

THE COURT OF SPECIAL JUDGE CONSTITUTED
UNDER THE NATIONAL INVESTIGATION AGENCY ACT,
2008 FOR GR. MUMBAI
SESSIONS CASE NO.674 OF 2009 (NIA).

The State of Maharashtra.
(at the instance of National
Investigation Agency(N.I.A), New Delhi
C.R. No.03/09)

... Complainant

Versus

- 1.Ravi Dhiren @ Jadhav @ Ruby Ghosh,
Village Gol Pada, Post Chori Anantpur,
Dist. Malda, West Bengal.
- 2.Nuruddin Islam Bari
Village Ghosh Tula, Post Chori Anantpur,
Dist. Malda, West Bengal.
- 3.Mohd.Samad Mohd.Shahid Shaikh
Village Amanat, Post Piyarpur,
Dist.Sahebganz, Jharkhand
- 4.Mohd.Aijul Mohd.Sarali Shaikh
Village Amanat, Post Piyarpur,
Dist.Sahebganz, Jharkhand
- 5.Abdul Asurddin Shaikh,
Village Amanat, Post Piyarpur,
Dist.Sahebganz, Jharkhand
- 6.Azraul Tamez Shaikh,
Village Amanat, Post Piyarpur,
Dist.Sahebganz, Jharkhand

... Accused

Ms. Rohini Salian Ld.SPP for the N.I.A-Complainant.

Mr. Wahab Khan with Ms.Spurti Shinge Ld. Advocates for the Accused No.1 to 4 & 6.

Ms.Apeksha Vora Ld.Adv. for Accused No.5.

Offences punishable under Sections: 489-C, 489-B, 489-E, 120(B) of the I.P.C. and 16, 17 & 18 Unlawful Activities (Prevention) Act, 1967.

**CORAM: HIS HONOUR THE SPECIAL JUDGE
PRITHVIRAJ K. CHAVAN.**

JUDGMENT

(Delivered on this 30th day of January, 2014)

1. The accused here-in-above stand charged by National Investigation Agency (For short 'NIA') New Delhi, alleging that a deep rooted criminal conspiracy was hatched by them alongwith wanted accused Shoukat Marfat Ali to circulated fake Indian Currency Notes (for short 'FICN') of high quality, printed and manufactured across the border, which is a terrorist act aimed at destabilizing the economy and to threaten the unity, integrity, security and sovereignty

of this country. The prosecution case, as emerged from the record can be stated as follows.

2. On 14/5/09 PW-1 Sanjay Patil, Head Constable attached to Anti-terrorist Squad (for short 'ATS') Police Station Kalachowky, received a secret information from an informer on condition of anonymity that A/1 Ravi Dhiren Ghosh@ Jadhav@Ruby Ghosh and A/2 Nuruddin Islam Abdul Bari would be delivering FICN to A/3 Mohd.Samad Mohd.Shahid Shaikh and A/4 Mohd.Aizul Mohd.Sarali Shaikh on the same day at about 13.30 hrs., near Star Cinema, Barrister Nath Pai Marg, Mazgaon, Mumbai.

3. PW-1 Sanjay Patil, took the informer to Sr.PI Khanvilkar who was also apprised of the said information. Accordingly, Sr.PI Khanvilkar formed a team comprising PI Dudhgaonkar, PSI Sachin Kadam, API Wakurdekar, API Popat Avhad, Vijay Shinde and it was decided to lay a trap

to nab the accused. The police team reached near Star Cinema in a vehicle. They reached there at about 13.00 hrs. Sr.PI Khanvilkar formed three groups and directed them to take positions around the spot by concealing their presence. Around 13.45 hrs., two persons came over there to whom the informer identified as A/1 Ravi and A/2 Nuruddin. After sometime two more persons reached the spot who were also identified as A/3 Mohd.Samad and A/4 Mohd.Aijul by the informer. The activities of those four persons were found to be suspicious. Sr.PI Khanvilkar, therefore, signaled his teammates and immediately thereafter, the four accused were encircled by the police. After displaying his identity, Sr.PI Khanvilkar informed those four persons in Hindi language about the search to be effected. He immediately sent Police Naik No.25528 to bring two panch witnesses. Within 10 minutes two panchas were brought on the spot. PW-9 API Popat Avhad informed the panch witnesses about the purpose of panchanama. He

also asked the four persons as to whether they wanted to effect search of the police team and panch witnesses. The accused declined to effect search of police team and panchas.

4. PW-9 API Popat Avhad inquired about the name and addresses of those four persons who told their names as shown here in above. A-1 Ravi Dhiren is basically a resident of Gol Pada, Post Chori Anantpur, Police Station Kalia Chowk, Dist.Malda, West Bengal. A-2 Nuruddin Bari informed that his address is Ghosh Tula, Post Chori Anantpur, Police Station Kaliachowk, Dist.Malda, West Bengal. A-3 Mohd.Samad's address is Room No.28, Bhaskar Chawl, Kalwa, Dist.Thane, his permanent address is Amanat, Post Piyarpur, Police Station Rajmahal, Dist.Sahebganz, Jharkhand and the address of A/4 Mohd.Aijul is Shakkargali, Danabander, near Masjidbunder Railway Station and his permanent address is same as that

of A/3 Mohd.Samad.

5. During search of all the four accused in the presence of panch witnesses currency notes of Rs.1,000/- denomination were found wrapped in a black coloured polythene and tucked in the pant of A/1 Ravi. There were 200 currency notes of Rs.1000/- denomination with 2 AQ and 8 AC series were found. On careful observation, it revealed that those notes were of inferior quality. Two sample currency notes were taken out for sending to Reserve Bank of India, Mumbai for examination and remaining 198 notes were duly seized under a panchanama. During his search the police also found a black wallet with Rs.150 /-, a newspaper cutting in Bengali language over which mobile No.97691819839 was written alongwith handset of Nokia company and a simcard of Vodofone. These articles were duly seized.

6. During search of A/2 Nuruddin, 100 notes of Rs. 1000/- denomination, with 2 AQ series were found. After separating one note for the purpose of examination remaining 99 notes were duly seized under a panchanama. A pan card bearing No.ABGP 12191H, a mobile handset and simcard of vodafone company was found. Those articles were duly seized under a panchanama.

7. During the search of A/3 Mohd.Samad 23 currency notes of Rs.1000/- denomination were found alongwith a brown coloured wallet in which there was Rs. 320/- cash, photographs of the accused, some visiting cards, two railway tickets, telephone diary etc., were also found. Those articles were also duly seized.

8. While effecting search of A/4 Mohd.Aijul, 22 currency notes of Rs.1000/- denomination with 2 AQ series were noticed. One note was kept aside for sending to the

RBI and remaining 21 notes were duly seized. During his search the team also found a black coloured wallet containing Rs.20/- and receipt of State Bank of India bearing account No.30660824659 indicating deposit of Rs. 25,000/-, visiting card, telephone diary and a passport size photograph of a woman. There was a mobile phone and a simcard of Idea Company. The currency notes of Rs.1000/- denomination recovered from all the accused were prima facie found to be fake. All these articles were duly seized. As it revealed that all the four accused pursuant to a criminal conspiracy, knowing that those were fake currency notes were found trafficking the same with having its conscious possession and, therefore, an FIR came to be registered vide C.R.No.60/09 under Secs.489(A), 489(B), 489(C) and 489(D), 120(B) of the I.P.C. (Ex.61 FIR).

9. During custodial interrogation of A-1 Ravi on 17/5/09 in presence of a two independent witnesses

voluntarily disclosed that he received FICN from his friend Shaukat (Wanted) a resident of Jharkhand for circulation in Mumbai market. He further disclosed that he had supplied the FICN to his associates A/5 Abdul Shaikh and A/6 Azruul Shaikh for circulation in the market and that he would show the place where they reside. On the basis of the said disclosure A/1 had identified the house where A/5 and A/6 stayed. The house was found locked.

10. A/5 Abdul came to be arrested on 23/5/09 from Crawford market, Mumbai. During investigation A/5 voluntarily made a statement that he would show the place where he had kept FICN worth Rs.14,500/-, which was given to him by his friend Shaukat (Wanted) a resident of Sahibganj, Jharkhand for circulation in Mumbai and Thane market. Accordingly a Nivedan panchanama was prepared in the presence of panch witnesses. On the basis of the such statement FICN worth Rs.14,500/- (two notes of Rs.1000/-

and 25 notes of Rs.500/- denomination) were recovered at the instance of A/5 from a gala shop rented out to him by PW-7 Sanjay Kagde from Dombivali.

11. A/6 Azraul was arrested from Ray Road, Mumbai on 23/5/09. While effecting his personal search in the presence of witnesses, four FICN of Rs.1000/- denomination were recovered from his possession. All the suspected FICN recovered from A/1 to A/6 were sent to Reserve Bank of India, Mumbai and Currency Note Press (CNP), Nasik for expert opinion. The reports confirmed that all the recovered notes were counterfeit.

12. Investigation further revealed that a deposit slip of Rs.25,000/- recovered from A/4 on 14/5/09 relates to an account held by one Shamsuddin Miya with State Bank of India, Borokamat branch, Malda, West Bengal. The said amount was deposited on 11/5/09 in Masjid-Bandar branch

of SBI Mumbai. The bank statement of Shamsuddin, who is a Bidi worker and admittedly brother of A/2 Nuruddin show several transactions of large amount, from 19/3/09 to 11/5/09. The statement also shows withdrawal of Rs. 25,000/- (deposited on 11/5/09) through ATM, Malda on 12/5/09 in two installments of Rs.20,000/- and 5000/-. The call detail record of Shamsuddin's mobile No. 9733132812 revealed that he was in touch with A/1, A/2, A/3, A/4 and Shaukat (A-7) between January, 2009 to May, 2009. CDRs' of Samduddin also indicate that 18 calls were made from his mobile No.9733132812 to the two numbers i.e.8801724595720 and 8801728172907 of Bangladesh during the relevant period.

13. According to investigating agency, Shaukat Shaikh is one of the main conspirators. Efforts were made to arrest him from his native place as well as from Mumbai, but in vain. It is further found by the investigating agency

that one FICN of Rs.1000/- denomination of 2AQ series was recovered at Kochi currency chest of the RBI. The analysis by RBI of the FICN seized by the ATS Mumbai and the one detected at RBI, Kochi clearly indicates that they are similar in nature. The similar nature and similar series of FICN found at two different places indicate that there is a wide network operating in circulation of FICN and that the source of both FICN (i.e.Kochi and Maharashtra) is the same. The RBI report indicates that many covert features of genuine Indian currency were successfully imitated. These features, according to investigating agency, can be achieved only through highly sophisticated machinery, which is sold only to sovereign governments as revealed in the examination of Expert of Bank Note Press, Mysore.

14. The investigating agency further found that several cases related to recovery of FICN were registered all over the country in the recent past, having national and

international ramifications. It appeared that all the seizures were interconnected. The samples of all the seizures of FICN were obtained after taking due permission of the respective competent Courts. When the samples of aforesaid FICN were sent to the Chairman and Managing Director, Security Printing and Minting Corporation of India Limited (SPMCIL), Jawahar Vyapar Bhawan, for expert opinion, the following conclusion was arrived at by the experts. "After thoroughly examining the FICN it can be concluded that the notes have been printed on highly sophisticated machines which a common man cannot acquire since such machines involve huge capital investment. The pulp found to be 100% rag in the FICN which is normally used in making currency papers. The perfection of window and watermarks formation indicates the manufacture of FICN paper on regular currency making machines which can only be owned by a country/state".

15. It is found that there is willful circulation of high quality FICN printed abroad and smuggled into India with intent to threaten the economic security and sovereignty of this country, which tantamounts to a "terrorist act" committed "by other means of whatever nature" to cause damage, destruction of India's legal tender and monetary system, thereby impeding the economic security of India. It was found that genuine currency paper and such printing machinery are only available to sovereign governments, which means some foreign country is involved in this act. The agency found that FICN seized at Samba, Thane, Badwani and Chandigarh is similar with the FICN seized in this case. FICN seized from Samba and Thane was being used by terrorists for committing terror acts. Similarly FICN was smuggled in from Pakistan in the Chandigarh case and from Bangladesh in Thane and Badwani case.

16. The investigation of this case was initially carried

by the Anti terrorism Squad Mumbai, Maharashtra and there after investigation was taken over by the National Investigation Agency (N.I.A.) by an Order of the Central Government in exercise of Powers conferred under Section 6(5) of National Investigation Agency Act, 2008 vide Ministry of Home Affairs Order No. 11034/10/2009-IS. VI dated 3-06-2009 and Numbered the case vide Crime No. 03/2009 of N.I.A. Police Station, Delhi, under Section 120B, 489A, 489B, 489C & Section 17 of the Unlawful Activities Prevention Act as amended in 2004 and 2008, as the offences of smuggling and circulating of Fake Indian Currency Notes come under as scheduled offences under the N.I.A Act, 2008. After the investigation, National Investigation Agency (N.I.A.) filed the chargesheet before this Special Court constituted under Section 11 of the National Investigation Agency Act, 2008, against the above six accused, after obtaining due Sanction from the Government of India dated 5th November, 2009

“Exhibit-147” (PW-22 R.V.S. Mani). After filing the chargesheet permission to investigate further was sought from this Court. During the further investigation material collected disclosed a larger conspiracy as and the source of the Fake Indian Currency Notes (FICN) came to light hence, further, sanction was sought from the Central Government of India for the offences under Section 15 r/w Section 16 & 18 of the Unlawful Activities Prevention Act, 1967 (UAPA) (as amended in 2004 & 2008). The authority constituted for the purpose of making an independent review as per Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 reviewed the evidence gathered. After satisfaction, the Sanction Order dated 31st May, 2011 was granted to prosecute the above accused persons, under Section 15 Section 16 & 18 of the Unlawful Activities Prevention Act, 1967 (UAPA) in addition to Section 17 of the UA(P)A & Section 120B, 489-A, 489-B, 489-C, to prosecute the above six accused and one Shoukat

Sheikh son of Marfat Ali (absconding), and this Court took cognizance of the offences. Most of the investigation was conducted by ATS Mumbai by PW-9 Popat Avhad and the remaining part was investigated by PW-39 Sajid Shapoo Superintendent of Police, N.I.A.Delhi.

17. After investigation and as a result of investigation a charge-sheet is laid in the Court of Addl.Metropolitan Magistrate 11th Court mazgaon, Mumbai under Secs.120(B), 489(A), 489(B), 489(C) of I.P.C and 17 of U.A.P. Act. Subsequently, it was registered as Sessions case. All the accused are in judicial custody ever since their arrest in this case.

18. The accused appeared before my learned colleague Shri Yatin Shinde, who is also designated as a Judge of Special Court constituted under National Investigating Agency Act, 2008. All the six accused

appeared before him on 24/12/12. He framed a charge below Ex.47 under Secs.489-C, 489-B, 489-E, 120(B) of the I.P.C. and under Secs.15, 17 and 18 of Unlawful Activities (Prevention) Act, 1967. It was read over and explained to each of the accused. Each of the accused pleaded not guilty and claimed to be tried. The common defence of the accused is denial of commission of the offences alleged.

19. During the statement under Sec.313 of Cr.P.C. A/1 admitted having told the names and addresses of A/1 to A/4 to the police (ATS) at the Police Station. He admitted putting thumb impression and signature over the panchanama Ex.68 by him and accused Nos.2 to 4. A/2 admitted that his pan card was found during the personal search and while drawing panchanama Ex.68. He also admits that Shamsuddin Miya is his elder brother. He admitted his mobile No.9733391033. A/3 admitted his signature over the panchanama Ex.68 but submits that he

was forced to put his thumb impression. A/5 has also admitted his signatures over Ex.76 and 77 the memorandum panchanamas. It is the contention of the accused that they have been falsely implicated. No defence evidence has been adduced by any of the accused.

20. The Ld.SPP Ms.Rohini Salian apart from oral arguments submitted a memorandum of argument(Ex,216). The prosecution has examined as many as 39 witnesses coupled with several documents and articles. The Ld.SPP categorised the evidence of the prosecution witnesses in 7 groups in the memorandum of arguments. The first group is in respect of the recovery of FICN from A/1 to A/4 by the ATS personnel PW-1 Sanjay Patil, PW-2 Sandip Palve and PW-9 Popat Avhad. The second group is in respect of FICN found in possession of A/5 Abdul and also in respect of different accounts in Axis Bank, Punjab National Bank etc. The third group is about the documents of bank indicating

frequent deposits in the accounts of Bodhu Taimur Shaikh and the witnesses/officers of the different banks. Group four relates to seizure of FICN elsewhere i.e. Jammu Kashmir, Samba, Thane, Badwani M.P, Chandigarh Punjab etc. Group five relates the reports of experts i.e.PW-17 Pratibha Raghavan (Dy.General Manager, RBI, Bangalore), PW-24 Manjunath J. (Retired General Manager Bhartiya Reserve Bank Note Mudran Private Ltd., PW-25 Bylappa (General Manager Indian Government Mint Calcutta, West Bengal). Group six is about the orders of sanction by PW-22 RVS Mani (Dy.Land and Development Officer) Ministry of Urban Development Government of India and PW-23 Virendra Kumar Dy.Financial Advisor in Ministry of Defence and the last group relating to CDR. I shall deal with the arguments of Ld.SPP while appreciating the evidence of prosecution witnesses.

21. Advocate Ms. Sphurti Shinge mainly argued for

accused Nos.1 to 4 and 6. Some part of the argument was made by advocate Wahab Khan. According to advocate Ms.Shinge there are discrepancies at every stage and contradictions at every step in the evidence of prosecution witnesses. There is no pre-trap panchanama, no station diary entry. The prosecution could not establish criminal conspiracy, much less, between the present accused and absconding accused Shaukat and Shamsuddin Miya. The so called recovery of FICN from the possession of A/1 to A/4 also shrouded with mystery as the panchas came 15 minutes later on the spot. It is further argued by Ms.Shinge as to why the accused would choose an open public place for accepting FICN ? They could have chosen more discreet place as that is the natural human tendency. The learned Counsel tried to bring on several minor discrepancies and errors on record in order to buttress her argument as to how it is a totally false case. It is also argued that PI Khanvilkar's antecedents are to be looked into as admittedly he was

trapped by the Anti Corruption Bureau and, therefore, the investigation conducted by him is also cannot be said to be faithful. On the point of deposit of Rs.25,000/- in the account of Shamsuddin Miya by A/4, neither there is an evidence of handwriting expert that the amount was in fact deposited by A/4 nor it is an offence to deposit amount in somebody's account. The prosecution has not examined panch witnesses on panchanama Ex.94. There is no interse connection established between accused No.6 and accused No.1 to 4. It is submitted by Ld.Counsel that all those seized notes were genuine.

22. On the point of CDR it is argued that PW-16 Rajesh Kumar Singh has no authority to supply the copy of subscriber application form. Only because there was a call by A/2 Nuruddin to his brother Shamsuddin Miya on 8/5/09 does not mean that there is some conspiracy. According to the Counsel there is no evidence of circulation

of FICN by the accused. There is no evidence of contact with sovereign neighbouring country. There is no evidence that accused were aware that those were FICN as they are of high quality. The accused are illiterate and, therefore, it would not be possible for them to differentiate between fake and genuine currency notes. There is no evidence that they were connected with some terrorist organisation.

