

(2013) 10 TP CK 0003

In the Tripura High Court

Case No : Criminal A. No. 69 of 2006

Sambhu Chakraborty VsThe State of Tripura

Date of Decision : 07-10-2013

Acts Referred:

Citation : (2013) 10 TP CK 0003

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Advocate : P.K. Biswas and R. Debnath, for the Appellant; A. Ghosh, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

U.B. Saha, J.—This appeal at the instance of appellant has been preferred against the judgment of the Additional Sessions Judge, Belonia, South Tripura dated 7-7-2006 passed in S.T. 6(ST/B) 2006, whereby the Additional Sessions Judge acquitted one of the accused, namely, Sri Pradip Nama on benefit of doubt from the charge under Sections 489B and 489C of the Indian Penal Code (for short "Penal Code") and also acquitted the present appellant from the charge levelled against him u/s 489C of the Penal Code, but convicted him u/s 489B of the Penal Code and sentenced to suffer R.I. for 10 years and to pay a fine of Rs. 10,000/-, in default to suffer further one year S.I. Heard Mr. P.K. Biswas, learned counsel appearing for the appellant as well as Mr. A. Ghosh, learned Public Prosecutor appearing for the State-respondent.

2. Briefly the prosecution case is as follows:--

On 25-5-2005 the PW1, Sri Chandi Kumar Chakma, a Sub-Inspector of Police working at Belonia police station, received a secret information that one vehicle bearing No. TR-03-3085 (Jeep) was coming from Nalua to Udaipur via Belonia with some passengers and some fake currency notes were also coming with the said vehicle. The aforesaid information was recorded in the G.D. Book of Belonia police station as G.D. Entry No. 1434 dated 25-5-2005 and the Officer-in-charge of Belonia police station instructed PW1 to verify the information. Accordingly,

PW1 along with staff proceeded towards Nalua side along the Belonia-Nalua road and while the PW1 along with his companion staff reached at Tripura Bazar, he found the said Commander Jeep TR-03-3085 coming from Nalua to Belonia with some passengers. Then he stopped the vehicle on the road and conducted thorough search inside the vehicle and found 25 numbers of 100 rupees denominations fake currency notes in the back side of the seat cover of the middle seat. PW 1 also found the appellant sitting in the middle seat of the vehicle. On being asked, the assistant of the said vehicle, Sri Rajib Bhowmik (PW 8), informed him that the vehicle came to Nalua from Udaipur with some passengers in the early morning and when at about 8.30 a.m., again the vehicle was ready for moving to Udaipur, the appellant came to him and asked him whether the vehicle would go to Udaipur or not and later the appellant also talked to the driver of the Jeep. Then he saw the accused-appellant to keep something in the back side of the seat cover of the middle seat where from 25 numbers of 100 rupees denominations fake currency notes were recovered. Ultimately the same were seized by preparing a seizure list and the accused persons were arrested.

Thereafter, PW 1 lodged an FIR with the Officer-in-charge of Belonia police station and on the basis of the said FIR, a police case was registered being Belonia P.S. Case No. 52/2005 u/s 489B of the Penal Code against the driver of the vehicle. Sri Pradip Nama as well as the accused-appellant, Sri Sambhu Chakraborty. The said police case was endorsed to him (PW 1) by the O/C of the Belonia police station. Accordingly, on 25-5-2005, he recorded the statements of one Sri Mahesh Baidya, Sri Sishir Patari (PW 5), Sri Samar Malakar (PW 3) and Constable Sri Tushar Kanti Nag (PW 2) and on the following day, i.e. on 26-5-2005, he recorded the statement of Sri Rajib Bhowmik (PW 8), assistant of the vehicle. Thereafter the case was endorsed to S.P., CID for arranging the investigation. On completion of investigation PW 11, Sri Sujit Kumar Das, a Sub-Inspector, working under the S.P. (CID), submitted the charge-sheet against the driver of the vehicle, Sri Pradip Nama and the present accused-appellant under Sections 489B and 489C of the Penal Code.

