

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.354 OF 2013

1) NAFIZ ALAM NURUL HUDDA SHAIKH)
)
 2) MOHD.SADIDUL MOHD. MAJIDALI HAQ)
)
 3) ASAMUL SAFARUDDIN SHAIKH)...APPELLANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Nasreen Ayubi, Appointed Advocate for the Appellant Nos.1 and 2.

Ms.Payoshi Roy i/b. Dr.Yug Mohit Chaudhary, Advocate for
Appellant No.3.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : **A. M. BADAR, J.**

RESERVED ON : 15th MARCH 2018

PRONOUNCED ON : 27th APRIL 2018

JUDGMENT :

1 Appellants/Accused Nos.1, 2 and 3, by this appeal are
challenging the judgment and order dated 15th March 2013 passed

by the learned Additional Sessions Judge, Greater Bombay, Mumbai, in Sessions Case No.341 of 2011, thereby convicting them of offences punishable under Sections 489B and 489C read with 34 of the Indian Penal Code. For the offence punishable under Section 489B read with 34 of the Indian Penal Code, they all are sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.10,000/- and in default, to suffer simple imprisonment for 6 months by each of them. For the offence punishable under Section 489C read with 34 of the Indian Penal Code, appellants/accused persons are sentenced to suffer rigorous imprisonment for 7 years apart from payment of fine of Rs.10,000/-, and in default to undergo further simple imprisonment for 6 months by each of them. Substantive sentences are directed to run concurrently by the learned trial court.

2 Facts, in nutshell, leading to the prosecution of appellants/accused persons are thus :

(a) Police Inspector Kavalekar of the DCB CID Unit No.7,

Mumbai, received information from the Informer that at about 6.30 p.m. of 8th March 2011, two unknown persons are likely to come near the Reliance Energy Office, Ghatkopar, Mumbai, along with forged and counterfeit currency notes. Therefore, Police Inspector Kavakelar, called Police Inspector Vatsa, Police Inspector Vyankat Patil (PW6), Assistant Police Inspector Jaywant Sankpal (PW5), Police Head Constable Bhaskar Kisanrao Chavan (PW1) etc., in his chamber and shared the information with them. It was decided to lay a trap for apprehending the culprits. Accordingly, two panchas including Abddul Sattar Sayyed Ali Shaikh (PW2) were summoned. The police team accompanied by panch witnesses then went to the spot and laid a trap. At about 7.05 p.m. of 8th March 2011, two persons arrived on the spot on a motorcycle. The Informant pointed out those persons to be the suspects possessing the counterfeit currency notes. They were accosted and apprehended by the police. On making inquiry from both these persons by the police team, one of them disclosed his

identity as Nafiz Alam Shaikh, who is appellant/accused no.1. His personal search resulted in recovery of 200 forged/counterfeit currency notes, each of Rs.500/- denomination, in two bundles, apart from sundry items. Another person disclosed his name as Mohd.Sadidul Haq. He is appellant/accused no.2. His personal search resulted in recovery of 200 forged/counterfeit currency notes, each of Rs.500/- denomination, in two bundles, apart from sundry items. The police noted down serial numbers of those currency notes and kept them in a polythene bag and sealed the same on the spot. Seizure Panchnama Exhibit 28 came to be prepared on 8th March 2011 itself on the spot in presence of PW2 Abddul Sattar Sayyed Ali Shaikh, seizing the counterfeit currency notes and other articles from the appellants/accused nos.1 and 2.

- (b) PW1 Bhaskar Kisanrao Chavan, Police Head Constable, then lodged First Information Report (FIR) Exhibit 19 at the Parksite Police Station, Mumbai, which resulted in

registration of Crime No.105 of 2011 for offences punishable under Sections 489B and 489C read with 34 of the Indian Penal Code against appellants/accused persons Nafiz Alam Shaikh and Mohd.Sadidul Haq. Offence came to be registered by PW4 Bharat Gosavi, Assistant Sub-Inspector. Investigation of the crime was then transferred to the DCB, CID, Mumbai, and accordingly, Crime No.37 of 2011 came to be registered. The same came to be investigated by PW6 Vyankat Patil, Police Inspector.

- (c) During the course of investigation, both appellants/accused nos.1 and 2 disclosed to the Investigator that they used to meet appellant/accused no.3 Asamul Shaikh in front of Kurla Railway Station. Accordingly, appellant/accused no.3 came to be arrested by police. On 9th March 2011, appellant/accused no.3 made a voluntary disclosure statement (Exhibit 31) to the effect that he would show the place where the currency notes are kept concealed. The disclosure statement came to be recorded in presence of

panch witnesses including PW3 Mohd.Wasim by PW5 Jaywant Sankpal, Assistant Police Inspector. Accordingly, appellant/accused no.3 Asamul Shaikh led the panch witnesses and police party to Bainganwadi area of Mumbai and from one house in that locality, he recovered a sack containing six bundles of counterfeit currency notes having 560 counterfeit currency notes, each of Rs.500/- denomination, which were kept in a plastic bag. Accordingly, those forged/counterfeit currency notes came to be seized vide panchnama Exhibit 32.

