(2011) 08 CAL CK 0174

In the Calcutta High Court

Case No : C.R.A. No. 760 of 2005

Monojit Raju Sood @ Manjit Raju Sood — APPELLANT

Vs

State of West Bengal — RESPONDENT

Date of Decision : 29-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 120B, 420, 489A, 489B, 489C

Citation : (2012) 1 CALLT 294 : (2012) 3 CHN 377

Hon'ble Judges : J.N. Patel, C.J;Ashim Kumar Roy, J

Bench : Division Bench

Advocate : Sekhar Kumar Basu, Sandipan Ganguly, Saryati Datta and Antarikhya Basu, for the Appellant;Debasis Roy and Sanjoy Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Patel, C.J.—The Appellant was tried in the Court of Additional Sessions Judge, 2nd Fast Track Court, Kolkata, in Sessions Case No. 13 of 2004 on a charge for having committed an offence under Sections 489B/489C/489D and 420 of Indian Penal code. By judgment and order dated 30th August 2005 and 31st August 2005, the learned Trial Court found the Appellant-accused guilty of having committed the offences, for which charged and sentenced him to suffer rigorous imprisonment for 10 years and to pay fine of Rs. 10,000/-, in default to suffer rigorous imprisonment for 6 months for the offence punishable u/s 489B of Indian Penal Code, and to suffer rigorous imprisonment for 5 years and to pay fine of Rs. 5,000/-,in default to suffer rigorous imprisonment for 3 months for an offence u/s 489C of Indian Penal code and also, to suffer rigorous imprisonment for 10 years and to pay fine of Rs. 10,000/-, in default to suffer rigorous imprisonment for 6 months for the offence punishable u/s 489D of the Indian Penal Code and further to suffer rigorous imprisonment for 5 years and to pay fine of Rs. 5000/-, in default to suffer rigorous imprisonment for 3 months for the offence u/s 420 of Indian Penal Code. All the substantive sentences were directed to run concurrently.

2. In a nutshell, the prosecution case can be summed up as under: One Siddharth Banthia (P.W.11) runs a travel agency business under the name and style of Global Connexions at 196, Old China Bazar Street, first floor, Room No. 30, Kolkata-700 001. In the course of his business he arranges air tickets, visa and foreign exchange for his clients. The Appellant-accused Monojit Raju Sood was known to him as a client for the last 2 years. On 5.10.2003 at about 11.00 hrs., he came to the office of the complainant and asked him to arrange 5 air tickets, foreign exchange of 10,000 US$ for himself and 4 others for traveling to Bangkok on 9.10.2003. It is the case of the prosecution that the complainant arranged 10,000 US$ from his known licence holder, M/S N.P.R Finance Limited, and also arranged for 5 air tickets for the Appellant-accused and Ors. on the assurance that he will be paid sum of Rs. 4,00,000/- immediately and balance would be given after a day. On 7.10.2003 around 2 p.m. the complainant met the accused at the crossing of Kid Street and Sudder Street. The Appellant-accused handed over 4 sealed bundles of currency notes each of denomination of Rs. 1,000/-, against the air tickets and foreign exchange. On his return to the office the complainant realised that except for the G.C. notes of the denomination of Rs. 1,000/- on the top of 4 bundles of G.C. notes, all other remaining currency notes appeared to be forged. Therefore, the complainant called the Appellant-accused on his mobile Cell No. 9831071444 and informed him that he had given him forged currency notes. However, he was assured that the Appellant-accused on reaching at the Super Guest House at Free School Street, (where he was staying) in half-an-hour would settle the same. Accordingly, the complainant went to the said Guest House and waited for the Appellant-accused for 2 hours but he did not turn up and thereafter came to know that the Appellant-accused had already checked out at 12.30 p.m. with all his belongings. The complainant thereafter realized that he had been cheated by the Appellant-accused who dishonestly induced him to deliver 5 air tickets and 10,000 US$ against forged currency notes of Rs. 3,96,000/- and by not paying the balance amount of Rs. 50,000/-. Therefore, on the next day, i.e. 8.10.2003, the complainant lodged a written complaint to the Deputy Commissioner of Police who referred the matter to the Officer-in- charge of the Anti Cheating Section of Detective Department, Kolkata Police, Lalbazar. The said complaint was treated as F.I.R. and came to be registered as New Market P.S. Case No. 313 dated 8.10.2003 under Sections 489B/489C/489D/420 and 120B I.P.C against the Appellant-accused by S.I. P.C. Ghosh. In the course of investigation, the Appellant-accused was arrested from the house of Rajpal Singh, his brother-in-law, from Ludhiana and the Investigation Officer was able to seize a sum of 4,000 US$ from the residence of Rajpal Singh. The Police Officer recorded the statement of persons whose passports were given for obtaining ticket and foreign exchange by the Appellant-accused, all from Ludhiana, Punjab. In the course of investigation, the police was also able to seize All-in-One Printer, Scanner and