3. The learned Sub-Divisional Judicial Magistrate, Belonia, on receipt of the charge-sheet took cognizance of the offences and thereafter committed the case to the Court of learned Sessions Judge, Belonia as the case was triable by the Court of Sessions. After commitment, the learned Additional Sessions Judge again took cognizance of the offence and on perusal of the police report, i.e., the charge-sheet, framed the charges against the accused persons under Sections 489B and 489C of the Penal Code.

4. The charges framed by the learned trial Court against the accused persons are as follows:--

Firstly that both of you on or about 25-5-05 at 1410 hrs. at Tripura Bazar on the Nalua-Belonia road had in your possession of forged or counterfeit Indian currency note to wit, 8EL-565343 five Nos. hundred Indian currency, 8EL-565344

eleven Nos. hundred rupee Indian currency, 8EL-565346 nine Nos. hundred Indian currency, knowing or having reason to believe that the same to be forged for counterfeit and intending to use the same as genuine and that both of you are thereby committed an offence punishable under S. 489C of the IPC and within the cognizance of this Court.

Secondly that both of you on or about the same date, time and place, traffics in a forged or counterfeit currency note, to wit. 8EL-565343 five Nos. hundred Indian currency, 8EL-565344 eleven Nos. hundred Indian currency, 8EL-565346 nine Nos. hundred Indian currency knowing or having reason to believe that the same to be forged or counterfeit and that you are thereby committed an offence punishable under S. 489B of the IPC and within the cognizance of this Court of Sessions.

5. The prosecution examined as many as eleven witnesses including the official witnesses and one senior Scientific Officer and also exhibited some documents and material object, i.e., the fake currency notes. The defence adduced no evidence and their case was of total denial of the charges. On completion of recording of evidence of the prosecution witnesses as well as recording of statement of the accused persons u/s 313 of the Cr.P.C., the learned trial Court acquitted the accused-appellant from the charge levelled against him u/s 489C of the Penal Code and convicted him u/s 489B of the Penal Code and sentenced him as stated supra and acquitted the accused, namely, Sri Pradip Nama from both the charges.

6. Mr. Biswas, learned counsel appearing for the appellant faulted the impugned judgment contending that the learned trial Court failed to appreciate the evidence adduced by the prosecution particularly the evidence of PW 8 on whose solitary evidence the appellant was convicted. It was again contended by him that PW 8 in his statement specifically stated that he had met with the police only on the date of recovery of the fake currency notes and thereafter he did never meet with the police personnel, whereas the I/O of the case, PW10, in his evidence specifically stated that the statement of this witness was recorded on the following day of the registration of the case, i.e., on 26-5-2005. Thus, when the alleged statement u/s 161 of the Cr.P.C. of this witness was recorded, he was admittedly not before the I/O of the case. Mr. Biswas again submitted that though the PW 8 was available at the time of alleged seizure of the fake currency notes and other materials, his statement was not recorded at the earliest opportunity though the evidence of some other witnesses was recorded and on that count itself the evidence of PW 8 should be disbelieved. Mr. Biswas also submitted that though admittedly in the vehicle from where the alleged fake currency notes were seized, there were 15 passengers in the Jeep and out of which 4 passengers were in the middle seat, but none of those passengers was examined and produced before the learned trial Court either as a seizure witness or an eye-witness.

7. For non-examination and withholding of the passengers, who were travelling

in the said vehicle at the time of seizure, an adverse inference has to be drawn against the prosecution u/s 114(G) of the Evidence Act. In support of his aforesaid contention he has placed reliance on a decision of the Apex Court in

Zahira Habibullah Sheikh (5) & Ann v. State of Gujarat & Ors., (2006) 3 SCC 374 (AIR 2006 SC 1367)

, wherein the Apex Court noted inter alia that "the Court is not empowered under the provisions of the Code of Criminal Procedure to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the Court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference". The Apex Court further noted in the said judgment that "a criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact in issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny".