- (d) Investigating Officer PW6 Vyankat Patil, Police Inspector, forwarded the seized currency notes to the Currency Notes Press, Nasik, and received the report (Exhibit 40) certifying that those are counterfeit currency notes. Ultimately, the appellants/accused persons were charge-sheeted.
- (e) The Charge for offences punishable under Sections 489B and 489C read with 34 of the Indian Penal Code was framed and

explained to the appellants/accused persons. They pleaded not guilty and claimed trial.

- (f) In order to bring home the guilt to the accused persons, the prosecution has examined in all six witnesses. First Informant Bhaskar Kisanrao Chavan, Head Constable, is examined as PW1. Panch witness Abddul Sattar Sayyed Ali Shaikh is examined as PW2. Exhibit 28 is the seizure panchnama of counterfeit currency notes seized from appellants/accused nos.1 and 2. Another panch witness Mohd.Wasim is examined as PW3. Exhibit 31 is the Memorandum statement whereas Exhibit 32 is the Recovery Panchnama. PW4 Bharat Gosavi, Assistant Sub-Inspector, who had registered the FIR is examined as PW4. Assistant Police Inspector Jaywant Sankpal is examined as PW5 whereas Senior Police Inspector Vyankat Patil is examined as PW6. The defence of the appellants/accused persons was that of total denial.

(g) After hearing the parties, the learned trial court came to the conclusion that prosecution had proved offences punishable under Sections 489B and 489C read with 34 of the Indian Penal Code, and therefore, he convicted the appellants/accused persons for the same and sentenced them as indicated in the opening paragraph of this judgment.

3 I have heard Ms.Ayubi, the learned advocate appearing for appellants/accused nos.1 and 2. She argued that evidence of PW1 Bhaskar Kisanrao Chavan, Head Constable, and PW2 Abdul Sattar Sayyed Ali Shaikh is discrepant in respect of spot of the incident. There was no ceramic shop or market as seen from one of these witnesses whereas, the another witness is vouching for the same. PW2 Abddul Sattar Sayyed Ali Shaikh – panch witness deposed that he accompanied the police only because the police assured to help him and as such, evidence of this witness is not reliable. No independent witnesses are examined by the prosecution even though spot was allegedly located at the market area.

4 Ms.Roy, the learned advocate appearing for appellant/accused no.3 vehemently argued that the prosecution has not proved arrest of the appellant/accused no.3 and it is seen from the evidence that two persons were residing in the house from which counterfeit currency notes were allegedly recovered at the instance of appellant/accused no.3. PW6 Vyankat Patil, Police Inspector, has admitted that he had not carried out Memorandum Panchnama of arrest of the appellant/accused no.3 and the said accused was not arrested at the instigation of other accused. Arrest panchnama of the appellant/accused no.3 is not exhibited. She further argued that the appellant/accused no.3 was residing at Panvel whereas the counterfeit currency notes were recovered from the house at Bainganwadi, which was taken on rent by persons named as Nazrul and Aminul. At the time of effecting recovery, both of them were present inside the house and the house was locked from inside. The recovered counterfeit currency notes were not hidden or concealed and the bag was lying in the open, in a room,

in which Nazrul and Aminul were present. It was under their control and possession. The learned advocate argued that if incriminating object was found in exclusive possession of the accused or found to be concealed by the accused, then only such circumstance constitutes incriminating circumstance against such accused. She placed reliance on judgment of the Honourable Supreme Court in Vijay Kumar vs. State of Rajasthan¹ to substantiate this contention and argued that the recovered counterfeit currency notes from the room in Bainganwadi area were not in exclusive possession of the appellant/accused no.3. The learned advocate further argued that Nazrul and Aminul, who were occupants of the said house are not examined by the prosecution to establish exclusive knowledge and possession of the appellant/accused no.3. Reliance is placed on State of Madhya Pradesh vs. Ghudan², Sarwan Singh vs. State of Punjab³ as well as State of Uttar Pradesh vs. Jageshwar and Others⁴. It is further contended on behalf of the appellant/accused no.3 that mandate of Section 100(6) of the Code of

1 (2014) 3 Supreme Court Cases 412

2 (2003) 12 Supreme Court Cases 485

3 AIR 1957 SC 637

4 (1983) 2 Supreme Court Cases 305

Criminal Procedure is not followed by the prosecution and Nazrul and Aminul, who were occupants of the said room, were not given the list of items seized and their signatures were not taken on the Recovery Panchnama. For this purpose, reliance is placed on the judgment of this court in the matter of **Shankar Banglorkar vs. State of Goa**⁵. According to the learned advocate for the appellant/accused no.3, Section 489-B of the Indian Penal Code is not applicable so far as appellant/accused no.3 is concerned, as there is no evidence of either selling, buying, receiving or use of counterfeit currency notes by the said accused. Neither any link between the appellant/accused no.3 and the co-accused nor common intention under Section 34 of the Indian Penal Code is proved by the prosecution. In submission of the learned advocate for the appellant/accused no.3, for the offence punishable under Section 489-C of the Indian Penal Code, maximum sentence of 7 years is imposed even though there are no aggravating circumstances against the appellant/accused. With this, it is argued that the appeal of the appellant/accused no.3 needs to be allowed.

