

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Appeal S-1816-SB of 2004
Date of Decision: February 28, 2017**

Mukesh Kumar and another	Versus	Appellants
State of Haryana		 Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. B.S. Saroha, Advocate
for the appellants.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

T.P.S.MANN, J. (Oral)

The appellants, namely, Mukesh Kumar and Naresh Kumar alongwith Rajender Singh @ Rajender Kumar and Vijay Kumar were tried for committing offences punishable under Sections 234, 235, 240, 242 and 120-B IPC. Vide judgment and order dated 2/3.9.2004, learned Additional Sessions Judge, Sonapat, acquitted Rajender Singh @ Rajender Kumar and Vijay Kumar accused of all the charges against them. The appellants were also acquitted for

the offences under Sections 234, 235 and 120-B IPC. However, they were convicted under Section 240 IPC and sentenced to undergo rigorous imprisonment for a period of three years with fine of Rs.1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months. They were also convicted under Section 242 IPC and sentenced to undergo rigorous imprisonment for a period of one year with fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month. Both the substantive sentences of imprisonment were ordered to run concurrently. The period already undergone by them during the course of investigation or trial was ordered to be set off against the period of substantive sentence of imprisonment imposed upon them.

Aggrieved of their conviction and sentence, the appellants filed the present appeal, which stood admitted and the record of the trial Court duly requisitioned.

According to the prosecution, on 24.6.2000, SI Mahabir Singh, Station House Officer, Police Station Sadar, Sonapat alongwith other police officials was on patrolling duty at Fazilpur turning point near Truck Union, Bahalgarh Road, Sonapat, where he received a secret information that Mukesh

Kumar had gone towards village Fazilpur and having counterfeit coins of the denomination of Rs.5/- each in order to supply those coins in the market. Further, he was also having a machine, die and other material for preparing the counterfeit coins. In case a raid was conducted, he could be apprehended. Noticing the commission of cognizable offences under Sections 234, 235, 240 and 242 IPC, SI Mahabir Singh sent a ruqa to the police station, where on its basis FIR No. 145 dated 24.6.2000 was registered.

It is also the case of the prosecution that on 25.6.2000, Mukesh Kumar and Rajender Singh @ Rajender Kumar, accused were arrested. From the possession of Mukesh Kumar, 25 counterfeit coins of the denomination of Rs.5/- each were recovered. On 28.6.2000, Naresh Kumar accused was arrested and he was found in possession of 9 counterfeit coins of the denomination of Rs.5/- each. Vijay Kumar accused was also arrested on 10.1.2001.

Upon completion of the investigation, the police presented final report under Section 173 Cr.P.C. against the four accused. The case was, thereafter, committed to the Court of Sessions, where they were charged for the aforementioned offences, to which, they pleaded not guilty and claimed trial.

After going through the evidence brought on the record and hearing the learned counsel for the parties, the trial

Court convicted and sentenced the appellants under Sections 240 and 242 IPC only and sentenced them, as mentioned above.

From the evidence, it is made out that both the appellants were found in possession of counterfeit coins of the denomination of Rs.5/- each. It is true that three independent witnesses, namely, PW5 Krishan Lal, PW8 Sultan Singh and PW13 Harmender Singh did not support the prosecution case and were declared hostile but that is not a ground to absolve the appellants from the liability for committing the offence punishable under Section 242 IPC only. No offence under Section 240 IPC is made out as there is no evidence that any of the two appellants had delivered the counterfeit coins to any person. Whatever material is available on the file is in the nature of disclosure statements made by the appellants during their interrogation by the police and as there is no evidence that the appellants had delivered the coins to any other person, their conviction under Section 240 IPC cannot be sustained. At the same time, as the appellants were found in possession of counterfeit coins, they have rightly been convicted by the trial Court under Section 242 IPC.

The appellants are facing the agony of the criminal prosecution for the last about 16 years. When they were heard by the learned trial court under Section 235 Cr.P.C., they had

pleaded that they were poor persons and sole bread winners of their respective families. Further, they were not previous convicts.

As per the custody certificates already brought on record by the learned State counsel, Mukesh Kumar appellant has already undergone an actual period of two months and five days whereas Naresh Kumar appellant has undergone one month and twenty days. They were not shown to be either involved or convicted in any other case. There is no allegation that they have misused the concession of bail in any manner.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the appellants behind the bars, once again, for undergoing the remaining sentence of imprisonment imposed upon them for the offence under Section 242 IPC. Ends of justice shall be suitably met, if their substantive sentence of imprisonment is reduced to the one already undergone by them.

Resultantly, the conviction and sentence of imprisonment and fine of the appellants under Section 240 IPC is set-aside. Their conviction under Section 242 IPC is upheld. Their substantive sentence of imprisonment is reduced to the one already undergone by them. The fine of Rs.500/- imposed by the trial Court is, however, enhanced to Rs.3,000/- each. The fine amount be deposited by the appellants with the learned Chief

Judicial Magistrate, Sonapat, within three months from today, failing which, they shall undergo rigorous imprisonment for three months.

The appeal is, accordingly, disposed of.

February 28, 2017
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No