

(2015) 09 CAL CK 0001
In the Calcutta High Court
Case No : C.R.A. 545 of 2012

Rajim Sk. and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 100(2), 292, 293, 313, 446

Evidence Act, 1872 — Section 4

Penal Code, 1860 (IPC) — Section 489B, 489-B, 489C

Citation : (2015) 09 CAL CK 0001

Hon'ble Judges : Indrajit Chatterjee, J

Bench : Single Bench

Advocate : Tapan Dutta Gupta, Sayantan Hazra, Nagina Begam and Bijoy Bag, for the Appellant; Anjan Dutta, Advocates for the Respondent

Judgement

Indrajit Chatterjee, J—I am hearing this appeal as against the judgment and order of conviction dated 22-08-2012 and 24-08-2012 respectively as passed by the then learned Additional Sessions Judge, 3rd Fast Track Court, Malda, in Sessions Trial No. 05 of 2012 arising out of Sessions Case No. 12 of 2012 wherein the learned Trial Court was pleased to convict both the appellants in respect of the charge punishable under Section 489C of the Indian Penal Code (hereinafter called as the said Code) and sentenced them to suffer Rigorous Imprisonment for seven years and fine of Rs. 50,000/- each and in default of payment of fine, both were sentenced to suffer further Rigorous Imprisonment for a period of one year. The appellants were however acquitted in respect of the charge punishable under Section 489B of the Code.

2. The prosecution case, as unfold at the time of the trial, can be stated in brief thus, that the case was initiated at the instance of the de facto complainant, A.S.I, Ranjit Das of English Bazar Police Station of District - Malda, on 29-08-2011 giving rise to English Bazar P.S. Case No. 547 of 2011 under Sections 489B and 489C of the Code.

3. As per F.I.R. two accused persons, who faced the trial, were produced before the said Police Station by the said A.S.I. with 200 pieces of suspected Fake Indian Currency Notes (hereinafter called as FICNs) all of Rs. 1,000/- denomination. It is also there in the F.I.R that the accused persons were arrested on 29-08-2011 at 19-35 hours in course of special mobile duty within English Bazar Police Station near one "nursery". The de facto complainant received a source information and then he diarized as English Bazar G.D Entry No. 1977 dated 29.08.2011, that two persons of Jadupur area were coming to Sadullapur within the said Police Station and they were carrying huge amount of FICNs to hand over those notes to their agent and, as such, the de facto complainant, being accompanied by other policemen like, Constable No. 672, Asit Saha, Constable No. 441, Chitu Singh, Constable No. 610, Jakir Hossain, Constable No. 232, Ujjal Singha, NVF/80069 Mithun Rabidas, HG/396 Subhankar Dey and HG/787 Anup Ghosh, rushed to the spot, that is, behind Sadullapur nursery within that P.S. (at a distance of six and half k.m.) being accompanied by the source.

4. The police party ambushed themselves and meanwhile contacted the local people, namely, Pulak Sarkar and Rati Ghosh, and they were apprised regarding the purposes of the police party and at about 20-45 hours they came and noticed that two persons were moving behind that area and started loitering in a perplexed manner. Then the police party jumped upon them and disclosed their identity. Offer was made to the apprehended accused persons to search the body of the policemen but they denied. On search, the de facto complainant recovered two bundles of suspected FICNs all of Rs. 1,000/- denomination in total amounting to Rs. 2 lakh (one lakh each) from the accused persons. One seizure list was prepared at the spot at about 20-45 hours. The seizure list is divided in two parts to prove the seizure respectively from accused No. 1 and accused No. 2, namely, Rajim Sk and Nazrul Sk. The bundle showed with the captioned "A" denoted the seizure of notes from the accused/appellant No. 1. All those notes were of two series, namely, 6CA and 2BK. In all 100 notes were seized of denomination of Rs. 1,000/- from the appellant, Rajim Sk.

5. The bundle "B" of the seizure list denotes seizure of 100 notes of denomination of Rs. 1,000/- each amounting to Rs. 1 lakh. This bundle covers the notes with the series 6CA of different numbers.

