

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

**Criminal Appeal S-1834-SB of 2004
Date of Decision: October 24, 2017**

Yusuf and another	Versus	Appellants
State of Haryana		 Respondent

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

Present : Mr. Subhash Godara, Advocate for
Mr. S.S. Dinarpur, Advocate
for the appellants.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

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

The appellants, namely, Yusuf and Liyakat Ali alongwith Rifakat Ali and Jagir Singh were tried for committing the offences punishable under Sections 120-B, 489-A, 489-B and 489-C IPC. Vide judgment and order dated 9.9.2004/10.9.2004, learned Additional Sessions Judge, Yamunanagar at Jagadhri acquitted Rifakat Ali and Jagir Singh of all the charges against them. The appellants were also exonerated of the charges under Sections 489-A and 489-B read with Section 120-B IPC. However, they were convicted under Section 489-C read with Section 120-B IPC and sentenced to

undergo rigorous imprisonment for five years and to pay a fine of Rs.2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year. The fine amount was deposited by them there and then.

Aggrieved of their conviction and sentence, the appellants filed the present appeal, which was admitted on 23.9.2004. Subsequently, vide order dated 4.10.2004, a co-ordinate Bench of this Court suspended their sentences of imprisonment and ordered their release on bail during the pendency of the appeal.

According to the prosecution on 8.9.1999, A.S.I. Lajja Ram while in company of other police officials was present at Nagal Chowk in connection with patrolling where complainant Om Prakash came and made a statement to the effect that he was resident of village Naharpur whereas his brother Naresh Kumar was living in Saudi Arabia. Naresh Kumar's wife Maya Devi had opened an account in the State of Bank of India, Branch Naharpur. On 4.9.1999, she withdrew a sum of Rs.10,000/- from her account. The amount was in the denomination of Rs.100/- each, which were given to her by Jagir Singh, Cashier of the Bank. Rs.7,000/- was spent by her at home and on 7.9.1999, she handed over remaining Rs.3,000/- to him for depositing the same in his account in the same bank. When he presented Rs.3,000/-

for depositing after filling a voucher, Umesh Bali, Cashier returned the same to him as according to him the notes were counterfeit. The complainant apprised the Branch Manager that his sister-in-law had withdrawn this amount on 4.9.1999 but the Manager did not listen to him. Accordingly, on the basis of statement made by complainant Om Parkash on the aforementioned lines, FIR No. 38 dated 8.9.1999 was registered at Police Station Jathlana.

During the investigation of the case, ASI Lajja Ram took into possession 30 counterfeit notes of the denomination of Rs.100/- each. Statements of the witnesses were recorded. Yusuf appellant suffered a disclosure statement pursuant to which he got recovered 200 counterfeit currency notes of the denomination of Rs.100/- each. Similarly, Liyakat Ali appellant got recovered 15 counterfeit currency notes of the denomination of Rs.100/- each pursuant to the disclosure statement suffered by him.

After hearing learned counsel for the parties and on going through the evidence examined by the prosecution, learned trial Court believed the prosecution case regarding the involvement of the appellants in the commission of the crime and, accordingly, convicted and sentenced them, as mentioned above.

Learned counsel for the appellants has submitted that

the conviction of the appellants for the offence under Section 489-C IPC read with Section 120-B IPC is not sustainable as disclosure statements said to have been made by the appellants were not supported by any independent evidence. On the other hand, only police officials have been examined, who have stated about making of alleged statements by the two appellants.

From a perusal of the record, it is made out that Yusuf appellant had suffered a disclosure statement Ex.PM pursuant to which he got recovered 200 counterfeit currency notes of the denomination of 100/- each. The said disclosure statement was recorded by SI Dhanna Ram and witnessed by ASI Lajja Ram and Head Constable Gopi Chand besides Girdhari Lal, Sarpanch whereas Liyakat Ali appellant suffered disclosure statement Ex.PEE before SI Dhanna Ram, which was witnessed by Head Constable Phool Chand and Jai Narayan @ Pappu and got recovered 15 counterfeit currency notes of the denomination of Rs.100/- each. Girdhari Lal was examined by the prosecution as PW12 in support of its case whereas Jai Narayan @ Pappu was not examined. PW12 Girdhari Lal mentioned about the recovery of the counterfeit currency notes from the residence of Yusuf appellant. However, he stated that the recovery was effected on 8.9.1999 whereas according to the prosecution, it was effected on 12.9.1999. Further, before Yusuf appellant got recovered the