Copier Machine HP 1210 from the house of Ramji Das (P.W.7). The G.C. notes were sent to the expert of currency notes placed at Nasik, so also the machine HP 1210. Police recorded the statement of Bank Officials concerned with bank slips which were found with the fake currency notes. After completion of the investigations police submitted charge-sheet against the Appellant-accused on 20.1.2004 for having committed offence punishable under Sections 489B/489C/489D and 420 of the Indian Penal Code; the supplementary charge-sheet came to be filed on 18.2.2004. The case was committed to the City Sessions Court, Kolkata; the Appellant -accused pleaded not guilty to the charges framed against him and claimed to be tried. It was the case of the Appellant-accused that he has been falsely implicated in the case by the complainant in order to avoid payment of loan taken from him from time to time and though on 4.10.2003 the Appellant-accused had given 5 passports including that of him to the complainant to arrange visa for Australia and for Thailand but the complainant could not arrange the same and falsely implicated him in this case. The prosecution examined in all 22 witnesses on its behalf. In defence, the Appellant-accused examined the Bank Official of UCO Bank, Lower Circular Road Branch. On conclusion of the trial, he was found guilty on all counts and sentenced to undergo various terms of punishment which is subject matter of challenge in this appeal.

3. Mr. Sekhar Basu, learned Counsel on behalf of the Appellant-accused, submitted that the Appellant-accused does not dispute that he had given 5 passports including that of his own to the complainant Siddharth Banthia (P.W.11) for arranging visa for Australia and for the 4 passport holders visa for Thailand. However, P.W.11 could not arrange the same and on the contrary, quarreled with the Appellant and in order to dupe the Appellant-accused of the sum of Rs. 1,00,000/- taken as loan and lodged a false complaint against the Appellant-accused. It is submitted that on 13.10.2003 the police accompanied by P.W.11 had come to Ludhiana at the house of sister of the Appellant-accused, from where he was arrested and a sum of 4500 US$ were recovered from residence of his sister and, therefore, a false case is made out against the Appellant-accused by the complainant. It is further submitted that the complainant instead of lodging complaint at the Police Station directly approached the Deputy Commissioner of Police who is well-known to the complainant and at whose instance the complaint was treated as F.I.R. and false case came to be registered against the Appellant.

4. The learned Counsel for the Appellant-accused submitted that the prosecution case that Appellant collected passport from P.W.1, P.W.2, P.W.4 and P.W.5 and misutilized them cannot be believed as none of the witnesses has lodged any complaint against the Appellant accused. The fact that the air tickets and foreign exchange were obtained against the said passport holders was also not mentioned by the complainant in his report or statement before the police and that the statement of the witnesses came to be recorded subsequent to the filing of the charge-sheet, i.e. in the month of January, 2004, creates doubt in the

prosecution case.

5. It is submitted that in so far as the Appellant-accused was residing at Super Guest House and on 7.10.2003 he left the same has not been established as none of the witnesses including P.W.14 the Receptionist-cum-Manager failed to identify the Appellant-accused. It is submitted that the Guest Register of the Guest House was interpolated and was seized at very late stage. In the course of investigation, the person who identified the Appellant-accused in the T.I.P was not examined. Therefore, the prosecution has failed to prove that the Appellant stayed at the Guest House. It is further contended that the specimen handwriting of the Appellant-accused was obtained without following proper procedure and, therefore, the evidence of the Forensic Expert (P.W.21) cannot be taken into consideration in respect of disbursal of US$ 10,000 by NPR Finance Ltd.

6. It is submitted that the prosecution has failed to prove the fact that the complainant Siddharth Banthia (P.W.11) has procured US$ in favour of the Appellant-accused and Ors. and there is No. endorsement on the passport of the Appellant-accused or other persons of having disbursed US$ in their favour and No. document was produced by P.W.12 to show that foreign exchange were issued against the Appellant-accused and Ors. as No. application duly filled in from any passport holder was produced by NPR Finance Ltd against the sale of foreign exchange in favour of such passport holder. Even the serial numbers of US$ were not mentioned in the cash memo issued by NPR Finance Ltd. Therefore, the prosecution has not been able to prove that the complainant obtained US$ from NPR Finance Ltd. for the Appellant-accused and Ors. as No. copies of air tickets were seized by the police from the NPR Finance Ltd.

