

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

Judgment delivered on: March 28, 2011

+ **CRIMINAL APPEAL NO. 570/2008**

**SUNIL KUMAR**

**....APPELLANT**

Through: Ms. Anita Abraham, Advocate/Amicus  
Curiae.

Versus

**THE STATE (N.C.T. OF DELHI)**

**.....RESPONDENT**

Through: Mr.Sunil Sharma, APP.

**CORAM:**

**HON'BLE MR. JUSTICE AJIT BHARIHOKE**

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

**AJIT BHARIHOKE, J.(ORAL)**

1. This appeal is directed against the impugned judgment dated 25.3.2008 in Sessions Case No.136/2003 FIR No.212/2003 under Sections 489A to 489E P.S. Nabi Karim and the consequent order on sentence dated 26.3.2008 whereby the appellant Sunil Kumar has been convicted for the offences under Section 489A, 489C and 489D IPC and sentenced to undergo R.I. for a period of seven years and to pay a fine of ₹100/- for respective offences, in default to undergo R.I. for a further period of seven days each for respective offences.

2. Briefly stated, case of the prosecution is that on 14<sup>th</sup> July, 2003 Inspector S.R.Meena (PW6) while on patrol duty along with Head Constable Ghanshyam (PW4), Constable Asloop (PW3) and Constable Gopal at about 6.45 p.m. near Sheela Cinema, Inspector S.R.Meena received a secret information that a person having counterfeit currency notes was present on the footpath of Sheela Cinema. Inspector S.R.Meena decided to conduct a raid and he requested few persons to join the raiding party but no-one came forward. Thereafter, on the pointing out of the secret informer, police party apprehended appellant Sunil Kumar. He was searched and from his possession 90 counterfeit currency notes of ₹100/- denomination each were recovered. All those counterfeit currency notes were having the same serial number i.e. 6DD 823243. Counterfeit currency notes were sealed in a packet with the seal of 'SRM' and it was taken into possession vide memo Ex.PW3/A. 'Rukka' (Ex.PW2/A) was prepared and sent to the police station for the registration of case. On the basis of 'rukka', formal FIR was registered by the Duty Officer A.S.I. Mahender Singh (PW2), site plan Ex.PW6/B was prepared and the appellant was arrested. On interrogation, the appellant made a disclosure statement stating that he was having a printing machine and other material for counterfeiting the currency notes at his residence. Pursuant to said disclosure statement, appellant led the police party to his residence

A-23, Gali No.10, Vikas Nagar, Uttam Nagar, New Delhi and from there, police party recovered 93 more counterfeit currency notes of ₹100/- denomination each having same serial number 2GU 2J496J (collectively Ex.P2), another bundle of 78 counterfeit currency of ₹100/- denomination each having the same serial number 8CS 955820 (collectively Ex.P3), 3 genuine currency notes and 3 counterfeit currency notes, an adopter, 5 ink cartridges, 8 printing papers, 1015 white papers/sheets, a cutter and a printer. The recovered articles as well as the counterfeit as well as genuine currency notes were sealed separately with the seal of `SRM' and were taken into possession vide respective memos Ex.PW3/C to PW3/G. Rough site plan of the residence of the appellant Ex.PW6/E was also prepared. The sealed exhibits were handed over to Head Constable Ramesh Tyagi (PW5). Counterfeit currency notes were sent to Security Printing Press, Nasik for examination. As per the report of Security Printing Press, Nasik (Ex.PW6/G), currency notes bearing Nos. 6DD 823243, 8CS955820, 2GU214961, 3 currency notes found to be counterfeit.

3. On completion of investigation, appellant was challaned and sent for trial.

4. Appellant was charged under Section 489A, 489C and 489D IPC. He pleaded not guilty and claimed to be tried.

5. In order to bring home the guilt of the appellant, prosecution has examined as many as six witnesses.

6. PW1 Sunny is resident of Vikas Nagar, Uttam Nagar, New Delhi. He has testified that the appellant was resident of A-23, Gali No.10, Vikas Nagar, Uttam Nagar for the last 8-10 years. PW2 ASI Mahender Singh has proved the copy of FIR registered by him on the basis of rukka Ex.PW2/B. PW5 Head Constable Ramesh Tiwari is the Malkhana Muharir, who stated about the deposit of case property at Malkhana by the IO SI S.R.Meena and he testified that during the period in which the case property remained at Malkhana, nobody tampered with the same.

