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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.941 OF 2009

Mansur Azaruddin Shaikh .Appellant
(Original Accused)

Vs.

The State of Maharashtra
(At the instance of J.J. Marg Police
Station in C.R. No.288/08 in S.C. No.206
of 2009. ..Respondent.

None for the Appellant.
Mrs. A.A. Mane, APP for the Respondent-State.

CORAM: A.S. GADKARI, J.

DATE : 31st March 2015.

***ORAL JUDGMENT*:**

1 The present appeal is placed for final hearing before this Court. The record discloses that when the present appeal was on board for final hearing on 17.6.2013, 19.7.2013, 21.2.2014, 4.4.2014, 7.7.2014, 20.8.2014, 21.8.2014, 16.9.2014, 20.2.2015 and 20.3.2015 none had appeared for and on behalf of the Appellant though as per noting of the Registry the appearances of two Advocates have been filed on record.

2 Today, also when the matter is called out for final hearing, none appeared for and on behalf of the Appellant. As per the note put up by the Registry, the accused since the day of arrest is in jail. In view of the ratio laid down by the Hon'ble Supreme Court in the case of ***Surya Baksh Singh Vs. State of Uttar Pradesh reported in (2014) 14 SCC 222,*** the present appeal has been taken up for final hearing in the absence of the Advocate for the Appellant.

3 Heard the learned APP for the Respondent-State at length and with the help of the learned APP, perused the entire evidence and record produced before this Court.

4 The Appellant has questioned the correctness of the judgment and order dated 7th September 2009 passed by the learned 2nd Ad-Hoc Sessions Judge, Sewree, Mumbai in Sessions Case No.206 of 2009 arising out of C.C. No.145/PW/2009 registered at Sir J.J. Marg Police Station, Mumbai, thereby convicting the Appellant for the offence punishable under Sections 489(B) of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 10 years and to pay fine of Rs.5000/-, in default of payment of fine to suffer further rigorous imprisonment of 3 months.

The Appellant has been further convicted for the offence punishable under Section 489(C) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 7 years and to pay fine of Rs.1000/-, in default of fine to suffer further rigorous imprisonment for 1 month. That both the sentences to run concurrently.

By the same judgment and order dated 7th September 2009, the learned 2nd Ad-Hoc Sessions Judge, Sewree, Mumbai was pleased to acquit the Appellant for the offence punishable under Section 420 of the Indian Penal Code.

5 The facts which are necessary for deciding the present appeal can briefly be stated as under:

(a) PW-1 Shahid Kallu Khan, the complainant was running a CD shoppee at Shop No.153, Bori Mohalla, Nalbazzar, Mumbai. He used to open his shop at about 10 a.m. and close it at about 9.30 p.m. That on 12th November 2008, between 5.30 to 6.00 p.m., the Appellant went to the shop of the complainant and purchased one CD of Hindi songs for Rs.100/-. The Appellant paid Rs.500/- currency note to the complainant. The complainant returned Rs.400/- to the Appellant. When the complainant saw the currency note of Rs.500/- handed over by the Appellant to him, he found it a new-one. That the complainant matched the said currency note with a currency note which was with him and he found that there was no similarity between these two notes. He found that the currency note given by the Appellant was a fake one. The complainant therefore was in the process of returning the said currency note to the Appellant by saying that it was not genuine and is a fake currency note, at that time the Appellant tried to ran away. The Police personnel who were on their patrolling duty on the said road, after hearing the shouts from the passerby, caught the Appellant and took him along with them. The complainant also informed the Police about the said incident. The complainant thereafter lodged First Information Report with the Sir J.J. Marg Police Station.

(b) PW-4, PSI Shri Dilip Shinde, was attached to J.J. Marg Police Station as PSI since 2006. That on 12th November 2008, the complainant along with Police and the Appellant came to the police station at 5.45 p.m. The complainant recorded the First Information Report as per version narrated by the complainant. PW-4 took into his custody the said currency note of Rs.500/- handed over by the complainant. PW-4 arrested the Appellant and he took search of the person of the Appellant in the presence of panch-witnesses. At the time of search, one CD of Hindi songs and one mobile hand-set of Nokia found in his pocket. PW-4 also found 44 fake currency notes of Rs.500/- denomination from the right pant pocket of the Appellant and 4 currency notes of Rs.100/- denomination in his shirt pocket. PW-4 effected seizure panchanama which is at Exhibit-15 and seized the said articles. He also arrested the Appellant by effecting arrest panchanama which is at Exhibit 21. Further investigation was taken over by the Police Inspector Shri Santosh Bagwe.