7. It is contended that the P.Ws 1,2,4 & 5 against whose names and passports US$ came to be issued, never traveled to Kolkata prior to their giving evidence before the Court and these persons were not known to NPR Finance Ltd. In such circumstances, the sale of foreign exchange in favour of such persons by of NPR Finance Ltd. is not in conformity with the general rules of business of NPR Finance Ltd.. It is submitted that the foreign exchange can be sold to the applicant against visa for travel to foreign country and also air tickets showing they will travel to such foreign countries. It is submitted that none of the witnesses have stated having obtained any visa for traveling abroad. Therefore, in the absence of valid visa stamped in the passport of the said witnesses, P.W.11 the complainant and officials of the NPR Finance Ltd. claiming that foreign exchange was sold in favour of such witnesses is rendered extremely suspicious and liable to be given No. credence.

8. It is further submitted that the whole transactions of issuance of US$ 10,000 is suspicious as No. document is produced to support the transaction and the prosecution failed to produce the original cash memo in order to prove that the complainant had obtained the foreign exchange from NPR Finance Ltd. and issued cheque towards payment of the same.

9. It is submitted that in so far as the purchase of air tickets from Genani Travels is considered, No. evidence is brought on record to show that such tickets were purchased and given to the Appellant-accused or their agent. The complainant has come up with the case that on 7.10.2003 the Appellant-accused has returned all the 5 air tickets of P.W.11 with a request to change the date of journey. But this fact has not been mentioned in the complaint of 8.10.2003 and the complainant has failed to produce any receipt issued by Genani Travels regarding return of the said 5 air tickets. Therefore, the evidence on this aspect is also doubtful.

10. It is submitted that the prosecution has not proved beyond reasonable doubts that the Appellant-accused has handed over the forged currency notes to the complainant, as except of the bare words of the complainant, there is No. other evidence to show that the forged currency notes were given to the complainant by the Appellant-accused. It is submitted that the prosecution has not examined the Peon who was accompanying the complainant in taxi when the Appellant-accused handed over the fake currency notes to the complainant.

11. Therefore, the prosecution has reasonably failed to prove the case. It is further submitted that the prosecution has failed to examine Mr. Avijit Roy and Mr. Santosh Roy, the two employees of P.W.11, who are the witnesses to seizure of the forged currency notes with Bank note slips.

12. On the aspect of recovery of US$ 4,000 from the Appellant-accused at the time of arrest from Ludhiana, it is submitted that there is No. evidence on record to show that the US$ were seized from the physical possession of the Appellant-accused. The reason recorded in the statement of the Appellant-accused is recovery of US$ 4000 in terms of Section 27 of the Evidence Act. It is submitted that the Appellant-accused could not have drawn US$ 10,000 as claimed by the prosecution, because on date he had already withdrawn US$ 10,500 between 29.5.2003 and 29.8.2003 and further, the possibility of US$ 4,000 found with the complainant cannot be said to be incriminating circumstance or the said US$ 4,000 to be part of the amount which was purportedly handed over to the Appellant-accused by P.W.11 cannot be accepted as evidence and treated to be incriminating circumstance against the Appellant-accused.

13. It is submitted that there is No. evidence led by the prosecution to show that the scanner machine was used for purpose of manufacturing forged notes and came to be recovered at the instance of the Appellant-accused. The said recovery was done by the Police without any knowledge of the Appellant-accused. It is submitted that according to the evidence of P.W.21, the scanner machine came to be recovered on the confessional statement of the Appellant-accused recorded on 25.10.2000, whereas the actual recovery was made after 31 days of the recording of such confessional statement on 25.11.2003. This delay is fatal to the prosecution to connect the recovery of the scanner machine with the Appellant-accused. The prosecution witnesses No. 6 & 7 do not prove that the Appellant-accused is the owner of the scanner machine. No. evidence is collected

by the Investigating Officer to find out the ownership of the scanner machine. Further, the prosecution has not examined the mother of P.W.5 who is alleged to be present at the time Appellant-accused handed over the scanner machine to P.W.5 for safe keeping. It is submitted that No. evidence is led by the prosecution to show that the Appellant-accused used the scanner machine for printing or producing forged currency notes. Therefore, there exists No. live link between the recovery of the scanner machine and forged notes. Therefore the prosecution has failed to prove any case against the Appellant-accused who deserves to be acquitted.

