IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.397 OF 2001

Sow. Shashikala w/o. Vijaykumar
Shewale, Age 31 years,
Occu. Household, r/o. Nilanga,
Tq. Nilanga, Dist.Latur ..Appellant

Versus

The State of Maharashtra ..Respondent

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Mr.N.G.Kale, advocate for appellant

Mr.N.T.Bhagat, APP for respondent - State

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CORAM : M.T. JOSHI, J.
RESERVED ON : NOVEMBER 26, 2015
PRONOUNCED ON : DECEMBER 02, 2015

JUDGMENT :

Heard both sides.

2] Present appellant i.e. original accused no.2 - Shashikala has been convicted by learned Addl. Sessions Judge, Nilanga in Sessions Case No.3 of 2000 on 10th August, 2001 for the offences punishable under Section 240 and 243 of Indian Penal Code. She was sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.500/-; rigorous imprisonment for three years and to pay fine of Rs.300/-, respectively, for both the offences. The substantive sentences were directed to run concurrently.

3] In fact, present appellant was convicted along with original accused no.1 – Raju of Mumbai. According to the prosecution, accused no.1 – Raju used to manufacture counterfeit coins in the denomination of Rs.5/- and present appellant i.e. original accused no.2 – Shashikala used to bring those coins in the market through her son i.e. juvenile accused - Vinod. It is stated at bar that original accused no.1 – Raju had not preferred any appeal.

4] The prosecution case, in short, is as under :-

. That, during the period of present incident, there was a news-cum-rumor spread within the business circle at Nilanga that certain counterfeit coins were being circulated in the market. In this background, on 3rd August, 1999, son of present appellant, namely Vinod, went to the medical store of PW 5 – Baburao Mahajan at about 10:00 a.m. Said Vinod had brought 40 coins in the denomination of Rs.5/- and told that he was son of a Cobbler and his mother i.e. present appellant wanted that the coins should be exchanged for rupees. However, due to suspicion, PW 5 – Baburao took said Vinod to Police Station, Nilanga. He had already obtained name of said child i.e. Vinod and his mother from him and accordingly, the complaint came to be filed about the counterfeit coins. As the name of present appellant was disclosed in the present complaint itself, she was also arrested on the same day.

. While in custody, the appellant made a statement leading to seizure of additional 240 counterfeit coins in the similar denomination from her house in presence of the panchas. Further, the Investigating Officer PW 11 – Prakash Jadhav recorded statement of said Vinod and on the information given by him, seized more counterfeit coins from various shops and hotels at Nilanga, which coins were circulated by said child.

. Upon interrogation of present appellant, it was found that the counterfeit coins were manufactured by original accused no.1 - Raju. Therefore, another Police Officer i.e. PW 10 – Patloba Murkute was sent to Mumbai. He carried further investigation there. He seized the articles which were used in preparation of counterfeit coins i.e. the mould etc. Further necessary investigation was carried. All the coins, certain articles, the moulds and bags were forwarded to MINT, Mumbai. The experts at MINT, Mumbai i.e. PW 7 – Sunil Chandra Jogendra Chandra Saha, Chief Assessor; PW 8 – Vasant Gavand, Artist Engraver; and PW 9 Pundlik Malondkar, Deputy Bullion Registrar, MINT, carried necessary examination and found that the very same mould was used for preparation of the coins and all the coins were counterfeit. In the circumstances, the charge sheet came to be filed.

5] Before the learned Addl. Sessions Judge, Nilanga, in all 11 witnesses were examined by the prosecution. Those were the complainant; the shop keepers from whose shops the counterfeit coins were seized; the panch witnesses to seizure of the coins as well as the mould; the carrier who carried the articles to the MINT; and the experts of MINT, as detailed supra.

6] The case of present appellant was that only in order to show detection in the case, she was falsely implicated. In fact, nothing was seized from her house and in the circumstances, she claimed acquittal. Learned Addl. Sessions Judge, however, convicted her as detailed supra.

7] Mr.N.G.Kale, learned counsel for the appellant, submitted before me that the evidence on record is not sufficient to show that 240 counterfeit coins, as claimed by the prosecution, were seized from the house of the appellant, which is the only material against the appellant. The result of the examination of the counterfeit coins was, however, not challenged before me.

