

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.127 of 2010**

- Nandu @ Nand Kumar Sinha S/o Krishnalal Sinha, aged about 21 years, R/o Ashok Nagar, PS Gudhiyari, Raipur Distt. Raipur (CG)

---- Appellant

Versus

- State Of Chhattisgarh through the District Magistrate, District Raipur (CG)

---- Respondent

CRA No. 316 of 2010

- Purushottam, S/o. Dharmdas Lahre, aged about 20 years, R/o. Gongaun, Police Station Gudiyari Town, Tahsil and District Raipur (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through the Station House Officer, Police Station Gudiyari Raipur (CG)

---- Respondent

CRA No. 503 of 2010

- Santosh Markande S/o Babulal Markande, aged about 28 years, R/o Ashok Nagar, PS Gudiyari, Raipur Tahsil and District Raipur (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through District Magistrate, Raipur (CG)

---- Respondent

 For the appellants : Shri Shivendu Pandya, Shri Vinod Tekam
 and Shri Udho Ram Koshley, Advocates
 For the respondent/State : Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board**

12.10.2018.

1. As above mentioned appeals arise out of same incident, they are heard analogously and are being disposed of by this common judgment.

2. The above mentioned three appeals have been directed against the judgment of conviction and order of sentence dated 29.01.2010 passed by Second Additional Sessions Judge, Raipur, (CG) in Session Case No.27/2009, wherein the said Court convicted all the three appellants for commission of offence under Section 489C of the Indian Penal Code 1860 and sentenced them to undergo Rigorous imprisonment for the three years and to pay fine of Rs.1000/- with default stipulations to each of the appellants for having in their possession forged or counterfeit currency notes or bank notes, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine.

3. As per the case of the prosecution, on 22.11.2008 in the night the police officer of Crime Branch Raipur received information that the appellants are in possession of counterfeit currency notes and other articles. The officer enquired and seized the currency notes of Rs.100/- denomination 26 in number from appellant Santosh Markandey, 31 in number from appellant Nandu @ Nand Kumar Sinha and 7 in number from appellant Purushottam. He also seized other articles like computer, printer, scanner, cutter, scale, plain photo copy paper and ink during

investigation. The appellants were charge sheeted and after completion of trial, the trial Court convicted and sentenced them as mentioned above.

4. Learned counsel for the appellants submits as under:-

(i) The currency notes were not produced before the trial Court and the evidence of the expert who examined currency notes has not been adduced.

(ii) As the notes were not exhibited as article during evidence the same is not part of the evidence, therefore, conviction of the appellant is not sustainable.

(iii) Possession and knowledge that the currency notes were counterfeit, is necessary ingredient to constitute an offence under Section 489C of the IPC but the same is not established before the trial Court.

(iv) The prosecution witnesses have improved their version before the trial Court and therefore, they are not reliable and the finding of the trial Court is liable to be reversed.

5. On the other hand, learned counsel for the State submits that the finding arrived at by the trial Court is based on proper marshaling of evidence and the same is not liable to be interfered while invoking jurisdiction of the appeal.

6. Assistant Sub Inspector Sevak Bairag (PW-8) deposed that he seized 15 notes of Rs.100/- denomination having serial No.5pm661166 and 11 notes of same denomination having serial No.5pm661155 from appellant Santosh when he produced the same after removing it from his pocket. He further deposed that

he seized 17 notes of Rs.100/- denomination having serial No.5pm661166 and 14 notes of same denomination having serial No.5pm661155 from appellant Nandu and seized four notes of Rs.100/- denomination having serial number 5pm661166 and 3 notes having same serial number 5pm661155 from appellant Purushottam. From the evidence of this witness, whose version is supported by the version of ASI RS Giri (PW-6), it is established that 26 currency notes of Rs.100/- denomination were seized from appellant Santosh and 31 number of Rs.100/- denomination was seized from appellant Nandu and 7 number of Rs.100/- denomination from appellant Purushottam and in all 64 currency notes were seized from the appellants. Version of these witnesses is subjected to searching cross-examination but they were firm in their material point. From the evidence of ASI RS Giri (PW-6) it is established that seized of currency notes were sent for examination to General Manager, Reserve Bank and as per the report (Ex-P/33) currency notes were counterfeit notes. From the evidence of direct evidence and report of the expert it is established that all the appellants were in possession of the counterfeit currency notes.

7. It is established that the appellants were in possession of counterfeit currency notes and it is for them to explain the source or receiving the currency notes, but all the appellants did not explain anything and their version is mere denial which is meritless. In absence of explanation it can be presumed that they had reason to believe that seized currency notes are counterfeit and

when they are in possession of the said counterfeit notes, it can be presumed that they kept the same to use as genuine.

8. The trial Court has elaborately discussed the entire evidence and came to a conclusion that the offence under Section 489C IPC is established against the appellants and this court has no reason to record a contrary finding. Accordingly, the conviction of the appellants for the offence under Section 489C is hereby affirmed.

9. Heard on the point of sentence.

From the record it appears that appellant Santosh suffered jail sentence from 23.11.2088 to 22.10.2010 i.e. for one year and 11 months, appellant Nandu suffered jail sentence from 23.11.208 to 22.3.2010 i.e. for one year and four months and appellant Purushottam suffered jail sentence from 23.11.2008 to 05.5.2010 i.e. one year and five months. Looking to the material available on record, this court is of the view that ends of justice would be served if the sentence imposed by the trial Court is reduced to the period already undergone by the appellants while maintaining the fine amount.

10. Accordingly, all the three appeals are allowed in part. Conviction of the appellants under Section 489-C of IPC is affirmed. Now the appellants are sentenced to the period already undergone by them. The fine amount shall remain intact.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**