IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:
The Hon'ble Justice Debangsu Basak

The Hon'ble Justice Jay Sengupta

The Hon'ble Justice Tirthankar Ghosh

C.R.A. 123 of 2019

(CRAN 2 of 2022)

[Anikul @ Anikul Islam & Anr. vs. The State of West Bengal]

WITH
C.R.A. 37 of 2019

[Maharom Mondal @ Antu @ Maharam Mondal vs. The State of West Bengal]

WITH
C.R.A. 189 of 2017

(CRAN 2 of 2021)
(CRAN 3 of 2023)
[Krishna Kumar Patel vs. The State of West Bengal]

WITH

C.R.A. 702 of 2018

[Ripon Sk. vs. The State of West Bengal]

WITH

C.R.R. 2111 of 2019

[Eunus Ali Mondal @ Yunush Mondal @ Yunus Ali Mondal
vs.
The State of West Bengal]

WITH

C.R.A. 215 of 2016

[Abdul Hakim @ Dalim @ Abdul Halim vs. The State of West Bengal]

WITH
C.R.A. 657 of 2016

(CRAN 1 of 2017 Old CRAN No. 3152 of 2017)

[Jalal Sk. vs. The State of West Bengal]

WITH
C.R.A. 730 of 2016
[Morful Sk. vs. The State of West Bengal]

WITH
C.R.A. 15 of 2019
[Jahangir Sikdar vs. The State of West Bengal]

WITH
C.R.A. 268 of 2019
[Anarul Sk. vs. The State of West Bengal]

WITH
C.R.A. 396 of 2019
[Ujjal Mondal @ Ujjwal Mandal vs. The State of West Bengal]

WITH
C.R.A. 608 of 2019
(CRAN 2 of 2019 Old CRAN No. 4712 of 2019)
[Hash ibul Mondal vs. The State of West Bengal & Anr.]

WITH
C.R.R. 984 of 2019
[Fajlur Rahaman Sk. @ Fajlur vs. The State of West Bengal]

WITH
C.R.R. 2308 of 2019

(CRAN 3 of 2019 Old CRAN No. 4855 of 2019)
[Bapi Chatterjee @ Biplab & Anr. vs. The State of West Bengal]

Mr. Tapan Dutta Gupta,
Mr. Parvej Anam,
Ms. Rituparna Ghosh,
Mr. Sourav Sardar
... for the appellants in CRA 123 of 2019.

Mr. Sourav Chatterjee,
Mr. Soumyajit Das Mahapatra,
Ms. Madhurai Sinha,
Ms. Upasana Banerjee
... for the appellant in CRA 37 of 2019.

Mr. Sabyasachi Banerjee
Mr. Arnab Saha,
Mr. Abhimanyu Banerjee,
Ms. Nahid Ahmed
... for the appellant in CRA 189 of 2017.

Mr. Satadru Lahiri,
Mr. Safdar Azam
... for the appellant in CRR 2111 of 2019.

Md. Sabir Ahmed,
Md. Abdur Rakib,
Mr. Shraman Sarkar,
Mr. Dhiman Banerjee,
Mr. Megahid Mehedi
... for the appellant in CRA 702 of 2018.

Mr. Sataroop Purkayestha,
Mr. Musharraf Alam Sk.,
Ms. Jagriti Bhattacharyya,
Mr. Abhishek Chakraborty,
Mr. Hamidur Rahaman
... for the appellant in CRA 657 of 2016.

Mr. Debanshu Ghorai,
Mr. Avinabha Mukherjee

... for the appellant in CRA 396 of 2019.

Mr. Sailendranath Chakrabotry,
Mr. Anshunath Chakraborty
... for the appellant in CRA 15 of 2019.

Ms. Jhuma Sen,
Ms. Swastika Chatterjee,
Ms. Sneha Bera
... for the Appellant in CRA 215 of 2016.

Mr. Arindam Jana,
Mr. Sumanta Ganguly,
Mr. Shahan Shah,
Mr. Yuvraj Chatterjee,
Mr. Rahul Surtari,
Mr. Soumen Barman
... for the appellant in CRA 608 of 2019.

Mr. Ramdulal Manna,
Ms. Manju Manna (Dey),
Mr. Sayan Mukherjee
... for the appellant in CRA 268 of 2019.

Mr. Amanul Islam,
Mr. Sourav Mukherjee
... for the Petitioner in CRR 984 of 2019.

Mr. Jhuma Sen,
Ms. Swastika Chatterjee,
Ms. Ankita Roy
... for the appellant in CRA 215 of 2016.

Mr. Debashis Roy, Ld. P.P.
Ms. Sukanya Bhattacharya,
Md. Kutubuddin
... for the State in CRR 984 of 2019.

Mr. Debashis Roy, Ld. P.P.
Ms. Anasuya Sinha

... for the State (CRA 37 of 2019, CRA 657 of 2016 & CRA 15 of 2019)

Mr. Debashis Roy, Ld. P.P.
Mr. Partha Pratim Das,

Mrs. Manasi Roy ...for the State (CRA 123 of 2019).

Mr. Debashis Roy, Ld. P.P.
Mr. Faria Hossain,
Ms. Baisali Basu
... for the State (CRA 396 of 2019).

Mr. Debashis Roy, Ld. P.P.
Md. Anwar Hossain, AGP,
Ms. Manisha Sharma, AGP
.... for the State (CRA 702 of 2018).

Ms. Faria Hossain Ld. APP,
Ms. Baisali Basu
....for the State in CRA 396 of 2019.

Hearing Concluded On : 18.08.2025

Judgment on : 10.11.2025

Tirthankar Ghosh, J:-

During the hearing of CRA 123 of 2019, CRA 37 of 2019, CRA 189 of 2017 and CRA 702 of 2018, the following *terms of reference* arose:

1) Whether the aid of 'presumption' is available when the seizure of FICN is effected from the possession of an individual?

2) If quantity/volume of FICN is a ground of 'presumption', what would be the cut off number for presuming that the 'possession' was for the purpose of 'otherwise traffics in'?

3) When substantial number of FICN are recovered from the possession of a security personnel associated with the Government i.e. Police, CISF, Defence Forces etc. can it be presumed that the ingredients of the term

'otherwise traffics in' used in Section 489B of the Indian Penal Code is automatically attracted?

4) Do seizure from the possession of an individual of High Quality Counterfeit Notes (as referred to in the provisions of UAPA, 1967), opined by an Expert automatically attract the provisions of Section 489B of the Indian Penal Code?

In view of the aforesaid terms of reference, the Hon'ble Chief Justice was pleased to constitute the present Larger Bench for deciding the same.

Subsequently CRR 2111 of 2019, CRA 215 of 2016, CRA 657 of 2016,CRA 730 of 2016, CRA 15 of 2019, CRA 268 of 2019, CRA 396 of 2019, CRA 608 of 2019, CRA 984 of 2019 and CRR 2308 of 2019 were referred as common questions of law arose in those appeals/revisions and as such they were heard along with the present reference.

Submissions from the Bar:

CRA No. 37 of 2019

Mr. Chatterjee, learned Senior Advocate appearing on behalf of the appellant submitted that the appellant (Mahoram Mondal @ Antu) was convicted under Sections 489B and 489C of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for 5 (five) years and 3 (three) years respectively with fine and default clause qua the offences under Sections 489B and 489C of the Indian Penal Code.

The appellant's case in appeal was based on the following facts:-

- The Police Officer being P.W.1, lodged an FIR, but in course of evidence he could not recollect the name of other independent witnesses;
- Two witnesses in respect of search and seizure being P.W.4 and P.W. 6 could not recollect the name of the accused;
- P.W.4 and P.W.5 also could not identify the appellant in Court.;
- P.W.10 the expert, who examined the FICN, produced his report i.e. Ext.27, however his deposition is silent as to what was examined by him, what was the nature and method of examination. As such the process followed by him was cryptic, sketchy and as such unreliable;
- The ingredients of the offences punishable under Sections 489B and 489C of the Indian Penal Code according to the appellant could not be proved.

In support of his contention learned Advocate relied upon Jiban Sasmal -versus- State of West Bengal reported in 1987 SCC Online Cal 114, Sarvesh Pathak @ Kallu -versus- State of West Bengal reported in 2014 SCC Online Cal 18497, Chhotelal Thakur -versus- Union of India reported in 2020 SCC Online Cal 2149, Hoda Sk. -versus- State of West Bengal reported in 2020 SCC Online Cal 1478, Umashanker -versus- State of Chattisgarh reported in (2001) 9 SCC 642, M. Mammutti -versus- State of Karnataka reported in (1979) 4 SCC 723,

Md. Morful Haque -versus- State of West Bengal reported in 2017 SCC OnLine Cal 3380, Sanskriti Jayantilal Salia -versus- State of Maharashtra reported in 2018 SCC OnLine Bom 2969, Muksetul Sk. and Ors. -versus- the State of West Bengal reported in MANU/WB/1291/2018, Amijuddin Sk. -versus- State of West Bengal reported in MANU/WB/0429/2021 and Md. Tousif -versus- State of West Bengal reported in MANU/WB/0282/2022.

Learned Senior Advocate in order to justify and advance his argument on issues relating to presumption and its application in respect of seizure of FICN, when it is effected from the possession of any individual, submitted that there is difference between statutory presumption and adverse presumption under Section 106 of the Indian Evidence Act, 1872 ("**Indian Evidence Act**"). According to him the Indian criminal justice system does not permit participatory investigation, and an accused under the relevant clause has no say as to how an investigation would proceed. As such if a person is booked with bundles of counterfeit currency, and in trial if it is his burden to overcome such accusation by himself, it would be an unjust application of law. Further, Section 106 of the Indian Evidence Act according to the appellant if it is applied at the stage of investigation, in that case, a bailable offence under Section 489C gets converted into a non-bailable offence under Section 489B of the Indian Penal Code. In fact, until the examination of the accused is conducted in terms of Section 313 of Code of Criminal Procedure, there is no mechanism in criminal law which affords an accused an opportunity to dispel the prosecution's case. Hence, the invocation of Section 106 of the Indian Evidence Act right at the

inception of criminal proceedings will unnecessarily burden an accused on one hand without any lawful remedy and on the other hand will completely change the profile of the offence. Learned Advocate also distinguished the judgment of Jubeda Chitrakar (supra) which was relied upon by the State, however, the same would be dealt with in the latter part of the judgment .

CRA 189 of 2017

Mr. Sabyasachi Banerjee, learned Senior Advocate appearing for the appellant canvassed that presumption and suspicion are contradictory to each other and there cannot be a law raising suspicion of guilt. According to the learned counsel, there are statutory presumptions under certain provisions/statues such as NDPS Act, wherein the Courts being subjectively satisfied in respect of the factual foundation of the case, applies statutory presumption. So far as Indian Penal Code is concerned, the Code omits to indicate a particular guilty intent i.e., presumption. Reference was made to M.S. Narayan Menon -versus- State of Kerala reported in (2006) 6 SCC 39, Dipakbhai Jagdish Chandra Patel -versus- State of Gujarat reported in (2019) 16 SCC 547, Bachan Singh -versus State of Punjab reported in (1981) SCC Online P&H 47 and Bur Singh -versus- The Crown reported in (1930) SCC Online Lah 61.

Learned Counsel also referred to the precedents relating to counterfeit currency i.e. Hoda Sk. -(supra), Jiban Sasmal - (supra), Chhotelal Thakur -(supra), K. Hashim -versus- State of Tamil Nadu reported in (2025) 1 SCC 237, Supdt. & Remembrance of Legal Affairs, WB -versus- Anil Kumar Bhanja

reported in (1979) 4 SCC 247, Thomman Kunju Naina -versus- State of TC reported in AIR 1953 TC 225, Madan Lal and Anr. -versus- State of Himachal Pradesh reported in (2003) 7 SCC 465, Ashu Mondal -versus- State of West Bengal reported in 2013 Cri LJ 715, Roney Dubey -versus- State of West Bengal reported in 2007 Cri LJ 4577, Abdul Rahiman -versus- State of Kerala reported in (2014) 4 KLJ 772, Sou. Bharti -versus- State of Maharastra reported in 2003 Cri LJ 2583, Umashanker (supra), M.Mammutti (supra), Md. Morful Haque (supra), Sanskrit Jayantila Salia (supra), M. Mukhtarul Islam @ Suman -versus- State of West Bengal, (2014) 2 Cal LT 260, Sarvesh Pathak @ Kallu (supra) and Abu Sajed @ Sayed & Anr. -versus- The State of West Bengal reported in 2014 SCC OnLine Cal 18497.

