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

Judgment Reserved on: May 19, 2016

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Judgment Delivered on: June 03, 2016

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CRL.A. No.819/2015

MOHD. AMZAD

..... Appellant

Through : Ms.Manika Tripathy Pandey,
Advocate (DHCLSC) and
Mr.Ashutosh Kaushik, Advocate.

Versus

STATE

..... Respondent

Through : Mr.Sudershan Joon, APP for State

PRATIBHA RANI, J.

1. This appeal has come up for hearing pursuant to the directions issued for expediting hearing in appeals filed by persons in custody (with sentence more than five years and upto seven years).

2. The instant appeal has been preferred by the appellant Mohd. Amzad challenging the judgment dated 17th April, 2015 and order on sentence dated 21st April, 2015 whereby he has been convicted for committing the offence punishable under Section 489B and 489C IPC and sentenced as under :

- (i) U/S 489B IPC : to undergo RI for seven years with fine of ₹25,000/- and in default of payment of fine, to undergo SI for six months.
- (ii) U/S 489C IPC : to undergo RI for five years

3. When this matter came up for hearing on 19th May, 2016, the appellant was produced from judicial custody. The appellant through his counsel submitted before the Court that though he had been convicted for the offence punishable under Section 489B & 489C IPC, he admits that he was in possession of Fake Indian Currency Notes (FICN) at the time of his apprehension, hence conviction for the offence punishable under Section 489C IPC may be maintained. However, he is aggrieved by his conviction for the offence punishable under Section 489B IPC as he was not trafficking or using the FICN as genuine. The appellant also prayed for leniency on the quantum of sentence explaining his family circumstances that he is married and has two children. He has a wife aged 26 years and two children aged 8 years (daughter) and 10 years (son) at the time he was sent to judicial custody. The mother of the convict is no more and father of the convict had married another woman and is living separately. His family does not have any source of income and he is the only sole bread earner of his family.

4. The prosecution case against the appellant is that on 23rd August, 2013 on the basis of secret information, a raiding party was constituted. On that date at about 8:25 PM, the appellant came on foot from Ring Road side and stopped near Bhairo Mandir. He was identified by the secret informer as Amzad and thereafter the secret informer left the spot. The appellant continued standing there for 15 minutes as if he was waiting for someone and thereafter started leaving. At that time the appellant was apprehended by the raiding party. The appellant disclosed his name and address and during his cursory search a bundle of currency notes of ₹1,000/- was found in the right pocket of his trousers and another bundle of currency notes of ₹500/-

was found in his left pocket which appeared to be fake. The sample of the FICN from the appellant were sent to Currency Note Press, Nasik Road, Maharashtra which confirmed the currency notes recovered from the appellant as well his co-accused to be fake.

5. From the above it is clear that right from inception the case of prosecution against the appellant was of being found in possession of FICN of ₹1.5 lacs. There is no evidence to show that the appellant was using the counterfeit currency notes as genuine. It is relevant to record here that the co-accused Rahim @ Salman from whom also the FICN were recovered stands acquitted vide impugned judgment. Another accused Nazira who was arrested on the basis of disclosure statement made by Rahim @ Salman has been discharged in this case.

6. In the case ***Umashanker Vs. State of Chhattisgarh***, AIR 2001 SC 3074, the Supreme Court had held as under:

“A perusal of the provisions, extracted above, shows that mens rea of offences under Sections 489B and 489C is, “knowing or having reason to believe the 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 a genuine forged or counterfeit currency-notes or bank-notes, is not enough to constitute offence under Section 489B of I.P.C. So also possessing or even intending to use any forged or counterfeit currency-notes or bank-notes is not sufficient to make out a case under Section 489C in the absence of the mens rea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mens rea. The high Court, however, completely missed this aspect. The learned trial judge on the basis of the evidence of P.W. 2, P.W. 4 and P.W. 7 that they were able to make out that currency note alleged to have been given to P.W. 4, was fake

“presumed” such a mens rea. On the date of the incident the appellant was said to be 18 years old student. On the facts of this case the presumption drawn by the trial court is not warranted under Section 4 of the Evidence Act. Further it is also not shown that any specific question with regard to the currency-noted being fake or counterfeit was put to the appellant in his examination under Section 313 of Criminal Procedure Code. On these facts we have no option but to hold that the charges framed under Sections 489B and 489C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Section 489B and 489C of I.P.C. and acquit him of the said charges.”

7. In the instant case there was no material against the appellant to convict him for the offence punishable under Section 489B IPC. Hence, the appellant is acquitted of the charge under Section 489B IPC.

8. So far as offence under Section 489C is concerned, the prosecution has been able to prove recovery of FICN of ₹1.5 lacs which fact is conceded by the appellant. Thus, the conviction of the appellant for committing the offence punishable under Section 489C IPC is maintained.

9. Coming to the quantum of sentence, the appellant has been acquitted of the charge under Section 489B IPC. So far as the sentence awarded to the appellant for committing the offence punishable under Section 489C IPC is concerned, in view of the facts and circumstances of the case and the submissions made on behalf of the appellant that he has a family consisting of wife and two minor children to look after and he is the only bread earner in the family, it would meet the ends of justice if the substantive sentence awarded to him is reduced to three years.

10. Accordingly, while maintaining the conviction of the appellant for the offence punishable under Section 489C IPC, the substantive sentence

awarded to him for the offence punishable under Section 489C IPC is reduced from seven years to three years.

11. The appeal stands allowed in the above terms.
12. Copy of the order be sent to the Jail Superintendent for information and compliance.
13. TCR be sent back alongwith copy of this order.

PRATIBHA RANI, J.

JUNE 03, 2016
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