

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 849 of 2009**

Swami Gyanand @ Gyan Kumar @ Deva Son of Narendra Sakhre, aged about 35 years, R/o Katangpali, Police Station Saraipali, District- Mahasamund (C.G.).

----Appellant**Versus**

State of Chhattisgarh through Police Station – Saraipali, District Mahasamund (C.G.)

---- Respondent

For Appellant	:	Mr. Vimal Tondey, Advocate
For Respondent	:	Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****24/02/2018**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 11/09/2009 passed in S.T. No. 46/2009 by the learned Sessions Judge, Mahasamund (C.G.) convicting the accused/appellant under Sections 489 (b) and 489 (c) of IPC and sentenced him to undergo RI for 10 years and to pay fine of Rs. 5,000/- and RI for 5 years and to pay fine of Rs. 2,000/-, respectively with default stipulations.
2. Case of the prosecution, in brief, is that on 10/06/2009 at about 10:55 am, complainant- Rishikesh (PW1) had lodged a FIR (Ex.P-1) in police station- Saraipali, District- Mahasamund against the accused/appellant stating therein that in the morning at about 9:00 am, when he opened his Mobile shop, situated at near Gurudwara, Saraipali, a Swami wearing

Gehuan clothes came and introduced him as Swami Atmanand and asked the complainant to show some second hand mobiles. The complainant showed him second hand mobiles and the accused/appellant purchased one second hand mobile cost of Rs. 1900/- by giving the complainant 19 currency notes of Rs. 100/-. The complainant after seeing the said notes carefully found that 8 currency notes of Rs. 100/- were fake. Thereafter, the police had registered a crime under Section 489 (b) and 489 (c) of IPC. The said fake notes which was given by the accused/appellant were seized from the possession of the complainant. During investigation, on the basis of memorandum Ex.P-5 of accused/appellant, total 25 notes of Rs. 100/- denomination, which was also fake, were seized along with one mobile vide seizure memo Ex.P-3. All the seized currency notes were examined by Indian Reserve Bank, who had confirmed that the notes were fake. A charge-sheet under Section 489(b) and 489(c) of IPC was filed. To guilt the accused/appellant, the prosecution has examined as many as 5 witnesses. No defence witness has been examined. Statement of accused/appellant under Section 313 Cr.P.C was recorded, wherein he denied all the charges and pleaded his innocence and false implication in the present case. After trial, the trial Court has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of this judgment. Hence, this appeal.

3. Learned Counsel appearing for the appellant submits that he does not want to press this appeal on merits and confines his argument to the sentence part only. He further submits that the matter is of the year 2009 and the appellant is facing the *lis* since last 9 years. It is further submitted

that out of total jail sentence of 10 years, the appellant has already undergone about 8 years 9 months, therefore, the jail sentence awarded to him may be reduced to the period already undergone by him.

4. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
5. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
6. It is not in dispute that the matter relates to the year 2009 and the appellant is facing the *lis* since last about 9 years. Moreover, out of total jail sentence of 10 years, he has already undergone about 8 years 9 months.
7. Considering the above facts and circumstances, I am of the considered opinion that the ends of justice would be met if, while upholding the conviction imposed upon the appellant, the jail sentence awarded to him is reduced to the period already undergone by him.
8. Consequently, the appeal is partly allowed. The conviction imposed upon the appellant under Sections 489 (b) and 489 (c) of IPC is upheld, but the jail sentence awarded to him is reduced to the period already undergone by him. The fine sentence imposed upon him is also affirmed.
9. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge