

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 4355 of 2018

Bishnu Chandra Das @ Biplob

.....Convict-appellant.

-Versus-

The State.

.....Respondent.

Mr. M.K. Main Uddin, Advocate.

.....For the appellant.

Ms. Shahida Khatoon, D.A.G with

Ms. Sabina Perven, A.A.G with

Ms. Kohenoor Akter, A.A.G.

.... For the respondent.

Heard on 25.02.2024 and

Judgment on 14.03.2024.

This criminal appeal at the instance of convict appellant, Bishnu Chandra Das @ Biplob is directed against the judgment and order of conviction and sentence dated 08.04.2018 passed by the learned Judge, Special Tribunal No.2 Noakhali in Special Tribunal Case No. 18 of 2011 arising out of G.R No. 649 of 2011 corresponding to Kabirhat Police Station Case No. 01 dated 06.05.2011 convicting the accused-appellant under section 25A(b) of the Special Powers Act, 1974 and

sentencing him thereunder to suffer rigorous imprisonment for a period of 5(five) years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer simple imprisonment for 03(three) months more.

The prosecution case, in short, is that one, Md. Shahiduallah, Son of Md. Mostafa, village- Chandra Suddi of 7 No. Batiya U.P. under Kabirhat police station of district- Noakhali as informant on 06.05.2011 at about 18:30 hours lodged an Ejahar with Kabirhat Police Station against the accused-appellant and another stating, inter-alia, that the informant being owner of a tea stall used to sell tea everyday and accordingly, on 06.05.2011 at evening 5:00 p.m. the accused-appellant and another Sumon came to his shop while accused Sumon after purchasing cigarette to pay the cigarette bill gave a note of Taka 100/- asking to return rest amount, the informant on getting the note of Taka 100/- suspects the same as forged/counterfeit note and accordingly, informed the matter to secretary of the market and other shopkeepers and then local people came there and beaten them and thereafter police came there and on search recovered 40 counterfeit notes of Taka 100/- from the shirt pocket of the accused-appellant in presence of witnesses and also recovered a forged note of Taka 100/- kept in hand of accused Sumon

Chandra Das totalling 41 counterfeit notes of Taka 100/- and thereafter, police seized those notes by preparing seizure list in presence of the witnesses.

Upon the aforesaid First Information Report, Kabirhat Police Station Case No. 01 dated 06.05.2011 was started against the accused-appellant and another under section 25A(b) of the Special Powers Act, 1974.

Police after completion of investigation submitted charge sheet against the accused-appellant and another being charge sheet No. 48 dated 13.09.2011 under section 25-A(b) of the Special Powers Act, 1974.

Ultimately, the accused-appellant and another were put on trial before the learned Judge, Special Tribunal No.2, Noakhali to answer a charge under section 25A(b) of the Special Powers Act, 1974 in which the accused-appellant pleaded not guilty and claimed to be tried stating that he has been falsely implicated in this case.

At the trial the prosecution examined as many as 8 witnesses and exhibited some documents to prove its case, while the defence examined none.

The defence case, from the trend of cross-examination of the prosecution witnesses and examination of the accused-appellant under section 342 of the Code of Criminal Procedure appeared to be that

the accused-appellant was innocent and he has been falsely implicated in the case.

On conclusion of trial, the learned Judge, Special Tribunal No.2, Noakhali by the impugned judgment and order dated 08.04.2018 found the accused-appellant and another guilty under section 25A (b) of the Special Powers Act, 1974 and sentenced them thereunder to suffer rigorous imprisonment for a period of 5(five) years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer simple imprisonment for 03(three) months more.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence, the present accused-appellant preferred this criminal appeal.

Mr. M.K. Main Uddin, the learned Advocate appearing for the convict-appellant submits that the accused-appellant is innocent, who has been made scapegoat in this case inasmuch as no incriminating counterfeit 100 taka's notes were recovered from the possession of the accused-appellant. He adds that in this case PW-1, PW-2 and PW-3 in their respective deposition stated nothing as to recovery of counterfeit notes from the direct possession and control of the accused-appellant and rest witnesses inconsistently deposed before the Court as to recovery of counterfeit

currency notes although the tribunal Judge giving a go-by to such vital aspects of the case mechanically found the accused-appellant guilty under section 25A(b) of the Special Powers Act, 1974 and sentenced him thereunder to suffer rigorous imprisonment for a period of 5(five) years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer simple imprisonment for 03(three) months more. Finally, the learned Advocate submits that the ingredients of section 25A(b) of the Special Powers Act, 1974 is absent in this case inasmuch as the prosecution side having miserably failed to prove that the accused-appellant kept the said counterfeit note or he used those notes as genuine and as such, the accused-appellant is entitled to get benefit of doubt.

