

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.570 of 2015**

Arising Out of PS.Case No. -74 Year- 2012 Thana -PALANWA District- EASTCHAMPARAN
(MOTIHARI)

=====

Sohan Sah, S/o Moti Lal Sah, resident of village- Bherihari, P.S.- Pokhariya,
District- Parsa (Nepal)

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Dewendra Narayan Singh-Advocate

For the Respondent/s : Mr. Bipin Kumar-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 14-08-2018

Appellant Sohan Sah has been found guilty for an offence punishable under Section 489(A) of the I.P.C. and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to undergo S.I. for three months, additionally, under Section 489(B) of the I.P.C. and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to undergo S.I. for three months, additionally, under Section 489(C) of the I.P.C. and sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo S.I. for three months, additionally, with a further direction to run the sentences concurrently with a further direction that the period having undergone be set off as



provided under Section 428 of the Cr.P.C. vide judgment of conviction dated 06.08.2015 and order of sentence dated 18.08.2015 passed by the 6th Additional Sessions Judge, East Champaran at Motihari in Sessions Trial No.308 of 2013/ 54 of 2014.

2. Amitesh (PW-4) Officer-in-Charge, Palanwa P.S. received confidential information on 23.06.2012 regarding transportation of counterfeit Indian Currency Notes, whereupon constituted a raiding party and had gone to Nahar Chowk. During course of surveillance at about 1.00 P.M., they perceived one person over black colour motorcycle having suspicious activity, whereupon challenged. Seeing the police, he sped up motorcycle towards High School, chased by the police personnel, who lastly succeeded in apprehending him. In presence of seizure list witnesses namely Harendra Singh and Tej Pratap Singh, he was searched out and from his right pocket of full-paint, ten counterfeit Indian Currency Notes of one thousand denomination and twenty counterfeit Indian Currency Notes of five hundred denomination were seized and for that, seizure list was prepared. Accordingly, accused was taken into custody, who disclosed his identity to be appellant.

3. After registration of Palanwa P. S. Case No.74 of 2012, investigation commenced and concluding the same, chargesheet was submitted, whereupon trial commenced and concluded in a manner, subject matter of instant appeal.



4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. However, nothing has been adduced on behalf of defence.

5. Altogether eight PWs have been examined on behalf of prosecution in order to prove its case, who are PW-1, Tej Pratap Yadav, PW-2, Harendra Sah, PW-3, Harilal Raut, PW-4, Amitesh, PW-5, Ashok Kumar, PW-6, Rajendra Yadav, PW-7, B. K. Singh and PW-8, Ram Narain Ram. Side by side, had also exhibited, Exhibit-1 series, signature of seizure list witnesses (PW-1 and PW-2), Exhibit-2, seizure list, Exhibit-3, self-statement of the informant, Exhibit-4, confessional statement of the accused, Exhibit-5, formal F.I.R., Exhibit-6, carbon copy of the letter sent for examination of counterfeit Indian Currency Notes to F.S.L., Patna, Exhibit-7, F.S.L. Report. Material Exhibit has also been produced marked as Exhibit-X to X/9, Exhibit-Y to Y/9. As stated above, nothing has been adduced on behalf of defence.

6. The learned counsel for the appellant while assailing the judgment impugned has submitted that the same has been passed in mechanical manner. Had there been proper appreciation of the materials available on the record, then in that circumstance, the judgment impugned would not have been passed holding the appellant guilty. In order to justify such plea, it has been submitted that both the



seizure list witnesses became volte face to the prosecution that means to say, the alleged recovery has not been supported by an independent witness. Except PW-1 and PW-2, whoever been examined, are police personnel and their evidences in the background of non-examination of the independent witness, should not be accepted, stay of recovery is found doubtful as alleged seizure is said to have made in a broad-day time at a public place, more particularly within the campus of High School and so, at least there should have been presence of School Teacher, Students etc. That being so, the manner of search and seizure has become under controversy. Appellant being resident of foreign country that means to say Nepal, has been made an scapegoat allowing the real culprit a safe passage.

7. It has also been submitted that so alleged counterfeit recovered notes were not at all sealed at the place of occurrence, whereupon there was every opportunity available for the prosecution party to have replacement of genuine notes by the fake currency. The prosecution was under obligation to have the seized notes examined by the R.B.I., which was only competent enough to identify whether as the seized notes were genuine or not. That being so, in absence of legal evidence, appellant would not be liable for conviction and sentence.

8. Apart from this, it has also been submitted that no offence under Section 489(A) of the I.P.C. is made out, because of the



fact that there happens to be no evidence at the end of the prosecution that appellant was any way engaged in manufacture/ preparation of counterfeit notes. In likewise manner, Section 489(B) of the I.P.C. is also not made out in the background of the fact that there happens to be absence of prosecution evidence to the effect that appellant was engaged in circulating the same. So, even accepting the prosecution case, in worst case suggests application of Section 489(C) of the I.P.C. and for that, considering the nature of the allegation in consonance with the period of detention having from the date of appearance up-till 18.01.2017, on which date, he has been granted bail by this Court, remained under custody and that being so, the sentence so inflicted by the learned lower Court is found saturated in its major part covering more than four years and so, be reduced to period having undergone.

