

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.622 of 2015

Arising Out of PS. Case No. -29 Year- 2012 Thana -ECONOMIC OFFENCES, BIHAR District- PATNA

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CHHOTU SINGH @ CHHOTU SINGH SON OF LATE LAL BAHADUR SINGH
RESIDENT OF VILLAGE - DHATIAUNA TOLA - KISHANPUR, P.S. THAWA,
DISTRICT - GOPALGANJ.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

WITH

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Criminal Appeal (SJ) No. 756 of 2015

Arising Out of PS. Case No. -29 Year- 2012 Thana -ECONOMIC OFFENCES, BIHAR District- PATNA

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DEEPAK SINGH @ DEEPAK KUMAR SINGH, SON OF RAJ KISHORE
SINGH, RESIDENT OF VILLAGE- DHATIAUNA TOLA- KISHANPUR, P.S
THAWA, DISTRICT- GOPALGANJ.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

(In CR. APP (SJ) No.622 of 2015)

For the Appellant/s	:	Mr. Ranjan Kumar Jha, Adv. Mr. Dharamveer, Adv.
For the EOU	:	Mr. Vishwanath Pratap Singh, Sr. Adv. Mr. Vijay Anand, Adv.

(In CR. APP (SJ) No.756 of 2015)

For the Appellant/s	:	Mr. Ranjan Kumar Jha, Adv. Mr. Dharamveer, Adv.
For the EOU	:	Mr. Vishwanath Pratap Singh, Sr. Adv. Mr. Vijay Anand, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

C.A.V. JUDGMENT

Date: 30-06-2017

Criminal Appeal (SJ) No.622 of 2015 filed on behalf of
appellant, Chhotu Singh @ Chhotu Singh, Criminal Appeal (SJ) No.



756 of 2015 filed on behalf of Deepak Singh @ Deepak Kumar Singh originate against the common judgment of conviction dated 26.08.2015 and order of sentence dated 31.08.2015 passed by Additional Sessions Judge, Begusarai in Sessions Trial No.482 of 2013 convicting both the appellants for an offence punishable under Section 489(c) of the IPC and accordingly, sentenced each of them to undergo R.I. for five years as well as to pay fine of rupees five thousand in default thereof, to undergo S.I. for one month, additionally.

2. Krishna Kumar Gupta (PW.1), S.I. posted at Economic Offence Wing, Bihar, Patna had filed written report on the basis of which Economic Offence P.S. Case No.29 of 2012 was registered on 07.12.2012 under Sections 489(A), 489(B), 489(C) of the IPC divulging the fact that on 06.12.2012 at about 01:30 PM he received confidential information with regard to transportation of counterfeit Indian currency note by Deepak Singh and Chhotu Singh, resident of Gopalganj district from Bengal via Begusarai, Muzaffarpur whereupon superior officials were informed and as per direction, constituted a raiding party comprising Deepak Prakash, Rajesh Narain Verma, Sanjeev Kumar No.1, Arvind Kumar Rai along with he himself and proceeded through government jeep bearing registration no.BR01-PC-5236 driven by driver Ashok Kumar (constable). They proceeded at 02:00 PM. At about 06:00 PM while they were at Bairiya Bus Stand, Muzaffarpur they were further informed by the informer



that both the persons will travel through bus directly to Siwan/Gopalganj from the Begusarai in the night. Accordingly, they all rushed to Begusarai where they reached at about 09:45 PM. While they were staying at Begusarai Bus Stand, the informer again informed that aforesaid Deepak Singh and Chhotu Singh were proceeding towards Ramapati Petrol pump lying under Lakho O.P., Begusarai Muffasil P.S. wherefrom they will proceed through Jagdamba Travel whereupon, they rushed. After their arrival, they found two persons having resemblance of physical feature as disclosed by informer standing by the side of NH-31. As soon as they proceeded towards them, both of them began to flee who were chased and apprehended. On query they disclosed their identity as Deepak Kumar as well as Chhotu Singh (with full details). Seeing the event, staff of Mahatama Line Hotel, shopkeepers, passengers of the bus, bus staff along with others assembled, out of them, two persons were requested to stand as search and seizure witness who volunteered as Amardeep Paswan and Bipin Kumar in whose presence both the persons were searched. From the personal search of Chhotu Singh Rs.1,99,000/- of fake currency note each being denomination of one thousand (detailed), one note of one thousand denomination, genuine one, mobile ticket were seized while from the personal possession of Deepak Kumar Singh Rs.2,99,000/- fake Indian note each containing denomination of five hundred were seized. Furthermore, one currency note of five hundred denomination being genuine, one ticket, two



mobile sets were seized for that seizure list was prepared and a copy thereof was handed over to the respective accused. Accordingly, both of them taken into custody and were handed over to Officer-in-charge along with all the relevant documents.