Additionally, learned Advocate submitted that it is a settled principle of law that *mens rea* is an essential ingredient of law and existence of the same must be proved by the prosecution, unless presumption exists. There are certain presumptions enumerated under some provisions of Evidence Act for offences under the Indian Penal Code but such presumptions are not available in respect of offences under Sections 489B to 489E of the Indian Penal Code and adverse presumption under Explanation 2 to Section 28 of the Indian Penal Code which defines “counterfeit” is restricted to Section 489A of Indian Penal Code. There is no such adverse presumption available under Section 489B of Indian Penal Code. In order to emphasise such contention learned Advocate relied upon Ranjit D Udeshi -versus- State of Maharashtra reported in AIR 1965 SC881. Reference was also made to Sunder Lal -versus- State Govt NCT of Delhi

reported in 2018 SCC Online Del 9079, Smt. Amaramma -versus- State of Karnataka (CRIMINAL APPEAL NO. 3606 OF 2012), Iman Hussain -versus- State of West Bengal (Criminal Appeal No. 291 of 2021).

In order to substantiate his argument relating to the quantity or volume of counterfeit currency/ FICN in terms of the reference for interpreting 'otherwise traffics in', learned Advocate relied upon Rayab Jasub Sama -versus- (The) State of Gujarat reported in 1999 Cri LJ 942, Shabbir Sheikh -versus- The State of Madhya Pradesh Crl. Appl Nos. 162,452 and 453 of 2015. Further to distinguish Jubeda Chitrakar -versus- State of West Bengal (supra), Learned Advocate for validating his reasoning reiterated the series of judgments being Md. Tousif (supra), Ponusamy -versus- State reported in 1997 SCC (Cri) 217, Habibur Rahaman (supra), Turakka Nagaraju -versus- State of West Bengal reported in 2023 SCC OnLine Cal 658.

While dealing with the issue as to whether the ingredients of Section 489B of the Indian Penal Code would be automatically attracted in case of recovery of a substantial number of FICN from the possession of any personnel associated with the Government i.e., Police, CISF, Defence Forces etc., it was argued neither the Indian Penal Code nor the Code of Criminal Procedure culls out any special provision so far as the availability of concept of presumption is concerned, and hence, there cannot be a concept of statutory presumption enforced in absence of the same. The provisions in the Indian Penal Code do not envisage or recognize the creation of any class of people to be indicted on the

basis of any presumption, since the same may lead to violation of Article 21 of the Constitution of India.

Insofar as the issue as to whether the provisions of Section 489B of the Indian Penal Code would be automatically attracted in respect of seizure from the possession of an individual of High Quality Counterfeit Notes (as referred to in the provisions of UAPA, 1967) opined by an Expert, learned Advocate dealt with the different provisions of UAPA 1967 including the Explanation as well as Rules relating to The Investigation of High Quality Counterfeit Indian Currency Offences Rules, 2013 and pointed out that in such cases the quantity should not be less than rupees one lakh. According to the learned Advocate there are other parameters which are to be satisfied before invoking the provisions of UAPA, 1967. Reference was also made to the observations in Uttam Kumar Sarkar -versus- The State of West Bengal reported in 2016 SCC OnLine Cal 682.

CRA 123 of 2023

Mr. Dutta Gupta, learned Advocate appearing on behalf of the appellant adopted the submissions advanced in CRA 37 of 2019 and CRA 189 of 2017.

CRA 702 of 2018

Mr. Sabir Ahmed, Learned Advocate appearing on behalf of the appellant submitted that the appellant was convicted in connection with Raghunathganj Police Station Case No. 744 of 2015 dated 06.08.2015 under Section 489B/489C of the Indian Penal Code wherein forty-nine number of fake Indian currency notes of Rs. 500/-denomination were seized. The facts of the case

related to Fake Indian Currency Notes (FICN), which were recovered were high quality counterfeit Indian currency, which would fall within the purview of Section 15 of UAPA, 1967. However, throughout the trial no charge was framed under the relevant provisions of 1967 Act nor the requirements relating to sanction was obtained from the appropriate authorities. It was emphasised that the prosecution case was simpliciter relating to possession, wherein the learned Trial Court on conclusion of investigation convicted the appellant under Section 489B of the Indian Penal Code in spite of no materials being available in the prosecution evidence, relating to ingredients of Section 489B of the Indian Penal Code.

CRA 657 of 2016

The Learned Advocate appearing on behalf of the appellant stressed on two issues particularly the terms “possession” and “otherwise traffics in”. According to the Learned Advocate, possession which is physical possession would be applicable when there is exclusive control over the counterfeit notes and then only the case can be brought within the ambit of Section 489C of the Indian Penal Code. So far as the term “otherwise traffics in” is concerned, one must first appreciate that the accused had the intention to use the same as genuine. Thus, an overt act or at least an attempt is required to be shown on the part of the accused or some steps towards preparation towards the commission of the crime. So far as the phrase it may be used as “genuine”, the scope of interpretation is very limited and there is no scope for raising any presumption.

The notes may be forged and the possession even if it is attached to the accused, there are other essential requirements particularly with regard to knowledge and reasonable belief of the accused regarding the notes being forged. The distinction between Section 489B and Section 489C of the Indian Penal Code in such a case would require a higher degree of complicity in the offence, as in case of Section 489B of the Indian Penal Code the attending terms which have been used are selling, purchasing, receiving, trafficking, export, import or delivery. Learned Advocate, with the aid of examples, has attempted to explain the terms selling, purchasing, delivery, trafficking, and thereafter, proceeded to emphasise on the word 'otherwise'. According to the learned Advocate, the expression 'otherwise' would only refer to circumstances, which have not been dealt with in the definition of Section 489B of Indian Penal Code in the context of any form of usage of counterfeit currency.

Learned Advocate further submitted that under no circumstances can the burden of proof shift to the accused. The accused is under no obligation to provide any explanation for possessing FICN. So far as the issue relating to number of FICN is concerned, the same also do not have any relevance, as a person is presumed to be innocent of the charges under the provisions of the Indian Penal Code. In respect of the other referential terms concerned, learned Advocate for the appellant has emphasised that going by the provisions of the Indian Penal Code, the terms do not qualify either attracting the provisions of UAPA or do not draw a special reference in case the recoveries are from any other government servant.

CRA 608 of 2017

Learned Advocate appearing on behalf of the appellant commenced his argument by distinguishing the case of Jubeda Chitrakar (Supra), and submitted that the emphasis in the said judgment related to seizure of huge volume of FICN. The said case thus referred to huge volume of FICN being involved. Thus, in spite of mere possession of any particular quantity of FICN falling within the ambit of Section 489C of Indian Penal Code and a separate penal provision under Section 489B of the Indian Penal Code existing for cases involving selling, buying, receiving or otherwise trafficking in, it was categorically submitted that while arriving at its conclusion, the Division Bench in the judgment of Jubeda Chitrakar (supra) without relying upon upon M.Mammutti (supra) and Umashanker (supra) arrived at its conclusion. Thus, the said judgment cannot be held to be an authority on the issue relating to presumptions in cases under Section 489B of the Indian Penal Code. Learned advocate also relied upon the case of Habibur Rahman v. State of West Bengal (CRA 277 of 2016), wherein conviction was upheld under section 489B of the Indian Penal Code. However, it was emphasized that in the said case, transportation was established by the Court on the following factual aspects: receipt of secret information and apprehending the appellant in a public place with FICN amounting to Rs 10 lakhs; accused was unable to give explanation for such possession and accordingly presumption was drawn that he was knowingly trafficking FICN; charge was one of “Attempt to use/traffic FICN”; basis of conviction was that the accused was apprehended while carrying large

volume of FICN in a public place. Learned advocate submitted that under Section 313 of Cr.P.C. an accused is not bound to give answers as the same may be used against him and in a criminal trial, an accused is also not under any obligation to adduce defence evidence. Further, statute also does not lay down any automatic presumption upon failure of an accused to give answers during his examination under Section 313 Cr.P.C. or on his failure to adduce defence witness. The Evidence Act does not provide for any reverse onus upon an accused in respect of possession of FICN which has to be rebutted either by giving sufficient explanation under section 313 Cr.P.C or by adducing defence witness, failing which an automatic presumption would be drawn for commission of an offence punishable under section 489B IPC as the phrase "otherwise traffics in" would come into operation. Additionally, it was submitted that the language/tense used by the legislature in Section 489B IPC is "sells" "buys" or "otherwise traffic in" - which means the legislature has made the "act" punishable upon contemplating that a transaction has already taken place. The Hon'ble Supreme Court has held that even for the purpose of conviction under Section 489C IPC, it has to be proven that possession is accompanied by *mens rea* i.e,. knowledge or reason to believe that the currency notes are forged or counterfeit. Therefore, without there being any transaction it will not be safe to draw an automatic presumption of trafficking based on mere possession of FICN. Perhaps there cannot be any automatic presumption of a separate and distinct offence which requires any kind of transaction when there is nothing to show that such offence was yet to take place or when at that point of time no

material is available to sustain the charge of such transaction or transportation. Learned Advocate for the appellant segregated the list of cases where there has been acquittal under Section 489B of IPC and those in which there were convictions under Section 489B IPC. **Acquittal**:- Hoda Sk. (Supra), Jhantu Sk. (supra), Ohidul Sk. (supra), Dolon Sk, (supra), M. Mammutti (supra), Umashanker (supra). **Conviction:-** Rayab Jusab Sama((supra) , Shabbir Sk. (supra), Jubeda Chitrakar (supra).

Additionally, learned Advocate advanced his argument relying upon Section 106 of the Indian Evidence Act, particularly with regard to reverse onus proof. According to him, Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary burden of proving the prosecution case beyond reasonable doubt and it is only when the prosecution has led evidence, which is believed to sustain a conviction or which makes out a case, and the fact is exclusively within the special knowledge of the accused, only then the burden of proof would be shifted to the accused. On that aspect, Learned Advocate relied upon Shivaji Chintappa Patil v. State of Maharashtra, reported in (2021) 5 SCC 626, Subramaniam v. State of Tamil Nadu, reported in (2009) 14 SCC 415, Gargi v. State of Haryana reported in (2019) 9 SCC 738. It has been held by the Hon'ble Apex Court that in the event prosecution fails to prove the basic facts as alleged against the accused, the burden could not be shifted on the accused by pressing into service the provisions of Section 106 of the Evidence Act. Similar view was also expressed by the Hon'ble Supreme Court in Satye Singh v. State of Uttarakhand reported in (2022) 5 SCC 438, and also in

Nagendra Sah v. State of Bihar reported in (2021)10 SCC 725, wherein it was stated that cases of circumstantial evidence requires prosecution to establish the chain of circumstances and failure of the accused to discharge the burden under Section 106 of the Indian Evidence Act is not relevant. Even if the defence of the accused is false, the same cannot be a ground for conviction, when the chain of circumstances demonstrated by the prosecution are incomplete. Reference was also drawn from State of Punjab v. Baldev Singh (supra) and it was submitted that if the statute itself is silent regarding applying the principle of presumption of "otherwise traffics in"., in case of mere possession of FICN, an accused cannot be burdened with the reverse onus proof to explain that he was not involved in trafficking such FICN, before the prosecution fully discharges its onus of establishing the foundational facts. Reference was also made to Union of India -versus- Prafulla Kumar Samal reported in (1979) 3 SCC 4, and it was submitted that charge has to be framed by the learned trial court based on the materials collected by the investigating agency and the test of satisfaction of the learned trial court would be "grave suspicion". Lastly, Learned Advocate contended that presumption ordinarily cannot be read into the provisions of Section 489B of the Indian Penal Code like any other statutory presumption as it was not the intention of the legislature to empower the courts to exercise such rights.

The rest of the appellants and the revisionists adopted the aforesaid submissions and referred to the same series of judgments.

Submissions on behalf of the State:

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

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

> *"15. Adverting to the material evidence on record and the findings of the court below, it can be seen that the raid, interception and recovery were on the basis of secret information, the reception of which, and the modality of the raid and recovery have been noticed by us. 500 pieces of 100 rupees denomination FICN, 7 pieces of 1000 rupees denomination FICN and 9 pieces of 500 rupees denomination FICN wrapped in a newspaper and kept in a polly bag were recovered from Mokaram Mondal (one of the accused). Sunil Pramanick (one of the appellants) was also searched and 27 pieces of 500 rupees denomination FICN were recovered. Jubeda Chitrakar (one of the appellants) whose house was also raided led to recovery of 20 pieces of 500 rupees denomination FICN and 5 pieces of 1000 rupees denomination FICN. Thereupon, Jubeda was arrested. Again search and seizure was conducted leading to recovery of FICN from different other accused persons who are not amongst the appellants. They were also convicted. The appellants did not offer any explanation when questioned under Section 313 Cr.P.C. regarding 12*

the possession of FICN. Nor was any evidence adduced in defense to explain the possession of FICN. Section 106 of the Evidence Act enjoins that when any fact is especially within the knowledge of any person, the burden of proving the fact is upon him. In terms of Section 106 of the Evidence Act the burden of proof of facts within the knowledge of the appellants regarding the nature of possession of FICN was not discharged. Hence, the possession of such large quantity of FICN in concealed manner is not dormant possession but active transportation amounting to trafficking. It amounts to commission of offences punishable under Section 489B of the IPC. The possession of FICN of such quantity is trafficking, and, therefore, falling under the incriminating activity which made the accused/appellants offenders punishable under Section 489B as well, apart from the liability for committing offences punishable under Section 489C. For the aforesaid reasons the conviction of the appellants under Sections 489B as well as 489C stands. We approve the findings of the court below on the issue that the accused persons are liable to be convicted under Sections 489B and 489C of the IPC. Accordingly, we affirm the finding of guilt and the conviction of the appellants by the court below."

