

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

RESERVED ON : 8th FEBRUARY, 2016

DECIDED ON : 21st MARCH, 2016

+ CRL.A.1179/2013

STATE (GOVT. OF NCT OF DELHI) Appellant

Through : Mr.Amit Gupta, APP.

VERSUS

MOHD. IQBAL & ANR. Respondents

Through : Mr.Vimal Puggal, Advocate for
Respondent No.1.

Mr.Ajay Verma, Amicus Curiae for
Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The present appeal has been preferred by the State to challenge the legality and correctness of a judgment dated 24.09.2011 of learned Addl. Sessions Judge in Sessions Case No.253/1/10 arising out of FIR No.16/08 PS Special Cell by which the respondents were acquitted of the charges. Appeal is contested by the respondents.

2. Briefly stated, the prosecution case as projected in the charge-sheet was that on 17.04.2008 on the basis of a secret information

recorded vide Daily Diary (DD) No.7 (Ex.PW-8/A), a raiding party was organised. At about 03.40 p.m., the respondent – Mohd Iqbal (R-1) was apprehended and a black colour bag was recovered from his right hand. On checking the bag, it was found containing two bundles of fake currency notes in the denomination of ₹500/- each to the tune of ₹1,70,000/-. It is further alleged that thereafter R-1 took the police team to Panipat and at his instance Mohd.Furqan (R-2) was arrested and from his possession 20 counterfeit currency notes in the denomination of ₹500/- each were recovered. Necessary proceedings were conducted. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against both of them in the Court for committing offences under Sections 489B & 489C IPC. The respondents pleaded not guilty to the charges and claimed trial. In order to establish its case, the prosecution examined 10 witnesses. In 313 Cr.P.C. statements, the respondents denied their involvement in the crime and pleaded false implication. After considering the rival contentions of the parties and on scrutinizing the evidence produced on record, the Trial Court, by the impugned judgment acquitted both the respondents of the charges. Being aggrieved and dissatisfied, the State has filed the instant appeal.

3. I have heard the learned counsel for the parties and have examined the file. On perusal of the record, it reveals that entire case of the prosecution is based on the testimonies of the police officials. No independent witness was associated at any stage of the investigation despite their availability. Usual explanation that the public persons were requested to join the investigation and they declined to do so has been furnished by the Investigating Officer which does not appeal to mind. Nothing has been explained as to why any government official was not requested to join the investigation as is primarily done in trap cases by ACB/ CBI. The Investigating Agency had ample time to join the independent public witness to give credibility to their case. Since no independent public witness was joined, testimonies of police officials require to be perused with great care and caution.

4. Both the respondents were charge-sheeted for committing offences under Section 489C. However, nothing emerged on record if fake currency notes allegedly recovered from their possession were sold to any individual. The secret information about the availability of R-1 along with fake currency notes was received in the morning hours and he was arrested at the spot at around 03.40 p.m. Investigation does not reveal as to from where the respondent No.1 had arranged or procured the huge

fake currency notes. Nothing surfaced on record as to, to whom R-1 was to deliver the counterfeit currency notes and for what consideration. R-1 remained at the spot for around 15 minutes, however, none came to him to collect any such fake currency notes. R-1 even did not contact any such individual on his phone during that time. It is unclear as to from where R-1 had arrived at the spot. At the time of conducting personal search vide memo Ex.PW-1/D, a mobile make Nokia 1108 was recovered from R-1. However, the Investigating Officer did not collect Call Details Records. It is unclear as to whom this mobile belonged. Nothing has emerged if R-1 had remained in contact with R-2 on any particular date for any particular duration. The prosecution case is that at about 11.30 p.m. R-1 took the raiding team to Panipat. There, he contacted R-2 on phone and asked him to collect the money received by him for sale of counterfeit currency notes. Strange enough, R-2 came at Panipat chowk along with 20 fake currency notes and was apprehended by the police then and there. Again no independent public witness was joined at that place. It is highly unbelievable that R-2 would come at odd hours at Panipat chowk to collect the sale proceeds of currency notes from R-1. Where was the difficulty for R-1 not to visit the house of R-2 to deliver the currency.

There was no occasion for R-2 to bring 20 fake currency notes in the

denomination of ₹500/- each at the time of his alleged meeting with R-1. R2's house was searched but no incriminating article was recovered from there. R2's landlord was not joined in the investigation. No plausible explanation has been offered by the Investigating Officer as to why the local police was not informed during their presence in the said area. The prosecution witnesses have given divergent statements as to the vehicle or vehicles used in the incident; who arranged it; who was the driver; and, who paid its fare. Apparently, the driver of the vehicle was not associated at the time of conducting investigation. No cogent and clinching evidence has come on record to show if R-1 and R-2 used to remain in contact with each other before the incident. Their involvement in any other similar transaction did not surface.

5. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the Trial Court have been succinctly explained by the Apex Court in a catena of evidence. In '*State of Goa vs. Sanjay Thakran & Anr.*', (2007) 3 SCC 75, it was held :

“16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal

unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with.”

6. Similar principle has been laid down by the Apex Court in the cases of ‘*State of Uttar Pradesh vs. Ram Veer Singh and Ors.*’, AIR 2007 SCW 5553 and in ‘*Girja Prasad (Dead) by LRs vs. State of M.P.*’, AIR 2007 SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

“It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper.”

7. In the light of above discussion, the appeal lacks merit and is dismissed. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

MARCH 21, 2016 / *tr*