3. Investigation commenced and after completing the same charge sheet was submitted whereupon trial commenced and concluded in a manner, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, there happens to be specific plea that nothing has been recovered from their possession even then, they have been victimized at the ends of prosecution party on account of their barbaric activities. However, neither any DW nor a chit of paper has been adduced.

5. While assailing the judgment of conviction and sentence impugned it has been submitted on behalf of learned counsel for the appellant that the judgment impugned, as has been passed without appreciating the flow persisting in the prosecution case, in mechanical manner on account thereof, is fit to be set aside. To substantiate the same, it has been submitted that both the seizure list witnesses (PW.9 as well as PW.10) have not supported the factum of search and seizure though they admitted their signature over the seizure list with an explanation and that being so, the search and seizure is not at all found substantiated by an independent witness.



6. It has also been urged by the learned counsel for the appellant that during course of examination of PW.8, an expert, it is evident that the material exhibits allegedly recovered from the possession of the appellants were not at all placed before her whereupon, there happens to be complete absence of the conclusive evidence as identification is not made by substantial evidence whether the notes allegedly recovered from the possession of the appellants were really examined by the aforesaid PW.8 being fake one and so, her finding relating to the currency note to be fake/counterfeit is not at all admissible in the eye of law.

7. Furthermore, it has also been argued that in spite of presence of so many persons at the spot, none of them were interrogated by the Investigating Officer nor they were cited as a witness on account thereof, the prosecution version became suspicious more particularly over apprehension of appellants near Ramapati Petrol pump over NH-31.

8. It has also been submitted that remaining witnesses happen to be the member of the raiding party whose evidence, in the facts and circumstances of the case, would not be acceptable, on account of being interested one. In its continuity it has also been submitted that once, the evidence of witnesses relating to the remaining charges having been framed against the appellants under Sections 489A, 489B of the IPC have been disbelieved, on account thereof, the same treatment would have been relating to the remaining



charge having under Section 489A(c) whereunder appellants have been held guilty and so, in sum and substance, it has been submitted that prosecution utterly failed to substantiate its case whereupon, appellants are entitled for acquittal.

9. The learned Special P.P. representing the economic offence has submitted that the judgment impugned is well reasoned, based upon factual as well as legal aspect and so, did not attract interference. Furthermore, it has also been submitted that though appellants at an initial stage were booked for an offence punishable under Section 489A, 489B of the IPC also including the present one which, the learned lower court rightly disbelieved on account of paucity of the evidence on that very score. However, so far possession of counterfeit Indian currency notes by these two appellants are concerned, the evidences of the PWs are consistent over the same. It has also been submitted that mere turning hostile by the seizure list witnesses who had accepted their presence over seizure list is not going to dent over its reliability. As such, the judgment of conviction and sentence recorded by the learned lower court is fit to be confirmed.

10. In order to substantiate its case, prosecution had examined altogether eleven PWs out of which PW.1 is Krishna Kumar Gupta, PW.2 is Deepak Prakash, PW.3 is Sanjeev Kumar, PW.4 is Rajesh Narayan Verma, PW.5 is Mithilesh Kumar Jha, PW.6 is Arvind Kumar Ray are the economic offence personnel while PW.7 is



Ashok Kumar Rai is the driver, PW.8 is Priyanka Singh Senior Scientist, FSL Patna, PW.9 is Amardeep Paswan, PW.10 is Bipin Kumar both search cum seizure list witnesses, PW.11 Sheo Charan Prasad Singh, formal in nature who had produced material exhibit. Side by side exhibited Ext.1- seizure list, Ext.2- written report, Ext.3- formal First Information Report Ext.4- Series Inculpatory Extra Judicial Confessional Statement of both the accused namely, Deepak Kumar Singh, Ext.5 Series-Interrogation report of both the appellant Deepak Kumar Singh and Chhotu Singh, Ext.-6- FSL Report, Ext.7 Series-Signature over seizure list witnesses. The prosecution also produced material exhibit which has been exhibited as Material Exhibit No.I-One hundred ninety nine notes of Rs.1000/-, Ext.I/1-200 currency note of Rs.500/-, Ext.I/2-Two hundred notes of Rs.500/-, Ext.1/3-One hundred ninety nine note of Rs.500/-.

