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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 289 OF 2014

1. Mirza Noor Ayub Hakib	]	
@ Fakir	]	
age: 30 years,	]	
	]	... <u>Appellants</u>
2. Smt. Taniya Mijaj @ V. Shaikh	]	Orig. accused
	]	Nos 1 & 2
at present lodged in Central Prison	]	
Kolhapur.	]	

V/s.

The State of Maharashtra].... Respondent

Ms. Rohini Madhav Dandekar, appointed advocate for the Appellants.

Mr. H. J. Dedhia, A.P.P., for the Respondent-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 16TH APRIL, 2015.

ORAL JUDGMENT.

1. The appellants, who are convicted by the Assistant Sessions Judge, Greater Bombay, in Sessions Case No.224 of 2011, by the judgment dated 27th April, 2011, for the offence punishable under Sections 489-B and 489-C read with 34 of the Indian Penal Code and sentenced to

suffer rigorous imprisonment for 10 years and to pay fine of Rs.5,000/- in default to suffer simple imprisonment for one year for offence punishable u/s 489-B of IPC and rigorous imprisonment for 7 years and to pay fine of Rs.2,000/- each in default to suffer simple imprisonment for six months for offence punishable u/s 489-C of IPC, by this appeal, challenge their conviction and sentence.

2. The facts of the case, as are necessary, for deciding this appeal may be stated thus :-

3. On 24th November, 2010 at about 12.28 p.m. while P.W.1 ASI Dashrath Gaikwad was on duty at Andheri Police Station, he received message from Control Room that one lady and one man have been nabbed at Super Society, Blue Box Cinema, J. B.Nagar, Andheri, while they were attempting to use the counterfeit currency notes of denomination of Rs.500/- for purchasing potatoes and oranges. On receipt of this message, P.W.1 ASI Gaikwad, went to the spot. There P.W. 2 Potato vendor, Jagannath Nadar and Orange vendor, P.W.6 Raisahab Saroj were present, alongwith some crowd gathered there. They had detained the accused Nos 1 & 2 in their custody. They also produced counterfeit currency notes of Rs.500/- each which accused Nos 1 & 2 had

given them, towards purchase of onion, potatoes and oranges respectively. The search of both the accused persons was also taken in presence of P.W.4 Panch Suraj Mishra and in that search one black bag was found in possession of accused No.1 in which 46 currency notes of denomination of Rs.500/- alongwith currency notes of Rs.10, Rs.50/- were found. In the search of accused No.2 a purse was seized in which 8 currency notes of denomination of Rs.1,000/- were found. The panchnama (Exh.9) was prepared accordingly and both the accused were brought to the police station alongwith the seized articles. P.W.1 ASI Gaikwad then lodged complaint (Exh.10) on behalf of the State against the accused and handed over accused persons and seized articles, alongwith panchnama (Exh.9) to P.W.7 PSI Kadam.

4. On the basis of the complaint lodged by P.W.1 ASI Gaikwad, P.W.7 PSI Kadam registered C.R.No.603 of 2010 against both the accused for the offence punishable under Sections 489-A, 489-B and 489-C read with 34 of the Indian Penal Code and took over further investigation of the case. He recorded the statements of both the vendors, namely, P.W.2 Jagannath and P.W.6 Raisahab. He also called panchas and took personal search of accused No.2. In the personal search, two mobiles were found, which were seized under panchnama (Exh.25). As a

part of further investigation, he handed over the seized currency notes to P.W.5 Constable Sonar for taking them to Currency Note Press at Nashik. After obtaining necessary permission and sanction order from D.C.P. (Exh.35) and on the receipt of report (Exh.36), from Nasik Currency Press, that the currency notes of denomination of Rs.500/- and Rs.1,000/- were counterfeit, he submitted chargesheet in the Court against both the accused.

5. On the case being committed to the Sessions Court, the trial Court framed charge against the accused vide exh.2. Both the accused pleaded not guilty and claimed trial raising defence of false implication.

6. In support of its case, the prosecution examined 7 witnesses and on appreciation of their evidence, trial Court acquitted the accused for the offence punishable under Section 489-A of IPC; whereas convicted and sentenced them as aforesaid for the offences punishable under Sections 489-B and 489-C read with 34 of the IPC.

7. In this appeal, the submissions are advanced by learned counsel for the appellants challenging the prosecution case on the ground that there are several discrepancies and inconsistencies in the evidence

of prosecution witnesses. The prosecution has failed to bring from the evidence, on record, as to in whose possession the counterfeit currency notes were found. The black bag in which the counterfeit currency notes of Rs.500/- denomination were found is not produced before the Court. The learned counsel for the appellant further submitted that as per evidence of witnesses the currency notes were handed by the vendors at the time of panchnama and not by the accused and therefore according to her there is sufficient doubt created as to the veracity of the prosecution case and benefit of the same needs to be extended to the accused.

8. Per contra, the learned APP has supported the judgment of the trial Court by submitting that there is consistent evidence of the prosecution witnesses, supported with report Exh.36 from the Currency Note Press, Nashik which goes to prove the guilt of both the accused for the offences, held to be proved against them, by the trial Court.

9. In my considered opinion, in order to effectively deal with the submissions advanced by the learned counsel for the appellants and learned APP, it would be useful to refer to the evidence on record.