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

"Lastly, it is argued ingredients of offence under section 489B IPC have not been proved. Prosecution evidence clearly shows that the appellant and the co-accused was apprehended in front of a tailor shop while carry counterfeit currency notes totaling to Rs 10 lakhs. When the appellant was found carrying a large volume of FICNs in a public place and he is unable to give any explanation for the said 13 possession, one can safely

held the appellant was knowingly trafficking in counterfeit currency notes. Section 489B of the Indian Penal Code makes selling, buying, receiving or trafficking in counterfeit currency notes culpable. In this regard, it may be apposite to refer to the charge framed against the appellant under section 489B of the Indian Penal Code which reads as follows:- "that you on 4.11.2014 at township More on NH 34, under Baisnabnagar PS DistMalda attempted to use/traffic forged or counterfeit Indian currency notes of Rs. 9,76,000/- of denomination of Rs. 1,000/- each (976 pieces) and Rs. 24,000/- of denomination of Rs. 500/- each (48 pieces) and totalling Rs 10,00,000/- knowing the same to be counterfeit and as per seizure list dated 4.11.2014, a copy of which was served to you, knowing the same to be forged or counterfeit." Plain reading of the aforesaid charge shows the prosecution had put the appellant on notice that he was being accused of "attempt to sell/trafficking" in counterfeit notes. As discussed above, evidence on record unequivocally shows the appellant and co-accused were apprehended while carrying a large volume of counterfeit notes in a public place. Thus, transportation of counterfeit notes by the appellant is clearly established."

Learned Public Prosecutor supported the findings and/or conclusions arrived at so far as the interpretation of Section 489B of the Indian Penal Code is concerned, which were dealt with in the aforesaid two judgments and distinguished the judgments relied upon by the Appellants. It was emphasized seizure of huge volume of counterfeit currencies is bound to lay down a distinctive factual foundation, which would shift onus upon the accused to explain the possession of receipt of such huge volume of FICN.

In course of hearing learned Advocates while advancing their arguments referred to **same series of judgments** for validating their submissions. The said judgments with relevant paragraphs are set out hereunder:

In *Jiban Sasmal -versus- The State of West Bengal* reported in *1987 SCC OnLine Cal 114:*

> *"**3.** Along with one Rampada Samanta, Jiban Sasmal, the appellant herein, was put on trial before the learned Sessions Judge, Midnapore, on charges under s. 489C and s. 489B read with s. 109 of the Penal Code, 1860 on the allegation that on 5th August, 1983, at Argoraha, P.S. Ghatal, the appellant had in his possession five counterfeit currency notes of ten rupee denomination knowing the same to be counterfeit and intending to use the same as genuine and on the same day at about the same time and same place, the appellant Jiban Sasmal abetted Rampada Samanta to use as genuine two counterfeit currency notes of ten rupee denomination knowing the same to be counterfeit. The learned Sessions Judges, Midnapore, by his judgment and order dated 20th December, 1985 although was pleased to acquit the other accused, Rampada Samanta of the charges framed against him under ss. 489C and 489B of the Penal Code, 1860 but held the appellant, Jiban Sasmal, guilty of both the charges.*
>
> ***7**. Under the circumstances, the evidence led for and on behalf of the prosecution does not lend support to the case inasmuch as none of the witnesses examined on behalf of the prosecution, so far as the present appellant is concerned, had not indicated in any manner that the present appellant had either sold, bought or*

received from any person or otherwise trafficked in or used as genuine, any forged counterfeit currency notes or bank notes, knowing or having reason to believe the same as forged or counterfeit. Under the circumstances, in the absence of any evidence led on behalf of the prosecution to indicate that the present appellant had in any manner used the same counterfeit currency notes-the conviction of the appellant under s. 489B of the Penal Code, 1860 cannot, therefore, be sustained.

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

In *Sarvesh Pathak @ Kallu & Anr. -versus- State of West Bengal* reported in *2014 SCC OnLine Cal 18497:*

> *"The learned counsel appearing on behalf of the petitioners vehemently contended that on the face of the aforesaid materials, the framing of charge against the petitioners for the offence punishable under sections 489B IPC, is wholly illegal and liable to be quashed.*
>
> *From the side of the State, it is vehemently contended the facts of recovery of huge amount of fake currency notes from the possession of the petitioners, by itself leads to one and only one conclusion that they were possessing such huge quantity of fake currency notes intending to use the same as genuine. He also invited the attention of this court to the statement of these petitioners as well as to that of the other miscreants and vehemently contended that they have confessed that those fake notes were carried by them for the purpose of trafficking and utilizing the same as genuine. Heard the learned counsel appearing on behalf of the parties. Perused the materials collected during investigation against the petitioners.*
>
> *On the face of the allegation that the accused knowingly possessed forged counterfeit currency notes intending to use the same as genuine, the only offence made out is punishable under section 489C IPC, even without disputing the contention of the learned counsel for the State that possessions of huge counterfeit notes by the petitioners clearly indicates they possessed the same, not for any other purpose but for use the same as genuine. But by no stretch of imagination, on those materials, the case of*

the prosecution, they can also be charged under section 489B IPC, is not acceptable.

In this regard, the provision of section 489C IPC may be referred,

Whoever has in his possession any forged or counterfeit currency-note or bank- note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

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

There is no debate that an accused can be charged for criminal conspiracy to commit an offence, even when such offence was not actually committed. Since in this case, the prosecution has not been able to bring any materials against the petitioner, which can be legally translated into admissible evidence to support the case of conspiracy, no charge under section 120B IPC, can said to be made out. In the result, the impugned order so far that relates to rejection of petitioners prayer for discharge for the offence under section 489B/120B IPC stands quashed and this application is allowed and disposed of."

In *Chhotelal Thakur -versus- Union of India* reported in *2020 SCC OnLine Cal 2149:*

> *"2. The prosecution was initiated on the basis of a complaint filed by Prabir Kumar Bhadra, Senior Intelligence Officer, Directorate of Revenue Intelligence, Berhampore, Sub-Regional Unit. According to the prosecution case on the basis of a source information three persons were apprehended at Moregram More at NH 34 on 12-12-2013 at about 18: 30 hours and huge quantity of fake Indian currency Notes (FICN) were recovered from two of the accused persons namely, Umesh Sha and Maya Devi. It has been alleged that the value of the FICN so recovered after search was to the tune of Rs. 14,46,500/- which included denomination of Rs. 1000/- and Rs. 500/-. Specific allegations were made against Umesh Sha to the extent about 797 pieces of FICN of Rs. 1000/- denomination and 01 piece of FICN of Rs. 500/- denomination being recovered from a specially designed white coloured vest having concealed pockets and a pair of white colour shoes worn by the accused. The allegation against Maya Devi was recovery of 649 pieces of FICN of Rs. 1000/- denomination. The further allegation was that the above two accused persons namely Umesh Sha and Maya Devi were recruited by the other accused namely, Chhotelal Thakur. The complaint alleged specific role of each of the accused persons and prayed for taking cognizance of the offences alleged.*
>
> ***17**. The next issue which assumes importance in this case is regarding trafficking So as to attract the provisions of Section 489B of the IPC.*
>
> ***19**. In course of argument the main point which was canvassed by the rival parties related to the applicability of Section 489B of*

the IPC. According to the Ld. Counsel for the appellants there are no iota of evidence in order to support the charges under Section 489B of the IPC while the Ld. Advocate for the Union of India heavily relied upon the statement under Section 108 of the Customs Act and tried to impress the court that the said evidence is sufficient for convicting the accused appellants under Section 489B of the IPC.

29. *In Hoda Sk v. State of West Bengal, 2020 SCC OnLine Cal 1478, relying upon the Hon'ble Supreme Court, it has been held:-*

> *"**14**. Analysis of the aforesaid section shows whoever sells, buys or receives from any other person or otherwise traffics in or uses as genuine any forged or counterfeit currency notes or bank notes with the knowledge or reasonable belief that the said notes are forged or counterfeit is said to have committed the offence. Hence, sale, purchase or receipt from any person, or otherwise trafficking in counterfeit currency notes as genuine is a sine qua non of such offence. There is no evidence that the appellants had sold, received or used any counterfeit notes. However, it has been argued on behalf of the prosecution that the appellant was "otherwise trafficking in" counterfeit notes by knowingly transporting a large volume of forged currency not ferry ghat when they were apprehended. Hence, he had committed the offence notes in a bag through a public road and had reached the under section 489B of the Penal Code, 1860.*
>
> ***15.*** *What would the expression "otherwise traffics*

in" mean in the context of aforesaid offence?

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

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

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

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

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

30. *Having regard to the aforesaid proposition of law as also the evidence brought on record it can safely be concluded that the prosecution has failed to prove the charges under Section 489B of the IPC. However, the accused appellants have failed to dislodge the prosecution evidence so far as the seizure of*

the fake currency notes from their possession are concerned."

In *Hoda Sk. -versus- State of West Bengal* reported in *2020 SCC OnLine Cal 1478:*

> *"**14**. Analysis of the aforesaid section shows whoever sells, buys or receives from any other person or otherwise traffics in or uses as genuine any forged or counterfeit currency notes or bank notes with the knowledge or reasonable belief that the said notes are forged or counterfeit is said to have committed the offence. Hence, sale, purchase or receipt from any person, or otherwise trafficking in counterfeit currency notes as genuine is a sine qua non of such offence. There is no evidence that the appellants had sold, received or used any counterfeit notes. However, it has been argued on behalf of the prosecution that the appellant was "otherwise trafficking in" counterfeit notes by knowingly transporting a large volume of forged currency notes in a bag through a public road and had reached the ferry ghat when they were apprehended. Hence, he had committed the offence under section 489B of the Penal Code, 1860.*
>
> *19. Lexicographically the expression 'traffic' means transportation or movement of goods through a route or public road. Interpreting the expression "otherwise traffics in" in section 489B of the Penal Code, 1860 in that perspective, transportation of a large volume of fake currency notes with the knowledge or reasonable belief that such notes are forged would definitely fall within the penal ambit of section 489B IPC. However, in the present case no charge of transportation of fake currency notes has been framed. On the other hand, charge framed under the head of section 489B of the Penal Code, 1800 is as follows.-*

"Firstly, that you on 10.10.2013 at about 11:05 am at Dhuliyan ferry Ghat under P.S. Samserganj, Dist. Murshidabad you were found possessing fake Indian currency notes of Rs. 4,00,000/- consisting of 400 pieces of such notes of denomination of Rs. 1,000/- and also found possessing 597 pieces of FICN of denomination of Rs. 500/- with knowledge that the said currency notes are fake Indian Currency Notes and thereby committed the offence punishable u/s 489B of I.P.C. and which is within the cognizance of this court of sessions.""

In *Umashanker -versus- State of Chhattisgarh* reported in *(2001) 9 SCC 642:*

*"**4.** The gravamen of the charge against the appellant is that on 25-5-1990 at about 10 p.m. having purchased one kilogram of mango costing Rs 5 he paid a fake currency note of Rs 100 to PW 4 who doubted its genuineness. She showed it to PWs 2 and 7 who also said that it was a fake currency note. He was handed over to the police who recovered-13 more such fake currency notes from him. Further, some papers, refills of different colours and scissors were also recovered from his house. On these facts charges were framed against him under Sections 489-A, 489-B and 489-C IPC.*

***7.** Sections 489-A to 489-E deal with various economic offences in respect of forged or counterfeit currency notes or banknotes.*

The object of the legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency notes and banknotes. The currency notes are, in spite of growing accustomedness to the credit card system, still the backbone of the commercial transactions by the multitudes in our country. But these provisions are not meant to punish unwary possessors or users.

8. *A perusal of the provisions, extracted above, shows that mens rea of offences under Sections 489-B and 489-C is "knowing or having reason to believe the currency notes or banknotes are forged or counterfeit". Without the aforementioned 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 under Section 489-B IPC. So also possessing or even intending to use any forged or counterfeit currency notes or banknotes is not sufficient to make out a case under Section 489-C in the absence of the mens rea, noted above. No material is brought on record by the prosecution to show that the appellant a 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 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 b warranted under Section 4 of the Evidence Act. Further it is also not shown that any specific question with regard to the currency notes being fake or counterfeit was put to the appellant in his examination under*

Section 313 of the Criminal Procedure Code. On these facts, we have no option but to hold that the charges framed under Sections 489-B and 489-C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Sections 489-B and 489-C IPC and acquit him of the said charges (see: M. Mammutti v. State of Karnataka')."

