

GAHC030002822024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./19/2024

Ajmal Hussain Mazarbhuiya
Mohanpur Village, PS-Algapur, Hailakandi District, Assam. PIN - 788150

VERSUS

State of Mizoram
Aizawl

Advocate for the Appellant : Mr. Z. Kamar, Sr. Advocate
: Mr. Taher Ahmed Choudhury, Advocate
Advocate for the Respondents : Ms. Mary L. Kiangte, Addl. P.P.

Date of Hearing : **23.10.2024**

Date of Judgment : **23.10.2024**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGEMENT AND ORDER (ORAL)

Heard Mr. Z. Kamar, the learned Senior counsel assisted by Mr. T. A. Choudhury, the learned counsel appearing on behalf of the Appellant and Ms. Mary L. Kiangte, the learned Additional Public Prosecutor appearing on behalf of the State of Mizoram.

2. This is an appeal filled under Section 374(2) of the Code of Criminal Procedure, 1973 (for short "the Code") challenging the judgment and order dated 07.03.2024 as well as the sentence dated 20.03.2024 passed by the learned Fast Track Court, Kolasib, Mizoram (for short "the learned Trial Court") in S.C.(K) No.35/2019 arising out of Vairengte P.S. Case No.38/2017 registered under Sections 489B/489C of the Indian Penal Code whereby the learned Trial Court had convicted the Appellant under Section 489B to suffer simple imprisonment for a period of 6 (six) years and to pay a fine of Rs.50,000/-, in default of payment of fine, to undergo further simple imprisonment for a period of 3 (three) months and also sentenced under Section 489C of the Indian Penal Code to suffer simple imprisonment for a period of 3 (three) years and to pay a fine of Rs.50,000/- in default, to further undergo simple imprisonment for a period of 3 (three) months and both the sentences were to run concurrently.

3. For deciding the appeal, it is relevant to take note of the brief facts which led to the filing of the instant appeal.

4. The case of the prosecution is that on 06.07.2017 at around 2:30 PM, one Mr. Zoramsanga Sailo, SI of Police, Special Narcotics Police Station Aizawl submitted a First Information Report to the Officer In-charge of Vairengte Police Station to the effect that on the same day at around 2 PM, a police team under his command recovered/seized huge number of currency notes suspected as Fake Indian Currency Notes (for short "FICN") from the possession of the Appellant at Kawngthar, Veng, Vairengte. As per the FIR, the suspected FICN were 434 notes of Rupees 2000 denomination and 1465 notes of Rupees 500 denomination totaling to Rs.16,05,000/-. The said

suspected FICN were seized and on the basis thereof, a VRT P.S. Case No.38/2017 dated 06.07.2017 was registered under Sections 489B/489C of the Indian Penal Code. The appellant was also arrested.

5. The Investigating Officer thereupon carried out investigation and also sent the seized articles under proper escort to the FSL Aizawl for scientific examination. The FSL Aizawl submitted a report stating inter alia that the seized Rs.500 currency which were marked as Q-1389 to Q-1818 and the seized Rs.2000 currency notes marked as Q-1 to Q-1387 were found to be counterfeit except the denominations marked as Q-1819 and Q-1388. On the basis of the said report and the investigation being carried out, a charge sheet was submitted under Section 489B/489C of the IPC.

6. Pursuant thereto, the Chief Judicial Magistrate, Kolasib sent the records on committal under Section 209 of the Code to the learned Trial Court as the case was exclusively triable by the Court of the learned Sessions Judge, Kolasib. During the trial, the prosecution examined 6 witnesses while the Appellant did not examine any defence witness. The learned Trial Court on the basis of the evidence as well as upon hearing the learned counsels, framed three points for determination which are enumerated herein under:

“(i) Whether the police officer seized 1465 nos. of 500 rupees denominations & 434 nos. of 2000 rupees denominations suspected to be FICN from the possession of the accused?”

(ii) Whether the seized currency notes were Fake Indian Currency Notes?

(iii) Whether the accused is liable to be convicted and sentenced under the charged sections of laws?”

7. The learned Trial Court vide the impugned judgment and order dated 07.03.2024 held that the seized FICN denominations were seized from the possession of the Appellant as well as also opined that the seized currency notes were Fake Indian Currency Notes. On the basis thereof, the learned Trial Court also opined that the Appellant had committed the offence under Sections 489B and 489C of the Indian Penal Code and accordingly passed the sentence dated 20.03.2024 as already mentioned herein supra. It is under such circumstances, the instant appeal has been preferred.

