

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.961 OF 2015
WITH
CRIMINAL APPLICATION NO.92 OF 2018
IN
CRIMINAL APPEAL NO.961 OF 2015**

ZAHIR SAMAUN SHAIKH)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mrs.Farhana Shah, Appointed Advocate for the Appellant.

Mr.Prashant Jadhav, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 23rd FEBRUARY 2018

ORAL JUDGMENT :

1 By this appeal, the appellant/accused is challenging his conviction for offences punishable under Sections 489B and 489C of the Indian Penal Code recorded on 14th August 2014 in Sessions Case No.175 of 2013, by the learned Additional Sessions Judge, Greater Bombay, Mumbai. For the offence punishable

under Section 489B of the Indian Penal Code, the appellant/accused is sentenced to suffer rigorous imprisonment for 7 years apart from payment of fine of Rs.5,000/- and default sentence of 3 months. On another count, he is directed to suffer rigorous imprisonment for 5 years apart from payment of fine of Rs.5,000/- and default sentence of 3 months.

2 Facts leading to the prosecution of the appellant/accused can be summarized thus :

- (a) On 3rd November 2012, PW1 Shailesh Kupawadekar, Police Nayak, working in Crime Detection Branch of the Crime Investigation Department of Mumbai Police received secret information that one person dealing in fake currency notes is coming near Sion bridge at Sion at about 4.00 p.m. of that day. This information was then transmitted to Police Inspector Gopale and it was decided to lay a trap. Panch witnesses including PW2 Habib Mansuri was summoned. They, along with other police personnel, were informed about the proposed trap. Along with necessary material,

then the police team headed by PW8 Nitin Patil, Assistant Police Inspector, proceeded for the spot at about 2.45 p.m. of 3rd November 2012. Two teams were formed at the spot for apprehending the accused. One was headed by PW8 Nitin Patil, Assistant Police Inspector, whereas, the another was headed by Assistant Police Inspector Phulpagare. Both groups of police as well as the panch witnesses took their position. The secret informant was also present on the spot.

- (b) It is case of the prosecution that at about 4.10 p.m. of 3rd November 2012, a suspect came at the spot. He waited there for few minutes. The informant informed PW1 Shailesh Kupawadekar, Police Nayak. Accordingly, the police team swung in action and apprehended that suspect on the spot itself. The suspect told his name as Zahir Shaikh i.e. the present appellant/accused. On his personal search, he was found to be carrying 65 fake currency notes of Rs.1,000/- denomination apart from a cell phone of L.G. make and a receipt for Rs.7,152/- issued by the shop named "The Mobile

Store”. By preparing seizure panchnama Exhibit 20, all these articles were seized. The currency notes were kept in a transparent plastic bag and that bag was sealed. The cell phone and the purchase receipt were kept in a brown envelope and that envelope was also sealed.

- (c) After the successful trap, the accused was taken to the Sion Police Station, where PW1 Shailesh Kupawadekar, Police Nayak, lodged the First Information Report (FIR) Exhibit 17, which was recorded by PW7 Anant Kamble, Police Sub-Inspector. Accordingly, Crime No.339 of 2012 came to be registered against the appellant/accused.
- (d) Routine investigation followed. During the course of investigation, the police team took the appellant/accused to the mobile shop named as “The Mobile Store”. PW4 Rahul Ramteke, Manager of “The Mobile Store” informed the police about purchase of cell phone by the appellant/accused for a consideration which comprised of two fake

currency notes of Rs.1,000/- denomination. Fake currency notes were then produced by PW4 Rahul Ramteke and the same came to be seized, packed and sealed vide seizure panchnama Exhibit 23 prepared in presence of PW3 Lalu Shaikh. According to the prosecution case, the incident of purchasing the cell phone by using the fake currency notes by the appellant/accused was video-graphed in the C.C.T.V. installed at "The Mobile Store". The compact disc of this recording was also seized by police in presence of panch witness PW5 Hemant Joso.