8. The next point raised by Mr. Biswas is that though the prosecution examined as many as 11 witnesses, but except PW 8, none of the witnesses corroborated the statement of PW 10, who is the informant as well as the I/O of the case. He further contended that none of the seizure witnesses is independent witness, rather all of them are partisan witnesses being the police personnel and the driver of the police vehicle. Not only that even as partisan witnesses also they have specifically stated that the alleged search and seizure had not been made in their presence and they did not know from where the alleged fake currency notes were seized. They were only told by the Investigating Officer that fake currency notes were seized and they were asked to put their signatures. PW 8, who supported the alleged seizure of fake currency notes, has nowhere stated in his evidence that he has seen the accused kept any fake notes. Neither his statement was recorded on the recovery of fake currency notes nor was he cited as a seizure witness and the evidence of PW 8 in fact for the first time was in the learned trial Court, which cannot be relied upon in view of the decision of the Apex Court in Radha Kumar v. State of Bihar (2005) 10 SCC 216.

9. As stated supra that the prosecution to establish the charge levelled against the accused appellant under Sections 489B and 489C examined 14 witnesses, out of them PW1 as well as PW 10 is the same person, who being S.I. of Belonia P.S. lodged the information and also investigated the case. PW 3, Sri Samar Malakar, is the driver of the police vehicle, in whose presence PW 10 seized 25

numbers of 100 rupees fake currency notes, and he also identified his signature in the seizure list, marked as Exbt. P-2/2. Except this, he did not say anything about the accused appellant's involvement. P.W. 4, Sri Tapan Debnath, is one of the Head Constables at Belonia P.S., who accompanied the PW 1, the informant/ Investigating Officer. This witness is also a seizure witness relating to seizure of a diary. PW 5, Sri Shishir Patari and PW 6, Sri Siba Prasad Patari, in their evidence, did not implicate the accused appellant. PW 7. Sri Tarun Datta, a hearsay witness, in his deposition stated that he heard that some fake currency notes were recovered from the vehicle and he did not know from whom the said fake currency notes were seized.

10. As the entire case of the prosecution is based on its star witness, PW 8, on whose evidence the learned trial Court convicted the accused-appellant and statement of the said PW 8 was recorded by Sri Chandi Kumar Chakma (PW1/ PW10), it would be proper to reproduce the salient part of the deposition of those witnesses for re-appreciation of the evidence on record and to examine as to whether the accused-appellant is in any way involved in the alleged commission of offence and as to whether the impugned judgment of order of conviction and sentence can be sustained.

11. PW 8, Sri Rajib Bhowmik, in his deposition stated that on 25-5-2005 he was working as assistant of the commander Jeep No. TR-03-3085 and the said vehicle was started from Nalua. The accused Sambhu Chakraborty was the first passenger, who asked him that where the vehicle would go and in response to that he told the accused that the Jeep would go up to Udaipur. Thereafter, the accused-appellant began to talk with the driver of the vehicle, Pradip Nama, and at the time of their conversation, Pradip Nama asked him to go to the back side for calling passenger. Accordingly, he went to the back side for calling passengers. In the meantime, he saw the accused-appellant Sambhu Chakraborty to keep a bundle in the seat cover in the middle row rear part of the seat and what was there in the bundle, he could not say. He further stated that their vehicle did not obey the signal of the police at Motai and it was driven with high speed. In the meantime, the accused, Sambhu Chakraborty, changed his seat and went to the front seat. Police caught their vehicle at Tripura Bazar, searched the vehicle, recorded the bundle which had been kept by the accused, Sambhu Chakraborty and found 25 numbers of fake currency notes in the said covered bundle, those were of 100 rupees notes. He told the police that the bundle was kept by the accused-Sambhu Chakraborty and then police arrested the driver of the vehicle, Sri Pradip Nama and the accused-appellant Sambhu Chakraborty. He also identified both the accused, i.e. driver, Sri Pradip Nama and the accused-appellant Sambhu Chakraborty, in the dock.

12. In his cross examination, the PW-8 specifically stated that the vehicle was checked for two times, first at 9-00 a.m. and thereafter at 9-30 a.m. All the passengers were inside the vehicle at the time of checking. Passengers and vehicle were checked. distance between Motai and Tripura Bazar is 5 km.