⁵ 1992 (2) BOM C R 169

5 Shri S.V.Gavand, the learned APP, supported the impugned judgment and order of conviction and the resultant sentence by submitting that seizure of fake/counterfeit currency notes in huge quantity from appellants/accused nos.1 and 2 is established by the prosecution through evidence of PW1 Bhaskar Chavan, PW2 Abdul Sattar Shaikh and PW6 Vyankat Patil. Evidence on record shows that investigation from these accused persons resulted in arrest of appellant/accused no.3 Asamul Shaikh. Confessional statement of appellant/accused no.3 has resulted in recovery of 560 pieces of counterfeit currency notes of Rs.500/- denomination. The Report at Exhibit 40 issued by Currency Notes Press, Nasik, establish the fact that the currency notes were counterfeit. The learned APP placed reliance on the judgment of the Honourable Apex Court in the matter of **Mehboob Ali and Another vs. State of Rajasthan**⁶ to submit that the fact that the appellant/accused no.3 came to be arrested at the instance of the co-accused, and ultimately, he was having knowledge of the place where the counterfeit currency notes were

6 2015 DGLS (SC) 1010 = 2015 (4) Mah L J (Cri) 377

kept, demonstrate his complicity in the offence alleged against him. With this, he supported the impugned judgment and order.

6 I have carefully considered the rival submissions and also perused the Record and Proceedings including oral as well as documentary evidence, so also the judgments relied by the learned advocate appearing for the appellant/accused no.3.

7 The appellants/accused persons were charged for commission of offences punishable under Sections 489-B and 489C read with 34 of the Indian Penal Code, and after due trial, it is held that the prosecution has proved both these charge leveled against the appellants/accused persons. Hence, for better understanding, it is necessary to reproduce provisions of Sections 489-B and 489-C of the Indian Penal Code, which makes possession as well as use of forged or counterfeit currency notes an offence. Those read thus :

“489-B Using as genuine, forged or counterfeit currency-notes or bank-notes — Whoever sells to, or buys or receives from, any other person, or

otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

“489-C Possession of forged or counterfeit currency-notes or bank-notes — Whoever has in his possession any forged or counterfeit currency-note or bank-note, 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, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

8 According to the prosecution case, initially on the basis of secret information received from the Informer, police laid a trap and arrested appellants/accused nos.1 and 2 namely, Nafiz Shaikh and Mohd.Sadidul Haq near Reliance Energy Office at Ghatkopar, upon finding that they both were having in their possession huge

quantum of counterfeit currency notes of Rs.500/- denomination. Subsequently, upon interrogating those two appellants/accused nos.1 and 2, according to the prosecution case, complicity of the appellant/accused no.3 Asamul Shaikh was made known to the police, which resulted in his arrest on 9th March 2011. His confessional statement led to recovery of 560 counterfeit currency notes, each of Rs.500/- denomination from a room in Bainganwadi area of Mumbai. Let us, therefore, re-appreciate evidence of the prosecution in order to find out whether it is established by the prosecution that the appellants/accused persons knowingly or having reason to believe the currency notes are forged or counterfeit, received those currency notes and were possessing them knowingly. PW1 Bhaskar Chavan, Police Head Constable (First Informant), PW6 Vyankat Patil, Police Inspector, DCB CID and PW2 Abdul Sattar Shaikh – panch witness are examined by the prosecution in order to prove the fact that appellant/accused no.1 and appellant/accused no.2 namely Nafiz Shaikh and Mohd.Sadidul Haq were arrested by police on 8th March 2011 while they were possessing 200 pieces of counterfeit

currency notes of Rs.500/- denomination, by each of them. PW1 Bhaskar Chavan and PW6 Vyankat Patil in unison have deposed that on 8th March 2011, Police Inspector Kavalekar received information that two unknown persons possessing counterfeit currency notes are likely to come near the Reliance Energy Office at Ghatkopar, and therefore, Police Inspector Kavalekar called police officials in the chamber and disclosed this information to all of them. As per congruous version of PW1 Bhaskar Chavan, Police Head Constable, and PW6 Vyankat Patil, Police Inspector, then it was decided to lay a trap and accordingly, two panch witnesses were called. Taking panch witnesses and the Informer with them, under leadership of Police Inspector Vatsa, police team which was comprising of both of them, went near Reliance Energy Office of Ghatkopar. Both these witnesses testify that at the spot of the incident, the police team was divided in three groups. One group waited near the office of Reliance Energy, whereas the another group took its position near the public toilet and the third group waited near the bus stop. Both these witnesses further stated that, at about 7.05 p.m., two persons came at the spot on a motorcycle

and stopped near the Reliance Energy Office. Both of them were then accosted by the police teams.

9 PW2 Abdul Sattar Shaikh is a panch witness, who was witnessing the proceeds of the trap laid by the police. He has also corroborated version of PW1 Bhaskar Chavan and PW6 Vyankat Patil by deposing that as a panch witness, he accompanied the police party and went to the spot of the incident where two persons came on the motorcycle and stopped near the Reliance Energy Office, where those were apprehended by the police.

10 PW1 Bhaskar Chavan, PW2 Abdul Sattar Shaikh and PW6 Vyankat Patil further deposed that, upon being asked, the apprehended persons disclosed their names as Nafiz Shaikh and Mohd.Sadidul Haq. Their personal search was conducted and appellant/accused no.1 Nafiz Shaikh was found possessing 200 pieces of counterfeit currency notes, each of Rs.500/- denomination apart from sundry items such as driving license, PAN card and Credit card as well as cash amounting to Rs.790/-.