6. Apart from such seizure of alleged FICNs two pieces of Indian Currency Notes of denomination of Rs. 100/- each were also seized from accused, Nazrul Sk.

7. The accused persons were arrested and taken to Police Station along with the Alamat. As per F.I.R. filed by the de facto complainant, English Bazar P.S. Case No. 547 of 2011 dated 29.08.2011, was started at 22.05 hours. The investigation was taken up by the S.I., Sujit Kumar Mondal (P.W.7), as per the order of the Inspector-in-Charge of that police station. During the course of investigation, he visited the place of occurrence, prepared a rough sketch map, recorded the statements of the witnesses and took steps for sending the notes to the expert

for their examinations through the Chief Judicial Magistrate, Malda. The notes were labeled, which were marked as materials Exts. I and II respectively, and on his transfer, the investigation was taken up by the second I.O. (P.W.8). P.W. 8 during his tenure as the Investigating Officer of this case collected the report of the expert which report was marked as Ext. 9 as per Sections 293 of the Code of Criminal Procedure and on completion of investigation, he submitted the charge-sheet against both the accused persons under Sections 489B and 489C of the Code.

8. The case was committed to the court of sessions and after the Sessions case was registered, the case was transferred to the learned trial court and S.T. No. 05/2012 was registered by the learned trial court. Charge was framed against both the accused persons for the offences punishable under Sections 489B and 489C of the Code which the accused persons pleaded not guilty and claimed to be tried. Before the learned trial court, the prosecution examined in all 8 witnesses and marked several documents as exhibits about which there is clear reflection in internal page Nos. 3 and 4 of the judgment and I am not going to repeat the same. On behalf of the defence, neither any oral or documentary evidence was adduced. In their statement recorded under Section 313 of the Code of Criminal Procedure, the accused persons only claimed innocence and did not make out any specific case.

9. I have already noted the result of this litigation. At the time of hearing of the argument, it was argued by Mr. Datta Gupta, learned Advocate, appearing on behalf of the defence that in this case all the prosecution witnesses are policemen except P.W.s 5 and 6, that is the two seizure list witnesses who were declared hostile by the prosecution. He took me to the evidence of P.W.1 to show that some of the policemen who were in that raid were not examined. Learned Counsel submitted that they were constable Ujjal Singha, NVF Mithun Rabidas and two home-guards, namely, Subhankar De and Anup Ghosh. He submitted that in the seizure list, there is no mention as to from what portion of the body of the accused/appellants those FICNs were sized. He pointed out one contradiction in between the evidence of P.W.1 and P.W. 2 that as per P.W.1, two original Indian currency notes of Rs. 100/- each were found to be in the possession of each of the accused persons whereas P.W.3 deposed that hundred rupee note was recovered from each of them. He also pointed out one contradiction when P.W.1 deposed that the vehicle was kept near the sweetmeat shop near the place of occurrence whereas P.W.2 deposed that the police vehicle was kept at the police camp which was at a distance of 200 or 300 cubits. He also took me to the evidence of P.W.3 to show that this witness, even though the de facto complainant who prepared the seizure list, did not put his signature on the seized notes and further that even though the level was prepared but such level was detachable. He also attracts the evidence of P.W 3 that he could not identify the accused, Najrul Sk. in the court. As to his evidence, learned defence Counsel submitted further that in the complaint, this witness did not write which bundle was recovered from which accused person. As regards P.W.4, learned Counsel

deposed that this witness only accompanied with the other policemen to the place of occurrence and did not depose anything special. He also took me to the evidence of P.W.5 and P.W. 6 to show that both these witnesses were declared hostile and as such no reliance can be placed on their evidence to support the prosecution case that those FICNs were at all seized from the possession of those accused persons.

10. He also summarized the points in the following manner :--

"1) Alleged search and seizure were not done in compliance with Section 100(2) of the Code of Criminal Procedure;

2) That the seizure from the possession of the accused persons was not proved as the P.Ws did not depose from which portion of the body of the accused, those FICNs were seized;

3) That the prosecution had failed to prove that the accused persons had the knowledge that those were FICNs;

4) That mens rea was not proved and

5) That in examination under Section 313 of the Code of Criminal Procedure, the question were jumbled up and, as such, the accused persons could not answer the questions properly."