Accused Sambhu Chakraborty was on the front seat when the money was recovered at Tripura Bazar. He further stated in his cross that there were 15 passengers in the Jeep. There were 4 passengers in the middle seat. Passengers and other neighbouring people saw the recovery of money by the police from the seat cover. He also stated that he had not cited as seizure witness and he also did not meet Darogababu after this occurrence. He also stated that passengers generally asked the driver about the fare. He further stated in his cross that some passengers were got up and got down the vehicle between Nalua to Motai and he could not say the details of the conversation between Sambhu and Pradip.

13. Sri Chandi Kumar Chakma (PW1/PW10), informant-investigator, in his deposition as PW-1 stated that on getting specific information that one Commander Jeep bearing No. TR-03-3085 going towards Udaipur from Nalua was carrying some fake currency notes and upon receipt of the said information he proceeded with the staff towards Hrishyamukh side. On the way he stopped the vehicle at Tripura Bazar and searched the vehicle. At the time of searching, a bundle was detected on the middle seat on the back side part and it was kept inside the cover of the back side of middle seat. He further stated that Sambhu Chakraborty was sitting on the seat part where the bundle was kept. On his interrogation, the assistant, Sri Rajib Bhowmik (PW-8) told him that the bundle of currency notes was kept there in consultation with the driver of the vehicle, Pradip Nama. 25 numbers of 100 rupees currency notes were found in the bundle and being those appeared to be forged currency notes, he seized them. Consequent thereto, he arrested the accused-appellant, Sambhu Chakraborty, and the driver of the vehicle, Pradip Nama and finally he took them to the police station and submitted the first information report Exbt. P/1. He also identified both the accused Sambhu Chakraborty and Pradip Nama in the dock.

14. PW-10, Sri Chandi Kumar Chakma in his deposition stated that on 25-5-2005 he was posted as S.I. of Police at Belonia Police Station and on that date the Officer-in-charge of Belonia P.S. endorsed him the BLN P.S. Case No. 51/2005 for investigation. During investigation, he visited the place of occurrence, prepared hand sketch map, seized the offending vehicle carrying the fake notes and prepared the seizure list. He further stated that on 25-5-2005 he recorded the statement of Mahesh Baidya, Sishir Kumar Patari (PW-5), Samar Malakar (PW-3) and constable Sri Tushar Kanti Nag (PW-2). On 2-6-2005 he handed over the case to CID for investigation and thereafter the CID investigated the case and PW-11, Sri Sujit Kumar Das, submitted the charge-sheet, in his cross he has stated that the CID, I.O. recorded his statement. He was not endorsed to investigate the case as I.O. but he had taken pre-steps as per G.D. Entry and he seized the vehicle once at Tripura Bazar. In his cross he also stated that he could not say how many passengers were in the vehicle at the time of checking. Independent witnesses were present at the time of checking, but he had not taken their signatures in the seizure list. He had taken the signatures of the driver and the assistant. He has also stated that he recorded the statement of PW-8, Sri Rajib Bhowmik, on the next day and that may be after 32 hours.

15. Mr. A. Ghosh, learned P.P. appearing for the respondent while supporting the order of conviction and sentence would contend that the learned trial Court did not commit any wrong relying upon the evidence of PW 8, which was corroborated by the PW 2, PW 3 and PW 4, the seizure witnesses, though he admitted that PW 8 is the only independent eyewitness of keeping the bundle in the back side of the seat cover of the middle seat of the vehicle wherefrom the fake currency notes were found and seized.

16. Now let me consider the law reports cited by Mr. Biswas, learned counsel for the appellant. In *Radha Kumar (supra)* the Apex Court considered inter alia that when the witnesses have not disclosed the complicity of the appellant in the crime in their statement made before the police inasmuch as they have not even disclosed the name of the appellant as the accused in their statement made before the police and for the first time in the Sessions Court after several months they have disclosed complicity of the appellant in the crime. No reason has been assigned by the prosecution for non-disclosure of the name of the appellant before the police by these witnesses. The Apex Court ultimately noted that "this being the position, we are of the view that it would not be safe to place reliance upon the statement of these witnesses made for the first time in the Sessions Court after several months of the alleged occurrence without there being any reasonable excuse for not naming the accused before the police especially when the prosecution case has not been supported by the informant who also claimed to be an eyewitness".

