

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.426 OF 2010

WITH

CRIMINAL APPLICATION NO.1634 OF 2014

1 Allauddin Jallauddin Shaikh

Age-33 years, Occ: Labourer

2 Mamaruddin Mohammad Shaikh

Age-41 years, Occ: Labourer

Both residing at

Present Address:

**Sonapur Crematory, Near Masjid
Hutment, Below Reay Road Bridge,
Near Reay Road Railway Station,
Reay Road (W), Mumbai**

Permanent Address:

**At-Iyadali Tola, Post-Piyarapur,
Tal: Radhanagar, Dist-Sahebganj,
Zharkhand-State**

)...Appellants

V/s.

State OF Maharashtra

(At the instance of Sr.PI. Of D.C.B.C.I.D.

Police Station vide C.R.No.45/2009

)...Respondent

Mrs. Nasreen Ayubi, Advocate for the Appellants.

Mr. A.R.Kapadnis, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 16th FEBRUARY 2017.

ORAL JUDGMENT :

The Appellants/Original Accused Nos.1 and 2 by this appeal are challenging the judgment and order dated 3.5.2010 passed by the learned Ad-hoc Additional Sessions Judge at Sewree, Greater Bombay in Sessions Case No.419 of 2009 thereby convicting both of them of the offences punishable under Section 489-C read with Section 34 of the IPC. Both of them are sentenced to suffer RI for 5 years and to pay fine of Rs.5,000/- each in default to undergo further RI for one year. They, however, were acquitted of the offence punishable under Section 120-B of the IPC.

2 Facts in nutshell leading to the prosecution of accused persons can be summarised thus:

On 31.3.2009, the secret informant of Police Constable P.W.1-Rajesh Malusare gave confidential information to him to the effect that at about 2.30 p.m. of 31.3.2009, two persons are coming to Gokul Hotel, Sewree for circulating counterfeit currency notes. P.W.1-Rajesh Malusare transmitted this information to Police Inspector Mr. Sandbhor of the DCB, CID, who in turn entrusted further inquiry in respect of the information to P.W.3-Wilson Rodrigues, PSI of DCB, CID. Accordingly, two pancha witnesses including P.W.2-Sunil Sorte were summoned to the office of DCB, CID, Mumbai. Pancha witnesses took personal search of police

team so also police vehicle but nothing objectionable was found by them. Then pancha witnesses and the police team proceeded to Gokul Hotel, Sewree in a police vehicle. Police vehicle was stopped at a sufficiently long distance and by walk they all went to Gokul Bar and Restaurant situated near Sewree Railway Station. P.W.1-Rajesh Malusare, Police Constable, P.W.3-Wilson Rodrigues, PSI and secret informant sat inside the Gokul Bar and Restaurant whereas rest of the members of the raiding team and the pancha witnesses waited at a short distance from the said bar and restaurant. At about 2.15 p.m. of 31.3.2009, according to the case of the prosecution, both accused persons came at the said bar and restaurant and occupied the table. P.W.1-Rajesh Malusare then signalled raiding team including panchas who entered inside the Gokul Bar and Restaurant. Secret informant left the spot. Personal search of both the Appellants-Accused was taken. It is the case of the prosecution that from person of the Appellant-Accused No.1-Allauddin Shaikh, 18 counterfeit currency notes of Rs.500/- denominations each and 52 counterfeit currency notes of Rs.1,000/- each came to be seized. Similarly, 7 counterfeit currency notes of denomination of Rs.500/- each and 16 counterfeit currency notes of Rs.1,000/- denomination each came to be seized from person of the Appellant-Accused No.2-Mamruddin Shaikh. This seizure was effected vide panchanama Exhibit 20 in presence of pancha witnesses. The FIR Exhibit 17 was then lodged by P.W.1-Rajesh Malusare, Police Constable with

R.A.K.Marg Police Station, Mumbai and the same came to be recorded by P.W.4-Yashwant Sawant, PSI. Accordingly, Crime No.97 of 2008 for the offence punishable under Sections 498B, C and 120-B read with Section 34 of the IPC came to be registered. After necessary investigation, accused persons were charge-sheeted and after due trial, by the impugned judgment and order dated 3.5.2010, they are convicted of the offence punishable under Section 489C read with Section 34 of the IPC. Both the Appellants are sentenced as indicated in opening paragraph of this judgment.