- (e) During course of investigation, all 67 allegedly fake currency notes were sent for examination to the Government Currency Press at Nasik through carrier Head Constable PW6 Babu Vajarkar. On completion of investigation, the appellant /accused came to be charge-sheeted. The learned trial court framed and explained the Charge for the offences punishable under Sections 489B and 489C of the Indian Penal Code to the appellant/accused, who abjured guilt and claimed trial.

- (f) In order to bring home the guilt to the appellant/accused, the prosecution has examined in all eight witnesses. First Informant PW1 Shailesh Kupawadekar, Police Nayak, has proved the FIR at Exhibit 17 apart from identifying the appellant/accused as well as the seized muddemal property. PW2 Habib Mansuri had acted as a panch witness while effecting search and seizure on 3rd November 2012 vide Seizure Panchnama Exhibit 20. PW3 Lalu Shaikh acted as a panch witness for effecting seizure of two allegedly fake currency notes used by the appellant/accused for purchasing a cell phone from PW4 Rahul Ramteke, Manager of “The Mobile Store.” PW5 Hemant Joso is a panch witness to the seizure of the compact disc containing video-graphed event of purchasing the cell phone by the appellant/accused. PW6 Babu Vajarkar had carried the seized alleged fake currency notes to the Government Note Press at Nasik. PW8 Nitin Patil, Assistant Police Inspector, is the Investigating Officer of the subject crime. After hearing the parties and considering the defence of total denial of the appellant/accused, the

learned trial court was pleased to convict the appellant/accused on both counts and he came to be sentenced, as indicated in the opening paragraph of this judgment.

3 I have heard Ms.Farhana Shah, the learned advocate appearing for the appellant/accused. She vehemently argued that the prosecution case is to the effect that after receipt of secret information, it was transmitted to the superior officers, panchas were called and then the raid was arranged. After effecting the raid and conducting alleged seizure of 65 currency notes of Rs.1,000/- denomination each, panchnama was prepared. Thereafter the FIR came to be lodged by PW1 Shailesh Kupawadekar, Police Nayak. However, all these facts are conspicuously absent in the FIR and this omission is fatal to the prosecution case. The learned advocate further argued that according to the prosecution case, subsequently, on 5th November 2012, two fake currency notes of Rs.1,000/- denomination were seized from PW4 Rahul Ramteke. Those two currency notes were

used for purchasing a cell phone costing Rs.7,152/- from “The Mobile Store” of which PW4 Rahul Ramteke is an employee. Though this seizure was effected on 5th November 2012, evidence of PW4 Rahul Ramteke shows that on the next day of selling the cell phone to the accused, police came to his shop for effecting seizure. Thus, as the sale was effected on 2nd November 2012, case of the prosecution that two fake currency notes were seized on 5th November 2012, becomes doubtful. House search of the house of the accused did not yield anything incriminating. Therefore, the case of the prosecution is not free from doubt. The learned advocate for the appellant/accused relied on judgment of the learned Single Judge of Honourable Calcutta High Court in the matter of **Rakesh @ Chhotu Kedia vs. Bharat Keshri**¹ to demonstrate that the punishment awarded is excessive and needs to be modified, in the event the conviction is held to be proper and just.

4 The learned APP supported the impugned judgment and order of conviction by contending that the appellant/accused

1 2016 SCC Online Cal 1211

was found to be possessing as well as trafficking in fake currency notes and evidence against him is clinching.

5 I have carefully considered the rival submissions and also perused the impugned judgment and order of conviction and the resultant sentence.