11. It was the submission of Mr. Dutta Gupta, that the decisions of the Apex Court will show that the accused persons are entitled to get the benefit of defective 313 examination. He cited the following decisions on this point :--

"1) Nagraj Vs. State(2015) 2 JCC 1121

Learned Counsel relied upon the last line of paragraph 15 at page 731 of this judgment wherein the Apex Court observed "In the case in hand the High Court was not correct in drawing an adverse inference against the accused because of what he has stated or he has failed to state in his examination under Section 313 of the Code of Criminal Procedure. In that decision, the Apex Court also emphasized on the settled principle of law that one accused o shall not be compelled to be witness against him,

2) Shaikh Maqsood Vs. State of Maharashtra, (2009) 7 JT 554 : (2009) 6 SCALE 640 : (2009) 6 SCC 583 : (2009) 7 SCR 428 : (2009) AIRSCW 4308 : (2009) 4 Supreme 429 wherein the Apex Court declined to upheld the conviction in a case of murder as the conviction was based on an accused person's failure to explain certain thing what he was never asked to explain and it was held in bad in law.

3) Sukhjit Singh Vs. State of Punjab, (2014) 4 CCR 324 : (2015) 1 JCC 35 : (2014) 4 RCR(Criminal) 902 wherein the Apex Court set aside the order of conviction as the incriminating material was not brought to the appellant when he was examined under Section 313 of the Code of Criminal Procedure. The Apex Court further held that on a studied scrutiny of the questions put under Section

313 of the Code of Criminal Procedure in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions."

12. Mr. Dutta Gupta also argued that one essential ingredient of the offence under Section 489C is mens rea. On this point, he cited the decision of the Apex Court reported in 2002 SCC (Cri) 758 (Umasanker v. State of Chattisgarh) wherein the Apex Court on the facts and circumstances of that case held that the presumption drawn by the learned trial court is not warranted under Section 4 of the Evidence Act. It was also held by the Apex Court that without mens rea selling, buying or receiving from any other person or otherwise taking in or using as genuine and forged or counterfeit currency notes or bank notes is not enough to constitute offence either under Section 489-B IPC or under Section 489C of the IPC and conviction in the absence of mens rea is bad. In that case before the floor of the Apex Court, learned trial court convicted the appellant in respect of the charge punishable under Sections 489B and 489C of the IPC. The fact of the case before the trial court is also to be looked into. On the date of the incident, the accused purchased 1 kg. of mango at the cost of Rs. 5/-. He paid a Fake currency note of Rs. 100/- to P.W.4 who doubted its genuineness. Thereafter the accused was handed over to the police who recovered 13 more such fake currency notes from him. In that case before the Apex Court, the accused appellant was not put any question as regards the currency notes being fake when the accused examined under Section 313 of the Code of Criminal Procedure and on that analogy the Apex Court acquitted the appellant in respect of the charge punishable under Sections 489B and 489C of the IPC. It was also held in that case that in the absence of mens rea there cannot be any conviction under Section 489C of the IPC.

13. Learned Counsel on this point of mens rea cited a Division Bench decision of this court as reported in Madan Lal Sarma Vs. The State, (1990) CriLJ 215 in that case before the floor of the Division Bench of this court, the employer of the appellant gave Rs. 10,000/- in a bundle containing 100 rupee notes but unfortunately from that bundle, one 100/- rupee note came out which was found to be fake one. Taking this fact into consideration, the Division Bench of this court held that mere possession of forged notes does not shift the burden of the accused to prove his innocence, knowledge or reason to believe that note was forged had to be proved.

14. In counter to all these Mr. Datta, learned Advocate, appearing on behalf of the State took me to 313 examinations of the accused persons made before the trial court to show that all possible incriminating evidence was put to the accused persons including the evidence of the hostile witnesses. Thus, he suggested that the decisions of the Apex Court as reported in Nagraj (Supra), then Shaikh Maqsood (Supra) and Sukhjith Singh (Supra) will not apply in the present case before this court.