14. On the other hand, the learned Public Prosecutor submitted that the Appellant-accused has not disputed that he was in Kolkata on 7.10.2003 and stayed at Super Guest House and he has also admitted his writing in the Hotel register. It is submitted that the prosecution has been able to prove that the Appellant-accused did assign the job of buying air tickets and foreign exchange to P.W.11 which stands established from the fact that the photocopy of the 5 passports were submitted along with the application for buying foreign currency from NPR Finance Ltd. and non disclosure of the name of the 5 passport holders will not effect the prosecution case. It is submitted that the prosecution has proved the purchase of foreign currency by examining the witnesses from NPR Finance Ltd., who have produced the carbon copies of 5 cash memos issued by them which came to be seized in the investigation and produced before the Court. It is submitted that it is not necessary to endorse the issuance of foreign currency on the passport of the travellers availing foreign exchange for tourism and private purposes. The Ld. Public Prosecutor has placed reliance on the Circular dated November, 23, 2001, being Circular No. A.P. (DIR)/12 AP(FL), whereby it was declared that with the view to simplifying the procedures henceforth authorized dealers need not make any endorsement on the passports of the traveller availing foreign exchange and, therefore, the fact that there is No. endorsement on the passport of the witnesses regarding issuance of the foreign exchange does not matter. It is submitted that the Appellant-accused, admittedly, has previously purchased foreign exchange and he has paid for the same by cheque to N.P.R Finance Ltd., but for the transactions-in-issue the Appellant-accused chose to make the payment in cash, because otherwise prior permission of the Reserve Bank of India would have been required to purchase any further amount of foreign exchange purchased in the month of October 2000. It is, therefore obvious why No. endorsement of the issuance of dollar in the month of October 2000 was taken on the passport. It is further contended that the serial number of US Dollars is never mentioned in the ordinary course of business and the personal appearance of passport holder is not mandatory for issuing US Dollar. It is submitted that the persons were travelling to Thailand and at the relevant time visa prior to departure from India was not mandatory as there was a system of Visa-on-arrival available to Indians travelling to Thailand from India. It is submitted that the complainant P.W.11 has stated that he has handed over the original passport to the Appellant- accused after the photocopy

of the passport were kept with the authorized dealer of foreign exchange for the purpose of complying with the formalities of Reserve Bank of India It is also submitted that the original cash memo in connection with issuance of foreign exchange in usual course is made over to the person in whose favour the foreign exchange was issued as a proof of purchase of foreign exchange. The original cash memos cannot be kept with NPR Finance Ltd and they have placed on record the carbon copies to prove that foreign exchange was issued in favour of the applicants.

15. In so far as purchase of 5 air tickets by P.W.11 from Genani Travels is concerned, it is submitted that the complainant has explained in his examination-in-chief that the Appellant-accused returned the said tickets for change in the dates of travel and so question of tendering of tickets in evidence does not arise and there is No. lacuna in the prosecution case. It is submitted that the prosecution has sufficiently established that the Appellant-accused in exchange of US$ 10,000 gave forged currency notes to the complainant. It is submitted that the prosecution has established that the currency notes given by the Appellant-accused to the complainant were fake and forged and produced/ manufactured with the help of HP Scanner Machine 1210 which he used as genuine to hand over to P.W.11. It is submitted that the prosecution has examined P.W. 5 & 6 who are friends of the Appellant-accused to whom the Appellant-accused had given the scanner machine for safe keeping which was prior to Diwali and the Appellant-accused had left Kolkata on the eve of Laxmi Puja, which makes it clear that the Appellant-accused by using the scanner machine (Mat. Ext.D) has prepared the forged notes and thereafter made over the same to P.W.11 in lieu of US$ 10,000. This fact has been sufficiently established by examination of P.W.20, an expert, who has stated that the machine was printer, scanner and copier and could be used for printing US Dollars which are Mat Ext. in the case. It is submitted that the Appellant-accused has denied the fact of seizure of US$ 4,000 from the house of Rajpal Singh and, therefore, considering the fact that NPR Finance Ltd. issued Dollar against the passport of the Appellant-accused when he had already been issued US$ 10,500 between the months of May and August 2003, it was in violation of Rules of Foreign Exchange Management (Current Account Transaction) Rules, 2000. Therefore, the NPR Finance Ltd, the complainant (P.W.11) and the accused liable to be dealt with under the provisions of said Rules and Foreign Exchange Management Act, 2000. Therefore, the Trial Court was justified in confiscating the seized US$. It is submitted that the prosecution has proved its case beyond doubt, and the appeal deserves to be dismissed.