(c) PW-8 Santosh Bagwe, Police Inspector, was attached to J.J. Marg Police Station since February 2008. On the day of incident i.e. on 12.11.2008, he was on the duty as day police inspector and PW-4 Dilip Shinde was the duty officer. On 14.11.2008 PW-8 Santosh Bagwe took over further investigation of the C.R. No.288 of 2008 registered with Sir J.J. Marg Police Station on 12.11.2008 under Sections 489(B), 489(C) and 420 of the Indian Penal Code. On 14.11.2008, the Appellant gave voluntary statement that he will show the hut wherein he had concealed more fake currency notes. The memorandum statement was recorded below Exhibit 17. In pursuance of memorandum statement given by the Appellant, the Appellant took the Police and panch-witnesses to C.G.S. Colony, Antop Hill, near a hut. The Appellant took the key from the roof of the said hut and opened the lock of the door. The Appellant along with police and pancha witnesses entered into the hut. One black colour plastic bag was found in the said hut. As the key of the said bag was not found, the said bag was opened by tearing the chain. In the said plastgic bag, 83 currency notes of Rs.500/- denomination were found. Those currency notes were seized in the presence of two panch-witnesses by preparing panchnama which is at Exhibit 18. PW-8 thereafter during the course of investigation sent all the currency notes to the Currency Note Press at Nashik Road, Maharashtra State, Government of India for verifying the authenticity of the said notes and for its report. The said Government Currency Note Press at Nashik Road gave its report to the PW-8 thereby stating that the referred currency notes of Rs.500/- denomination are counterfeit notes. During the course of investigation, PW-8 recorded statements of the witnesses including the owner of the hut who had given the said hut to the Appellant on rent for his residence. During the investigation, PW-8 found that the Appellant is involved in trafficking the counterfeit currency notes in our country and had kept in his possession substantial quantity of currency notes for circulating the same in the Indian economy.

(d) After completion of the investigation, PW-14 submitted chargesheet before the Court of Metropolitan Magistrate, 15th Court, Mazgaon, Mumbai. The learned Magistrate after perusing the papers of the chargesheet, find that the offences punishable under Section 489(B) and 489(C) of the Indian Penal Code are triable by the Court of Sessions and therefore, committed the case to the Court of Sessions for trial by order dated 17.3.2009, as contemplated under Section 209 of the Cr.P.C.

(e) The Trial Court framed charge below Exhibit 5 against the Appellant. The contents of the said charge were read over and explained to the Appellant in the language known to him. The Appellant pleaded not guilty and claimed to be tried. The defence of the Appellant was of total denial and false implication at the behest of the police. In response to the questions recorded under Section 313 of Cr. P.C., he submitted that he was caught on the road. He showed his Identity Card to the Police. That the police took his Identity Card from his pocket and falsely implicated him in the case.

(f) The prosecution in support of its case, examined in all eight witnesses. The learned Trial Court, after recording the evidence of the witnesses and after hearing the parties to the said trial, convicted the Appellant as stated in the foregoing paragraphs. The said judgment and order is impugned in the present appeal by the Appellant.

6 Heard Mrs. A.A. Mane, the learned APP for the Respondent-State. Perused the evidence on record minutely including record received from the Trial Court. The learned APP in her arguments submitted that the Appellant was caught raid-handed while circulating the fake currency notes in the Indian economy. That when the Appellant was caught by the police, he tried to ran away from the spot. She submitted that during the course of investigation, in all 128 fake currency notes of Rs.500/- denomination were seized from the Appellant. She further submitted that the present offence is of serious nature, as the Appellant has caused serious threat to the Indian economy, firstly by possessing the fake currency notes of substantial quantity and secondly by circulating the same in the market. She, therefore, submitted that after taking into consideration the evidence available against the Appellant on record, the present appeal may be dismissed, and the conviction of the Appellant may be sustained.

7 With a view to appreciate the submissions advanced by the leaned APP, it will be necessary and useful to advert briefly to the evidence on record produced by the prosecution against the Appellant.