15. He took me to internal page Nos. 18 and 19 of the judgment to show how the learned court answered the theory of presumption and also the intention part

of the accused persons. Mr. Datta submitted that the learned trial court relied upon the decision of Madras High Court as reported in AIR 1939 Madras 56 (Public Prosecutor v. Rowthulu Kondalrao); In Re: Satyanarayana, AIR 1961 AP 213 , the decision reported in 1971 Madras. L.J. (Cri) 400 (State of Mysore v. Sthapathi Natarajan), the decision of Mysore High Court as reported in 1972 Cr.L.J. 1114 (Basi Reddy) and (Chanduri Lakshmanachari v. State of A.P.) 2002 Cr.L.J, N.O.C. 283 . As regards the value of evidence of a police personnel the learned trial court relied upon the decisions of the Apex Court as reported in Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, AIR 2007 SC 3106 : (2007) 10 JT 421 : (2007) 10 SCALE 358 : (2007) 7 SCC 625 : (2007) AIRSCW 5589 : (2007) 6 Supreme 49 and Gian Singh Vs. State of Punjab, AIR 1974 SC 1024 : (1974) CriLJ 789 : (1974) 4 SCC 305 : (1974) SCC(Cri) 406 : (1974) 6 UJ 754 and Nathusingh Vs. The State of Madhya Pradesh, AIR 1973 SC 2783 : (1974) CriLJ 11 : (1974) 3 SCC 584 : (1974) SCC(Cri) 62 : (1974) 6 UJ 29 . Learned Prosecutor also submitted that the decision of Umasanker (Supra) or Madan Lal Sharma (Supra) will not apply in the facts and circumstances of the case as in the instant case, huge quantity that is two lakhs (one lakh each) of FICNs were seized from the possession of each accused. He also submitted that presumption of Section 4 of the Evidence Act will certainly apply in such a case.

16. In reply, Mr. Dutta Gupta submitted again that 313 examination was defective and there cannot be any attraction of Section 4 of the Evidence Act in the instant case.

17. Let me now have a glimpse as to the evidence of record. Pw 1 who deposed on that date, he along with other constable and home guard (as named) accompanied with ASI Ranjit Ghosh for conducting one raid at Sadullapur beside one farm. He further deposed that the said ASI got information at about 7.35 p.m. and they reached there within 15 minutes. Source and public witnesses also accompanied them. He further deposed that at about 8.45 p.m. two person were apprehended as per indication of the source and the accused persons were searched in presence of local witnesses and two bundle of Fake Indian currency Notes were recovered from each accuse along with 100 X 2 original Indian currency notes were found in the possession of the each accused persons. This witness also deposed regarding the seizure and labeling currency notes in presence of public witnesses. This court of the unmindful of the fact that the seizure of 100 X 2 original Indian Currency Notes from the possession of each accused persons is not matching with the seizure list and also the evidence of PWs 2 and 3 but this contradiction cannot be considered to be so vital to disbelieve the otherwise convince evidence of this PW. It is true that this witness could not show the number of vehicle but he deposed that is the Tata Sumo vehicle which is matching with the other policemen. It is also true this witness could not show the names of those 3 or 4 persons who accompanied the raiding party from the police station but all these are minor matters. I have gone through the cross-examination of this witness there is nothing to disbelieve this witness.

18. PW 2 is another police constable Chitu Singh, this witness has also supported PW 1. He has proved his signature in seizure list and also identified a signature on the label on the FICNs. It is apparent from his evidence that the vehicle in which they were travelling Tata Sumo vehicle and the driver was Kajal Raha. It is also clear from his evidence that the vehicle was kept near the police camp at Sadullapur More which was at a distance of two hundred to three hundred cubits from the PO. In his cross-examination nothing has come out to impeach his credibility. It is true that he deposed that he did not sign on the currency notes. We should not forget that in all two hundred FICNs were recovered from the possession of these accused persons all of the denomination of Rs. 1,000/-. It was practically impossible for the investigating agency to take the signatures of the entire raiding party and the seizure list witnesses on such huge amount of notes.