As deposed to by these witnesses, appellant/accused no.2 Mohd.Sadidul Haq was found to be possessing 200 pieces of counterfeit currency notes, each of Rs.500/- denomination, apart from cash amounting to Rs.1100/-, driving license and credit card etc. Then, as per version of these prosecution witnesses, panchnama of the events which took place including seizure of those currency notes (Exhibit 28) was prepared on the spot. As per version of PW1 Bhaskar Chavan, Police Head Constable, the counterfeit currency notes were wrapped in khakhi paper and those were sealed by applying lac seal, whereas, PW2 Abdul Sattar Shaikh and PW6 Vyankat Patil have deposed that counterfeit currency notes were sealed by keeping them in plastic bags. PW6 Vyankat Patil has stated that serial numbers of those currency notes were noted down. Thereafter, according to the testimony of these witnesses, PW1 Bhaskar Chavan, Police Head Constable, lodged FIR on 8th March 2011 itself with PW4 Bharat Gosavi, Assistant Sub-Inspector, attached to Parksite Police Station, Mumbai. That is how, Crime No.105 of 2011 came to be registered.

11 All these three witnesses are extensively cross-examined by the learned defence counsel and it was attempted to demonstrate that it was not possible for First Informant PW1 Bhaskar Chavan, Police Head Constable, to disclose serial numbers of the allegedly counterfeit currency notes while lodging the FIR as those were already sealed by the police. Similarly, it was argued that evidence regarding description of the material in which those counterfeit currency notes were packed is also contradictory, as PW1 Bhaskar Chavan, Police Head Constable, has stated that the counterfeit currency notes were wrapped in khakhi paper, whereas other two witnesses have stated that those were kept in a plastic bag. However, in my considered opinion, these discrepancies do not go to the root of the prosecution case in order to disbelieve congruous and consistent version of these three prosecution witnesses. Evidence of these witnesses goes to show that on the spot of the incident, after recovering the alleged counterfeit currency notes from person of appellants/accused nos.1 and 2, Panchnama Exhibit 28 came to be prepared. Evidence of PW6 Vyankat Patil, Investigating Officer, does show

that serial numbers of the alleged counterfeit currency notes were noted. If Panchnama at Exhibit 28 prepared on the spot, which is in handwriting of PW1 Bhaskar Chavan, Police Head Constable – First Informant is perused, then it is seen that serial numbers of the alleged counterfeit currency notes recovered from the appellant/accused no.1 Nafiz Shaikh and appellant/accused no.2 Mohd.Sadidul Haq are noted therein. Therefore, it cannot be said that it was not possible for PW1 Bhaskar Chavan, Police Head Constable – First Informant, to disclose the serial numbers of those alleged counterfeit currency notes at the time of lodging the FIR – Exhibit 19, as at that time, those currency notes were sealed. Cross-examination of PW1 Bhaskar Chavan, Police Head Constable, shows that he himself had written the Seizure Panchnama and perusal of the Seizure Panchnama Exhibit 28 shows that serial numbers of those alleged counterfeit currency notes are noted therein. Thus, the argument, so advanced, lacks merit.

12 Cross-examination of PW1 Bhaskar Chavan, Police Head Constable, reveals that one of the group was standing near the ceramic shop adjacent to the Reliance Energy Office. On both sides of that Reliance Energy Office, a market is situated. From cross-examination of PW2 Abdul Sattar Shaikh it is elicited by the defence that there is no market near the Reliance Energy Office and near the spot of the incident, there is no ceramic shop. A capital is sought to be made out from this material to disbelieve evidence of the prosecution regarding the spot of occurrence. However, from cross-examination of PW6 Vyankat Patil, Police Inspector, it is brought on record that there is a market at the place of the incident. Thus, such trivial issues are not sufficient to discard otherwise trustworthy and reliable evidence of these three prosecution witnesses. Promptly lodged FIR Exhibit 19 is corroborating the version of PW1 Bhaskar Chavan, Police Head Constable, about seizure of alleged counterfeit currency notes from the appellants/accused nos.1 and 2 in huge quantity. Evidence of the prosecution on this aspect is corroborated by contemporaneous documentary evidence in the nature of

Panchnama Exhibit 28 which was prepared on the spot of the incident, at the time of the incident. Hence, it is proved by the prosecution that on 8th March 2011, appellant/accused no.1 Nafiz Shaikh and appellant/accused no.2 Mohd.Sadidul Haq were found having in their possession alleged counterfeit currency notes, 200 pieces of Rs.500/- denomination, by each of them.

13 Now let us examine case of the prosecution against appellant/accused no.3 Asamul Shaikh and the evidence adduced by the prosecution in order to establish the charge against the said accused. So far as this accused is concerned, case of the prosecution is primarily resting on discovery of fact about complicity of appellant/accused no.3 Asamul Shaikh in dealing with fake currency notes, at the instance of appellant/accused no.1 Nafiz Shaikh and appellant/accused no.2 Mohd.Sadidul Haq, as well as subsequent discovery of the fact of knowledge and mental awareness of appellant/accused no.3 Asamul Shaikh about hoarding of the fake currency notes, 560 in number, each of Rs.500 denomination.

