IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.611 OF 2015

Mohd. Gulam Rabbani,
Age : 26 years, Occu. Labour Work,
Residing at Ahmedabad Estate,
Masjid Bunder, Mumbai 400 009.
(Presently at Nasik Central Prison,
Nasik) ... **Appellant**

V/s.

The State of Maharashtra,
(at the instance of Azad Maidan
Police Station vide CR No.08/2013) ... **Respondent**

.....

Mrs.Nasreen S.K.Ayubi, Appointed Advocate for the Appellant.

Mrs.M.R.Tidke, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 10th DECEMBER 2018.

<u>ORAL JUDGMENT</u> :

1 By this appeal, the appellant/accused is challenging the Judgment and Order dated 01/04/2015 passed by the learned Additional Sessions Judge, Greater Mumbai in Sessions Case No.385 of 2013 along with Sessions Case No.1162 of 2013 thereby convicting him of the offences punishable under Sections 489(B) and 489(C) of the Indian Penal Code. No separate sentence is

imposed on the appellant/accused so far as the offence punishable under Section 489(C) of the Indian Penal Code is concerned and for the offence punishable under Section 489(B) of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for seven years apart from imposition of fine of Rs.500/- and default sentence of rigorous imprisonment for two months.

2 Facts in brief leading to the prosecution and resultant conviction of the appellant/accused can be summarized thus :

(a) The First Informant/P.W.No.1 Ashokkumar Mandal is a hawker and he used to sell T-shirts from his stall in the sub-way of the Churchgate Railway Station, Mumbai. P.W.No.2 Raj Bahadur Singh and P.W.No.3 Joseph D'Souza are also the vendors, who used to do their business in the neighbourhood of the stall of the P.W.No.1 Ashokkumar Mandal.

(b) On 13/01/2013 at about 6 p.m., the appellant/accused had purchased four T-shirts costing Rs.400/- from P.W.No.1 Ashokkumar Mandal. The appellant/accused had made payment by giving one currency note of Rs.1,000/- denomination. By retaining that currency note with him, P.W.No.1 Ashokkumar Mandal had returned Rs.600/- to the appellant/accused. In the evening hours of that day, when P.W.No.1 Ashokkumar Mandal tried to use that currency note for purchasing the goods for his business, he was informed by the Trader that the said currency note is fake one. P.W.No.1

Ashokkumar Mandal informed this fact to his neighbourhood vendors in order to make them alert.

(c) On 14/01/2013, again at about 11.00 a.m., the appellant/ accused came at the stall of P.W.No.1 Ashokkumar Mandal and purchased 12 T-shirts. The payment was made by giving two currency notes of Rs.1,000/- denomination to the P.W.No.1 Ashokkumar Mandal. He then immediately called neighbouring hawkers namely P.W.No.2 Raj Bahadur Singh and P.W.No.3 Joseph D'Souza, Purshottam Chopade, Munna Khan, etc. After informing this incident to the police, the appellant/accused was taken to the Police Station. P.W.No.1 Ashokkumar Mandal produced all three currency notes each of Rs.1,000/- denomination before police and those currency notes came to be seized.

(d) On the basis of Report (Exhibit 38) lodged by P.W.No.1 Ashokkumar Mandal on 14/01/2013, Crime No.8 of 2013 for offences punishable under Sections 489(A) and 489(B) read with Section 34 of the Indian Penal Code came to be registered at Police Station, Azad Maidan, Mumbai. The appellant/accused came to be arrested. House search of the appellant/accused came to be conducted resulting seizure of some T-shirts and some genuine currency notes as well as sundry items. Involvement of other accused persons was also found by the Investigating Officer and those were arrested.

Seized currency notes were sent for forensic examination to the Government Currency Notes Press of Nashik and on completion of investigation, including the appellant/accused four accused persons came to be charge-sheeted.