16. The questions which arise for our determination is whether fake currency notes in the sum of Rs. 40 lakhs were given to the complainant by the accused, knowing the same to be counterfeit, that the accused produced such G.C. notes with the HP 1210 machine and therefore cheated the complainant. In order to prove their case against the Appellant-accused the prosecution has examined the complainant (P.W.11) who is the victim of being cheated by the Appellant-

accused who gave him counterfeit currency notes of Rs. 1,000/- denomination in the sum of Rs. 40 lacs. Siddharth Banthia (P.W.11) deposed that the Appellant-accused Manjit Raju Sood who is one of his customers had approached him on 5.10.2003 and requested him to arrange 5 international air tickets from Kolkata to Bangkok for 5 passengers including himself and to arrange 10,000 US$ for the said 5 persons and assured him to hand over the entire money in Indian currency notes equivalent to the said 10,000 US$ as its value and cost of 5 international air tickets i.e. total of Rs. 5,25,000/-. He also assured to hand over in the morning of 7.10.2003 on receiving 10,000 US$ and 5 international air tickets and handed over 5 passports for procuring foreign currency and international air tickets. In the morning of 7.10.2003 the complainant contacted Genani Travels to procure 5 international air tickets for them and supplied 5 photocopies of passports given to him by Manjit Raju Sood i.e the Appellant-accused. He then collected 5 international air tickets for Kolkata to Bangkok and thereafter went to the office of NPR Finance Ltd, at R.N. Mukherjee Road, Kolkata for procurement of 10,000 US$. There he supplied photocopies of 5 international tickets and that of 5 passports to the said finance company for the purpose of procurement of 10,000 US$. He filled up the necessary documents to obtain 10,000 US$ on behalf of all 5 passengers. The said finance company handed over 4,000 US$ in cash and 6,000 US$ in traveller cheques and prepared necessary bill on which he put his endorsement for receipt of dollars, then he came to office and informed Manjit Raju Sood that he was waiting with tickets and dollars. Mr. Sood over the phone told to meet him at Super Guest House situated at Kyd Street, Kolkata. So while he was on his way with his Peon towards the Guest House in a taxi, Mr. Sood contacted him over his cell phone and informed that he is not able to meet him due to water logging as it was raining heavily and asked him to meet at the junction of Kyd Street and Mirza Galib Street and, therefore, he reached the said crossing in the Taxi. Mr. Sood met him and sat in his taxi, he handed over 5 international tickets and 4,000 US$ in cash and 6,000 US$ in traveller cheques and 5 original passports to him. The Appellant-accused Mr. Sood in his return handed over 4 lakh Indian Currency Notes in 4 bundles of thousand-rupee denomination. All bundles were containing note slips of Bank. He did not count 6 lakh Indian currency notes then and there in the taxi. Mr. Sood assured him that in the evening he would come to his office and hand over the balance amount and got down from the taxi along with the dollars, passport and international air tickets. The complainant then proceeded towards his office. On reaching the office he started to count the amount of 4 lakhs Indian currency notes given by Mr. sood. He found those currency notes appear to be fake in nature. He then immediately contacted Mr. Sood over mobile phone and informed him. Mr. Sood told him that there is misunderstanding in the matter and asked him to came to his guest house to sort out the situation as soon as possible. Thereafter when he tried to contact Mr. Sood but found his mobile phone is switched off and he has left his guest house, however he waited for Mr. Sood till night but he did not respond and so on 8.10.2003 in the morning, he went to Lalbazar P.S. and lodged a written complaint addressed to the Deputy

Commissioner of Police (D.D.), Lalbazar. The complaint was treated as an F.I.R (Ext. 12/1) and it bears his signature. According to this witness, in the evening police came to his office and he handed over 4 bundles of currency notes which were given to him by Mr. Sood to them. Police counted those notes and it was found that those notes were not 400 in number but in all 33 lakhs 73 thousands, then under instruction of Police he got prepared computer print of the list of G.C. notes. The police thereafter seized the currency notes after obtaining his signature on bank note slips on each bundles and that of his two employees, Abhijit Roy and Santosh Roy. He has identified the signature of his employees as Ext. 13, 13/1, 13/2, 13/3, 13/4 and 13/5 respectively and the copy of the seizure lists with the endorsement (Ext. 13/6). In the course of his evidence he has identified the Appellant-accused Manjit Raju Sood and also identified the currency notes (Mat Exts) before the Court and the signatures of his 2 employees on bank slips.

17. The prosecution has examined P.W.1 Manmit Singh, P.W.2 Harprit Singh, P.W.4 Atma Prakash and P.W.5 Aswini Kumar Nirmohi these persons are residents of Amritsar and Jalandhar, Punjab, from whom Manjit Raju Sood had collected passports for the purpose of arranging for their travel to foreign country. All these witnesses supported the prosecution and identified the Appellant-accused as the person who collected their passports on the pretext that he would arrange for their travel to foreign country. The challenge to this fact by the Appellant-accused that the Appellant-accused did not collect passport from various persons viz., P.W.1, 2, 4 & 5, and gave the same to the complainant along with his own passport for the purpose of booking air tickets and drawing of foreign exchange US$ 10,000, is falsified by examining these witnesses and the complainant''s evidence before the Court on this count stands fully corroborated.