14 It is in evidence of PW6 Vyankat Patil, Police Inspector, who investigated this crime that after arrest of appellant/accused no.1 Nafiz Shaikh and appellant/accused no.2 Mohd.Sadidul Haq, he conducted investigation by interrogating both these appellants/accused persons. PW6 Vyankat Patil, Police Inspector, deposed that both these appellants/accused persons told him that appellant/accused no.3 Asamul Shaikh used to meet them at Kurla (East) Railway Station and this appellant/accused no.3 Asamul Shaikh is involved in the subject crime. PW6 Vyankat Patil, Police Inspector, further deposed that, he, therefore, went to Kurla (East) Railway Station and arrested appellant/accused no.3 Asamul Shaikh. As deposed by PW6 Vyankat Patil, Police Inspector, after arrest of appellant/accused no.3 Asamul Shaikh, he was interrogated by PW5 Jaywant Sakpal, Assistant Police Inspector.

15 Cross-examination of PW6 Vyankat Patil, Police Inspector, shows that he had not carried out Memorandum Panchnama of arrest of appellant/accused no.3 Asamul Shaikh at

the instigation of appellants/accused nos.1 and 2. Though from cross-examination of this witness it is elicited that in Panchnama Exhibit 31, appellant/accused no.3 Asamul Shaikh had given his residential address as Panvel, but it needs to be noted that this witness had not conducted investigation from the said accused, nor recorded his voluntary disclosure statement which ultimately resulted in discovery of the fact. It is seen that on the basis of record, this witness has stated that the recovery was from the house, which was in possession of Nazrul and Aminul, whose police statements were not recorded.

16 It is not the case of appellant/accused no.3 Asamul Shaikh that he was never arrested in the subject crime. Therefore, the fact that PW6 Vyankat Patil, Police Inspector, had not drawn Arrest Panchnama of this accused is of no consequence.

17 Now, let us examine what PW5 Jaywant Sakpal, Assistant Police Inspector, speaks about voluntary disclosure statement of appellant/accused no.3 Asamul Shaikh. It is in

evidence of this witness that during investigation, this accused showed his willingness to give his statement, and therefore, he called two panch witnesses. In presence of those panch witnesses, this accused made a disclosure statement that he is willing to produce the fake currency notes from the place where those were kept and accordingly, Statement Exhibit 31 of appellant/accused no.3 Asamul Shaikh came to be recorded. This witness further stated that this appellant/accused no.3 Asamul Shaikh led them to Shivaji Nagar in Bainganwadi area, and thereafter, he knocked the door of one house. A person named Aminul opened the door. Thereafter, appellant/accused no.3 Asamul Shaikh picked up one sack (bag) from the place where other sacks were also kept and opened that sack. It was found to be containing six bundles containing 560 currency notes, each of Rs.500/- denomination. As per version of this witness, those currency notes were wrapped in a plastic paper and sealed. Recovery Panchnama Exhibit 32 then came to be effected in presence of panchas, on which signatures of panchas were obtained.

18 Cross-examination of this Investigating Officer reveals that appellant/accused no.3 Asamul Shaikh had given his address as resident of Panvel. The Recovery Panchnama mentions the fact that the premises were taken on rent by Nazrul Haq. Said Nazrul as well as Aminul were present in that house. This witness admitted that he never made inquiry about ownership of other bags nor recorded statements of those two persons who were present in the house. PW3 Mohd. Wasim is a panch witness to the disclosure statement and resultant discovery of fact at the instance of appellant/accused no.3 Asamul Shaikh. His evidence shows that in his presence, appellant/accused no.3 Asamul Shaikh made a disclosure statement and showed his willingness to show the place where the currency notes were kept. Thereafter, as per version of this witness, appellant/accused no.3 Asamul Shaikh led them to Bainganwadi and from one house he took one bag and opened it. That bag was found to be containing 560 currency notes each of Rs.500/- denomination and ultimately, those currency notes were seized by preparing Panchnama Exhibit 32. This panch witness duly identified appellant/accused no.3 Asamul

Shaikh as the person who made the disclosure statement resulting in discovery of fact. Cross-examination of this witness shows that appellant/accused no.3 Asamul Shaikh had taken them to Govandi in his rented room and prior to proceeding, he was informed that they are going towards Govandi.

19 This is the evidence regarding involvement of appellant/accused no.3 Asamul Shaikh in the crime in question adduced by the prosecution. This evidence is criticized by the learned advocate appearing for appellant/accused no.3 Asamul Shaikh mainly on the ground that arrest of appellant/accused no.3 Asamul Shaikh is not proved and the currency notes allegedly recovered were not in possession of appellant/accused no.3 Asamul Shaikh. It is argued that this discovery of fact does not incriminate appellant/accused no.3 Asamul Shaikh as the recovery was made from the house occupied by other persons, who are neither examined before the court nor their statements are recorded by police. Violation of Section 100(6) of the Code of Criminal Procedure is also alleged.