19. PW 3 is the star witness of this case, he deposed on 29.08.2011, he was posted in English Bazar Police Station as ASI of police and he along with constable Jakir Hossain, Asit Saha etc. two N.V. Fs and one Home Guard were on mobile duty and he received an information at about 19.35 hours that two persons would be coming towards Sadullapur more with huge amount of FICNs and thereafter this witness along with force went to work out the information and ultimately entrapped these two appellants from whose possession after search 1000 X 100 FICNs were recovered from each of the accused persons and also from the possession of the appellant No. 2 Najrul Sk. two Indian Currency Notes of 100 domination was also recovered.

20. This court is not unmindful that this Najrul Sk. could not be identified by him on dock. He has proved the seizure list which was marked as Exbt. 1. He also deposed that the accused persons and the witnesses also signed on the seizure list. He further deposed that he also prepared seizure list, prepared labels and took the signatures of the witnesses and accused persons on the seizure list. He also identified one label relating to seizure from the appellant No. 1 which was marked as Exbt. 2/1. This witness also identified another such label which was marked as Exbt. 3/1 relating to seizure from accused No. 2. He also identified the Fake Currency Notes which was recovered from the possession of the accused persons. He duly proved the complaint. From his cross-examination it appears that the place of occurrence was five minutes journey by vehicle from English Bazar Police Station and he directly went to Sadullapur without going to the police station. He duly corroborated the evidence of PWs 1 and 2 on materially particulars. This court is not unmindful that the labels were not fixed on the FICNs or in other words those were not pasted on the notes. We must keep in mind that such notes were to be examined as to their authenticity and as such he (PW 3) thought it wise not to paste the label on the bundle of notes. In his cross-examination, he also deposed that the FICNs were recovered from the pocket of each accused person. It is true that he could not say whether those notes were recovered from the pocket of the shirt or trouser of the accused person. This is not a material discrepancy and it can safely be overlooked. It is

true that in the seizure list it was not mentioned from which portion of the body those FICNs were seized this may be treated as omission but this cannot be treated as vital commission considering otherwise establish evidence.

21. PW-4 is another constable Md. Jakir Hossain this witness has well corroborated PWs 1, 2 and 3. This witness deposed that the accused persons were on the back side of the nursery. This witness also deposed that the local witnesses were called from the place wherefrom the accused persons were arrested. The evidence of this witness is matching with the sketch map prepared by the IO and it is also matching with the evidence of PWs 5 and 6 that is the seizure list witnesses both of whom had/have sweet meat shops at Sadullapur More.

22. PWs 5 and 6 being seizure list witnesses were naturally declared hostile in such a case but before they were declared hostile they made some statements before the court which can safely go in favour of the prosecution. PW-5 deposed in his examination in chief that he owned one sweetmeat shop at Sadullapur more and on 29.08.2011 he was in his shop. This witness also proved his signatures on the two pages of the seizure lists and his signatures were marked as Exbt. 1/2 Collectively. This witness was not cross-examined by the defence and as such this portion of the evidence of this witness has gone unchallenged.

23. PW-6 also deposed that he was the owner of a sweetmeat shop at Sadullapur and his signatures also appearing on the seizure lists which were marked as Exbt. 1/3 Collectively. This witness was cross-examined by the defence and he deposed that the shop of Pulak Sarkar that is PW-5 was intervened by 20 or 25 shops. It is also clear from his cross-examination that Sadullapur nursery is at a distance of 180 to 320 cubits from the shop of Pulak Sarkar as well as that of him. This court is not unmindful of the fact that he deposed that he signed on a blank paper.

24. Thus it is apparent that on that particular date the police had been to Sadullapur. It goes without saying that in such type of cases the public at large is not inclined to support the prosecution story as they had no interest in the crime.

25. PW-7 is the IO of this case but came to prove the formal FIR which was filled in by the then Inspector-in-Charge English Bazar Police Station. This witness during the course of investigation prepared a sketch map with index which was marked as Exbt. 5 and he examined available witnesses and forwarded the FICNs for expert examination through the Chief Judicial Magistrate, Malda. I have gone through his cross-examination he deposed "the label cannot be replaced by another one as the label bears signatures of different persons", "the labels cannot be replaced by taking signature of accused on separate paper". Thus, this witness tried to counter the argument of the defence that as the label was not pasted with the seized Alamat those could have been altered. This witness in his examination in chief also proved those labels which were marked as Material Exbts. I and II before the learned trial court. With the transfer of this I.O the

investigation of this case was taken up by PW-8. This PW-8 only collected the report of the expert which was marked as Exbt. 9 which proved that those notes which were forwarded to the said authority in connection with this case were "Fake". This witness on receipt of the report submitted charge-sheet against the accused persons for the offences punishable under Sections 489B and 489C of the IPC.

