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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

(The judgment is corrected pursuant to speaking to the minutes order dtd.08.10.18)

CRIMINAL WRIT PETITION NO. 3027 OF 2018

1. Sanskriti Jayantilal Salia
age : 25 years, Occu.: Service,
Indian inhabitant having her permanent
place of address and residing at 13/202
Kannamwar Nagar – I, Vikhroli (E),
Mumbai – 400 083

...Petitioner
(Ori. Accused)

Versus

1. The State of Maharashtra
2. The Senior Inspector of Police
at the instance of Parksite Police
Station, Vikhroli, Mumbai
3. Mrs. Dipika Prakash Amin
Employed with Saraswat Co-operative
Bank Ltd., Vikhroli (W), Mumbai
Branch as Bank Cashier and residing
at Flat No.11, Sankalp Siddhi Housing
Society, Kamarl Sagar, Bhandup (E),
Mumbai – 400 042.

...Respondents
(First Informant)

Mr. Jatin P. Shah, a/w Ms. Snehankita Munj and Zarna K.
Shah, for the Petitioner.

Mrs. Aruna S. Pai, APP for the State/Respondent.

**CORAM : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.**

DATED : 1st October, 2018

JUDGMENT :- (Per Smt. Bharati H. Dangre, J.)

1. Rule. Rule made returnable forthwith. Heard by consent
of the parties.

2. On **7th January, 2017** one Smt. Dipika Prakash Amin working as Bank Cashier with the Saraswat Co-operative Bank Ltd. Vikhroli, lodged complaint stating therein that on 19.12.2016 while she was discharging her duties as cashier one Ms. Sanskriti Salia with A/c No.055203100000285 deposited old currency notes to the tune of Rs.40,500/-. When these notes tendered by the customer, were placed in the Fake Note/Counterfeit Money Detector Machine, three notes of denomination of Rs.1,000/- and two notes of denomination of Rs.500/- i.e. total amount of Rs.4,000/- were found to be counterfeit. On inquiry from Ms. Sanskriti Salia, she informed that the said notes were her saving and in the wake of demonetization she had deposited the said amount. Ms. Sanskriti complied with the directions issued by the Bank authorities and the complaint filed by Smt. Dipika was registered as CR No.22 of 2017 and offences under Section 489(B) of Indian Penal Code ("IPC", for short) came to be registered against Ms. Sanskriti Jayant Salia, who has approached this court praying for quashing of the said **charge-sheet**.

3. The petitioner before us is well educated and has

completed post-graduation in commerce. According to the petition, her father is a businessman and she while pursuing her studies, she started working with a company “Enlightned Minds” - National English Language Testing & Assessment System at Mulund, in the capacity of Senior Back Office Executive. According to the Petitioner, on 8th November, 2016, the Government of India announced demonetization of old bank notes of Mahatma Gandhi series in the demonetization of Rs.500/- and Rs.1,000/-. It is the case of the Petitioner that the Government of India issued a notification post demonetization, and the demonetized notes were permitted to be deposited by the concerned holders of the said notes, in their bank account before the deadline, which was stipulated on or before 30th December, 2016. It is specific case of the petitioner that she had saved an amount of Rs.92,500/- in cash and this was in form of currency of Rs.500/- and Rs.1,000/-.

4. It is the case of the Petitioner that on 10th November, 2016, she deposited an amount of Rs.32,000/- in her account and thereafter on 4th December, 2016 she deposited further amount of Rs.20,000/- in her saving bank account in Saraswat Co-operative Bank Ltd., Vikhroli. As per the bank, on both

dates, the amount deposited by her was verified by the cashier by putting the notes in Fake Note/Counterfeit Note Detector Machine and nothing abnormal was noted. On 19th December, 2016 she again visited the bank to deposit balance sum of Rs.40,500/- in her saving bank account and on this date, the cashier found that currency amounting to Rs.4,000/- (three notes of Rs.1,000/- and two notes of Rs.500/-) were counterfeit. Based on which an offence was registered against the Petitioner under Section 489(B) of the Act on **7th January, 2017 at Parksite Police Station Vikhroli**. The Petitioner co-operated with the investigation and got her statement recorded. The Petitioner also obtained anticipatory bail from the Sessions Court of Greater Bombay, Mumbai, anticipating her arrest. On completion of investigation, charge-sheet was filed against the Petitioner on 17th June, 2017 in the Metropolitan Magistrate, 31st Court, at Vikhroli and the case was committed to the Court of Sessions, Greater Bombay, Mumbai and registered as Sessions Case No.699 of 2017.