8] On the other hand, learned A.P.P. for the respondent – State, submitted that it has been amply proved that the complainant himself had made inquiry with Vinod, son of the appellant, who had divulged the name of the appellant as found in the immediate FIR at Exhibit 39. Further, the evidence of the complainant i.e. PW 5 – Baburao coupled with the statement of PW 3 – Ratan Patil, would prove that 240 counterfeit coins were seized from the house of the appellant on the basis of the statement made by her while in custody. In the circumstances, learned A.P.P. submitted that the appeal may be dismissed.

9] On the basis of this material, following points arise for my determination :-

> (I) Whether the prosecution has proved that present appellant was found in possession of the counterfeit Indian coins in the denomination of Rs.5/-, knowingly that those were the counterfeit Indian coins when she obtained possession

of it and thereafter, she fraudulently delivered them to other persons ?

(II) Whether the prosecution has further proved that present appellant was in possession of the counterfeit coins fraudulently or with intent that fraud may be committed, she had obtained its possession of the same ?

. My findings to the above points are in the affirmative. The appeal is, therefore, dismissed for the reasons to follow.

R E A S O N S

10] Of all the eleven witnesses, so far as present appellant is concerned, deposition of PW 5 – Baburao Mahajan - complainant, PW 3 – Ratan Patil, panch witness, evidence of the Investigating Officer, the carrier i.e. PW 12 – Budhiwant Mane, Police Constable who carried the counterfeit coins to the MINT, Mumbai and the deposition of the experts, is material.

11] Mr.Kale, learned counsel for the appellant, principally assailed the evidence of PW 5 – Baburao - complainant and PW 3 – Ratan. He submitted that previous to registration of the present offence, not a single case was registered against the present appellant for any offence. Further, though PW 3 – Ratan has deposed that on 3rd August, 1999, present appellant, while in police custody, made a statement in his presence that she was in possession of the counterfeit coins as received from accused no.1 – Raju and was ready to produce the same and accordingly, under the seizure panchnama, the same were seized yet Exhibits 26 and 27 i.e. memorandum as well as the seizure panchnama, would show that those were forged documents. He submitted that Exhibit 26 would show that it was recorded between 4:15 p.m. and 4:30 p.m. on that day while, the seizure panchnama Exhibit 27 would show that it was recorded between 4:35 p.m. and 5:30 p.m. He, therefore, submitted that just within five minutes of recording the memorandum panchnama, the seizure panchnama was started.

12] It is the prosecution case that statement was made by the appellant while in police custody and thereafter, just within five minutes, the appellant took the police and panch witnesses to her house and within five minutes the seizure of counterfeit coins was done.

13] Learned A.P.P. for respondent – State, however, submitted that Nilanga is a small town and more so, in the year 1999, it was very small and therefore, there is no reason to doubt these activities.

14] Further, the complainant PW 5 – Baburao had made inquiry with Vinod, son of the present appellant when Vinod had brought counterfeit coins to his shop and said Vinod had divulged the name of present appellant as his mother, who had handed over the counterfeit coins to him with a direction to seek exchange of the same in the rupees.

15] Mr.Kale submitted that no documents regarding either title or possession of the appellant regarding the house in question, was collected by the Investigating Officer. Further, the panchnama would not show as to whether, the house was locked and therefore, he submitted that the prosecution has failed to prove its case beyond reasonable doubt.

16] We have already found that besides the case of seizure of the counterfeit coins from the house of the appellant on the statement made by her, the deposition of PW 5 – Baburao coupled with the FIR, would show that she was named in the FIR on the basis of the information given by her son Vinod i.e. juvenile accused to the complainant. Further, merely because documents about title of the said house were not collected as, according to the prosecution, she was only in possession of house, no fault can be found with the prosecution case in this regard.

17] In the circumstances, in my view, the prosecution has proved, beyond the reasonable doubt, that present appellant had, knowingly, obtained possession of the counterfeit coins and attempted to circulate the same fraudulently in the market.

18] Hence, the following order :-

A] The appeal is hereby dismissed.

B] Bail bonds, if any, of the appellant shall stand cancelled.

C] The appellant to surrender before the concerned Sessions Court to serve rest of the sentences, if any, within a period of four weeks. Upon failure, concerned learned Sessions Judge to take steps for securing presence of the appellant to serve the rest of the sentence.

[M.T. JOSHI, J.]

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