18. The next set of witnesses examined by the prosecution is the Experts and Bank Official. M.S. Bylappa (P.W.8) is the Works Manager of Currency Notes Press at Nasik who has examined the currency notes which were sent to him from the Office of the Deputy Commissioner of Police DD, Lalbazar, in respect of Crime No. 2000 dated 8.10.2003 on New Market P.S. Case under Sections 489B/489C/489D/420 and 120B I.P.C which was received in his office through B.C Majumder, S.I. of Kolkata Police. In his deposition before the court, he has stated:

On opening the sealed packet. I found four bundles of currency notes of Rs. 1000/-These were filed (Sic) 375 such currency notes bout of which only four currency notes of Rs. 1000/- were genesis and 371 currency notes were false.

On examined all currency notes and found the following outside of the notes-length was not covered but width was covered. Paper- 334 notes single paper and 37 notes bundle paper. This both mark absent other marked (sic) absent. Security thread Absent. Paper thickness-(Illegible) then genuine note paper. When size paper, is need. Further than genuine note paper. When double paper is used. Printing colours-Ink shades do not match with the shades of genuine note.

Colours were both soluble. Colour Registration Fronts and Bank register is not correct. Numbering-numbering style does not match with the style of genuine note and entries used the non florescent, quality of printing very poor.

My opinion is that the referred suspected notes of Rs. 1000/- denomination were received is (illegible) condition. This referred suspected notes of Rs. 1000/- denomination are counter notes.

On Front: The body printing lacks sharpness. The such printing is done with soluble ink and is in the form of date and not in line pattern as per the genuine note design.

The Said: Mahatma Gandhi (illegible) and wet easily readable. The (illegible) design in the centre of the note lacks sharp ness and is broken. The R.B.I. seal lacks sharpness and five details are (illegible). In taglio printing is absent "OVI" effect for figure ''1000'' is absent.

On Backs - The such design details lacks sharpness and printing ink colours do not match with genuine notes. This is my report my signature with office seal. The report prepared in prescribed form of my Dept an official course of business. The report dt. 31.10.2005 regarding false notes is marked as Ext-4. this is my signature on the report which is marked as Ext. 4/1.

The details of the genuine notes of Rs. 1000/- form in remember as follows.

1.- Rs. 1000/- with Mahatma Gandhi design with inset letter ''A'' with signature of Governor Bimal Jalan, bearing prefix and serial No. GAE- 233735.

2. Rs. 1000/- with Mahatma Gandhi design with inset letter ''A'' with signature of governor Bimal Jalan bearing prefix and Sl. No. 4 AG-704 257.

3. Rs. 1000/- with Mahatma Gandhi design with inset letter. ''A'' with signature of Governor Bimal Jalan bearing prefix and Sl No. 5AG-283370.

4. Rs. 1000/- with Mahatma Gandhi design with inset letter. ''A'' with signature of Governor Bimal Jalan bearing prefix and Sl. No. 4AG-704261.

Those four Rs. 1000/-note were receiving in sealed condition as referred above and were examined by one according I formed those four notes are hearing all security aspect or genuine notes and certified as genuine currency notes of Rs. 1000/- and are having valid lender value. There notes were placed on the top of each bundle for examination. Those four notes Rs. 1000/- were returned along with the slips pasted on each bundle which bears the signature of police authorities/punch etc in sealed condition along with the report after examination.

This is the report about genuine notes of Rs. 1000/- prepared in my office and prescribed form with my signature and official seal. This report is marked as Ext.5. these are my signatures on it marked as Ext. 5/1 and 5/2 respectively.

19. This witness was shown the Material Ext. concerned with the articles as the currency notes sent to him for examination which he has identified before the

Court as the consignment which was sent to him for his examination. In his cross-examination except for questioning him whether he personally counted the currency notes sent to his office which he confirmed, nothing could be brought on record to show that he has in any manner failed to establish that the currency notes sent to him were not genuine. Therefore, the Trial Court had No. hesitation to hold that the prosecution has proved that the 4 bundles of currency notes which were seized from the complainant and sent to Currency Notes Press at Nasik for its examination as to genuineness, were false currency notes. Except for the forged currency notes, his report before the Court is marked as Ext. 4 & 5.

20. By way of abundant caution the prosecution has examined Uday Singh (P.W.9), Chief Manager State Bank of India, Radhashyam Singh (P.W.10) and Deputy Manager State Bank of India Barhalganj Branch, in order to verify the bank slips which were found on the false currency notes/counterfeit notes. These 2 Bank Officials have confirmed that bank slips are belonging to their Bank but those have nothing to do with the writings and seal on them and that slips do not bear the signature of any of their staff. The other marks like rubber stamps and seal are also of their bank and according to them, these Bank Slips are stolen from their Bank and the Appellant-accused does not have any account in their bank. Therefore, the question of bundle of Govt. currency notes along with the bank slips being issued from their bank does not arise.

