*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : 9th APRIL, 2018
DECIDED ON : 16th MAY, 2018

\+ **CRL.A. 451/2011**

SUNDER LAL ..... Appellant
Through : Mr.R.P.S.Yadav, Advocate.

versus

STATE GOVT. OF NCT OF DELHI ..... Respondent
Through : Mr.Tarang Srivastava, APP.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 22.01.2011 of learned Addl. Sessions Judge in Sessions Case No. 45/2008 arising out of FIR No.291/2005 PS Bhajanpura by which the appellant - Sunder Lal was held guilty for committing offences punishable under Sections 489B and 489C IPC. The appellant was sentenced to undergo Rigorous Imprisonment for two years with fine ₹2,000/- under Section 489B IPC and Rigorous Imprisonment for one year with fine ₹1,000/- under Section 489C IPC. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as set-up in the charge-sheet was that on 22.07.2005 at around 12.30 p.m. at Shop No.C81/3, Wazirabad Road, Bhajanpura, Delhi, the appellant was

found in possession of two counterfeit currency notes in the denomination of ₹500 each, one of which he used as 'genuine' while purchasing a towel from the shop of the complainant - Dalip Kumar Gupta. Intimation about the occurrence was conveyed to the police and DD No.14A (Ex.PW-5/A) came to be recorded at 1.22 p.m. at PS Bhajanpura. The Investigating Officer after recording complainant's statement (Ex.PW-1/A) lodged the FIR. The appellant was arrested and necessary proceedings were carried out at the spot. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against the appellant for commission of the aforesaid offences. The appellant pleaded not guilty to the charges and claimed trial. The prosecution examined seven witnesses to prove its case. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and claimed innocence. The trial resulted in conviction as mentioned previously. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. I have heard the learned counsel for the parties and have examined the file. On 22.07.2005, the appellant, a resident of district Bulandshahar (U.P.) had visited the complainant's shop to purchase a towel; he handed over a currency note of ₹500 denomination to the complainant. It was, however, found forged / counterfeit. DD No.14A (Ex.PW-5/A) reveals that the shopkeepers had caught hold of the appellant at the spot. In the complaint (Ex.PW-1/A), Dalip Kumar Gupta disclosed that at around 12.30 p.m. the appellant had approached him to purchase a towel worth ₹90/- and had handed over

a currency note of ₹500 denomination. He became suspicious about the genuineness of the currency note and asked the appellant to give some other note. The appellant in a huff attempted to flee but was apprehended. On search, seven notes of ₹500 denomination were recovered; six of them were genuine.

4. From the complainant's statement (Ex.PW-1/A), it reveals that besides two fake currency notes recovered from appellant's possession, he was also in possession of six other currency notes of ₹500 denomination which were genuine.

5. In the Court statement, the complainant as PW-1 informed that on 22.07.2005 at around 11.00 to 01.00 p.m. his employee whose name he did not remember was present at the shop. The appellant came at the shop; purchased a towel costing ₹90/- and handed over a currency note of ₹500 denomination. On examining the note, he became suspicious. To clear his doubt, he went to a nearby shop of one Sanjay who checked the currency note with an instrument and informed that it was a fake one. When he confronted the accused about it, he took out seven other notes from his pocket and offered him to take any of them. Those currency notes were also checked by Sanjay; one was found fake and other six notes were genuine. He lodged complaint (Ex.PW-1/A) with the police. He further testified that after return from Sanjay's shop, a commotion was created by the shopkeepers; they gave beatings to the accused who was under fear; he did not try to run away.

6. From the Court deposition of the complainant, it can well be inferred that the appellant was not having any 'knowledge' that the

currency notes in his possession were genuine or counterfeit. He did not try to flee from the spot. The currency note given to the complainant was so similar to the genuine note that complainant's neighbour Sanjay had to test it with an instrument. The appellant had only two fake currency notes. At the same time, he was also in possession of six genuine notes of the said denomination. Had the accused been of guilty mind, he would not have offered the complainant to take any of the currency notes in his pocket for the purchase of the towel; he would not have got all the notes tested.