20 As evidence against appellant/accused no.3 Asamul Shaikh is primarily comprising of the fact discovery in consequence of information received from appellant/accused no.3 Asamul Shaikh, it is apposite to quote provisions of Section 27 of the Evidence Act, which read thus :

“27 How much of information received from accused may be proved — Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

Bare reading of Section 27 of the Evidence Act makes it clear that the same is added by way of a proviso to Section 25 and Section 26 of the said Act. This provision makes a statement even by way of confession made by the accused in the police custody which distinctly relates to the fact discovered as admissible in evidence against the said accused. One will have to keep in mind that the discovery of fact is not to be confused or equated with the recovery of incriminating material object such as weapon of

assault, fake currency notes etc. The fact discovered embraces the place from where the object was produced or recovered and knowledge of the accused on such subject matter. If considered from this angle, then it becomes clear that evidence of PW6 Vyankat Patil, Police Inspector, makes it clear that from investigation made from appellants/accused nos.1 and 2 namely Nafiz Shaikh and Mohd.Sadidul Haq, he came to know about involvement of appellant/accused no.3 Asamul Shaikh in the crime in question, and therefore, appellant/accused no.3 Asamul Shaikh came to be arrested in the subject crime. Merely because PW6 Vyankat Patil, Police Inspector, has not recorded confessional statements of appellants/accused nos.1 and 2 in respect of involvement of appellant/accused no.3 Asamul Shaikh in the crime in question, it cannot be said that such evidence given by PW6 Vyankat Patil, Police Inspector, is not admissible. It is not the requirement of the law that a disclosure statement must always be reduced to writing and that writing should be exhibited. Evidence of PW6 Vyankat Patil, Police Inspector, clearly proves disclosure statement of appellants/accused nos.1 and 2 in respect of

appellant/accused no.3 Asamul Shaikh dealing in forged currency notes. To that extent, evidence of PW6 Vyankat Patil, Police Inspector, needs to be accepted, as material elicited from his cross-examination has not shaken this part of his evidence. This witness might not have prepared Arrest Panchnama of appellant/accused no.3 Asamul Shaikh but it is not the defence of this accused that no such Arrest Panchnama was ever prepared, nor he was ever arrested in this crime. Hence, vague suggestion to this witness that he has not carried out Memorandum Panchnama of the arrest of appellant/accused no.3 Asamul Shaikh is not sufficient to discard his otherwise trustworthy evidence regarding confessional statement of the rest of the accused which has resulted in discovery of the fact of involvement of appellant/accused no.3 Asamul Shaikh in the subject crime. It is not the defence of appellant/accused no.3 Asamul Shaikh that the police were already knowing his involvement in dealing with fake currency notes. Infact, the fact that appellant/accused no.3 Asamul Shaikh was dealing with counterfeit currency notes was not within the knowledge of the police. It was from the material elicited by PW6

Vyankat Patil, Police Inspector, by interrogating appellants/accused nos.1 and 2 namely Nafiz Shaikh and Mohd.Sadidul Haq, that the fact came to be discovered leading to the arrest of appellant/accused no.3 Asamul Shaikh. Therefore, the information furnished by appellants/accused nos.1 and 2 to PW6 Vyankat Patil, Police Inspector, as stated by him in his evidence, is clearly admissible and it had resulted in arrest of appellant/accused no.3 Asamul Shaikh.

21 Subsequent to apprehending appellant/accused no.3 Asamul Shaikh by police, his disclosure statement came to be recorded by PW5 Jaywant Sakpal, Assistant Police Inspector, in presence of PW3 Mohd. Wasim – panch witness and 560 currency notes, each of Rs.500/- denomination, came to be seized vide Panchnama Exhibit 32. These currency notes along with 400 other currency notes which were seized from rest of the appellants/accused persons, were sent for examination to Currency Notes Press, Nasik, by PW6 Vyankat Patil, Police Inspector. The Report at Exhibit 40 of the Currency Notes Press,

Nasik, shows that all those currency notes were counterfeit currency notes.

22 It is, thus, established from the evidence of the prosecution that on the basis of information furnished by appellants/accused nos.1 and 2, appellant/accused no.3 Asamul Shaikh came to be arrested and disclosure statement of the said accused resulted in discovery of the fact which resulted in recovery of 560 fake currency notes, each of Rs.500/- denomination. In the matter of **Pulukuri Kottaya vs. Emperor**⁷ it is held by the Privy Council that the discovery of fact arises by reason of the fact that the information given by the accused exhibited knowledge or the mental awareness of the accused as to its existence at a particular place. In **Mohd.Inayatullah vs. State of Maharashtra**⁸ the Honourable Supreme Court has held that the expression “fact discovered” in Section 27 of the Evidence Act is not restricted to a physical or material fact which can be perceived by the senses and that it does include a mental fact. Thus, the

⁷ AIR 1947 PC 67

⁸ 1976 1 SCC 828

expression “fact discovered” includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this. Thus, if assessed in proper perspective, evidence of the prosecution witnesses including PW6 Vyankat Patil, Police Inspector, PW5 Jaywant Sakpal, Assistant Police Inspector and PW3 Mohd. Wasim unerringly points out that appellant/accused no.3 Asamul Shaikh was having knowledge of the place where counterfeit currency notes in huge quantity i.e. 560 in number, of high denomination i.e. Rs.500/-, were kept, and consequently, those counterfeit currency notes came to be seized by the police. Therefore, even if the place from which the counterfeit currency notes were recovered was inhabited by two other persons, what is material is knowledge of appellant/accused no.3 Asamul Shaikh in respect of the place where fake/counterfeit currency notes were hoarded in large number.