8. Mr. Z. Kamar, the learned Senior counsel appearing on behalf of the Appellant submitted that the impugned judgment and order dated 07.03.2024 is liable to be interfered with taking into account that the prosecution has failed to prove the possession of the Appellant in respect to the FICN in question beyond reasonable doubt. He further submitted that from a perusal of the evidence of PW-7 and more particularly his cross-examination, it would appear that there were two riders in respect to the motorcycle and only the Appellant has been arrested without proving that the suspected FICN were seized in the manner provided under law from the possession of the Appellant. He further submitted that from a perusal of the evidence, it would be seen that the suspected FICN were packed inside a bag however the bag was neither seized nor exhibited as would be apparent from the seizure memo. The learned Senior counsel submitted that not only the question of possession was not proved for attracting the offence under Sections 489B as well as 489C of the IPC but the prosecution have further failed to adduce any evidence to show that the Appellant had knowledge or had reasons to believe that the currency notes were forged or counterfeit and that the Appellant intended to use the same as genuine or it may be used as genuine. The

learned Senior counsel therefore submitted that in absence of such proof, the offence under Sections 489B and 489C of the IPC cannot be substantiated and accordingly, the impugned judgment and order dated 07.03.2024 is liable to be interfered with. The learned Senior counsel further submitted that a perusal of the statement of the accused recorded under Section 313 of the Code would also show that there was no specific question put in respect to as to whether the Appellant had knowledge that the seized currency notes were counterfeit or had reasons to believe that the same to be forged or counterfeit and that the Appellant intended to use the same as genuine or that it may be used as genuine. In absence of that, the learned Senior counsel submitted that the trial proceedings stood vitiated.

9. The learned Senior counsel further drew the attention of this Court to the evidence of PW-1 and submitted that the Seizing Officer had categorically stated that the Appellant had simply possessed the seized article and the Appellant had not utilized the said seized articles and under such circumstances, the question of implicating the Appellant under Section 489B of the Indian Penal Code did not arise at all and in this aspect of the matter, the learned Trial Court completely committed an error. In support of his submissions, the learned Senior counsel has placed reliance upon the judgment of the Supreme Court in the case of ***Umashankar Vs. State of Chhattisgarh*** reported in ***(2001) 9 SCC 642***.

10. Per contra, Ms. Mary L. Khiangte, the learned Additional Public Prosecutor appearing on behalf of the State of Mizoram submitted that the provisions of Section 489A to Section 489E of the Indian Penal Code were brought into the statute books to deal with various offences in respect to

forged or counterfeits currency notes or bank notes and the object of the legislature in enacting the provisions is not only to protect the economy of the country but also to provide adequate protection to the currency notes and bank notes. She submitted that from the evidence adduced, it is clear that the Appellant was in possession of the FICN and this has been duly proved during the course of the proceedings. She therefore submitted that as huge quantity of FICN were seized, the necessary implication was that the Appellant had knowledge that these denominations were fake and counterfeit. She therefore submitted that there was no error in the impugned judgment and order for which there is no requirement of interference.

11. This Court has heard the learned counsels for both the parties at length and given its anxious consideration.

12. Before proceeding to deal with the facts of the instant case, this Court would like to take note of the provisions of Sections 489B and 489C of the Indian Penal Code and the said Sections for the sake of convenience are reproduced herein 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 [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 bank-notes.- *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."

13. A perusal of the above extracted provisions would show that the mens-rea of offence under Section 489B and 489C of the Indian Penal Code is knowing or having reasons to believe that the currency notes or bank notes are forged or counterfeit. Without the aforesaid mens-rea, selling, buying or receiving from any other 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 the IPC. It is also relevant to take note of that 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 of the Indian Penal Code in absence of mens-rea noted above.

14. In the backdrop of the above, it is relevant to take note of as to what the prosecution had proved. From the evidence so adduced, it would be seen that the prosecution had only proved that the accused/appellant was in possession of the currency notes in question. The prosecution had categorically admitted during the cross-examination that the Appellant had simply possessed the seized articles and had also not utilized the said seized articles. This aspect of the matter would be clear from the cross-examination part of the Prosecution Witness No.1 which is extracted herein below:

"6. It is also a fact that at the time of seizure the accused has simply possessed the seized articles.

7. It is also a fact that as far as my knowledge is concerned, the accused

has not utilized the said articles."

15. It would also be seen that from the other evidence of the prosecution witnesses, there is not a single shred of evidence placed by the prosecution that the Appellant had knowledge or had reasons to believe that the currency notes or bank notes were forged or counterfeit. It is very pertinent at this stage to mention that for attracting the provisions of Section 489B and 489C of the Indian Penal Code, the mens-rea of knowing or having reasons to believe that the currency notes or bank notes are forged or counterfeit is a *sine qua non*. It is further relevant to take note of that the learned Trial Court also did not at all address this issue inasmuch as amongst the points for determination which were framed, there was no reference to that aspect as to whether the appellant/accused had knowledge or had reasons to believe that the currency notes which were seized were forged or counterfeit and this aspect of the matter also percolates to the examination of the appellant/accused under Section 313 of the Code wherein the learned Trial Court even failed to put that specific question. Under such circumstances, as the prosecution has failed to prove that the Appellant herein had knowledge or reasons to believe that the seized currency notes were forged or counterfeit, the conviction of the Appellant under Section 489B and 489C of the Indian Penal Code cannot be sustained in law.

16. Accordingly, the impugned judgment and order dated 07.03.2024 passed in Sessions Case (K) No.35/2019 arising out of Vairengte P.S. Case No.38/2017 is set aside and quashed and the sentence dated 20.03.2024 is also set aside and quashed. The accused/appellant is acquitted from the said charges under Section 489B and Section 489C of the Indian Penal Code.

17. With above observations and directions, the instant appeal stands allowed. The Registry is directed to take necessary steps for informing the learned Trial Court as well as the other authorities for doing the needful forthwith.

JUDGE

Comparing Assistant