

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Appeal S-1544-SB of 2006
Date of Decision : September 26, 2018

Nitin Jain

.....Appellant

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Ms. Shubreet Kaur, Advocate
for the appellant.

Mr. Sarabjit Singh Cheema, Asstt. A.G., Punjab.

T.P.S. MANN, J.

The appellant, alongwith Darshan Singh, was tried for committing the offences punishable under Sections 489-A, 489-B and 489-C IPC. Vide judgment and order dated 9.8.2006, learned Sessions Judge (FTC), Ludhiana acquitted Darshan Singh of the charges against him. The appellant was, however, convicted under Section 489-B IPC and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for two months. He was also convicted under Section 489-C IPC and sentenced to undergo rigorous

imprisonment for three years and to pay a fine of Rs. 1,500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month. Both the sentences were ordered to run concurrently. The period of detention during the investigation and trial was ordered to be set off against the sentence awarded to him.

Aggrieved of his conviction and sentence, the appellant filed the present appeal which was admitted on 21.8.2006. Subsequently, vide order dated 25.4.2007, this Court granted the concession of bail to him.

According to the prosecution, on 17.12.2002, SI Sandeep Kumar alongwith police officials was present at Shahpur Chowk in connection with meeting to be held in the office of the Deputy Superintendent of Police, Industrial Area, Ludhiana. At about 8.00 p.m., complainant-Jai Parkash made statement before him that he was running a fish rehri on the Giaspura crossing. After purchasing fish worth Rs.50/- from the complainant, the appellant handed over to him a currency note of the denomination of Rs.500/- bearing No.9FU4812620 after taking it out from a fresh bundle and the complainant thereafter returned the balance amount to him. On suspicion, the complainant compared the aforementioned currency note with other currency notes and found that the appellant had given him a counterfeit currency

note. The complainant further stated that the appellant was waiting for a bus so as to go to Jalandhar and he could be apprehended if a raid was conducted. The note in question of the denomination of Rs.500/- was taken into possession. Believing the information to be reliable, SI Sandeep Kumar sent ruqa to the Police Station Focal Point, Ludhiana for registration of the case. He then raided the specified place and apprehended the appellant. Counterfeit currency note of Rs.500/- each, 99 in number were taken into possession from the appellant. During investigation, the appellant confessed that he had received the currency notes in question as commission from accused Darshan Singh. After that accused-Darshan Singh was also arrested and during investigation, counterfeit currency notes of Rs. 13 lacs were recovered. Accordingly, FIR No. 115 dated 14.2.2003 under Sections 489-B and 489-C IPC was registered against Darshan Singh at Police Station Basti Jodhewal. After obtaining the report of the expert and completion of codal formalities, challan was presented against Nitin Jain-appellant and Darshan Singh-accused. The case was, thereafter, committed to the Court of Sessions where both the accused were charged for the offences under Sections 489-A, 489-B and 489-C IPC to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1

T.R.Bansal, Asstt. Manager, RBI, PW2 ASI Harbans Singh, PW3 Jai Parkash, PW4 HC Bhupinder Singh, PW5 SI Sandeep Kumar, PW6 HC Amarjit Singh, PW7 HC Sikander Singh and closed the evidence.

When examined under Section 313 Cr.P.C., the accused denied the prosecution allegations and pleaded that they were innocent and falsely implicated. In defence, they examined DW1 Abhey Kumar Jain, DW2 Ashwani Kumar and DW3 Kashmiri Lal.

After hearing learned counsel for the parties and on going through the record, learned trial Court acquitted Darshan Singh-accused of the charge against him. However, the appellant was convicted and sentenced under Sections 489-B and 489-C IPC, as mentioned above.

This Court has heard learned counsel for the parties and perused the evidence with their able assistance.

PW3 Jai Parkash, a fish vendor, who was the star witness in the case, testified that on 17.12.2002 at about 8.40 p.m., he had not come across the Investigating Officer. Neither he disclosed to the Investigating Officer with regard to the counterfeit currency notes nor he handed over a currency note of the denomination of Rs.500/-. As he did not support the prosecution case, learned Additional Public Prosecutor requested the trial Court to declare him hostile which request was allowed.

