

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1229 of 2015

1. Naresh Kumar Manhar S/o Bharatlal Manhar, Aged About 30 Years, R/o Village Taldevri, Police Birra, Distt. Janjgir-Champa. Present Address House Of Ramnarayan Sahu, Manhar Clinic Hasaud, Police Station Hasaud, Civil And Revenue Distt. Raipur Chhattisgarh., Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through District Magistrate Raigarh, Distt. Raigarh Chhattisgarh. , Chhattisgarh

---- Respondent

CRA No. 1535 of 2015

1. Naresh Kumar Banjare S/o Ishwar Prasad Banjare, Aged About 35 Years, R/o Village - Odkakan, Police Station - Sarsiwa, Civil And Revenue District - Balodabazar Chhattisgarh, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through - Station House Officer, Police Station - Sarangarh, District - Raigarh Chhattisgarh, Chhattisgarh

---- Respondent

For Appellants	: Shri Awadh Tripathi, Advocate.
For Respondent/State	: Shri Avinash K. Mishra, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

26/10/2018

1. These appeals have been preferred against the judgment of conviction and order of sentence dated 26-09-2015 passed in S.T. No.24/2014 by the Additional Sessions Judge Sarangarh, District

Raigarh, C.G. convicting and sentencing the appellants in the following manner with a direction to run all the jail sentences concurrently:-

Sr.No.	Conviction	Sentence
1.	U/s 489(A) of the IPC	R.I. for 7 years and fine of Rs.2500/- in default of payment of fine amount 6 months R.I.
2.	U/s 489(C) of the IPC	R.I. for 5 years and fine of Rs.2000/- in default of payment of fine amount 5 months R.I.
3.	U/s 467 of the IPC	R.I. for 7 years and fine of Rs.2500/- in default of payment of fine amount 6 months R.I.
4.	U/s 468 of the IPC	R.I. for 5 years and fine of Rs.2000/- in default of payment of fine amount 5 months R.I.

In addition to the above, by the impugned judgment appellant Naresh Kumar Banjare (appellant in CRA No.1535/2018) has also been convicted under Section 489(D) of the IPC and sentenced with R.I. for 7 years and fine of Rs.2500/- in default of payment of fine amount, further R.I. for 6 months.

2. The case of the prosecution in brief is this, that on 27-06-2014 the SHO of P.S. Sarangarah, Gopal Dhruwe (PW-14) received a confidential information and on that basis he conducted a raid and apprehended Naresh Kumar Banjare (appellant in CRA No.1535/2015) and in the search made, total counterfeit currency notes of Rs.88,500/- was seized from the possession of appellant Naresh Kumar Banjare (appellant in CRA No.1535/2015) vide Ex.-P/1 along with other articles. Subsequently, on the basis of his memorandum statement, Ex.-P/9, a search was made in his place

of work and counterfeit currency notes of Rs.1,21,500/- and other articles, computer, printer, papers etc. were seized vide Ex.P/4. On the basis of information given by appellant Naresh Kumar Banjare (appellant in CRA No.1535/2015) a seizure of counterfeit currency notes of value Rs.5000/- was made vide Ex.-P/3 from appellant Naresh Kumar Manhar (appellant in CRA No.1229/2015). The FIR (Ex.-P/26) was lodged. During the investigation the counterfeit currency notes were sent for examination to the Currency Note Press Nasik Road and a report was received that the seized notes were fake currency notes. The investigation was completed and the charge sheet was filed.

3. Both the appellants were charged with the offence under 489(A), 489(C), 489(D), 467, 468 of the IPC, to which they denied all the incriminating evidence against them and pleaded innocence and false implication. In the course of trial the prosecution examined as many as 15 witnesses. No witness was examined in defence.
4. After completion of the trial, the impugned judgment has been passed in which the appellants have been convicted and sentenced as mentioned hereinabove.
5. Learned counsel for the appellants submits that no case for conviction is made out against both the appellants. The independent witnessed of memorandum and seizure have not supported the prosecution case and the conviction is based only on the evidence of investigator and the police witnesses. There is no such report of any forensic lab or any expert present on record to show that any of the appellants had counterfeited or manufactured the fake currency

notes. The statements of the witnesses are self contradictory and contradicting each other which cannot be formed basis of the conviction in such a case. Both the appellants are entitled for benefit of doubt. Hence, it is prayed that the appeals may be allowed and they may be acquitted of the charges. In the alternative, it is prayed that if the Court is not convinced to set aside the conviction against the appellants, then sentence imposed upon them may be reduced to the period already undergone by them.