(e) The learned trial Court framed charge for the offences punishable under Sections 489(B) and 489(C) read with Section 34 of the Indian Penal Code against all accused persons. They pleaded not guilty 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 – Ashokkumar Mandal is examined as P.W.No.1. The report lodged by him is at Exhibit 38. His neighbouring vendors namely Raj Bahadur Singh and Joseph D'Souza are examined as P.W.No.2 and P.W.No.3. Ganeshkuamr Chourasiya – a panch witness is examined as P.W.No.4. Exhibit 44 is the seizure panchanama of three face currency notes each of Rs.1,000/- denomination, which were produced by P.W.No.1 Ashokkumar Mandal. Pravin Sawant, an employee of the Axis Bank is examined as P.W.No.5. Panch witness Rajeshkumar Chourasiya is examined as P.W.No.6. Shobha Mohite, landlady of the appellant/accused is examined as P.W.No.7. Investigating Officer Sabaji Naik of Azad Maidan Police Station is examined as P.W.No.8.

(g) The defence of the appellant/accused was that of total denial. However, he did not enter in the defence.

(h) After hearing the parties, the learned trial Court was pleased to convict the appellant/accused of offences punishable under Sections 489(B) and 489(C) of the Indian Penal Code. He is sentenced accordingly as indicated in the opening paragraph of this Judgment. The co-accused who are tried along with the appellant/accused came to be acquitted by the learned trial Court.

3 I heard Mrs.Nasreen S.K.Ayubi, the learned Advocate appointed to represent the appellant/accused at the cost of the State. She vehemently argued that though upon arrest of the appellant/accused his house search came to be conducted by the prosecuting agency, nothing incriminating came to be seized from his house. Evidence of P.W.No.1 Ashokkumar Mandal indicates that he had not dealt with the appellant/accused as a customer. Therefore, in submission of the learned Advocate, P.W.No.1 Ashokkumar Mandal cannot be said to be the eye-witness, who had accepted the currency note from the appellant/accused. Only three currency notes which were ultimately found to be fake are claimed to be used by the appellant/accused. Therefore, he is entitled for benefit of doubt.

4 The learned Additional Public Prosecutor supported

the impugned Judgment and Order of conviction and resultant sentence.

5 I have carefully considered the submissions so advanced and also perused the Record and Proceedings including the oral as well documentary evidence adduced by the prosecution.

6 Offences punishable under Sections 489(B) and 489(C) of the Indian Penal Code are held to be proved against the appellant/accused by the learned trial Court. In order to bring home the guilt to the appellant/accused in respect of these offences, the prosecution is required to prove *mens rea* as possession of the fake or counterfeit currency notes must be with the requisite knowledge and having reason to believe that such currency notes are forged or fake currency notes. Section 489(B) of the Indian Penal Code is relating to using as genuine forged or counterfeit currency notes. However, mere use is not sufficient to prove the offence. It must be with requisite knowledge and with reason to believe that the currency notes are counterfeit or forged. Even mere possession of the forged or counterfeit currency notes is not an offence. What is actionable is such possession must conscious with requisite reason for the belief. Keeping in mind these aspects, let us examine evidence adduced by the prosecution.

7 It is in evidence of P.W.No.1 that he is selling T-shirts from his stall, which he used to install in the sub-way of the Churchgate Railway Station. He further deposed that on 13/01/2013, he received one currency note of Rs.1,000/- denomination after selling four T-shirts to the appellant/accused. When he went to the market for purchasing goods for his business, he came to know that the said currency note is a forged currency note. Then, on 14/01/2013, the said customer again came to his stall and again purchased eight T-shirts by giving two currency notes each Rs.1,000/- denomination. This witness then claimed to have called his neighbouring hawkers and that is how the appellant/accused came to be apprehended on the spot itself. He was then taken to the Police Station, where report (Exhibit 38) came to be lodged by P.W.No.1 Ashokkumar Mandal against the appellant/accused. He produced those three currency notes each of Rs.1,000/- denomination and then those came to be seized vide seizure panchanama (Exhibit 44).

8 The material elicited from the cross-examination of P.W.No.1 Ashokkumar Mandal is not creating any doubt in his version. The fact that the appellant/accused was apprehended on the spot itself is not challenged in the cross-examination of this witness. It was attempted to show that as P.W.No.1 Ashokkumar Mandal was running the stall without license, he is deposing false

