

#R-6B

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 18.11.2015

CRL.A. 493/2008

MAUSAM ALI

..... Appellant

Through: Mr Mohd. Saleem, Mr Mohd.
Khursheed and Mr Mohd. Tabrez,
Advocates.

versus

THE STATE (DELHI ADMN.)

..... Respondent

Through: Mr Rajat Katyal, APP.

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is an appeal under Section 374(2) read with Section 397 of the Code of Criminal Procedure, 1973 assailing the judgment and order on sentence dated 07.05.2008 and 08.05.2008 respectively. The appellant has

been convicted under Sections 489C and 489D IPC and sentenced to undergo rigorous imprisonment for a period of four years for the offence punishable under Section 489C IPC. The appellant has been further sentenced to undergo rigorous imprisonment for a period of five years and a fine of Rs.2,000/- in default simple imprisonment for a period of one month for the offence punishable under Section 489D IPC. Both the sentences have been directed to run concurrently.

2. As per the prosecution on 08.07.2004 they received secret information that one person who supplies counterfeit currency notes would come by Metro Rail and would go to Inderlok Cooler Market to supply counterfeit notes. Based on this information a raiding party apprehended one Farzanda. The said Farzanda, who was convicted along with appellant, was found carrying a polythene bag, a search of which led to the recovery of counterfeit currency notes in the denomination of Rs.500/- as well as Rs.100/-. On the disclosure statement of Farzanda, the appellant who resides at Mawana in Uttar Pradesh was arrested from his house and ten notes of Rs.1,000/- each, forty-four notes of Rs.500/- each and ten notes of Rs.50/- each were alleged to have been recovered from his house. A photocopy machine is also stated to have been recovered from the residence of the appellant.

3. Learned counsel for the appellant submits that he has instructions from the appellant, who is present in person, not to challenge his conviction on merits. However, counsel contends that a lenient view may be taken and the appellant may be released on the period already undergone which is more than 2½ years out of the total sentence of five years awarded to him by the trial court.

4. It has been contended that the appellant has aged parents who are ailing, a young wife and a four year old daughter who are entirely dependent on him for care and support.

5. In **B.G. Goswami vs. Delhi Administration**, 1973 SCC (Crl.) 796, the Supreme Court observed as under:-

“Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part

in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentence both lose their efficaciousness. One does not deter and the other may frustrate, thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after seven years of the agony and harassment of these proceedings when he is also going to lose his job and has to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs 200 to Rs 400. Period of imprisonment in case of default will remain the same.”

6. I have perused the nominal roll qua the appellant. It is observed that his conduct in jail has been satisfactory from the inception of his incarceration. The appellant is thirty-five years old as of today and was barely twenty-three years of age at the time of the commission of the offence.

7. There is no gainsaying the doctrine that punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole.

8. The present appeal was instituted in the year 2008 and the sentence awarded to the appellant has been under suspension since then. To send the appellant back to jail now after such a long gap would tantamount not only to inflicting agony and harassment on the appellant but would reduce his family members to penury considering that he is the sole breadwinner.

9. Having regard to the totality of circumstances, while upholding the conviction, the sentence awarded to the appellant, is reduced to the period already undergone by him. The appellant shall be set free if not wanted in any other case.

10. The appeal is disposed of in the above terms.

11. A copy of this order be given *dasti* to counsel for the parties.

SIDDHARTH MRIDUL, J

NOVEMBER 18, 2015

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