In *M. Mammutti v. State of Karnataka* reported in *(1979) 4 SCC 723:*

".....Mr. Nettar submitted that once the appellant is found in possession of counterfeit notes, he must be presumed to know that the notes are counterfeit. If the notes were of such a nature that mere look at them would convince anybody that it was counterfeit such a presumption could reasonably be drawn. But the difficulty is that the prosecution has not put any specific question to the appellant in order to find out whether the accused knew that the notes were of such a nature. No such evidence has been led by the prosecution to prove the nature of the notes also. In these circumstances, it is impossible for us to sustain the conviction of the e appellant. For these reasons, there- fore, the appeal is allowed, conviction and sentences passed on the appellant are set aside, and the appellant is acquitted of the charges framed against him."

In *Md. Morful Haque v. The State of West Bengal* reported in 2017 SCC Online Cal 3380:

"...By virtue of the impugned judgment appellant was convicted for commissioning of the offence punishable under Section 489B

and 489C of the Penal Code, 1860 (hereinafter referred to as IPC) and was sentenced to suffer rigorous imprisonment for life and also to pay a fine of Rs. 5000/in default rigorous imprisonment for further one year for the offence under Section 489B IPC and was also sentenced to suffer rigorous imprisonment for 7 years and to pay fine of Rs. 2000 in default to suffer rigorous imprisonment for further six months for the offence punishable under Section 489C IPC……

2. *The prosecution case, in brief, is as follows:-*

On August 19, 2009, P.W. 2 received one information at English Bazar P.S. that one suspect possessing fake Indian currency notes is staying in the lobby in front of reception counter of hotel Pratapaditya located at Kanir More on station road under English Bazar P.S., District Malda. Accordingly, as per instruction of Inspector-in- charge English Bazar P.S.P.W. 1 along with ASI Bapi Chakraborty, constables Asit Saha (P.W. 4), Jakir Hossein (P.W. 5) and Dilwar Hossain (P.W. 3) left the P.S. to work out the information under direct supervision of Sri. Abhijit Banerjee, Dy. S.P. (D & T) Malda and reached at hotel Pratapaditya at about 13.35 hours. As per source indication they surrounded the appellant who was sitting in the lobby in front of the reception counter of hotel Pratapaditya possessing one a black coloured office bag on his lap. P.W. 1, then in presence of manager (P.W. 6), assistant manager (P.W. 7) and hotel boy (P.W. 8) of Hotel Pratapaditya searched the bag and found 300 pieces of Rs. 500 denomination fake Indian currency notes amounting of Rs. 1,50,000/and one mobile phone in that bag. He then seized those currency notes and the mobile phone under a seizure

list in presence of the above witnesses and obtained their signatures.

4. *P.W. 1, then started English Bazar P.S. case No. 550/09 dated August 19, 2009 against the appellant under Section 489B and 489C IPC and the case was endorsed to P.W. 10 for investigation who then investigated the same and thereafter it was investigated by P.W. 9 who then on completion of investigation submitted charge sheet being No. 257/10 dated April 5, 2010 under Section 489B/489C IPC against the appellant.*

9*. Mr. Basu relied upon the decisions in the matter of Umashanker v. State of Chattisgarh reported in (2001) 9 SCC 642, in the matter of State of Rajastha v. Gurmail Singh reported in (2005) 3 SCC 59, in the matter of Jiban Sasmal v. State of West Bengal reported in 1987 (11) CHN 430 and in the matter of All Hossain Dulal v. State of West Bengal reported in 1995 (II) CHN 448 in support of his submissions.*

24*. From the above provisions of law it was evident that without mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit notes or bank notes is not enough to constitute offence under section 489B IPC. So also possessing or even intending to use any forged or counterfeit currency notes or bank notes is not sufficient to make out a case under section 489C IPC in the absence of mens rea. Criminality of mind and/intention must be there to constitute*

the offence under those sections but on critical analysis of the evidence of the prosecution witnesses on record we do not find any such evidence to the effect that the appellant had the requisite mens rea.

25. Furthermore, from the questions put to the appellant during his examination under section 313 Cr.P.C., we find that not a single question was put to him with regard to the recovery of any counterfeit Indian currency notes from his possession and all the questions were astonishingly directed towards recovery of counterfeit Indian currency notes from one suspect. So, the incriminating material appearing on record against the appellant being not put to him during his examination under section 313 Cr.P.C. for offering any explanation cannot be used against him."

In *Sanskriti Jayantilal Salia v. State of Maharashtra and ors.* reported in *2018 SCC Online Bom 2969:*

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

offence under Section 489(B) in absence of any material to attribute such a knowledge on her part."

In *Md. Tousif v. State of West Bengal* reported in MANU/*WB/0282/2022*:

"4. The F.I.R. reveals that S.I. Sibayan Dey at Shibpur Police Station received a secret information that the accused would come to Fazir Bazar More on G.T. Road to deliver in the said area and apprehended the appellant at about 21.40 hours near Howrah Jute some FICN to his associates namely Sultan Ali and Barbadi. Accordingly, they laid a trap in the said area and apprehended the appellant at about 21.40 ours near Howrah Jute Mills Gate. After apprehension, S.I. Sibayan Dey conducted search observing all necessary formalities of the person of the accused and recovered 11 (eleven) numbers of FICN in denomination of Rs. 1,000/- and Rs. 500/- from the right side pocket of his pant. Seizure was made in presence of two local witnesses. After search, recovery of FICN and seizure of FICN the accused was arrested and brought to the police station. Sub-Inspector lodged a complaint before the Officer-in-Charge of Shibpur P.S.

10. *It is important to note that the said independent witnesses did not support the prosecution case relating to their presence at the place of occurrence when the accused person was searched and FICN was recovered from his possession. The above-named witnesses were not declared hostile by the prosecution. Therefore, it is safely concluded that the said two witnesses were not present at the place of occurrence at the time of search and seizure of FICN from the possession of the appellant. Thus, the claim of the prosecution that search and seizure was made in presence of*

independent witnesses appears to be false. Apart from the above-named two witnesses, prosecution examined one Sanjoy Mondal as P.W. 3 and Prabir Kumar Khan as P.W. 4. It is found from their evidence that they could not say the number of seized FICN from the possession of the appellant on 12th October, 2015. From the cross-examination of P.W. 4, it appears that he was examined by the Investigating Officer at the spot immediately after seizure. It is surprising to note that P.W. 4 was interrogated by the Investigating Officer before initiation of any case against the accused.

13. *Learned Public Prosecutor-in-Charge refers to a decision of the Division Bench of this Court in the case of Jubeda Chitrakar @ Jaba @ Zubeda Chitrakar & Ors. Vs. The State of West Bengal (CRA 562 of 2018 and CRA 592 of 2018, Judgment delivered on 22nd November, 2019). The Hon'ble Division Bench held that illegal possession of huge quantity of FICN cannot be treated "as those of mere dormant possession but are of active transportation of fake currency notes which would fall within the sweep of Section 489B of the Indian Penal Code. In holding so, it was stated that when the accused person is found carrying sizable quantity of fake currency notes on a public road, or otherwise, in a concealed manner, it would amount to active transportation of such currency note at the time when the accused person is apprehended. No explanation being offered by the accused when questioned under Section 313 of the Code of Criminal Procedure regarding the possession of the counterfeit currency, the burden of proof of facts within the knowledge of such person was held as not discharged by that person in terms of Section 106 of the Evidence Act. We completely agree with those judicial precedents and follow them, they being applicable on the facts of these*

appeals as we would elaborate hereunder".

14.*It is needless to say that judicial precedent is applicable under the facts and circumstances of a particular case. In the aforesaid decision delivered by the Division Bench of this Court it was held that the prosecution was able to prove the raid, interception and recovery of FICN on the basis of secret information. The prosecution also was able to prove the modality of the raid and recovered of huge quantity of FICN by adducing satisfactory evidence which was accepted by the Division Bench of this Court.*

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

In *Habibur Rahaman v. State of West Bengal* reported in *CRA 277 of 2016*:

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

….

When the appellant was found carrying a large volume of FICNs in a public place and he is unable to give any explanation for the said possession, one can safely held the appellant was knowingly trafficking in counterfeit currency notes. Section 489B of the Indian Penal Code makes selling, buying, receiving or trafficking in counterfeit currency notes culpable. In this regard, it may be apposite to refer to the charge framed against the appellant under section 489B of the Indian Penal Code which reads as follows:-

> *"that you on 4.11.2014 at township More on NH 34, under Baisnabnagar PS Dist Malda attempted to use/traffic forged or counterfeit Indian currency notes of Rs. 9,76,000/ of denomination of Rs. 1,000/- each (976 pieces) and Rs. 24,000/- of denomination of Rs. 500/- each (48 pieces) and totaling Rs 10,00,000/- knowing the same to be counterfeit and as per seizure list dated 4.11.2014, a copy of which was served to you, knowing the same to be forged or counterfeit."*

Plain reading of the aforesaid charge shows the prosecution had put the appellant on notice that he was being accused of "attempt to sell/trafficking" in counterfeit notes. As discussed above, evidence on record unequivocally shows the appellant and co-accused were apprehended while carrying a large volume of counterfeit notes in a public place. Thus, transportation of counterfeit notes by the appellant is clearly established.…"

In *Shabbir Sheikh & Ors. v. State of MP* reported in *ILR (2018) M.P 1712 (DB):*

*"**16**. After dealing with this whether the appellants had possessed the necessary mens rea, the second aspect is whether recovery of large number of counterfeit Currency notes are sufficient to establish that their possession amounts to an offence punishable under Section 489-B IPC. This section prohibits use of or trafficking with the counterfeit currency notes. Since the appellants had preferred to plead total denial, they had not cared to explain as to why such currency notes were in their possession though according to provisions contained in Section 106 of the Evidence Act the burden was on them to explain it. Their failure to do so raises an adverse inference against them and for such inference we conclude that their possession was not mere conscious possession, they meant either to use the counterfeit currency notes or transport them. In the case of Rayab Jusab Sama Vs. State of Gujarat [1999 Cri. L. J. 942] the Division Bench of Gujarat High Court has held the possession of large number of fake currency notes to be a case of active transportation of such notes. The observation made by the Division Bench in that case also substantiates the view formed by us. Para-10 of the report reads as under:*

> *"10. The learned counsel for the appellant contended that the prosecution had failed to prove the offence under S. 489-B of the Indian Penal Code even if it is held that the offence of possession the fake currency notes under S.489-C is proved. This submission is wholly erroneous because the evidence clearly establishes that the appellant was found carrying 250 fake currency notes on a public road in the city of Bhuj concealed in a Thela beneath cloth pieces as alleged in the charge. He was, therefore, transporting the said currency notes at the time when he was apprehended with them. Therefore, this is not a case of mere dormant possession, but, it*

is a case of active transportation of the currency notes, which would fall within the expression 'traffics in such currency notes.' Section 489-B of the Indian Penal Code clearly contemplates the cases where the counterfeit currency notes are received from any other person as also the cases where a person traffics in such currency notes knowing or having reason to believe the same to be forged or counterfeit. In our opinion, these ingredients of the offence under S.489-B are clearly established against the appellant. He was not only carrying 250 counterfeit currency notes on 9.4.1996 but he had concealed 101 other such counterfeit currency notes which he later discovered before the Panchas on 12.4.1996. It is, therefore, clearly established that the appellant was trafficking in these counterfeit currency notes which he had received from some source. The appellant is, therefore, rightly held guilty of the offences under Ss. 489-B and 489-C of the Indian Penal Code by the trial Court and we are in complete agreement with the reasoning adopted by the trial Court for reaching its conclusions on this count. We are not concerned in this appeal, as noted above, with the offences under the Passport Act for which the accused was acquitted."

