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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : SEPTEMBER 03, 2015
DECIDED ON : DECEMBER 02, 2015

\+ **CRL.A. 89/2007**

SHAHID ZAHOOR WANI ..... Appellant
Through : Mr.Ashok Agrawal, Advocate with Mr.Anuj Kapoor, Advocate.

VERSUS

STATE ..... Respondent
Through : Mr.Sanjeev Sabharwal, APP.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 27.07.2006 of learned Additional Sessions Judge in Sessions Case No.42/05 emanating from FIR No.581/01 registered at Police Station Kotwali by which the appellant Shahid Zahoor Wani was convicted under Sections 498C IPC, the instant appeal has been filed by him. By an order dated 31.07.2006, he was awarded RI for one year with fine ₹2,000/-.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 12.10.2001 at around 8.00 p.m. near urinal, Azad Hind Market, Lal Quilla, New Delhi, Wasim Ahmed Lily @ Wasim Ashraf was

apprehended being in possession of forged or counterfeit currency notes. He was also found in possession of a scanner, colour ink cartridge, key-board, compact disk, printer, monitor and other articles mentioned in the seizure memo (mark A) being used for forging or counterfeiting currency notes at his residence 1940, Third floor, Gali Oonth Wali, Hauz Sui Walan, Delhi. Pursuant to his disclosure statement, he led the the police team to Jammu and Kashmir on 18.10.2001 and recovered 497 forged sheets of counterfeit currency notes in the denomination of ₹100/- from the appellant's residence. Statements of the witnesses conversant with the facts were recorded. Exhibits collected during investigation were sent to Printing Press, Nasik for examination. Upon completion of investigation, a charge-sheet was filed against Wasim Ahmed Lily @ Wasim Ashraf, Suhail Ahmed Shora and Shahid Zahoor Wani (the appellant) for commission of offences under Sections 489-B, 489-C, and 489-D IPC. By an order dated 25.10.2002, the appellant was charged for committing offence under Section 489-C to which he pleaded not guilty and claimed trial. The prosecution examined 12 witnesses to establish appellant's guilt. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication. After considering the rival contentions of the parties and on appreciation of the evidence, the Trial Court by the impugned order convicted all of them for the offences mentioned previously. Being aggrieved and dissatisfied, the appellant has preferred the instant appeal. It is unclear if the co-convicts have challenged the said judgment.

3. I have heard the learned counsel for the parties and have examined the file. On perusal of the Trial Court record, it reveals that Wasim Ahmed Lily @ Wasim Ashraf was convicted and sentenced to undergo RI for five years with fine ₹3,000/- under Sections 489-B and 489-D IPC each and RI for one year with fine ₹2,000/- under Section 489-C IPC. Suhail Ahmed Shora and Shahid Zahoor Wani (the appellant) were sentenced to undergo RI for one year with fine ₹2,000/- each under Section 489-C IPC. It is relevant to note that during trial Wasim Ahmed Lily @ Wasim Ashraf had moved an application to confess his guilt and to release him for the period already undergone. His plea of confession was recorded separately by the Trial Court. On perusal of the confession, it reveals that Wasim Ahmed Lily @ Wasim Ashraf did not implicate the appellant for the crime. He did not disclose if any counterfeit currency was ever delivered by him to the appellant. Needless to say, co-convict Wasim Ahmed Lily @ Wasim Ashraf's confession has no impact upon the appellant's involvement in the crime.

4. The prosecution has examined PW-1 (Anil Kumar Singh), Dy.Commandant, BSF, PW-8 (SI Sanjay Dutt) and PW-10 (Insp.Badreesh Dutt) to prove that pursuant to Wasim Ahmed Lily @ Wasim Ashraf's disclosure statement, fake Indian currency i.e.497 sheets (Ex.P-14/1 to 497) of denomination of ₹100 amounting to ₹1,49,100/- were recovered from the appellant's house on 18.10.2001 which were seized vide seizure memo (Ex.PW-1/E). Undoubtedly, no independent public witness was associated at any stage of the investigation. The local police was not informed about the said visit to the appellant's residence. The Trial Court record contains an application written by the Investigating Officer to seek transit remand. It appears that the arrested accused persons were not produced before the local court to seek transit remand. It is pertinent to note that PW-1 (Anil Kumar Singh), Dy.Commandant, BSF, was a prime witness in Wasim Ahmed Lily @ Wasim Ashraf's apprehension and recovery of huge counterfeit currency notes from his possession at Delhi on 12.10.2001. PW-1 had specifically travelled to Delhi to share the secret information in his possession about Wasim Ahmed Lily @ Wasim Ashraf's activities whereby he used to deliver counterfeit currency notes for circulation at Jammu and Kashmir. The Investigating Officer did not offer any explanation as to why they had reported at BSF Headquarters