7. PW6 Inspector S.R. Meena is the Investigating Officer. He has stated that on 14.07.2003, he was on patrol duty near Sheela Cinema along with Head Constable Ghanshyam, Constable Gopal and Constable Asloob at around 6:45 pm he received information that one boy having in possession of counterfeit currency notes was present on the footpath of Sheela Cinema. He organised a raiding party with other police officials. He also requested few passerby to join the raiding party, but they declined to be part of raiding party. Accordingly, he along with the police officials, conducted raid and apprehended the appellant Sunil Kumar on the pointing of informer. The appellant was searched and 90 counterfeit currency notes of

₹100/- denomination each were recovered from his possession. All the recovered currency notes were having same number i.e. 6DD 823243. He further stated that he converted the recovered currency notes into a sealed pullanda with the seal of 'SRM' and took the packet into possession vide memo Ex.PW3/A. Thereafter, he prepared the rukka Ex.PW2/A and sent it to the police station for registration of the case. He further stated that he arrested the appellant. On interrogation, appellant made a disclosure statement Ex.PW3/B and pursuant to the disclosure statement, he led the police party to his residence A-23, Gali No.10, Vikas Nagar and from there, he got recovered printer, cutter, cartridge, papers, blade as well as 171 counterfeit currency notes of ₹100/- denomination each. He stated that printer, scanner, copier were sealed in one pullanda and sealed with the seal of 'SRM', adapter and cartridge were sealed in another pullanda and sealed with the seal of SRM, the counterfeit currency notes were sealed in a pullanda and sealed with the seal of SRM and were taken into possession vide memo Ex.PW3/C, PW3/D and PW3/E respectively. Cutter and blade were also converted into a separate pullanda and sealed with the seal of 'SRM' (Ex.PW3/F). Aforesaid version of Inspector S.R. Meena is corroborated by the other witness of recovery, namely, Constable Asloop Khan(PW3) and Head Constable Ghanshyam Singh(PW4) who deposed to the similar effect.

8. Statement of the appellant under Section 313 Cr.P.C. was recorded. The appellant denied the prosecution version in toto and he claimed that he has been falsely implicated at the instance of one Pappu who is related to PW3 Constable Asloob Khan. No witness in defence has been examined.

9. Learned Additional Sessions Judge on consideration of the prosecution evidence convicted the appellant on three counts under Section 489A, 489C and 489D IPC and sentenced the appellant accordingly.

10. Learned Ms.Anita Abraham, Amicus Curiae, on the instructions of the appellant, at the outset has conceded that the appellant does not challenge his conviction under Section 489C IPC on merits. She has confined her arguments to challenge the conviction under Section 489A IPC and 489D IPC and the quantum of sentence awarded to the appellant for the offence under Section 489C IPC.

11. Learned amicus curiae for the appellant submits that Section 489A deals with the offence of counterfeiting currency notes or bank notes and it reads thus:

“489A. Counterfeiting currency-notes or bank-notes.

Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation-For the purposes of this section and of sections 489B, [489C, 489D and 489E], the expression "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for money".

12. Learned Amicus Curiae submitted that in order to succeed on charge under Section 489A IPC, the prosecution was required to establish beyond doubt that the appellant has counterfeited the recovered fake currency notes. However, the prosecution has not led any evidence to this effect. As such, in the absence of any evidence in this regard, the offence under Section 489A is not made out.

13. Learned APP, on the contrary has submitted that the prosecution has been able to establish on record that the appellant was not only found in possession of 90 fake currency notes of ₹100/- denomination each near Sheela Cinema but he also got recovered 171 more fake currency notes of ₹100/- denomination each from his residence. Besides that, he also got recovered a printer, scanner, ink cartridges (black as well as coloured), paper cutter, blade and paper etc. From this, it can be safely inferred that it was the petitioner who actually counterfeited the recovered fake currency notes.

14. No doubt, from the testimony of the IO Inspector S.R. Meena, PW3 Constable Asloob Khan and PW4 Head Constable Ghyanshyam

Singh and in view of above referred seizure memos, it is established that the appellant got recovered the printer, scanner, ink cartridges, paper, blade and cutter etc., but this itself, in my considered view, is not sufficient to conclude that the recovered material was actually the equipment for printing the counterfeiting currency notes. Those recovered articles were not sent to CFSL or any other expert for examination to seek opinion whether the aforesaid equipment/cutter/paper were used for counterfeiting recovered fake currency notes. In absence of any evidence in this regard, it is difficult to conclude that the appellant counterfeited currency notes. Thus, in my view, prosecution has failed to establish beyond doubt the charge under Section 489A IPC.