23. The Ld.Counsel also argued that the amendment to Sec.15 U.A.P Act, which came into effect on 1/2/2013 cannot cover the offence in question since as per law of interpretation, penal provisions cannot be applied retrospectively since the offence in question was of 2009, it was not an offence in view of Sec.15 of the U.A.P Act, before its amendment as the accused had no intention or mens-rea in 2009, therefore, there is no question of punishment under Sec.16 as well as no question of conspiracy under Sec.18 of the said Act. There is no

evidence to show that those FICN were raised for funding terrorist activities. The Ld.Counsel further submits that since prosecution has failed to substantiate terrorist act in view of Sec.15, there is no question of presumption under Sec.43(E) of the U.A.P.Act. She drew my attention to Kartar Singh's Judgment, which I shall deal in subsequent part of the judgment. On the point of conspiracy it is submitted that no purpose of conspiracy is brought-forth and no agreement is proved between the accused persons. There is no evidence to attract ingredients of Sec.489(D) and 489(C) of the I.P.C.

24. Advocate Mr.Wahab Khan, mainly argued on the point of sanction, as according to him there is no application of mind by the competent authorities and, therefore, sanction is bad in law. The next point is that since other accused across the nation are not before this court, but, the prosecution wants this court to presume that

those were FICN from Pakistan and, therefore, it is larger conspiracy, which cannot be accepted.

25. While arguing on behalf of accused No.5 advocate Ms.Apeksha Vora submits that erroneous admissions does not amount to proof. She doubted the discovery of the FICN on behalf of A/5 from the gala (shop) of PW-7 Sanjay Kagde as according to her the shutter of the gala was half opened and, therefore, it is not strictly a discovery as per the provisions of law. It is argued that the FICN alleged to have been seized at the behest of A/5 were not sent for examination to the experts, and, therefore, the evidence of experts is of no use against A/5. The Ld. Counsel drew my attention to Ex.100 and 102, which are the reports of experts. It is further submitted that the identity card issued by the Election Commission of India Ex.199 does not belong to A/5. The FICN of 500 denomination with BR series were not sent for examination.

On the point of the evidence of the expert witness PW-25 Bylappa, there are no minutes of the meetings by the committee and no evidence of collection and sending back of legal tenders of Pakistan. She also stressed and supported the argument of the Ld.Counsel for accused Nos. 1 to 4 and 6 that the sanction is mechanical and without application of mind. To sum up, it is submitted that identity of A/5 is disputed. The possession of FICN has not been proved from A/5. The FICN have never been sent for examination. The report is silent. The legal tenders of neighboring country i.e. Pakistan are not on record and there is no cellphone number of A/5.

26. Having considered the respective submissions at bar and after going through the record, following points arose for my determination. I record my findings with reasons therefor as shown here-in-below.

P O I N T S	F I N D I N G S
<p>1. Whether it is proved by the prosecution that on 14/5/09 at Barrister Nath Pai Marg near Star Cinema, Mazgaon. Mumbai the accused Nos.1 to 4 were found in possession of 200, 100, 23 and 22 Fake Indian Currency Notes of Rs.1000 denomination each respectively of 2AQ and 8AC series, total 345 ?</p>	<p><u>Proved.</u></p>
<p>2. Whether it is proved by the prosecution that on 23.5/09 at Gala No.2 of Matoshree Building, Kagde Chowk Dombivali (W), Tal.Kalyan, Dist.Thane, accused No.5 was found in conscious possession of 2 and 25 Fake Indian Currency Notes of Rs.1000 and Rs.500 denomination each of 2 AQ and 9BR series and also in possession of accused No.6 on the same day at Reay Road Railway Station (W), Barrister Nath Pai Marg Mumbai, four fake Indian Currency Notes of Rs.1000 denomination each of 2AQ series which were intending to be used as genuine notes ?</p>	<p><u>Proved.</u></p>

<p>3. Whether it is proved by the prosecution that accused No.1 to 6 on the aforesaid dates or before the said dates were found trafficking in the above described FICN knowing or having reason to believe to be counterfeit and thereby committed an offence punishable under Sec.489-B of the I.P.C.?</p>	<p><u>Proved</u></p>
<p>4. Whether it is proved by the prosecution that accused Nos.1 to 6 on the same dates, time and places had in their possession for the purpose of delivering to any person the aforesaid FICN resembling or so nearly resembling as to be circulated to deceive any Indian Currency Notes ?</p>	<p><u>Proved</u></p>
<p>5. Whether it is proved by the prosecution that the accused Nos. 1 to 6 along with wanted accused Shaukat Marfat Ali with an intention to threaten the security and sovereignty of India by being in possession of the aforesaid FICN on the above dates, time and places for the purpose of circulating them to cause disruption of the supply and services essential to the life of the</p>	

community in India and to de-stabilise the Indian economy, committed a terrorist act as defined under Sec.15 punishable under Sec.16 of the Unlawful Activities (Prevention) Act, 1967 ?	<u>Proved</u>
6. Whether it is proved by the prosecution that accused No.1 to 6 alongwith wanted accused Shaukat Marfat Ali, in India, directly or indirectly, raised or collected funds by being in possession of the above described FICN, knowing that such funds were likely to be used to commit a terrorist act ?	<u>Not Proved</u>
7. Whether it is proved by the prosecution that accused Nos.1 to 6 alongwith wanted accused Shaukat Marfat Ali on or before 14/5/09 and 23/5/09 in India, agreed to do an illegal act, i.e., a terrorist act, to wit, to traffic in and circulate FICN to threaten the security and sovereignty of India by disruption of the supply and service essential to the life of the community in India and to destabilise the Indian economy which are the offences punishable under Sec.16 and 17	

of the Unlawful Activities (Prevention) Act, 1967 and Sec. 489(C), 489(B), 489(E) of the IPC and thereby committed an offence punishable under Sec. 120(B) of the I.P.C.	<u>Proved, except Sec.17 of U.A.PA</u>
8. Whether it is proved by the prosecution that accused Nos.1 to 6 alongwith wanted accused Shaukat Marfat Ali on or before 14/5/09 and 23/5/09 in India conspired or attempted to commit or abetted the commission of a terrorist act, to wit, to traffic in and circulate FICN to threaten the security and sovereignty of India by disruption of the supply and service essential to the life of the community in India and to destabilise the Indian economy?	<u>Proved</u>
9. What offence, if any, has been proved against accused?	As above
10. What order ?	As per final Order

REASONS

Point Nos.1 to 4:

27. Before scrutinizing the evidence as to whether

the currency notes found in the possession of accused Nos.1 to 6 are counterfeit, it would be essential to see as to whether on 14/5/09 and 23/5/09 the team of ATS personnel found such FICN in the possession of A/1 to A/6. PW-1 Sanjay Patil, PW-2 Sandip Palve and PW-9 API Popat Avhad are the three witnesses examined by the prosecution in order to prove the possession of aforesaid FICN with the accused persons. The evidence of these three witnesses needs to be marshalled in order to appreciate it in a proper manner.

28. The evidence of PW-1 Sanjay Patil reveals that pursuant to an information received by him on 14/5/09 that A/1 and A/2 were going to deliver FICN to A/3 and A/4 near Star Cinema at Mazgaon, he took the informer to Sr.PI Khanvilkar who was apprised about the said important information. The informer requested the police to keep his name secret. A team of the ATS personnel was formed

comprising PI Khanvilkar, PI Sawant, PI Dudhgaonkar, API Sachin Kadam, ASI Wakurdekar, PSI Vijay Shinde, PW-9 Popat Avhad and after informing them about the trap to be laid, they proceeded towards the Star Cinema in a police vehicle along with the informant. They reached on the spot at about 13.45 hrs. The team was divided into three groups. Each of the group was directed to take positions for surrounding the area. PI Khanvilkar instructed the groups that only after his signal they should come forward to apprehend the accused. They were instructed to remain on a spot in such a manner that their presence should not be noticeable. Within 5 to 10 minutes two persons came over there who were identified by informant as A/1 Ravi Dhiren , A/2 Nuruddin Bari and after sometime A/3 Mohd.Samad and A/4 Mohd.Aijul. Informant thereafter left the spot. The movements of those four persons were suspicious. No sooner did PI Khanvilkar signal all the members they rushed towards the four persons and were apprehended on the

spot. PI Khanvilkar introduced himself and the other members of staff to those four persons in Hindi. He also informed them about their search to be taken. He directed police constable 25528 to bring two panch witnesses. After arrival of two panchas within 5 to 10 minutes PW-9 Avhad informed the panchas about the search to be effected of those four persons and the preparation of panchanama. The panchas were asked whether they would act as a panch witnesses. The evidence further reveals that PW-9 Avhad also inquired with those four accused as to whether they wanted to effect search of the panch witnesses and the police. The accused declined. Thereafter, PW-9 Avhad asked the names and addresses of those four persons who told their names as A-1 Ravi Dhiren a resident of Gol Pada, Post Chori Anantpur, Tehsil Kaliachowk, Distt.Malda, West Bengal. A-2 Nuruddin Bari informed that his address is Ghosh Tula, Post Chori Anantpur, Police Station Kaliachowk, Distt.Malda, West Bengal. A-3 Mohd.Samad told his

address i.e. Room No.28, Bhaskar Chawl, Kalwa, Dist.Thane, his permanent address is village Amanat, Post Piyarpur, Police Station Rajmahal, Dist.Sahebganz, Jharkhand and the A/4 Mohd.Aijul told his address i.e. Shakkargali, Danabunder, near Masjidbunder Railway Station and his permanent address is village Amanat, Post Piyarpur, Police Station Rajmahal, Dist.Sahebganz, Jharkhand.

29. The evidence of PW-1 Sanjay Patil, PW-2 Sandeep Palve and PW-9 Popat Avhad is quite consistent and corroborates each other on material particulars in so far as apprehension of A/1 to A/4 is concerned and the recovery of FICN from each of them as well as on the aspect of preparation of seizure panchanama with respect to those FICN and other articles such as genuine Indian Currency, wallet, mobile phone, paper cutting etc., which I shall discuss in the subsequent paras. The evidence of these

three witnesses further reveals that during the search of A/1 Ravi a bundle in black polythene bag was found in his right side pant pocket. On opening the same it contained 100 Indian Currency Notes of Rs.1000 denomination each. Similar black polythene bag was found tucked in his waist containing 100 FICN of Rs.1000 denomination each. PI Khanvilkar compared the notes those were found on the persons of the four accused with genuine notes of Rs.1000 denomination and they found that those notes were of inferior quality. PI Khanvilkar found paper of those notes thicker than genuine notes as well as there was a difference in security thread. The common feature of all those notes were that they were of 2AQ and 8AC series. The serial numbers of those notes were written in the panchanama. One note from each series from the bundle seized from all the accused was taken out for the purpose of sending the samples to Reserve Bank of India for examination and remaining notes were sealed separately under panchanama.

There were 200 notes of Rs.1000 denomination found in possession of A/1. 100 notes of Rs.1000 denomination were found in possession of A/2. 23 notes of Rs.1000 denomination were found in possession of A/3 and 22 notes of Rs.1000 denomination were found in possession of A/4. Those notes were amounting to Rs.3,45,000/-. The details of all the 345 notes are described in the panchanama Ex.68, which has been duly proved by PW-2 Sandeep Palve. It is the evidence of these witnesses that after completion of investigation PW-9 Avhad read over and explained its contents to the accused in Hindi language. It was signed by the panchas and one of the accused as well as by PW-9 Avhad and three accused put their thumb impressions. A perusal of panchanama Ex.68 reveals that following sample notes were taken out from the bundles for the purpose of forwarding the same for examination. From A/1 currency notes bearing Nos.2AQ 577624 and 8AC 991403 were taken out, which were duly sealed in a brown envelop and

remaining 198 notes were separately sealed. Interestingly, apart from genuine Indian Currency of Rs.150/- which was separately kept by A-1 in his wallet, a new cutting of Bengali language bearing mobile No.9769189839 was found. It was also duly sealed. A sample note from the bundle seized from A/2 bearing No.2AQ 579148 and similarly note No.2AQ 585424 and 2AQ 585446 were separately sealed which were found from the bundle seized from A/3 and A/4 respectively. During the search of A/4 a receipt indicating deposit of Rs.25,000/- in account No. 30660824659 in SBI was found. It was proved to be the account number of Shamsuddin Miya at Borokamat Branch in West Bengal.

30. PW-2 and PW-9 in detail, testified about all the remaining articles seized during the search of the accused which have been duly identified in the Court by them.

31. During cross-examination of PW-1 by Mr.Wahab Khan Ld.advocate for accused Nos.1 to 4 and 6, the fact that the ATS team visited the spot in Government vehicle bearing MH-01-BA 4329 and so also about the trap, which was laid, apprehension of A/1 to A/4 on the spot and recovery of 345 notes from their person has been reaffirmed. The fact that the accused were searched by PW-9 Avhad and the answering of queries by the accused made by PW-9 Avhad has also been substantiated during the cross. The defence has also substantiated the fact about the details of serial numbers of those currency notes of FICN and the corresponding names of accused Nos.1 to 4 as noted down in the panchanama. It is also reiterated that till the arrival of the panchas no search was effected, which confirms the fact that there was no planting of FICN on the person of A/1 to A/4. The panchanama was dictated by PW-9 and scribed by ASI Jadhav on the spot itself has also been substantiated.

Only because there are some discrepancies as regards the drawing of panchanama by sitting on the ground or by sitting on a platform near a spot etc., would not make evidence of these three witnesses unworthy of credit, which has been duly proved by the prosecution through the evidence of these three witnesses that due procedure has been followed at the time of effecting search of A/1 to A/4 and recovery of FICN. It is also brought out in cross of PW-1 Sanjay Patil that during interrogation of accused between 14/5/09 to 22/5/09 they disclosed names of their companions i.e. accused Nos.5, 6 and absconding accused No.7. An attempt has been made during the cross of PW-2 to show that he was not present on the spot at the time of panchanama as from his mobile location it could have been detected that he was somewhere else, which proved to be futile. It has been reiterated that the accused were encircled by the team of ATS personnel and then the search of the accused and the recovery of FICN. On the contrary it

has been brought out in cross that this was his first case where he acted as a panch witness. Similarly, nothing could be elicited from the mouth of PW-9 during the cross by the defence, which would render his testimony unbelievable. It would be pertinent to note that PW-9 Avhad has also testified that during the search of A/2 apart from the 100 FICN of 2AQ series his wallet contained his pan card, a black coloured mobile handset of some Bluetooth FM Company and a simcard. During search of A/3 apart from 23 FICN his wallet contained Rs.320, certain railway tickets of central railway, railway coupons, visiting cards and some photographs. During search of A/4, apart from 22 currency notes his wallet contained visiting card, some passport size photographs and a receipt of Bank of India, Masjid Branch, Mumbai bearing account No.30660824659 which was in the name of Shamsuddin Miya, a mobile handset and Simcard of Idea Company. It is testified by PW-9 that on the same day he had prepared a draft and forwarded the

sample notes to Reserve Bank of India after obtaining the signature of PI Khanvilkar. A copy of the said letter is proved at Ex.93.

32. Evidence of PW-9 Avhad further reveals that on 17/5/09 during interrogation of A/1 he volunteered to give some information. Accordingly, two panch witnesses were called. A/1 voluntarily stated before the panchas and the police that A/5 Abdul Shaikh and A/6 Azraul Shaikh are distributing FICN in the market at Mumbai and Thane. He volunteered to show the residence of A/5 and A/6. Accordingly, a memorandum was prepared over which A/1 put his thumb impression and the panchas put their signatures. It is proved at Ex.94. Thereafter, A/1, panchas, PW-9 and other staff boarded a Government vehicle. As per direction of A/1 they proceeded towards Masjid Bunder, Ahmedabad Galli via P.D'Mello Road. A/1 asked to stop the vehicle at Ahmedabad Galli. He was followed by the police

team. A/1 took them to an adjoining hutments known as Chatai Chawl. He took them to hut No.18 over a mezzanine floor. The said floor was locked. A/1 Ravi informed that A/5 Abdul and A/6 Azraul reside over there. A panchanama was drawn over which A/1 put his thumb impression and was signed by the panchas. It is proved at Ex,94-A. The team returned to the office and an entry was effected in the case diary.

33. PW-9 further testified that in order to search the house of A/4 Mohd.Aijul, he again reached Ahmedabad Galli, Chatai Chawol on 28/5/09. He summoned two panch witnesses. They volunteered to act as panchas. When hut no.18 was searched in the presence of panchas, nothing incriminating could be noticed. Accordingly a panchanama Ex.95 was drawn.

34. Now, so far as the possession of notes from A/5 is

concerned PW-9 Avhad testified that on 23/5/09 he received an information about the visit of A/5 to Crawford Market. Accordingly, he visited Crawford market alongwith informer at about 12.30 p.m. The informer had shown him A/5 Abdul and then left. PW-9 took A/5 Abdul in custody and brought him to office. He summoned two panch witnesses and informed them about the purpose for which they were called. Personal search of A/5 was effected in presence of panchas. On being asked A/5 told his name as Abdul Asruddin Shaikh, resident of Matoshree building, Shop No.2 Subhash Road, Dombivali, Dist.Thane, age 26 years. Occupation mango seller. During his search a small notebook with a caption "Rajasthan", one telephone diary, a pancard of his name, his photograph, mobile phone with simcard and cash of Rs.160 was found. The articles were duly seized. A panchanama was drawn, which is proved at Ex.86. PW-9 Avhad has identified a small diary containing account number of one Bhodu T. Shaikh. The articles were

marked as Art.54 colly. PW-9 Avhad has identified A/1 to A/4 and A/5 sitting in the dock. PW-9 deposed that the articles were deposited in the Malkhana.

35. The evidence of PW-9 Avhad reveals that on 23/5/09 A/5 Abdul volunteered before him that he would like to state certain facts about the case. PW-9 summoned two panch witnesses and informed them about the accused and the crime. A/5 Abdul in the presence of of panchas informed that his friend Shaukat, who hails from his village sends fake currency notes for the purpose of circulating in Thane and Mumbai. A/5 Abdul further volunteered that Shaukat had given him Rs.15000 FICN out of which he possessed Rs.14500 FICN. He further stated that he would discover Rs.14500 FICN from a place where he would take them. Accordingly PW-9 Avhad had scribed a memorandum which was signed by him, the panchas and by the accused. It is proved at Ex.76. Thereafter, the police team headed by

PW-9 Avhad and the panchas alongwith A/5 boarded Qualis Jeep No.MH 01 BA 4328. As per the direction of A/5 they proceeded towards Subhash Road, Dombivali. A/5 had asked to stop vehicle at the square known as Kagde Chowk. He led the team to a Gala No.2. The shutter of Gala was half opened. A person was standing near the Gala, who told his name as Sanjay Kagde (PW-7). PW-7 Sanjay Kagde agreed to act as a witness. When they entered into the Gala, they found 40 boxes of mangoes. There was a small passage admeasuring 4 X 3 ft. in the said Gala adjoining to the boxes of mangoes where a suitcase was lying on the ground. A/5 opened the suitcase and took out FICN amounting to Rs.14,500 by saying that those were given to him by Shaukat. Those were two currency notes of Rs.1000 denomination with 2AQ series and 25 currency notes of Rs. 500 denomination with 9 BR series. It is testified by PW-9 Avhad that while handling those notes, prima facie, he found that they were fake. He packed the notes in a

polythene bag, duly sealed by affixing signed labels of panchas and himself. He also found two passbooks of Axis Bank, Vashi Branch in the name of Bhodu T. Shaikh bearing account No.....66178, which is in fact account No. 30561366178 (Art.45). This is the third account in the name of Bhodu T. Shaikh in Bank of India, Vashi Branch to the earlier two accounts of Axis Bank found in the name of Bhodu T. Shaikh while conducting search of A/3. Those account numbers are 661010100001380 (Ex.119) and 072010100288033 (Ex.174). PW-9 Avhad had duly seized the two passbooks, which he tied together with a string by punching holes in the corner. The signed labels with signatures of panchas were affixed over the passbooks. He also noticed identity card issued by the Election Commission of India in the name of A/5 Abdul. He found a passbook of Punjab National Bank in the name of A/5 with account number 81226 (last 5 digits). It was also duly seized. He found a cheque book issued in the name of A/5 on the same

account commencing with cheque No.43901 to 43920. PW-9 Avhad also found 48 filled slips of different dates and of different amount in the name of Bhodu T. Shaikh, who is admittedly brother-in-law of A/5. He also found 26 slips showing deposit of amounts on different dates in the account of Bhodu T. Shaikh bearing account No.1380 (last 4 digits). All the slips were punched and tagged together. He took possession of all the aforesaid articles by drawing panchanama which is proved at Ex.77. A perusal of Ex.84 also containing a list of articles, is quite shocking indicating deposit of huge amount on almost every alternate date in the account of Bhodu T. Shaikh by A/5 Abdul. The following chart at a glance would depict the gravity and seriousness of this case as well as indicates as to how such huge amount was being deposited by A/5 in the account of Bhodu T. Shaikh.