17. In the instant case, though PW 8 in his deposition before Court stated that he informed the informant-investigator (PW 1/PW 10) on the date of occurrence, i.e. on 25-5-2005, that the bundle was kept by the accused Sambhu Chakraborty, but in his cross he specifically stated that he did not meet Darogababu after the occurrence. Whereas PW 10, the informant-investigator in his cross specifically stated that he has recorded the statement of this witness on the next day that may be after 32-hours and he also cannot say where he recorded the statement. Thus, it can be presumed that no statement u/s 161 of the Cr.P.C. of this witness was recorded on the following day of recovery of bundle wherein fake currency was found and thus, his evidence before the Court to the said extent is for the first time where he disclosed the name of the accused and not only that neither this witness nor any other witnesses of the prosecution stated in their deposition that the notes, which were recovered, were known to the accused-appellant before allegedly keeping the same in the vehicle as counterfeit which is basic requirements to establish an offence u/s 489B of the I.P.C.

18. In

Umashanker v. State of Chhattisgarh (2001) 9 SCC 642 (AIR 2001 SC 3074)

, the Apex Court considered regarding the object of the legislature in enacting the provisions of Sections 489A to 489E, which are as under:--

7. Sections 489A to 489E 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 mens rea of offences under Sections 489B and 489C is "knowing or having reason to believe the currency notes or banknotes are forged or counterfeit". Without the aforementioned mens rea 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 u/s 489B . I.P.C. So also possessing or even intending to use any forged or counterfeit currency notes or banknotes is not sufficient to make out a case u/s 489C in the absence of the mens rea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mens rea. 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 mens rea. 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 u/s 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 u/s 313 of the 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 , I.P.C. and acquit him of the said charges (See:

M. Mammutti v. State of Karnataka (1979) 4 SCC 723 (AIR 1979 SC 1705)

.

19. In a criminal case, the responsibility of the trial Court as well as the appellate Court is more than in other cases, as even after accusation against a person, he has to be treated as innocence till the guilt is proved by the prosecution on the basis of the evidence on record. In

Babu v. State of Kerala (2010) 9 SCC 189 (AIR 2011 SC (Cri) 809)

. the Apex Court observed that "Every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence. For this purpose, the nature of the offence, its seriousness and gravity thereof has to be taken into consideration. The Courts must be on guard to see that merely on the application of the presumption, the same may not lead

to any injustice or mistaken conviction."

20. On proper reading of the aforesaid observations of the Apex Court, it can be easily said that the Apex Court tried to remind the Courts dealing with the cases relating to penal offence that on the basis of mere presumption a person cannot be or should not be convicted as it is also the duty of the Court to guard the human right like innocence of an accused till the accusation/guilt is proved. Not only that the Apex Court in

State of Himachal Pradesh v. Asha Ram (2005) 13 SCC 766 (AIR 2006 SC 381)

held as under:

...It is true that the golden thread which runs throughout the cobweb of criminal jurisprudence as administered in India is that nine guilty may escape but one innocent should not suffer. But at the same time no guilty should escape unpunished once the guilt has been proved to hilt. An unmerited acquittal does no good to the society. If the prosecution has succeeded in making out a convincing case for recording a finding as to the accused being guilty, the court should not lean in favour of acquittal by giving weight to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof where none exists. A doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for a finding in favour of acquittal....

21. On scrutiny of the evidence on record the only thing established by the prosecution is that the police upon a search in the vehicle, in which the accused was a passenger, recovered a bundle from the seat cover in the middle row, where 25 numbers of 100 rupees fake currency notes were there and those fake currency notes were seized and proved by the PW 2 and PW 3 and there is no evidence that the said bundle, wherein the fake currency notes were found, was kept by the accused-appellant Sambhu Chakraborty knowing that those notes were counterfeit. The learned trial Court merely believing the evidence of PW 8, which happened to be the first time evidence in the Court and considering the evidence of the seizure witnesses, i.e. PW 2 and PW 3 as well as the informant investigator presumed that the accused-appellant Sambhu Chakraborty kept the bundle wherein the fake currency notes were available. But mere recovery of fake currency notes from the vehicle where accused was a passenger would not help the prosecution to convict the accused appellant unless they establish that it is only the accused appellant who kept the bundle of fake currency recovered.

