

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

RESERVED ON : April 01, 2013

DECIDED ON : 27th May, 2013

+ CRL.L.P. 135/2007

STATE (GOVT OF NCT DELHI)

..... Petitioner

Through : Mr.M.N.Dudeja, APP for the State.

versus

PRATAP NARAIN SINGH @ PREM NATH SINGH & ORS

..... Respondents

Through : Mr.Yogesh Swaroop, Advocate for
respondent Nos.2 & 5.

Mr.Bhanu Nandwani, Advocate for
Respondent No.3

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. State has preferred the petition for leave to appeal against the judgment dated 16.01.2007 in Sessions Case No.168/2001 by which the respondents were acquitted of all charges in case FIR No. 237/1999 under Sections 489B/489C/489D/467/120B IPC.

2. I have heard the learned Additional Public Prosecutor and the learned counsel for the respondents and have examined the record. Allegations against R-1 were that he used two fake currency notes in the denomination of ₹100/- each to purchase bus tickets from Kasturi Lal at

Kashmeri Gate, ISBT to go to Haridwar. DD No.16A was lodged and R-1 was apprehended. On his search, 27 more fake currency notes were recovered. Pursuant to R-1's disclosure statement 67 fake Kisan Vikas Patras with an identity slip were recovered from his house. He recovered fake currency notes from Naresh Chaudhary (R-5)'s possession. Printing material and fake currency notes were also recovered from Adil Ahmad (R-2) and Mukhtiar (R-3). R-5 was allegedly found in possession of 7 fake currency notes. R-2 and R-3 led the police to M/s S.A. Prints Okhla, Phase-II and recovered ink, plastic sheet and paper bearing imprints of ₹100/-. During the course of investigation, R-3 disclosed that his cousin Imtiaz (R-4) had helped him by preparing a floppy of currency notes. It lead to R-4's arrest and he disclosed that the said floppy was with R-6. The prosecution examined 13 witnesses. In their 313 statement, the respondents pleaded false implication. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court by the impugned judgment acquitted the respondents in the absence of cogent and reliable proof.

3. Learned APP for the State urged that the minor discrepancies emerging in the PW's deposition were not enough to discard their version in entirety. The respondents were found in possession of fake currency

notes and Kisan Vikas Patras. Material to prepare and forge fake currency notes was recovered from their possession or at their instance. The Trial Court did not give due weightage to handwriting expert's report and he was of the opinion that the signatures on the identity slip were forged by R-1. The police officials had no ulterior motive to falsely implicate the respondents with whom they had no prior animosity. The Trial Court did not appreciate that recoveries were effected pursuant to the disclosure statements and were admissible under Section 27 of the Evidence Act. Learned counsel for the respondents urged that vital discrepancies in witnesses's version compelled the Trial Court to reject prosecution case. It recorded specific findings in that regard which need no interference. The floppy in question was never recovered. Daily Diary 16-B was fabricated. First Information Report was lodged on the basis of the contents of the Daily Diary. The recovery was effected prior to recording statements of respondent.

4. I have examined the findings of the Trial Court minutely and find no illegality or irregularity. Trial Court referred to various contradictions, discrepancies and lapses to give benefit of doubt to the respondents and disbelieved and discarded the prosecution case. R-4 was suspected to have prepared a computer floppy used for preparing

counterfeit currency notes. Admittedly, the floppy could not be recovered. There was no other evidence to show as to where, when and by what mode, R-4 prepared the floppy. There is no evidence that R-4 had access to the computers at his office. The Trial Court noted that Investigating Officer did not make efforts to find out if any particular computer at the office was used by R-4 by getting a computer forensic expert to analyse the hard disk. Statement of co-accused was not admissible to prove the guilt that R-4 prepared the floppy.