A/5 Abdul Asruddin Shaikh

Date	Account Number	Amount deposited	Date	Account Number	Amount deposited
04/12/08	72010100288033	49500	29/11/08	661010100001380	18000
06/12/08	" "	30000	01/12/08	" "	10000
08/12/08	" "	27000	04/12/08	" "	6500
11/12/08	" "	25000	12/12/08	" "	15000
15/12/08	" "	49500	13/12/08	" "	4000
16/12/08	" "	28000	15/12/08	" "	10500
-----	" "	49500	19/12/08	" "	14500
22/12/08	" "	46000	09/01/09	" "	39000
27/12/08	" "	38000	15/01/09	" "	16000
29/12/08	" "	24000	19/01/09	" "	20000
01/01/09	" "	47000	27/01/09	" "	5000
03/01/09	" "	28000	29/01/09	" "	2000
05/01/09	" "	17000	31/01/09	" "	24000
06/01/09	" "	18000	02/02/09	" "	18000
09/01/09	" "	30000	12/02/09	" "	30000
12/01/09	" "	38000	16/02/09	" "	25000
15/01/09	" "	38000	19/02/09	" "	7000
19/01/09	" "	20000	24/02/09	" "	14000
20/01/09	" "	19000	26/02/09	" "	40000
24/01/09	" "	14000	02/03/09	" "	15000
27/01/09	" "	28000	28/03/09	" "	30000
29/01/09	" "	20000	13/04/09	" "	49000
03/02/09	" "	5000	30/04/09	" "	19000
03/02/09	" "	43000	15/05/09	" "	8000
05/02/09	" "	38000	14/05/09	" "	14000
07/02/09	" "	17000	18/05/09	" "	49000
09/02/09	" "	33000		Total (B)	502500
12/02/09	" "	40000			
14/02/09	" "	49000			
16/02/09	" "	26000			
19/02/09	" "	46000			
24/02/09	" "	16000			
27/02/09	" "	7000			
02/03/09	" "	49000			
23/03/09	" "	34000			
28/03/09	" "	40000			
06/04/09	" "	4500			
06/04/09	" "	22000			
13/04/09	" "	49000			
20/04/09	" "	14000			
27/04/09	661010100001380	49500			
27/04/09	072010100288033	49500			
02/05/09	" "	15000			
05/05/09	" "	30000			
14/05/09	" "	33000			
15/05/09	" "	49500			
18/05/09	" "	49000			
22/05/09	" "	15900			
	Total (A)	1507400			

Total (A) + (B) = 2009900

It is really surprising and shocking that A/5 who claims to be a poor labourer selling mangoes during season deposited such huge amount in the accounts of Bhodu T. Shaikh. It does not require an expert's opinion to infer from the attending circumstances that he must have been depositing such large sums in the account of Bhodu T. Shaikh and that the said Bhodu T. Shaikh was immediately withdrawing the said amount at Malda in West Bengal promptly from ATM Machine. It has been rightly argued that after circulating FICN in the market, genuine currency generated there from was being deposited in the account of Bhodu T. Shaikh and withdrawn by the later through ATM. Be that as it may. The two currency notes of Rs.500 denomination are marked as Art.44.

36. During cross-examination of PW-9 by Ms. Apeksha Vora the Ld. Counsel appearing for A/5 Abdul, it is admitted by him that panchanama dated 17/5/09 in

respect of A/5 was written by PSI Wakurdekar. The attention of the witness is drawn to date 27/5/09 below **Ex. 94**, which the witness admits that it is due to inadvertence. However, the detail beneath the signature of PW-9 Avhad on **Ex.94** is date 17/5/09 and, therefore, it appears to be a clerical error and, therefore, on this ground itself the document cannot be viewed with suspicion. He admits that he had given a list of articles to A/5 which were seized from his person but did not mention about it in the panchanama. There are some interpolation in the date of arrest panchanama **Ex.105** from 22nd to 23rd. This is a minor error which does not carry much importance in the light of the fact that the arrest of the accused on 23/5/09 has been substantiated during the cross by the defence itself. It is the case of defence so far as A/5 is concerned that the currency notes found on the person of A/1 to A/6 were genuine, which the witnesses denied. As such, there is no effective cross examination of PW-9 Avhad in so far as A/5 is

concerned. The honest and sincere efforts made by PW-9 Popat Avhad to investigate the case thoroughly needs to be appreciated.

37. It has been extensively argued by the defence that there are inconsistencies and contradictions in the evidence of PW-9 and other witnesses. As already stated, there are bound to be some inconsistencies in the evidence of prosecution witnesses as it cannot be expected that the evidence of each witness would be exactly similar or identical to that of another as every human being has his own way of describing a particular fact. Unless there are material contradictions or inconsistencies going to the root of the matter it cannot be said to be the inconsistencies affecting very core of the case. It would be apposite to place a useful reliance on an authority of Hon'ble the Supreme Court in case of **State of Maharashtra V. Siraj Ahmed Nisar Ahmed and others** reported in (2007) 2

Supreme Court Cases (Cri) 472. The Hon'ble Supreme Court held that

at the time of appreciation of evidence what should be the duty and approach of the Court. It is held that the court to first see whether evidence of witness read as a whole appears to have a ring of truth. Once the said impression is formed, Court must scrutinise the evidence, more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence, as a whole, and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matter not touching the core of matter in issue, hyper technical approach by taking sentence out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter, would not permit rejection of the evidence as a whole. On facts,

the discrepancies in statements of the two witnesses were not infirmities”.

The ratio is squarely applicable to the present case.

38. PW-5 Raja Jadhav is a panch witness in whose presence personal search of A/5 was effected at the office of ATS by PW-9 during which a diary, pan card and a mobile handset of Nokia Company were found on his person. An amount of Rs.160 was also found on his person. The witness testified that the panchanama was read over to the accused and then it was signed by him as well as by this witness and another panch. The panchanama is proved at **Ex.86**. The witnesses have duly identified articles seized from A/5 in the form of small diary, mobile handset of Nokia, pancard in his name, his own 10 coloured photographs of different size and the cash of Rs.160. These articles are marked as **Ex.54 colly**. During his cross-examination by the defence advocate Ms.Vora, it is elicited that copy of panchanama is given to the accused in his

presence. There were no injury marks on the person of the accused. As such, I do not find any reason to disbelieve the testimony of PW-5 Raja Jadhav and PW-9 Avhad in so far as recovery of two currency notes of 2AQ series of Rs.1000 denomination and 25 currency notes of 9BR series of Rs. 500 denomination from A/5. Their evidence further finds full support and corroboration from the testimony of PW-3 Nasuruddin Khan a panch witness and PW-7 Sanjay Kagde the Gala owner.

39. The evidence of PW-3 Nasuruddin Khan reveals that on 23/5/09 he was summoned at Kalachowky Police Station at about 3.30 to 3.45 p.m. when he was returning home. A person approached him calling himself to be a police officer by displaying his identity card. He asked this witness as to whether he would act as a panch witness. He consented and, therefore, taken to the office of ATS on the first floor. PW-9 Avhad had shown to him a person who was

arrested in connection with FICN. The witness was supposed to hear as to what the said person would say before the police. On being asked the person in custody said that his name was Abdul Shaikh. He further said that one Shaukat Ali had given him Rs.15000. Shaukat Ali indulges in the activities of fake currency notes at Thane and Mumbai. Thereafter, the arrested person said he would produce the said amount of Rs.15000, which he had concealed at one place. The said narration was scribed by Mr.Avhad. It was then signed by this witness and other panchas as well as by the accused. He testified that the said statement was recorded as per the say of the accused. It was also signed by PW-9 Avhad. The said memorandum is proved at Ex.76. PW-3 further testified that thereafter the police team, panchas and the accused boarded a police vehicle (Qualis). The accused asked Avhad to drive towards Dombivali. The vehicle proceeded towards Dombivali via Sewree. After two hours journey they reached Dombivali.

The accused asked to stop the Jeep near a junction. All of them alighted from the vehicle and then the accused led to a Gala (shop). A person was standing over there, who on inquiry by Mr.Avhad told his name as Sanjay Kagde (PW-7) owner of the Gala. The accused Abdul raised the shutter of the gala which was already opened to its' half. All of them followed A/5 Abdul into the Gala. There were 30-40 boxes of Alphanso Mangoes. A/5 Abdul took out a suitcase concealed beneath a heap of clothes. He opened the suitcase and took out a bundle of currency notes by saying that those were given to him by Shaukat Shaikh. Those were two currency notes of Rs.1000/- denomination and 25 currency notes of Rs.500 denomination. The witness testified that those notes were a bit thicker than normal currency notes. Those were duly sealed by placing in a plastic cover and affixing the signed labels of panch witnesses and Mr.Avhad. The numbers of those notes were already noted down. During search the police found two

passbooks of a bank which were also duly sealed. An election card and one more passbook of accused was found. He also testified about the slip books of Axis Bank found over there. All the articles were duly seized by drawing the panchanama, which is proved by this witness and is marked as Ex.77. A perusal of panchanama Ex.77 and the memorandum statement Ex.76 appears to be duly drawn as per Sec.27 of the Evidence Act. A/5 had discovered this fact voluntarily while in police custody. The details of all the currency notes found in the suitcase have already been mentioned in the panchanama Ex.77. The panchanama also reveals that 26 slips were found, which were of Axis Bank showing certain amounts deposited in the account of Bhodu T.Shaikh bearing account No.661010100001380. Similar 48 slips were found through which certain amount was deposited in another account of Bodhu T.Shaikh bearing account No.....8033. PW-3 testified that after due seizure of all the articles the passbooks, the slips, it was

signed by him as well as by the accused No.5 Abdul and another panch. He has also identified the accused sitting in the dock. The two currency notes of Rs.1000 denomination are at Art.42 and 25 notes of Rs.500 denomination are at Art.43. The polythene cover with signed labelled are at Ex.44.

40. This witness was cross-examined by the earlier Counsel of A/5 namely Shri Mooman. It has been reiterated in cross examination that he was asked by the police to hear what the accused had to say about the fake currency notes in the office of ATS. The said conversation was written down by the police. He admits that no local panch was called near the Gala, however, it has been again brought out that owner of the Gala i.e. PW-7's signature was obtained over the panchanama. When he was cross-examined by Ms.Vora he admits that he did not work as panch witness before this case. Though he admits that PW-9 Avhad had

held the hand of accused while going to the Gala it does not necessarily mean that the accused did not lead the police to the Gala. It cannot be lost sight of the fact that accused was in police custody and, therefore, in order to take proper precaution and to avoid his escape PW-9 must have held his hand. The witness admits no documents of title with respect to the said Gala was asked for from its owner. It is not the requirement of law to know the title of the place from where a fact is discovered by the accused voluntarily after his statement in the police custody. However, he confirmed the fact that bank passbooks and the cheque books as well as slips were in the suitcase, which were duly sealed.

41. During his re-examination SPP Ms.Salian has shown two passbooks of SBI in the name of Bhodu T. Shaikh bearing same account number i.e.30561366178. The witness identified his signature over the slip affixed on the

passbook. The passbooks are marked as Ex.45 colly. The witness has also identified the passbook of Punjab National Bank (Dombivali East Branch) in the name of A/5 Abdul with saving account No.3988000100081226. It is marked as Ex.47. The cheque book of the Punjab National Bank bearing signature over the paper slip is marked as Art.48. The 48 slips in the name of Bhodu T. Shaikh of different dates mentioning Axis Bank account No.....88033. The witness has identified his signature over the paper slips which is marked as Ex.49 colly. Similarly, he has identified 26 slips in the name of Bhodu T.Shaikh of various dates mentioning Axis Bank account No....1380 which is marked as Art.50. He specifically testified that all the aforesaid articles at Sr.No.1 to 6 were seized from A/5.

42. PW-7 Sanjay Kagde is the owner of the Gala, which was given by him to A/5 in the year 2009 on rent. He testified that there are six Galas in his building. In one

Gala there is a medical store. This witness testified that the Gala was given to A/5 on rent in the month of May,2008 also for his seasonal business of mangoes. It was again given to him in the month of April, 2009 on rent for a seasonal business of the mangoes. He has duly identified A/5 in the dock. This Gala was given to A/5 on a monthly rent of Rs.4000/-. He has accepted Rs.500/- as an advance. He testified that A/5 Abdul used to reside in the said Gala alongwith his 2-3 relatives who used to sell mangoes by carrying boxes over head. His evidence reveals that on 23/5/09 at about 5.30 p.m. when he had been to A/5 Abdul to buy mangoes he noticed the shutter of the Gala half opened. At that time the ATS personnel came over there with A/5 Abdul. After going inside the Gala he followed them. A/5 took out some currency notes, bag and gave those notes to ATS personnel. He fully corroborated the testimony of PW-3 and PW-9 in so far as seizure of two currency notes of Rs.1000 denomination and 25 currency

notes of Rs.500 denomination taken out by A/5 from the suitcase and its due seizure as well as panchanama by the police on the spot. He also testified about the seizure of passbooks of Punjab National Bank, Axis Bank and vouchers etc.

43. During his cross examination nothing could be elicited which would create any doubt about the authenticity and genuineness of his evidence. There is no reason for this witness to speak against the accused as he had no axe to grind against A/5. It has come in the cross examination that this witness does not know whether A/5 or his relative were always locking shutter while going out. He also admits that at the relevant time there was nobody in the Gala. It is not the case of the defence that those notes were planted in the said Gala either by PW-7 or ATS. Merely because the shutter was half opened does not mean that the discovery of the said fact was not faithful. Much

has been argued by Ms.Vora that identity of this accused has not been established as the FICN were not found from his possession and FICN have never been sent for examination. It is pertinent to note that memorandum Ex.76 bears the signature of A/5 so also the discovery panchanama Ex.77. Through this panchanama the FICN of 2 AQ series of Rs. 1000 denomination and 9 BR series of Rs.500 denomination came to be seized. A perusal of Ex.100 which is a letter written by Sr.PI Khanvilkar to the Executive Manager of Currency Note Press Nasik on 26/5/09 indicates that apart from the FICN seized from A/1 to A/4 the FICN seized from A/5 comprising two notes of Rs.1000 denomination of AQ series and 500 FICN of 9 BR series total Rs.25 were forwarded to the CNP Nasik, which falsifies the argument of Ld.Counsel that the notes recovered from A/5 were not at all sent for forensic examination.

44. Ex.101 is the letter of Currency Note Press Nasik

dt.27/5/09 which clearly indicates that 345 notes of Rs. 1000 denomination which were seized earlier from A/1 to A/4 and 25 notes of Rs.500 denomination with 9BR series were duly received by CNP Nasik, which indicates that samples from all the seizure of FICN were duly forwarded by the Sr.PI ATS Kalachowky to the CNP Nasik.

45. The expert's opinion on forged notes by CNP Nasik Ex.102 further confirms the fact that the referred suspected notes of Rs.500 and 1000 denomination are counterfeit notes for the reasons that the paper was not genuine. The main water marks are imitated. Security thread are imitated. Ink shades are not matching. Colour registration is not correct. Numbering not as per genuine note. On the aspect of quality of printing on front intaglio printing for the text is absent. OVI effect for the figure "500/1000 in the centre is absent. The R.B.I.seal lacks sharpness and the details of Ashoka Pillar are missing. On

backs, Tint design lacks sharpness and printing ink colours do not match with the genuine note.

46. As such, the argument of Ms.Vora is contrary to the record referred here in above. I am afraid, I cannot buy the argument of Ld.Counsel on the question of identity of A/5, which has been established by the prosecution beyond any doubt. PW-7 Sanjay Kagde, PW-9 Avhad and PW-3 Nasuruddin have identified A/5 Abdul. Interestingly, in para 4 of the cross-examination of PW-7 Sanjay Kagde Ms.Vora herself has suggested that PW-7 used to accompany A/5 Iqbal Shaikh in his business of sell of mangoes. The seizure memo Ex.199 in respect of the copy of Election identity card appears to be of one Abdul Haque Tamaruddin Shaikh, which is definitely not of A/5. It has been rightly argued by SPP Ms.Salian that it has come in the evidence of PW-7 that one more person was living with A/5 and perhaps this identity card must have been of that person

viz. Abdul Haque. However, on perusal of **Ex.91** colly. which is document of Axis Bank indicating details of account number of A/5 Abdul indicate not only the photograph of A/5 but his signature, the copy of his pan card bearing permanent account No.CFYPS 7400F, the copy of passbook of A/5 with Punjab National Bank bearing account No. 3988000100081226 also indicates the transaction details as well as his address at the Gala of Matoshree Building Dombivali. **Ex.108** is the letter of the Punjab National Bank indicating details of account of A/5 and the original account opening form **Ex.109** which clearly depicts not only signatures of A/5 and his two coloured passport size photographs but also specimen signature on this original form. This original documents produced by Punjab National Bank and duly proved by the prosecution fully established the fact that it was the same accused i.e.A/5 from whom FICN were seized from the Gala (shop) at the relevant time and that FICN were duly sent to CNP Nasik.

The report of CNP Nasik at Ex.102 can be directly admitted in evidence under Sec.292 and 293 of Cr.PC.

47. PW-4 Vilas Nage is a panch witness whose evidence reveals that on 23/5/09 when he was waiting for a bus at a bus stop between Cotton Green and Ray Road, 3-4 persons in plain clothes approached him and disclosed their identity as policemen. They asked him as to whether he would act as a panch witness while effecting search of a person. The witness agreed and, therefore, took him to some walking distance of two minutes where he saw a person in the custody of policemen. Another person who was also a panch witness was already present over there. His evidence further indicates that the policemen asked the person in custody whether he wanted to effects search of the police personnel. The said person told his name as Azraul Shaikh (A-6). During his search four currency notes of Rs.1000 denomination were found in his pant's pocket.

There was a currency note of Rs.50 denomination, six currency notes of Rs.10 denomination and one currency note of Rs.5 denomination were also found. There was a mobile handset in his shirt's pocket. A Police officer took out a currency note of Rs.1000 denomination from his pocket and compared it with the currency note of the same denomination found in the possession of A/6. The note found in the possession of A/6 was different than the currency note with the officer. The witness testified that he could feel the difference between the two notes so as to say that the embossed printing, which was found on the currency notes of the police officer was absent in those notes found in possession of A/6. The witness remembered that the notes were of common series as '2AQ'. Those were four currency notes of Rs.1000 denomination, one note was taken out and remaining three notes were duly sealed in an envelop by the police officer by affixing signed label of this witness, another panch and officer. The panchanama was

drawn in Marathi, which was explained to the accused in Hindi. It was signed by him and another panch. He also testified that copy of the panchanama was given to the accused and his thumb impression was obtained. The panchanama is proved at **Ex.84**. The witness has also identified articles such as mobile handset over which it is inscribed '**Digital Series**' on the backside. The handset contained a battery and simcard. The mobile is marked as Art.51. The one currency note of Rs.50 and 6 currency notes of Rs.10 and one currency note of Rs.5 are marked as **Art.52 colly**.

