

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of the Order: 16.12.2009

+ **CRL.A. 1059/2006 & CRL.A. 20/2007**

ANIS & ANR Appellant
! Through:Mr. Anish Dhingra, Mr. S. Mehdi
Imam and Anis S., Advocates

versus

\$ STATE NCT OF DELHI Respondent
^ Through: Mr. Amit Sharma, APP for the
State

And

+ CRL.A. 20/2007

NAND KISHORE Appellant
! Through:Mr. Sangram S. Saron, Advocate

versus

\$ STATE OF DELHI Respondent
^ Through: Mr. Amit Sharma, APP for the
State

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether the Reporters of local papers
may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be
reported in the Digest? Yes

: V.K. JAIN, J. (oral)

These are two appeals against the judgment and Order on Sentence dated 30th November, 2009 whereby the appellants were convicted under section 489-B of IPC and were sentenced to undergo RI for 7 years each and to pay fine of Rs.5000/- each or to undergo SI for 6 months each in default.

2. The FIR was registered on the statement of one Lakhpat Singh, Cashier with the Central Bank of India, Badarpur Branch. He alleged that on 31st October, 1997 at about 11.30 a.m. one Inderjeet Singh came to the counter, filled up a voucher and submitted the same along with two hundred currency notes of Rs.100 each for depositing in his saving account No.19412. On careful examination of those notes and consulting his colleagues and the Bank Manager, he felt that they were counterfeit currency. The police was informed and Inderjeet Singh was handed over to the police along with the currency which he had deposited with the bank. During the course of investigation, the investigating agency claims to have recovered 50 counterfeit currency notes of Rs.100 each from the house of the appellant Nand Kishan, kept there in a trunk. The appellant Sharafat Hussain was also arrested during investigation and 13

counterfeit currency notes of Rs.100 each were recovered from his possession. The appellant Anis was arrested during investigation on 3rd November, 1997 and 8 counterfeit currency notes of Rs.100 each were recovered from his possession.

3. The prosecution examined 9 witnesses during trial. Three witnesses were examined in defence.

4. PW1 Lakhpatt Singh is the bank official to whom counterfeit currency notes were tendered on 31st October, 1997. He has stated that one customer came to the bank to deposit a sum of Rs.20,000/- in denomination of Rs.100 each. While counting the currency notes given to him, he felt that some of them may not be genuine. He checked those notes minutely and informed the Branch Manager, who confirmed his suspicion. Police was thereupon informed and those currency notes were seized by the police. He identified Inderjit, co-accused of the appellants as the person who had tendered those currency notes to him. He also identified the fake currency notes which were tendered to him on that date. PW 2 Shri R.N. Swami was the Senior Manager posted at Badarpur Branch on 31st October, 1997. He informed the police when a person was caught while trying to deposit currency notes, which included some fake notes.

5. PW 3 Head Constable Bhagirath had stated that on 2nd November, 1997 the appellant Nand Kishore was arrested from his residence in Village Aali, Nai Basti and 50 fake currency notes in the denomination of Rs.100 were recovered from a box in his house. He further stated that pursuant to the disclosure statement made by the appellant Nand Kishore, the appellant Anis was arrested from Trilok Puri and 8 fake currency notes of Rs.100 each were recovered during his search. The appellant Sharafat Hussain was arrested pursuant to disclosure statement made by Anis and 13 fake currency notes of Rs.100 were recovered from his possession. The witness has identified the currency notes which were recovered from the possession of the appellants in his presence. Ex.P.201 to 271 are the currency notes which were recovered from the possession of the appellants.

PW 7 Inspector Amreek Raj has corroborated the deposition of PW 3 Head Constable Bhagirath regarding seizure of currency notes from the appellants. PW 5 Shri R.N. Gawhaya is Technical Officer, of Bank Note Press, Dewas. He examined 98 suspected counterfeit currency notes of Rs.100 brought to him by hand by Head Constable Bhagirath of PS Badarpur and

gave his opinion Ex.PW5/A. He has identified P 174 to 200 and P.201 to 271 as the currency notes mentioned in his report.

6. In his statement under section 313 of Cr.PC, the appellant Nand Kishore denied the alleged recovery from him and stated that he was made to sign some blank papers after he had been beaten by the police officers. Similar statement was made by the appellants Sharafat Hussain and Anis.