***18**. In view of the aforesaid facts and as per the provision of Section 106 of the Evidence Act, burden of proof of facts especially within the knowledge of any person is upon that person. In the present case no explanation has been offered by the accused persons under Section 313 of CrPC as to how they were in possession of counterfeit currency or in respect of phone calls inspite of categorical questions put to them under Section 313. No defence has been put forth by the accused persons that notes were received in usual course of business.*

> ***19***. *The judgments relied by the learned counsel for the appellants are distinguishable in the facts of the present case as in those cases, the prosecution has not proved mens rea on the part of the accused persons and no question under Section 313 CrPC was put to the accused persons about currency notes being fake or counterfeit. In the present case, there was specific question put to the accused persons under Section 313 of CrPC."*

In *Rayab Jasub Sama v. The State of Gujarat* reported in *1998 SCC Online Guj 225:*

> ***"5.*** *It was then contended that since the appellant has been acquitted of the charges under the Passport Act of having illegally entered and come back from Pakistan bringing the fake currency notes, the very basis of the prosecution story is not established. As can be seen from the charges which were levelled against the appellant, the charge of his carrying the fake currency notes on a public road near the Fire Station in the city of Bhuj concealed in a "Thela" and his having discovered the other fake currency notes from a place where they were hidden by him and possessing the fake currency notes with an intention to use them as genuine is entirely a distinct and separate charge for the offences under Section 489-B and 489-C of the Penal Code, 1860 and it cannot be said that because the prosecution has not been able to establish his entry into Pakistan and return therefrom contrary to the provisions of the Passport Act, the basis for the aforesaid substantive and distinct charge for the offences under Sections 489B and 489C is gone. The offences under the Passport Act are entirely distinct offences from the offences under Sections 489-B and 489-C of the Penal Code, 1860 and, therefore, the submission of the learned Counsel is misconceived.*

10. *The learned Counsel for the appellant contended that the prosecution had failed to prove the offence under Section 489-B of the Penal Code, 1860, even if it is held that the offence of possession of the fake currency notes under Section 489-C is proved. This submission is wholly erroneous because the evidence clearly establishes that the appellant was found carrying 250 fake currency notes on a public road in the city of Bhuj concealed in a Thela beneath cloth pieces as alleged in the charge. He was, therefore, transporting the said currency notes at the time when he was apprehended with them. Therefore, this is not a case of mere dormant possession, but, it is a case of active transportation of the currency notes, which would fall within the expression 'traffics in such currency notes'. Section 489-B of the Penal Code, 1860 clearly contemplates the cases where the counterfeit currency-notes are received from any other person as also the cases where a person traffics in such currency notes knowing or having reason to believe the same to be forged or counterfeit. In our opinion, these ingredients of the offence under Section 489-B are clearly established against the appellant. He was not only carrying 250 counterfeit currency notes on 9-4-1996 but he had concealed 101 other such counterfeit currency notes which he later discovered before the Panchas on 12-4-1996. It is, therefore, clearly established that the appellant was trafficking in these counterfeit currency notes which he had received from some source. The appellant is, therefore, rightly held guilty of the offences under Section 489-B and 489-C of the Penal Code, 1860 by the Trial Court and we are in complete agreement with the reasoning adopted by the Trial Court for reaching its conclusions on this count. We are not concerned in this appeal, as noted above, with the offence under the Passport Act for which the accused was acquitted. It was finally*

submitted by the learned Counsel appearing for the appellant that the appellant is having three daughters and he was poor person and, therefore, the sentence of 10 years' rigorous imprisonment was a harsh one. The offences of counterfeiting currency notes for using them as genuine, trafficking in them and possessing them are offences of grave nature and cannot be lightly viewed. Such offences vitiate the economy of the country and are a matter of serious concern. They are rarely detected and all that is ultimately proved is perhaps the tip of an iceberg. The offence under Section 489-B prescribes imprisonment for life as the maximum punishment which itself shows the seriousness with which the Legislature has viewed the offence. Having regard to the facts and circumstances of the case, we do not find that the sentence that is imposed is disproportionately severe as submitting by the learned Counsel. We find it to be a sentence which has been properly imposed and which is the minimum which should be imposed in this case. The appeal is, therefore, dismissed."

There are other relevant judgments which were cited by the learned Advocates representing the different parties, which are pertinent and as such they are set out hereunder.

In *Mohan Lal v. State of Rajasthan* reported in *(2015) 6 SCC 222*:

*"**16.** Coming to the context of Section 18 of the NDPS Act, it would have a reference to the concept of conscious possession. The legislature while enacting the said law was absolutely aware of the said element and that the word "possession" refers to a mental state as is noticeable from the language employed in Section 35 of the NDPS Act. The said provision reads as follows:*

*"**35. Presumption of culpable mental state**.—(1) In any prosecution for an offence under this Act, which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*

Explanation.—In this section 'culpable mental state' includes intention, motive, knowledge, of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability."

***20.** Having noted the approach in the aforesaid two cases, we may take note of the decision in Dharampal Singh v. State of Punjab [(2010) 9 SCC 608 : (2010) 3 SCC (Cri) 1431] , when the Court was referring to the expression "possession" in the context of Section 18 of the NDPS Act. In the said case opium was found in the dickey of the car when the appellant was driving himself and the contention was canvassed that the said act would not establish conscious possession. In support of the said submission, reliance was placed on Avtar Singh v. State of Punjab [(2002) 7 SCC 419 : 2002 SCC (Cri) 1769] and Sorabkhan Gandhkhan Pathan v. State of Gujarat [(2004) 13 SCC 608 : (2006) 1 SCC (Cri) 508] . The Court, repelling the argument, opined thus : (Dharampal Singh case [(2010) 9 SCC 608 : (2010) 3 SCC (Cri) 1431] , SCC pp. 613-15, paras 12-13 & 15-16)*

"12. We do not find any substance in this submission of the learned counsel. The appellant Dharampal Singh was found driving the car whereas appellant Major Singh was travelling with him and

from the dickey of the car 65 kg of opium was recovered. The vehicle driven by the appellant Dharampal Singh and occupied by the appellant Major Singh is not a public transport vehicle. It is trite that to bring the offence within the mischief of Section 18 of the Act possession has to be conscious possession. The initial burden of proof of possession lies on the prosecution and once it is discharged legal burden would shift on the accused. Standard of proof expected from the prosecution is to prove possession beyond all reasonable doubt but what is required to prove innocence by the accused would be preponderance of probability. Once the plea of the accused is found probable, discharge of initial burden by the prosecution will not nail him with offence. Offences under the Act being more serious in nature higher degree of proof is required to convict an accused.

13. It needs no emphasis that the expression 'possession' is not capable of precise and completely logical definition of universal application in the context of all the statutes. 'Possession' is a polymorphous word and cannot be uniformly applied, it assumes different colour in different context. In the context of Section 18 of the Act once possession is established, the accused who claims that it was not a conscious possession has to establish it because it is within his special knowledge.

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15. From a plain reading of the aforesaid it is evident that it creates a legal fiction and presumes the person in possession of illicit articles to have committed the offence in case he fails to account for the possession satisfactorily. Possession is a mental state and Section 35 of the Act gives statutory recognition to culpable mental state. It includes knowledge of fact. The possession, therefore, has to

be understood in the context thereof and when tested on this anvil, we find that the appellants have not been able to satisfactorily account for the possession of opium.

16. Once possession is established the court can presume that the accused had culpable mental state and have committed the offence. In somewhat similar facts this Court had the occasion to consider this question in Madan Lal v. State of H.P. [(2003) 7 SCC 465 : 2003 SCC (Cri) 1664] , wherein it has been held as follows : (SCC p. 472, paras 26-27)

'26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.

27. In the factual scenario of the present case, not only possession but conscious possession has been established. It has not been shown by the accused-appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act.'"

21. *From the aforesaid exposition of law it is quite vivid that the term "possession" for the purpose of Section 18 of the NDPS Act could mean physical possession with animus, custody or dominion over the prohibited substance with animus or even exercise of dominion and control as a result of concealment. The animus and the mental intent which is the primary and significant element to show and establish possession. Further, personal knowledge as to the existence of the "chattel" i.e. the illegal substance at a particular location or site, at a relevant time and the intention based upon the knowledge, would*

constitute the unique relationship and manifest possession. In such a situation, presence and existence of possession could be justified, for the intention is to exercise right over the substance or the chattel and to act as the owner to the exclusion of others.

22. *In the case at hand, the appellant, we hold, had the requisite degree of control when, even if the said narcotic substance was not within his physical control at that moment. To give an example, a person can conceal prohibited narcotic substance in a property and move out thereafter. The said person because of necessary animus would be in possession of the said substance even if he is not, at the moment, in physical control. The situation cannot be viewed differently when a person conceals and hides the prohibited narcotic substance in a public space. In the second category of cases, the person would be in possession because he has the necessary animus and the intention to retain control and dominion. As the factual matrix would exposit, the appellant-accused was in possession of the prohibited or contraband substance which was an offence when the NDPS Act came into force. Hence, he remained in possession of the prohibited substance and as such the offence under Section 18 of the NDPS Act is made out. The possessory right would continue unless there is something to show that he had been divested of it. On the contrary, as we find, he led to discovery of the substance which was within his special knowledge, and, therefore, there can be no scintilla of doubt that he was in possession of the contraband article when the NDPS Act came into force. To clarify the situation, we may give an example. A person had stored 100 bags of opium prior to the coming into force of the NDPS Act and after coming into force, the recovery of the possessed article takes place. Certainly, on the date of recovery, he is in possession of the contraband article and possession itself is an offence. In such a situation, the appellant-accused cannot take the*

plea that he had committed an offence under Section 9 of the Opium Act and not under Section 18 of the NDPS Act.

24. *In the instant case, Article 20(1) would have no application. The actus of possession is not punishable with retrospective effect. No offence is created under Section 18 of the NDPS Act with retrospective effect. What is punishable is possession of the prohibited article on or after a particular date when the statute was enacted, creating the offence or enhancing the punishment. Therefore, if a person is in possession of the banned substance on the date when the NDPS Act was enforced, he would commit the offence, for on the said date he would have both the "corpus" and "animus" necessary in law."*

In *Ashu Mondal v. State of West Bengal*, reported in 2012 SCC OnLine Cal 12428:

"1. *The challenge in this appeal is to the judgment and order dated 29.04.2010 and 03.05.2010 passed by the learned Additional Sessions Judge, Fast Track Court No. VIII, South 24-Parganas at Alipore in Sessions Trial No. 5(5) of 2008, corresponding to Sessions Case No. 184(4) of 2008, thereby convicting the appellant Ashu Mondal alias Ashu Khamaru for committing offence punishable under Sections 489-B/489-C of the Penal Code, 1860 and sentencing him to suffer rigorous imprisonment for seven years and to pay fine of Rs. 5,000/- under Section 489-B of the Penal Code, 1860 and further sentencing him to suffer rigorous imprisonment for five years and to pay fine of Rs. 2,000/- under Section 489-C of the Penal Code, 1860. On 09.02.2008, Debobrata Sen, S.I. of Behala Police Station, received a source information that one young man, strong built medium height black complexion, wearing ganji and pant, was loitering at Parnashree Bus Stand area suspiciously and possessing huge*

number of counterfeit currency notes with an intention to use the same as genuine in the local market. Debobrata Sen, S.I., informed the Officer-in-Charge of Behala Police Station and was instructed to proceed towards the Parnashree Bus Stand to work out the said information. On receiving instruction from the Officer-in-Charge, Behala Police Station, S.I., Debobrata Sen along with other police personnel had been to Parnashree Bus Stand. Before leaving the Police Station he asked the Duty Officer of the said Police Station to make a G.D. Entry. On the way to Parnashree Bus Stand, S.I. Debobrata Sen met two persons, disclosed the facts and action to be taken to them and asked them to be witnesses to the entire process. They voluntarily agreed to the proposal. At about 14.45 hours, S.I. Debobrata Sen and other officials together with those two persons reached near the Parnashree Bus Stand and found a man tried to hide himself behind the standing bus seeing the police party approaching towards him. He was chased and caught. On interrogation, he disclosed his identity and on queries he admitted that he possessed a bunch of counterfeit currency notes, which he wanted to use in the local market as genuine currency notes knowing fully well that those were counterfeit. He was searched thoroughly and 20 numbers of 1000 rupee notes, 3 numbers of 500 rupee notes and 24 numbers of 100 rupee notes were seized from the right side pocket of his trouser. Those were seized under seizure list in presence of witnesses and after seizure, the seized currency notes were kept in an envelope, which was sealed and labelled properly. The appellant was arrested and taken to the Police Station together with the seized articles. A written First Information Report was lodged by the S.I. Debobrata Sen stating the entire episode in the Behala Police Station. On the basis of such First Information Report, Behala Police Station Case No. 40 of 2008, dated 09.02.2008 under Sections 489-B and 489-C of the Penal Code, 1860 was started. The case was

investigated into and ended in a charge-sheet against the appellant for prosecuting him under Sections 489-B and 489-C of the Penal Code, 1860. The appellant was arrayed to face the above charges under Sections 489-B and 489-C of the Penal Code, 1860. He pleaded not guilty and, accordingly, the trial commenced. As many as nine witnesses were examined on behalf of the prosecution. Some documents were ad mitted into evidences, which were marked Exbts. 1 to 7/1. The seized 20 numbers of 1000 rupee notes, 3 numbers of 500 rupee notes and 24 numbers of 100 rupee notes were also produced in Court, identified by the witnesses and marked material Exbts. I, II and III collectively. No evidence, oral or documentary, was adduced on behalf of the defence. The learned Trial Court upon consideration of the evidence recorded by it and the documents as well as material exhibits placed before it, came to a finding that the appellant was guilty of offence under Sections 489-B and 489-C of the Penal Code, 1860. Accordingly, the judgment and order of sentence impugned was passed, which has been assailed by the appellant on the following grounds:

It was contended by Mr. Majumder, learned advocate for the appellant that mere possession of counterfeit notes is not sufficient to uphold the charge framed against the accused under Sections 489-B and 489-C of the Penal Code, 1860. In support of this contention Mr. Majumder referred to a decision of this Court in Jiban Sasmal v. The State of West Bengal, reported 1987 (II) CHN 430. It is admitted position of law that mere possession does not necessarily indicate that there was mal-intention or intention to use. Intention to use the counterfeit currency notes, being an essential ingredient of the offence under Sections 489-B and 489-C of the Penal Code, 1860, prosecution is, no doubt, saddled with the liability to establish such intention or attempt on the part of the appellant/accused to use such counterfeit

notes. On careful scrutiny of the evidence on record, I find that there was no evidence, whatsoever, which suggests that the appellant had made any effort to use the counterfeit currency notes. Since evidence on that issue is lacking manifestly, I am of the opinion that the conviction of the appellant under Section 489-B of the Penal Code, 1860 cannot be sustained."

