

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION APPLICATION NO.14 OF 2014

Durga w/o Sanjay Patil,
Aged about 36 years,
Occupation-Private,
R/o. Plot No.467,
New Subhedar Layout,
Near NIT Garden, Nagpur.
(Presently at Central Prison, Nagpur).

..

Applicant

.. Versus ..

The State of Maharashtra,
Through Police Station Officer,
Police Station, Sakkardara,
District-Nagpur.

..

Non-Applicant

.....
Shri C.R. Thakur, Advocate for Applicant,
Smt. N.P. Mehta, APP for Non-Applicant.
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CORAM : MRS. SWAPNA JOSHI, J.
DATED : FEBRUARY 14, 2018.

ORAL JUDGMENT

1] This revision has been directed against the judgment and order passed by the learned District Judge-5 and Additional Sessions Judge, Nagpur on 18.1.2014 in Criminal Appeal No.201/2011, wherein the learned Additional Sessions Judge dismissed the appeal preferred by the appellant- herein against the judgment and order passed by the learned Ad-hoc

Assistant Sessions Judge-3, Nagpur in Sessions Trial No.199/2011 decided on 1.8.2011 under Section 489-B and C of the Indian Penal Code.

2] Heard Shri C.R. Thakur, learned counsel for Applicant and Smt. N.P. Mehta, learned APP for Non-Applicant.

3] Learned counsel for applicant vehemently argued that both the courts below had failed to consider the evidence of the witnesses in right perspective and the learned judges had passed perverse judgment and order against the applicant/accused. He contended that both the courts below have not considered the main aspect that the applicant was not identified by the witness nos.1 and 3 in the court, whose shops the applicant visited and presented the counterfeit notes.

4] As against this, the learned APP contended that prosecution has established its case beyond reasonable doubt and there is concurrent finding of the court with regard to the alleged offence. Learned APP contended that although PW-3 failed to identify the accused before the court, however, this may be due the time gap and due to the similarity in both the accused. He submitted that the seizure of the counterfeit notes and the arrest of the applicant immediately at the place of incident proves the guilt of the applicant beyond reasonable doubt. The learned APP further contended that the visit of the applicant in two shops and using the currency notes in second shop, despite of the fact that the first shopkeeper expressed that

those notes do not appear to be genuine one, the applicant used those notes in second shop immediately, which shows the mens rea of the applicant to use those notes knowing it to be counterfeit notes.

5] In order to verify the rival contentions of both the sides, it would be advantageous to go through the prosecution case. The prosecution case is that on 28.1.2011, complainant Manish Baliram Banode lodged a complaint (Exh.11) with the Sakkardara Police Station, Nagpur alleging that he runs a grocery shop under the name and style "Banode Brothers" in Ayurvedic Layout, Nagpur. As usual, he opened his shop on 28.1.2011 in the morning. He along with his servant Sanjay Dhoble (PW-2) was present in the shop. At about 2.00 pm one woman (applicant) had visited the shop for purchasing the rice and she purchased 100 kg. rice and gave the amount of Rs.2,500/- to him after taking out the said amount from her purse and handed over five currency notes of Rs.500/- denomination each to him. Thus, total amount of Rs.2,500/- was handed over to him by that lady. The complainant raised his doubt about the thickness of the currency notes and he noticed that some matter was missing from those notes, hence he made enquiry with the applicant whether those notes were forged/counterfeit notes. The applicant told him that those notes were given to her by another lady. At that point of time, the complainant received the information on telephone from the adjoining shopkeeper Amit (PW-3) that one lady was trying to purchase the articles by using forged notes. He was asked to be careful. He also gave the description of that lady to complainant (PW-1). On the basis of

the said information, the complainant raised doubt about the said lady who visited his shop for purchasing the rice. He immediately made a phone call to Sakkardara Police Station and informed about the said fact.