26. I have gone through the evidence on record and taken into consideration of the argument of the defence that the search and seizure were not made in conformity with Section 100(2) of the Cr.P.C has no leg stand upon. I shall cover this matter also later on in this judgment. Regarding the circumstances mens rea this court can say that the possession of such huge amount of FICNs is enough mens rea to cover the crime within Section 498C of the IPC. I shall also illustrate this point later on.

27. I have perused the 313 examination of the accused persons it cannot be said that vital questions were not put to the accused persons. The examination sheets will show that each and every incriminating evidence was duly put to the accused persons and they answered only "I am innocent". Thus no prejudice was caused to the accused persons during their examinations under Section 313 Cr.P.C. I am sorry to say that the decisions of the Apex Court in Nagraj (supra), Shaikh Maqsood (supra) and Sukjit Singh's (supra) cannot apply in the present case before this Court. This court is not unmindful decision of the Apex Court as delivered in Punnuswamy v. State reported in AIR 1995 SCW 1788: (1995) CriLJ SC 2658 where the Hon"ble Supreme Court opined that silence on the part of the accused 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. I like to repeat that both the accused person remained salient as regards the recovery point even though they were duly confronted when they were examined under Section 313 Cr.P.C and naturally the above decision of the Apex Court will squarely apply in this case.

28. I have given my anxious thought on the facts which were before the floor of the Apex Court or before the floor of the Division Bench of this Court respectively in Umasankar (supra) and Madan Lal Sharma (supra). The facts before those Hon"ble courts were totally different and in the present case huge amount of FICNs valued Rs. 1,00,000/- each were seized from the possession of these accused persons. Thus, considering the seizure of huge amount of FICNs this Court is of the opinion that the principles derived in Umasanker (supra) or Madan Lal Sharma (supra) can be made applicable in the present case.

29. Thus this Court is satisfied that of the police personnel who conducted the raid and apprehended the appellants have duly supported the prosecution story even the two public witnesses that is PWs-5 and 6 though declared hostile have supported the prosecution story in part when PW-5 deposed that he has one sweetmeat shop at Sadullapur more and that he signed on two pages of the seizure list as per the instruction of the police. PW-6 also deposed that he has

also a sweetmeat shop and the sweetmeat shop of PW-5 was intervened by 20/25 shops, he further deposed that Sadullapur nursery was at a distant of 180-320 cubits from their shops. This witness also signed on the seizure list as per the instruction of the police. PW-1 deposed that the police vehicle was kept near the sweetmeat shop thus the evidence of PW-1 is well corroborated by two public witnesses that is PWs-5 and 6. In such a case, the public witnesses are generally declared hostile as they have no interest in the detection of the crime or in the result of the criminal battle.

30. The learned trial court relied upon some decisions of the Apex Court in Girija Prasad (supra), Gain Singh (supra) and Nathu Singh (supra) in support of the fact that the police witnesses should not always be disbelieved. I like to supplement this by saying that time and again, the Apex Court has directed the learned trial court to assess the evidentiary value of the police personnel appearing to depose on behalf of the prosecution. I can cite here the decision of the Apex Court, as reported in Aher Raja Khima Vs. The State of Saurashtra, AIR 1956 SC 217 : (1956) CriLJ 426 : (1955) 2 SCR 1285 wherein the Apex Court held that evidence of a witness cannot be discarded simply because he is a police officer-in-charge of investigation. The police officers are not worse than ordinary human being. It cannot be said that all of them are liars just as it cannot be said that all of them are truthful.