Ms. Shahida Khatoon, the learned Deputy Attorney-General, on the other hand, supports the impugned judgment and order of conviction, which was according to her just, correct and proper. She submits, it is on record that in this case the accused appellant kept the counterfeit notes under his possession in order to use it as genuine and therefore, the trial Court below justly found the accused-appellant and another guilty under section 25A(b) of the Special Powers Act, 1974 and sentenced them thereunder to suffer rigorous imprisonment for a period of 5(five) years and to pay a

fine of Taka 5,000/- (five thousand) in default to suffer simple imprisonment for 03(three) months more and as such, the appeal is liable to be dismissed.

Having heard the learned Advocate and the learned Deputy Attorney General for the parties and having gone through the materials on record, the only question that calls for my consideration in this appeal is whether the trial Court committed any error in finding the accused- appellant and another guilty of the offence under section 25A(b) of the Special Powers Act, 1974.

On scrutiny of the record, it appears that one, Md. Shahiduallah, son of Md. Mostafa, village- Chandra Suddi of 7 No. Batiya U.P. under Kabirhat police station, District- Noakhali as informant on 06.05.2011 at about 18:30 hours lodged an Ejahar with Kabirhat Police Station against the accused-appellant and another stating, inter-alia, that the informant being owner of a tea stall used to sell tea everyday and accordingly, on 06.05.2011 at evening 5:00 p.m. the accused-appellant and another accused Sumon came to his shop and after purchasing cigarettes accused Sumon to pay bill gave a note of Taka 100/- asking to return rest amount while on getting the note the informant suspects the same as forged note and then the informant informed the matter to the

secretary of the market and thereafter, local people came and beaten them and thereafter, on knowing the fact police came to the place of occurrence and arrested the accused persons and on search, recovered total 1-40 counterfeit notes of Taka 100/- and police seized those counterfeit notes by preparing seizure list in presence of the witnesses. Police after completion of investigation submitted charge sheet against the accused-appellant and another. It further appears that at the trial the prosecution side to prove its case examined in all 8 witnesses out of which PW-1, Md. Shahidullah, informant of the case stated in his deposition that at 5:00 p.m. police came and took his signature on blank paper. This witness in his cross-examination stated that- “ডকে দাঁড়ানো আসামীদের কে চিনি না। ডকে দাঁড়ানো আসামীরা ঘটনার তারিখে ঘটনার সময় আমার দোকানে সিগারেট কিনতে যাইতে দেখি নাই। তখন আমি ঘুমাইয়া ছিলাম। আমি এই এজাহার আমি থানায় যাইয়া দেই নাই। আমি থানায় কোন লিখিত এজাহার দেই নাই। আসামীদেরকে কে আমি চিনি না।” This witness was declared hostile by the prosecution. PW-2, Md. Sekander, seizure list witness stated in his deposition that on 06.05.2011 at 5:30 p.m. he came to know that police arrested the accused persons and recovered counterfeit notes from the accused Bishu, this witness proved the seizure list as “Ext.-1”. This witness identified the accused on doc. This witness in

his cross-examination stated that- “সুমন ১০০ টাঃ নোট দিতে আমি দেখি নাই। নোটটা আমাদের সামনে উত্থাপন করে। বাদীর হাতে টাকাটা দেয়। দিতে আমি দেখি নাই।”