5. The Petitioner has approached this Court praying for quashing and setting aside of the said Sessions Case arising out of the CR No.22 of 2017 registered against her, for the

offences punishable under Section 489(B) of IPC.

In support of the Petitioner, we have heard the learned Counsel Mr. Shah and the learned APP **Mrs. Pai**. The learned Counsel for the Petitioner would submit that for invoking the provisions of Section 489(B) of IPC, it is necessary for the prosecution to establish that the Petitioner had either “knowledge” or that she had “reason to believe” that the currency notes were forged or counterfeit. He would submit that *mens rea* is an essential ingredients of Section 489(B) and without the presence of the same, the Petitioner could not have been charged with Section 489(B). The learned Counsel would submit that even if the **charge-sheet** is perused and construed the way it stands, it do not reflect any knowledge being attributed to the Petitioner and, in fact, she herself is a victim of the counterfeit menace and has been made an scapegoat of entire incident. Thus, according to the Petitioner, perusal of the entire charge-sheet and the material collected by the prosecution both, fall short of establishing the charge even *prima facie*, since it fails to establish knowledge on her part that the notes which she had deposited were forged or fake. His specific submission is that mere possession of the currency

notes by her, is not sufficient to foist the charges on her and according to him perusal of the charge-sheet would reveal that there is no iota of any evidence to show that the counterfeit notes were of such nature or description that a mere look at them would convey any person of average intelligence that they were counterfeit notes. He would thus submit that continuation of trial and the Petitioner being made to go through the rigmarole of trial would nothing but an abuse of process of law and this Court should intervene and quash the Sessions Case pending against her.

6. The learned Counsel for the Petitioner would rely upon judgment of the Hon'ble Apex Court in the case of ***Umashankar vs. State of Chattisgrah***¹ to support his argument that the Section 489(B) would involve an element of *mens rea* and is is an essential ingredient to constitute an offence under the said Section. According to the learned Counsel the Hon'ble Apex Court has held that possessing or even intending to use any forged or counterfeit currency notes or bank notes is not sufficient to make out a case under Section 489 - C of IPC in absence of *mens rea*. He also place reliance on the following judgments of this Court, which lay down a similar

1 (2001) 9 Supreme Court Cases 642

proposition of law, following the judgment of the Hon'ble Apex Court.

- (i) Shashikant s/o. Gulabchand Bora vs. State of Maharashtra, (2010) ALL MR (Cri) 3883.
- (ii) Abdul Majeet Abdul Reheman Sarkhot vs. State of Maharashtra, (2001) ALL MR (Cri) 1311.
- (iii) Abdul Fakirsaheb Mamtule vs. State of Maharashtra, (2001) ALL MR (Cri) 2264.
- (iv) Noor Islam s/o. Sadik Ali vs. The State of Maharashtra, (2016) ALL MR (Cri) 3480.

He would also place the reliance on the judgments of the other High Courts taking a similar view.

7. With the assistance of the learned Counsel for the parties, we have carefully perused the charge-sheet in the subject crime. The case of the prosecution is that the Petitioner had deposited an amount of Rs.40,500/- on 19th December, 2016 out of which an amount of Rs.4,000/- has been found to be counterfeit currency. The denomination of the said counterfeit currency was three notes of Rs.1,000/- and two notes of Rs.500/- and in terms of the circular issues by the Reserve Bank of India vide Circular No.RBI/2015-16/162, since more than five notes were found to be counterfeited, an offence came to be registered against the Petitioner. The Investigating Officer

during the course of investigation has sought an opinion from the General Manager, Currency Note Press, Nashik Road, Nashik vide letter dated 10th January, 2017. The seized currency notes were sent for examination to the addressee and he was requested to give his opinion on the following points:

- (i) Whether seized currency notes are counterfeit note or genuine notes.
- (ii) Whether seized notes are printed/produced from Security press of Government of India.
- (iii) What are the security features in genuine currency notes of denomination of Rs.1000/- (having silver colored thread) and Rs.500/- (having green colored thread).
- (iv) In which respect (regarding security features) the seized currency notes differ from that in genuine currency notes.
- (v) Any other opinion than above points.

