**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 1271 OF 2013**

Munshi Mohammed Ayub
Mohammed Yusuf Shaikh
Aged about 43 years, Occ. Tailor,
R/at Vijay Nagar, Tajub Shethji Chawl,
Jarimari, Kurla-Andheri Road,
Kurla(W), Mumbai – 400 072 .. Appellant
(Orig. Accused is in Jail)

V/s.

The State of Maharashtra
(At the instance of Kurla Police
Station (CR No.265/2011) .. Respondent

Mr. A.A. Mirza for the petitioner
Mrs. M.M. Deshmukh, APP for the respondent State

**CORAM : ANUJA PRABHUDESSAI, J.**
**DATED : 1st APRIL, 2015**

**ORAL JUDGMENT :**

1. The appellant, who shall be hereinafter referred to as the accused, has challenged his conviction under Sections 489(B) and 489(C) of the IPC.

2. The facts leading to this appeal in brief are that on 19.12.2011

between 10.30 a.m. to 10.45 a.m. one unknown person went to Punjab National Bank, Belgrami Road, Kurla (W), Mumbai and handed over a pay-in-slip along with cash of Rs.9,500/- in denomination of 17 notes of Rs.500/- and one note of Rs.1,000/- to the cashier Pw1 Baburao to deposit in the saving accounts of one Aurangzeb. PW-1 Baburao suspected that some of the notes were counterfeit. He told the accused that the notes were counterfeit and instructed him to wait at the counter while he went to the cabin of the PW-2 Sudhir, the Branch Manager of the Bank. PW-1 showed the notes to the Branch Manager. PW-2 Sudhir, the Branch Manager also confirmed that the notes were counterfeit. When PW-1 and PW-2 returned to the counter, they noticed that the accused was not present near the counter. Hence, they went to Kurla Police Station to lodge the FIR.

3. PW-1 Baburao lodged the FIR at Exh.12, pursuant to which PW-5 Siddharth Kamble, SHO on duty, registered the Crime No.265 of 2011 for offences under Section 489(B) and 489(C) of the IPC against an unknown person. PW-1 handed over the currency notes to

PW-5 and the same were seized in presence of PW-3 under panchanama at Exh.17. The said notes were subsequently forwarded to Government Press Nashik, through PW-4 Arjun for examination and opinion. The expert opinion at Exh.26 revealed that the notes were counterfeit.

4. While PW-1 Baburao and PW-2 Sudhir were at the Police Station, they received a phone call from the bank that the accused had returned to the bank. PW-5 Siddharth along with PW-1 Baburao and PW-2 Sudhir proceeded to the bank and arrested the accused. PW-5 conduced house search panchanama at Exh.24. The work place of the accused was also searched and panchanama was drawn at Exh.25. PW-5 recorded the statements of the witnesses and upon completion of the investigation filed the charge sheet against the accused for the offences u/s 489(B) and 489(C) o the IPC.

5. Upon committal of the case, the learned Sessions Judge framed charge under Section 489(B) and 489(C) of the IPC. The accused pleaded not guilty. The prosecution in support of its case examined

5 witnesses. The accused examined his brother in his defence. Upon considering the oral as well as the documentary evidence, the learned Sessions Judge held the accused guilty of the offences punishable under Sections 489(B) and 489(C) of the IPC and sentenced him to undergo R.I. for 5 years and to pay fine of Rs.2,000/- in default RI for 6 months for offence under Section 489(B). The accused is also sentenced to undergo rigorous imprisonment for 5 years and to pay fine of Rs.2,000/- and in default to undergo RI for 6 months for offence under Section 489(C) of the IPC. The substantive sentence was ordered to run concurrently. The period undergone by the accused was ordered to be set off. Aggrieved by the conviction and sentence, the accused has preferred this appeal.