to oblige the police. However, why the police were behind the appellant/accused is not brought on record by the defence. Though, it is brought on record that two workers were working with P.W.No.1 Ashokkumar Mandal, it is not suggested to him that he never used to transact with any customer and all that work was done by the employee. P.W.No.1 Ashokkumar Mandal was the road-side hawker and his cross-examination reveals that he used to install his stall at the sub-way daily and he used to wind it up in the evening so that it can be taken away from that place. This makes it clear that in that makeshift stall, there was no provision for cash counter. Therefore, it cannot be said that P.W.No.1 Ashokkumar Mandal had no opportunity to directly sell his goods and receive payment from the customer. This witness has duly identified the appellant/accused as a person, who had given counterfeit currency notes to him and the part of his evidence so far as it relates to the identification of the appellant/accused is not at all challenged. Evidence regarding identification of the appellant/accused coming from mouth of P.W.No.1 Ashokkumar Mandal seems to be trustworthy because this witness is candidly made it clear that as he used to deal with plenty of customers, he cannot tell exactly, but the appellant/accused No.1 resembles the customer, who had given fake currency notes to him. Thus, no reason can be found to discard the version of the P.W.No.1 Ashokkumar Mandal, which is gaining corroboration from the FIR lodged by him with promptitude.

9 Neighbouring vendor namely P.W.No.2 Raj Bahadur Singh has spoken about the incident and has stated that on 14/01/2013, P.W.No.1 Ashokkumar Mandal had alerted him by informing him about receipt of fake currency note of Rs.1,000/- denomination on 13/01/2013. Likewise, P.W.No.3 Joseph D'Souza has stated that in the night hours of 13/01/2013, P.W.No.1 Ashokkumar Mandal had informed him that the fake currency notes of Rs.1,000/- denomination are being circulated. This version of both these witness is corroborating the version of P.W.No.1 Ashokkumar Mandal regarding receipt of one fake currency note of Rs.1,000/- denomination by him on 13/01/2013.

10. P.W.No.2 Raj Bahadur Singh and P.W.No.3 Joseph D'Souza have deposed about apprehension of the appellant/accused, when he was trying to circulate two fake currency notes of Rs.1,000/- denomination at the stall of P.W.No.1 Ashokkumar Mandal. Both these witnesses have duly identified the appellant/accused as a person, who had apprehended on the stall of P.W.No.1 Ashokkumar Mandal.

11 Evidence of panch witness P.W.No.4 Ganeshkumar Chourasiya is to the effect that in the evening of 14/01/2013, he was called at Azad Maidan Police Station and upon being produced by P.W.No.1 Ashokkumar Mandal, three currency notes each of Rs.1,000/- denomination came to be seized by police by

preparing panchanama (Exhibit 44). This witness had also participated in the house search of the appellant/accused. P.W.No.8 Sabaji Naik, Investigating Officer has spoken about production of three counterfeit currency notes by P.W.No.1 Ashokkumar Mandal and its seizure in presence of panch by police vide seizure panchanama (Exhibit 44).

12 P.W.No.8 Sabaji Naik, Investigating Officer has stated before the Court that all three currency notes seized upon being produced by P.W.No.1 Ashokkumar Mandal were sent for examination to the Government Currency Note Press at Nashik with forwarding letter at Exhibit 53. The Investigating Officer has received report from the Government Currency Note Press, Nashik upon examination of those three currency notes, which were seized after being produced by P.W.No.1 Ashokkumar Mandal. Perusal of the report of Assistant Works Manager, Currency Note Press, Nashik makes it clear that those currency notes were counterfeit notes. The said report is admissible as per provisions of Section 292 as well as Section 293 of the Code of Criminal Procedure. Incidentally, it needs to mention that all those three counterfeit currency notes were of same series i.e. of '5BK'.

13 This evidence makes it clear that the appellant/accused was not only possessing the counterfeit currency notes of Rs.1,000/- denomination, but he was circulating it by visiting the shop and by purchasing the T-shirts. The fact that the

appellant/accused had purchased some T-shirts on 13/01/2013 by using counterfeit currency note and that he immediately attempted to purchase more T-shirts from the very same shop on the next day by using counterfeit currency notes makes it clear that he was knowing the fact that the currency notes with him were forged and counterfeit currency notes.

14 Thus, the prosecution by its evidence is successful in making out the offences punishable under Sections 489(B) and 489(C) of the Indian Penal Code. Similarly, the quantum of sentence imposed on the appellant/accused is also proportionate to the offences held to be proved against the appellant/accused. In the result, the appeal fails and therefore, the Order :

ORDER

The Appeal is dismissed.

(A.M.BADAR J.)