48. While cross-examining this witness the Ld.Counsel Mr.Wahab Khan brought out that the accused was not arrested in his presence nor did he ask any question to the accused. He did not ask any question to the police. Rest of the questions about the knowledge of this witness, about the custody of the accused, vehicle number of ATS,

number of spectators etc., are all irrelevant question. However, it has come in the cross examination that a single officer took search of A/6. It is also brought out that the articles found on the person of the accused were not placed on the ground. The cross further reveals that it took 10 minutes to take out the articles from the person of the accused. The witness further admits that after completion of the entire procedure the articles were in the possession of a policeman. The witness had never signed any panchanama in any case, before the present matter. He has not deposed in any court earlier. He candidly testified that panch witness must speak the truth. The witness has also identified FICN, which is marked as **Art.53**. He has duly identified the accused sitting in the dock.

49. From the discussion of aforesaid facts, evidence and circumstances the prosecution has proved not only the possession of FICN by accused Nos.1 to 6 but also

forwarding the FICN to CNP Nasik and the report of CNP Nasik Ex.102 confirming the fact about the counterfeit nature of those notes by the said report dt,30/5/09.

50. Apart from the report Ex.102 of CNP Nasik, the prosecution has also examined some other experts in order to establish one more additional factor that those were not only FICN notes but those were manufactured and printed in a neighbouring sovereign country i.e.Pakistan.

51. Once the prosecution has established by its trustworthy, cogent and reliable evidence that the aforesaid currency notes of Rs.1000 and Rs.500 denomination were recovered from A/1 to A/6 and the report of CNP Nasik Ex. 102, the next important question would be as to whether these are really counterfeit or fake Indian currency notes printed and manufactured in a neighboring sovereign country ?

52. Prosecution has examined PW-24 Manjunath J., a retired General Manager, Bhartiya Reserve Bank Note Mudran Pvt.Ltd., and PW-25 Mr.Marlenhalli C. Bylappa, General Manager, Indian Government Mint Calcutta (West Bengal). It would be quite interesting to learn and understand about the peculiarities and the features of currency notes. The evidence of PW-24 Manjunath reveals that in the year 2009, he was posted as a General Manager, Technical Services in the Corporate Office of Bhartiya Reserve Bank Note Mudran Pvt.Ltd., he worked there since 1/3/2005 till 30/11/09. His educational qualification is B.Sc.in Physics followed by a degree in Mechanical Engineer and Masters in Business Administration. He was heading the Mysore Unit of the Printing Press from 1/3/2005 to 7/4/07. The Reserve Bank Note Mudran, prints currency notes of denomination right from Rs.1000/- upto Rs.5/-.

53. It would be just and convenient to reproduce his evidence in exact words in order to fully understand the important features of currency notes, which reads thus:

54. *“Substrate is the material on which inks are applied and it is made of cotton. The security features in Indian currency notes comprises of the paper itself, water mark, fluorescent fiber magnetic thread. Apart from this, there is one Central Bank feature known as M.feature. M.feature is rare earth mixed at the time of manufacture of papers.*

55. *Security thread is demetalized foil which has a letter in capital 'RBI' in the forward
and in the mirror image also.*

56. *Multi-colour fibers are hair like structure, which are about 5 millimeters in length*

and has multiple colours. These are all paper based features. Water mark is also a paper based feature, in the sense that the image of Mahatma Gandhi appears in the paper with light and shade i.e. various thicknesses in the paper. There are also vertically placed letters in the form of RBI.

57. The paper for currency notes in the denomination of Rs.10/- and Rs.20/- is manufactured at Hoshangabad District, Madhya Pradesh. The papers for printing the currency notes in the denomination of Rs.50/-, Rs.100/-, Rs.500/- and Rs.1000/- are imported from various countries based on global tender. We import such papers from U.K., Germany, Italy, Netherland. We measure density of the papers as gms./sq.meter. For layman it is known as measure of thickness of the paper.

58. Usually there are three coloured fibers in currency notes. The colours are visible only under ultra-violet rays. Multi-colour fibers are also known as planchettes.

59. M.features in the currency notes are detected by a machine. It emanates light below the frequency of visible light. If there is reflection, it means there is a presence of M.feature. M.feature for Indian currency notes is known as M262G. It is patented item of G & D, Germany. The machine is also patented with G & D, Germany. These machines are not sold in general market. The machines are marketed only to the Governments/ Central Banks of the country.

60. The distinguish water mark in Indian

currency notes is in the form of image of Mahatma Gandhi. Near the neck of Mahatma Gandhi's image there is a feature of denomination, which is known as electrolyte mark. The electrolyte water mark is made on the cylinder mould and then it goes to paper manufacture.

61. Security thread is a continuous film which is fed alongwith the pulp and is embedded at the time of formation of paper. The portion visible on the security thread is known as windows.

62. Micro lettering is in two places, one is in the demetalised thread and also in the intaglio printing. Security thread is patented.

63. The printing processes are generally in three stages. First stage is simultan offset printing. Second is intaglio printing and third is letter press printing. Simultan printing provides printing on the front face with fluorescent colour and the rear face with solid colours and fluorescent colours. In the centre there is design which is fluorescent.

64. Dot based printing is combination of four colours namely cyan, magenta, yellow and black. In currency notes we use line based printing. It is known as Guilloche design. Guilloche is a French word. We use Guilloche design in India. We have bought the Software from "Jura" Hungary. The Guilloche is a software which requires a license. It's key is kept with head of the design centre.

65. Rainbow print means gradual transition from one colour to another colour by means of mixing colours i.e. Blue + Yellow = Green.

66. See through registration means a portion of the image is printed on the front page and the remaining portion is printed on the rear side.

67. Simultan Dry Offset Press is a patented machine and sold only to Government and Government authorized Central Banks of the Country i.e. only to Reserve Bank of India. India has procured this press from KBA-GIORI of Switzerland for the presses at Nasik, Dewas and Mysore. For Salboni (West Bengal) we procured

the machine from Komori of Japan.

68. *Intaglio printing is a process where raised lettering and impression are produced. The inking process is to apply the ink on a engraved nickel plate where the engraving depth is maximum 130 microns. After application of ink the paper is pressed against the plates with very high pressure. When the paper is removed, it sucks out the ink from the grooves and thereby creates an impression on paper. The intaglio prints on the currency notes are the extreme left figure of the currency notes, the letters Bhartiya Reserve Bank in English and Hindi, the entire image of Mahatma Gandhi, the micro printing behind the image of Mahatma Gandhi's head, The Ashoka pillar, the blind mark on the extreme left middle in the form of black spot, the reserve bank*

logo in the right hand corner below, the latent image on the right hand side on the panel when viewed at grazing incidents. Intaglio machines are sold only to the Government.

69. The next process is letter/number press. In this process the numbers on the currency notes are printed by using fluorescent ink on the letter/numbers and the letters/numbers are then impressed on the paper. For Rs.1,000/- we use two colours i.e. Red and Blue. The top right hand letter/number would be Blue and the left hand bottom number would be Red. The numbering boxes are procured from Leibinger in Germany or Atlantic Zeiser, Switzerland. These number fonts are specific to India and will not be sold to any other country.

70. The Overt features are the features which are seen with the naked eye. Covert features are those which require an instrument to see those features.

71. There is a feature known as "Omron" which is anti scanning/copying feature. In dry offset we use fluorescent inks and solid colours to produce complete images on the rear face and part images on the front face. Intaglio inks are generally used on the front face only. Optical Variability Inks are used only on Rs.500/- and Rs. 1,000/- denomination currency notes. India manufactures offset inks at Dewas. India manufactures intaglio inks also at Dewas but the capacity is low. The balance quantity is imported from Sicpa, Switzerland which has a processing plant in the State of Sikkim. Optical Variable Ink

is manufacture only by Sicpa in Switzerland. It's an Air consignment which comes to Delhi. Optical Variable Ink (OVI) is country specific and the manufacture is obliged not to sell it to any other country. OVI is also patented. These inks are not commercially available anywhere. The Government of India restricts supply of India's specific papers and ink to any other country. The other sovereign governments may procure the machinery but not the paper.

72. During his cross-examination it has been reiterated that he has deposed on the basis of his working knowledge at Mysore Printing Press and that all of them followed the requisite process. It has also come during his cross that service and conduct rules of Bhartiya Reserve Bank authorises him to depose about the features of Indian Currency Notes. He also admits that the features which

were changed in the year 1997 and 2005 are not machine readable features. Thus, there is absolutely nothing brought out in his cross which would diminish his evidence on the different aspects and features of Indian Currency Notes.

73. Now, the most important evidence in this case is of PW-25 Marlenhalli Bylappa. His evidence indicates that from February, 2009 to April, 2011 he had worked as Dy.General Manager and Head of the department, Bank Note Press, Dewas, M.P. This witness is basically a graduate in Electrical Engineering and MBA in Finance. He joined the India security Press, Nasik on 30/3/88 as a Junior Class-I Officer. Thereafter, he was promoted as Dy.Works Manager, Works Manager, Dy.General Manager and General Manager. The said communication was received by Chairman and Managing Director of Security Printing and Minting Corporation of India Ltd., (SPMCIL). The said confidential letter is marked as Ex.207 alongwith the list of

annexures.

74. By a communication dated 20/8/2009 from PW-39 Sajid Shapoo, S.P., N.I.A, his opinion was sought on FICN. Accordingly, a committee of experts was formed of which he was a convener. The other members of the committee were S.Mahapatra, Manager, Quality Assurance, Security Paper Mill Hoshangabad and Shri Rajan Shirwadkar, Dy.Works Manager, Currency Note Press, Nasik. On 29/9/09 Bylappa had taken up the matter with PW-39 Sajid Shapoo to convey the approval for destruction of samples i.e. one note from each category (total six notes). They had taken approval for destruction of legal tender sample (Marked G).

75. The evidence of PW-25 Bylappa further indicates that the committee members met from 1st to 4th September, 2009 and thereafter, from 9th to 11th October, 2011 at Bank

Note Press, Devas. A Chemist from ink factory Dewas was co-operating them. His name is Gawhayee. He is a Chemist Grade-II. PW-39 Shapoo has supplied sample 'A' of Rs.1000 denomination, which was seized by ATS Kalachowky Mumbai. Sample 'B' was from Badawani, (M.P), sample 'E' was from Chandigarh, sample 'C' was from Thane (Maharashtra) and sample 'F' was from Chitradurga (Karnataka). The said group of samples was of currency notes of Rs.1000 denomination. Similarly, the committee had also received notes of Rs.500 denomination, which was sample 'E' seized from Chandigarh and sample 'I' was seized from Bhopal (M.P). They also received sample 'D' from Sambha (Jammu & Kashmir), sample 'F' was from Chitradurga (Karnataka) and sample 'H' was from Marmagoa.

76. The committee had also received sample 'G' consisting of genuine notes of Pakistan, Bangladesh,

Srilanka, Nepal, Bhutan and Myanmar. Sample 'J' also consisting of genuine currency notes of Pakistan, Bangladesh, Srilanka, Nepal and Bhutan except Myanmar.

77. The N.I.A. had also forwarded a questionnaire and thereafter, committee undertook the job of examining the physical characteristics, printing characteristics as well as the characteristics of the quality of the paper used and the nature of the ink used in manufacturing the notes. Accordingly, a report was given on 14/10/09, which bears signature of PW-25 Bylappa and it is proved at Ex.153. This is a very comprehensive report of the committee of the experts. The witness further testified that the details of the report are at page D66/3 to D66/13, which is proved at Ex. 154. Alongwith the report there are Annexures 1 to 4, which are proved at Ex.155. Annexure 2 is at Ex.156. Annexure 3 is at Ex.157 and Annexure 4 is at Ex.158.

78. The evidence further reveals that Annexure-1 is a

statement showing printing and other defects observed in the FICN samples marked A, B, C, E and F in respect of notes of Rs.1000 denomination. These notes were compared with genuine currency notes of Rs.1000 denomination. Page D/66/16 of Annexure is a statement showing printing and other defects in FICN marked as D, E, F, H and I in respect of Rs.500 denomination. Those notes were also compared with the genuine currency notes of Rs. 500 denomination.

79. Page D66/17 shows a statement about observations in respect of the legal tender samples marked 'G and J'. The genuine notes of the countries mentioned in the statement were compared with Indian currency genuine notes. The currency marked at 'G' are of Pakistan, Bangladesh, Srilanka, Nepal, Bhutan and Myanmar and currency marked at 'J' are of Pakistan, Bangladesh, Srilanka, Nepal and Bhutan.

80. Annexure-2 indicates the analysis of the source of FICN of samples A, B, E, C & F in respect of Rs.1000 denomination and sample E, I, D, F and H in respect of Rs.500 denomination. The Annexure-3 is the reply to questionnaire sent by N.I.A. along with questions. It is testified that sample marked "E" is from Chandigarh. Tender sample "J" in reply No.2 is the legal tender of Pakistan. Latent image is available in intaglio printing. It is easier to detect the latent image. Even a common person can detect this latent image. The only thing is one has to see note by holding it at 90 degree angle to the image. It is one of the security features. The report was sent to the Chairman and thereafter, it was sent to the N.I.A.

81. Evidence of PW-25 further reveals that a second questionnaire was sent by NIA dt.30/12/2010. The members of the committee convened a meeting on

20/2/2011 and 21/2/2011. After examining the questionnaire and the FICN notes of Rs.500 denomination and Rs.1000 denomination the questions were answered by the committee. The said reports are also proved by this witness at **Ex.159 and 160**. He further testified that A-1 FICN of Rs.500 denomination which were three in number were destroyed. From B-1 there was one note of Rs.500 denomination and other of Rs.1000 denomination were also destroyed. The witness had proved Annexure-1 at Ex.161.

82. PW-25 Bylappa was not cross examined by advocate Mr.Wahab Khan appearing for A/1 to A/4 and A/6. During his cross-examination by Ms.Vora for A/5 PW-25 admits that legal tenders of 'G and J' were called by the committee but there is no document on record to show that those legal tenders were called by committee. He candidly testified that he did not feel it necessary to mention particulars of legal tenders of 'G and J' as

mentioned in Annexure-1 at Ex.155 in column No.2. As a matter of fact it is not requirement of the law and PW-25 being an expert witness has given his opinion based on the scientific knowledge. The evidence of PW-25 Bylappa and Exh.154 to 161 can be directly admitted in evidence in view of Sec292 and 293 of the Cr.P.C. The defence could not make any dent in the oral and documentary evidence adduced by PW-25 Bylappa.

83. In this regard the evidence of PW-39 Shapoo is of much significance in the sense that during investigation it revealed that the FICN seized in this case were similar to the FICN, which were seized across the nation and more peculiar aspect is that most of the accused hailed from Malda District of West Bengal. Mr.Shapoo testified that it revealed during investigation that smuggling and circulation of FICN were not isolated events but a part of larger conspiracy to target the economic security of India and

disturb the monetary stability of this country. I shall discuss this aspect of conspiracy later on. The testimony of this witness reveals that he had forwarded a detailed questionnaire alongwith the samples of FICN and legal tenders of the neighbouring countries for an expert opinion. The queries were about the important features of currency notes like GSM, see through registration, watermarks, security thread, micro lettering, properties of the paper use etc. I have already mentioned about report given by the committee comprising PW-25 Bylappa. Mr.Shapoo testified that the report revealed that the paper used in the manufacturing of FICN is genuine currency paper (100% cotton rag) and the paper has been made on the regular cylindrical mould machines which only sovereign nations have access to. Going by the sophistication of the security features it is concluded that the FICN were manufactured in regular currency making machines, which are available only to sovereign nations and the Central Banks. Report

revealed that FICN seized in Sambha (Jammu & Kashmir) and in Chandigarh are exactly similar to the FICN seized in this case. The FICN seized in Sambha area were recovered from two Pakistani terrorists who were killed in an encounter on the Indo-pak Border while infiltrating into India. The FICN which was seized in Chandigarh was being brought from Pakistan by the accused Savinder Kaur and it was seized while she was getting down from Attari Express.

84. PW-11 Ms.Shilpa Shigvan, who was attached to police station Bandra in the year 2009 as a woman police constable delivered a packet to Reserve Bank of India on 26/5/2009, which was given to her by Sr.PI Khanvilkar. The letter to that effect is proved at Ex.98. It also bears the signature of the person who had received the packet.

85. PW-17 Ms.Pratibha Raghavan who was then Dy.General Manager in the currency department, RBI,

Mumbai has testified that for FICN there is a Forged Notes Vigilance Division in the Currency Management Section of R.B.I. The role of RBI is to forward the FICN to the various investigating agencies and to receive reports from such agencies. She testified about receipt of letter Ex.93 from ATS on 15/5/2009. She testified that she had received 5 currency notes of Rs.1000 denomination. There were four currency notes of 2AQ series and one currency note of 8AC series brought in a sealed cover. It was opened as per the procedure and ascertained whether the notes are as per the statement. The notes were thereafter, forwarded to the Note Printing Press. Out of 5 currency notes one note was sent to Nasik Currency Note Press. Two others were sent to Bhartiya Reserve Bank Note Mudran Pvt.Ltd., Mysore. Two notes were retained by the office of this witness. The currency notes were sent in a sealed condition by Registered Insured Post to Nasik and Mysore. She testified that thereafter, the office received reports from CNP Nasik and

Bhartiya Reserve Bank Note Mudran Pvt.Ltd. Mysore, that the notes were not genuine. The report received from Nasik is proved at Ex.126. Second report from Mysore is proved at Ex.127 and 128. What appears from the evidence of this witness is that the FICN received from ATS were forwarded as per the procedure to the CNP Nasik and Bhartiya Reserve Bank Note Mudran Pvt.Ltd. Mysore. There is nothing more in the evidence of this witness. This witness was extensively cross-examined by Ms.Vora. The cross is not effective in the sense that several questions were asked which are quite irrelevant in the given context. When the witness has made it clear that she has not an authority to examine FICN and that her office does not examine FICN, there was no propriety in asking the questions in respect of the role of RBI in examining FICN. It has been brought in cross that the FICN received by the office of this witness were in the custody of the Head of the Department and kept in the safe vault before they were forwarded to CNP. She also made it

clear that the record is maintained when articles are removed out of the vault. Only because the witness says that she has not sent the FICN to CNP does not mean that the notes were not sent to CNP. She being an officer is not required to personally do the work of sending the packet on her own to the CNP Nasik, which is a job of other employees of the RBI.

86. As such, it is crystal clear that not only the notes seized in this case but the notes seized from other part of the nation are, in fact, counterfeit Indian currency notes. There is no doubt in my mind about the counterfeit nature of the currency notes seized in this case in the light of the un-rebutted and trustworthy evidence of the expert witnesses.

87. Thus, the prosecution has established beyond doubt that the accused Nos.1 to 4 were found in conscious

and controlled possession of FICN on 14/5/09 of 2AQ and 8AC series which were 345 in number. The prosecution has also established beyond doubt that the FICN seized from A-5 and A-6 on 23/5/09 were also found to be in conscious and controlled possession of FICN of 2AQ and 9BR series and 2AQ series respectively. I, therefore, answered point No.1 and 2 in the affirmative.

