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

DECIDED ON : 12th JANUARY, 2015

+ **CRL.A. 422/2012 & CRL.M.B.1906/2013**

SUNDER DEV KUSHWAHA Appellant

Through : Mr.Jaideep Malik, Advocate.

versus

STATE Respondent

Through : Ms.Kusum Dhalla, APP.

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

S.P.Garg, J. (Open Court)

1. The appellant – Sunder Dev Kushwaha impugns a judgment dated 06.03.2012 of learned Additional Sessions Judge in Sessions Case No. 80/09 arising out of FIR No.731/07 under Sections 489B/489C/34 IPC PS Lajpat Nagar. By an order dated 21.03.2012, the appellant was sentenced to undergo RI for six years with fine ₹ 10,000/- under Section 489B and RI for four years under Section 489C. Both the sentences were to run concurrently.

2. Allegations against the appellant and co-accused persons – Jagram and Shishram were that on 20.07.2007 when Sub-Inspector Pramod Gupta along with other police officials was on patrolling duty, he reached at Amar Colony Market where Vikrant, a Juice Vendor called him. On seeing the police officials, two persons standing there started slipping and were apprehended. Statement of the Juice Vendor – Vikrant was recorded. He alleged that two persons had come at his shop at C-13, Amar Colony Market and had asked for two glasses of juice. They had handed over a fake currency note of ₹ 500. He got suspicion and called the police. Both the accused persons, one of which was the appellant Sunder Dev Kushwaha were examined. Fake currency notes amounting to ₹ 64,500/- were recovered from the appellant. ₹ 60,000/- fake currency notes were recovered from co-accused Shishram. Statements of the witnesses conversant with the facts were recorded. Another co-accused Jagram was apprehended at the instance of the appellant and his associate and he recovered forty fake currency notes in the denomination of ₹500 from his house. After completion of investigation, a charge-sheet was submitted against the appellant and two other accused persons. The prosecution examined seven witnesses to bring home the charges. In 313 statement, the appellant denied his involvement in the crime and pleaded

false implication. The accused persons examined three defence witnesses, Ram Kishan, Ram Sobhawan and Saroj Prasad. After considering the rival contentions of the parties and appreciating the evidence, the Trial Court, by the impugned judgment held all the accused persons guilty for the offences mentioned previously. The appellant was sentenced as mentioned above. Aggrieved by the said judgment, the appeal has been preferred by the appellant.

3. During the course of arguments, learned counsel for the appellant, on instructions, stated that the appellant has opted not to challenge the findings of the Trial Court on conviction. He, however, prayed to take lenient view as the appellant is not a previous convict and has suffered substantial portion of the substantive sentence awarded to him. To this, learned Addl. Public Prosecutor for the State has no objection.

4. Since the appellant has accepted the findings of the Trial Court on conviction and there is ample evidence coupled with recovery, I am of the view that the prosecution has established its case beyond reasonable doubt. The findings of the Trial Court on conviction are affirmed.

5. The appellant was sentenced to undergo RI for six years under Section 489B and four years under Section 489C with fine ₹ 10,000/-. Fine is stated to have been deposited. Nominal roll dated 05.01.2015 reveals that the appellant has already remained in custody in this case for three years, seven months and six days. He also earned remission for eight months and eleven days. The unexpired portion is only one year, eight months and thirteen days as on 05.01.2015. The appellant is not involved in any other criminal case and is not a previous convict. His overall conduct in jail is satisfactory. Considering the facts and circumstances of the case, sentence order requires modification. The period already undergone by the appellant in this case shall be taken as substantive sentence under Sections 489 B and 489 C IPC.

6. Appeal stands disposed of in the above terms. Pending application also stands disposed of. Trial Court record be sent back immediately with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

JANUARY 12, 2015 / *tr*