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**(2022) 11 CAL CK 0052**

**In the Calcutta High Court**

**Case No :** Criminal Appeal No. 397 Of 2019, CRAN 1 Of 2019 (Old CRAN 3515 Of 2019)

Md. Mojammel Haque @ Situ & Anr.

APPELLANT

Vs

State Of West Bengal

RESPONDENT

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**Date of Decision :** 14-11-2022

**Acts Referred:**

Indian Penal Code, 1860 — Section 120B, 489B, 489C  
Code Of Criminal Procedure, 1973 — Section 428

**Citation :** (2022) 11 CAL CK 0052

**Hon'ble Judges :** Joymalya Bagchi, J;Ajay Kumar Gupta, J

**Bench :** Division Bench

**Advocate :** Anasuya Sinha, Eshita Dutta, N Ahmed, S Bardhan, Ayantika Roy

**Final Decision :** Dismissed

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## **Judgement**

Joymalya Bagchi, J

Appeal is directed against the judgment and order dated 29.05.2019 and 31.05.2019 passed by learned Chief judge, City Sessions Court, Calcutta in Sessions Trial No. 1(11)2013 convicting the appellants for commission of offences punishable under Sections 489B and 489C of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for 8 (eight) years and a fine of Rs. 50,000/- each, in default, to suffer simple imprisonment for one year more for the offence punishable under Section 489B of the Indian Penal Code and to suffer rigorous imprisonment for five years and to pay a fine of Rs.20,000/- each, in default to suffer simple imprisonment for six months more for the offence punishable under Section 489C of the Indian Penal Code; both the sentences to run concurrently.

Prosecution case, as alleged against the appellants, is to the effect that on 22.3.2013, SI Silash Toppo (PW1) received credible source information that two fake currency dealers of Malda would come near Sonagachi area with huge quantity of fake Indian Currency Notes (for short FICNs). Accordingly, PW1 with

force proceeded to the spot and kept watch. Around 15.35 hrs they noticed a gathering in front of a mobile shop named and styled as "Tirupati Telecom". Source informer pointed out to two persons, one of whom was carrying a red and black rucksack bag on his shoulder and the other was carrying red and off white synthetic bag in his hand, as the trafficker of FICNs. The raiding party cordoned them and disclosed their identity. At that time Anup Kr. Banerjee (PW 2) owner of the shop informed the police that the aforesaid persons had come to his shop to purchase mobile phones and one of them named Parvej Sk (appellant No. 2 herein) handed over four pieces of currency notes of denomination Rs. 500/- each and the other namely Md. Mojammel (appellant No. 1 herein) had handed over five pieces of similar currency notes for the purpose of purchasing two mobile phones valued at Rs. 2500/- and Rs. 1650/- respectively. PW 2 prepared two cash memos with regard to the purchase of the said mobile phones and handed them over to the said persons. However, suspecting the currency notes were fake, he returned them too.

Upon search the said currency notes and the cash memos were recovered along with other articles. Further search of the bags of the appellants, lead to the recovery of three bundles of 100 pieces each of currency notes of denomination of Rs. 1000/- each and one bundle 95 pieces of currency notes of denomination of Rs. 500/- each, all of whom appeared to be fake. Upon suspicion, the currency notes and other articles were seized from the appellants under a seizure list. Appellants were arrested and taken to the police station along with seized articles. One complaint was lodged by SI Silash Topo resulting in registration of Burtolla PS case no 134 of 2013 dated 22.3.2013 under sections 120B/489B/489C IPC. In the course of investigation the seized currency notes were sent for verification and report was obtained from Bharatiya Reserve Bank, Note Mudran Pvt. Ltd. Bangalore that they were fake. Charge sheet was filed and charges were framed under sections 489B/489C/120B IPC. Appellants pleaded not guilty and claimed to be tried. Prosecution examined 9 witnesses and exhibited a number of documents. Defence of the appellants was one of innocence and false implication.

In conclusion of trial, the trial Judge by the impugned judgment and order dated 29.5.2019 and 31.5.2019 convicted and sentenced the appellants, as aforesaid.