6 The raid, which yielded in search and seizure of 65 counterfeit currency notes of Rs.1,000/- denomination each, was conducted on the basis of secret information received on 3rd November 2012 by PW1 Shailesh Kupawadekar, Police Nayak. The prosecution has examined PW8 Nitin Patil, Assistant Police Inspector, under whose leadership the search and seizure came to be conducted and the same was witnessed by PW2 Habib Mansuri, a panch witness. Undisputedly, pre-raid panchnama was not conducted by the prosecuting agency and no evidence regarding taking of the entry of the secret information in the Station Diary came to be adduced before the learned trial court. This aspect would have bearing on the prosecution case, if ultimately evidence

adduced by the prosecution is found to be discrepant and untrustworthy. Therefore, let us examine what the witnesses, who had participated in the search and seizure, are stating about the incident in question. I have carefully examined evidence of PW1 Shailesh Kupawadekar - Police Nayak, PW2 Habib Mansuri – panch witness as well as that of PW8 Nitin Patil, Assistant Police Inspector, who had participated in the operation, which ultimately resulted in seizure of 65 fake currency notes of Rs.1,000/- denomination. It is in evidence of PW1 Shailesh Kupawadekar, Police Nayak, that on 3rd November 2012, he received secret information to the effect that a person using forged and counterfeit currency notes is coming near the petrol pump below Sion bridge of Mumbai, at about 4.00 p.m. This witness disclosed the incident to the Police Inspector Gopale, and accordingly, the job of conducting raid and effecting search and seizure came to be entrusted to the police team headed by PW8 Nitin Patil, Assistant Police Inspector, who was accompanied with another Police Inspector named Phulpagare. Evidence of PW1 Shailesh Kupawadekar - Police Nayak, PW2 Habib Mansuri – panch witness

and that of PW8 Nitin Patil – Assistant Police Inspector, is congruous to the effect that the police party along with panch witnesses left the police station at about 2.30 p.m. on 3rd November 2012 for effecting raid and reached near the petrol pump at Sion. There, the police team divided itself into two groups and at that time, the secret informant also joined them. All these three witnesses have deposed that at about 4.10 p.m. of 3rd November 2012, the suspect reached near the petrol pump of Sion and waited there for sometime. The informant gave signal to PW1 Shailesh Kupawadekar, Police Nayak, and then the suspect came to be nabbed on the spot itself. He, then, told his name as Zahir Shaikh i.e. the appellant/accused.

7 In unison, PW1 Shailesh Kupawadekar - Police Nayak, PW2 Habib Mansuri – panch witness and PW8 Nitin Patil – Assistant Police Inspector, deposed that after giving identity of the police party, personal search of the appellant/accused was taken and 65 fake currency notes, each of Rs.1,000/- denomination, apart from a cell phone of L.G. Company and receipt of purchase

of the cell phone amounting to Rs.7152/- came to be recovered from the appellant/accused. The panchnama Exhibit 20 was then prepared and those articles came to be seized on the spot itself.

8 PW2 Habib Mansuri – a panch witness has duly proved this panchnama Exhibit 20. This witness stated in the cross-examination that he he did not remember whether the printer was taken to the spot, but that aspect is inconsequential, because he had entered in the witness box after a gap of about 2 years, and as such, is not expected to recollect the minute details of the incident. However, evidence of PW1 Shailesh Kupawadekar, Police Nayak, is clear to the effect that while proceeding for effecting raid, police party had carried with them material used for sealing a laptop as well a printer and the seal. The panchnama Exhibit 20 is a typed panchnama, and therefore, some concession to the fading of the memory of PW2 Habib Mansuri needs to be given and only on that count, case of the prosecution cannot be doubted.

9 Evidence of PW1 Shailesh Kupawadekar, Police Nayak, so also that of PW8 Nitin Patil, Assistant Police Inspector, shows that then PW1 Shailesh Kupawadekar, Police Nayak, lodged the FIR Exhibit 17 in respect of the incident which came to be recorded by PW7 Anant Kamble, Police Sub-Inspector, working with Sion Police station. Accordingly, Crime No.339 of 2012 came to be registered at Police Station Sion itself, on 3rd November 2012.