In *Roney Dubey v. State of West Bengal,* reported in *2007 SCC OnLine Cal 549*:

"2. Briefly stated the of the prosecution, appearing from the FIR, lodged by Sub-Inspector Debashish Bose, Officer-in-Charge of New Jalpaiguri Outpost is as follows:

On 21st February, 2001, at 2.25 hours acting on a source information the de facfo-complainant alongwith Sub-Inspector B. Roy, Sub-Inspector S.K. Bhattacharjee, Sisir Sinha, Nripen Roy and Subir Sen accompanied by the witnesses Shri Hari Dewan and Shri Ganesh Roy reached the Dewan Hotel and raided the room No. 14 thereof where the convict was found, who upon interrogation disclosed that he had come from Delhi and had been staying at Dewan Hotel since 16th February, 2001. On search, three fifty rupees denomination notes of the Indian currency, believed to be counterfeit, were recovered from the pocket of his underwear. On thorough search, one xerox machine, one voltage stabiliser together with accessories, one gold star multipurpose office paper packet containing 115 pieces of white papers and one used white paper with some impression of the Indian currency were seized from the room No. 14 in the presence of the witnesses. The accused is alleged to have stated on interrogation that he copied the Indian currency notes of fifty rupees denomination from the coloured xerox machine for the purpose of using the same as genuine. It was, on that basis,

complained that the accused possessed fake counterfeit currency notes of Rs. 50/- each aggregating to a sum of Rs. 150/-.

9. *There is no material on the record to show that the xerox machine, the voltage stabiliser, the blank papers and the paper containing some impression of the Indian currency note belonged to the convict. Mere fact that they were seized from room No. 14 is not enough. Therefore, the question of the convict becoming liable for possession of the aforesaid articles does not arise.*

10. *Even assuming for the sake of argument that these articles were seized from the possession of the appellant that would not without anything more justify a finding that the appellant is guilty either under section 498A or under section 489D/489E of IPC. There is no evidence on the record to suggest that the appellant indulged in the act of counterfeiting any currency note or knowingly performed any part of the process of counterfeiting any currency note. Therefore the charge under section 489A was not at all proved.*

16. *In the instant case, no material was brought on record by the prosecution to show that the appellant has the requisite mens rea. On the facts of this case the presumption drawn by the learned Trial Court is not warranted under section 4 of the Evidence Act."*

In *Abdul Rahiman v. State of Kerala* reported in *2014 SCC OnLine Ker 23291:*

"18. *So it is clear from the above decisions that in order to attract an offence under section 489 B or C of the Penal Code, 1860, mere possession of the counterfeit or fake notes alone is not sufficient but it must be further proved that he had the intention to use the same as genuine notes and he had reason to belief that the note found to be in possession was a fake or counterfeit currency. It is also clear from the above decision that it is very difficult to adduce direct evidence on*

this aspect to ascertain the mens rea or intention of the accused and the same can be inferred from he circumstances and conduct of the accused and if he is not able to give any satisfactory explanation for coming into possession of such articles, then it may give an inference that he had the intention or knowledge as contemplated under Section 489 B and C of the Penal Code, 1860."

In *Sou. Bharti v. State of Maharashtra* reported in *2002 SCC OnLine Bom 1373:*

*"**2.** The prosecution case in brief is that on 14-11-1998 accused/appellant No. 1-Bharti had gone to Sakkardara Market for shopping and in the process of shopping at different places, she purchased certain articles and gave counterfeit currency notes of the denomination of Rs. 500 as also Rs. 50. It appears that appellant No. 1-Bharti was detained in the market by the public and it was being said that appellant No. 1 -Bharti was possessing fake currency notes. In the meantime, police had been informed and the police party headed by PSI Sapkale arrived there. In the presence of panchas, the search of the appellant No. 1-Bharti was conducted and on her search, counterfeit currency notes of Rs. 500 denomination and two counterfeit currency notes of Rs. 50 denomination were recovered. Appellant No. 1-Bharti then took the police to Raghute Bhavan, Dighori, Nagpur where she was staying along with the other co-accused. Appellant No. 2 is stated to be the second wife of appellant No. 3, first wife being the appellant No. 1. During his search, 21 onesided printed notes of Rs. 50 denomination, 8 one sided printed notes of Rs. 500 denomination and 4 notes of Rs. 100 denomination, blank papers for printing notes one colour computerised xerox machine; printing kit etc. were recovered. Appellant No. 2 was present in the house during the said search. Appellant No. 3 had*

absconded and he was arrested only on 24-3-1999 in some other offence and was arrested in connection with the case under consideration on 27-3-1999. At his instance, 48 fake currency notes of Rs. 500 denomination were recovered from his house after opening the lock of a cupboard and from under an idol kept there for worship.

12. *Coming to the recovery from the house of the accused/appellants, all the appellants in their statement under S. 313, Cr. P.C. have admitted that the house was taken on lease by the appellant No. 3 who is husband of appellants 1 and 2. The prosecution case is that all the accused were staying in the suit house though, according to the accused, the said premises were used only for the purpose of business. There is, however, no denial of the fact that the house from where counterfeit currency notes and other materials were recovered, was in pos session of the appellants. Accused/appellant No. 1 had taken the police party and panchas to the said house. Accused No. 2 was present inside the said house. The prosecution has examined witnesses P.W. 4 Bandu, P.W. 5 Shakuntala and P.W. 6 Manda. I have already pointed out that P.W. 6 Manda has not supported the prosecution case and the observation made by me in respect of her deposition would apply with equal force in relation to the recovery from the house in respect of which she was one of the panchas."*

In *Mukhtarul Islam @ Suman v. State of West Bengal* reported in *2014 SCC OnLine Cal 6838:*

"13*. Section 489B of the IPC speaks about the use of forged or counterfeit notes or bank notes as genuine with knowledge or having reason to believe the same to be forged or counterfeit. Similarly, 489C is attracted when a person is in possession of forged or counterfeit currency notes or bank notes having the knowledge or a reason to*

believe that they are forged or counterfeit. No presumption can be drawn about the mens rea of the accused as held in M. Mammutti (supra) and Umashanker (supra). In fact, the conduct of the accused is to the contrary. Had the accused the knowledge or any reason to believe that the currency notes were forged or counterfeit he would not have continued sitting in the bank till the police arrived there."

In *Abu Sajeed @ Sayed & Anr. V. State of West Bengal* reported in *2014 SCC Online Cal 19255*:

"…

It appears from the said report that the said currency notes seized from the appellants are fake. Accordingly it is clear that the appellants were in conscious possession of FICNs which were seized from their possession.

Hence the conviction of the appellants under section 489C of the Penal Code, 1860 is established.

I, however, do not find any evidence on record to show that the appellants were buying, selling or using as genuine FICNs which were seized from their possession. As there is nothing on record to establish that the appellants were indulging in such activities the ingredients of the offence under section 489B of the Penal Code, 1860 cannot be said to be established.

In the aforesaid factual matrix conviction of the appellants under section 489B of the Penal Code, 1860 is unmerited and liable to be set aside. Conviction and sentence of the appellants under section 489C of the Penal Code, 1860 is upheld. Conviction and sentence of the appellants under section 489B of the Penal Code, 1860 is set aside."

In *Sunder Lal v. State Govt. of NCT of Delhi* reported in *2018 SCC Online Del 9079:*

> ***"10.*** *Settled position is that mere possession of a counterfeit currency note is not enough to establish the guilt; any individual in the usual course of business may come across a fake currency note. Nothing has come on record to show that the appellant had reasons to believe that the note used by him was counterfeit. Presumption of knowledge from mere possession can only be drawn if the notes were apparently counterfeit. In the present case, currency notes in the appellant's possession were not of such nature as could be recognised as counterfeit by having a look at them. The prosecution is required to establish the circumstances clearly and irresistibly that the appellant had reason to believe that the currency notes in his possession were forged or fake. The appellant, an uneducated man, in the instant case is not expected to believe that the currency notes in his possession were fake or forged. When the complainant apprised him that the currency note produced by him was forged, he was rather under fear; he did not try to flee the spot and suffered beatings at the hands of the shopkeepers".*

In *Mahendrasingh Khetsing Rao v. State of Karnataka reported in 2014 SCC Online Kar 12828:*

> ***"22.*** *It is further observed by the learned Sessions Judge at paragraph 27 that:*
>
> *"MO-1 to 10 are all of same number noted as '8MT - 084858'. There is evidence that accused was working in cloth shop at Hubli and he is a businessman. In such of his day to day business he comes to know about the genuine and fake currencies. It must be*

within his knowledge that each currency will have a different numbers. When he has used 10 fake notes of same number, it is seen that with all knowledge and intention he has used the fake notes as genuine one. Evidence available on record further goes to show that the accused was in the habit of putting money into the disputed account of Bhagwan Singh of Syndicate Bank, Shriramnagar Branch, Gangavati. It goes to indicate that in a slow and casual manner the accused was using the fake notes as genuine one. These are all incriminating circumstances arising out of the prosecution evidence and from such evidence it can be observed here that the accused with full knowledge and intention has used the fake notes as genuine one".

***26**. Added to the above said circumstances, it is an undisputed fact by the prosecution itself that this man was working in the Textile Shop belonging to CW-9 - Suresh Kumar S/o Giridharji Rajpurohith. It is there in the evidence of Mr. Gopalrao - PW-4 that, on the day of the incident he has not called the owner of the said Jayashree Textiles. But he further says that somebody came from the said shop and told that the accused a worker in their shop, requested to release him. It is to be noted here that the said CW-9 - Suresh Kumar has not been examined before the Court by the prosecution in order to ascertain what is the education qualification of the accused and whether the accused was so intelligent man who can understand the different languages and English numericals in order to come to a definite conclusion that the accused on the basis of the common serial numbers on the fake currency notes could have identified those currency notes as fake currency notes and in spite of that he was in conscious possession of them. In the absence of such clinching evidence before the Court, in my opinion, it cannot be said that the prosecution has proved the guilt of the accused beyond reasonable*

doubt. The ingredients referred to above under Section 489-B of Cr.P.C. have not been satisfactorily established by the prosecution. Hence, the appeal deserves to be allowed."

Taking into account the submissions on behalf of the learned Advocates of the respective parties including the learned Public Prosecutor appearing on behalf of the State, as well as the relevant facts and law asserted by each of the parties, this Court is of the opinion that an analysis of the relevant precedents relied upon by the parties is required before arriving at the conclusion in respect to the *terms of reference* to be decided by this Court.

In Jiban Sasmal -versus- State of West Bengal reported in 1987 SCC OnLine Cal 114, the facts of the case involved five counterfeit currency notes of Rs. 10 denomination, and on the basis of the facts of the said case, this Hon'ble Court was pleased to hold that in absence of any evidence adduced by the prosecution to demonstrate that the appellant had in any manner used the said counterfeit currency notes, the conviction of the appellant under Section 489B of the Indian Penal Code could not be sustained.

In Sarvesh Pathak @ Kallu & Anr. -versus- State of West Bengal reported in 2014 SCC OnLine Cal 18497, the subject matter of challenge in the revisional application was in respect of an order refusing discharge relating to offences punishable under Sections 489B/489C of the Indian Penal Code. According to the facts of the said case, three accused persons from whom fake Indian currency notes of Rs. 4.80 lakhs were recovered were arrested, and on subsequent disclosure Rs. 8 lakhs of fake currencies were further recovered

from other persons, who were arrested. Consequently, charge-sheet was submitted on completion of investigation under Sections 489B/489C/120B of the Indian Penal Code. The revisionist prayed for discharge under Section 227 of the Code of Criminal Procedure with respect to the offence punishable under Section 489B/120B of the Indian Penal Code. The Hon'ble Court while dealing with the documents relied upon by the prosecution observed that the seizure of fake currency was from the possession of the accused persons and as such the offence under Section 489C of the Indian Penal Code was made out. However, the Court proceeded to observe that there must be some material to show that the fake notes were actually used or trafficked, meaning thereby there was a transaction involving those forged notes. The Court also took into consideration that a charge of criminal conspiracy could not be inferred from the materials collected by the investigating agency and further no materials was available as legally admissible evidence to support a case under Section 120B of the Indian Penal Code. Thus, the Court proceeded to quash the charges under Section 489B/120B of the Indian Penal Code.

In Chhotelal Thakur -versus- Union of India reported in 2020 SCC OnLine Cal 2149, the prosecution case was in respect of recovery of Rs. 14,46,500/- which included seven hundred and ninety-seven pieces of FICN of Rs. 1,000/- denomination and one piece of FICN of Rs. 500/- denomination. In this case, the accused was acquitted of the charges under Section 489B of the Indian Penal Code as the only evidence which was available with the prosecution, and relied upon in the trial, was a statement under Section 108 of the Customs Act.