21. To prove the complainant-accused procured Dollars for the Appellant-accused, prosecution has examined witness, being the official of the NPR Finance Ltd who issued 10,000 US$ to Siddharth Banthia, i.e. the complainant for the 5 passengers namely 1. Manjit Raju Sood 2. Harpreet Singh (P.W.2), 3. Manmit Singh (P.W.1), 4. Atma Prakash (P.W.4), 5. Aswini Kumar Nirmohi (P.W.5). Ganga Prasad Paswan (P.W.12) was at the relevant time working as cashier. He has deposed that he knows Siddharth Banthia i.e. complainant and they have business terms with him. On 7.10.2003 a business transaction took place in between the said Siddharth Banthia and M/s NPR Finance Limited. On phone Siddharth Banthia booked 10,000 US$ for his five passengers from their office and after half an hour he came to their office and this witness handed over to him 10,000 US$ for 5 passengers. After counting the dollars total 10,000 in denomination he made his endorsement in their bill book and gave cheque of Rs. 4,60,000/-. According to this witness, Siddharth Banthia gave photo stat copy of 5 passports of those 5 passengers. He has also given the names of those persons. According to him, sometime in November 2009 Police Officer from Lalbazar came to office of NPR Finance Limited and seized various document as per the seizure lists Ext.22 and the 5 manual cash memos Ext 15/1 in the name of Manjit Singh Ext. 16/1, Harpreet Singh ext. 17/1, Atma Prakash Ext. 18/1, Aswini Kumar and Ext.19/1 in the name of Manjit Raju Sood. He has stated the passport number of all those passenger and its validity period and has been written by him along with the respective cash memos which bears initials of Siddharth Banthia and he has identified the cash memo as Ext. 15 and 19 and he has also produced before the Court cheque of Rs. 4 lakhs 60 thousand which was

given by Siddharth Banthia to NPR finance Limited which is Ext.20. He has stated that so far he remembers cash of 4,000 US$ and traveler cheques of 6,000 US$ were issued. He has further clarified that he was not shown any passport holder and without seeing the passport holders they have issued the US$ since Siddharth Banthia the complainant was their regular agent. He has clarified the serial number of Cash US$ were not written and Banthia did not shown to him any visa of any passenger and without verifying the original passport he has issued the US$ to Banthia. One of their office staff Sugata Mukherjee P.W.13 was tendered for cross examination as such practice was in vogue in state of West Bengal, however it does not in any manner damages the prosecution case as nothing could be brought on record in the cross examination of the witness so as to discredit the prosecution case. On the other hand the witness stated that at the time of issuing US$ to different passport holder they did not insist for personal appearance of passport holder since Banthia was their regular agent. The evidence so far clearly goes to establish that the Appellant-accused did contact Siddharth Banthia the complainant for buying tickets and foreign currency for 5 persons including himself and acting on his instruction the complainant did purchase 5 tickets and also made arrangement for US$ 10,000 from NPR finance Limited and than he gave the tickets as well as the foreign currency US$ 10,000 in form of cash and travellers cheque to the Appellant accused and in exchange of that the Appellant - accused gave him fake/ counterfeit currency notes in the sum of Rs. 4 lakhs.

22. The contention of learned Counsel for the Appellant-accused that the complainant Siddharth Banthia has tried to foist false case against the Appellant-accused does not appeal to us. We do not find any reason to disbelieve evidence of P.W.1,2,4 & 5 on whose passports foreign currency was procured mainly for the reason that they did not lodge any complaint at the local P.S and to the Passport Authority about the passports being misutilized, but one thing is clear that all these witnesses who were exploited by the Appellant-accused deposed whatever was the correct state of facts. Probably they never expected that the Appellant-accused would also dupe them. Further the Appellant-accused has not taken any stand in defence that he was not in Kolkata on the day the complainant had handed over to him tickets and foreign currency/traveller cheques as claimed, or that he did not meet him at all. He has come up with the defence that because the complainant was indebted to him in the sum of Rs 1 lakh he has foisted a false case upon him. This appears to be totally false. We, therefore, find that the trial Court has not committed any error in arriving at the conclusion that the Appellant-accused is guilty of having committed offences under Sections 489B, 489C of the Indian Penal Code. The offence of cheating Siddharth Banthia goes to show that the Appellant-accused taking advantage of his acquaintance with the complainant cheated him into giving air tickets and foreign currency in exchange for sum of Rs. 40 lakhs which were given in cash by him to the complainant and were subsequently found to be counterfeit/fake.