31. In Girdhari Lal Gupta and Another Vs. D.N. Mehta, Assistant Collector of Customs and Another, AIR 1971 SC 28 : (1971) CriLJ 1 : (1970) 2 SCC 530 : (1970) 1 SCC(Cri) 496 wherein the Apex Court held that evidence of I.O conducting search may be relied upon without cooperation.

32. In a recent decision of the Apex Court as reported in Govindaraju @ Govinda Vs. State by Srirampuram P.S. and Another, AIR 2012 SC 1292 : (2012) CriLJ 1991 : (2012) 3 JCC 1714 : (2012) 3 SCALE 414 : (2012) 4 SCC 722 : (2012) AIRSCW 1994 , the Apex Court held that it cannot be stated as a rule that a police officer can or cannot be a sole eyewitness in a criminal case which will depend upon fact of a given case - if testimony of such a witness is reliable, trustworthy, cogent, then the statement of such witness cannot be discarded only on the ground that he is a police officer and may have some interest in success of the case. The Apex Court proceeded to say that only when his interest in success of case is motivated by over zealotry to an extent of his involving innocent people, then, no credibility can be attached to his statement.

33. In another decision of the Apex Court as reported in Pramod Kumar Vs. State (GNCT) of Delhi, (2013) 7 AD 215 : AIR 2013 SC 3344 : (2013) CriLJ 3680 : (2013) 4 RCR(Criminal) 55 : (2013) 7 SCALE 578 : (2013) 6 SCC 588 wherein the Apex Court held on this subject that non-examination of public witness is not automatically fatal to prosecution case, as ordinarily, public at large show their disinclination to come forward to become witness and the evidence of police witnesses would depend upon veracity, credibility and unimpeachability of their testimony. It further proceeded to say if the testimony of the police official is

found to be reliable and trustworthy, court can definitely act upon the same. The court has every right to disbelieve one unreliable and untrustworthy police man but it should not do so solely on the presumption that a police witness should be viewed with distrust.

34. This Court is also not unmindful of the decision of the Andhra Pradesh High Court in Chanduri lakshmanachari (supra) that in a case of recovery of huge quantity of counterfeit notes from the possession of the accused itself justifies presumption against the accused. In that case before the floor of the Andhra Pradesh High Court the accused could not make out a specific case as regards the motive or reason of false implication like the present case and in that case the A.P. High Court held that the accused was rightly held guilty in respect of the offence under Section 489C of the Code. Similarly, the learned trial court rightly relied on the decisions in Basi Reddy (supra), Sathpathi Natarajan (supra) and Satya Marayana (supra). This court is satisfied that actually on the date of the incident rupees one lakh each FICNs were seized respectively from these two accused persons all of which were of denomination of one thousand (1,000/-) rupee notes having a particular series No. 6CA (seized from the appellant No. 2) and the series of notes recovered from the appellant No. 1 were 6CA and 2BK. Considering the huge recovery made there is no reason to fathom what was in the mind of the appellants. Taking the risk of repetition I like to cite here the decision of the Apex Court in Punnuswamy (Supra). It cannot be said that they were in possession of such notes without knowing those to be FICNs. To swallow the argument of the defence on this point cannot do justice in a criminal trial like this. This Court reiterates that these accused persons were in possession of those notes knowing those to be FICNs. The report of the expert which was marked as exhibit under Section 293 of the Cr.P.C. (which might have been also marked as exhibit under Section 292 of the said Code) goes to show that all those notes were counterfeit notes.

35. It is true that the learned trial court acquitted the accused persons in respect of the charge punishable under Section 489B of the IPC and the State did not prefer any appeal as against that order of acquittal but considering the recovery of such huge FICNs the court could have presumed that the accused persons were in possession of such huge FICNs only for the purpose of possession only. The intention is also to be derived from the circumstances and also the quantity of notes recovered. The intention of the appellants convicts was clear that they were trafficking those FICNs. Be that as it may, I am not going to reopen that chapter or reverse the order of acquittal in respect of the charge under Section 489B of the IPC as not notice was given to the accused appellants.

36. Thus, what has come out before this court, this court is convinced, that the learned trial court rightly came to the conclusion that the accused appellants were found to be in possession of that huge quantity of FICNs. This Court is also satisfied that the finding of guilt and sentence of fine as imposed by the learned trial court was just and adequate.