22. On proper survey of the provisions of Sections 489B and 489C of the I.P.C., it would be evident that mens rea of the offence under those Sections is "knowing or having reason to believe the currency notes or banknotes are forged or counterfeit". In the instant case, the prosecution fails to establish that the accused-appellant was either knowing or having reason to believe the currency notes which recovered by the police are forged or counterfeit. Admittedly, the counterfeit notes were not recovered from the physical possession of accused-

appellant.

23. Admittedly, Sri Chandi Kumar Chakma(PW1/PW10) lodged the complaint on the basis of which a specific police case was registered against the accused appellant and the said witness also arrested the accused appellant and on search in the vehicle being conducted in presence of PW 2 and PW 3 seized a bundle of fake currency notes and also recorded the statement of the witnesses u/s 161 of Cr.P.C. which is not permissible being the said conduct of this witness creates a suspicion regarding the fair and impartial investigation which is sine qua non and, as such, such an act of this witness also prejudiced the accused-appellant. In

Megha Singh v. State of Haryana, : 1995 Cri LJ 3988 (AIR 1995 SC 2339)

, the Apex Court while considering a similar situation noted as under:--

4. After considering the facts and circumstances of the case, it appears to us that there is discrepancy in the depositions of the P.Ws. 2 and 3 and in the absence of any independent corroboration such discrepancy does not inspire confidence about the reliability of the prosecution case. We have also noted another disturbing feature in this case. PW 3, Siri Chand, head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case that he carried on with the investigation and examined witnesses S. 161 , Cr.P.C. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation.

24. A Division Bench of Karnataka High Court in

State of Karnataka v. Sheshadri Shetty & Ors., : 2005 Cri LJ 377

, while considering a criminal appeal against the order of acquittal of the accused therein has relied upon

Megha Singh (AIR 1995 SC 2339) (supra)

noted inter alia that "For purpose of resolving this rather complex legal issue, we have carefully applied our minds to the principle underlying the Supreme Court decision. The rule of fairness which is the bed-rock of criminal investigations pre-supposes impartiality and starting from this premise what emerges is, that where the Investigating Officer is the complainant, he is offending the principle of impartiality as far as the quality of the investigation is concerned. Though the Govt. Pleader has tried to salvage the position by contending that the Court should totally disregard the evidence of the I.O. PW 8 and examine the question as to whether the prosecution case is established on the basis of the remaining evidence, we need to point out that this procedure would not pass the legal test of fairness. The reason for this is because in his capacity as the Investigating

Officer, PW 8 has not only given evidence at the trial but PW 8 is really the main architect of the prosecution case. Everything that PW 8 has done right from the recording of evidence to the drawing up of panchanamas and the like would be hit by the lurking suspicion that if he is the complainant in the case he may not be acting impartially. It is precisely this underlying principle which affects the quality of the whole of the prosecution case because PW 8 as the Investigating Officer is the architect of that edifice."

25. A Division Bench of the Gauhati High Court, Agartala Bench while considering an appeal being Criminal Appeal No. 23 of 2004 (Sri Dipak Nath and Anr. v. The State of Tripura) which was directed against the judgment of the learned Additional Sessions Judge, North Tripura, Dharmanagar, wherein the appellant therein were convicted u/s 302 /201 read with Section 34 of the IPC and sentenced to suffer imprisonment for life for the offence of murder and also to suffer another two years imprisonment for causing disappearance of evidence of offence u/s 201 of the I.P.C., had an opportunity to consider almost a similar situation like the case in hand as the PW 13 of that case as informant lodged a written report and he himself registered the same as FIR case and investigated the said FIR case and submitted the charge-sheet against the accused appellant therein and taking note of

Megha Singh (AIR 1995 SC 2339) (supra)

and

Sheshadri Shetty (2005 Cri LJ 377 (Kar) (supra)

the Division Bench held that in view of the above proposition of law we have no option except to treat the entire investigation as a tainted one and ultimately set aside the judgment of the learned Additional Sessions Judge, North Tripura. Dharmanagar.