3 I heard Ms. Nasreen Ayubi the learned Advocate for both the Appellants at sufficient length. She argued that prosecution has failed to examine owner of Gokul Bar and Restaurant in order to prove alleged offence. In her submission, entire evidence of the prosecution is lacunic as even entry of arrival of both the pancha witnesses is not taken at the entry gate of the office of the police. She further argued that for proving the alleged offence, mere possession of forged or counterfeit currency notes is not sufficient and possession of forged/counterfeit notes is not an offence. The learned Advocate further argued that what is required to be proved for bringing home the guilt of the Appellants/Accused is, therefore, *mens-rea* as having knowledge or reason to believe that what is possessed is counterfeit or fake currency notes is the mandate of law. This ingredient is missing

from the evidence of the prosecution and, therefore, in submission of the learned Advocate for the Appellants, Accused are entitled to acquittal.

4 The learned APP supported the impugned judgment and order of conviction by contending that both the accused were apprehended red handed by the police and fake currency notes were seized from their person.

5 I have carefully considered the rival submissions and also perused the record and proceedings including deposition of witnesses and documentary evidence adduced on record.

6 In the case in hand, conviction for the offence punishable under Section 489C of IPC read with Section 34 thereof came to be recorded by the learned Trial Court on the basis of evidence adduced by the prosecution. Section 489C of the IPC reads thus:

489-C. 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”

The first and foremost ingredient of this Section is that the accused must possess forged or counterfeit currency notes. However, mere possession is not enough to record conviction for the offence under Section 489C of the IPC. What is required to prove next is conscious possession of fake or counterfeit currency notes. Therefore, prosecution is obliged to establish by adducing cogent and clear evidence that at the time of possessing forged or counterfeit currency notes, accused persons were knowing that what they are possessing are forged or counterfeit currency notes. Such knowledge or reason for belief can also be established by surrounding circumstances emerging on record as conscious possession is a state of mind and the same is required to be inferred by all attending circumstances brought on record. Therefore, fate of each case depends upon its own facts. With this let us examine whether prosecution has proved that both the Appellants-Accused were having conscious possession of fake or counterfeit currency notes with them on 31.3.2009. P.W.1-Rajesh Malusare, Police Constable, P.W.2-Sunil Sorte, Pancha Witness and P.W.3-Wilson Rodrigues PSI are eye witnesses to the incident in question. If evidence of these three witnesses is ultimately found to be trust-worthy and reliable then, their evidence can be used to hold that accused persons were in possession of seized currency

notes which ultimately were found to be counterfeit as reported by Government Currency Note Press, Nashik vide its report Exhibit 22.

7 It is in the evidence of P.W.1 Rajesh Malusare Police Constable that on 31.3.2009, he received secret information from his informant that two persons are coming to Gokul Bar and Restaurant of Sewree for exchanging fake currency notes. His evidence as well as evidence of P.W.3-Wilson Rodrigues, PSI shows that this information was passed on to PSI Sandbhor of DCB, CID and then further proceedings in the matter were entrusted to P.W.3-Wilson Rodrigues, PSI. Evidence of both these witnesses coupled with the evidence of P.W.3-Sunil Sorte, Pancha witness goes to show that panchas were summoned to the office of DCB, CID on the very same day. The said office at the relevant time was located in the office of Commissioner of Police, Mumbai. P.W.2-Sunil Sorte and co-panch Ashok Kharat responded to the call of the police and attended the office of DCB, CID. Evidence of these witnesses and particularly that of P.W.2-Sunil Sorte, pancha witness shows that panchas took personal search of the members of the police team so also that of police vehicle but nothing objectionable was found.

8 As seen from the evidence of the prosecution, after conducting necessary formalities, police team led by P.W.3-Wilson Rodrigues, PSI and accompanied by pancha witness P.W.2-Sunil

Sorte and co-pancha Ashok Kharat left for Sewree by police vehicle. Evidence of P.W.2-Sunil Sorte and that of P.W.3-Wilson Rodrigues, PSI shows that at about 1.50 p.m. of 31.3.2009, they reached Gokul Bar and Restaurant. As seen from the evidence of P.W.1-Rajesh Malusare, Police Constable, P.W.2-Sunil Sorte, Pancha Witness and P.W.3-Wilson Rodrigues, PSI; secret informant, P.W.1-Rajesh Malusare and P.W.3-Wilson Rodrigues entered in the Gokul Bar and Restaurant and waited for accused persons to come whereas pancha witnesses and other members of the raiding team waited at distance of about 100 feet from the said bar and restaurant. Congruous evidence of these three witnesses goes to show that at about 2.15 p.m. of 31.3.2009, both the appellants-accused persons entered inside Gokul Bar and Restaurant and occupied table on the left side. P.W.1-Rajesh Malusare signalled to other members of the raiding party and pancha witnesses, who were waiting outside . They all entered into Gokul Bar and Restaurant whereas the secret informant left the spot.