8 PW-1 Shahid Kallu Khan is the complainant in the present case. PW-1 was running a CD Shoppee at Shop No.153, Bori Mohalla, Nalbazzar, Mumbai and used to open his shop at 10 a.m. and close it at about 9.30 p.m. PW-1 in his testimony has stated that on 12.11.2008 in between 5.30 p.m. and 6 p.m., the said incident had occurred. That at about 5.30 p.m., the Appellant came to his shop and purchased one CD of Hindi Songs for Rs.100/- and tendered Rs.500/- currency note to the complainant against the said purchase of CD. The complainant returned Rs.400/- to the Appellant. After viewing the said currency note, the complainant got suspicious about its authenticity/genuineness and found it to be a fake currency note. The complainant, therefore, tried to return the said currency note to the Appellant by saying that it was not a real currency note. At that time, the Appellant tried to ran away. PW-1 has further stated in his testimony that at the time of said incident the police who were on patrolling duty were passing through the road and they caught the Appellant on the spot. The Police took the Appellant with them. The complainant informed the said incident to the police and also showed the currency note to the police. Thereafater the police, the appellant and the complainant went to the police chowki. The complainant handed over the said currency note to the police and police seized it. That the number of the said currency note was 99326. The complainant thereafter lodged a FIR before Sir J.J. Marg Police Station, which is at Exhibit-13. The complainant identified the currency note in the Court which is marked as Article-A.

The complainant was cross-examined at length by the Appellant. In the cross-examination, the complainant has admitted that he never used to give bill against purchase and if it is required, he used to give ordinary bill (chalu bill). The complainant in his cross-examination has specifically denied the suggestion given by the Appellant that the Appellant/accused did not come to his shop and did not purchase the CD and paid Rs.500/- currency note to him. He further denied the suggestion that at the instance of police, he did file false complainant. He further denied the suggestion that at the instance of police, he identified the appellant in the Court. It may be noted here that though the cross-examination of the PW-1 Shahid Khan is a detailed and lengthy cross-examination, nothing fruitful or beneficial to the Appellant has been extracted from the said cross-examination. In other words, the testimony of PW-1 in his examination-in-chief has not at all been shaken by the Appellant in the cross-examination.

9 PW-2 Shri Shabbir Gulam Abbas is a panch-witness to the personal search of the Appellant. PW-2 in his testimony has stated that at the request of police from Sir J.J. Marg Police station, he went to the police station. At that time, one person was present at the police station and police wanted to take his personal search. That during the course of personal search of the said person (the appellant herein) in his presence, 44 currency notes of Rs.500/- denominations were found in the pant pocket of the right hand side. One CD was found in the left hand side pocket of the pant. That in the shirt pocket of the appellant, four currency notes of Rs.100/- denomination were found. The police showed to PW-2 the 44 notes of Rs.500/- denomination, to which he expressed doubt about its genuineness. The seizure panchanama was drawn in the presence of the said PW-2-panch-witness which is at Exhibit 15. The said PW-2 has identified the said currency notes and has proved the Exhibit 15 i.e. the seizure panchanama during the course of his testimony.

PW-2 has been cross-examined at length by the Appellant. During the course of cross-examination, it has been brought on record that PW-2 is also working as a Special Executive Officer and had worked with other police stations. An admission has been extracted to the effect that PW-2 has worked as S.E.O. for J.J. Marg Police Station for 10 to 20 times. However, it is to be noted here that as far as the testimony of PW-2 with regard to the search of the Appellant and seizure of 44 counterfeit currency notes is concerned, during the cross-examination the same has remained unshaken.

10 PW-3 Subhash Waman Shirsat, is the panch-witness to the seizure of the fake currency notes from the hut of the appellant. PW-3 in his testimony has stated that on 14.11.2008, one person was present at Sir J.J. Marg Police Station and he gave statement that he was willing to show the place where the currency notes were concealed by him. The said statement was reduced in writing and the same is at Exhibit 17. PW-3 has further stated in his testimony that in pursuance of memorandum statement which is at Exhibit 17, the police officer (Investigating Officer) and some other police staff sat in police vehicle and went at Antop Hill, Wadala. That the accused took the police to the hutment area. The appellant took out one key from the roof of the hut and opened the lock of the said door. The appellant then entered into the hut and showed one black plastic bag. The said plastic bag was containing 83 currency notes. The said currency notes were of Rs.500/- denomination. All those notes were taken in the custody by preparing panchanama. PW-3 has also given detailed description of the bag which was found in the hut and the procedure adopted by the police in his examination-in-chief. The said currency notes were seized by the police by effecting panchama below Exhibit 18. PW-3 has further stated that he signed on five currency notes of 9CN series.