11. In order to properly appreciate the evidences first of all Section 489(c) of the IPC is to be seen. For better appreciation the same is quoted below:-

“489C. Possession of forged or counterfeit currency-notes or bank-notes.—Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

12. From plain reading of the Section 489(c), it is evident that it needs following requirement to be satisfied at the end of the prosecution in order to have recording of guilt against the accused and



those are:-

- a. that the currency notes in question were forged or counterfeited;
- b. that the accused was in possession of them
- c. that he at the time of his possession knew or had reason to believe that they were forged or counterfeited; and
- d. that he intended to use them as genuine or that they might be used in genuine.

13. In *K. Hashim v. State of T.N.* reported in *AIR 2005 SC*

128 it has been held:

“**43.** Section 489-C deals with possession of forged or counterfeit currency notes or banknotes. It makes possession of forged and counterfeited currency notes or banknotes punishable. Possession and knowledge that the currency notes were counterfeited notes are necessary ingredients to constitute offence under Sections 489-C and 489-D. As was observed by this Court in *State of Kerala v. Mathai Verghese (1986) 4 SCC 746* the expression “currency notes” is large and wide enough in its amplitude to cover the currency notes of any country. Section 489-C is not restricted to Indian currency note alone but it includes the dollar also and it applies to American dollar bills.

44. The wording of Section 489-D is very wide and would clearly cover a case where a person is found in possession of machinery, instrument or materials for the purpose of being used for counterfeiting currency notes, even though the machinery, instruments or materials so found were not all the materials particular (*sic*) required for the purpose of counterfeiting.

45. Section 28 defines the word “counterfeiting” in very wide terms. The main ingredients of counterfeiting as laid down in Section 28 are:

- (1) causing one thing to resemble another thing;
- (2) intending by means of that resemblance to practise deception; or
- (3) knowing it to be likely that deception will thereby be practised.

Thus, if one thing is made to resemble another thing and the intention is that by such resemblance deception would be practised or even if there is no intention but it is known to be likely that the resemblance is such that deception will thereby be practised, there is counterfeiting. (See *State of U.P. v. Hafiz Mohd. Ismai AIR 1960 SC 669*)



46. In the said case it was observed that there is no necessity of importing words like “colourable imitation” therein. In order to apply Section 28, what the court has to see is whether one thing is made to resemble another thing and if that is so and if the resemblance is such that a person might be deceived by it, there will be a presumption of the necessary intention or knowledge to make the thing counterfeit, unless the contrary is proved.

47. “Counterfeit” in Section 28 does not connote an exact reproduction of the original counterfeited. Explanation 2 of Section 28 is of great significance. It lays down a rebuttable presumption where resemblance is such that a person might be deceived thereby. In such a case the intention or the knowledge is presumed unless the contrary is proved.”

14. In *Umashanker v. State of Chhattisgarh* reported in *AIR*

2001 SC 3074 it has been observed as follows:

“**8.** A perusal of the provisions, extracted above, shows that mens rea of offences under Sections 489-B and 489-C is “knowing or having reason to believe the currency notes or banknotes are forged or counterfeit”. Without the aforementioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency notes or banknotes, is not enough to constitute offence under Section 489-B IPC. So also possessing or even intending to use any forged or counterfeit currency notes or banknotes is not sufficient to make out a case under Section 489-C 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 PW 2, PW 4 and PW 7 that they were able to make out that the currency note alleged to have been given to PW 4 was fake, “presumed” such a mens rea. On the date of the incident the appellant was said to be an eighteen-year-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 notes being fake or counterfeit was put to the appellant in his examination under Section 313 of the Criminal Procedure Code. On these facts, we have no option but to hold that the charges framed under Sections 489-B and 489-C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Sections 489-B and 489-C IPC and acquit him of the said charges (see: *M. Mammutti v. State of Karnataka* (1979) 4 SCC 723).”

15. So far, credibility of evidence deposited by a police



officials are concerned, neither Evidence Act prescribes any kind of embargo nor there happens to be any kind of infirmity relating to their evidence on account of being police official. Their evidences are to be considered like any other witness subject to same treatment as has been held by the Hon'ble Apex Court in *Aher Raja Khima vs. State of Saurashtra* reported in AIR 1956 SC 217, *Tahir vs. State of (Delhi)* reported in AIR 1996 SC 3079, *P.P. Beeran vs. State of Kerala* reported in (2001) 9 SCC 571, *Abdul Majid Abdul Hak Ansari* reported in (2003) 10 SCC 198, *Lopchand Naruji Jat vs. State of Gujarat* reported in (2004) 7 SCC 566, *Girija Pd. Vs. State of M.P.* reported in (2007) 7 SCC 625.