23 In the matter of **Ismail vs. Emperor**⁹, as a result of information given by the accused, another co-accused was found by the police. The statement made by the accused to the police as

⁹ AIR 1946 Sind 43

to whereabouts of the co-accused was held to be admissible under Section 27 of the Evidence Act, as evidence against the accused. Similar are the facts of the case in hand, wherein, statement by the co-accused resulted in arrest of appellant/accused no.3 Asamul Shaikh and ultimately, he was found to be having knowledge of the place where counterfeit currency notes were hoarded in large number.

24 The learned APP has rightly relied on the judgment in the matter of **Mehboob Ali and Another vs. State of Rajasthan (supra)**, the facts of which are more or less identical to the facts of the case in hand. In the said case, after taking review of earlier judgments of the Honourable Supreme Court as well as of other High Courts, the Honourable Supreme Court was pleased to dismiss the appeal challenging conviction of the appellants for similar charge under Section 489-B and 489-C of the Indian Penal Code. In the said case, on the basis of information given by accused Puran Mal, other accused namely Mehboob Ali, Firoz and Ram Gopal were arrested. They informed police that they

obtained the forged currency notes from one Anju Ali and therefore, said Anju Ali was also arrested. He, in turn, informed that he used to receive the currency notes from accused Majhar. Said Majhar was also arrested. He, in turn, informed that he used to receive fake currency notes from Liyakat Ali. Said Liyakat Ali was also arrested by the police. They all were put to trial after filing the charge-sheet against them. Ultimately, they were convicted of the alleged offence and in appeal before the Honourable Supreme Court, it was argued that confessional statement of accused persons recorded under Section 27 of the Evidence Act is not admissible and no recovery has been made from accused Mehboob Ali and Mohd.Firoz. The recovery has not been proved. After considering various authoritative pronouncements reflected in earlier decisions of the Honourable Supreme Court on interpretation of Section 27 of the Evidence Act, so also the judgments of the Privy Council and other High Courts, for the reasons found in paragraph 20, the appeal came to be dismissed. Paragraph 20 of the said judgment reads thus :

“20 Considering the aforesaid dictums, it is apparent that there was discovery of a fact as per the statement of Mehmood Ali and Mohd. Firoz. Co-accused was nabbed on the basis of identification made by the accused Mehboob and Firoz. He was dealing with fake currency notes came to the knowledge of police through them. Recovery of forged currency notes was also made from Anju Ali. Thus the aforesaid accused had the knowledge about co-accused Anju Ali who was nabbed at their instance and on the basis of their identification. These facts were not to the knowledge of the Police hence the statements of the accused persons leading to discovery of fact are clearly admissible as per the provisions contained in Section 27 of the Evidence Act which carves out an exception to the general provisions about inadmissibility of confession made under police custody contained in Section 25 and 26 of the Evidence Act.”

Ratio of this judgment is squarely applicable to the case in hand.

25 The learned advocate for the appellant/accused no.3 Asamul Shaikh has placed reliance on the judgment in the matter

of State of Uttar Pradesh vs. Jageshwar (supra). In that case, accused Durga never made any statement that he concealed the gun. The gun was not recovered from Durga. In that context, it was held that the discovery is as regards authorship of concealment. Conduct and concealment are incriminating circumstances and their discovery becomes relevant and admissible under Section 27 of the Evidence Act. This judgment is of no assistance to the appellant/accused no.3 Asamul Shaikh as evidence adduced by the prosecution shows that he had knowledge of the place where counterfeit currency notes in large numbers were hoarded. Reliance is also placed by the learned advocate for appellant/accused no.3 Asamul Shaikh on judgment in State of Madhya Pradesh vs. Ghudan (supra). In that case, the weapon allegedly used in the crime was recovered from the house of one Chandan, who has not supported the prosecution case. It was recovered after seven months after the incident of firing on Narayan. The accused therein was arrested in some other crime and made a disclosure statement and that is how the pistol came to be recovered from the house of Chandan. On this

backdrop it was held that the recovery, infact, cannot be said to be from a place to which the resident alone had the exclusive access and the possibility of that weapon being with Chandan cannot be ruled out. Such is not the case in hand. In the instance case, evidence on record shows that the appellant/accused no.3 Asamul Shaikh was having knowledge about the place where the counterfeit currency notes were kept concealed.

26 In the matter of Sarwan Singh vs. State of Punjab (supra) Gurudev Singh was the victim of the assault. Accused no.1 was his brother. He had planned and committed murder of Gurudev Singh. On facts it was held by the Honourable Supreme Court that the discovery of clothes made at the place of Gurdev Kaur cannot be pressed in service against the accused as she has not been examined. In the case in hand, the panch witness as well as the Investigating Officer have vouched that appellant/accused no.3 Asamul Shaikh led them to the place from where 560 counterfeit currency notes were recovered. Hence, this ruling is not helpful to appellant/accused no.3 Asamul Shaikh.