6] On receipt of alleged information, PW-6 PSI Narendra Wankhede visited the shop of the complainant along with a lady constable and others. On making enquiry with the applicant, she informed her name. The police then took charge of those five currency notes of Rs.500/- each from the complainant under the seizure panchanama. PW-5 seized those currency notes from the complainant. The lady constable took search of the applicant and she found the applicant possessing eleven forged currency notes of Rs.500/- in her purse. Those notes were taken charge by PW-5 under seizure panchanama. On the basis of complaint, offence was registered against the applicant vide Crime No.20/2011. The applicant was arrested. The applicant stated that she received currency notes from accused no.2. Hence, both the accused came to be arrested. The Investigating Officer PW-5 took charge of the five currency notes from the complainant and remaining currency notes from applicant no.1 Durga under seizure panchanama.

7] The Investigating Officer recorded the spot panchanama. He sent letters to the L & T Finance Company, Umrer seeking information against accused no.1. He also issued requisition to Reserve Bank of India for inspection of those currency notes. He received the report from the

Reserve Bank (Exh.25). The currency notes were also sent to the Manager, Currency Note Press, Nashik Road, Nashik, vide requisition Exh.29, who submitted the report vide Exh.5. The statements of the witnesses were recorded. After the completion of the investigation, chargesheet was filed against both the accused. The charge was framed. Accused pleaded not guilty to the charge and claimed to be tried. The defence of the applicant was that she does not know anything about the currency notes. She has come up with the defence that the currency notes were given to her by accused no.2. It is further her case that she had obtained loan from L & T Finance Company, Umrer who gave currency notes to her. She further came up with the defence that she received currency notes from Bachat Gat.

8] After considering the evidence on record, the learned Ad-hoc Assistant Sessions Judge-3, Nagpur convicted the applicant under section 489-B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.500/-, in default to suffer simple imprisonment for 15 days. She was also convicted under section 489-C of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs. 500/-, in default to suffer simple imprisonment for 15 days.

9] The applicant preferred an appeal against the said judgment and order. The learned appellate court, after hearing both the sides and on going through the evidence on record, dismissed the appeal. The applicant

has challenged these orders in the present revision.

10] PW-1 identified the currency notes which were taken charge from the applicant in the court. On the point of identification, no doubt, PW-1 has not identified the applicant in the court. However, he gave the description of the lady who visited his shop and was apprehended by the police.

11] On this count, PW-2 Sanjay i.e. the servant of PW-1 identified the applicant before the court as the same lady to whom he gave the rice. PW-2 deposed that 100 kg. of rice was sold for Rs.2,500/- to the applicant, five currency notes of 500 denomination were given to his owner PW-1 and the said fact was informed to the police by his owner. The police took the charge of those five currency notes from the owner PW-1 under seizure panchanama (Exh.13). He also stated about the spot panchanama Exh.15.

12] The testimony of PW-2 is also supported by PW-3, who has stated that the applicant had given him five currency notes of 500 denomination, however, he returned the same to her, as he had doubt about their genuineness and immediately he told PW-1 on phone that one lady had been to him having forged currency notes. He had also given the description of that lady. The testimony of PW-3 corroborates with the testimony of PW-1. The witnesses have categorically stated about the seizure of five currency notes from PW-1 and eleven currency notes from the purse of said lady

under seizure panchanama Exh.16. The testimony of PW-1, 2 and 3 has not been shattered in the cross-examination and their testimony clearly indicates that five currency notes were found and were taken charge from the PW-1 by the police and eleven currency notes were taken charge from the applicant. The Investigating Officer Narendra Wankhede has supported the case of PW-1 and PW-3 with regard to the seizure of currency notes from PW-1 as well as eleven currency notes from the applicant. It is not disputed that those currency notes were reported on examination as counterfeit notes.

