IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.147 OF 2016

MUJAMIL SAIFUDDIN SHAIKH)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Satyavrat Joshi, Appointed Advocate for the Appellant.

Mr.Vinod Chate, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 1st SEPTEMBER 2017

ORAL JUDGMENT :

1 By this appeal, the appellant / accused is challenging the judgment and order dated 20th September 2013 passed by the learned Additional Sessions Judge, Greater Bombay, Mumbai, in Sessions Case No.371 of 2012, thereby convicting him of the offence punishable under Section 489C read with Section 34 of the Indian Penal Code (IPC) and sentencing him to suffer rigorous imprisonment for 6 years apart from directing him to pay fine of

Rs.10,000/- and in default, to undergo simple imprisonment for the period of 1 year. By the very same judgment, co-accused Jahrul Shaikh came to be convicted of the same offence.

2 Briefly stated, facts leading to the institution of the present appeal are summarized thus :

(a) On 7th February 2012, secret information of PW1 Shabir Shaikh, Police Naik attached to V.P.Road Police Station, Mumbai, gave information to him that two persons in the age group of 22 to 25 years are coming to Tisara Bhoiwada Naka with counterfeit currency notes for purchasing gold. PW1 Shabir Shaikh immediately disclosed this information to superior officer namely Rajendra Chavan and Desai – both Police Inspectors as well as other police officers of the said Police station. It was decided to lay a trap and to apprehend the culprits. Accordingly, two panch witnesses were called. They were informed about purpose of summoning them. Police team accompanied by panch witnesses then went to Tisara Bhoiwada Naka of Mumbai, where secret informant of PW1 Shabir Shaikh was present. A trap was laid.

The secret informant then pointed out two persons who were carrying counterfeit currency notes. He signaled PW1 Shabir Shaikh. Police then apprehended those two persons who were ultimately found to be accused no.l Mujamil Shaikh and accused no.2 Jahrul Shaikh. From person of appellant / accused no.1 Mujamil Shaikh, seventy counterfeit currency notes of Rs.1,000/- denomination came to be recovered. Accused no.2 Jahrul Shaikh was found to be possessing 49 counterfeit currency notes of Rs.1,000/- denomination apart from one currency note of Rs.500/- denomination, four currency notes of Rs.100/- denomination and one currency note of Rs.10/- denomination. These remaining currency notes were ultimately found to be genuine.

(b) After recovering counterfeit currency notes from accused persons, the Investigating Officer took those counterfeit currency notes to nearby Bank of Baroda where PW4 Shridhar Sawant examined them on note counting machine and certificate Exhibit 25 came to be issued disclosing the fact that currency notes of Rs.1000/- denomination, 119 in number, are counterfeit. Those counterfeit currency notes were seized in presence of panch witnesses including PW5 Gurudatt Bobade. Accordingly, panchnama Exhibit 28 came to be prepared. PW1 Shabir Shaikh lodged report of the offence which resulted in registration of Crime No.30 of 2012 for the offence punishable under Section 489C read with Section 34 of the IPC with V.P.Marg Police Station. Subsequent investigation followed.

(c) Both accused persons, according to the prosecution case, gave voluntary disclosure statement which resulted in recovery of seizure of one counterfeit currency note of Rs.1,000/- denomination from a sandwich vendor named Uttam. It was found thereby that accused persons had used one of the counterfeit currency note as genuine. Seized counterfeit currency notes were send for examination to Government Currency Note Press at Nashik. On completion of investigation, charge-sheet came to be filed against accused persons.

(d) As accused persons abjured guilt, in order to prove the charge leveled against them, prosecution has examined in all seven witnesses. Informant Shabir Shaikh, Police Naik, is examined as PW1 whereas the report lodged by him on 7th February 2012 is at Exhibit 16. PW2 Amol Jadhav is a Constable who carried seized muddemal property to Currency Note Press at Nashik. PW3 Nandkumar Kamble is a panch witness to seizure of one counterfeit currency notes from a vendor named Uttam and exihibit 21 is that seizure panchnama. PW4 Shridhar Sawant is Head Cashier with Bank of Baroda who examined seized currency notes with the help of currency note counting machine. PW5 Gurudatt Bobade is a panch witness who accompanied the raiding party and in whose presence counterfeit as well as genuine currency notes came to be seized from accused persons. Exhibit 28 is the seizure panchnama of currency notes. PW6 Narayan Rane is a panch witness to voluntary disclosure statement and consequent recovery panchnama of one counterfeit currency note which was allegedly used by accused persons as genuine. PW7 P.S.I. Milind Kate is the Investigating Officer.