88. Once the prosecution has established the counterfeit nature of the currency notes found in possession of A-1 to A-6, the next important question would be whether the accused were found trafficking the aforesaid FICN knowingly or having reason to believe that those were counterfeit. Then there would be a question as to whether there has been a larger conspiracy behind the smuggling and circulation of FICN with an intention to de-stabilize the Indian economy and to create terror in the mind of the citizens by some sovereign nation.

89. A/2 in his statement under Sec.313 of the Cr.PC. admitted that Shamsuddin Miya is his elder brother. He has also admitted that his (A/2) mobile number is 9733391033. A/5 admitted in his statement under Sec.313 of the Cr.PC. that Bhodu T.Shaikh is his brother-in-law. The defence has also not disputed this fact. It is a matter of record that Bengali newspaper cuttings seized from the possession of A/1 has a mobile No.9769189839, which also figures in the bank's slips Ex.117 dated 11/5/09 in the name of Shamsuddin Miya signed by one Azaruddin. PW-14 Babuji Pawale, a Branch Manager of the State Bank of India, Masjidbunder Branch, Mumbai has proved Ex.117 which is pay-in-slip furnished by the State Bank of India to the ATS pursuant to its letter at Ex.97. PW-14 Babuji Pawale has testified that the said information relates to account of Shamsuddin Miya bearing account No.30660824659. This witness was not cross-examined by any of the defence

Counsel. A perusal of Ex.117 confirms the fact that the account of Shamsuddin Miya who is the real brother of A/2 also shows mobile No.9769189839, which was found on a Bengali newspaper cutting in the possession of A/1

90. The prosecution has succeeded in establishing close connection between accused Nos.1 to 6 with one another as well as their connection with Bhodu T.Shaikh and Shamsuddin Miya. I have already discussed that admittedly A-2 is the real brother of Shamsuddin Miya while Bhodu T.Shaikh is the brother-in-law of A/5 Abdul. Bhodu T.Shaikh has 3 different accounts in his name which are as follows:

1) State Bank of India bearing Account No.30561366178

2) Axis Bank Account No.072010100288033

(48 slips and 28 slips)

3) Axis Bank Account No.661010100001380

(48 slips and 28 slips)

A/6 has deposited Rs.30,000 on 28/3/09, Rs.49,000 on 13/4/09 and amount of Rs.49,000 on 18/5/09 in the account of Bhodu T.Shaikh bearing No.661010100001380. There are signatures of A/6 over Ex.115. Further, A/1 in his memorandum statement Ex.94 voluntarily disclosed names of A/5 and A/6 and had further stated that his friend Shaukat resident of Jharkhand used to give him FICN for circulating in Mumbai market and in turn he used to give it to A/5 and A/6. Except discovery of fact the rest of the information incriminating himself cannot be admissible in evidence in view of Sec.27 of the Indian Evidence Act, yet the fact that he knew A/5 and A/6 and his connections with A/2 to A/4 is apparent from the fact that they were arrested together on 14/5/09. As such, it is crystal clear that all the accused had a nexus with each other and it is quite clear that all of them very well knew that they were involved in circulating FICN in such a huge quantity in the area of Mumbai and Thane.

91. Now it would be interesting to see and evaluate the evidence of various officials of different banks about the transactions of the accused persons, which will make the picture clear as to the modus operandi.

92. PW-8 Vishal Nikam who is a Dy.Manager with Axis Bank, Crawford Market Branch has testified that in the year 2009 his designation was Business Development Executive. Pursuant to a letter of NIA dated 26/10/09 to the Axis Bank requiring the bank details of A/5 Abdul Asurddin Shaikh, it was supplied to the NIA. He testified that he had taken pan card of A/5 Abdul and his one Passbook of Punjab National Bank. He had filled up the necessary form, which was signed by A/5 in his presence. The certified copy of the said form has been duly proved by this witness, which bears signature of one Milind Ghosalkar, the then Branch Manager. The witness has identified

signature of Milind Ghosalkar as well as his signature and also the photo-state copy of the Pan card of A/5 Abdul. He had personally seen the original Pan card of A/5 Abdul. He had also duly identified and proved the certified copy of Passbook of Punjab National Bank in the name of A/5 Abdul. The witness further clarified that there is also a certified copy of statement of account of A/5 Abdul. All the documents were duly supplied to the NIA, which are marked as **Ex.91**. The witness has correctly identified A/5 Abdul in the dock. A perusal of **Ex.91** shows the account of A/5 in Axis Bank bearing No.294010100065423 and Punjab National Bank Account No.3988000100081226. It is also evident from the **Ex.91**, more particularly the transactions from the account in Axis Bank that on a single day i.e. on 22/5/09 an amount of Rs.49,000 appears to have been deposited, which came to be withdrawn on the same day at 10 times from a single ATM at Malda, West Bengal. It appears that on 8 occasions an amount of Rs.5000/- each

was withdrawn and lastly an amount of Rs.9000/- was withdrawn. In almost all the transaction in this case it appears that all deposits were made in cash and were restricted to Rs.49,500/-, perhaps for the reason that if an amount of Rs.50,000/- is to be deposited in the bank it necessarily requires a pan number.

93. During cross examination of this witness by Ms.Vora it has been substantiated that this witness had personally verified the address of the accused at Dombivali. The certified copy of the Passbook of Punjab National Bank corroborates the fact that A/5 was residing at Matoshree building, Subhash Road, Dombivali from where the FICN were seized by the ATS. It is also admitted by PW-8 that it was A/5 Abdul who had deposited the cash in the bank at the time of opening his account. Except this there is no effective cross.

94. PW-10 Ramesh Lahane is serving in Punjab National Bank as a Sr.Branch Manager with its Dombivali West Branch. He proved a letter Ex.103, received from ATS Kalachowky Mumbai dated 9/6/09 by which it was asked to the Punjab National Bank about the details of account of A/5 Abdul with Punjab National Bank bearing account No. 81226. At that time Mr.Pramod Charegavkar was the Sr.Manager. Pursuant to the said letter the detail information had been supplied to the ATS vide documents Ex.108 and 109. Ex.108 is the covering letter while Ex. 109 is the original account opening form indicating the account number, name and original coloured passport photograph of A/5 Abdul. It also bear his signatures in the respective columns as well as his four specimen signatures in the four blocks on the second page of Ex.109. His place of birth appears to be from Jharkhand and his local address is Matoshree Building, Subhash Road, Dombivali. He has shown his total annual income upto Rs.50,000/-, which is in

sharp contrast with the amount being deposited by him on every alternate day, which is more than Rs.30 to 40 thousand. Some insignificant questions were asked to PW-10 by defence which do not in any way rebut his testimony, which is fully corroborated with documents on record. There is absolutely no question of doubting the cogent and trustworthy evidence of not only PW-10 Ramesh Lahane but PW-8 Vishal Nikam, PW-12 Ganesh Palav, PW-13 Shrikant Pol, PW-14 Babuji Pawale, PW-15 Guruprasad Kudva and PW-19 Santoshkumar Aacharya.

95. Now let me have a look into the evidence of PW-12 Ganesh Palav, which is quite important, in the sense that it has about the two accounts of Bhodu T. Shaikh. He has been working as a Manager in Axis Bank at Vashi Branch. Pursuant to the letter of the ATS seeking certain documents from the Axis Bank in respect of the account of Bhodu T. Shaikh bearing account No.8033 and 1380 (last

four digits), he has identified the account opening form of Bhodu T. Shaikh, copy of pan card, LIC Insurance copy, bank statement of account No....8033. He testified that he had verified original record of which certified photo-state copies were tendered. He has also proved the letter dated 29/5/09 on the letter head of the Axis Bank addressed to the Inspector of Police ATS. The documents are collectively marked as Ex.112. A perusal of Ex.112 reveals that Bhodu T. Shaikh had opened his account in Axis Bank on 21/6/08. It bears his signature and also his photograph. While cross-examining this witness it has been again substantiated that Bhodu T. Shaikh had opened an account in the bank by depositing Rs.5000 on 27/3/08, the date on which the form was filled up by the account holder. He also admits that from the account opening form it appears that it was opened on 3/4/08 but that itself will not result in creating any doubt about the evidence of this witness coupled with the documents on record as it is bank record maintained by

bank in its regular course of business. In this account of Bhodu T. Shaikh A/5 Abdul used to deposit huge amounts after every alternate day or even after a gap of one or two days. This aspect shall be discussed in the subsequent paras.

96. Now it would be equally important to go through the evidence of PW-13 Srikant Pol, who also works as Asstt. Manager in Axis Bank Dombivali Branch. He testified that pursuant to a letter of ATS the information in respect of account No....8030 and1380 was provided by the bank. The ATS had also asked about the transaction which had taken place in respect of the aforesaid two accounts. He has proved the letter dated 9/6/2009 written by the Branch Head viz. Mr.Deepak Shroff. The letter is proved at Ex.114. Its perusal, as shown below, indicates the deposit of amount on different dates in both accounts of Bhodu T.Shaikh by A/6 Azraul. The 7 slips are colly. marked as Ex.115 i.e. as

follows:

Account No.	Date	Amount
661010100001380	28/03/2009	Rs.30,000/-
661010100001380	13/04/2009	Rs.49,000/-
661010100001380	18/05/2009	Rs.49,000/-
072010100288033	22/05/2009	Rs.15,900/-
072010100288033	18/05/2009	Rs.49,000/-
072010100288033	28/03/2009	Rs.40,000/-
072010100288033	13/04/2009	Rs.49,000/-

This witness was not cross examined either by Mr.Wahab Khan or by Ms.Vora.

97. The evidence of PW-15 Guruprasad Kudva, Manager of Axis Bank attached to Koparkhairane Branch indicates that pursuant to the letter of ATS Mumbai information pertaining to account No661010100001380 was supplied, which is proved at Ex.119 page 278 to page 293. A perusal of Ex.119 indicates that on 18/5/09 an amount of Rs.49,000/- was deposited in Dombivali Branch of Axis Bank, which was almost completely withdrawn on

the same day at different intervals at 10 times from the same ATM at Malda, West Bengal. Thereafter, an amount of Rs.40,000/- came to be deposited in the account of Bhodu T. Shaikh in cash at Vashi Branch, which also came to be withdrawn by Bhodu T. Shaikh on the same day from the same ATM at Malda at 8 times. Thereafter, an amount of Rs.38,100 was deposited in this account of Bhodu T. Shaikh in cash at Dombivali Branch, which was withdrawn on the same day from the same ATM at Malda by making 9 withdrawals. Likewise, an amount of Rs.18,500/- was deposited at Vashi Branch on 8/5/2009, which was similarly withdrawn. An amount of Rs.27,000/- was deposited on 5/5/09 in cash at Vashi Branch, which was also withdrawn in the same manner. The enormity of the transactions are evident from the entire extracts running into 16 pages i.e. from page No.278 to 293 is itself sufficient to establish as to how this big racket had indulged in trafficking FICN and then depositing the genuine amount in the account of

Bhodu T. Shaikh by the present accused persons especially accused No.5 and 6 which came to be withdrawn several times on a single day by Bhodu T. Shaikh from one ATM at Malda. It does not require any expertise to *fathom* the modus operandi of the accused. PW-15 was not cross examined by the defence. The evidence, therefore, remained unchallenged.

98. PW-27 Mijanoor Rehman is also a Manager of Axis Bank, Brancha Malda, West Bengal. His evidence indicates that pursuant to the communication of NIA asking for certain documents from Axis Bank, Malda Branch, the same were supplied to it. He has identified signature of Mr.K.Mujumdar over the letter **Ex.165**, which gives the details of the account number of Bhodu T. Shaikh bearing Nos....8033 and1380. It also pertains to use of two ATM cards issued in the aforesaid two accounts of Bhodu T. Shaikh bearing Nos.4215720720008875 and

4215726610000088 respectively. The evidence further reveals that statement of account of Bhodu T. Shaikh (Ex.165-A) has also been supplied to the NIA. PW-27 has corroborated the fact that account No.8033 and 1380 of Bhodu T. Shaikh are from Axis Bank, Branch at Navi Mumbai. The amounts were being deposited in those branches and were being withdrawn through ATM Machine at Malda. He has also given numbers of ATM cards. Ex.165 which is from page 369 to 384 depicts that from November, 2008 till July, 2009 an amount of Rs.13,63,409.09 had been credited in the account of Bhodu T. Shaikh bearing account No....8033 and amount of Rs.13,63,516 was debited. There was a balance of Rs.156.

99. PW-31 Shrikant Sanjekar, Vice President, Treasury Department, Axis Bank has testified about the transaction pertaining to the account No....8033 of Bhodu T. Shaikh. He had supplied the account opening form's copy

along with KYC, copy of pan card and LIC Policy which are proved at Ex.172 and 173. Ex.173 reveals that Bhodu T. Shaikh had withdrawn amount from the different ATMs at Malda. According to this witness the photo-copy of the account opening form of Bhodu T. Shaikh, photo-copy of the pan-card bearing account No.BPUPS 9181Q, copy of LIC Policy, which are duly certified by the concerned officer are proved at Ex.173. The certified copy of extract is proved at Ex.174 colly., which runs into 27 pages. Ex.174 is also self explanatory which needs no discussion as to how at regular intervals, sometimes even more than 10 times in a day, amount came to be withdrawn from the ATM at Malda on the day it came to be deposited in the account here at Mumbai. Here also peculiarity of not depositing more than Rs.49,500/- appears to have been followed. His evidence also could not be shattered during the cross-examination by the defence.

100. Now, it would be equally important to see about the account of Shamsuddin Miya, who is the real elder brother of A/2. PW-14 Babuji Pawale, Branch Manager of State Bank of India Masjid Bunder Branch, testified that as per the request of ATS in the year 2009 the bank had supplied information pertaining to account No. 30660824659, which is in the name of Shamsuddin Miya. The bank had supplied the pay-in-slip which is marked as Ex.117. I had already discussed about Ex.117.

101. Similarly PW-19 Santoshkumar Acharya has testified about the account number of Shamsuddin Miya. PW-19 is a Branch Manager of the State Bank of India, Borokamat, Dist.Malda. He testified that pursuant to the communication of NIA through its officer Sanjay Dhall (PW-37), the witness had contacted his Controller Mr.Sengupta and after getting necessary permission and after verifying the system he had given the details of

account of Shamsuddin Miya for a period from 01/01/2009 to 15/07/2009, which is proved at Ex.133 (comprising six pages). He has proved the copy of the account opening form of Shamsuddin Miya and other relevant documents i.e. copy of pan card and ration card which are colly., marked as Ex.134. The account number of Shamsuddin Miya is 30660824659. The application for opening the account was made on 27/1/2009 and account was opened on 29/1/2009. He was provided with ATM facility. The transaction through ATM was made by the account holder on 19/3/2009. The witness had obtained an acknowledgment of receipt of those documents by the officer of NIA, which is proved at Ex.135. The accounts of Bhodu T. Shaikh, Shamsuddin Miya and A/5 Abdul were operated by A/4, A/5 and A/6.

102. Even though Bhodu T. Shaikh and Shamsuddin Miya are not before the Court, as according to the

prosecution though they are the important links in the circulation of FICN, the aforesaid transactions are relevant facts. It can also be said that in view of Sec.11 of the Evidence Act, the facts which are not otherwise relevant become relevant if by themselves or in connection with other facts they make the existence or non existence of any fact in issue or relevant fact highly probable or improbable. Thus, it can be seen that accused Nos.1 to 6 who were found in conscious and controlled possession over FICN adopted a peculiar modus operandi of circulating the FICN in the open market and then to deposit the genuine currency in the account of Bhodu T. Shaikh and Shamsuddin Miya, which the latter used to withdraw immediately through the ATM at Malda. It can definitely be said that there are reasonable grounds to believe that accused Nos.1 to 6 had full knowledge that they were circulating FICN, which were so nearly resembling as genuine Indian currency notes, in the market. I, therefore, answer Points

No.3 and 4 in the affirmative.

103. POINTS Nos.5, 7 & 8 :- These points are also intrinsically connected and, therefore required to be discussed together.

104. It has been argued by Ld.SPP that not only there is a well hatched conspiracy between accused Nos.1 to 6 to do an illegal act of circulating FICN in the market of Mumbai and Thane but also the conspiracy extends to and includes other conspirators placed in West Bengal and Jharkhand who used to supply FICN to these accused for circulating the same. She further argued that from the evidence of PW-29 Sunil Tated and PW-39 Sajid Shapoo, it is quite clear as to how the FICN were being smuggled into India through the routes like Dubai to Srilanka, Dubai to Chennai, Chennai to Bangalore, which were all originating from Pakistan, which is the main source to print and

smuggle FICN in our country. She also drew my attention to the testimonies of PW-16 Rajeshkumar Singh and PW-18 Subirkumar Deb, the Nodal Officers giving details of mobile numbers of the accused showing their interconnection and links and also to the evidence of PW-20 Vijaykumar, PW-21 Sawant, PW-26 Avchar, PW-28 Vinodkumar, PW-29 Tated, PW-30 Sharma etc., to show as to how the high quality of FICN came to be seized across the nation in different states by the respective police, which were also found to be having same characteristics features found in the FICN seized in this case.

105. PW-16 Rajeshkumar Singh is the Nodal Officer of Bharti Airtel Limited. According to this witness after receiving a request from NIA asking for certain call detail record of mobile Nos.9631785582 and 9631485381 from period 1/5/2009 to 24/9/09, it was supplied accordingly. He has proved Ex.122, 123 and 124. Ex.122 is the CDR of

mobile No.9631785582. This is from Bihar and Jharkhand circle. From this number there were calls to Shaukat Ali on his mobile No.9735060070 on 1/5/2009. Mobile No. 9631485381 as per Ex.124 is also registered in the name of Shaukat Ali. There were two calls by Shaukat Ali to A/5 Abdul on 10/5/2009 at 21:03:45 and 21:10:17 the phone number of A/5 9769937036 is already proved at Ex.91, 108, 109, 112 and 114. PW-16 Rajeshkumar has testified that he had supplied all the relevant documents to NIA about the aforesaid mobiles of Shaukat Ali. The defence has failed to rebut the testimony of this witness in cross.

106. Similarly, PW-18 Subirkumar Deb, Nodal Officer of Vodafone, West Bengal and Calcutta gave following details to NIA. He testified that the mobile numbers in the name of Shaukat Ali are 9735060070, 9775614812, 9609965552. The mobile numbers of Shamsudding Miya is 9733132812. The CDR and the other details are at page

Nos.921 to 1139 of the record which is proved at Ex.131 by this witness. Ex.131 also indicates mobile of A/2 Nuruddnn as 9733391033. The CDR is from 1/3/09 to 25/8/09. Page No.133 Sr.No.256, page No.135 Sr.No.333, page No.138 Sr.No.510 and page No.138 Sr.No.511 which are the calls between 8/5/09 to 18/5/09 indicates conversation between Shamsuddin Miya from mobile No.9733132812 and A/2 Nuruddin on his mobile No.9733391033. During cross PW-18 testified that all the documents supplied to the NIA were on the basis of the record available with the company. As such, the testimonies of these witnesses are admissible in view of Sec.35 and 65(B) of the Indian Evidence Act. There is absolutely no reason to suspect the oral and documentary evidence proving the interse connection between these accused on one hand and with Shaukat Ali and Shamsuddin Miya on the other hand who were also shown to be co-conspirators in distributing FICN.