9 Congruous evidence of P.W.1-Rajesh Malusare, Police Constable, P.W.2-Sunil Sorte and P.W.3-Wilson Rodrigues, PSI shows what happened next. Police team then apprehended both the Appellants-Accused persons and took their personal search. All three witnesses have unanimously stated that from person of the Appellant-Accused No.1-Allauddin, 18 counterfeit currency notes of Rs.500/- denominations each and 52 counterfeit currency notes

of Rs.1,000/- denominations each were recovered and seized. From person of the Appellant-Accused No.2-Mamruddin, 7 counterfeit currency notes of Rs.500/- denomination each and 16 counterfeit currency notes of Rs.1,000/- denomination each were recovered and seized. Seizure came to be effected by preparing seizure panchanama at Exhibit 20 and evidence of PW.3-Wilson Rodrigues shows that for the purpose of effecting seizure, seal was carried by the police team with them. Congruous and consistent evidence of these three witnesses is gaining further corroboration from contemporaneous seizure panchanama Exhibit 20.

10 A doubt is sought to be casted on the version of three eye witnesses to the incident by eliciting from their cross-examination that entry of pancha witnesses in the office of DCB, CID is not vouched from recording of the gate register. It is further brought on record that that police did not ascertain from the pancha witnesses as to whether they acted as panchas previously or whether any criminal case is pending against them. Evidence of PW.1-Rajesh Malusare is sought to be criticized by brining on record from his cross-examination that he has not given information in writing to his superior about the secret information gathered by him nor his superior has directed the action to be taken in writing. It is suggested to PW.1-Rajesh Malusare that he is not an expert in identifying the fake currency notes. It was

suggested to P.W.3-Wilson Rodrigues that note of departure of the police party was not taken in station diary. All these aspects are peripheral matters not touching to the core of the prosecution case. Those are clarified by the witnesses in their cross-examination itself. As panchas were brought for the official purpose, their names were not entered in the gate register. There is no further cross-examination to the effect that panchas are habitual pancha witnesses and as such, their version is unworthy of credit. As core of version of the prosecution witnesses is not shaken so far as it relates to effecting seizure of alleged counterfeit currency notes, minor discrepancies in their version and any consequential lacuna in the prosecution case is of no assistance to the defence. As such, in the wake of clear, consistent and cogent evidence of P.W.1, P.W.2 and P.W.3, I hold that prosecution has established the fact of seizure of currency notes of Rs.500/- and of Rs.1,000/- denominations from the accused persons as reflected in the seizure panchanama Exhibit 20. Evidence of P.W.1-Rajesh Malusare is gaining corroboration from the FIR Exhibit 17 lodged by him with promptitude with RAK Marg Police Station. Now question which falls for consideration is whether the Appellants-Accused were in conscious possession of those currency notes and whether those currency notes proved to be counterfeit currency notes. On this aspect it is in the evidence of Wilson Rodrigues PSI that on 22.4.2009 seized currency notes were sent for forensic examination to the Government Currency Note Press, Nashik. The

Report of the the Government Currency Note Press is at Exhibit 22. After examining the seized currency notes from the accused persons , the Government Currency Note Press has reported vide its report Exhibit 22 that recovered 25 currency notes of Rs.500/- denominations each and 68 currency notes of Rs.1,000/- denominations each are counterfeit currency notes for the reasons stated in the report. With this finding, prosecution has established that what came to be seized from the Appellants-Accused on 31.3.2009 were counterfeit currency notes.

11 Next question which requires consideration is whether the Appellants-Accused were having reason to believe that or whether they were having knowledge that what was possessed by them was fake currency notes. On this aspect, examination of both the accused persons under Section 313 of the Cr.P.C. assumes importance. It imputes knowledge of possessing fake currency notes. Both Appellants/Accused persons have taken a stand that they are dealing in business of fruits and in February, 2009, they had gone for purchase of fruits. While they were returning, police seized counterfeit currency notes and made enquiry from both of them. As per defence of both the Appellants-Accused Persons reflected from their statement under Section 313 of Cr.P.C. then police had taken them to the police station, released them on the next date with direction to apprehend person who was dealing in counterfeit currency notes. Since they failed to comply with the

same, police arrested them. This defence version coupled with the fact that several currency notes of higher denominations which were ultimately found to be counterfeit were found in possession of both the Appellants-Accused leads to the unresistable conclusion that both the Appellants-Accused were having knowledge so also reason to belief that they possessed counterfeit currency notes. In the result, appeal fails and the same is dismissed.

12 As the appeal itself is disposed of, nothing survives in the pending application therein and the same is also disposed of.

(A. M. BADAR, J.)