6. Mr. Mirza, learned Counsel for the appellant has submitted that the RBI has prescribed certain guidelines to be followed when the currency notes suspected to be counterfeit are tendered in the bank. He has submitted that as per the said guidelines the bank officials were required to note down the numbers of the notes in presence of the accused and obtain his signature on the same. Learned Counsel

Mr. Mirza has submitted that PW-1 and PW-2 had not complied with the guidelines prescribed by the Reserve Bank of India.

7. Learned Counsel Mr. Mirza has further submitted that the evidence of PW-1, PW-2 and PW-5 reveals that the accused had returned to the bank even after he was told that the notes were counterfeit. The said conduct is not consistent with hypothesis of guilt. He has further urged that prosecution has failed to establish that the accused had knowledge or that he had reason to believe that the notes were forged or counterfeit. He has submitted that the prosecution has failed to establish the essential ingredient of Section 489(B) and 489(C) of the IPC and accused is therefore entitled for an acquittal.

8. Mrs. Deshmukh, learned APP has submitted that the evidence of PW-1 and PW-2 vis-à-vis the expert opinion amply proves that the accused had tendered counterfeit notes to be deposited in his account. Learned APP has further submitted that the evidence DW-1 does not in any manner explain as to from whom the accused had

procured the said notes. She has further submitted that the conduct of the accused of going away from the bank after being told that the notes were counterfeit is an indication of guilty mind. She, therefore, contends that the prosecution has established the guilt of the accused beyond reasonable doubt.

9. Section 489(B) of the Indian Penal Code prescribes punishment for use of counterfeit-note or bank note as genuine. Whereas Section 489(C) makes possession of forged or counterfeit currency-note or bank note punishable. Both these sections are attracted only when the person uses or possesses the counterfeit currency notes as stipulated in the sections, knowing or having reason to believe the same to be forged or counterfeit.

10. In the case of Uma Shankar Vs. State of Chattisgarh reported in (2000) 9, SCC 642, the Apex Court, reiterating the principles laid down in the case of Mammutti Vs. sate of Karnataka, 1979 (4) SCC 723, has held as under :-

> *"A perusal of the provisions, extracted above, shows that mens rea of offences under Section 489B and 489C is knowing or having reason to believe that currency notes or bank notes are forged or counterfeit. Without the aforementioned 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 under Section 489(B) IPC. So also possessing or even intending to use any forged or counterfeit currecy notes or bank notes is not sufficient to make out a case under section 489C in the absence of the mens rea,* noted above."

11. Thus, it is crystal clear that in order to prove the ingredients of the offences u/s 489(B) and 489(C), the prosecution is not only required to prove mere use or possession of counterfeit notes as genuine but the prosecution is also required to prove that the accused had knowledge or that he had reason to believe that the said notes were forged or counterfeit.

12. In the light of above principles, the question, which falls for consideration, is whether the prosecution has established that:

(i) That the accused was in possession of counterfeit currency notes;

(ii) That the accused had used the same as genuine notes;

(iii) That the accused had knowledge or reason to believe that the said notes were forged or counterfeit.

13. In this regard, the prosecution has examined PW-1 Baburao, who was working as a cashier in Punjab National Bank, Kurla (W) and PW2 Sudhir, the Branch manager of the Bank. The testimony of PW1 vis-à-vis the FIR at Exh.13 indicates that on 19.12.2011 between 10.30 a.m. to 10.45 a.m., one unknown person had come to the counter with pay-in-slip along with cash of Rs.9,500/- in denomination of 17 notes of Rs.500/- and one note of Rs.1,000/-. PW-1 Baburao suspected that some of the notes were counterfeit. He informed the said person that the some of the notes appeared to be counterfeit and directed him to wait at the counter while he went to the cabin of the Manager. He showed the said notes to PW-2 Sudhir, the Branch Manager, who upon checking the notes confirmed the same to be counterfeit.