27 In the matter of **Shankar Banglorkar vs. State of Goa** (**supra**) the accused had disclosed that he was having *charas* at his residence. Therefore, the police and panch witnesses went to his house. From kitchen platform of that house, three packets of *charas* kept in a plastic bag came to be recovered. The panchnama was stating that the accused therein made a statement that at the kitchen of his residence at Duler, he had kept two kilograms of *charas*. There was divergence between evidence of the panch witness and contents of the panchnama. The accused therein was handcuffed while making the statement, and therefore, the High Court came to the conclusion that disclosure was under duress and threats. In addition, it was held that copy of panchnama was not supplied to the accused therein after search of his house and recovery of *charas* from his house and this has violated the provisions of Section 100 (6) and (7) of the Code of Criminal Procedure. In the case in hand, the fact was discovered on the basis of voluntary disclosure statement made by appellant/accused no.3 Asamul Shaikh. Evidence on record shows that the place, from where counterfeit currency notes were

recovered at the instance of appellant/accused no.3 Asamul Shaikh, was not owned or taken on rent by him but it was taken on rent by some other person named Nazrul, as seen from cross-examination of PW5 Jaywant Sakpal, Assistant Police Inspector. That room was not searched or inspected in terms of provisions of Chapter VII of the Code of Criminal Procedure, but it was appellant/accused no.3 Asamul Shaikh who had led the police team and panch witnesses to that room from where he had picked up a sack, which was ultimately found to be containing 560 fake/counterfeit currency notes, each of Rs.500/- denomination. What is relevant is knowledge of appellant/accused no.3 Asamul Shaikh of the place where the fake currency notes were hoarded, and therefore, appellant/accused no.3 Asamul Shaikh in this case was not, even otherwise, entitled for compliance in terms of provisions of Section 100 of the Code of Criminal Procedure. Hence, the judgment in the matter of **Shankar Banglorkar vs. State of Goa (supra)** is not of any help to appellant/accused no.3 Asamul Shaikh.

28 In the matter of Vijay Kumar vs. State of Rajasthan (supra) recovery was from the house of appellants where families were residing and the articles recovered were ornaments. In the wake of the fact that from the house inhabited by families, ornaments were recovered, the recovery was not taken into consideration in that matter, by holding that the ornaments were not in exclusive possession of the accused therein. As stated in foregoing paragraphs, in the case in hand, it was found that appellant/accused no.3 Asamul Shaikh exhibited knowledge or his mental awareness in respect of the place where the counterfeit currency notes were kept concealed in a bag. Therefore, statement of appellant/accused no.3 Asamul Shaikh leading to the discovery of fact of his mental awareness about the place where the counterfeit currency notes were hoarded, is clearly admissible as per provisions contained in Section 27 of the Evidence Act.

29 Now let us examine which of the offences are proved against the appellants/accused persons. Possession as well as selling, buying, receiving, or trafficking in, or use as genuine of

any forged or counterfeit currency notes with requisite *mensrea* is made punishable under Section 489(b) and 489(c) of the Indian Penal Code. Without the *mensrea*, such offences cannot be made out. Knowing or having reason to believe that the currency notes are forged or counterfeit constitute *mensrea* of offences punishable under these Sections. *Mensrea* is the mental state and it is difficult to produce tangible evidence to prove *mensrea* of the offences punishable under Sections 489(b) and 489(c) of the Indian Penal Code. Such *mensrea* can be gathered from all surrounding circumstances which are brought on record from evidence of the prosecution. In my considered opinion, quantity of fake/ counterfeit currency notes found with the accused demonstrate their knowledge as well as reason to believe that the currency notes received by them and possessed by them are forged or counterfeit, particularly, in absence of any explanation in respect of such possession of counterfeit currency notes in large volume by the accused. In the case in hand, appellant/accused no.1 Nafiz Shaikh and appellant/accused no.2 Mohd.Sadidul Haq were found

to be possessing 200 counterfeit currency notes of Rs.500/- denomination, by each of them, on 8th March 2011, when they came near the Reliance Energy Office. Similarly, appellant/accused no.3 Asamul Shaikh was found to be conscious of the place where 560 fake/counterfeit currency notes were stacked and kept concealed in the bag. His possession over those counterfeit currency notes is established by the prosecution through evidence of PW3 Mohd. Wasim and PW5 Jaywant Sakpal, Assistant Police Inspector. Thus, it becomes crystal clear that all these three appellants/accused persons had received fake/counterfeit currency notes in large quantity and were possessing the same, undoubtedly, with knowledge or having reason to believe that those currency notes were forged or counterfeit. Therefore, the prosecution has made out offences punishable under Sections 489B and 489C of the Indian Penal Code against appellants/accused persons, and as such, no infirmity can be found with the impugned judgment and order of convicting appellants/accused persons for offences alleged against them by the prosecution.

30 The learned advocate appearing for appellant/accused no.3 Asamul Shaikh has also questioned the quantum of sentence imposed on appellant/accused no.3 Asamul Shaikh. Therefore, let us now examine whether the consequent sentence is proper. It is well settled that it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was committed. The sentencing court is expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The sentence is required to be adequate, just and proportionate with the gravity and nature of the crime. At the same time, circumstances of the accused are also required to be kept in mind while imposing the sentence, as one of the objects of the criminal justice system is to rehabilitate the transgressors and the criminals.

31 In the case in hand, the offence proved against appellants/accused persons is serious economic offence which actually destroys the economy of the State and is having large

ramification. Therefore, it cannot be said that appellants/accused persons are inappropriately sentenced by the learned trial court for offences proved against them. The sentence imposed upon them is commensurate with the gravity of offences held to be proved against them.

32 In the result, the appeal is devoid of any substance and therefore the order :

ORDER

The appeal is dismissed.

(A. M. BADAR, J.)