Ms. Sinha, learned Advocate for the appellants submits that use of the alleged FICNs for purchase of mobile phones have not been proved beyond doubt. Mobile phones were neither seized nor produced in court. Cash memos Ext. 15 and Ext. 26 exhibited in the instant case refers to mobile phones which were standing in the name of shop owner Anup Kr. Banerjee. There is nothing on record to show Anup Kr Banerjee was authorized to sell mobile phones. PW4 Rahul Mondal is a pocket witness of the police and cannot be relied upon. Hence, use of FICNs have not been proved. Recovery of FICNs valued at Rs.5,99,500/- has also not been proved. Accordingly, appellants are entitled to an order of acquittal.

On the other hand, Mr. Ahmed, learned advocate for the State submits evidence

of PW 1, leader of the raiding party is corroborated by shop owner (PW 2) and an independent witness (PW 4) who was present at the shop. Their evidence and the cash memos exhibited in the instant case prove use of FICNs by the appellants. A large volume of FICNs were recovered from their possession. Prosecution case has been proved beyond doubt.

PW 1 (Silash Toppo) is the leader of the raiding party. He deposed on receipt of secret information he along with team went to the spot and saw the appellants in front of the shop named 'Tirupati Telecom'. There was a commotion going on. Anirban Banerjee (PW 2), owner of the shop told PW 1 that the appellants had handed over fake currency notes to purchase mobile phones from his shop. He had prepared cash memos and handed them over to the appellants. Suspecting the notes to be fake, he returned them to the appellants. On search, the fake notes as well as the cash memos were recovered from the appellants.

300 pieces of currency notes of Rs. 1000 each and 95 pieces of currency notes of Rs. 500 each suspected to be fake were also recovered from their bags. PW 1 seized the currency notes and other articles under a seizure list. He signed on the currency notes which were kept in an envelope. He arrested the appellants and lodged FIR.

His deposition is corroborated by the shop owner Anup Kr. Banerjee (PW 2) as well as an independent witness Rahul Mondal (PW 4).

Ms. Sinha strenuously argues the use of FICNs have not been proved. Mobile phones were not produced during trial. Cash memos exhibited in the instant case show mobile phones referred to therein belong to PW 2.

I am unable to accede to the aforesaid submission. During cross examination, PW 2 clarified he purchased mobile phones from dealers and used to re-sell them to customers. Hence, mobile phones referred to in the cash memos which were proposed to be sold to the appellants were standing in his name. Mobile phones were not produced in Court. It is true there is lack of clarity whether the mobile phones were actually handed over to the appellants or not. However, failure of the investigating officer to recover the mobile phones does not erode the credibility of the evidence of PW 2 that he used to carry on business in selling of mobile phones and had, in fact, prepared cash memos with regard to sale of two mobile phones to the appellants after they had handed over the fake currency notes to him.

His deposition is corroborated by an independent witness (PW 4). PW 4 deposed he was present at the shop "Tirupati Telecom" at the time of the incident. He had seen the appellants hand over the currency notes to the shop owner who again returned the notes suspecting them to be fake. He was also present when FICNs were recovered from the possession of the appellants. He proved his signature on the seizure list and other documents prepared in connection with seizure. He was extensively cross examined and denied the suggestion that he was a planted witness.

N Krishnawamy (PW 3) is the Deputy General Manager, Bharatiya Reserve Bank, Note Mudran Pvt. Ltd. He deposed he examined the seized currency notes and prepared report. Report has been exhibited as Ext. 30. Analysis report was also exhibited as Ext 40. From the said reports, it appears that the seized currency notes are fake.

In view of the aforesaid evidence on record I am of the opinion both use as well as possession of FICNs from the appellants have been proved.

Conviction and sentence of the appellants are upheld.

Appeal is, accordingly, dismissed.

In view of disposal of the appeal, connected applications, if any, also stand disposed of.

Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon them in terms of section 428 of the Code of Criminal Procedure.

Lower court records along with copies of this judgment be sent down at once to the learned trial Court as well as the Superintendent of Correctional Home for necessary compliance.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.