10 Perusal of the FIR at Exhibit 17 shows that the same is fully corroborating the version of the First Informant PW1 Shailesh Kupawadekar, Police Nayak, in respect of possession of fake/counterfeit currency notes by the appellant/accused. True it is that, this FIR at Exhibit 17 is not mentioning the fact of preparation of panchnama Exhibit 20 on the spot, so also names of the panch witnesses, but the FIR is not suppose to be an encyclopedia of the crime. What is expected to be stated in the FIR is the fact of commission of cognizable offence by the accused

and therefore, PW1 Shailesh Kupawadekar, Police Nayak, was not obliged to state all events in detail while lodging the FIR.

11 The panchnama at Exhibit 20, which was prepared on the spot after effecting seizure of 65 counterfeit currency notes from the appellant/accused, if perused, would reveal that the same is covering the entire happenings right from 2.30 p.m. of 3rd November 2012. It is covering both events which took place prior to conducting the raid as well as the events which took place at the time of the raid. Therefore, I do not find any substance in the argument of the learned advocate for the appellant/accused that pre-raid panchnama was not prepared or that the mention of the post-raid panchnama was not made in the FIR. With clear, consistent and cogent evidence of PW1 Shailesh Kupawadekar – Police Nayak, PW2 Habib Mansuri – panch witness and PW8 Nitin Patil – Assistant Police Inspector, the prosecution has established seizure of 65 currency notes each of Rs.1,000/- denomination from the appellant/accused and those were sealed on the spot of the incident itself by putting them in the polythene bag. Similarly,

the cell phone and the receipt of purchase of the cell phone was also packed and sealed on the spot of the incident itself.

12 According to the prosecution case, the appellant/accused was trafficking in fake currency notes, so also was selling them as genuine, as during investigation it was transpired that he had used some fake currency notes for purchasing the cell phone. To establish this fact, the prosecution is relying on evidence of PW4 Rahul Ramteke – Manager of “The Mobile Store” as well as PW3 Lalu Shaikh – panch witness, apart from the evidence of official witness. It is case of the prosecution that it was on 5th November 2012, that the Investigator had been to “The Mobile Store” and seized two currency notes, each of Rs.1,000/- denomination, which were used by the appellant/accused for purchasing the cell phone of L.G.make under the purchase receipt which was seized from him on the day of the incident i.e. on 3rd November 2012. On this aspect, it is in evidence of PW4 Rahul Ramteke of “The Mobile Store” that on 2nd November 2012, the appellant/accused came to his shop, purchased a cell phone of

L.G.make costing Rs.7150/- and paid the entire cost by giving 3 currency notes of Rs.1,000/- denomination, 8 currency notes of Rs.500/- denomination and 2 currency notes of Rs.100/- denomination. Subsequently, he came to know that out of three currency notes of Rs.1,000/- denomination, two were fake, and therefore, he kept the separately. PW4 Rahul Ramteke deposed that on the next date, the police brought the appellant/accused to his shop and he identified the appellant/accused as he was seen in the C.C.T.V. footage installed in the shop. Police then seized two fake currency notes, each of Rs.1,000/- denomination, from him. In cross-examination of this witness, it is elicited that he had not informed the police about giving two fake currency notes to him by his customer. This witness has also admitted that when the appellant/accused had come for purchasing the cell phone, one more customer was also in his shop.

13 PW3 Lalu Shaikh is a panch witness to the seizure of two fake currency notes from PW4 Rahul Ramteke of “The Mobile Store.” As per evidence of PW3 Lalu Shaikh, on 5th November

2012, police called him at the mobile shop, and at that time, PW4 Rahul Ramteke had narrated to the police that the appellant/accused had purchased a cell phone by paying Rs.3,000/-. It is in evidence of PW3 Lalu Shaikh that PW4 Rahul Ramteke had produced two currency notes, each of Rs.1,000/- denomination, and police put those currency notes in a plastic bag and it was sealed vide panchnama Exhibit 23.