14. The testimony of PW-1 and PW2 reveals that when they had returned to the counter, they found that the said unknown person

was not at the counter. Hence, they went to Kurla Police Station and PW1 lodged the FIR at Exh.12 against an unknown person for using and possessing counterfeit notes.

15. While PW1 and PW2 were at the police station, they received a phone call from the bank informing him that the said unknown person had returned to the bank. On receipt of the said information, PW1, PW2 and PW5 went to the bank. PW1 identified the accused who was present at the bank and thereupon the police took the accused into custody.

16. The evidence of PW-1 and PW-2 vis-à-vis the FIR at Ex.12 proves that the accused had tendered cash of Rs. 9500/ to PW-1 to be deposited in the account of one Aurangzeb. PW-1 and PW-2 suspected the notes to be counterfeit and therefore handed over the counterfeit notes to PW-5. PW-5 seized the said notes under panchanama drawn in presence of PW-3. PW-5 forwarded the sealed packets containing counterfeit notes to Nashik Government Press through PW-4 Arjun Kangane. PW-5 received the report at Exh.26

from the Government Press, Nashik stating that the notes were counterfeit notes. The evidence thus proves that the notes tendered by the accused were counterfeit.

17. The testimony of PW-2 reveals that as per the guidelines of Reserve Bank of India, if any customer produces fake notes, then, the bank officers are required to note down the serial number of notes in presence of the customer and obtain his signature on the same. PW-1 and PW2 have admitted that they had not followed the said procedure. Nevertheless, the fact that PW1 as well as PW2 had not complied with RBI guidelines is not of much significance as the defence witness DW1 Mohammad, the brother of the accused has admitted that the accused had gone to the said bank with 17 currency notes of Rupee 500/- denomination and one note of Rs. 1000/- denomination for depositing in the bank. The evidence of DW1 therefore supports the case of the prosecution that the accused was in possession of counterfeit currency notes and that he had tendered the said notes along with the pay-in-slip to PW1 to be deposited in the saving account of one Aurangzeb.

18. As stated earlier, mere possession or use of counterfeit notes is not an offence under Section 489(B) or 489(C) of the IPC. In the instant case, the prosecution has not adduced any evidence to prove that the accused had knowledge or that he had reason to believe that the notes were counterfeit. The prosecution has not adduced any evidence to prove that the accused was questioned as regards the source of the said notes. Though the Investigating Officer had searched the house as well as the work place of the accused, he had not found any incriminating material to link the accused with the crime. The prosecution has also not made any attempts to tress the source of the said notes.

19. The evidence adduced by the prosecution does not indicate that the colour and the texture of the notes was different and the difference was so apparent that a mere look at the same would convince a lay man that it was counterfeit. In the absence of any such evidence, it cannot be presumed that the accused had knowledge or that he had reason to believe that the notes were counterfeit.

20. It is also pertinent to note that the evidence of PW-1 indicate that he had told the accused that the notes tendered by him were counterfeit and had instructed him to wait at the counter while he went to the cabin of the Branch Manager. The evidence of PW-1 and PW-2 reveals that though the accused had left the bank for short while, he had returned to the bank and that he had remained in the bank till the police arrived at the scene. It is difficult to believe that the accused would continue to remain in the bank and wait for the police to arrive and arrest him, had he known or had reason to believe that the notes were fake or counterfeit. The normal conduct in such circumstance would be to flee from the scene of offence. The conduct of the accused is therefore not consistent with the hypothesis of guilt.

21. The prosecution has thus failed to prove the essential ingredients of the offence punishable under Sections 489(B) and 489(C) of the IPC. Under the circumstances, the conviction and sentence cannot be sustained.

22. The appeal is accordingly allowed. The judgment dated 22nd October, 2013 in Sessions case No.291 of 2012 is set aside. The accused is acquitted of offences punishable under section 489(B) and 489 (C) of the IPC. The accused shall be released forthwith, provided he is not required in any other case.

**(ANUJA PRABHUDESSAI, J.)**