PW-3, Shahin @ Fakhrul Islam stated in his deposition that “৬/৫/১১ ইং সময় ৫.৩০ এ ভূইয়ার হাট পশ্চিম বাজার শহিদুল্লার দোকানে। ঘটনার কিছুক্ষন পরে আমি আসি ঘটনার আধা ঘন্টা পরে আমি চা খাইতে গেলে পুলিশ সই দেতে বলে। বিষঃ নাথের কাছে পুলিশ ১০০ টাঃ জাল নোট পাইয়াছে। বিষঃুর সাথে আরেকজন ছিল নাম জানিনা। আমাকে দেখান কাগজে (জব্দ তালিকার) সইটা আমার। (প্রদঃ- ১/১। বিষঃু ডকে আছে।” PW-4, Joynal Abedin gave evidence in support of the prosecution and made similar statements like P. W 3 in respect of all material particulars. PW-5, Md. Mohsin as officer of the Bangladesh Bank examined the counterfeit notes and submitted his report on 26.06.2011. PW-6, Mofiz Ullah stated in his deposition that- “ভূইয়ার বাজারে শহীদ উল্লাহার দোকানে মানুষ আনাগোনা করিতেছে জাল নোট ধরা পড়িয়াছে শুনি। দারোগা আমাকে সই করিতে বলেন। আমি কিছু দেখি নাই। সবাই বলে জাল নোট ধরা পড়িয়াছে।” This witness in his cross-examination stated that- “আমি ভূইয়ার হাট বাজারে মাগরিবের আযান দেয় এই সময়ে কাহার কাছে টাকা পায় দেখি নাই। শুনিও নাই।” PW-7 was tendered. PW-8, S.I. Abdul Kader investigated the case. This witness stated in his evidence that during investigation he prepared sketch-map, and examined the witnesses under section 161 of the Code of Criminal Procedure and the sent

the seized counterfeit note to Bangladesh Bank for examination. This witness proved the seizure list as “Ext.-1/2 and his signature thereon as “Ext.-1/3”. This witness identified the counterfeit notes as material exhibit. In cross examination the defence could not able to discover anything as to the credibility of this witness on the matter to which he testifies.

On scrutiny of the above quoted evidence on record, it appears that none of the witnesses in their respective testimony testified that counterfeit notes were recovered from the exclusive possession of the accused-appellant in their presence. Moreover, PW-1, informant of the case was declared hostile by the prosecution and rest witnesses namely, PW-2, PW-3, PW-4, PW-5 and PW-6 stated that they came to know as to recovery of counterfeit notes.

It is thus difficult to believe that the alleged seized counterfeit notes were actually recovered from the possession of the accused-appellant. In view of the attending facts and circumstances of the case and the evidence on record, I am constrained to hold that the prosecution has failed to prove the charge against accused appellant beyond any reasonable doubts. The learned tribunal Judge failed to evaluate the evidence on record as adduced before the tribunal court thereby

coming to a wrong conclusion which occasioned a miscarriage of justice. In the facts and circumstances of the case and the evidence on record, it must be held that the prosecution failed to prove charge under section 25A(b) of the Special Powers Act, 1974 against accused Bishnu Chandra Das @ Biplob beyond reasonable doubts.

In the case of Abdus Salam alias Abdus Salam and another Vs The State, reported in 15 BLD 477, it has been held as follows:-

“Mere possession of counterfeit currency notes is by itself no offence under Section 25A of the Special Powers Act. In order to succeed, the prosecution must prove that the accused used the counterfeit currency notes as genuine ones knowing or having reason to believe them to be counterfeit”.

In the case of *Omela Bibi vs State* , reported in 53 DLR 98, it has been held as follows:-

An accused, in order to be found guilty under Section 25A(b) of the Special Powers Act, must have *mens rea* or to believe that the currency-note which he kept in his possession

or tried to use was in fact a counterfeit currency-note.

On perusal of the record, I find nothing in record to suggest that the accused appellant used the counterfeit currency notes as genuine ones knowing or having reason to believe them to be counterfeit.

In view of my discussions made in the foregoing paragraphs vis-à-vis the cited decisions, it is by now clear that the instant criminal appeal must succeed.

In the result, the appeal is allowed and the impugned judgment and order of conviction and sentence dated 08.04.2018 passed by the learned Judge, Special Tribunal No.2, Noakhali against accused appellant, Bishnu Chandra Das @ Biplob is set-aside and he is acquitted of the charge levelled against him.

Accused appellant, Bishnu Chandra Das @ Biplob is discharged from his bail bond.

Send down the lower Court records at once.