10. The material evidence in this case is naturally that of the two

vendors viz P.W.2 Jagannath and P.W.6 Raisahab. Both of them were having business of selling vegetables and the fruits in the market. It is deposed by P.W.2 Jagannath that on the date of incident at about 12.15 p.m, accused No.1 came to him and has purchased onions and potatoes worth Rs.72/- and gave him currency note of Rs.500/-. When he verified the said currency note, he found that words RBI were missing from the said note. Hence he became suspicious and he confronted the accused No.1 about the same. Thereupon the accused No.1 started running away from the spot. Hence P.W.2 Jagannath chased and nabbed accused No.1. At that time accused No.2 Tanya rushed there and started quarrelling with P.W. 2 Jagannath. Taking advantage of the said quarrel, accused No.1 again started running away from the spot. P.W.2 Jagannath again chased and nabbed him. The crowd was gathered there. Accused No.1 was in possession of black bag which was containing currency notes of Rs.10, 20, 50,100 and 46 currency notes of Rs.500/- denomination. At the same time P.W.6 Raisahab came there, hearing commotion and he also narrated that accused No.2 has purchased oranges worth Rs.50/- from him and gave him currency note of Rs.500/- and on verification of the said currency note, he found it to be fake. Hence accused No.2 was also detained there. Someone from the crowd there informed the police. Then P.W.1 ASI Dashrath Gaikwad came there. He seized currency notes of

Rs.500/-from the accused Nos 1 and 2. He also seized the currency notes which were in the black bag in possession of accused No.1. He made panchnama of the same on the spot vide Exh.9 and seized those currency notes. From the possession of accused No.2 one ladies purse was seized in which there were 8 currency notes of Rs.1,000/- each. Both the accused were brought to the police station, where P.W.1 ASI Gaikwad lodged complaint Exh.10.

11. This evidence of P.W.2 Jagannath and P.W.6 Raisahab gets complete support and corroboration from the evidence of P.W.4 panch Suraj Mishra in whose presence, seizure panchnama Exh.9 was prepared. In the seizure panchnama, the numbers of currency notes which were seized from the possession of both the accused are also noted in detail.

12. As per evidence of P.W.1 ASI Gaikwad, in view of the seizure of such large quantity of currency notes from accused Nos 1 and 2 which were found to be suspicious in character, he lodged complaint (Exh.10) against both the accused. Then there is evidence of P.W.7 PSI Ravindra Kadam, who has sent these currency notes to Currency Press at Nashik at the hands of P.W.5 Constable Sonar. The report of Currency Note

Press is at Exh.36. It is admissible in evidence under Section 293 of the Code of Criminal procedure, without any formal proof of the contents. As per said report, the currency notes of Rs.500/ and Rs.1000/- denomination were found to be counterfeit. The report contains in detail the reasons as to why he came to that finding. According to said report, for the reasons stated therein and in view of absence of other security feature of relevant design, those currency notes were found to be counterfeit one.

13. Thus, the evidence of these witnesses, supported with the report Exh.36 go to prove that notes of Rs.500/- and Rs.1,000/- found in possession of the accused Nos 1 and 2 respectively were counterfeit and accused Nos 1 and 2 have tried to use such currency notes for purchase of the articles as genuine currency.

14. As regards the submissions advanced by learned counsel for the appellant that there are some discrepancies in the evidence of prosecution witnesses in my considered opinion, those discrepancies are of minor and trivial nature and they do not affect the credibility of the prosecution witnesses. The seizure panchnama being proved through the independent evidence of P.W.4 panch Mishra, there is no reason to doubt

whether the currency notes were seized from the possession of accused or otherwise.

15. As regards submission that the currency notes of Rs.500/- each were seized from the vendors, that is bound to be because accused Nos 1 & 2 had given those currency notes to P.W.2 Jagannath and P.W.6 Raisahab for purchase of the articles. Thus, in this case the evidence on record goes to prove that the accused were found in possession a large number of counterfeit currency notes, which possession both the accused have failed to explain. Hence the very possession of such large number of currency, which are found to be counterfeit and the use of such currency notes by the accused as genuine, for purchase of articles, goes to prove their knowledge that those currency notes are counterfeit currency notes. The trial Court has hence rightly held the guilt of both the accused to be proved beyond reasonable doubt for the offences punishable under Sections 489-B and 489-C read with 34 of the Indian penal Code.

16. As regards sentence, it is submitted by the learned counsel for the appellants that since the date of arrest on 24th November, 2010, both the accused are in jail and hence it is urged that they may be released on the punishment already undergone by them. However, as

rightly submitted by the learned APP, the offence for which the accused are charged and convicted is serious in nature. It is not an instance of accused being found in possession of one or two counterfeit currency notes, but the accused were found in possession of large number of counterfeit currency notes of higher denomination of Rs.500/- and Rs.1000/- respectively. It is an offence which affects the economy of the country. Therefore, in the absence of any grounds made out for leniency, the minimum punishment for both the offences, as imposed by the trial Court, need not be disturbed.

17. Consequently the appeal stands dismissed confirming the conviction and sentence.

18. The legal professional fees of learned counsel appointed by the Legal Aid Committee, for representing the appellants are quantified at Rs.5,000/-.

[DR. SHALINI PHANSALKAR-JOSHI, J.]