after reaching J&K on 18.10.2001 to seek PW-1 (Anil Kumar Singh)'s assistance who was already a witness to the recovery effected from co-accused Wasim Ahmed Lily @ Wasim Ashraf on 12.10.2001. PW-1 (Anil Kumar Singh) had no suspicion, whatsoever, upon the appellant any time before 18.10.2001. He was not aware if Wasim Ahmed Lily @ Wasim Ashraf used to deliver the counterfeit currency notes to him at J&K. His association in the raiding team creates suspicion about the recovery of the counterfeit currency sheets from the appellant's residence. Rukka (Ex.PW-6/A) dated 12.10.2001 records that on interrogation Wasim Ahmed Lily @ Wasim Ashraf informed that after forging counterfeit currency notes, he was going to Srinagar to deliver it to his associate Shahid who along with his companion used to circulate it there after necessary 'cuttings'. Apparently, appellant's involvement had emerged in the crime on 12.10.2001 itself. However, no efforts were made by the Investigating Agency including that of PW-1 to search the appellant's residence before 18.10.2001. Nothing has come on record to show if the appellant used to remain in touch with the other co-accused persons or any fake and counterfeit currency was ever delivered to him at any particular date. Nothing has come on record if the alleged currency recovered from the accused on 18.10.2001 from his residence was delivered on any specific date by the co-accused. It is apt to note that recovery effected from the appellant's residence was not of finished counterfeit Indian currency notes. Rather these were in the form of uncut 'sheets' and obviously were not ready for immediate circulation. Nothing has surfaced to infer if any overt act was done by the appellant with the said unfinished sheets to make it ready for circulation in the market.

5. Various infirmities have emerged in the statements of the members of recovery team regarding exact time when they had reached at the appellant's residence to effect recovery. It is unclear if the house was in appellant's exclusive possession. Had there been nexus among the appellant and accused Wasim Ahmed Lily @ Wasim Ashraf and others, he must not have kept the counterfeit currency notes at his residence after coming to know about his arrest in Delhi on 12.10.2001. Throughout the prosecution case was that 497 sheets in the denomination of ₹100/- were recovered from the appellant's residence and were seized vide seizure memo Ex.PW-1/E. However, if all the sheets detailed in Ex.PW-1/E (i.e.144 sheets of ₹100 + 122 sheets of ₹100 + 207 sheets of ₹100 + 17 sheets of ₹100) are added the total sheets recovered come to 490 and not 497. The prosecution has failed to reconcile this material inconsistency.

6. From the very inception, the appellant's case was that he was in the custody of BSF officials since 7/8.10.2001 and was shown to have been arrested on 18.10.2001. The appellant examined DW-1 (Mohd.Tarik Dar), Law Officer, posted at Consumer Affairs Department Shahid Ganj, Srinagar, where the appellant was working as store keeper. He produced letters/documents (Ex.DW1/A to L) written by their Department about the appellant's arrest. Document (Ex.DW1/D) reveals that the appellant was arrested by the BSF authorities during intervening night of 7/8.10.2001 from his residence situated at Kralpora, Chadoora. Name of PW-1 (Anil Kumar Singh), Dy.Commandant, BSF, finds mention in the said document. It lends credence to the appellant's defence. PW-8 (SI Sanjay Dutt) and PW-10 (Insp.Badreesh Dutt) were specifically asked about it in the cross-examination. They gave evasive replies and expressed their ignorance about the appellant's arrest on the night intervening 7/8.10.2001 by BSF officers.

7. In the light of the above discussion, I am of the view that the prosecution has failed to establish its case beyond reasonable doubt against the appellant. The appellant deserves benefit of doubt. Conviction and sentence recorded by the Trial Court cannot be sustained.

The appeal is allowed. Conviction and sentence recorded by the Trial Court are set aside.

8. Trial Court record along with the copy of the order be sent back forthwith. Intimation be sent to the Superintendent Jail, Tihar.

(S.P.GARG)
JUDGE

DECEMBER 02, 2015
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