In response, the Assistant Manager (Tech and Per) on behalf of General Manager, forwarded an opinion report on examination of the suspected forged currency notes to the Investigating Officer. The said report reveals that the opinion was expressed after comparing the alleged counterfeit notes with genuine notes of respective parties with the help of modern scientific instrument, and the observation is reproduced below:

1. Cut size of the note (s)
 - (i) Length :- Correct
 - (ii) Width :- Correct
2. Size of printed design :- Varies from genuine note
3. Paper
 - (i) Thickness :- Same as that of Genuine note paper
 - (ii) texture :- Not as per genuine note.
4. Watermarks
 - (i) Main Watermark :- Created during paper making process but imitated
 - (ii) Hidden Watermark :- Created during paper making process but imitated
 - (iii) Deno. Number :- Created during paper making process but imitated
5. Security Thread
 - (i) Continuity of the thread:- Partly embedded on front & fully embedded on Back.
Inserted during paper making but imitated.
6. Optical response under U.V. light :-
 - (i) Paper – optically active / inactive :- Optically inactive
 - (ii) Fluorescent Fibers :- Only single colour fibers are present & are imitated.
 - (iii) Fluorescent Tint Band:- Present
 - (iv) Security Thread :- The thread is not glowing.
The text is over printed with invisible fluorescent links.
 - (v) **Numbering** **Present.**
7. See though registration :- Correct

- | | | |
|------------|--|---|
| 8. | Printing quality of straight lines arranged in Different angles on front side of watermark window :- | Good |
| 9. | Latent image of denomination :- | Imitated without intaglio printing. |
| 10. | Intaglio Printed micro lettering :- | Un sharp without intaglio printing |
| 11. | Printing Inks :- | Not matching with the genuine notes |
| 12. | Optically variable ink :- | Imitated without distinct color shift effect. |
| 13. | Printing Process used :- | Offset |
| 14. | Presence of Intaglio Printing:- | Not present |
| 15. | Numbering | |
| | (i) Color Shade :- | Slightly varies. |
| | (ii) Size of Numerals & alphabets :- | Not as per genuine note. |
| 16. | “M” Feature | Not present. |
| 17. | Whether the FICN(s) is/ are of High Quality or not: | <u>Yes.</u> |

The opinion expressed conclusively read thus:

“All the referred suspected notes of Rs.500/- & Rs.1000/- deno are HIGH QUALITY COUNTERFEIT NOTES as it is imitation of security features as specified in the third schedule of the Unlawful Activities (Prevention) Amendment Act 2012 (3 of 2013).”

8. On the basis of the opinion received from the Currency Press Note, Nashik Road, Nashik, it is **apposite** to note that the notes which were referred to as suspected notes are classified

as High Quality Counterfeit Notes and perusal of the report would reveal that there was no means by which a young girl like the Petitioner could have distinguished the said notes as being counterfeit. It was only on careful scrutiny of the expert like General Manager of the Currency Press Note, the alleged notes are concluded to be high quality counterfeit notes. Apart from this material, the charge-sheet do not in any manner discloses that the Petitioner had any knowledge about the notes seized from her to be counterfeit. This submission of the learned Counsel for the Petitioner is not disputed by the learned APP **Mrs. Pai**.

9. In such circumstances, we will have to examine whether on the basis of the material collected by the investigating agency and on the basis of which charge-sheet has been filed, whether invocation and application of Section 489(B) of IPC against the Petitioner is justified. Section 489(B) reads thus:

“489B. 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 2[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.”

10. Perusal of the said Section would reveal that *mens rea* is an essential ingredient of the said Section and use of the term “knowing or having reason to believe the same to be forged or counterfeit” is the *sine qua non* for inviting penalty under the said provision. When *mens rea* is conspicuously absent, mere use of any forged or counterfeit currency notes or bank notes cannot attract the provisions of Section 489(B). The essential ingredient of the said offence being that the person, who receives the notes has reason to believe that the said notes are forged or counterfeit. The burden to prove beyond all reasonable doubt, that the accused had knowledge or reason to believe that the currency notes which were put to use / possessed by him were counterfeit or fake currency note is on the prosecution.

