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

+ **CRL.A. 89/2003**

% Decided on: 1st May, 2013

RAGHUBIR SINGH

..... Appellant

Through: Mr. Asutosh Lohia and Ms. Aabha
Verma, Advocates.

versus

STATE OF DELHI

..... Respondent

Through: Mr. Manoj Ohri, APP for the State
with SI Dharma Vir Singh, PS Hazrat
Nizamuddin Railway Station.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. By this appeal the Appellants lays a challenge to the judgment dated 7th February, 2003 whereby he has been convicted for offences punishable under Sections 489B/489C IPC for possession of three fake currency notes of Rs. 500/- denomination and the order on sentence dated 10th February, 2003 whereby he has been directed to undergo Rigorous Imprisonment for a period of 3½ years and a fine of Rs. 500/- each for the aforesaid offences and in default of payment of fine, the Appellant has to undergo Simple Imprisonment for a period of three months on each count.

2. Learned counsel for the Appellant contends that the prosecution has neither proved the intention of the Appellant nor the possession. The

prosecution has to prove the possession by leading positive evidence and no presumption qua the possession can be raised. No question has been specifically put to the Appellant under Section 313 Cr.P.C. that the contraband was recovered from the possession of the Appellant. After the recovery of the notes, the same were never sealed and were circulated from one person to another without seal, which aspect has been totally overlooked by the learned Trial Court. The defence of the Appellant was that he had gone for reservation to the railway booking counter and gave 12 notes of Rs. 100/- denomination for ticket from Delhi to Bandra. The Appellant was demanding the balance amount of Rs. 40/- which the booking clerk was not giving and thus the dispute arose between them. At that stage PW1 foisted these notes on the Appellant. Though the prosecution failed to prove the possession, the learned Trial Court relying on the uncorroborated and contradictory testimony of PW1 and the fact that in the bail application it was admitted that the notes were given by the brother of the Appellant, convicted the Appellant for the aforesaid offences. The bail application is neither signed by the Appellant nor his pairokar nor the counsel. Thus the same could not be treated as a confession. While seizing the notes no identification mark was put on the notes. Though opinion was taken from

the Nasik Press however, the same was not properly exhibited as no expert witness come forth to exhibit the same. Despite occurrence at public place no public witness was joined. The essential requirement of mensrea has not been proved. Reliance is placed on *M. Mammutti vs. State of Karnataka*, AIR 1979SC 1705; *Umashanker vs. State of Chhattisgarh*, AIR 2001 SC 3074 and *Madan Lal Sharma vs. The State*, 1990 Cri LJ 215.

3. Learned APP for the State on the other hand contends that though initially PW4 Constable Sudhir Kumar had taken the notes in an unsealed condition to the RBI office however, thereafter they were duly sealed by the seal of RBI. RBI PW2 Swayam Prakash, the Treasurer from RBI stated that the three notes Ex. P1 to P3 were produced before him and he opined them to be forged in view of various features. Further PW3 Ms. Usha R. Thomas has clearly stated that she was in the reception hall with the counter clerk as she was the supervisor, when the notes were handed by the Appellant to the counter clerk PW1. Thereafter these notes were not returned by the booking clerk to the Appellant but handed over to her which she handed over to the police. Minor contradictions arising due to the testimony of Investigating Officer PW7 that the fake currency notes were handed over by PW1 and PW3 will not shake the otherwise credible testimony of the witnesses. The

notes have been opined to be fake, both by the Treasurer, RBI and also Nasik Press. The expert opinion Ex. PW7/F received from the Nasik press is per se admissible under Section 292 Cr.P.C and in case the Appellant was challenging the same he ought to have summoned the witness under Section 292 Cr.P.C. Thus the opinion cannot be now challenged by the Appellant. In view of the direct testimony of PW1, PW3 and the expert opinion, the conscious possession of the Appellant has been proved beyond reasonable doubt from which an inference qua the mensrea is clearly attributed. Further incriminating circumstances are required to be proved under Section 313 Cr.P.C. and not the inference drawn from the evidence on record. Reliance is placed on *Alister Anthony Pareira vs. State of Maharashtra 2012 Cri.L.J 1160 SC*.