(e) Defence of accused persons before the trial court was that of total denial. They alleged that they are falsely implicated in the crime in question. The appellant / accused came up with a stand that he was never arrested from the spot but was arrested from his house at Kika Street on 6th February 2012 as he hails from Bangladesh.

(f) Upon hearing the parties, by the impugned judgment and order, the learned trial court convicted the appellant / accused Mujamil Shaikh and co-accused Jahrul Shaikh for the offence punishable under Section 489C read with Section 34 of the IPC, but they both were acquitted for the offence punishable under Section 489B read with Section 34 of the IPC. The appellant / accused came to be sentenced as indicated in the opening paragraph of this judgment.

3 I have heard Shri Satyavrat Joshi, the learned advocate appointed to represent the appellant / accused at the cost of the State. He argued that the prosecution has failed to prove

mensrea. In submission of the learned advocate appearing for the appellant / accused, evidence adduced by the prosecution for showing possession of counterfeit currency notes by the appellant / accused is scanty and laconic. Infact, the panchnama Exhibit 21 was signed by PW3 Nandkumar Kamble at the police station. As there is no evidence to show that accused persons including the appellant / accused was having knowledge or reason to believe that the currency notes were forged, the offence punishable under Section 489C of the IPC is not made out by the prosecution.

4 The learned APP supported the impugned judgment and order by contending that large number of counterfeit currency notes were seized from the person of the appellant / accused and he has no explanation to offer for this possession. The learned APP drew my attention to the statement of the appellant / accused recorded under Section 313 of the Code of Criminal Procedure and contended that the fact of possession of counterfeit currency notes was established within the knowledge of the appellant /

accused and he has not offered any explanation regarding the same. The learned APP, therefore, prayed for dismissal of the appeal.

5 I have carefully considered the rival submissions and also perused the record and proceedings including deposition of witnesses as well as documentary evidence adduced on record by the prosecution. The appellant / accused along with co-accused is convicted of the offence punishable under Section 489C of the IPC. The first and foremost ingredient of this Section is that the accused person must possess forged or counterfeit currency notes. At the same time, mere possession of counterfeit currency notes is not enough to record conviction for the offence punishable under Section 489C of the IPC. What is required to be proved next is conscious possession of fake or counterfeit currency notes by accused person. As such, prosecution is obliged to establish by adducing cogent and clear evidence that at the time of possessing forged or counterfeit currency notes, accused person was knowing that what was possessed by him is forged and 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 which cannot be established by tangible evidence. The attending circumstances are required to be considered for giving finding on this aspect.

6 Now let us examine whether factum of possession of counterfeit currency notes is proved by prosecution. On this aspect, the case of prosecution rests on evidence of three witnesses. Those are - PW1 Shabir Shaikh – Police Naik, who received the secret information and who had witnessed the incident of apprehending the accused persons with counterfeit currency notes, PW5 Gurudatt Bobade – who as a panch accompanied the police team which laid trap and apprehended accused persons, and PW7 P.S.I. Milind Kate – who was one of the members of the raiding team and who had witnessed the incident. Evidence of PW1 Shabir Shaikh and that of PW7 P.S.I. Milind Kate is congruous to the effect that the secret information sent by PW1 Shabir Shaikh, Police Naik, was transmitted by him to police

officers and other staff of V.P.Road Police Station, Mumbai, in morning hours of 7th February 2012. Both these witnesses deposed that then panch witnesses were summoned. PW5 Gurudatt Bobade – a panch witness corroborated version of these two witnesses by stating that on 7th February 2012, he was called to the police station to act as a panch witness and accordingly, he went to the police station and he was informed about the secret information received by PW1 Shabir Shaikh to the effect that two persons in the age group of 22 to 25 years are coming to Tisara Bhoiwada Naka with forged currency notes for purchasing gold. As seen from evidence of PW1 Shabir Shaikh, PW5 Gurudatt Bobade and PW7 P.S.I. Milind Kate, then police team accompanied by the panch witness went to Tisara Bhoiwada area of Mumbai. PW1 Shabir Shaikh deposed that his secret informant was standing near the spot and he pointed out two persons standing near cement platform as culprits who were possessing counterfeit currency notes. These three witnesses then congruously deposed that the police team nabbed those two persons who upon being questioned told them names as Mujamil Shaikh (appellant /