7. DW-1 Ramesh Kumar has stated that on 2nd November, 1997, the police came to J.J. Camp, Trilok Puri and took the accused Sharafat Hussain with them. DW-2 Mohd. Sabir has stated that on 2nd November, 1997 police came to the house of the accused Anis and took him with them in a car. DW-3 Jagdish Chander Verma has stated that on 1st November, 1997 the police came to Jagdamba colony in Ali Village of Badarpur and took accused Nand Kishore with them.

8. In order to succeed for a charge under Section 489-C of IPC, prosecution must prove:

- (i) that the currency-note or bank-note in question was forged or counterfeit;

- (ii) that the accused sold to, or bought or received from, some person, or trafficked in, or used as genuine, such currency-note or bank-note.
- (iii) that when he did so he knew or had reason to believe that it was forged or counterfeit.

9. I do not see any reason to disbelieve the testimony of PW-3 Head Constable Bhagirath and PW-7 Inspector Amreek Raj as regards recovery of counterfeit currency notes from the possession of appellants. The appellants do not claim that there was any enmity or ill will between them and any of these witnesses. Therefore, there could have been no reason for them to depose falsely against the appellants and implicate them in a false case. Their testimony cannot be rejected merely because they happen to be police officers. As observed by the Hon'ble Supreme Court in *Tahir Vs. State*, (1996) 3 SCC 338, no infirmity attaches to the testimony of police officials merely because they belong to the police force. It was observed in *Aner Raja Khima Vs. The State of Saurashtra*, AIR 1956 SC 217 that the presumption that a person acts honestly and legally applies as much in favour of police officers as of others. It is not proper and permissible to doubt the evidence of police officers. Judicial

approach must not be to distrust and suspect their evidence on oath without good and sufficient ground thereof.

10. It was contended by the learned counsel for the appellants that no public witnesses were joined before searching the appellants. It cannot be disputed that the public does not want to get dragged in police and criminal case and wants to avoid them, because of long drawn trials and unnecessarily harassment. Similar view was taken in *Manish Vs. State*, 2000 VIII AD (SC) 29 and in *A. Bhai Vs. State of Gujrat*, AIR 1980 SC 696. We can't be oblivious to the reluctance of a common man to join such raiding parties organized by the police, lest they are compelled to attend Police Station and Courts umpteen times at the cost of considerable inconvenience to them, without any commensurate benefit. Hence, no adverse inference on account of non-joining of public witnesses in such raids should be drawn.

In fact the deposition of PW-3 and PW-7 to some extent stands corroborated by DW-1 and 3 who say that in their presence the police had come to their house and had arrested the appellants.

11. The testimony of PW-3 and PW-7 proves that out of 71 counterfeit currency notes Ex.P-201 to P-271, 50 currency notes were recovered from the possession of the appellant Nand Kishore. 8 out of them were recovered from the possession of the appellant Anis and the remaining 13 were recovered from the possession of the appellant Sharafat Hussain. The testimony of PW-5, who is Technical Officer with Bank Note Press, when read alongwith opinion Ex.PW 5/A shows that all these currency notes were counterfeit currency. There is no evidence to rebut the opinion given to PW-5 and in fact this is not the case of any of the appellants that the currency notes alleged to have been recovered from their possession were genuine currency. I, therefore, have no hesitation in confirming the finding that the currency notes recovered from the possession of the appellants were counterfeit currency.

12. This is not the case of the appellants that though the currency notes were in their possession, they did not know and had no reasons to believe that the same were counterfeit currency. This is also not their case that these currency notes were given to them by someone and they had accepted the same without suspecting them to be counterfeit currency. Their case