4. I have heard learned counsel for the parties.

5. FIR No. 64/2000 was registered on the complaint of PW1 Kanwaljit Lal. He stated before the Court that on 13th April, 2000 he was posted at counter No. 506 as Reservation Clerk from 8.00 a.m. to 2.00 p.m. Between 9.00 to 10.00 a.m. The Appellant present in Court came to his counter to book a ticket. However he did not remember the place where he wanted to go. On PW1 asking for the money in lieu of the ticket amount, he handed

over three notes of Rs. 500/- denomination. Since PW1 doubted the genuineness of the currency notes he asked him to change the notes however, the Appellant refused to exchange the notes. Thereafter he went to the Chief Reservation Supervisor Ms. Usha Thomas, PW3 and expressed his doubt, so she called the Appellant inside the office and also called the local police. The Appellant along with the notes was handed over to the police. His statement Ex. PW1/A was recorded whereupon FIR was registered. In the cross-examination this witness admitted that before he handed over the Appellant to the police after checking the notes he returned the same to the Appellant and kept the ticket booked with himself. PW1 in his cross-examination also clarified that the only reason why he doubted the genuineness of the note was because in the 500/- notes the word 'karne' was written as 'karme' in Hindi. The version of PW1 though partly supported by PW3, however she contradicted him on the point as to in whose possession the notes were. Ms. Usha Thomas also contradicted PW1 as to her presence at the counter. PW3 stated that she was present at the counter when the transaction took place as she was supervisor however, PW1 categorically stated that he was all alone when the booking was being done. PW1 stated that the notes Ex. P1 to P3 were returned to the Appellant by him but PW3

stated that the notes were handed over to her. The version of PW6 and PW7 is also contradictory. According to the PW6 and PW7 the fake notes Ex. P1 to P3 were handed over to them by PW1. PW6 stated that when they reached the office, Kawaljeet PW1 produced the notes and the Appellant, stating that the Appellant was using fake currency notes as genuine. This version is contradicted by PW7. Thus there is contradiction in the testimony of the witnesses as to who has handed over the notes to the Investigating Officer Inspector Balender Singh.

6. The fact that the police officers were also not in a position to find out the genuineness of the notes is apparent from the fact that immediately the notes were handed over to Constable Sudhir Kumar PW4 who took them to the office of RBI at Parliament Street along with the application from the Investigating Officer PW7 Inspector Balender Singh. It is only when the Treasurer, RBI opined the notes to be fake, the Appellant was arrested.

7. Learned counsel for the Appellant has taken certain other pleas like the envelope in which the notes were kept was not sealed as admitted by PW4 Constable Sudhir Kumar, however in my opinion the same do not merit serious consideration as when the notes were seized the numbers were noted down in the seizure memo. However, the Investigating Officer ought

to have put some identification marks on the notes seized which was not done in the present case.

8. The finding of the learned Trial Court that in view of confession of the Appellant in the bail application the possession has been proved beyond reasonable doubt needs to be adversely commented upon. The learned Trial Court in para 14 of the judgment has held that the defence of the Appellant that he had tendered notes of Rs. 100/- denomination was taken belatedly when Inspector Balender Singh, the Investigating Officer was examined on 3rd July, 2002. Learned Trial Court has further relied upon the bail application moved on behalf of the Appellant by his counsel wherein it is noted that the notes were withdrawn from Allahabad Bank by the brother of the Appellant and the same were given to the Reservation Clerk of the railway. This averment in the application has been treated as a confession. I have perused the bail application filed by the Appellant. The same is not signed by either the Appellant or his family member or even his counsel. In the absence of the Appellant signing the bail application the same could not have been used as a confession of the Appellant by the learned Trial Court.

9. In *M. Mammutti* (supra) it was held:

“Mr. Neitar submitted that once the Appellant is found in possession of counterfeit notes, he must be presumed to know

that the notes are counterfeit. If the notes were of such a nature that mere look at them would convince anybody that it was counterfeit such a presumption could reasonably be drawn. But the difficulty is that the prosecution has not put any specific question to the Appellant in order to find out whether the accused knew that the notes were of such a nature. No such evidence has been led by the prosecution to prove the nature of the notes also, In these circumstances, it is impossible for us to sustain the conviction of the Appellant.”

10. Similarly, in *Umashankar vs. State of Chhattisgarh* (Supra) their lordships held that these provisions are not meant to punish unwary possessors of users. It was held:

“8. 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-noted being fake on 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 [see: M. Mammutti Vs. State of Karnataka: AIR 1979 SC 1705]

11. Sections 489B and 498C IPC read as under:

489B. Using as genuine, forged or counterfeit currency-notes or bank-notes. Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with 2 [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.

489C. Possession of forged or counterfeit currency-notes or banknotes.-Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

12. From the evidence on record it is thus apparent that an ordinary prudent person would not be in a position to make out that the notes were fake as was also admitted by PW3 Ms. Usha Thomas and in such a situation on the facts of the case it cannot be said that the Appellant possessed the

requisite mensrea of selling, buying or receiving from other person or otherwise trafficking forged or counterfeit currency notes as genuine.

13. In view of the fact that the prosecution has not been able to prove the requisite mensrea and there are material contradictions with regard to the possession and link evidence, the Appellant is entitled to the benefit of doubt. The impugned judgment dated 7th February, 2003 and the order on sentence dated 10th February, 2003 are set aside. The Appellant is acquitted of the charges framed. Bail bond and the surety bond are discharged. Appeal is disposed of accordingly.

(MUKTA GUPTA)
JUDGE

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