In his cross-examination by the learned Additional Public Prosecutor, he stated that memos Exs. PA, PB, PC and PD bore his signatures but he went on to state that his signatures were obtained by the police by force. He did not know the accused nor he had made any statement to the police. Even in his cross-examination by the learned defence counsel, he stated that he did not know the accused.

According to PW5 SI Sandeep Kumar, who had recovered the counterfeit currency notes from the appellant, it was Jai Parkash, who had informed him that the appellant had handed over the counterfeit currency note of the denomination of Rs.500/- and subsequently SI Sandeep Kumar alongwith Jai Parkash gone to bus stop Sherpur chowk where the appellant was standing and waiting for bus meant for Jalandhar. It was followed by recovery of 99 counterfeit currency notes of the denomination of Rs.500/- each which were taken into possession vide memo Ex.PB.

However, as mentioned above, PW3 Jai Parkash did not support the prosecution case at all and despite being cross-examined by the learned Additional Public Prosecutor at length, the prosecution could not bring on record any evidence to connect the appellant with the commission of crime.

In his defence, the appellant had examined DW1 Abhey Kumar Jain, who deposed that on 17.12.2002, the

appellant had borrowed his scooter so as to deliver an amount of Rs.1 Lac to Ashwani Kumar at Jain Inder Colony. Later on, he learnt that the appellant had not reached. He had then received a call from Police Station Focal Point that the appellant was in lock up and, accordingly, he gave a call to the appellant's father about his detention. The next day, this witness was informed by the SHO that the scooter which was being driven by the appellant had struck against their vehicle and that was the reason that he was apprehended. DW2 Ashwani Kumar deposed that on 15.12.2002 he had asked for Rs.1 Lac from the appellant's father, who was his cousin, for construction of his house. At about 5.00/6.00 p.m. on 17.12.2002, he informed Kashmiri Lal that the amount had not been received. He told him that he had sent the appellant with the said amount. The next day he came to know about the appellant's scooter having met an accident with the police vehicle. DW3 Kashmiri Lal, father of the appellant, deposed that he had sent Rs.1 Lac with the appellant at about 1.00 p.m. Thereafter, at about 10.00 p.m., he learnt from DW1 Abhey Kumar Jain on telephone that the appellant had taken his scooter for going to DW2 Ashwani Kumar and had kept the cash amount in the dicky of his scooter. He was told about the appellant meeting with an accident with the police vehicle. He further stated that the police had taken the scooter and the

appellant to the Police Station. Next day, he learnt about the involvement of the appellant in a false case of recovery of fake currency notes.

Merely because the three witnesses examined by the appellant in his defence happened to be closely related to him is no ground to reject their testimonies. Possibility of false implication of the appellant in a case of possession/using of counterfeit currency notes by the police cannot be ruled out especially when it stands proved on record that an accident had taken place between the scooter driven by the appellant with the police vehicle and the said scooter was got released from the police custody. According to the prosecution, the appellant at the time of his apprehension was waiting for a bus and, thus, he could not be present alongwith the scooter. The recovery of scooter belonging to a close relative of the appellant and subsequently being released from the police custody indicates that the alleged occurrence had not taken place in the manner as suggested by the police, rather, the appellant was apprehended after the scooter which he was riding had struck against the police vehicle.

Even otherwise the conviction of the appellant under Sections 489-B and 489-C cannot be sustained as the necessary mens rea of selling, buying or receiving from another person or

otherwise trafficking in or using as genuine forged or counterfeit currency notes and so also possessing or even intending to use any forged or currency notes is missing in the case. No material has been brought on record by the prosecution to show that the appellant had the requisite mens rea. Reliance in this regard can be placed upon the judgment of the Hon'ble Supreme Court in **Umashanker Vs. State of Chhattisgarh**, (2001) 9 SCC 642.

In view of the above, this Court is of the considered view that the prosecution has miserably failed to prove its case against the appellant beyond reasonable doubt. Under these circumstances, it would be fit and appropriate to extend the benefit of doubt to him.

Resultantly, the appeal is accepted and the appellant is acquitted of the charge against him.

The appellant is on bail. His bail bonds and surety bonds are, hereby, discharged.

September 26, 2018
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No