The prosecution relied upon the judgments of Noor Aga -versus- State of Punjab reported in (2008) 16 SCC 417, and Nirmal Singh Pehlwan -versus- Inspector Customs reported in (2011) 12 SCC 298. Having considered that an evidence under Section 108 of the Customs Act is a very weak piece of evidence without any corroborative material supporting the same, the Court proceeded to acquit the accused under Section 489B of the Indian Penal Code though the conviction under Section 489C of the Indian Penal Code was maintained.

In Hoda Sk. -versus- State of West Bengal reported in 2020 SCC OnLine Cal 1478, the facts of the case related to recovery of one hundred FICN of Rs. 1,000/- denomination in 4 bundles, aggregating to an amount of Rs. 4 lakhs. The trial Court convicted the appellant under Section 489B of the Indian Penal Code as also under Section 489C of the Indian Penal Code. In the said case, the appellate Court observed that at the time of framing of charges, the appellant was not called upon to answer the charge of "otherwise traffics in" – in respect of the FICN, which was being transported through public thoroughfare for commercial use. Thus, there was no scope for the trial Court to convict the appellant under Section 489B of the Indian Penal Code as the substance of the charges were missing throughout the trial and the same obviously would prejudice the accused thereby causing failure of justice.

In Uma Shankar -versus- State of Chhattisgarh reported in (2001) 9 SCC 642, the Hon'ble Supreme Court while dealing with an appeal in respect of an order of conviction under Sections 489B and 489C of the Indian Penal Code, not

only took into account the absence of *mens rea* in respect of selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency notes or bank notes, but also took into account the age of the appellant and the fact that at the stage of Section 313 of the Cr.P.C. , the trial Court did not ask any specific question with regard to the currency notes being fake or counterfeit, and on such score acquitted the appellant under Sections 489B and 489C of the Indian Penal Code.

In M. Mammutti -versus- State of Karnataka reported in (1979) 4 SCC 723, the Hon'ble Supreme Court while deciding an appeal in respect of conviction under Section 489B and 489C, acquitted the appellant. The main grounds on which the Hon'ble Court considered the issue of acquittal was that there was no evidence of any witness to show that the counterfeit notes were of such nature or description that a mere glance at them would convince any person of average intelligence that the same was a counterfeit note. In any event, the accused was also not examined on such incriminating circumstance relating to counterfeit currency under Section 342 of Criminal Procedure Code, 1898 (Section 313 of CrPC, 1973).

In Md. Morful Haque -versus- State of West Bengal reported in 2017 SCC OnLine Cal 3380, the subject matter of the case related to an order of conviction under Section 489B and 489C of the Indian Penal Code, wherein the prosecution case related to seizure of 300 pieces of Rs. 500/- denomination FICN amounting to Rs. 1,50,000/- and a mobile phone in the bag of the

appellant. The learned trial Court on an appreciation of the evidence arrived at an order of conviction. However, the appellate Court after considering the materials placed before the trial Court observed that the prosecution failed to adduce any evidence on *mens rea* relating to selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged counterfeit note or bank notes, which diluted the charges under Section 489B of the Indian Penal Code. Further, there were no materials reflecting possession or even intention to use any forged or counterfeit notes or bank notes. The Court held that criminality of mind and intention must be proven to constitute an offence under the sections for which charges were framed. On a critical analysis of the evidence of the prosecution witnesses on record, it was held that relevant ingredients of the charges framed were wanting. Again, it has been categorially recorded that from the questions which were confronted to the appellant during his examination under Section 313 Cr.PC, not even a single question was asked to him regarding the recovery of any counterfeit Indian currency notes from his possession. Thus, the appellant did not have any opportunity to offer any explanation. Consequently, the Court allowed the appeal, thereby, setting aside the order of conviction and sentence.

In Sanskriti Jayantilal Salia -versus- State of Maharashtra and others reported in 2018 SCC OnLine Bom 2969, the Hon'ble Court, while adjudicating the materials collected by the prosecution at the time of submission of the charge-sheet, referred to the decisions of the Hon'ble Supreme Court in Uma Shanker (supra) and M. Mammutti (supra). After taking into account the

aforesaid two judgments, along with other precedents of the Bombay High Court, it was concluded that mere possession of counterfeit notes is not punishable under law and it must be established by prosecution that possession was within the knowledge of the accused that the said currency notes are fake or counterfeit. In absence of such evidence brought on record by the prosecution as a part of the charge-sheet to demonstrate possession of alleged counterfeit currency notes by the petitioner while being deposited by her in the bank, the Court held that she could not be tried for an offence under section 489B of the Indian Penal Code. Consequently, the Hon'ble Court by exercising its jurisdiction under Section 482 of the Cr.P.C. quashed the proceeding.

Md. Tousif @ Gara @ Tinku -versus- State of West Bengal (CRA 163 of 2019), the appellate Court was considering an appeal against an order of conviction under Sections 489B and 489C of the Indian Penal Code. The prosecution case related to seizure of eleven FICN of Rs 1000/- and Rs 500 denomination from the right side pocket of the appellant. While appreciating the evidence, the appellate Court took into consideration the judgment of Jubeda Chitrakar (supra). It was held in the said case from the factual circumstances revealed during trial that the relevant GD entry was not produced before the Court, the independent witnesses did not support the prosecution case, the raiding party did not offer themselves for being searched by the accused and the recovery of FICN occurred at a point of time when the accused was in police custody. Therefore, relying upon such factual circumstances, the Court was of the view

that the principles laid down in Jubeda Chitrakar (supra) was not applicable to the facts and circumstances of the said appeal and as such acquitted the appellant.

In Mohanlal v. State of Rajasthan reported in (2015) 6 SCC 222, the appellant emphasized on issues relating to "possession", "consciousness possession" and drew the attention of the Court to paragraphs 14 and 15 of the said judgment. Although the theoretical aspect of possession has been dealt with in detail, the principles laid down in the said case is distinguishable as the facts of the said case relate to NDPS Act, wherein Sections 35 and 54 of the NDPS Act are available for raising presumption of culpable mental state and the burden of proof. Thus, the judgment is not applicable in respect of the instant terms of reference.

In Ashu Mondal alias Ashu Khamaru reported in 2012 SCC OnLine Cal 12428, while dealing with an appeal against an order of conviction under Section 489B and 489C of the Indian Penal Code, the Court acquitted the appellant under Section 489B of the Indian Penal Code. The appellate Court relied upon the judgment of Jiban Sasmal (supra), specifically observing that mere possession does not necessarily indicate that there was a *mala fide* intention to use the counterfeit notes and the prosecution is under an obligation to establish such intention or attempt on the part of the appellant to use such counterfeit notes.

In Roney Dubey -versus- State of West Bengal reported in 2007 SCC OnLine Cal 549, the appellate Court was considering a case of FICN under Sections 489A, 489C and 489D of the Indian Penal Code. The Court referred to the word counterfeit as has been used in Section 28 of the Indian Penal Code and thereafter referred to the judgment of the Hon'ble Supreme Court in State of UP -versus- Hafeez Mohammad, AIR 1960 SC 1969 and concluded that since *mens rea* of the appellant could not be established by the prosecution on the facts of the case, and there were no evidence except three notes of Rs.50/- denomination-being seized from the possession of the appellant, it was held that it would be unjustified to convict the appellant.

In Abdul Rahiman -versus- State of Kerala reported in 2014 SCC OnLine Ker 23291, one hundred counterfeit currency notes of Rs. 100/- denomination were seized from the accused persons, who were charged under Section 489B and 489C, read with Section 34 of the Indian Penal Code. On conclusion of trial, the accused were convicted under Sections 489B and 489C, read with Section 34 of the Indian Penal Code. Challenging the said order of conviction, appeal was preferred, wherein the appellants relied upon a series of judgments, including Umashanker (supra), and the appellate Court was pleased to hold that in order to attract the provisions of Section 489B of the Indian Penal Code, it must be proved by the prosecution that the accused used or sold or intended to sell or use the same as genuine notes and mere possession of the notes alone is not sufficient for attracting the offence under Section 489B of the Indian Penal Code. Further, the Court, while appreciating the answers under Section 313 of

the Cr.P.C., took into account that the accused persons were under a *bona fide* belief that the notes which were in their possession were genuine currency notes and were not FICN. Consequently, the Court acquitted the appellant under Section 489B of the Indian Penal Code, and also modified the sentence under Section 489C of the Indian Penal Code.

In Sou. Bharati -versus- State of Maharashtra reported in 2002 SCC OnLine Bom 1373, forty-eight fake currency notes of Rs. 500/- denomination were recovered from the house after an initial search was made on the person of the accused, and there were recoveries of one-sided printed notes. The police authorities took into account the number of fake currencies which were recovered and submitted a charge-sheet. On conclusion of prosecution, the appellants were convicted for the offences punishable under Sections 489A/489B/489C/489D of the Indian Penal Code. The appellate Court, on an assessment of the materials, was of the opinion that so far as recovery of the counterfeit currency notes from the house is concerned, the same are said to have been printed only on one side and obviously, without any expert opinion, it could be said that the same are counterfeit currency. The evidence on record established the charge of conspiracy under section 120B of the Indian Penal Code. The Court, therefore, proceeded to arrive at a conclusion that the charges against the appellants have been proved and they have been rightly held guilty of the same by the trial Court. In this case, there was only modification of sentence by the learned trial Court, and the order of conviction was upheld.

In Mukhtarul Islam -versus- State of West Bengal reported in 2014 SCC OnLine Cal 6838, the Division Bench while considering an appeal under Sections 489B and 489C of the Indian Penal Code against an order of conviction relating to sixteen notes of Rs. 500/- denomination took into account the decisions of the Hon'ble Supreme Court in M. Mammutti (supra) and Umashanker (supra). The Division Bench disbelieved the factum that the appellant would continue to remain in the bank till the police arrived as there was no evidence to suggest or indicate that the appellant was detained forcibly. Further, in the factual circumstances of the case, the appellate court also did not rule out the possibility of the notes having been tampered with as the said FICN allegedly were kept in the police malkhana for more than 20 days, and no document was produced before the Court to show the retention of the said notes for such a long period in the police malkhana. Additionally, no questions were asked under Section 313 of the Cr.P.C. to the accused regarding the FICN. Consequently, the appellate court acquitted the accused persons.

In Abu Sajeed @ Sayed & Anr. -versus- State of West Bengal reported in 2014 SCC OnLine Cal 19255, the appellate court was considering an appeal from an order of conviction and sentence under Sections 489B and 489C of the Indian Penal Code, wherein the facts related to seizure of one hundred pieces of FICN of Rs. 500/- denomination. The appellate court, while acquitting the appellant under Section 489B of the Indian Penal Code and affirming the conviction under Section 489C of the Indian Penal Code, held that the prosecution evidence

lacked materials relating to buying, selling or using as genuine FICN which were seized from the possession of the appellants.

In Sundar Lal -versus- State Government of NCT of Delhi reported in 2018 SCC OnLine Del 9079, the subject matter of appeal related to an order of conviction and sentence passed under Sections 489B and 489C of the Indian Penal Code. On an appreciation of the evidence of the case and relying upon M. Mammutti (supra), the appellate Court arrived at a conclusion that bare perusal of the counterfeit currency note is not sufficient for convicting an individual without ascertaining the genuineness of the currency. As such, no presumption can be drawn that the accused had knowledge regarding the genuineness of the currency. The Court was considering a case where two counterfeit currency notes of Rs 500/- denomination was being used while purchasing a towel from a shop.

In Mahendra Singh Khetsing Rao -versus- State of Karnataka reported in 2014 SCC Online Kar12828, the Court was considering a case where ten counterfeit currency notes of Rs. 500/- denomination were seized and which were attempted for being used by intermixing the same with six genuine currency notes. The trial Court was pleased to convict the accused persons under Section 489B of the Indian Penal Code. The appellate Court relied upon the judgments of M. Mammutti (supra) and Umashanker (supra), and

thereafter, considered the issue as to whether the accused had knowledge of the fake currency notes or whether there was any reason to believe that those currency notes are fake, and despite the same, attempted to deposit it in the bank for wrongful gain. On an assessment of the facts and law, the Court arrived at an opinion from the factual matrix, that the accused was working in a textile shop and some person came from the said shop and requested to release him. The owner of the shop was not examined before the Court by the prosecution to ascertain the educational qualification of the accused, and whether the said person was able to understand different languages, particularly English numericals in order to arrive at a definite conclusion that the serial numbers on the fake currency notes could have been identified by him. On such factual appreciation, the Court was of the opinion that it would be unreasonable to convict the appellant under Section 489B of the Indian Penal Code.

