

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.469 of 2016

(Against the judgment of conviction and order of sentence dated 10.5.2016 and 11.05.2016 passed by Additional District and Sessions Judge-IV, East Champaran at Motihari in Sessions Trial No. 690 of 2010, arising out of Sugauli P.S. Case No. 186 of 2010)

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Sameer, son of Id Mahmood, village-Khudanagar, P.S. Chatoni, District-West Champaran at Motihari.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bishwajeet Singh, Amicus Curiae

For the Respondent/State : Mr. Binod Bihari Singh

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 07-10-2017

Heard Mr. Bishwajeet Singh, Amicus Curiae on behalf of the appellant and Mr. Binod Bihari Singh, on behalf of the State.

1. This jail appeal has been filed against the judgment of conviction dated 10.5.2016 in Sessions Trial No. 690 of 2010 whereby the Additional District and Sessions Judge-IV East Champaran at Motihari has convicted the appellant for the offence under section 489(B) and 489(C) of the Indian Penal Code and passed order of sentence dated 11.05.2016 whereby the appellant was inflicted punishment of ten years and a fine of Rs. 20,000/- for the



offence punishable under sections 489(B) of the Indian Penal Code and 7 years and a fine of Rs. 10,000/- for the offence punishable under section 489(C) of the Indian Penal Code and in default of payment of fine, further sentenced to undergo R.I. for 12 months and 6 months respectively.

2. Mr. Bishwajeet Singh appearing on behalf of the appellants submitted that even if the case of prosecution on its face value is taken against the appellant. No offence is made out against the appellant under section 489(B) of the Indian Penal Code as there is absolutely no case of use of counterfeit currency and only the case under section 489(C) is applicable in the instant case, even if the allegation in its entirety is taken as proved against him.

3. For ready reference sections 489(B) and 489(C) are quoted as follows:-

Section 489(B)- “Whoever sells to, or buys or receives from any other person or otherwise traffics or uses as genuine any forged or counterfeit currency note or bank note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”.

Section 489(C)-“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.”

4. Referring to the materials available on record, Shri Bishwajeet Singh has rightly submitted that the appellant was found in possession of 22 currency notes which was allegedly counterfeit currency notes and there is no case that he used those counterfeit currencies and as such section 489(B) is not attracted in the instant case.

5. Mr. Singh referred that in the instant case the prosecution has not examined most material witness namely, Ram Babu Singh, the then Branch Manager, Uttar Bihar Gramin Bank, Sugauli who purportedly verified the seized notes at about 10.30 a.m. dated 22.6.2010. On the alleged seizure of counterfeit currency from the possession of the appellant there is absolutely no explanation from the prosecution for withholding the most relevant and material witnesses and as such he submitted that the court should draw adverse inference of non-production of material witnesses namely, Ram Babu Singh, the then Branch Manager in the instant case.

6. He has drawn attention of the court that the FSL report was not proved in the instant case which is another infirmity in the prosecution case which renders prosecution doubtful. Referring to



the deposition of P.W.-1 and P.W.-2 he submitted that the seizure witnesses P.W.1 has stated before the court that during the search by the police no article was recovered and he put his signature on the plain paper on the dictation of “Darogajee” The P.W.2 reiterated the same version like P.W.1 who was declared hostile by the prosecution and referring the statements of the aforesaid two witnesses, he submitted that whole story of seizure of counterfeit currency notes from the possession of the appellant is not established. He referred to the vital contradiction in the version of the prosecution witnesses and the statements of the seizure witnesses that nothing was seized from the possession of the appellant and submitted that in view of the aforesaid facts and circumstances, the prosecution has not been able to bring home the charges beyond all reasonable doubt.

7. Lastly he submitted that the appellant was arrested on 21.6.2010 and he has already served imprisonment for a period of six years and approximately eight months and as such he has already suffered substantive sentence as there is no case of use of counterfeit currency by the appellant and the maximum sentence is seven years for the offence punishable under section 489(C) of the Indian Penal Code.

8. Sri Binod Bihari Singh, appearing on behalf of the State has conceded that from the materials available on record, it appears that no case under section 489(B) is made out and the



punishment under section 489(C) is seven years. He also conceded that the appellant has already suffered sentence of six years and approximately eight months.

9. Considering the peculiar facts and circumstances of the case, I am of the considered view that no case under section 489(B) is made out against the appellant and maximum punishment under section 489(C) is seven years imprisonment against which the appellant has already served imprisonment for six years and eight months.

10. Accordingly, the appeal is allowed in part. The conviction of appellant under section 489(B) is set aside and the sentence for the offence under section 489(C) is modified as the period undergone by the appellant i.e. six year and approximately eight months and the bail bond of the appellant is discharged.

11. With the aforesaid modification, the appeal stands disposed of.

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
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