is that these currency notes were not at all recovered from their possession. If a person found in possession of counterfeit currency, instead of giving any explanation for such counterfeit currency possession, chooses to altogether deny the possession and such a defence is found to be false, the inevitable inference is the he had reasons to believe that the currency notes recovered from him were counterfeit currency and that precisely was the reason why he is denying the recovery from him. The knowledge and intention are state of mind which cannot be proved by direct evidence and have to be inferred from the attending circumstances. Possession of counterfeit currency, coupled with denial of possession and no attempt to explain as to how the appellants came into possession of such currency is sufficient to infer the requisite knowledge and intention on the part of the appellants. No doubt, the fundamental principles of criminal jurisprudence is that it is for the prosecution to prove all the ingredients of the offence alleged to have been committed by the accused, but, when the prosecution has proved all that it could have and the circumstances proved by it point unerringly towards the guilt of the accused, in that case if there exists a fact which is only in the knowledge of the accused and that fact

is compatible with his innocence, it is for the accused to bring such a fact in the notice of the court. In '*Gajjan Singh vs. State of Madhya Pradesh*', AIR 1965 SC 1921, the accused, who was travelling in a separate truck, was present when his truck in possession of the driver was checked and forged permit produced by his driver was seized. The conviction of the accused under Section 471 read with Section 474 of Indian Penal Code was upheld. I, therefore, hold that the prosecution has already been able to prove that the appellants knew or had reasons to believe that the currency notes found in their possession were counterfeit currency.

13. There is no evidence of any of the appellants having sold any counterfeit currency note. There is no evidence to prove that they had bought the counterfeit currency notes, recovered from their possession. But, in the facts and circumstances of the case, it cannot be disputed that the appellant had received these counterfeit currency notes from someone, and that is how they came into possession of these notes. Normally, one would buy or receive currency notes from someone unless he prints them or finds them lying somewhere. This is not the case of any of the appellants that he had found these currency notes lying

somewhere and had picked them up. It is not possible for the prosecution to prove in each case that the person, who is found in possession of counterfeit currency notes had bought or received them from any particular person. The fact as to how the appellants came into possession of these currency notes is a fact especially in the knowledge of the appellants and in view of Section 106 of the Evidence Act when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. If the person found in possession of currency notes does not tell the Court as to how he had come into their possession and chooses to altogether deny his possession of such currency notes, the Court would be justified in inferring that he had received those notes from someone. The arrest of the appellant Anis and Sharafat at the instance of their co-accused, followed by recovery of counterfeit currency from them also corroborates this inference.

14. The main distinction between Section 489-B and 489-C of IPC is that in order to establish a charge under Section 489-B, the prosecution is required to prove the sale, purchase, receipt, trafficking or use of counterfeit currency as genuine, whereas to prove a charge under Section 489-C of IPC, the prosecution has

to prove possession of counterfeit currency with the requisite knowledge and with intention to use the same as genuine or intending that the same may be used as genuine. If in a given case, someone finds currency notes lying somewhere and picks them up with intention to use the same as genuine, while believing the same to be counterfeit currency, he would be guilty of the offence punishable under Section 489-C of IPC. If however someone consciously receives such counterfeit currency from another person with the requisite knowledge, he will be guilty of the offence punishable under Section 489-C of the IPC. The question as to whether possession of counterfeit currency in a particular case falls within the purview of Section 489-B or 489-C of IPC, depends upon facts of each case including the explanation, if any, given by the accused as to how he came into possession of counterfeit currency notes.

15. In view of the above discussion, I hold that the appellants have rightly been convicted under Section 489-B of IPC.

16. The learned counsel for the appellants requested for taking a lenient view in the matter of sentence, considering the individual circumstance of each appellant, including their family background, family obligations and state of health. Considering

the menace of counterfeit currency circulating in our country, which at times results in harassment of innocent citizens, who not being in a position to distinguish a fake currency note from a genuine one or on account of not taking trouble of examining them meticulously, become victims of such criminals by accepting such currency notes without even suspecting them to be fake currency notes, it is imperative to award adequate punishment to those who indulge in such crimes. This would also save harassment of innocent receivers of such currency notes, by curbing the activities of those who are printing and circulating counterfeit currency. Any unwarranted sympathy with such persons will be totally misplaced. Taking into consideration all the facts and circumstances of the case, while maintaining the fine imposed upon the appellants, I direct that they shall undergo R.I. for 4 years each, under Section 489-B of IPC. One copy each of this judgment be sent to the appellants through Jail Superintendent. Trial Court Record be sent back within seven days, alongwith a copy of this judgment.

V.K. JAIN,J

DECEMBER 16, 2009
RS/AG