13] Both the courts below had given a concurrent finding on the point of seizure of currency notes from the applicant and from the complainant. The provisions under Section 489-B and 489-C, IPC postulates as under :

Section 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.*

14] So far as Section 489-B and 489-C of the Indian Penal Code are concerned, the knowledge is an essential element. The *mens rea* of the offences under Section 489-B and 489-C of the Indian Penal Code is “knowing or having reason to believe the currency notes are forged or counterfeit”, without *mens rea*, selling, buying or receiving from any other person or otherwise trafficking in or using as genuine, forged or counterfeit currency-note or bank-note is not enough to constitute the offence under Section 489-B of the Indian Penal Code. Simply possessing or intending to use any forged or counterfeit currency-note or bank-note is not sufficient to make out the case under Section 489-C of the Indian Penal code in the absence of *mens rea*.

15] So far as *mens rea* and knowledge is concerned, the testimony of PW-3 indicates that prior to the applicant visiting the shop of the complainant, the applicant had visited his shop. At that time she had offered five hundred currency-note to PW-3, however, he expressed his doubt over the genuineness of those currency-notes. At that point of time, the applicant had a knowledge that the currency-notes which she had offered to PW-3 were not genuine. However, the applicant had not made any efforts to verify, whether those currency-notes were genuine or not. It was incumbent on the part of the applicant to get those currency-notes verified and see whether those currency-notes were genuine or not. However, the applicant had failed to verify the said fact and she had immediately rushed to the shop of PW-1 in order to spend the said amount which clarified that the applicant had

knowledge about those notes being counterfeit. PW-3 had brought to the knowledge of the applicant that those currency-notes were not genuine.

16] Since PW-1 came to know immediately from PW-3 that one lady had visited his shop with fake currency-notes, he immediately realized that the applicant may be the same lady who had visited the shop of PW-3. PW-1 became alert and when he handled those currency-notes, he realized that those notes were not genuine and he immediately informed the police. Police immediately visited the shop of PW-1 and took charge of those currency notes. Police apprehended the applicant at the place of incident itself and had also taken charge of remaining currency notes from her purse. All these facts go to show that the applicant had a knowledge about the currency notes which she offered to the shopkeepers PW-1 and PW-3 for purchasing rice and the currency notes which she was having in her purse were not genuine.

17] Thus, knowledge as well as *mens rea* has been proved by the prosecution. The police had taken pains to investigate, whether those currency notes were given to the applicant by accused no.2, however, they came to know that those currency notes were not given to accused no.2 by L & T Finance Company as well as Bachat Gat, the police did not get any concrete proof in that regard. Suffice it to show that the police found the applicant in the possession of counterfeit notes which were used by her while purchasing the rice. The sufficient evidence was brought by the

prosecution on record to prove the guilt of the applicant. The applicant was found in possession of forged or counterfeit currency notes knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine. The prosecution has proved that the applicant has purchased the rice from the complainant by using those forged currency notes, knowing or having reason to believe the same to be forged or counterfeit.

18] In the instant case the learned trial Judge has observed that the evidence on record establishes the charges for the offence punishable under Section 489-B and 489-C of the Indian Penal Code for using the counterfeit notes as genuine, when it was within the knowledge of the applicant that those notes were counterfeit notes. The applicant was in possession of those notes knowing that those were counterfeit notes and she intended to use them as genuine. The learned trial judge has observed that intention of the applicant has been proved by the prosecution. The said view of the learned trial judge has been confirmed by the appellate court.

19] It is well settled that while exercising revisional jurisdiction the Court has to ensure that the judgment rendered by the Lower Courts do not suffer from any illegality. The jurisdiction can only be exercised for preventing miscarriage of justice. In the present case, it can be seen that the findings recorded by the lower Courts are based on the sound reasoning. No illegality is pointed out by learned counsel for the petitioner. In this view of

the matter, no case for interference is made out. It is also well settled that the powers of the Court in the case of Revision Application under Section 397 of Cr.P.C. are limited. The court cannot re-appreciate the evidence unless there is manifest error of law in the judgment of the lower Court. In the instant case no perversity or illegality noticed in the judgments of the lower courts.

20] The order of conviction and sentence passed by the courts below is confirmed. The applicant shall appear before the learned trial court within one month from today for serving remaining sentence. Consequently, the revision fails and is dismissed. Rule is discharged.

JUDGE