107. The important issue involved in this case is whether its a well planned conspiracy to strike at the financial nerve of this country in which there is involvement of Pakistan which intends to threaten the unity, integrity, sovereignty and economic security of India ? The evidence, facts and circumstances discussed here-in-above would definitely attract essential ingredients of Sec.120(A) of the I.P.C. There is indeed a common design and common intention of all to work in furtherance of the common design. Each conspirator had played its separate part in one integrated and united effort to achieve the common purpose of clandestinely circulate the FICN in the open market and then to deposit genuine currency notes in the accounts of the other co-conspirators. Each of the accused was aware that he had a part to play in the general conspiracy though each might not be aware about all the secrets or the means by which the common purpose was to be accomplished. The accused by joining hands with other conspirators like

Shamsuddin Shaikh, Bhodu T.Shaikh and Shaukat Ali including the persons involved in smuggling FICN in this country designed and promoted an evil scheme by which they succeeded in pumping crores of FICN in this country. The law has developed several or different models or techniques to broach the scope of conspiracy. One such model is that of a chain, where each party performs even without knowledge of the other, a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy. In such case, smugglers, middleman, retailers are privies to a single conspiracy to smuggle and distribute contrabands. The smugglers know that the middle man must sell to the retailers; and retailers know that the middle man must buy from importers. Thus, the conspirators on one end of the chain know that the unlawful business would not, and could not stop with their buyers and those at the other end know that it had not begun with their settlers. The action of each has to be considered as a spoke in the

hub, there being a rim to bind all the spokes together in a single conspiracy. This ratio has been laid down by the Hon'ble Supreme Court in case of **State of Maharashtra & Others V/s. Som Nath Thapa & others** reported in 1996 **Supreme Court Cases (Cri) 820**. It is further observed by the Hon'ble Supreme Court in para 24 and I quote thus:

"To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known

that the collaborator would put the goods or service to an unlawful use”

108. In order to show relevancy of facts as regards the FICN found elsewhere in the country, the prosecution has examined PW-20, PW-21, PW-26, PW-28, PW-29, PW-30, PW-32, PW-33, PW-34 etc.

109. PW-20 Vijaykumar Sisodiya, Dy.S.P., Badawani, M.P. testified that in the month of July, 2009, C.R.No. 164/09 under Sec.489(B) r/w.120(B) of the IPC was registered at Badawani Police Station and was investigated by him. Five accused were arrested and FICN of Rs.1000 denomination were seized from one Shafiul Shaikh resident of Chamapratapur, Dist. Malda, West Bengal. The face value of FICN was Rs.44,000/-. Those were of 6 AN and 2AQ series. Certified copy of the charge sheet in that case is proved at Ex.137. PW-37 Sanjay Dhall, PI, NIA approached

PW-20 in the month of July 2009. Pursuant to an order of the Court PW-20 gave two samples of FICN to PW-37 Mr.Sanjay Dhall on Supurtnama. The said documents are proved at Ex.138. Interestingly, during the cross defence drew attention of PW-20 to a document giving details of FICN seized by PW-20 which is proved at Ex.139. Not only that it has come in the evidence of this witness that samples of FICN were forwarded to CNP Nasik for examination.

110. PW-21 Avinash Sawant, PI, DCB CID Unit-V testified that two Bangladeshi terrorist viz.Mohammad Ali Mohammad Hasim resident of Kullah and Kamal Kadar Shaikh resident of Bareilly District Bangladesh were gunned down by ATS on 11/3/09 during the exchange of fire in the jurisdiction of Kashmira Police Station. The fire arms, bags containing 10 bundles of FICN and a sticky substance was found in their possession. Sample of FICN were sent to Nasik and C.R.No.90/08 was registered against them. The

FIR is proved at Ex.142 and letter to CNP Nasik at Ex.143.

The report of CNP Nasik is proved at Ex.144, which clearly shows that those were FICN. There is no effective cross of PW-29 by the defence.

111. PW-26 Kiran Avchar, PI Jawahar Police Station Thane District testified that in C.R.No.176/09, 180/09 and 181/09 under Sec.489(B)(C) of the I.P.C one Anirual Habu Momin, resident of Phattekhami Kamat, Dist.Malda was arrested alongwith his brother Opu Habu Momin. The FICN seized from them and the samples of which were forwarded to NCP. Ex.163 is the copy of FIR.

112. PW-28 Vinodkumar K.S. was working with N.I.A as a constable who, on instructions of PW-39, carried samples of FICN in a parcel to PNP Dewas on 7/3/11. It was given to PW25 Bylappa on 8/3/11.

113. PW-29 Sunil Tated, Additional Director General, Central Excise intelligence, Kolkata testified that pursuant to a letter dated 23/3/2010 by PW-39 he had supplied the details of different seizures made by DRI from 1/4/2004 to 23/3/2010. The contents of the annexures are based on report submitted by Zonal Unit of DRI to headquarters. The said document is marked as Ex.164 colly. The details demonstrate the smuggling routes like Dubai to Srilanka, Dubai to Chennai, Chennai to Bangalore, from Pakistan through Samjhauta express, from Dubai to Indian Airlines, from Lahore Pakistan to New Delhi, from Bangladesh through Petrapole Land Border to, Dubai to Manglore Air India Flight, through Indo-Pak Border and delivered at Samli at U.P, from Indo-Pak Border to Punjab, from Dubai to Calcutta, from Indo-Pak border to Pata Court border, from Bangladesh to Siliguri, Dubai to Calcutta from Indian Airlines, from Indo Pak border to R.S.Pura Sector to Delhi, Bangladesh to Hawrah Railway Station, Dubai to Mumbai,

from Pakistan to Tar Express to Jodhpur, from Bangladesh to Bualjur, from Bangladesh to Delhi, from Bangladesh to Silchar Assam, Dubai to Banglore, Bangladesh to Bharampur, Bangladesh to Motigang, from Dubai, from Kuwait to Mumbai City, delivery at Panvel, from Pakistan through Samjhauta Express to U.P, to Birunj to Muzaffarpur, from Bangladesh Border to West Bangal, from Karachi to Dubai then to Mumbai, Dubai to Cochin, Indo Pak border to Amritsar, Dubai to Chochin, Bangladesh to Kolkata, Bangladesh to Hawrah, U.A.E. to Calicut, from Nepal to Delhi, Bangladesh to Delhi, Pakistan to Amritsar, from Nepal to Kurla Terminals. The following chart, at a glance annexed with Ex.168 depicts the enormity of FICN being smuggled into our country by different persons adopting different modes of transportation and how the perpetrators of the crime took dis advantage of the porous borders of the country and the latches in the security also

SEIZURES MADE BY DRI DURING 2004-05

S. No.	Face value of fake Indian Currency Notes (FICN) seized (in Rs.)	Denomination X Numbers of FICN seized	Date of Seizure	Place of Seizure	No. of persons arrested	Remarks (indicating source of smuggling)
1	79,000/-	500 x 158	13.04.04	Kajidahar trijunction (Bualijur) on NH-34	2	The smuggling was through passenger mode and the FICN originated from Bangladesh.
2	45,98,000/-	500 x 9196	20.12.04	Delhi	4	The smuggling was through passenger mode and the FICN was smuggled by two Bangladeshi nationals from Bangladesh into India.
3	45,000/-	500 x 77 100 x 65	08.02.05	Silchar, Assam	1	The FICN was believed to have been smuggled in from Bangladesh.
	47,22,000/-	500 x 9431 100 x 65			7	

SEIZURES MADE BY DRI DURING 2005-06

S. No.	Face value of fake Indian Currency Notes (FICN) seized (in Rs.)	Denomination X Numbers of FICN seized	Date of Seizure	Place of Seizure	No. of persons arrested	Remarks (indicating source of smuggling)
---- NIL ----						

SEIZURES MADE BY DRI DURING 2006-07

S. No.	Face value of fake Indian Currency Notes (FICN) seized (in Rs.)	Denomination X Numbers of FICN seized	Date of Seizure	Place of Seizure	No. of persons arrested	Remarks (indicating source of smuggling)
1	24,80,500	500 X 4003 1000 X 479	01.05.06	Bangalore International Airport	1	The smuggling was through passenger mode and the pax and the FICN originated from Dubai.
2	61,100	500 X 111 100 X 56	23.07.06 25.07.06	Behrampore	3	Smuggled from Bangladesh.
3	48,350	500 X 96 100 X 3 50 X 1	07.09.06	Motigunj, Bongaon	2	Smuggled from Bangladesh.
4	29,00,000	1000 X 1200 500 X 3400	17.09.06	Mumbai City	2	The passenger had arrived from Dubai by Kuwait Airways. The FICN smuggled by him was found to be concealed in toys, food packets brought by him in his baggage on the instructions of Puthu based in Dubai.

5	4,00,000	1000 x 100 500 x 600	29.09.06	Panvel, Navi Mumbai *	2	Intelligence developed about delivery of FICN at Panvel, Navi Mumbai was passed on to Navi Mumbai Police, Working on the intelligence they arrested a couple at Panvel railway station who had received delivery of FICN.
6	7,00,000	1000 X 700	17.10.06	Ghaziabad, Uttar Pradesh *	1	Smuggled from Pakistan through Samjhauta Express. Information was passed to the U.P. Police who seized the contraband.
7	40,15,000	500 X 3010 1000 X 2510	27.10.06	Chennai International Airport and Chennai City	3	The smuggling was through passenger mode. As per intelligence, the currencies were originally from Dubai to Sri Lanka and then to India. On follow up action two premises were searched and recovery was made. These currencies were brought earlier through passenger mode from Dubai to Chennai.
8	7,00,300	500 X 800 1000 X 300 100 X 3	31.10.06	Bangalore (Town)	1	The FICN was smuggled through Chennai ACC by unaccompanied baggage and later transported to Bangalore.

9	19,99,000	500 X 3998	07.11.06	Ajmeri Gate, Delhi	1	Smuggled from Pakistan through Samjhauta Express.
10	25,00,000	1000 X 2000 500 X 1000	04.01.07	Mumbai International Airport	3	The passenger had arrived from Dubai by an Indian airlines flight. The FICN smuggled by him was found to be concealed in a double walled cardboard carton containing personal items brought by him in his baggage. Two persons who had come to receive the FICN were also apprehended.
11	10,00,000	500 X 2000	28.02.07	IGI Airport, New Delhi.	2	A lady passenger had arrived from Lahore (Pakistan) to New Delhi by air and the FICN was found concealed in her baggage. The intended receipt was also arrested.
	Total : 1,68,04,250	1000 X 7289 500 X 19018 100 X 62 50 X 1	--	--	21	--

*Note : *Refers to seizures made by Police authorities on intelligence of DRI.*

SEIZURES MADE BY DRI DURING 2007-08

S. No.	Face value of fake Indian Currency Notes (FICN) seized (in Rs.)	Denomination X Numbers of FICN seized	Date of Seizure	Place of Seizure	No. of persons arrested	Remarks (indicating source of smuggling)
1	9,93,000	1000 X 993	21.04.07	Ludhiana, Punjab	1	The FICN had been smuggled across Indo-Pak Border alongwith 7.92 Kgs. of Heroin, one pistol and two empty magazines, Indian currency of Rs.1 lakh and three mobile SIM cards.
2	20,00,000	500 X 2400 1000 X 800	28.04.07	Calicut	1	The FICN had been smuggled by a passenger in his baggage who had travelled by an Air India flight from Dubai to Calicut airport.
3	7,99,000	500 X 998 1000 X 300	14.05.07	Pathankot, Punjab	1	The FICN had been smuggled across Indo-Pak border along with 14.03 kgs. Of Heroin.
4	2,64,000	500 X 528	21.05.07	Siliguri	3	The FICN had been smuggled in from Bangladesh through Kaliachak for delivery at Siliguri.
5	14,99,000	500 X 1998 1000 X 500	19.06.07	Calicut	3	The FICN had been smuggled in by a passenger concealed in a carton who had traveled from Dubai to Calicut by and Indian Air Lines flight.

6	4,60,000	500 X 158 1000 X 381	28/29.06 .07	Delhi	1	The FICN had been smuggled across Indo-Pak border through R.S.Pura sector alongwith 20.050 Kgs. of Heroin and was meant to be delivered at Delhi.
7	25,00,500	500 X 2001 1000 X 1500	13.11.07	Howrah Rly. Station	1	FICN smuggling from Bangladesh was concealed in a pigeon cage containing live pigeons.
8	19,93,000	500 X 2790 1000 X 598	15.11.07	Mumbai Int. Airport	1	The FICN had been smuggled by a passenger in his baggage who had travelled by an Indian flight No.IC-684 from Dubai to Mumbai airport.
9	19,54,000	500 X 2914 1000 X 497	18.11.07	Jodhpur Rly. Station	2	FICN was smuggled from Pakistan by Thar Express and then bring to Jodhpur by Munnabao-Jodhpur link rail. FICN was concealed in the slippers.
10	10,00,000	1000 X 1000	04.12.07	Kolikata	1	FICN was smuggled from Bangladesh through Petrapole Land Border and was to be delivered in Kolkata.
11	10,00,000	1000 X 1000	05.12.07	Kolkata	1	FICN was smuggled from Bangladesh through Petrapole Land Border and was to be delivered in Kolkata.

12	14,97,000	500 X 1798 1000 X 598	01.02.08	Mangalore Air port	1	The FICN had been smuggled in by brother of Puthu concealed in a carton who had traveled from Dubai to Mangalore by Air India flight.
13	2,00,000	500 X 340 1000 X 30	18.03.08	Mangalore	2	The FICN was concealed in courier parcels.
14	13,36,500	500 X 2673	25.03.08	Delhi	1	FICN was smuggled through Indo-Pal border and was to be delivered at Shamli in Uttar Pradesh.
	Total 1,74,96,000	1000 X 8197 500 X 18598			20	

SEIZURES MADE BY DRI DURING 2008-09

S. No.	Face value of fake Indian Currency Notes (FICN) seized (in Rs.)	Denomina tion X Numbers of FICN seized	Date of Seizure	Place of Seizure	No. of persons arrested	Remarks (indicating source of smuggling)
1	22,84,500	500 X 4569	06.04.08	Amritsar	1	FICN was smuggled through Indo-Pak border and was to be delivered at Shamli in Uttar Pradesh.
2	19,99,500	500 X 3999	03.05.08	Cochin	2	FICN was found in the baggage of a Dubai-based Indian who arrived at the Cochin International Airport from Colombo. The intended recipient was also arrested.

3	38,38,500	500 X 2703 1000 X 2487	10.06.08	Kolkata	2	FICN was smuggled from Bangladesh through Petrapole Land Border and was to be delivered in Kolkata.
4	7,60,000	500 X 1280 1000 X 120	06/07/08	Railway Station Howrah, Kolkata	3	FICN was smuggled from Bangladesh and all the three persons were about to board a train to Bangalore along with FICN.
5	72,50,000	500 X 10,100 1000 X 2200	16.08.08	Karipur International Airport, Calicut	6	The FICN had been smuggled by a passenger in his baggage who had traveled by an RAK Airways flight from Ras Al Khaimah (UAE) to Calicut airport.
6	14,97,000	500 X 998 1000 X 998	30.08.08	Delhi	1	FICN had been smuggled from Nepal via Bihar.
7	1,50,000	500 X 100 1000 X 100	27.09.08	Kolkata	2	FICN was smuggled from Bangladesh.
8	11,00,000	500 X 2200	12.10.08	Amritsar	1	FICN was smuggled from Pakistan along with 5 pistols and 5 spare magazines.
9	19,80,000	500 X 3960	02.02.09	Kurla Terminus, Mumbai.	3	FICN was smuggled from Nepal via Gorakhpur.
T o t a l	2,08,59,500	1000 X 5905 500 X 29909			21	

SEIZURES MADE BY DRI DURING 2009-10

S. No.	Face value of fake Indian Currency Notes (FICN) seized (in Rs.)	Denomination X Numbers of FICN seized	Date of Seizure	Place of Seizure	No. of persons arrested	Remarks (indicating source of smuggling)
1	4,50,000	500 X 900	02.05.09	Muzaffarpur	1	FICN was smuggled through Indo-Nepal border from Birgunj in Nepal.
2	2,00,000	500 X 400	11.09.09	Sahbajpur near Farakka, WB	2	
3	4,99,500		26.10.09	Farakka Rly. Station, District Murshidabad, West Bengal	1	FICN was smuggled through Indo-Bangladesh border.
4	18,00,000	500 X 3600	23.12.09	Andheri Rly. Station, Mumbai	3	FICN was smuggled from Karachi to Dubai and then to Mumbai.
5	1,20,000		26.02.10	Farakka Rly. Station by DRI, Siliguri/Berhampore	1	
6	24,18,000	500 X 994 1000 X 1921	11.03.10	Cochin Int. Airport by DRI, Cochin	1	FICN was smuggled from Dubai to Cochin.
Total	54,87,500				9	

114. PW-30 Rameshlal Sharma, Sub Inspector of Gandhi Nagar, Jammu & Kashmir testified that pursuant to an order of Chief Judicial Magistrate, Sambha, which was produced by officer of NIA, samples of FICN of Rs.500 denomination seized in FIR No.245/200 at Police Station Sambha were given to the NIA. The said documents are proved at Ex.170. He categorically testified that two Pakistani militants who were killed in an encounter were found in possession of AK 47 assault rifles, grenades, RDX, detonators and FICN.

115. PW-32 Sanjay Malviay, Inspector of Police attached to NIA, deposed about collection of FICN from Raxul(Bihar), Motihari (Bihar) and Kolkatta (West Bengal). An order of CJM was obtained and samples of FICN from Police Station Bariya were collected. The said document is proved at Ex.176.

116. On 21/1/2010 in a similar manner this witness had collected FICN from the IO of Raxul Police Station. The documents to that effect are proved at Ex.177. On 25/1/2010 in a similar manner he collected samples of FICN from the SHO of New Market Police Station, Calcutta. The documents are proved at Ex.178.

117. PW-33 Chandrahas Nayak, PI attached to Davanagere Police Station (Karnataka) deposed that he had investigated C.R.No.359/08 under Secs.489-B & C of the I.P.C. He had arrested 11 accused. All of them were residents of Murshidabad (W.B). He had seized FICN of the face value of Rs.2,20,000/- comprising FICN of Rs.1000 and 500 denomination. The samples FICN were obtained by PW-38 Ravi Gambhir of NIA, which is proved at Ex.180.

118. PW-34 Harpalsingh, Sub Inspector attached to 799 Chandigarh, testified that FICN of Rs.4,73,000/- of Rs.

500 and Rs.1000 denomination were seized by Police Station 31 of Chandigarh and FIR Ex.125 was registered under Sec.489-A, B, C, 420 and 120-B of the I.P.C. As per the orders of Court sample FICN of Rs.500 and 1000 denomination were delivered to NIA. The documents to that effect are proved at Ex.183, which includes the order passed by JMFC viz.Paramjit Kaur.

119. PW-35 J.S.Rautela, Inspector attached to NIA testified that he had brought sample of FICN from Kashmira Police Station in C.R.No.90/08 in a sealed envelope and gave it to PW-39. The letter is proved at Ex.187. He also testified that on 15/8/09 he went to police station 31, Chandigarh and as per orders of the Court had brought FICN and handed it over to PW-39. He proved Ex.184 to that effect.

120. PW-36 Pravin Chaturvedi PI attached to Rewa,

M.P.deposed that in the year 2010 he was attached to NIA Delhi, he had brought samples of FICN from Navashahar (Punjab) and S.T.F.Bhopal, M.P., as per the orders of PW-39. He proved the concerned documents at Ex.189 and 190 respectively.

121. PW-37 Sanjay Dhall Inspector of police attached to NIA from June, 2009 to 30/9/2013 deposed as to how he assisted PW-39 during investigation of this case when it was taken over by NIA from ATS Mumbai. He corroborated the testimony of PW-20 Sisodia about taking samples of FICN Ex.138 and samples from Bhopal at Ex.192. He also testified about collecting documents from SBI Malda (Ex. 135) etc.