During detailed cross-examination of PW-3, except an admission to the effect that he used to go to help the police whenever police called upon him, nothing has come on record which would create doubt in the mind of this Court about authenticity of the seizure panchanama which is at Exhibit 18. It further appears to me that the cross-examination of the PW-3 is proceeded by putting him stock questions, to which the said witness has strongly denied.

11 PW-4 Dilip Mahadeo Shinde was attached to Sir J.J. Marg Police Station as a PSI and on 12.11.2008, he was on day duty as duty officer. PW-4 in his testimony has stated that on 12.11.2008 the complainant (PW-1 herein) along with the appellant and the police staff came to the police station at about 5.45 p.m. He recorded the First Information Report as per version of the complainant. He took into custody one 500 currency note which was handed over to him by the complainant at the time of recording the FIR. PW-4 has further stated in his testimony that he arrested the appellant and took his search in the presence of the panch-witnesses. That at the time of taking search, one cassette of Hindi songs was found. That in the right pant pocket of the Appellant, 44 fake currency notes of Rs.500/- denomination and 4 currency notes of Rs.100/- denomination were found in his shirt pocket. He also seized one mobile handset. PW-4 took into custody all the said articles and effected the arrest panchanama. PW-4 has further stated in his testimony that after completing the preliminary procedure during the investigation, he handed over the investigation to the Police Inspector Shri Santosh Bagwe (PW-8)

PW-4 PSI Dilip Shinde was cross-examined at length by the appellant. However, no material which would come to the aid of the appellant has been extracted during the said cross-examination. In short, the testimony of PW-4 has remained unshaken.

12 PW-5 Sachin Shantaram Mohite is the owner of the hut which the appellant had taken on rent from him for residing at the time of incident. PW-5 in his testimony has stated that he had purchased one hut at Antop Hill for Rs.10,000/-. That he had given the said room to one person on rent for Rs.300/- per month. That when he showed the said room to the said person, he had stated to him that he would reside there along with his wife and children. PW-5 has further stated that he did not remember the name of the said person. He has further stated that after 15 days, PW-5 came to know that the police came to his room where that person was residing. He also came to know that the police called him at J.J. Marg Police Station. He went to J.J. Marg Police Station. PW-5 has further stated in his testimony that when he went to the police station, the person to whom he rented the room was present there. He identified the said person i.e. the appellant herein. PW-5 has also identified the Appellant in the Court.

During the course of cross-examination, PW-5 has denied the suggestions put to him by the learned Counsel for the Appellant. It appears that the said cross-examination has proceeded in routine manner by putting stock questions to him, to which PW-5 has denied.

13 PW-6 Laxman Pandurang Avhad is a police constable (Police Naik) who was attached to Sir J.J. Marg Police Station in December 2008. In his testimony, he has stated that as per directions of PW-8 Shri Santosh Bagwe, he took three sealed packets containing currency notes and handed over the same to the concerned Officer at Government Currency Note Press at Nashik. The covering letter dated 6th December 2008 which is Exhibit

25, has been proved by this witness. PW-6 in his testimony has further stated that in January 2009, he was directed to go to Nashik and bring the report from the Government Currency Note Press, at Nashik. The said letter was dated 17.1.2009 which bears signature of Senior P.I. Shri Bagwe. The said letter is at Exhibit 26. PW-6 has proved the said letter which is at Exhibit 26. he has further stated in his testimony that he went to Nashik and brought the said report and two sealed packets and handed over it to Sr. P.I. Shri Bagwe.

During the cross-examination, no material which is useful to the appellant has been brought on record by the Defence Advocate.

14 PW-7 Munawar Husain Shaikh is the panch-witness to the panchanama at Exhibit 29, wherein Nokia Company's Mobile handset having No.6030 and SIM card were seized from the appellant, by effecting the panchanama which is at Exhibit 29. PW-7 has proved the said panahcnama.

The evidence of this witness is of formal nature from the point of proving the seizure of Nokia handset of a mobile phone.