The Hon'ble Apex Court in the case of ***M. Mammutti vs.***

State of Karnataka² has observed thus:

“Mr. Neitar submitted that once the appellant is found in possession of counterfeit notes, he must be presumed to know that the notes are counterfeit. If the notes were of such a nature that mere look at them would convince anybody that it was counterfeit such a presumption could reasonably be drawn. But the difficulty is that the prosecution has not put any specific question to the appellant in order to find out whether the accused knew that the notes were of such a nature. No such

² (1979) 4 SCC 723

evidence has been led by the prosecution to prove the nature of the notes also, In these circumstances, it is impossible for us to sustain the conviction of the appellant. For these reasons, therefore, the appeal is allowed, conviction and sentences passed on the appellant are set aside, and the appellant is acquitted of the charges framed against him.”

The Hon'ble Apex Court in case of *Umashankar vs. State of Chattisgrah* (supra) has observed thus:

“7. Sections 489-A to 489-E deal with various economic offences in respect of forged or counterfeit currency-note or bank-notes. The object of Legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency-notes and bank-notes. The currency-notes are, inspite of growing accustomedness to the credit cards system, still the backbone of the commercial transactions by multitudes in our country. But these provisions are not meant to punish unwary possessors or users.

8. A perusal of the provisions, extracted above, shows that mens rea of offences under Sections 489B and 489C is, "knowing or having reason to believe the currency-notes or bank-notes are forged or counterfeit". Without the afore-mentioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency-notes or bank-notes, is not enough to constitute offence under Section 489B of I.P.C. So also possessing or even intending to use any forged or counterfeit currency-notes or bank-notes is not sufficient to make out a case under Section 489C in the absence of the mens rea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mens rea. The High Court, however, completely missed this aspect The learned trial judge on the basis of the evidence of P.W. 2, P.W. 4 and P.W. 7 that they were able to make out that currency note alleged to have been given to P.W. 4,

was fake "presumed" such a mens rea. On the date of the incident the appellant was said to be 18 years old student. On the facts of this case the presumption drawn by the trial court is not warranted under Section 4 of the Evidence Act. Further it is also not shown that any specific question with regard to the currency-noted being fake on counterfeit was put to the appellant in his examination under Section 313 of Criminal Procedure Code. On these facts we have no option but to hold that the charges framed under Sections 489B and 489C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Sections 489B and 489C of I.P.C. and acquit him of the said charges [see: M. Mammutti Vs. State of Karnataka].”

11. In light of aforesaid authoritative pronouncements wherein has been categorically held that mere possession of the counterfeit notes is not punishable under law and it must be established by prosecution that possession was with a knowledge that the said currency notes are fake or counterfeit. In such circumstances, in absence of any evidence brought on record by the prosecution as a part of charge-sheet to demonstrate that possession of the Petitioner of the alleged currency notes which were deposited by her in the bank on 19th December, 2016 was with a knowledge that the same were counterfeit, Petitioner cannot be tried for an offence under Section 489(B) in absence of any material to attribute such a knowledge on her part.

Continuation of the proceedings against the Petitioner would be nothing but would amount to abuse of process of law and in such circumstances we are of the opinion that this is a fit case where we should exercise our inherent jurisdiction under Section 482 of Code of Criminal Procedure and in any contingency even on culmination of a trial, the charge leveled against the Petitioner cannot be proved and would result into an acquittal. In such circumstances, we are inclined to invoke our inherent power and we allow the Writ Petition and quash and set aside the Sessions Case No.699 of 2017, pending before the Additional Sessions Judge, Greater Bombay, Mumbai, arising out of CR No.22 of 2017 registered with Parksite Police Station, Vikhroli, Mumbai, for the offence punishable under Section 489(B) of IPC.

12. Rule made absolute in terms of prayer clause (a). No costs.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]

Santosh
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The judgment is corrected pursuant to speaking to the minutes order dated 8th October, 2018.