

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

1. CRA-S-492-SB-2004

Prem Chand

.....Appellant

Versus

State of Haryana

..... Respondent

2. CRA-S-694-SB-2004

Dinesh Partap Singh

.....Appellant

Versus

State of Haryana

..... Respondent

Date of decision :01.11.2017

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. Ivan Singh Khosa, Advocate for
Mr. Shiv Kumar, Advocate
for the appellant in CRA-S-492-SB-2004.

Mr. Pranav Chadha, Advocate, as Legal Aid
counsel for the appellant in CRA-S-694-SB-2003.

Mr. Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

Vide this judgment I propose to dispose of two criminal appeals i.e. **CRA-S-492-SB-2004** filed by accused - Prem Chand and **CRA-S-694-SB-2004** filed by accused - Dinesh Partap Singh, both of them were convicted vide judgement dated 03.02.2004 and sentenced vide order dated 04.02.2004 by learned Additional Sessions Judge (I), Faridabad. These accused / convicts pray that appeals filed by them be accepted, the impugned judgment of their conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated the prosecution story is that on 21.09.2001 complainant – Ram Dev selling vegetables on a hand cart was approached by accused – Dinesh Partap Singh who purchased potato from him worth ₹10/- and handed over a currency note of denomination of ₹100/- which was a counterfeit one. The complainant took such accused to Police Station, City Palwal and submitted application Ex.PA there regarding the incident. ASI Om Parkash appended his endorsement below the same and formal FIR Ex.PA/1 was recorded on the basis thereof. Such accused was arrested in this case. The currency notes in question so produced by the complainant was taken into police possession, personal search of accused - Dinesh Partap Singh revealed that he was carrying two similar currency notes of ₹100/- each in the right pocket of the pants which he was wearing, those were also seized, the recovery memo Ex.PE was prepared.

Accused Dinesh Partap Singh was interrogated during the course of which he suffered a disclosure statement that he was indulging in circulation of counterfeit notes with the help of his co-accused - Prem Chand, whom he could get arrested. Subsequently in pursuance of said

disclosure statement accused – Dinesh Partap Singh got accused Prem Chand arrested on 23.09.2001. Personal search of accused – Prem Chand was conducted and a counterfeit currency note of denomination of ₹100/- was recovered from the pocket of the pant which he was wearing. The same was taken into possession vide recovery memo. Rough site of place of recovery was prepared, three counterfeit currency notes recovered from the possession of accused – Dinesh Partap Singh Ex.P1 to Ex.P3 and a counterfeit currency note recovered from accused – Prem Chand Ex.P4 were sent to Bank Note Press, Dewas (MP), Government of India and as per report Ex.PL received from there, they were found to be counterfeited.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Illaqa Magistrate. On presentation of challan in the Court, copies of documents relied upon therein were supplied to the accused free of accused as provided under Section 207 Cr.P.C., then finding that since the offences for which the accused had been booked were triable by the Court of Sessions, the case was committed there, then it was assigned to Additional Sessions Judge (I), Faridabad.

Finding a prima case, Additional Sessions Judge (I) Faridabad, framed charge against accused – Dinesh Partap Singh for offences under Sections 489-B and 489-C IPC whereas his co-accused Prem Chand was charge-sheeted for offence under Section 489-C IPC, both the accused pleaded not guilty to the charge and claimed trial.

During the course of prosecution evidence, it examined as many as eight witnesses i.e. Om Parkash ASI as PW-1, Raghbir Singh MHC

as PW-2, Omparkash as PW-3, Ram Dev – complainant as PW-4, Ishwar Singh HC as PW-5, Beg Raj Constable as PW-6, Munesh as PW-7 and Ramesh Chand ASI as PW8.

With that the prosecution evidence got concluded.

Statements of accused under Section 313 Cr.P.C. were recorded in which all the incriminating circumstances appearing against the accused were put to them, but they denied the assertions contending that they are innocent and have been falsely involved in this case.

The accused did not lead any evidence in defence.

