

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

RESERVED ON : 25th SEPTEMBER, 2013

DECIDED ON : 26th SEPTEMBER, 2013

+ CRL.A. 395/2001

SHYAM LAL

..... Appellant

Through : Mr.Sumeet Verma, Advocate.

versus

STATE N.C.T. OF DELHI

..... Respondent

Through : Mr.M.N.Dudeja, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Shyam Lal (the appellant) challenges his conviction in Sessions Case No. 17/2000 arising out of FIR No. 21/95 PS Rajender Nagar by which he was held guilty for committing offence punishable under Section 489B IPC. By an order dated 17.05.2001, he was sentenced to undergo RI for four years with fine ₹ 500/-.

2. Allegations against the appellant were that on 03.02.1995 at 04.00 P.M. at Sethi Petrol Pump, Gangaram Marg, Old Rajender Nagar, he used two forged counterfeit currency notes in the denomination of ₹ 100 each as genuine to get petrol at the Petrol Pump. Statements of the

witnesses conversant with the facts were recorded after lodging First Information Report on complainant – Raj Kumar’s statement (Ex.PW-6/A). After completion of investigation, a charge-sheet was submitted in the Court and the appellant was charged and brought to trial. The prosecution examined seven witnesses to establish his guilt. In his 313 statement, the appellant claimed himself innocent and stated that ₹ 200/- were handed over to him by his employer to fill petrol in the car.

3. I have heard learned counsel for the parties and have examined the record. It is not in dispute that the appellant used counterfeit notes (Ex.P2 & Ex.P3) for purchasing petrol at Sethi Petrol Pump, Old Rajender Nagar from PW-6 (Raj Kumar), Assistant Salesman. The said currency notes were found to be counterfeit by PW-1 (Dr.T.R.Ninjay) who submitted his report (Ex.PW-1/A). When the appellant handed over the currency notes (Ex.P2 & Ex.P3), PW-6 (Raj Kumar) suspected their genuineness as the quality of paper was not up to the mark. He asked the appellant to change them but he refused to do so and insisted that he did not have any other currency note. Shyam Lal did not attempt to flee the spot. In his personal search, no other counterfeit currency note was recovered. He was found in possession of ₹ 12/- only. Apparently, he had no other cash to hand over to PW-6 (Raj Kumar) for purchase of petrol. It

is not in dispute that the appellant was employed as a driver in car No.DL-1CC-5570 with Kailash Chand Tyagi. On the day of incident, he had taken his aged parents in the car to drop at Paharganj. Appellant's plea is that since there was no petrol in the petrol tank, he got two currency notes in the denomination of ₹ 100 /- from his employer Kailash Chand Tyagi and on the way, had approached the salesman for petrol in the car. The employer's parents were inside the car at that time. The Investigating Officer fairly admitted in the cross-examination that search at the house of Kailash Chand Tyagi was conducted but no counterfeit currency note was recovered from there. It also came to his notice that the Kailash Chand Tyagi had given ₹ 200/- to him to get petrol in the car. The employer however, denied that Ex.P2 & Ex.P3 were the currency notes handed over by him to the appellant. Since the appellant was having no other currency note in his pocket, the possibility of replacing the currency notes given by the employer with counterfeit currency notes seems improbable. The appellant was an illiterate layman and is not expected to know that the currency notes (Ex.P2 & Ex.P3) handed over by him were counterfeit currency notes. If he had any knowledge that the said notes were not genuine, he would have tried to flee away from the spot. This very conduct of the appellant shows that he was innocent.

4. The prosecution has not only to prove that the accused had possession of counterfeit note ensuring it or having reason to believe it as such but further, to prove circumstance which lead clearly, indubitably and irresistibly to his intention to use the notes as genuine on the public. Such intention could be proved by a collateral circumstance that the accused had palmed off such notes before or that he was in possession of such notes in such large number that his possession for any other purpose was inexplicable. In the instant case, no such evidence was forthcoming that such occasion ever arose where the appellant was found in possession of such type of counterfeit currency notes. It is also the prosecution case that the appellant was found only with two currency notes and therefore, there was no question of having with any other similar notes in his possession. Moreover, there is no evidence to show that the counterfeit notes were of such a nature or description that a mere look at them would convince any person of average intelligence that these were counterfeit notes. The Investigating Officer did not attempt to find out as to from where the forged counterfeit notes had originated. The appellant himself seems to be a victim whereby he came into possession of the forged counterfeit currency notes in circulation innocently. He had no reasons to

suspect the employer to handover counterfeit currency notes to him. The appellant's defence seems plausible and reasonable.

5. In '*Umashanker vs. State of Chhattisgarh*', AIR 2001 SC 3074, the Supreme Court held :

"A perusal of the provisions, extracted above, shows that mens rea of offences under Sections 489B and 489C is, "knowing or having reason to believe the currency-notes or bank-notes are forged or counterfeit". Without the aforementioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency-notes or bank-notes, is not enough to constitute offence under Section 489B of I.P.C. So also possessing or even intending to use any forged or counterfeit currency-notes or bank-notes is not sufficient to make out a case under Section 489C in the absence of the mens rea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mens rea. The High Court, however, completely missed this aspect. The learned trial judge on the basis of the evidence of P.W. 2, P.W. 4 and P.W. 7 that they were able to make out that currency note alleged to have been given to P.W. 4, was fake "presumed" such a mens rea. On the date of the incident the appellant was said to be 18 years old student. On the facts of this case the presumption drawn by the trial court is not warranted under Section 4 of the Evidence Act. Further it is also not shown that any specific question with regard to the currency-note being fake or counterfeit was put to the appellant in his examination under Section 313 of Criminal Procedure Code. On these facts we have no option but to hold that the charges framed under Sections 489B and 489C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Sections 489B and 489C of I.P.C. and acquit him of the said charges."

6. Considering the above said circumstances, I find that the essential ingredients of Section 489B IPC since missing, it cannot be held to be sufficient to prove the charge. The appeal is therefore allowed. Conviction and sentence passed by learned Addl. Sessions Judge are hereby set aside. The appellant is acquitted of the charge. Bail bond and surety bond stand discharged. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

SEPTEMBER 26, 2013/*tr*