26. In view of the law settled by the Apex Court in

Megha Singh (AIR 1995 SC 2339) (supra)

followed by Karnataka High Court as well as the Division Bench of the Gauhati High Court, Agartala Bench as stated supra, this Court is of the considered opinion that a person who lodged a complaint and consequent to which a specific police case was registered should not be allowed to investigate the said case by himself as it would not be possible on his part to do the investigation fairly and impartially which is a sine qua non for a criminal proceeding. Thus, according to this Court, the entire investigation is treated to be a tainted one and on the basis of such tainted investigation an accused should not be convicted.

27. Now, let us survey as to whether the learned trial Court recorded the statement u/s 313 of Cr.P.C. in accordance with statutory prescription as required. On proper scrutiny, it appears that the learned trial Court even failed to apply its mind in a case like the present one wherein the accused was charged

relating to an economic offence in respect of forged or counterfeit currency notes under Sections 489B and 489C of the I.P.C. At the same time the doctrine of criminal jurisprudence also speaks whatsoever the gravity of the offence is high, unless the accused is connected with the offence on the basis of proper evidence in that case, the Court should not convict the person being the innocence of an accused is his human right as stated by the Apex Court. In the instant case, on proper scrutiny of the Statement recorded u/s 313 of Cr.P.C. it appears that the learned trial Court in question No. 4 stated that PW 10 Sri Chandi Kumar Chakma, who investigated the case and submitted the charge-sheet against both the accused under Sections 489B and 489C of the I.P.C., whereas Sri Chandi Kumar Chakma, informant-investigator as PW 10 in his deposition specifically stated that the charge-sheet was submitted by the PW 11, S.I. of Police, Sri Sujit Kumar Das. Thus, it can be said that the learned trial Court had not even properly scrutinized the evidence on record. More so, in the whole statement of Section 313 of Cr.P.C. there is not a single question that any of the prosecution witnesses stated that the accused-appellant kept the bundle, wherein the currency notes were found, in the seat cover of the middle row in the rear part of the seat knowing the same is counterfeit. Thus, it is also established that the mens rea required for establishing an offence u/s 489B of the I.P.C. was totally absent in the instant case and in absence of mens rea as required, a person facing trial on accusation for an offence under Sections 489B and 489C cannot be punished.

28. It also appears from the evidence of informant-investigator that he did not attempt for collecting the required information by interrogating the accused person that from where he had received the alleged bundle and fake currency notes or whether he was aware regarding the fact that those currency notes were really counterfeit or not and even there is no attempt to collect evidence from other witnesses that the present accused was carrying such currency notes as fake to use or sell the same as a genuine one. For an investigating officer to establish an economic offence like the instant one, it is the primary duty of the investigating officer to investigate on that line which is totally absent in the instant case. He also did not attempt to find out the antecedent of the accused appellant and his companions to find out whether there is any probability of his being involved in such type of economic offence. Had it been done, then the person, who are really culprits, could have been booked and the implication of the innocence could have been avoided.

29. From the evidence of prosecution witnesses it is established that in the vehicle from where the bundle allegedly kept by the accused Sambhu Chakraborty, wherein fake currency notes were found in the seat cover in the middle row rear part of the seat, some other 14 to 15 passengers were there, but none of those passengers, who are admittedly independent witnesses were examined by the prosecution and produced before the Court and such non-examination or non-production of those witnesses also creates reasonable doubts regarding the prosecution case. Admittedly, another co-accused, i.e. the driver of

the vehicle, had already been acquitted by the Court, though acquittal of such a co-accused does not create any right in favour of the present accused appellant for his acquittal but obviously he is entitled the benefits of reasonable doubt.

30. According to this Court, as the prosecution fails to establish its case beyond reasonable doubt, there is no other option before this Court except to set aside the impugned judgment of conviction and sentence passed by the learned trial Court. Accordingly, the impugned judgment is set aside and consequent thereto the accused appellant is acquitted from the charge levelled against him for the reasons stated hereinabove. In the result, the appeal is allowed. As the appellant is on bail, his bail bond stands discharged.

Send down the lower court records.