial separately. All the same, the appellant had no explanation to offer as to wherefrom had he obtained those forged currency notes. Silence on the part of the appellant in such circumstances would by itself be a telling circumstance which would weigh against him in the consideration of the prosecution evidence led against him. In these circumstances, we are of the view that the convictions recorded deserve no alteration and equally there is no scope for reduction of sentence. Maintaining the convictions and sentences of the appellant, we dismiss this appeal."

Thus the term 'possession' in some of the judgments have been interpreted to have an extended meaning equivalent to 'otherwise traffics in' while a set of judgments have refused such an interpretation. In view of such conflicting decisions referred to above as has been pointed out by the learned Advocates appearing for the State as well as the appellants, I am of the opinion that the following issues arise for reference to be decided by a Larger Bench:

- 1) Whether the aid of 'presumption' is available when the seizure of FICN is effected from the possession of an individual?
- 2) If quantity/volume of FICN is a ground of 'presumption', what would be the cut off number for presuming that the 'possession' was for the purpose of 'otherwise traffics in'?
- 3) When substantial number of FICN are recovered from the possession of a security personnel associated with the Government i.e. Police, CISF, Defence Forces etc. can it be presumed that the ingredients of the term 'otherwise traffics in' used in Section 489B of the Indian Penal Code is automatically attracted?
- 4) Do seizure from the possession of an individual of High Quality Counterfeit Notes (as referred to in the provisions of UAPA, 1967), opined by an Expert automatically attract the provisions of Section 489B of the Indian Penal Code?

Accordingly, records of CRA 37 of 2019 with CRA 123 of 2019; CRA 189 of 2017 and CRA 702 of 2018 be placed before the Hon'ble the Chief Justice, High Court at Calcutta for constitution of a Larger Bench for deciding the issues.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.