In Habibur Rahaman -versus- State of West Bengal, the appellant was convicted for commission of offence punishable under Section 489B/489C of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 5000/-, in default to suffer rigorous imprisonment for six months for the offence punishable under Section 489B of Indian Penal Code and to suffer rigorous imprisonment for seven years and to pay fine of Rs. 5000/- in default, to suffer rigorous imprisonment for six months more for the offence

punishable under Section 489C of Indian Penal Code. The facts of the case related to seizure of eight bundles of currency notes in denomination of Rs 1000/-(each bundle containing 800 pieces) valued at 8 lakhs, suspected to be fake and wrapped in a coffee-coloured cloth bag, which was recovered from the appellant Habibur Rahaman and two bundles of fake Indian currency notes in denomination of Rs. 1000/- and Rs. 500/- (one bundle containing 176 pieces and another containing 48 pieces respectively) valued at Rs. 2 lakhs, which was recovered from his nephew Nasiruddin Sheikh, who was a juvenile at the time of occurrence. The appellate Court appreciated the entire evidence, took into account the expert opinion, the examination of the accused under Section 313 of the Code of Criminal Procedure as well as the charge framed, and thereafter, arrived at the following conclusion.

> *"When the appellant was found carrying a large volume of FICNs in a public place and he is unable to give any explanation for the said possession, one can safely held the appellant was knowingly trafficking in counterfeit currency notes. Section 489B of the Indian Penal Code makes selling, buying, receiving or trafficking in counterfeit currency notes culpable. In this regard, it may be apposite to refer to the charge framed against the appellant under section 489B of the Indian Penal Code which reads as follows:- "that you on 4.11.2014 at township More on NH 34, under Baisnabnagar PS Dist Malda attempted to use/traffic forged or counterfeit Indian currency notes of Rs. 9,76,000/- of denomination of Rs. 1,000/- each (976 pieces) and Rs. 24,000/- of denomination of Rs. 500/- each (48 pieces) and totaling Rs 10,00,000/- knowing the same to be counterfeit and as per seizure list dated 4.11.2014, a copy of which was served to you, knowing the same to be forged or counterfeit."*

> *Plain reading of the aforesaid charge shows the prosecution had put the appellant on notice that he was being accused of "attempt to sell/ trafficking" in counterfeit notes. As discussed above, evidence on record unequivocally shows the appellant and co-accused were apprehended while carrying a large volume of counterfeit notes in a public place. Thus, transportation of counterfeit notes by the appellant is clearly established. Facts of the instant 2022:CHC-AS:7018-D 9 case are clearly distinguishable from that in* ***Hoda Sk. vs. State of West Bengal****. In that case, no charge for trafficking of counterfeit notes had been framed by the trial court and on such premise this court was of the view the conviction under section 489B IPC on the score of trafficking could not be upheld. On the other hand, in the present case appellant had been charged of trafficking in counterfeit currency notes. Thus, conviction of the appellant under section 489B IPC does not call for interference."*

In Shabbir Sheikh & Ors. -versus- State of MP reported in ILR (2018) M.P. 1712 (DB), the Division Bench was considering an appeal against the judgment and order of conviction and sentence under Section 489B/489C read with Section 120B of the Indian Penal Code. The facts of the case reflected seizures of one hundred notes of Rs. 1000/- denomination, fifty-four notes of Rs. 1000/- denomination, which were recovered from the left shoe of the accused. Further, another one seventy-nine notes of Rs. 500/- denomination were recovered from underneath the seat of the motorcycle. The facts of the case reflect that at the time of seizure, there was scuffling between the raiding party and the appellants. After placing reliance on Umashanker (supra) and M. Mammutti (supra), the Hon'ble Court analysed the provisions of Sections 489B and 489C of the Indian Penal Code, Sections 106 and Section 114(h) of the Evidence Act and on an

appreciation of the alleged recovery, dealt with the issue of huge volume of counterfeit currencies being recovered from the possession of the appellants and arrived at the opinion that the prosecution has been successful in establishing the offence under Section 489B of the Indian Penal Code. The Court also considered Section 106 of the Evidence Act as a burden on the accused to explain the circumstances, and failure to do so would result in an adverse inference being raised against the accused. The Court while arriving at such a finding took the aid of the judgments of the Gujarat High Court in Rayab Jasub Sama -versus- The State of Gujarat reported in 1998 SCC OnLine Guj 225 and referred to Para 10 of the same judgment.

In *Ponnusamy -versus- State* reported in 1997 SCC (Cri) 217, the Hon'ble Supreme Court was pleased to hold as follows:

> *"The verdict of the three courts below is similar in convicting and keeping maintained the convictions of the appellant under Sections 489-B and 420 of the Penal Code, 1860. The case of the prosecution against the appellant is that he had purchased paddy from a peasant on payment of 130 forged currency notes of Rs 100 denomination. On the arrest of the appellant, further forged currency notes were alleged to have been found in his possession for which he had to face a trial separately. All the same, the appellant had no explanation to offer as to wherefrom had he obtained those forged currency notes. Silence on the part of the appellant in such circumstances would by itself be a telling circumstance which would weigh against him in the*

consideration of the prosecution evidence led against him. In these circumstances, we are of the view that the convictions recorded deserve no alteration and equally there is no scope for reduction of sentence. Maintaining the convictions and sentences of the appellant, we dismiss this appeal."

In *Jubeda Chitrakar -versus- State of West Bengal* reported in *2019 SCC OnLine Cal 8924*, the Hon'ble High Court was pleased to hold as follows:

*"**13.** Section 489B uses the phrase "or otherwise traffics in or uses as genuine". This phrase assumes importance in the context of the fact that the term "traffics" is not defined for the purpose of Section 489B or for the IPC generally. The phrase "or otherwise traffics in or uses as genuine" is added on to a string of phrases which results in the sentence that delineates the ingredients of the offence as defined in Section 489B; the punishment for which is prescribed in that section. The activities which would amount to an offence punishable under Section 489B of the IPC are firstly, selling, buying or receiving. The provision to this effect in the section is "whoever sells to, or buys or receives from, any other person". Therefore, the involvement of at least two persons is necessary for performing the activity of selling, buying or receiving which would amount to an offence for the purpose of Section 489B. If that be so, an important issue for consideration would be as to whether any activity which falls into the concept "or otherwise traffics in or uses as genuine" could be anything that could be treated differently from selling, buying or receiving or whether the term "traffics" has to be read ejusdem generis with "sells", "buys" or "receives". It was argued on behalf of the appellant on the basis of the decision of the Apex Court in Parakh Foods Limited v. State of Andhra*

Pradesh (2008) 4 SCC 584 that the term "traffics" has to be read ejusdem generis with the phrases "sells to", "buys" and "receives from any other person" and that the junction of another person is necessary to accomplish such acts. It is here that use of the word "otherwise" gains critical importance. The word "otherwise" is used to indicate the opposite of, or contrast to, something already stated when used as part of a phrase as "or otherwise" (see Oxford Dictionary of English-3rd Edition). Even when the word "otherwise" is used not as part of a phrase as "or otherwise", but as an adverb or an adjective, such usages are also resorted to, to draw a contrast or distinction. The word "traffics" as well as the word "trafficking" and "trafficked" are used to describe the action of dealing or trading in something illegal. The activity or activities which would amount to "sells to", "buys" or "receives from" any other person, may require the participation of two persons to complete any such transaction. However, any activity which would fall within the phrase "otherwise traffics in" does not indispensably require active participation of more than one person if noticeably sizable quantity of FICN is found to be in the possession of that person and such concealed possession cannot be treated as dormant possession. It is active transportation which amounts to trafficking. Any other mode of interpreting the phrase "or otherwise traffics" would dilute the rigour of law. A strict and literal interpretation of the penal provision contained in Section 489B of the IPC does not lead us to any other conclusion. Thus, the phrase "or otherwise traffics" in Section 489B of the IPC would take within its sweep, the action of dealing or trading in forged counterfeit currency note or bank note even otherwise than by selling, buying (purchase) or receiving. Therefore, the word "traffics" and the phrase "or otherwise traffics in" in Section 489B of the IPC are not to be read ejusdem generis with the words "sells", "buys" or "receives";

but ought to be read to understand that activities other than selling, buying or receiving would also fall into the basket of the incriminating factors which constitute the ingredients of the acts and omissions which is an offence as per that Section.

14. *The Division Bench of the Gujarat High Court in Rayab Jusab Sama v. State of Gujarat, reported at 1998 Cri LJ 942, held the possession of large number of fake currency notes to be a case of active transportation of such notes. That precedent was followed by the High Court of Madhya Pradesh(Jabalpur Bench) in Shabbir Sheikh v. The State of Madhya Pradesh Crl. Appl. Nos. 162, 452 and 453/2015 decided on 10.02.2018, holding that such cases cannot be treated as those of mere dormant possession but are of active transportation of fake currency notes which would fall within the sweep of Section 489B of the IPC. In holding so, it was stated that when the accused person is found carrying sizeable quantity of fake currency notes on a public road, or otherwise, in a concealed manner, it would amount to active transportation of such currency notes at the time when the accused person is apprehended. No explanation being offered by the accused person when questioned under Section 313 of Cr.P.C. regarding the possession of the counterfeit currency, the burden of proof of facts within the knowledge of such person was held as not discharged by that person in terms of Section 106 of the Evidence Act. We completely agree with those judicial precedents and follow them, they being applicable on the facts of these appeals, as we would elaborate hereunder.*

15. *Adverting to the material evidence on record and the findings of the court below, it can be seen that the raid, interception and recovery were on the basis of secret information, the reception of which, and the modality of the raid and recovery have been noticed*

by us. 500 pieces of 100 rupees denomination FICN, 7 pieces of 1000 rupees denomination FICN and 9 pieces of 500 rupees denomination FICN wrapped in a newspaper and kept in a polly bag were recovered from Mokaram Mondal (one of the accused). Sunil Pramanick (one of the appellants) was also searched and 27 pieces of 500 rupees denomination FICN were recovered. Jubeda Chitrakar (one of the appellants) whose house was also raided led to recovery of 20 pieces of 500 rupees denomination FICN and 5 pieces of 1000 rupees denomination FICN. Thereupon, Jubeda was arrested. Again search and seizure was conducted leading to recovery of FICN from different other accused persons who are not amongst the appellants. They were also convicted. The appellants did not offer any explanation when questioned under Section 313 Cr.P.C. regarding the possession of FICN. Nor was any evidence adduced in defense to explain the possession of FICN. Section 106 of the Evidence Act enjoins that when any fact is especially within the knowledge of any person, the burden of proving the fact is upon him. In terms of Section 106 of the Evidence Act the burden of proof of facts within the knowledge of the appellants regarding the nature of possession of FICN was not discharged. Hence, the possession of such large quantity of FICN in concealed manner is not dormant possession but active transportation amounting to trafficking. It amounts to commission of offences punishable under Section 489B of the IPC. The possession of FICN of such quantity is trafficking, and, therefore, falling under the incriminating activity which made the accused/appellants offenders punishable under Section 489B as well, apart from the liability for committing offences punishable under Section 489C. For the aforesaid reasons the conviction of the appellants under Sections 489B as well as 489C stands. We approve the findings of the court below on the issue that the accused persons are liable to be convicted under Sections 489B and 489C of

the IPC. Accordingly, we affirm the finding of guilt and the conviction of the appellants by the court below."

On an assessment of the legal propositions as is reflected from the different judgments cited above and in terms of the first three references, the conclusions arrived at are as follows: -

(i) For attracting the provisions of Section 489B of the Indian Penal Code, the quantity of FICN/counterfeit notes recovered is immaterial.

(ii) Where a substantial amount of FICN or counterfeit currency is found in the possession of an individual or collectively held by multiple persons, the same shall not be deemed to be dormant possession but instead would be indicative of active transportation.

(iii) In case of trial of an offence under Section 489B of the Indian Penal Code, specific charges in distinct language must be framed by the trial Courts so that the accused is able to understand and answer the charges framed against him.

(iv) It would be the duty of the prosecution to lay down the foundational facts regarding the ingredients of the offence relating to Section 489B of the Indian Penal Code.

(v) It would be also incumbent upon the accused to divulge facts which are within his special knowledge regarding the possession of fake currency in course of examination under Section 313 of the Code of Criminal Procedure. Mere silence on the part of the accused is a telling circumstance as has been held in *Ponnusamy* (supra).

(vi) The aforesaid propositions would apply to all persons, irrespective of the fact whether such an individual is a civilian or a government servant.

In respect of the fourth point of the terms of the reference relating to high-quality counterfeit currency notes, the same is of no relevance as the quantity or quality of counterfeit notes is not relevant for the purposes of attracting Section 489B of the Indian Penal Code. Thus, it would be immaterial whether the counterfeit currency note(s) so recovered are ordinarily fake or high-quality counterfeit currency.

The reference is accordingly answered.

The respective appeals and/or revisional applications and/or other proceedings may be decided by the appropriate Bench, according to the facts of each case in light of the conclusions arrived at pursuant to the terms of the reference answered by this Court.

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

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

(Tirthankar Ghosh, J.)

I agree.

(Debangsu Basak, J.)

I agree.

(Jay Sengupta, J.)