122. Ld.Counsel Mr.Wahab Khan made futile attempt to rebut the testimony of PW-37. The witness admits that he is unable to identify any of the accused of this case by

their faces or names but that itself would not brush aside his testimony in respect of what he has testified about the collection of FICN and assistance to PW-39 during investigation.

123. PW-38 Ravi Gambhir was attached to NIA as Dy.Superintendent during the relevant period. He testified that he had moved an application before the Addl.District Judge, Chitradurga, Karnataka seeking permission to obtain sample of FICN in FIR No.359/08 under Sec.489-B, C of IPC. The letter is proved at Ex.194. The order of Addl.District Judge, Chitradurga, Karnataka dated 23/7/09 is proved at Ex.195. He has also proved the letter Ex.196 written by him to the Manager of Axis Bank, Crawford Market Branch, seeking details of account and other documents of A/5 and about his account opening form. He also corroborated the testimonies of earlier witnesses who have proved the documents at Ex.197, 198, 199 and 200.

No effective cross of these witnesses have been made by the defence except giving certain suggestion. It appears that the prosecution has examined all these witnesses in order to show relevance of their testimonies in respect of seizure of high quality FICN having similar characteristics features, which were seized in this case. The evidence of these witnesses can be said to be relevant as per Sec.5, 11 and 14 of Chapter-II of the Indian Evidence Act.

124. On the aspect of Sanction, prosecution has examined PW-22 R.V.S.Mani and PW-23 Virendrakumar Channanram. PW-22 has proved the sanction order Ex.147. He was posted in the Ministry of Home Affairs as a Under Secretary of Internal Security Division. He used to receive inputs about terrorist activities, smuggling of FICN and activities of certain organizations involved in terrorist and anti-national activities. His evidence indicates that NIA had forwarded the entire evidence to the Internal Security

Division of Ministry of Home Affairs. He had processed all the evidence and papers brought by NIA. Then he placed all the papers before his higher authority i.e. Director (Internal Security). It was thereafter placed before Joint Secretary (Internal Security). The next authority was Union Home Secretary. Thereafter all the papers were placed before Union Home Minister of Government of India. The witness testified that they were also placed before a Special Committee comprising retired Law Secretary, retired Judge of a High Court and a third member. The Union Home Minister of Government of India approved the final sanction.

125. During his extensive cross examination by Mr.Wahab Khan it is elicited that he did not discuss anything with the investigating officer of this case. The sanction file was not produced before Court. He does not remember whether the draft sanction was forwarded by the

prosecution agency and such other questions. Only because this witness could not recollect names of the members of the Committee does not *ipso facto* falsify his evidence. He categorically testified that the matter was placed before Union Home Minister after recommendation of Special Committee and after approval of Union Home Minister he was bound to sign the sanction order as per Central Civil Service, Conduct Rules. He voluntarily testified that the Union Home Minister himself is an eminent lawyer namely Shri P. Chidambaram. He further strengthen his evidence by deposing that Special Secretary (Internal Security) in the hierarchy is a senior IPS Officer, who had also examined the papers. A perusal of Ex.147 and the testimony of PW-22 would show that the concerned members of the committee and the competent authorities after due application of mind accorded the sanction order in view of Sec.45(1) of the Unlawful Activities (Prevention) Act, 1967 (as amended in 2004 and 2008). The said order was obtained for

prosecution against the 7 accused from the first UAP Act reviewing authority consisting of the members as deposed to by PW-22. The testimony of this witness finds support from PW-39 Sajid Shapoo. After obtaining the sanction the first chargesheet was laid before the Court on 6/11/09 under relevant Section of IPC and under Sec.17 of UAP Act. Thereafter, further sanction of prosecution was sought under Sec.15, 16 and 18 of UAP Act in addition to earlier sections which is proved by PW-23 Virendrakumar, who had signed the said order while working as under Secretary in the Ministry of Home Affairs of Government of India (Internal Security Division). In short PW-23 deposed that after receiving necessary documents and papers from NIA by the Home Ministry they were placed before competent authority after obtaining the views of Independent Review Committee. All the papers were thereafter placed before the Hon'ble Home Minister. After getting approval from the Home Minister he signed the sanction order on behalf of the

President of India It appears that there was due application of mind by the competent authorities before according sanction to prosecute the accused persons. A specific question was asked to this witness as to whether, before according sanction he was supposed to get himself satisfied subjectively upon which the witness answered that since he was not a competent authority there is no question of his subjective satisfaction. As a matter of fact I do not see any reason to disbelieve testimonies of these witnesses and the sanction order, as nothing has been brought out to show that Ex.147 and 149 had been accorded without application of mind.

126. This takes me to the last and important witness of this case PW-39 Mr.Sajid Shapoo, DIG, NIA, New Delhi. He joined NIA on 2/3/09 as a Superintendent of Police. He took the investigation of this case from ATS Mumbai since it's a schedule offence and therefore, by an order of

Government of India dtd.03/06/2009 the case was made over to NIA considering its gravity and seriousness. He testified that he took over the investigation from PW-9 Avhad and the material seized therein as well as record of the case.

127. His evidence further indicates that Dy. Governor of RBI had written a letter to Home Minister and Home Secretary informing them that the FICN seized by ATS, Mumbai was exactly similar with FICN notes recovered in the currency chest of Kochi (State of Kerala). The said letter is proved at Ex.202, which is a secret letter. It reveals that the Kochi Office Currency Chest detected one piece of Rs.1000 denomination at their counter which is similar to the notes seized by ATS Mumbai with the prefix 2AQ (582105). From the number of the said FICN being between 2AQ 579148 to 585446 assuming that FICNs are printed continuously by the counterfeiters, the number of

pieces printed comes to 6,298. The letter further reveals that FICN with the prefix 2AQ have been distributed across the country from Mumbai to Kochi. Letter also bears an endorsement of this witness. A secret letter by Executive Director of Reserve Bank of India dated 28/7/2009(Ex.202) was addressed to the Director General of NIA Shri Radha Vinod Raju, wherein there is a mention of detection of one currency note of Rs.1000 denomination found in the currency chest of Kochi, which is similar to the FICN seized by ATS in this case. Letter also reveals that the said note bears pre-fix 2AQ which is similar to the FICN seized in this case. It appears from the letter that the RBI observed that FICN are printed continuously by the counterfeiters and the number of pieces printed comes to 6,298, which have been distributed across the country from Mumbai to Kochi. The analysis of the forged notes seized by ATS is enclosed alongwith the letter. The report of Bhartiya Reserve Bank Note Mudran Pvt.Ltd., shows that the said Rs.1000 currency

note was not genuine. The two currency notes bearing series 2AQ 577624 and 8AC 991403 are analysed and the detailed report in the form of comparison of authenticate and sample notes has been submitted diagrammatically. A bare look would show as to how the authentic and sample FICN are quite different in respect of its features such as latent image, intaglio effects, thicknesses, OVI effect, security thread, offset design, Gandhi Watermarks and hidden watermarks etc.

128. PW-39 further testified that during investigation it revealed that similar FICN were seized all across the country and most of the accused hailed from Malda District of West Bengal. It also revealed that smuggling and circulation of FICN were not isolated events but a part of a larger conspiracy to target the economic security of India and disturb the monetary stability of the Country. He also testified that it was revealed during investigation that such

FICN were being used to fund the terror activities also and, therefore, Sec.17 of UAPA, Act came to be invoked on 29/06/2009. I must say that except oral evidence of this witness prosecution has failed to bring on record that accused Nos.1 to 6 or for that matter the co-conspirators at Malda and across the borders of the nation were smuggling and circulating FICN to fund the terror activities. Be that as it may. He thereafter testified about collection of samples of the high quality of FICN seized in different cases with due permission from the concerned Courts. A report of Committee of the experts, which was formed after a letter written by this witness to the Chairman of SPMCIL has already been discussed by me. He further testified that legal tenders/ genuine currency of our neighboring countries like Pakistan, Bangladesh, Srilanka, Myanmar were obtained by writing a letter to the SBI on 08/09/2009. It is proved at **Ex.203**. The letter address to the members of SPMCIL is proved at **Ex.204**. Shri M.C.Bylapp, Dy.GM &

HoD, BNP, Dewas Convener, Shri S.Mahapatra, Manager (QA), SPM Hoshangabad and Shri R.P.Shirwadkar, DWM, CNP Nasik were the members of committee of experts. Thereafter, FICN Samples were collected from Sambha District (Jammu & Kashmir), Chandigrah, Badwani (M.P), Chitradurga (Karnataka), Bhopal, Goa, Thane and Kochi. FICN samples from Sambha were collected by PW-39. The letter written to the SHO dtd.08/07/2009 is proved by him at **Exh.205**. The copy of an application moved to CJM, Bhopal is proved at **Ex.206**. He further testified that a detail questionnaire was prepared by him for the purpose of interse comparison amongst not only the samples of FICN but also of the legal tenders of the neighboring countries with the said samples. As already discussed and again testified by this witness that the report revealed that the paper used in the manufacturing of FICN is genuine currency paper (100% cotton rag) and the paper has been made on the regular cylindrical mould machines which only

sovereign nations have access to. The report also demonstrates that going by the sophistication of the security features it is concluded that the FICN were manufactured in regular currency making machines. These machines are available only to sovereign nations and the Central Banks. Therefore, the report also revealed that the FICN seized in Sambha and in Chandigarh is exactly similar to the FICN seized in this case. The FICN seized in Sambha were recovered from two Pakistani terrorists, who were killed in an encounter on the Indo-pak Border while infiltrating into India. The FICN which was seized in Chandigarh was being brought from Pakistan by the accused Savinder Kour and it was seized while she was getting down from Attari Express.

129. He further testified and supported the earlier evidence regarding deposit slips of Rs.25,000 in the account of Shamsuddin Miya at SBI, Borokamat Branch in Malda, which revealed that there was similar transaction in the

account of Samshuddin Miyya wherein the money was deposited in the accounts in Mumbai and on the same day it was withdrawn from various ATM's at Malda. He corroborated the fact that Samsuddin Miyya is the brother of A/2 Nuruddin. According to this witness all the accused are a part of the conspiracy wherein FICN is brought from Malda and circulated in Mumbai and thereafter genuine money generally used to be sent back to Malda. He testified about the CDR analysis showing communication between the accused interse with Shaukat and Shamsuddin. Samsuddin was also communicating with Bangladesh numbers about which he had information that they belonged to FICN dealers in Bangladesh. The CDR analysis also revealed that Shaukat Ali was in touch with the FICN suppliers who had supplied FICN to the accused in Crime No.139/2009 of STF, Kolkatta. Though this witness testified that main accused of that case was in touch with accused Shaukat Shaikh and other accused of the case, he did not

name the so called main accused.

130. According to this witness during the course of further investigation and after forwarding a detail questionnaire asking specific question about the parameters of samples of FICN and the Pakistan Legal Tenders, the second report of the committee of Experts revealed that that the most pivotal features of the samples of FICN and the Legal Tenders of Pakistan were exactly similar. The GSM of the FICN was exactly similar to the GSM of Pakistan Legal Tender and it was different from the GSM of Legal Tender of India. The PH Value which determines the compositions of the currency paper was also exactly similar. The waxpick quotient and the poly venyel alcohol coating was also exactly similar. The committee of experts concluded that based on the properties of paper and the sophistication of printing the manufacture of FICN points towards Pakistan as the manufacturing Country.

131. He further testified that he sought opinion from Reserve Bank of India, who concluded that currency is the property of Government of India u/sec.22 of The RBI Act and such large scale circulation of counterfeit currency destroys the monetary stability of India. It is, therefore, a terrorist Act by other means to destroy the property of the Government of India, which directly comes under sec.16 r/w sec.15 of The UAP Act, 1967 as amended in 2008. He has proved his letter address to the Chairman and M.D. of SPMCIL seeking experts opinion on FICN at Ex.207 along with list of annexures, Ex.208 with list of annexures and the copies of legal tenders of Pakistan obtained from SBI which are marked as Art.56.

132. PW-39 specifically testified that after the investigation of this case the matter was taken up with the Government of Pakistan in June, 2012 as the Home

Secretary level talks were held in Islamabad. He was a part of that delegation. He testified that it was first communicated to the Home Minister and Home Secretary of Pakistan that the state actors in Pakistan are illegally producing counterfeit Indian Currency in the regular currency presses of Pakistan and that should be immediately stopped. He also testified that the matter was also taken up with the Government of United States to put diplomatic pressure on Pakistan. I do not see any reason to disbelieve the testimony of this witness on oath as the defence has failed to make any dent during cross examination. Some insignificant questions were put to this witness and some suggestions were given which are quite immaterial. Admittedly, the accused in other FICN cases are not before this court. The only purpose of the prosecution to bring the evidence to that effect is to show the relevancy of the fact and the modus operandi as well as the common source of manufacture of FICN and so also the common resident of

almost of the accused who hailed from District Malda of West Bengal. It is not the requirement of law that all those accused should have been included in this case also. The witness also admits that there is no document on record to show that he is a part of the delegation to the Pakistan. There is no reason to disbelieve his testimony

133. The witness further admits that the sample of FICN were not sent accused wise but were sent randomly. He also testified that remuneration to the SBI for procuring legal tenders of all the neighboring countries had been paid. An amount of Rs.1085 was sent to SBI New Delhi, Main Branch, in view of letter **Ex.203**. He also made it clear that he had received acknowledgment from the experts committee about having received the legal tenders of neighboring countries. Though he admits that copies or photographs of legal tenders of neighbouring countries has not been furnished alongwith the chargesheet, it is also not

the requirement of law. However, he made it clear that there was a partial destruction of legal tenders of neighboring countries for the purpose of chemical analysis, which is mentioned in Ex.208. Interestingly, Ms.Vora put a question as to whether the witness did not feel it necessary to collect the CDR in respect of mobile of Accused No.5, which links him with Accused Nos.1 to 4 and 6. The witness promptly answered that mobile number of A/5 is 9732920616, which was linked with mobile of A/7(absconding) Shaukat Ali on 10/5/09 indicating two calls, which I have already discussed here-in-above. The witness further testified that absconding accused A-7 Sahukat Ali was in touch with A-1 to A-6 and this is how a chain has been established. He also made it clear that there is a due compliance of Sec.82 and 83 of Cr.P.C. in respect of A/7.

134. Thus, from the discussion of evidence the facts

and circumstances on record the prosecution has succeeded in establishing that the accused Nos.1 to 6 alongwith wanted accused Shaukat Ali hatched a criminal conspiracy and circulated FICN in the financial capital of the country in a very clandestine manner having full knowledge that they were circulating said FICN as precautions were taken by accused Nos.1 to 6 to conceal the FICN separately from the genuine currency notes. As already stated above that to establish a charge of conspiracy knowledge about indulgence over an illegal act or a legal act by illegal means is necessary. The prosecution has also established the particular unlawful use of FICN. All the accused before the court are *participes crimines* who were collecting FICN from West Bengal and Jharkhand for the purpose of circulating the same in Mumbai.

135. The prosecution has, by its cogent and believable evidence proved nexus not only between A/1 to A/6 interse

but also established their links with A/7 Shaukat Ali, Bhodu T.Shaikh and Shamsuddin Miya, who were all the members of criminal conspiracy involved in circulation of FICN in Mumbai. Their links have been unearthed through the trustworthy evidence in the form of bank accounts and CDR. All of them had shared a common intention for committing the illegal act. All the accused also have been shown to possess full and clear knowledge of FICN being circulated in Mumbai, which can be said to be a well designed plan amongst them who agreed to do and caused to be done such illegal act. It, therefore, necessarily establishes mens-rea of all the accused. Though it is a settled position of law that act or action of one of the accused cannot be used as an evidence against another, however, exception has been carved out under sec.10 of the Evidence Act, in case of conspiracy. To attract Sec.10 of the Evidence Act, there must be a reasonable ground to believe that two or more persons had conspired together for

committing an offence. It is only then that the evidence of action or statement made by one of the accused could be used as evidence against the other. In case at hand it has been established that A/1 to A/6 with absconding A/7 Shaukat Ali hatched a criminal conspiracy to circulate FICN and, therefore, it can be definitely said that the illegal act of circulating FICN by A/1 to A/6 pursuant to a criminal conspiracy is in reference to the common design encompassing Shaukat Ali, Shamsuddin Miya and Bhodu T. Shaikh.

136. A useful reliance has been placed by the prosecution on a ruling reported in State of Maharashtra V/s. Somnath Thapa. I have already held herein above the ratio laid down by the Hon'ble Supreme Court, which can be extracted from para 23 and 24 of the judgment and is squarely applicable to the instant case.

137. Sec.15 the Unlawful Activities (Prevention) Act, 1967 defines terrorist act which reads thus:

“1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,-

a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause-

i) death of, or injuries to any person or persons; or

ii) loss of, or damage to, or destruction of, property; or

iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

- iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or*
- b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or*
- c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act.*

The acts committed by the accused can be definitely said to be committed with an intention to threaten the unity, integrity, economic security, sovereignty of India as well as with an intent to strike terror in the people by smuggling

and circulating FICN with full knowledge that such FICN will cause damage, loss, disruption of the supplies and services essential to the life of the community of India . Due to circulation of FICN there has been damage to the monetary stability of India. It is submitted by the prosecution that it has also triggered off inflation of money all over India. It has caused damage and disruption of monetary property of India and also destroyed the fiscal stability. Keeping in mind the evidence on record would definitely show that these accused are also members of a larger criminal conspiracy in tandem with and were working for the bigger actors in this game plan with the clear understanding of the criminal conspiracy entered into by the conspirators and co-conspirators who have printed India's Legal Tenders and have successfully smuggled the same into India. It is also clear from the evidence herein above that these conspirators have successfully created a network of their close confidante to circulate the tainted

notes all over India and to hoodwink national security.

138. The systematic infiltration seen from the modus operandi i.e. by opening various bank accounts and depositing the genuine currency generated after circulating FICN in open market. The said amount deposited in the accounts of Bhdu T. Shaikh etc., used to be withdrawn several times in a day. The systematic operation all over the country has indeed destabilized the Government's fiscal policy, which is clearly done with an intention to destroy the financial fabric of this country. From the evidence of PW-25 Bylappa a fact is strengthened that these FICN and other circulated FICN across the country were manufactured and prepared by a sovereign country and by the persons who are perpetrators of the crime stationed beyond the borders of this country. As it has been rightly argued by the Ld.SPP Ms.Salian that this is nothing but declaring a proxy war with the result of prolonged

psychological effect produced in the society at large. Such terror activity travels beyond the ordinary crime in capable of being punished under the ordinary Penal Law of the land. The offences committed by the perpetrators are primarily targeting to overawe the Government and to disturb the harmony of the society with a view to disturb the even tempo, peace and tranquility of the society which perhaps created a sense of fear psychosis and insecurity in the mind of the citizens who deal with the money day-in-day-out.