15 PW-8 Shri Santosh Atmaram Bagwe is the Investigating Officer. PW-8 in his testimony has stated that he was attached to Sir J.J. Marg Police Station since February 2008. That on the date of incident, he was on duty as a day Police Inspector and PW-4 Dilip Shinde, PSI, was the duty officer. PW-8 in his testimony has further stated that on 12.11.2008 at about 5.45 p.m., the complainant, two constables and accused came to the police station. That FIR was recorded by PSI Shinde and accused was arrested in his presence and the personal search of the Appellant was taken by effecting detailed panchanama. That on 14.11.2008, further investigation of the present crime was handed over to him. On that day, the appellant gave a voluntary statement that he will show the hut in which he had concealed more fake currency notes. The memorandum statement was recorded below Exhibit 17. In pursuance of the said memorandum statement, the police took the police party and panch-witnesses to the hut situated at Antop Hill and from the said hut the police seized 83 fake currency notes of Rs.500/- by effecting seizure panchanama. The said seizure panchanama is at Exhibit 18. During the search of the said hut, some other documents including Identity Card of the appellant, bill of purchase of a mobile phone were seized. During the course of investigation, PW-8 made an enquiry in respect of the owner of the said hut and he came to know that PW-5 Sachin Shantaram Mohite is the owner of the hut. He sent the collected currency notes through PW-6 Laxman Pandurang Avhad, Police Constable for its report from the Government Currency Note Printing Press at Nashik. During the course of investigation, PW-8 recorded statements of other witnesses. PW-8 found that the appellant was also indulging in trafficking the said currency notes in India and circulating the same into the Indian economy. After completion of the investigation, he submitted chargesheet before the Court of competent jurisdiction.

PW-8 Shri Bagwe was cross-examined at length by the appellant. It is to be noted here that the PW-8 has denied all the suggestions put to him during the course of cross-examination. It may be noted here that the cross-examination of PW-8 proceeded by putting usual suggestions and stock questions to the PW-8. The testimony of PW-8 has not all been disturbed during the cross-examination. It is to be noted here that the testimony of PW-8 is trustworthy and reliable.

16 After taking into consideration the entire evidence available on record, I find that the testimonies of PW-1 Shahid Kallu Khan, the complainant herein, PW-6 Laxman Pandurang Avhad a Police Constable and PW-8 Shri Santosh Atmaram Bagwe, the Investigating Officer are trustworthy and reliable. The Appellant is unsuccessful in creating any doubt in the mind of this Court about the trustworthiness of the testimonies of the said witnesses. PW-8 PI Shri Bagwe has proved Exhibit-32 which is a report received by him from the Government Currency Note Press at Nashik. The said report in unequivocable terms mentiions that the referred suspected currency notes are counterfeit notes.

17 It is further to be noted here that PW-2 a panch-witness Shri Shabbir Gulam Abbas has proved seizure of another 44 currency notes from the person of the appellant. PW-3 Subhash Waman Shirsat, a panch-witness has proved seizure of 83 more currency notes at the instance of the appellant. He has proved Exhibit 18 i.e seizure panchanama of the said 83 currency notes from the hut where the appellant was residing. PW-5 Sachin Shantaram Mohite the owner of the hut has stated in his testimony that the appellant had taken his room from where 83 currency notes have been seized on monthly rent of Rs.300/-.

18 Thus the prosecution has successfully proved the tendering of counterfeit notes by the Appellant firstly to the PW-1 Shahid Kallu Khan, the complainant herein, then the seizure of 44 more counterfeit currency notes of Rs.500/- denomination from the person of the appellant and subsequent seizure of 83 counterfeit currency notes of Rs.500/- denomination at the instance of Appellant from the hut wherein he used to reside. The prosecution has further proved that the Currency Note Press, Nashik Road, Government Undertaking has specifically given opinion that all the said notes sent to it for examination are counterfeit notes.

19 In view of the direct evidence at the first instance and the other surrounding circumstances, as stated hereinabove, I am of the opinion that the prosecution has proved beyond reasonable doubt that the Appellant has committed the crime in question, under Section 489(B) and 489(C) of the Indian Penal Code. The prosecution has successfully proved the said offences against the Appellant. As far as offence under Section 420 is concerned, I am of the view that the prosecution has failed to establish the same.

20 After taking to consideration the entire evidence on record, I am of the considered opinion that the learned Trial Court has not committed any error either on the facts or in law while convicting the Appellant under Sections 489(B) and 489(C) of the Indian Penal Code.

21 In the circumstances, no interference is called for in the impugned judgment and order dated 7th September 2009 passed by the 2nd Ad-Hoc Sessions Judge, Sewree, Mumbai, and the present appeal being devoid of merits is accordingly dismissed.

(A.S. GADKARI, J.)