14 PW4 Rahul Ramteke had sold the cell phone to the appellant/accused on 2nd November 2012 and in the night hours of 2nd November 2012 itself, he came to know that out of the amount paid by the appellant/accused, two currency notes each of Rs.1,000/- denomination are fake. He did not lodge report. However, this fact is not decisive to conclude that the prosecution case is false. Businessmen generally do not approach police in trivial matters as the entire process is time consuming. Similarly, PW4 Rahul Ramteke has deposed that on the next day i.e. on 3rd November 2012, police came to his shop with the appellant/accused, whereas, infact, as seen from evidence of PW8 Nitin Patil,

Assistant Police Inspector, and PW3 Lalu Shaikh, police had been to the shop of PW4 Rahul Ramteke on 5th November 2012. No overbearing importance can be given to this discrepancy in respect of the date of visit of police along with the appellant/accused to the shop of PW4 Rahul Ramteke, as this witness had entered in the witness box after about two years from the date of the incident, and therefore, he may not be recollecting the exact date. The fact remains that soon after arrest of the appellant/accused for possessing 65 currency notes, each of Rs.1,000/- denomination, PW4 Rahul Ramteke had also handed over two currency notes, each of Rs.1,000/- denomination, to the police, on identifying the appellant/accused as the person who had used those currency notes for purchase of the cell phone. While in the witness box, PW4 Rahul Ramteke had identified the appellant/accused as the person who had purchased the cell phone. Similarly, he had also identified the cell phone Article 2 before the trial court. Therefore, I see no reason to disbelieve version of PW4 Rahul Ramteke as well as that of PW3 Lalu Shaikh, which is fully corroborated by evidence of PW8 Nitin Patil,

Assistant Police Inspector, the Investigating Officer. With this evidence, the prosecution has proved seizure of two currency notes, each of Rs.1,000/- denomination, vide panchnama Exhibit 23 from PW4 Rahul Ramteke.

15 All 67 seized currency notes were sent for examination to the Government Note Press at Nasik through PW6 Babu Vajarkar, Head Constable. His evidence shows that he delivered those currency notes in the sealed condition in the Office of the Currency Notes Press at Nasik and obtained acknowledgment Exhibit 29.

16 All currency notes, 67 in number, were examined at the Currency Notes Press, Nasik, and it was found that those were counterfeit currency notes. The report to that effect is at Exhibit 12. Thus, the prosecution has established that the appellant/accused was in conscious possession of 65 fake / counterfeit currency notes of Rs.1,000/- denomination each, knowing or having reason to believe that those currency notes are forged or

counterfeit. Except those currency notes, he was not having any other currency notes, nor he has explained his possession over those currency notes. Similarly, it is seen that a day earlier to the incident of seizure of these currency notes from the appellant/accused, he had used two fake/counterfeit currency notes for purchasing a cell phone from the shop of PW4 Rahul Ramteke. Thus, the appellant/accused is also proved to have used as genuine, two forged or counterfeit currency notes, each of Rs.1,000/- denomination, for purchasing the cell phone.

17 The cumulative effect of foregoing discussion requires me to hold that the prosecution has proved offences punishable under Sections 489B and 489C of the Indian Penal Code against the appellant/accused. For the offence punishable under Section 489B of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for 7 years apart from imposition of fine of Rs.5,000/- and default sentence of 3 months, whereas, for the offence punishable under Section 489C of the Indian Penal Code, the appellant/accused is sentenced to suffer rigorous

imprisonment for 5 years. The maximum punishment prescribed for the offence punishable under Section 489B of the Indian Penal Code is imprisonment for life or with imprisonment which may extend to 10 years, apart from imposition of fine. The maximum punishment imposed on the appellant/accused is rigorous imprisonment for 7 years. In the matter of **Rakesh @ Chhotu Kedia (supra)** the rigorous imprisonment for 10 years was reduced to that of 7 years. In the case in hand, similar is the punishment imposed on the appellant/accused. Considering the nature of offence, I am of the considered opinion that the sentence imposed on the appellant/accused is just and proper. Hence, the following order :

ORDER

- i) The appeal is dismissed.
- ii) In view of disposal of the criminal appeal, the pending Criminal Application No.92 of 2018 also stands disposed of.

(A. M. BADAR, J.)