15. Coming to the charge under Section 489D, learned counsel for the appellant submits that offence under Section 489D relates to making or possessing instruments or material for forging or counterfeiting currency notes or bank notes. In this regard, learned counsel for the appellant has submitted that prosecution though has led evidence regarding recovery of printer, scanner, blade, cutter, ink cartridges and paper etc. at the instance of the appellant, yet it has not led any evidence to show that aforesaid recovered instruments/implements were the equipments for forging counterfeiting currency notes. Learned counsel for the appellant submitted that neither of those articles seized at the instance of the

appellant were sent to CFSL or some laboratory for seeking opinion whether those could be used for counterfeiting the currency notes or bank notes.

16. Learned APP has failed to point out any evidence which could lead to an inference that aforesaid articles were actually meant for the purpose of forging or counterfeiting currency notes. Therefore, I find merit in the contention of learned counsel for the appellant and conclude that prosecution has failed to establish the charge under Section 489D IPC for want of sufficient evidence.

17. Learned amicus curiae for the appellant has lastly contended that the sentence of seven years' imprisonment awarded to the appellant is too harsh and it does not commensurate with the gravity of the offence committed by the appellant. Learned counsel submitted that the appellant is a young man of 27 years, having responsibility of his aged mother and he has his whole life ahead of him. Thus, he deserves at least one chance to relent and repent and become a useful member of the society. Thus, she pressed for reduction of the sentence awarded to the appellant.

18. Learned APP, on the contrary, has contended that the appellant has been held guilty of the offence of possessing the counterfeit currency notes, which is a grave offence having adverse impact on the economy of the country. Therefore, learned

Additional Sessions Judge has rightly awarded the maximum term of imprisonment to the appellant.

19. I have considered the rival contentions. Sentencing of an accused in a criminal matter is a serious exercise and the quantum of sentence imposed commensurate with the gravity of the offence committed by the accused and the circumstances under which the offence was committed. While dealing with the issue of sentence for the offences under Sections 3,4 & 6 of Terrorist and Disruptive Activities (Prevention) Act, 1987, Supreme Court in the matter of **Karamjit Singh v. State (Delhi Admn.), (2001) 9 SCC 161**, wherein the Supreme Court, has inter alia, observed thus:

“7. ....Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such a case; a balance between the interest of the individual and the concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his

fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law.

8. After giving our anxious consideration to the question of reduction of sentence as urged on behalf of the appellant and objected to on behalf of the respondent, we have come to the conclusion that some consideration should be shown to the appellant in the matter. In coming to this conclusion we have taken into account the facts that he has spent a long period, more than thirteen years, in jail; that he was a young man of 21 years when he committed the act giving rise to the case; that the situation then prevailing in the State of Punjab was surcharged with acts of terrorism and several misguided young men were drawn into the movement; that in the meantime the movement has subsided and it could be reasonably taken that the State is free from the menace of terrorism. In taking the decision to show some consideration to the appellant in the matter of punishment we have reposed confidence in goodness of human character which is a part of the personality of every human being. We hope and believe that our confidence will not be belied in the case of the appellant. In the facts and circumstances of the case 165 and the changed social environment which has taken place in the meantime, it is our considered view that the sentence of life imprisonment should be modified to the period already undergone (about 13 years 7 months). Before being released from jail in the case, the appellant will notify the jail authority the place and the address at which he intends to stay, on receipt of which the jail authority will intimate the Superintendent of Police of that place with a request to him to keep the appellant under observation. If the Superintendent of Police finds that the appellant is indulging in any illegal activity which amounts to an offence under any law, he shall immediately send a report to the Registrar General of this Court. With this modification of sentence as noted above, this appeal is dismissed."

20. In the case in hand, the appellant is a young man of 27 years having responsibility of his aged mother. He appears to have realized his mistake, thus, in my view, he deserves at least a chance to mend his ways and become a useful member of the society. Therefore, taking into account the facts and circumstances of the case and the quantum of fake currency notes recovered from the

possession of the appellant, I take a lenient view and while, maintaining the sentence of fine, reduce the sentence of imprisonment awarded to the appellant from 07 years RI to 06 years RI.

21. In view of the discussion above, the appeal is partly accepted. The conviction of the appellant on charges under Sections 489A & 489D is set aside. His conviction under Section 489C is however maintained. However, while maintain the sentence of fine, the sentence of imprisonment awarded to the appellant for offence under Section 489C IPC is modified and reduced from 07 years RI to 06 years RI.

22. Appeal is disposed of accordingly.

23. Copy of the judgment be sent to the concerned Jail Superintendent for information and necessary action.

**(AJIT BHARIHOKE)**  
**JUDGE**

**MARCH 28, 2011**

ks/akb