16. In *Baldev Singh v. State of Haryana* reported in 2016 Cr.L.J 154, the Hon'ble Apex Court has summarized the issue in following manner:

“10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinized and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.

11. Observing that no infirmity is attached to the testimony of police officials merely because they belong to police force and that conviction can be based on the testimony of police officials in *Girja Prasad (dead) by LRs. vs. State of M.P.*, AIR 2007 SCW 5589 = (2007) 7 SCC 625, it was held as under:-

[24] In our judgment, the above proposition does not lay down correct law on the point. It is well-settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a Court of Law may not base conviction solely on the evidence of Complainant or a Police Official but it is not



the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a Police Official as any other person. No infirmity attaches to the testimony of Police Officials merely because they belong to Police Force. There is no rule of law which lays down that no conviction can be recorded on the testimony of Police Officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the Court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.

[25] It is not necessary to refer to various decisions on the point. We may, however, state that before more than half-a-century, in the leading case of *Aher Raja Khima v. State of Saurashtra*, AIR 1956 SC 217, Venkatarama Ayyar, J. stated: "The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefor. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration". (emphasis supplied)

[26] In *Tahir v. State (Delhi)*, (1996) 3 SCC 338, dealing with a similar question, Dr. A.S. Anand, J. (as His Lordship then was) stated:

"Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case."

17. The impact of seizure witnesses becoming hostile has been considered by the Apex Court in *Surender Singh v. State of Haryana* reported in (2006) 2 SCC (CrL.) 444.

"7. With regard to PWs 3 and 4 panch witnesses being turned hostile, this contention was also well considered by the trial court and the High Court. And both the courts held that their statements do not affect materially the prosecution story. PW 3 stated that pistol or cartridges or currency notes mentioned in Ext. PC were not recovered in his presence. He, however, admitted his signatures over Ext. PC and Ext. PD. PW 4 also stated that the pistol, cartridges or currency notes mentioned in Ext. PC were not recovered in his presence. He also admitted that Ext. PC and Ext. PD bear his signatures. Therefore, both the courts correctly held that Ext. PC and Ext. PD were recovered in the presence of PWs 3 and 4 who were panch witnesses."



18. Appreciating the settled proposition of law, as referred above, now the evidences are to be seen whether the same prove the allegation. From the evidence of PW.9, PW.10 it is apparent that though they have denied any kind of recovery in their presence and in likewise manner raised question over genesis of search cum seizure list and so, were declared hostile but they have admitted their presence over the search cum seizure list under Ext.7 Series, Hence, the event having been taken in their presence and for that search cum seizure list was prepared on their presence, is found duly sanctioned in the ye of law.

19. Now coming to the remaining witnesses, first of all evidence of PW.1, the informant is taken up who during course of his examination-in-chief had stated that after receiving confidential information regarding transportation of counterfeit Indian currency to Gopalganj via Muzaffarpur, they proceeded through government jeep after constituting a raiding party. After their arrival at Bairiya Bus Stand, Muzaffarpur he was informed regarding change of route by the miscreants who were to board in a bus at Begusarai and accordingly, they rushed. After arrival at Begusarai, they were again informed by the informer regarding boarding of miscreants at different place than bus stand whereupon they gone to Ramapati petrol pump where, they found two persons standing since before. When prosecution party proceeded towards them, they both began to flee were chased, apprehended and from their physical search, counterfeit Indian



currency in huge quantity as per seizure list were recovered for that, search cum seizure list was prepared. The aforesaid exercise was done in presence of PW.9, PW.10, seizure list witnesses. This witness on recall exhibited the material exhibit which was produced in court in sealed cover by PW.11. During his examination-in-chief on recall it is apparent that he had torned the sealed envelope in presence of P.O. which was sealed by the FSL laboratory where currency notes were sent for chemical examination and the details thereof, is incorporated whereupon, have been made material exhibits. During cross-examination, it is evident that nothing substantial has been explicit from his end in order to discredit his testimony save and except that they have not informed the Begusarai local police regarding their arrival as well as after arrest of the accused who were apprehended by the side of the road near Ramapati petrol pump. He had also stated that he had not put any specific mark over the bundle of counterfeits currency notes. He had also stated that all the seized articles were recovered from both the accused. He had prepared only one seizure list bifurcating the same. He had further stated that he had not put his signature over any of the counterfeit currency note. He had further stated that from perusal of the notes, it is apparent that it happens to be counterfeit. Furthermore, he had shown by demonstration in open court with regard to note being counterfeit as is evident from para-49, 50, 51, 52, 53, 54.