5. Allegations against R-3 were that he was found in possession of six fake currency notes in the denomination of ₹100/- each and one plastic sheet used for preparing forged/counterfeit currency notes. The Trial Court categorically recorded that when the police went to the house of R-2, R-3 was present there. At that time, the police did not make any inquiry from him and no fake currency note was recovered from his possession. The police did not suspect R-3's involvement at that time. It shows that there was no disclosure statement of co-accused showing R-3's involvement in the incident. However, subsequently six currency notes and the plastic sheet were allegedly recovered from his possession. Thereafter, in the disclosure statement, it was recorded that he was involved in the conspiracy. The Trial Court rightly noted that the contents

of the disclosure statement had no evidentiary value as the recovery had already been taken place. No independent public witness was associated at the time of recovery of currency notes from the possession of R-3. He deserves benefit of doubt.

6. Allegations against R-1 were that he was found in possession of two currency notes which he used to purchase tickets to go to Haridwar. There are various discrepancies in the statement of the witnesses in this regard. DD No.16B was recorded which mentioned his name. However, PW-5 (Kasturi Lal @ Pappu) at whose instance DD No.16B was recorded admitted that he did not know the name of the accused and had not stated so to the police in his information. He rather claimed that R-1's name was disclosed to him by the police. The ticket issued by PW-5 was in the name of P.N.Singh and not Pratap Narain Singh. So it is not clear as to how R-1's full name appeared in DD No.16B. The Trial Court also noted that there were errors in the name of the accused. In the arrest memo Ex.PW-13/B and statement of Kasturi Lal (Ex.PW-5/A) his father's name has been recorded as Ram Ashish Singh whereas in the recovery memo of KVPs, his father's name has been described as Ram Adhar Singh. The Trial Court also suspected recovery of twenty seven fake currency notes. There were inconsistent

versions given by PW-4 and PW-13 in this regard. PW-4 deposed that 27 notes were recovered from the pant pocket wherein PW-13 alleged that they were recovered from the kurta/kameez's pocket. IO claimed that bus ticket was recovered in the personal search of accused Pratap Narain with fake 27 currency notes. The seizure memo is silent on this aspect. Regarding recovery of Kisan Vikas Patras, it has come on record in the testimony of PW-3 (Rattan Chand) that on 23.07.1999 on getting letter from SHO Kashmere Gate, genuineness and issuance of Kisan Vikas Patras Ex.P1 to P67 was ascertained. After verification of the record, it revealed that Kisan Vikas Patras had been lost, so there was no question of their issuance from his post office. In the cross-examination he admitted that in the reply (Ex.Pw-3/D) there is no mention if any police complaint was lodged about the loss of the Kisan Vikas Patras. Apparently, the Kisan Vikas Patra recovered from R-1's possession were not fake/forged. It is unclear as to how and under what circumstances R-1 got possession of these Kisan Vikas Patras. It is not clear to whom these Kisan Vikas Patras belonged or any report of theft/loss was lodged. Since the ownership of the Kisan Vikas Patras has not been ascertained during investigation, it is not possible for R-1 to be recover the stolen article. The Trial Court also noted various other discrepancies regarding the

recovery and possession of these articles. It falsified the prosecution case that respondent used to print fake KVPs.

7. The learned Presiding Officer scanned the handwriting expert report (Ex.Pw-12/C). PW-12 deposed that the specimen handwriting provided with the questioned handwriting, was inadequate to give opinion in respect of the writings marked Q1 to Q133 on the Kisan Vikas Patras and identity slip. However, he was of the opinion that the specimen handwriting and signatures marked S1 to S4 and S-9 to S12 were similar to the questioned signature on the identity slip marked Q134. The Trial Court was not satisfied with the opinion and specifically noted that on comparison with the naked eyes, the report was to be rejected outrightly as under no circumstances signatures Q134 could be taken similar to the blocked handwriting S-1 to S-4 or to the signatures S-9 to S-12. The court compared the signatures of the accused on various documents on record and found that there were dissimilarities in the alphabet 'P'

8. Similarly, the Trial Court suspected the R-2's and R-5's complicity and highlighted various discrepancies. It was noted that PW-7 deposed that after R-1 was taken out of lock up at 04.00 P.M., his disclosure statement was recorded and thereafter he was taken to R-5's house. PW-4 on the contrary deposed that the R-1 was taken to court at