37. The judgment, the order of conviction and sentence are all confirmed.

38. This being so there is no merit in this appeal and it fails. There will be no order as to costs.

39. Before I part with the judgment I like to say that the Fake Indian Currency Notes are damaging the fiber of the financial system of our country. The economic prestige has also been lowered down in the neighboring countries. The countries like Bhutan and Nepal will not accept any Indian currency notes of the denomination of Rs. 500/- or 1,000/- on this apprehension that those may be fake. This court is coming across several such cases of FICNs and unfortunately only the carriers of such notes are apprehended by the police or other such agencies like BSF etc. It is the duty of the investigating agency to unearth from whose possession such carriers are getting such FICNs or for whom those were meant for that is who would have been the receivers of such FICNs from such carriers. In not a single case of this nature that is under Section 489B or 489C the investigating agency has failed to investigate or crack wherefrom those notes were collected by the receiver or for whom those were meant for. If the police cannot reach up to that extent, such type of crime cannot be curbed. The investigating agency should not keep in its mind what would be the result of trial against those persons without any recovery being made from them.

40. Let this matter be placed before the Director General and Inspector General of Police, West Bengal at Bhavani Bhawan, Alipore, Kolkata - 27, to introspect this problem and he in his turn will circulate this to the other Heads of Police Administration in his control on whom the charge of investigation have been vested, like the Inspector General of Police, CID, West Bengal, the Commissioners of Police of different Police Commissionerates, the Superintendents of Police of all the districts of West Bengal etc. for such introspection. Today, the Indian citizens are in fear while accepting either 500 rupee note or 1,000 rupee note from unknown persons and in some occasions the depositors of such currency notes are to mention the numbers of those notes, name and address of such depositors before those are deposited to the authority. This cannot be an example of healthy economy or trust on a citizen by the other citizen. This fear must be taken care of by the Police Administration of the State. Simple arrest of some carriers who will be out of jail after serving some period of detention cannot be a panacea for this. I feel that it is my duty to place this paragraph to the Director General and Inspector General of Police, West Bengal, for the purpose noted above, this has reference to English Bazar Police Station Case Number 547 of 2011 dated 29.08.2011 in which FICNs to the tune of two lakh was seized from the possession of two accused convicts.

41. Department is directed to send only a copy of the last two paragraphs of this judgment within seven days by speed post for necessary action on his part to the Director General and Inspector General of Police, West Bengal.

42. The appellants are enjoying bail as granted by this court in CRAN No. 1417 of

2013 on 29.01.2014 to the satisfaction of the Chief Judicial Magistrate, Malda. The said order of bail is hereby cancelled. They must surrender before the learned trial court within fifteen days of the communication of this order to him by the Inspector-in-Charge, English Bazar P.S. to serve out the remaining portion of the sentence. If the appellants fail to comply with the direction then the trial court will direct the Chief Judicial Magistrate, Malda, on being satisfied with the service of notice, to issue warrant of arrest against the appellants convict and simultaneously to start proceeding against the sureties under Section 446 of the Cr.P.C. The registered sureties must be placed under suspension till the accused appellants appear or are apprehended. The judgment is pronounced in open court and it is sufficient notice to the present appellants. To be doubly sure as to the service of notice I am instructing the Inspector-in-charge of English Bazar Police Station to intimate the appellants as to fate of this appeal and the order of this court.

43. Let a copy of this judgment be forwarded by the department to the said Inspector-in-Charge within seven days from this date by Speed Post at the cost of this court. The department must collect and keep in the record of this appeal the track report of that speed post letter as regards service of this judgment to the said Inspector-in-Charge. The said Inspector-in-Charge on receipt of this copy will deposit the FICNs as directed.

44. After the period of appeal is over, the counterfeit notes shall be handed over to the Inspector-in-Charge, English Bazar Police Station, District - Malda, on proper receipt, as per rule 222(2) of the Criminal Rules and Orders for sending the same to the Issue Department of the Reserve Bank of India, Kolkata with a brief report of this case.

45. The Lower Court Record along with a copy of this judgment be forwarded to the learned trial court.

46. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties as per rules.