20. PW.2, PW.3, PW.4, PW.6 happens to be the member of



the raiding party who have reiterated the prosecution case and further, apprehension of these two appellants by the side of the road in front of Ramapati petrol pump and further, substantiating recovery from the possession of respective accused the counterfeit Indian currency, preparation of seizure list. During their cross-examination, it is apparent that save and except whether any specific mark were put over the seized counterfeit currency notes which each of the witnesses negatived, nothing substantial has been extracted their from.

21. PW.5 is the Investigating Officer who had deposed that after registration of Economic P.S. Case No.29/2012, he was entrusted with the investigation. He received copy of the First Information Report search cum seizure list, counterfeit notes, arrest memo along with two accused who were subsequently remanded to judicial custody. During course of investigation, he recorded further statement of the informant, statement of the members of the raiding party, took inculpatory extra judicial confessional statement of both the accused (Ext.4, 4/1 respectively) prepared interrogation report (5, 5/1). After getting permission from the court, got the seized material examined by the FSL laboratory, visited the place of occurrence and detailed the same under para-9 which happens to be flank of N.H.31, Near Ramapati Petrol Pump, received FSL report and submitted charge sheet. During cross-examination at para-14 he had stated that who had handed over counterfeit currency to the Officer-in-charge, he had not mentioned in the case diary. He had also stated that he had



incorporated in the case diary whether seized counterfeit currency notes were sealed or not. He had further stated that he had not tested from the travelling agent with regard to genuineness of the ticket from Jagdamba Bus Travel. He had not investigated whether there was stoppage of Jagdamba Bas at Ramapati petrol pump. He had also deposed that though the seized article were kept in Malkhana but the same has not been incorporated in the case diary.

22. PW.7 is the driver a sepoy having deployed at Economic Offence Wing, Patna who during examination-in-chief had stated that as per direction, he had driven the members of the vigilance raiding party comprising K.K. Gupta, Rajesh Kumar, Deepak Singh, Vikash Krishna and others to Muzaffarpur and therefrom, to Begusarai where, the concerned officials conducted raid, apprehended two persons and from their possession counterfeit currency notes in huge quantity were recovered. During cross-examination, it is evident that his deposition has not been challenged save and except that going one place to other is being maintained in a log book.

23. PW.8 is an expert who had examined the counterfeit currency notes found the same to be counterfeit Indian currency note whereupon, issued his report and had exhibited the same. During cross-examination, it is evident that she has not been examined over propriety of her report rather, to be effect that at the time of her examination, counterfeit Indian currency notes were not present.

24. From close scrutiny of the evidences having adduced on



behalf of prosecution it is apparent that apprehension of both the appellants in front of Ramapati petrol pump is found duly substantiated and in likewise manner recovery of huge number of counterfeit Indian currency notes from their physical possession having concealed in a manner, would not be located a glance. Non putting of specific mark over the seized counterfeit currency notes could be considered as prejudicial to the interest of co-accused and the answer, in the present facts and circumstances of the case happens to be in negative as, the search cum seizure list clearly discloses the serial no. of the counterfeit currency notes which were produced in court by way of material exhibit on recall by PW.1 and found tallied. Had there been some sort of manipulations, then in that event, appellants were in a position to challenge his evidence on that very score which they never did. So from the consistent evidence of the witnesses, it is apparent that recovery of counterfeit Indian currency notes in such huge quantity from the respective possession of both the appellants, not only satisfy, its possession, counterfeited Indian currency and concealment of such huge quantity of counterfeit currency notes by the respective appellants is indicative of the fact that appellants were knowing since before regarding being counterfeit Indian currency notes and further, the manner whereunder such huge quantity of counterfeit Indian currency notes were recovered happens to be indicative of the fact that it was to be used in order to spoil the Indian economy.



25. That being so, the finding recorded by the learned lower court did not attract interference, consequent thereupon, these appeal lack merit and are accordingly dismissed. In likewise manner, the sentence so inflicted by the learned lower court attracts also no interference. Appellant are under custody hence are directed to remain till saturation of the sentence.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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