counterfeit currency notes, the police had given him beatings. On that ground alone, it cannot be said that the conviction of the two appellants stands vitiated. SI Dhanna Ram had testified in unequivocal terms that it were the appellants, who had suffered disclosure statements leading to the recovery of counterfeit currency notes from their houses. The defence has not been able to bring on record any material which might suggest that the police officials were having any grudge against the appellants. The police officials are as good witnesses as anyone else and their testimonies cannot be discarded merely on the ground that they are official witnesses. It may also be mentioned here that the recovery was effected in the month of September, 1999 whereas PW12 Girdhari Lal had deposed in the year 2002 about the recovery. After such a long time, the witnesses could not have remembered about what had happened at the time when the appellants had suffered disclosure statements leading to the recovery of counterfeit currency notes.

Another argument raised by learned counsel for the appellants pertains to non-production of the expert witness, who had stated about the currency notes recovered to be counterfeit. From a perusal of the reports Ex.PAA and Ex.PBB, it is made out that they had been prepared by Shri Gulshan Rai, Assistant Director, Forensic Science Laboratory, Haryana, Madhuban

(Karnal). Section 293 of the Code of the Criminal Procedure makes the reports prepared by Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or State Forensic Science Laboratory admissible without the production of the expert, who had prepared the same. At no stage, the appellants made any attempt to call for the aforementioned expert so as to examine him in regard to the contents of the aforementioned reports. As such, no benefit on the ground of expert witness having not stepped into the witness box in order to prove the reports Ex.PAA and Ex.PBB can be extended to them.

In view of the above, no case is made out for any interference in the impugned judgment of conviction passed by the learned trial Court.

As regards the quantum of sentence, it may be noticed that the appellants are facing the agony of criminal prosecution for the last about eighteen years. When they were heard by the learned trial Court on the quantum of sentence, they had pleaded that they were the only bread winners of their respective families.

As per the custody certificates already brought on record by the learned State counsel, the two appellants have already undergone an actual period of seven months and

nineteen days. They are on bail pursuant to the order passed by this Court on 4.10.2004. It may also be mentioned here that apart from the present case, the appellants are shown to be involved in two other criminal cases, i.e. FIR No. 109 dated 10.9.1999 under Sections 489-B/120-B/201 IPC, Police Station Chhachhrauli; and, FIR No.265 dated 16.9.1999 under Section 489-B IPC, Police Station City Jagadhri.

Learned counsel for the appellants has placed on record certified copy of the judgment dated 8.8.2003 passed by learned Additional Sessions Judge, Yamunanagar at Jagadhri whereby both the appellants stood acquitted in FIR No. 265 of 1999 under Sections 489-B and 489-C IPC, registered at Police Station City Jagadhri. He has also submitted that the appellants stand convicted and sentenced in FIR No.109 dated 10.9.1999, Police Station Chhachhrauli and they have challenged their conviction and sentenced by filing Criminal Appeal S-1419-SB of 2004.

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 their remaining sentences of imprisonment. Ends of justice shall be suitably met, if their substantive sentences of imprisonment are reduced to the one already undergone by them.

Resultantly, the conviction of the appellants under Section 489-C read with Section 120-B IPC is upheld. Their substantive sentences of imprisonment are reduced to the one already undergone by them. The fine of Rs.2,000/- is, however, enhanced to Rs.10,000/- each. The enhanced amount of fine shall be deposited by the appellants in the Court of learned Chief Judicial Magistrate, Yamunanagar at Jagadhri within a period of three months from today, failing which, they shall undergo rigorous imprisonment for one year each.

The appeal is, accordingly, disposed of.

October 24, 2017

amit rana

(T.P.S. MANN)

JUDGE

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