7. Testimony of PW-3 (Mir Abdul Kalim) is of no consequence; it does not corroborate the complainant's statement in material particulars. He claimed that in the morning on 22.07.2005, the accused had purchased a cigarette and soap for ₹30/- and had given a ₹500 denomination currency note. This witness identified the accused on 23.07.2005 to be the individual who had presented him a fake currency note of ₹500 denomination (Ex.P5) on 22.07.2005. PW-3 (Mir Abdul Kalim), however, did not furnish any explanation as to why no complaint for handing over counterfeit currency note was lodged by him against the accused. The fake currency note (Ex.P5) was not handed over by him to the police on 22.07.2005. It is only on 23.07.2005 when the police brought the accused at his shop, he identified him to be the individual who had purchased the cigarette and soap for ₹30/- and had produced before him a fake currency note. No Test Identification Proceeding was got conducted by the Investigating Officer before taking the accused to the shop of the PW-

3 (Mir Abdul Kalim). The witness did not suspect the said currency note to be a fake one at the time of accepting it.

8. Statement of PW-4 (Virender) does not inspire confidence as he did not produce any fake or counterfeit currency note allegedly given to him by the accused to purchase a cigarette packet for ₹30/-. He too did not lodge any report with the police against the accused to have produced a counterfeit currency note to him.

9. The testimonies of PWs-1, 3 and 4 are at variance. Sanjay, who had tested the currency notes was not examined by the prosecution. It was not ascertained as to from where the accused had procured the currency notes. It was also not verified as to when and for what purpose, the appellant had visited Delhi. It is highly unbelievable that from Bulandshahar (U.P.) the appellant would visit the complainant's shop to use a fake currency note.

10. Settled position is that mere possession of a counterfeit currency note is not enough to establish the guilt; any individual in the usual course of business may come across a fake currency note. Nothing has come on record to show that the appellant had reasons to believe that the note used by him was counterfeit. Presumption of knowledge from mere possession can only be drawn if the notes were apparently counterfeit. In the present case, currency notes in the appellant's possession were not of such nature as could be recognised as counterfeit by having a look at them. The prosecution is required to establish the circumstances clearly and irresistibly that the appellant had reason to believe that the currency notes in his possession were forged or fake. The appellant, an uneducated man, in the instant case

is not expected to believe that the currency notes in his possession were fake or forged. When the complainant apprised him that the currency note produced by him was forged, he was rather under fear; he did not try to flee the spot and suffered beatings at the hands of the shopkeepers.

11. Certain discrepancies have emerged in the version given by the complainant before the police in the complaint (Ex.PW-1/A) and the one given before the Court. It was not explained as to what had prompted the complainant and the other shopkeepers to conduct the appellant's search before arrival of the police to recover other currency notes in his pocket; most of which were genuine in nature and what necessitated them to thrash him.

12. In '*M.Mammutti vs. State of Karnataka*', AIR 1979 SC 1705, the Hon'ble Supreme Court has categorically observed that if the counterfeit currency notes are of such nature that mere look at them would not convince anybody that they were counterfeit, no presumption can be drawn that the accused knew that these were counterfeit in nature.

13. Since the appellant was found only in possession of two counterfeit currency notes along with six other genuine currency notes, no inference can be drawn that the appellant had knowledge or reasons to believe that the counterfeit currency notes in his possession were fake; he deserves benefit of doubt.

14. In the light of above discussion, the appeal is allowed. Conviction and sentence recorded by the Trial Court are set aside.

15. Trial Court record be sent back forthwith with the copy of the order.

16. Intimation be sent to the Superintendent Jail.

17. Bail bond(s) and surety bond(s) of the appellant stand discharged.

(S.P.GARG)
JUDGE

MAY 16, 2018 / *tr*