9. On the other hand, learned Additional Public Prosecutor while supporting the finding recorded by the learned lower Court has submitted that there happens to be no barrier in having the police personnel as a witness nor their evidences should be brushed aside on that very score. So, the submission at the end of the learned counsel for the appellant to the extent that for want of presence of independent witness, the evidence of police officials should not be accepted, appears to be fallacious. Furthermore, it has also been submitted that irrespective of conduct of the seizure list witnesses



PW-1 and PW-2, they both have admitted their presence over the seizure list and further, there happens to be no explanation at the end of the appellant, whose presence is also over the seizure list. It has also been submitted that sealing of counterfeit Indian Currency Notes at the spot was not at all necessary nor it caused prejudice to the interest of the appellant in the background of the fact that serial number of currency have already been disclosed in the seizure list having prepared just after search over which, there happens to be presence of accused/ appellant and so, he was very much aware since the time of preparation of seizure list that counterfeit Indian Currency Notes were recovered from his possession having particular serial number. Those currency notes have been made material exhibit by way of examining of PW-8 and both are matching to each other. Furthermore, the aforesaid currency bore signature of F.S.L. Officials, which is indicative of the fact that currency notes were examined and further, the F.S.L. Report (Exhibit-7) substantiated the same to be the counterfeit Indian Currency Notes. That being so, possession of counterfeit Indian Currency Notes is found duly proved. However, learned Additional Public Prosecutor fairly submits that there happens to be paucity of evidence in order to justify the finding recorded by the learned lower Court for an offence punishable under Section 489(A), 489(B) of the I.P.C.

10. Gone through the evidences available on the record.



Though, PW-1 and PW-2 were declared hostile by the prosecution in the background of the fact that they have not shown their inclination in order to support the factum of recovery of counterfeit Indian Currency Notes from the possession of the appellant. However, they have admitted their presence over the seizure list under Exhibit-1 series. So far evidence of remaining witnesses are concerned, admittedly, they happen to be police personnel, but they are consistent right from PW-3 to PW-6 with regard to getting confidential report, proceeded to nab the culprit, apprehension of accused, search, seizure of counterfeit currency notes. However, neither during course of cross-examining PW-1 and PW-2, nor PW-4, the informant, nay PW-7, B. K. Singh, I.O., any effort was made at the end of the appellant to challenge his presence over the seizure list and that being so, the jerk having at the end of PW-1 and PW-2 against the prosecution case is found duly absolved. Furthermore, from the seizure list, it is evident that there happens to be specific mentioning of serial number of counterfeit Indian Currency Notes of denomination one thousand (ten in number) and five hundred (twenty in number), which has not been challenged. The aforesaid numbers of counterfeit Indian currency notes were transmitted to F.S.L. Patna under the order of the learned S.D.J.M. dated 11.07.2012, which was examined by the F.S.L. and report is Exhibit-7. Not only this, the PW-8, who produced the notes in Court as a material exhibit opened the packet in sealed condition,



which was at the end of F.S.L. Patna and further, each one of the counterfeit Indian Currency Notes contained signature of the examining authority. Apart from this, the serial number is found also matching to each other.

11. The another circumstance, as is evident, is that there happens to be an admission by way of suggestion at the end of the appellant with regard to recovery of the counterfeit Indian Currency Notes as is evident from PW-4, Para-11, PW-5, Para-4. While PW-6 was suggested over complete denial. No suggestion was given to the I.O. on that very score.

12. So, recovery of counterfeit Indian Currency Notes from the possession of the appellant is found duly substantiated. Now, the another question, which is to be dealt with is with regard to proper application of the penal provision. As stated above, the learned lower Court had found the appellant guilty for an offence punishable under Section 489(A), 489(B), and 489(C) of the I.P.C., but from the evidence available on the record, it is evident that there happens to be paucity of evidence at the end of the prosecution with regard to activity of the appellant, more particularly identifying him to be indulged in making counterfeit Indian Currency Notes as required under Section 489(A) of the I.P.C., or was any way engaged in circulation as required under Section 489(B) of the I.P.C. That being so, these two Sections are not at all found applicable and that being



so, the finding of the learned lower Court to that extent is upset. The only Section, in the facts and circumstances of the case, applicable is Section 489(C) of the I.P.C. whereunder appellant has been sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo S.I. for three months, additionally.

13. From the record, it is evident that appellant was remanded on 24.06.2012 and since thereafter, he remained under custody up-till 18.01.2017, on which date, he was directed to be released under present appeal. That being so, he remained under custody for four years six months and fourteen days. There happens to be no evidence of antecedent. So, virtually saturated the period. In the aforesaid facts and circumstances of the case, setting aside the conviction and sentence relating to Section 489(A), 489(B) of the I.P.C., conviction for offence punishable under Section 489(C) of the I.P.C. is affirmed reducing the sentence as period having already undergone. Appellant is on bail, hence is discharged from its liability. Appeal is partly allowed.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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