139. The above offences are brought under Sec.2(g) a Schedule Offence under N.I.A.Act, 2008 coupled with Provisions of I.P.C. and Sec.15 of UA(P) Act, which also deals with terrorist act and such offence committed with intent to threaten unity, security, integrity or sovereignty of India or with an intent to strike terror in the people. A bare look at Sec.15 would reveal that if an act is done with

intent to threaten unity, integrity, security or sovereignty of India by using bombs, dynamites, explosives or other lethal weapons or even by **any other means of whatever nature** in itself would constitute circulation of FICN as Sec.15(a) (ii) postulates loss of, or damage to, or destruction of, property, which is defined in Sec.2(h) of the UA(P) Act as follows:

“property” means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and legal documents, deeds and instruments in any form including electronic or digital, evidencing title to, or interest in, such property or assets by means of bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit, cash and bank account including fund, however acquired”

A combine reading of Sec.15 sub clause(ii) (iii) would

definitely cover terrorist act in the form of circulating FICN. Though it is argued by the Ld.SPP that the addition of word economic security in Sec.15 and clause (iii-a) speaks about damage to the monetary stability of India which came to be inserted with effect from 1/2/2013 would be applicable in this case is unacceptable as the said amendment is penal in nature, which cannot be applied retrospectively. Even without taking into account the insertion with effect from 1/2/2013 in the definition of Sec.15, the pre-amended definition precisely covers the offence in question and it can be definitely be said that such act of accused Nos.1 to 6, who were found in conscious possession of FICN were circulating the same to cause disruption of the supply and services essential to the life of the community in India and to de-stabilize the Indian economy which in itself is a terrorist act. Clause (b) of Sec.15(1) defines

“high quality counterfeit Indian currency”

means the counterfeit currency as may be declared after examination by an authorized or Notified Forensics Expert that such currency imitates or compromises with the key security features in the III Schedule.

The third Schedule read thus,

a) Watermark, b) Latent image, c) See through registration in the currency notes.

As already stated word 'security' in Sec.15 of the Act, before its amendment would definitely cover “**economic security as well**”.

140. From the report of PW-25 Bylappa Ex.153 it is crystal clear that the FICN which have been circulated in India are manufactured in the same printing press and the answers given to the two questionnaires clearly indicate the similarity of FICN with sample note G and J of other countries. The last paragraph of the reply to the questionnaire Ex.157 reads thus;

A conclusive evidence found in the

examination. Efforts are made to reach out at some leads. It can be inferred from the use of similar furnish (% rag or cotton content), security thread, security fibre in both Rs.1000 denomination and Rs.500 denomination, the papers might be manufactured at one paper making unit. The printing of Rs.1000 denomination and Rs.500 denomination FICN might have been carried out in one Press, except in case of samples of Rs.500 series bearing No.4FK 803862, OEP 911402 and OEP 911403. The details are given in the report.

The accused Nos.1 to 6 in this case had definitely abetted or knowingly facilitated the commission of a terrorist act by circulating FICN in such a large quantity which attracts Sec.18 of U.A.(P) Act, apart from their role as co-conspirators along with absconding accused A/7 Shaukat Ali.

141. Once it has been established that A/1 to A/6 were found in conscious and controlled possession of FICN in such a large quantity for circulating the same in a city

like Mumbai, coupled with the facts that similar modus operandi and similar FICN were also circulated across the nation by different accused who mostly hailed from District Malda of West Bengal, it can definitely said that the accused had requisite mens-rea.

142. This takes me to Sec.43(E) of U.A.(P) Act, which is a presumption as to the offences under Sec.15. Sec. 43(E) reads thus;

a) that the arms or explosives or any other substances specified in the said section were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature were used in the commission of such offence; or

b) that by the evidence of the expert the finger-prints of the accused or any other definitive evidence suggesting the involvement of the accused in the offence were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence,

the Court shall presume, unless the contrary is shown, that the accused has committed such offence.

As such the presumption comes into play as the prosecution has proved beyond doubt that accused Nos.1 to 6 alongwith Shaukat Ali, had committed a terrorist act by circulating FICN. There is no rebuttal by the defence and, therefore, the presumption also is against the accused persons. The defence, as emerged from the line of cross-examination is that those were genuine currency notes. The defence has failed to substantiate the said fact.

143. Ms.Vora Ld.Counself for A/5 has pressed into service a few rulings. The first one is reported in **2011 CRI.L.J.(NOC) 199 (BOM.)** in case of **Shashikant Gulabchand Bora and etc.etc.,V/s. State of Maharashtra**. In the said case notes which were said to be counterfeit were found in possession of the accused. Those notes were such that by naked eyes even bank officials

were unable to make it out even after examining them under ultraviolet rays. The prosecution, as held by the Hon'ble High Court failed to prove the accused being layman had knowledge or reason to believe that the said notes were counterfeit notes. I am afraid, the ratio would not applicable to the present set of facts for the simple reason that all the six accused were found in possession of a huge quantity of counterfeit notes and in a peculiar manner they were circulating it in the market and the genuine notes generated from the FICN were regularly deposited in the accounts of other accused. The accused had full knowledge about the counterfeit nature of the notes and, therefore, the ratio is not applicable.

144. A reliance has also been placed on the ruling reported in *AIR 1979 Supreme Court 1249* in case of *Ram Rattan V/s. State of Punjab*, which is on the point of conscious and controlled possession of contraband. In the

said case prosecution has not proved that the appellant was in conscious possession of opium recovered from the house when the raid was conducted. The appellant was not there in the house at the time of raid. Here in this case pursuant to a memorandum statement of A/5 a raid was conducted and FICN were found in controlled possession of the accused and, therefore, the ratio laid down in the said ruling would not be applicable. On similar point reliance has been placed on a ruling reported in *AIR 1961 ALLAHABAD 438* in case of *Kanta Prasad V/s. State*. It is held that possession is a larger term and involves, contract; so that the charge of having in possession involves the charge of having in control. The next ruling pressed into service is in case of *Umashankar V/s. State of Chhattisgarh* reported in *AIR 2001 Supreme Court 3074*. The ratio laid down by the Hon'ble Supreme Court is about requisite mens-rea of the accused who were found in possession of counterfeit currency notes. In the said case

there was no material brought on record to show that the the accused had requisite mens-rea. I have already discussed in the preceding paras as to how these accused have had requisite mens-rea and, therefore, with due respect to the ratio laid down in this ruling would not be applicable to the present set of fact.

145. As it has been held time and again by the Hon'ble Supreme Court and various High Courts that conspiracy is a clandestine act. Persons generally don't form illegal covenants openly in the interest of security; a person may carry out his conspiracy without even informing the identity of his co-conspirators. Since, an agreement of this kind can rarely be shown by direct proof, it must be inferred from the circumstances of co-operation between the accused. What people do is, of course, evidence of what lies in their minds. In this case there is evidence of conspiracy in the form of agreement to

accomplish the unlawful object of circulating FICN, which can be seen from the association of the accused, their acts and communication. This is a typical chain where each party performs a role that aids succeeding parties in accomplishing the criminal objectivity of the conspiracy. The rationality is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement, and support of the group as a whole to warrant treating each member as a casual agent to each act. Under this view, such of the conspirator committing substantive offence would be less significant in determining his liability than the fact that the crime was performed as a part of a larger division of labour to which accused had also contributed their efforts.

146. Having considered all the aspects of this case from each angle and after considering the entire evidence on record as well as the facts and circumstances, I sincerely

feel that the prosecution has proved beyond all reasonable doubts that accused Nos.1 to 6 alongwith Shaukat Ali have threatened the security and sovereignty of our country by circulating FICN with an intention to cause disruption of supplies and services essential to the life of the community of India and also de-stabilized the Indian economy. It is certainly a terrorist act in which neighboring sovereign country i.e. Pakistan is involved with the sole purpose and intention to damage and threaten the unity, integrity, economic security and sovereignty of this country and also to strike terror in the people. I, therefore answer Point Nos.5, 7 and 8 in the affirmative.

147. POINT NO.6:- Except the testimony of PW-39 there is nothing on record to show that the seized FICN were raised by the accused or were found in possession of the said FICN for terrorist act. The point is, therefore, answered in negative.

148. There are absolutely no omissions or contradictions on record. The defence raised by the accused appears to be improbable, unbelievable and unacceptable. The prosecution by its cogent, convincing and trustworthy evidence has proved beyond all reasonable doubts that on 14/5/2009 accused Nos.1 to 4 were found in conscious possession of FICN denomination of Rs.1000 of 2AQ and 8AC series. The prosecution has also succeeded in establishing that on 23/5/09 accused No.5 and 6 were also found in conscious possession of 2 FICN of Rs.1000 denomination and 25 FICN of Rs.500 denomination of 2AQ and 9BR series respectively. It is further established that the accused were intending to use and had used the FICN as genuine currency notes by trafficking the same with the sole purpose of committing a terrorist act with an intention to de-stabilize the Indian economy and to threaten the unity, integrity, security and

sovereignty of India and so also to strike terror in the people. I, therefore, hold accused Nos.1 to 6 guilty of the offences punishable under Secs.489(C), 489(B), 489(E) r/w.120(B) of the I.P.C. and also under Sec.16 and 18 of Unlawful Activities (Prevention) Act, 1967. All the accused Nos.1 to 6 are acquitted of the offence punishable under Sec.17 of Unlawful Activities (Prevention) Act, 1967.

29th January, 2014.

(P. K. CHAVAN)
JUDGE OF SPECIAL COURT,
CONSTITUTED UNDER THE
NATIONAL INVESTIGATION
AGENCY ACT, 2008
FOR GR. MUMBAI

149. As regards the sentence to be awarded, I heard each of the accused by giving them considerable time. The Ld.Counsel for accused Nos.1 to 4 and 6 Mr.Wahab Khan is absent.

150. So far as accused No.1 Ravi Dhiren is concerned, it appears that he is repenting for the act committed by him. He submits that he has six marriageable sisters and is the only earning member of the family. He, therefore, prayed for leniency by sentencing him to the period already undergone by him in the jail.

151. It is urged by A/2 Nuruddin Islam that he has a wife and three kids as well as an old mother who are his dependants. He also prayed for leniency.

152. A/3 Mohd. Samad has also prayed for leniency by submitting that he has 8 kids. He has aged parents to be looked after and, therefore, requested to show him some leniency.

153. A/4 Mohd.Aijul submits that he has 2 kids and widowed mother and 5 sisters who are his dependants. He

submits that he is repenting for the crime committed by him and then prayed for leniency.

154. A/5 Abdul Shaikh submits that he has old parents, 2 marriageable sisters and a small son. He also submits that he is repenting for the crime committed by him. However, he also prayed for leniency by stating that he is the only earning member of the family. Ms.Vora Ld.Counsel for A/5 prayed for giving him set off for a period undergone by him during the trial.

155. Lastly A/6 Azraul Shaikh has also prayed for leniency by stating that he has a wife and a kid and that he is the only earning member of the family.

156. On the other hand Ld.SPP Ms.Salian submitted that all the accused have had full knowledge that they were circulating FICN as prosecution has established

beyond doubt that they had conscious and controlled possession over the FICN. The accused very well knew that the circulation of FICN by them is fully supported by the perpetrators of this crime, who are there across the border of this country and that they intended to threaten the unity, integrity, security and sovereignty of this country and also to strike terror and thereby de-stabilised the economy of this country and also to cause damage, loss and disruption to the property of this country. She also submits that this is a well hatched larger conspiracy across the nation and having its network and roots in West Bengal, Jharkhand, Sambha in the State of Kashmir. According to Ms.Salian this is the time the judiciary is required to take note of the gravity of such serious offence, which is nothing less than declaring a proxy war against our country. She has therefore, prayed for awarding maximum sentence prescribed not only under I.P.C., but also under the provisions of the Unlawful Activities(Prevention)Act, 1967.

157. Having considered the submissions made by the accused as well as by Ms.Vora and the Ld.SPP and after going through the entire facts, circumstances and evidence on record I must say that this is not an ordinary crime against an individual or for that matter an organized crimed syndicate involved in extortion, kidnapping etc., but it is much more serious as it would not only affect the Government's fiscal policy but also affect and de-stabilize the entire economy as well as banking system which is the backbone of the nation. It is indeed a terrorist act as defined in Sec.15 of Unlawful Activities (Prevention) Act, 1967. As already held that the accused knowingly conspired and abetted the offence of circulating the FICN in this country and, therefore, only maximum sentence prescribed in the statute book would be just and proper for the ends of justice as it is the need of the hour to have deterrence in the mind of not only the accused but the

others who are involved in such nefarious design of circulating FICN in our country. The larger conspiracy in which the state actors across border are involved have successfully manufactured and smuggled FICN into India and further created a network of such accused which is really a terrorist act, and therefore, there is no question of showing any leniency to any of the accused. However, they are entitled to set off for the period undergone by them in judicial custody during trial.

158. I, therefore, proceed to pass following sentence which would definitely meet the ends of justice. Now, to the order:

ORDER

1. A/1 Ravi Dhiren @ Jadhav @ Ruby Ghosh, A/2 Nuruddin Islam Bari, A/3 Mohd. Samad Mohd. Shahid Shaikh, A/4 Mohd. Aijul Mohd. Sarali Shaikh, A/5 Abdul Asurddin Shaikh and A/6 Azraul Tamez Shaikh are convicted u/s.235(2) of the Code of

Criminal Procedure of the offence punishable under Sec.489-B of the Indian Penal Code.

Each of the accused is sentenced to undergo imprisonment for life and shall pay a fine of Rs.1000/- (Rupees One thousand) each.

In default of payment of a fine, each shall undergo rigorous imprisonment for six months.

2. A/1 Ravi Dhiren @ Jadhav @ Ruby Ghosh, A/2 Nuruddin Islam Bari, A/3 Mohd. Samad Mohd. Shahid Shaikh, A/4 Mohd. Aijul Mohd. Sarali Shaikh, A/5 Abdul Asurddin Shaikh and A/6 Azraul Tamez Shaikh are convicted u/s.235(2) of the Code of Criminal Procedure of the offence punishable under Sec.489-C of the Indian Penal Code.

Each of the accused is sentenced to undergo imprisonment for Seven Years and shall pay a fine of Rs.500/- (Rupees Five hundred) each.

In default of payment of a fine, each shall undergo rigorous imprisonment for three months.

3. A/1 Ravi Dhiren @ Jadhav @ Ruby Ghosh, A/2 Nuruddin Islam Bari, A/3 Mohd. Samad Mohd.Shahid Shaikh, A/4 Mohd.Aijul Mohd.Sarali Shaikh, A/5 Abdul Asurddin Shaikh and A/6 Azraul Tamez Shaikh are convicted u/s.235(2) of the Code of Criminal Procedure of the offence punishable under Sec.489-E of the Indian Penal Code.

Each of the accused is sentenced to pay a fine of Rs.100/- (Rupees One hundred).

4. A/1 Ravi Dhiren @ Jadhav @ Ruby Ghosh, A/2 Nuruddin Islam Bari, A/3 Mohd. Samad Mohd. Shahid Shaikh, A/4 Mohd. Aijul Mohd. Sarali Shaikh, A/5 Abdul Asurddin Shaikh and A/6 Azraul Tamez Shaikh are also convicted u/s.235(2) of the Code of Criminal Procedure of the offence punishable under Sec.16 (1) (b) of the Unlawful Activities (Prevention) Act, 1967.

Each of the accused is sentenced to undergo imprisonment for life and shall pay a fine of Rs.1000/- (Rupees One thousand) each.

In default of payment of a fine, each shall undergo rigorous imprisonment for six months.

5. A/1 Ravi Dhiren @ Jadhav @ Ruby Ghosh, A/2 Nuruddin Islam Bari, A/3 Mohd. Samad Mohd. Shahid Shaikh, A/4 Mohd. Aijul Mohd. Sarali Shaikh, A/5 Abdul Asurddin Shaikh and A/6 Azraul Tamez Shaikh are convicted u/s.235(2) of the Code of Criminal Procedure of the offence punishable under Sec.18 of the Unlawful Activities (Prevention) Act, 1967 r/w.Sec.120-B of the Indian Penal Code.

Each of the accused is sentenced to undergo imprisonment for life and shall pay a fine of Rs.1000/- (Rupees One thousand) each.

In default of payment of a fine, each shall undergo rigorous imprisonment for six months.

6. All the accused are acquitted of the offence punishable under Sec.17 of the Unlawful Activities (Prevention) Act, 1967.

7. The substantive sentences of Accused Nos.1 to 6 shall run concurrently.

8. A copy of the findings and sentence be forwarded to the District Magistrate, Mumbai in view of Sec.365 of the Code of Criminal Procedure.

9. A copy of the Judgment be given to each of the accused.

Muddemal property shall be disposed off as follows:

The articles seized from accused No.1 Ravi Dhiren viz. Art.1 Wallet, Art.2 Currency notes, Art.3 News paper cutting, Art. 5 White and gray Nokia mobile, Art.6 Battery, Art.7 Sim card No. 8991673002747458945 be returned to him.

The articles seized from accused No.2 Nuruddin Bari viz. Art.9 Black colour mobile, Art.9A chit on which the word

"Pradarshit B-2" is written, Art.9-B Polythene bag, Art.10 Battery, Art.11 Simcard unnumbered, Art.12 Pan card be returned to him.

The articles seized from accused No.3 Mohd. Samad viz. Art.13 Wallet, Art.14(1-5) currency notes, Art.15 Card of Mukesh Optics, Art.16 (1-3) Railway pass, identity card and one railway ticket, Art.17 Pocket diary, Art.18 colly. Central Railway coupons be returned to him.

The articles seized from accused No.4 Mohd. Aijul viz. Art.20 Wallet, Art.21 currency note, Art.22 SBI deposit receipt, Art.23 visiting card, Art.24 Photograph, Art.25 Pocket diary, Art. 27 black colour mobile, Art.27A polythene bag, Art.28 Battery, Art.29 Simcard be returned to him.

The articles seized from accused No.5 Abdul Shaikh viz. Art.45 colly. Two passbooks of State Bank of India, Account No.30561366178, Art.46 colly. A photostate copy of an Identity Card issued by the Election Commission of India in the name of one Abdul Haque with MWB No.MWB4526660, Art.47 Passbook of Punjab National Bank (Dombivali East Branch) with saving

account No.3988000100081226 in the name of accused Abdul Shaikh, Art.48 A cheque book of Punjab National Bank bearing account No.3988000100081226 and Art.54 colly. Envelop containing a small diary, a mobile handset of Nokia company, a pancard in the name of Abdul A. Shaikh, 10 coloured photographs of different size of the accused and cash of Rs.160 (two currency note of Rs.50/- and 06 currency notes of Rs.10) be returned to him.

The articles seized from accused No.6 Azraul Shaikh viz. Art.51 mobile handset and Art.52 colly., currency notes of Rs. 50 x 1, Rs.10 x 6 and Rs.5 x1 be returned to him.

The aforesaid muddemal property shall not be returned for one year after the date of decision of this case. If in the mean while, intimation of an appeal having been filed in the Hon'ble High Court, in the present matter is received, the said muddemal shall not be returned to the accused until a period of one year expires from the date of the decision of the appeal to the Hon'ble High Court (Chapter VI paragraph 73(1)(d) of Criminal Manual).

All the FICN and the envelope Art.4, Art.8, Art.19, Art.30, Art.31, Art.32, Art.33, Art.34, Art.35, Art.36, Art.37, Art.38, Art.39, Art.40, Art.41, Art.42, Art.43, Art.44, Art.49, Art.50, Art.53 colly. and Art.55 and Art.55A colly. be returned to DIG, NIA, New Delhi for its disposal according to law, one year after the date of decision of this case. If in the mean while, intimation of an appeal having been filed in the Hon'ble High Court, in the present matter is received, the said muddemal shall not be returned to the NIA until a period of one year expires from the date of the decision of appeal to the Hon'ble High Court (Chapter VI paragraph 73(1)(d) of Criminal Manual).

Place: Mumbai

Date: 30th January, 2014.

(PRITHVIRAJ K. CHAVAN)
JUDGE OF SPECIAL COURT,
CONSTITUTED UNDER THE
NATIONAL INVESTIGATION
AGENCY ACT, 2008
FOR GR. MUMBAI

Dictated on : 13th, 15th, 16th, 17th, 18th, 20th, 21st, 29th, 30th January, 2014
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