6. Per contra, learned counsel for the State/respondent opposes the grounds raised in the appeal and submits that the prosecution has proved its case beyond reasonable doubt. Although the independent witnesses have not supported the prosecution case, but the investigator and other police witnesses have clearly given statement about the raid conducted and the seizure made and there is no reason to disbelieve their statements before the Court. It is not a rule that police witnesses shall always be disbelieved, there is only a rule of caution and that caution has been exercised by the trial Court, hence, there is no room for interference in the impugned judgment.
7. Investigator Gopal Dhruwe (PW-14) has stated that on the basis of confidential information he arrived on the spot where appellant Naresh Kumar Banjare (appellant in CRA No.1535/2015) was apprehended and searched, on that, he was found in possession of Rs.88,500/- currency notes which appeared to be fake along with other articles which were seized vide Ex.-P/1. Thereafter, at the instance of appellant Naresh Kumar Banjare (appellant in CRA

No.1535/2015) from his work place currency notes of Rs.1,21,500/- were found which appeared to be fake, along with that other articles, computer, printer, cartridge etc. were seized vide Ex.-P/2. At the instance of appellant Naresh Kumar Banjare (appellant in CRA No.1535/2015) seizure of 5 counterfeit currency notes of Rs.1000/- each was made from appellant Naresh Kumar Manhar (appellant in CRA No.1229/2015) vide Ex.-P/3. Some other certificates of schools and municipal council were also seized from the possession of appellant Naresh Kumar Banjare (appellant in CRA No.1535/2015) vide Ex.-P/4 which appeared to be fake and forged. He has stated that the seized currency notes were sent to be examined by Branch Manager, SBI, Raigarh vide Ex.-P/23, regarding which, a report Ex.-P/24 was received, in which, it was reported that the seized currency notes were appeared to be fake and counterfeit. Thereafter, the said counterfeit currency notes were sent for examination seeking report of the Currency Note Press Nasik Road Maharashtra. He has further given statement about conducting the investigation. In cross-examination Gopal Dhruwe (PW-14) has remained unshaken in his statement that he has given in the examination-in-chief.

8. After overall consideration of deposition given by him, it appears that I.O. has not made any investigation with respect to the certificates, mark sheets etc. that were found in possession of appellant Naresh Kumar Banjare (appellant in CRA No.1535/2015) so as to find whether these documents were genuine or fake and forged mark sheets. Apart from that, he has not made any effort to

send the articles seized, i.e., computer, printer etc. from appellant Naresh Kumar Banjare (appellant in CRA No.1535/2015) to any forensic lab so as to get a report whether these articles were used in manufacturing of the counterfeit currency notes. Hence, the investigation in this respect is found lacking.

9. Independent witness of search and seizure Rajesh Kumar Khunte (PW-1) has though admitted his signature on exhibits, but, has not made any statement in support of the prosecution, hence, he was declared hostile.
10. Another witness to these exhibits Narendra Jolhe (PW-2) is also a hostile witness, although he admits his signature on the exhibits.
11. Head Constable Ramprasad Baghel (PW-3) was a member of the team which raided the spot and apprehended appellant Naresh Kumar Banjare (appellant in CRA No.1535/2015), he has stated about the seizure made in his presence. In cross-examination his statement has remained unrebutted. Similar is the statement has been given by Head Constable Jaisingh (PW-4) and his statement has also remained unshaken in his cross-examination.
12. Constable Pushpendra Kumar (PW-5) has given similar statement and supported the seizure proceeding that have taken place of seizure. Constable Virendra Bhagat (PW-9) was also a member of the raiding party and he has also supported the version of investigator Gopal Dhruwe (PW-14) with respect to search and seizure made from appellant Naresh Kumar Banjare (appellant in CRA No.1535/2015) and his statement could not be shaken in his

cross-examination.