accused) and Jahrul Shaikh. All these three witnesses in unison deposed that from personal search of appellant / accused no.1 70 currency notes of Rs.1,000/- denomination came to be recovered. In similar way, 49 currency notes of Rs.1,000/- denomination came to be recovered from accused no.2 Jahrul Shaikh. As stated by PW1 Shabir Shaikh, PW5 Gurudatt Bobade and PW7 P.S.I. Milind Kate then those currency notes were verified from nearby Bank of Baroda.

7 Evidence of PW4 Shridhar Sawant, Head Cashier with Bank of Baroda, which is supported by contemporaneous certificate at Exhibit 25 goes to show that upon being tested on currency note counting machine, those 119 currency notes of Rs.1,000/- denomination were found to be counterfeit. Ultimately, in presence of PW5 Gurudatt Bobade those counterfeit currency notes came to be seized by preparing panchnama Exhibit 28.

8 It is argued that case of prosecution suffers from infirmity as PW1 Shabir Shaikh has admitted in cross-examination

that he is not an expert in assessing counterfeit currency notes and that the seized counterfeit currency notes are not having any mark or folding. It is further argued that PW5 Gurudatt Bobade, as seen from his cross-examination, was a panch witness in three cases and had deposed as such before the court of Metropolitan Magistrate at Mumbai. The question which requires consideration is whether a person, who had acted as a panch witness in past, is an untrustworthy witness, and whether if a panch is found to be a regular panch witness used by police, then the entire evidence regarding seizure witnessed by such panch, gets washed off from the record. There are many occasions in which police use services of a person who had previously acted as a panch witness. Many a times panch witnesses turn hostile to prosecution. However, still evidence of the Investigating Officer available on record can be considered for proving the fact. The Hon'ble Supreme Court has time and again held that if panch witnesses have not supported the case of prosecution, evidence as to recovery need not be rejected on that count. However, to prove recovery, prosecution must adduce clear and cogent evidence of other witnesses in that regard. Evidence of the Investigating Officer is one such evidence. In the case in hand, recovery and seizure of currency notes came to be witnessed by PW1 Shabir Shaikh and PW7 P.S.I. Milind Kate, who were part of the police team, which laid the trap. Their evidence regarding seizure of 70 currency notes of Rs.1,000/- denomination from person of the appellant / accused is not at all shaken in cross-examination. Hence, even if we ignore evidence of PW5 Gurudatt Bobade on this aspect, still with clear, cogent and trustworthy evidence of PW1 Shabir Shaikh and PW7 P.S.I. Milind Kate, prosecution has proved recovery of 70 currency notes of Rs.1,000/- denomination from the appellant / accused no.1.

9 Currency notes seized from the appellant / accused were sent to Government Currency Notes Press, Nashik, with PW2 Amol Jadhav. Those were examined at the said press and the report of examination of currency notes seized from the appellant / accused came to be placed on record of the learned trial court at Exhibit 22. This report goes to show that all seventy

currency notes of Rs.1,000/- denomination seized from the appellant / accused were counterfeit.

10 Now the question which falls for consideration is whether the appellant / accused was knowing or had reason to believe that the currency notes which were in his possession were forged or counterfeit currency notes. On this aspect, examination of the appellant / accused under Section 313 of the Code of Criminal Procedure assumes importance. It imputes knowledge of possession of counterfeit currency notes by him. Despite questions being put to him, the appellant / accused had not given any plausible reason for possessing counterfeit currency notes in huge number of the highest denomination available at that time i.e. in the year 2012. On the contrary, he came up with a stand that he was arrested from his house, he being a Bangladeshi. In absence of any plausible explanation regarding possession of such a huge quantity of high denomination currency notes, particularly in the light of the fact that this fact of possession was especially within the knowledge of the appellant / accused, it needs to be held that

he was possessing those counterfeit currency notes knowingly and having reason to believe that those were forged currency notes.

11 In the result, the appeal is devoid of any substance and the same is dismissed.

12 A copy of the judgment be forwarded to the appellant / accused at the concerned prison where he is undergoing jail sentence.

(A. M. BADAR, J.)