23. In so far as the charge against the Appellant-accused u/s 489A of Indian

Penal Code is concerned, he had in his use and possession scanner machine HP 1210 for the purpose of being used for counterfeiting the G.C. notes of Rs. 1000/- denomination and there is every reason to believe it was used for forging or counterfeiting currency notes on the basis that the said scanner machine has been recovered on 25.11.2003 at his instance from the premises No. WB-133 Rounak Bazar P.S., Chowki No. 4, Jalandhar, Punjab. On interrogation of Appellant-accused the police came to know that the Appellant-accused has a scanner machine HP 1210 which he has kept in the house of Ramji Das (P.W.7) having entrusted to his son Aswini Kumar @ Bobby Nirmohi (P.W.5).Therefore, Police party visited the house of Ramji Das (P.W.7) and recovered HP scanner Machine which is capable of printing, scanning and copying. In order to prove, the prosecution has examined P.W.5 Aswini Kumar, P.W.6 Praven Kumar Nirmohi who is the father of Aswini Kumar @ Bobby Nirmohi who is one of the victims of the Appellant-accused. They all know the Appellant-accused because he is the friend of their brother Love Kumar. Taking advantage of his friendship with Love Kumar, the Appellant-accused lured Aswini Kumar and took his passport, on the pretext of making arrangement for his education in foreign country and requested him to keep the parcel on the eve of Diwali 2003 and gave him a packet of HP-1210 for safe keeping. This was recovered and seized by the police in November 2003. All the witnesses have confirmed this fact in their evidence before the Court that the Appellant accused brought this HP 1210 scanner and kept at their place from where the police seized the same and they have identified the article before the court and also the seizure list which bears their signature. The contention for the learned Counsel of the Appellant accused that the mother of Aswini Kumar was not examined by the prosecution though she was present at the time HP Scanner Machine is purported to have been entrusted to Aswini Kumar for safe keeping, we find, is immaterial as there is No. reason to disbelieve the witness on this ground and their evidence clearly establishes that HP 1210 Scanner Machine (Mat Ext.D) which was kept at their residence for safe keeping belong to the Appellant- accused. On the seizure of the scanner machine it was sent to expert, Dr. P. Sinha (P.W.20), Senior Scientific Officer, Forensic Science Laboratory, Kolkata. In his evidence before the Court, he has stated:

on opening the cardboard packets marked "D" I found it contained one HP PSC 1210 all-in-one printing-scanner-copier machine with connecting cords but without any ink cartridge. It was connected to a computer in our officer laboratory and on examination I found that the machine was in perfect working condition with ink cartridge which was supplied from elsewhere.

In paper packet which was marked as "E" I found it contained four bundles of forged currency notes of denomination of Rs. 1000/- each. The four bundles contained 91, 91,97 and 92 pieces of such notes, i.e. 371 pieces in total. The packet "E" also contained four pieces of genuine currency notes of denomination of Rs. 1000/- each.

In a controlled test one forged note was produced from a genuine note by using the said machine (Exhibit). This controlled forged note along with some forged notes of packet "E" were separately compared with a genuine note of packet "E" and similar differences were observed. While the controlled forged note had similar printing quality as those of the forged notes in packet "E".

Thus, in my opinion the Exhibit-D is capable of being used to produce such forged currency notes as contained in packet "E".

24. Therefore, on the basis of the expert evidence we find that the Appellant-accused was in possession of the machine, viz., HP 1210 Scanner Machine, which can be used for forging currency notes, and in the opinion of Dr. P. Sinha (P.W.20) on the basis of the test carried out by him the HP Scanner machine (Ext.D) is capable of being used to produce such forged currency notes as contained in packet '' E ''.

25. In his defence, the Appellant-accused has examined Amrita kumar Chatterjee, Manager of United Commercial Bank, Lower Circular Road Branch, Kolkata, who in his evidence has brought on record that Manjit Raju Sood has a SB Account No. 7241 with the Bank and as per Statement of Account (Ext A) and on the basis of seven cheques (Ext. B - B/6) deposed that these cheques were issued in favour of NPR Finance Limited during August - September 2003. However in what way these payments can explain/exonerate him, remain unanswered. In his statement u/s 313 of Code of Criminal Procedure he has in turn admitted that he used to take air ticket, Dollar etc.. from Siddharth Banthia and that he was acquainted with him. He has also admitted of having given passport of 5 persons on 4.10.2003 for ticketing. Further he admits of having left Super guest House on 7.10.2003. However, he has failed to substantiate that complainant was given loan which he failed to return and falsely implicated him.

26. Therefore, we have No. hesitation to arrive at a conclusion that the trial court was justified in holding the Appellant-accused guilty on all counts.

27. We do not find any merit in this appeal the same is dismissed.

Ashim Kumar Roy, J.-

I agree.