After hearing arguments learned trial Court convicted the accused. Accused Dinesh Partap Singh was convicted for offences under Section 489-B and 489-C IPC whereas accused Prem Chand was convicted for offence under Section 489-C IPC vide order of sentence dated 04.02.2004 and they were sentenced as follow:-

“Accused – Dinesh Partap was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹1,000/- for offence under Section 489-B IPC and in default of payment of said amount to undergo further rigorous imprisonment for nine months.

He was further sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹500/- for offence under Section 489-C IPC and in default of payment of said amount to undergo further rigorous imprisonment for six months.

Both the substantive sentenced were ordered to

run concurrently.

***Accused – Prem Chand** was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹500/- for offence under Section 489-C IPC and in default of payment of said amount to undergo further rigorous imprisonment for six months.”*

Feeling aggrieved, both the accused – convicts had approached this Court by filing respective appeals.

I have heard learned counsel for the parties, besides, going through the record.

Learned counsel for the appellants has referred to citation **Umashanker vs. State of Chattisgarh 2001(4) RCR (Criminal) 444** by the Apex Court wherein it was observed that *when it was not shown that accused had knowledge or reason to believe that currency notes were fake the mens rea is not proved, no offence under Section 489-B and Section 489-C is made out as these provisions are not meant to punish unwary possessor or users of counterfeit currency notes.* There cannot be any dispute with such proposition of law but here the facts and circumstances of the case clearly show that both the accused were aware of the fact that they were carrying counterfeit Indian currency notes, therefore, this authority is not of much help to the petitioners.

The other authority referred was **Ramlath vs. Nasar and others 2009(4) RCR (Criminal) 921** wherein it was observed that *when a Court had summoned a person as a prosecution witness, but witness did not speak truth, then evidence given by witness cannot be used for prosecution*

him. Again there is no dispute with such proposition of law, but here the situation is quite different. No prosecution witness is going to be prosecuted and both the accused are shown to be in possession of counterfeit notes having knowledge thereof.

The trial Court had convicted accused Dinesh Partap Singh for offence under Sections 489-B and 489-C whereas accused Prem Chand has been convicted for offence under Section 489-C, as far as conviction of both the accused for offence under Section 489-C is concerned, the trial Court was justified in doing so, since the prosecution had led sufficient evidence to show that such accused had been found to be in possession of counterfeit currency notes, whereas conviction of accused Dinesh Partap Singh for offences under Section 489-B is not sustainable since evidence is lacking that he had used the counterfeit currency notes recovered from his as genuine.

The star witness for the prosecution to prove the fact that such accused had given a counterfeit currency of ₹100/- denomination after purchasing potato worth ₹10/- to the vegetable seller Ram Dev – complainant who appeared as PW-4, but then he did not toe the prosecution line and was declared hostile witness, although he had submitted a written complaint to the police in that regard which formed basis for registration of the FIR, but then FIR is not substantive piece of evidence, the allegations in the FIR are required to be proved by leading evidence and do not get proved ipso facto. The complainant having not lent support to the prosecution story. As regards accused Dinesh Partap Singh trying pass-off the counterfeit currency note of 100 denomination to him after purchase potato

worth ₹10/- it is not established on the record that such accused had tried to use counterfeit currency notes as genuine. Therefore, the conviction of accused – Dinesh Partap Singh for offence under Section 489-B by the trial Court is set aside, whereas conviction of both the accused for offence under Section 489-C is maintained, since the accused were found in possession of counterfeit Indian currency notes, in that way they were out to adversely affect the economy of the country. Such type of convicts need to be curbed sternly, therefore, sentence awarded to both the accused-convicts for offence under Section 489-C cannot be said to be on higher side and does not call for any reduction, as such the appeals filed by the appellant – Dinesh Partap Singh is accepted partly, inasmuch his conviction and sentence under Section 489-B is set aside, whereas his conviction and sentence under Section 489-C is maintained.

Appeal filed by appellant – Prem Chand stands dismissed.

Orders dated 04.3.2004 and 29.03.2004 suspending sentences of the appellants are cancelled. Chief Judicial Magistrate, Faridabad is directed to issue non-bailable warrant against the appellants and to take them into custody so as to make them undergo the remaining part of their sentences.

01.11.2017
Gaurav Sorot

(H.S. MADAAN)
JUDGE

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**