13. Hence, the case of the prosecution on the point of seizure made from appellants totally rest on the evidence of the investigator and other police personnel who were member of the raiding team. Although the independent witnesses of search and seizure have not supported the prosecution case, but, a reason has to be found to disbelieve the statement given by the police witnesses and there is no such reason available on record. There is no admission made by any of the police witnesses, so that it can be said that they had personal interest against any of the appellants or they had any intention to falsely implicate the appellants. Hence, for these reasons, the statements of the police witnesses and the investigator with respect to the procedure of search and seizure is found to be believable. Lacuna that has been found in this case is this, that the investigation has been done in part, although the appellants were prosecuted for the offences under Section 489(A) of the IPC regarding which there was requirement of strict proof, that appellant Naresh Kumar Banjare (appellant in CRA No.1535/2015) was the person who was counterfeiting and manufacturing the currency notes. Though there is seizure of computer, printer and other articles in this respect made, but the witness who has examined these articles, Shivraj Patel (PW-13) has only reported vide Ex.-P/19 that the computer etc. were in working condition and there is no such report by him that these articles were used for printing counterfeit currency notes. Similarly it has been observed that the investigator has not made any effort to send these articles to the

forensic lab, whereby it was possible to examine the data containing computer and other computer periferal to find out what kind of use was made of that computer, printer and other articles. Hence, this kind of evidence is totally lacking as there had been no investigation in this respect.

14. The evidence on other point regarding circulation of counterfeit currency notes is also lacking in this case as the investigator and the police witnesses have not given any statement as to the use of counterfeit currency notes by any of the appellants and the witnesses who have been examined on this point are Komal Satnami (PW-6) and Naresh Ratre (PW-7) and they have not supported the prosecution case.
15. After close scrutiny of all the evidence present on record, I am of this opinion that only case that is made out against both these appellants is under Section 489(C) of the IPC, which can be held that it is proved beyond reasonable doubt, whereas, the conviction of the appellants under Section 489(A), 489(D) as well as Section 467 and 468 of the IPC is totally without any basis of evidence on record. Hence, for these reasons, I find that impugned judgment needs interference.
16. Consequently, the appeal filed by the appellants are allowed in part. Conviction of appellant Naresh Kumar Banjare (appellant in CRA No.1535/2015) under Section 489(A), 489(D), 467 and 468 of the IPC is hereby set aside. Conviction of appellant Naresh Kumar Manhar (in CRA No.1229/2015) under Section 489(A), 467 and 468 of the IPC is also set aside. Whereas, conviction of both the appellants under Section 489(C) of the IPC is upheld. It is submitted by the counsel for

the appellants that appellant Naresh Kumar Banjare (appellant in CRA No.1535/2015) is in jail since 27-06-2014 to till date. Hence, it is prayed that he may be sentenced with imprisonment of detention period already undergone by him in jail. It is also submitted that appellant Naresh Kumar Manhar (appellant in CRA No.1229/2015) had been in jail since 28-06-2014 to 13-01-2016, hence, he may also be sentenced with detention of period already undergone by him in jail. As it appears from the evidence on record that appellant Naresh Kumar Banjare (appellant in CRA No.1535/2015) is the main accused and he is in jail since about more than 4 years, which appears to be sufficient punishment for this case, similarly, looking to the role of appellant Naresh Kumar Manhar (appellant in CRA No.1229/2015) in commission of this offence, period of detention he has undergone in jail is also appears to be sufficient sentence for the conviction against him. Hence, after due consideration, both the appellants in these appeals are sentenced with the period of detention already undergone by them in jail along with fine Rs.10,000/-. In case of default in payment of fine imposed by this Court, the appellants shall have to undergo R.I. for two months.

Sd/-

(Rajendra Chandra Singh Samant)
Judge