04.00 P.M. on 01.06.1999. They left the court at 04.30 P.M. and he took them to Pushpanjali apartment at 05/05.30 P.M. The Investigating Officer deposed that the R-1 was produced in the court at 02.30 P.M. and they had gone to the Pushpanjali apartment and reached there at 03.00 P.M. They returned to the Police Station at 04.00 P.M. after recovery. The prosecution failed to reconcile the major inconsistencies in the statement of the witnesses showing recovery from the possession of R-5. It observed that how two witnesses could have been at two different places at the same time. There were also inconsistent versions as to by which mode they had reached at R-5's house. PW-13 deposed that they had gone in a taxi arranged by the Investigating Officer, however, the Investigating Officer disclosed that they had proceeded in a three-wheeler scooter. In the disclosure statement, R-1 disclosed to hand over 10 notes to R-5. However, only seven fake currency notes were recovered from his possession. The Trial Court also noted that no efforts were made by the Investigating Officer promptly to effect recovery though disclosure statement of R-1 was recorded on 01.06.1999 and there was specific mention about R-2. No efforts are made to affect the recovery till 3rd June 1999. On 3rd June 1999, the Investigating Officer went to Allahabad with

PW-13. There was no specific address of R-2 at Allahbad to affect the recovery from them.

9. The Trial Court also noted that while dispatching the fake currency notes for Forensic examination, material was sent in unsealed condition. There is no clue as to how and why the currency notes were sent to Devas and thereafter to Hyderabad. Besides this, there was no cogent evidence on record to infer that the accused persons knowingly and intentionally were in possession of the fake currency notes. No specific number of fake currency notes were recovered from the possession of either of the accused. There is no evidence on record as to when, where, how and by what mode, these fake currency notes were manufactured/prepared. There is no evidence that prior to the occurrence, if any of the accused had used fake currency notes. In the present case only two fake currency notes were found in possession of the accused R-1 for purchasing ticket to Haridwar. It is not clear as to why and for what purpose R-1 had visited Delhi or he had used fake currency notes for any substantial purpose. In *Umashanker v.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 afore-mentioned 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 [see: M. Mammutti Vs . State of Karnataka 1979CriLJ1383]

10. Law relating to appeal against acquittal is very clear. The standards to be applied by the High Court while considering an appeal against acquittal is one where the prosecution establishes substantial and compelling reasons, which by and large are confined to serious or grave

mis-appreciation of evidence, wrong application of law and an approach which would lead to complete miscarriage of justice. In the present case, the Trial Court listed various grounds on which it acquitted the respondent/accused. All of them, to my mind, are reasonable and none of them can be termed as misapplication of law or wrongful appreciation of the evidence placed before the Court by the prosecution.

11. Appeal against the acquittal is considered on slightly different parameters compared to an ordinary appeal preferred to this Court. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is cautious in taking away that right. The presumption of innocence of the accused is further strengthened by his acquittal after a full trial, which assumes critical importance in our jurisprudence. The Courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, should be adopted. In '*State of Uttar Pradesh vs. Nandu Vishwakarma*', (2009) 14 SCC 501, Supreme Court held :

*"23. It is a settled principle of law that when on the basis of the evidence on record two views could be taken- one in favour of the accused and the other against the accused- the one favouring the accused should always be accepted. This Court in '*Chandrappa vs. State of Karnataka*', SCC 432 observed as follows :*

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

- (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
- (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*
- (3) Various expressions, such as, ‘substantial and compelling reasons’, ‘good and sufficient grounds’, ‘very strong circumstances’, ‘distorted conclusions’, ‘glaring mistakes’, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of ‘flourishes of language’ to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*
- (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*
- (5) It two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court”.*

12. In the light of above discussion, I find no merit in the petition for leave to appeal against the judgment dated 16.01.2007 . The

impugned judgment is based on fair and proper appreciation of evidence.

The leave petition is dismissed.

(S.P.GARG)
JUDGE

May 27, 2013

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