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

% *Reserved on: 28th February, 2018*
Decided on: 13th September, 2018

\+ **CRL.A. 657/2016**

TAZIR AHMED ....Appellant

Represented by: Mr. Mukesh Sharma with Mr.Manish Tanwar, Advocates.

versus

STATE OF NCT OF DELHI .....Respondent

Represented by: Mr. Hirein Sharma, APP for the State with SI Santosh Kumar, PS Pandav Nagar.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, Tazir Ahmed challenges the impugned judgment dated 4th May, 2016 convicting him and Jainul, the co-accused for the offence punishable under Section 489C IPC in FIR No. 262/2006 registered at PS Pandav Nagar and the order on sentence dated 6th May, 2016 directing him to undergo rigorous imprisonment for a period of four years and to pay a fine of ₹20,000/- and in default to undergo rigorous imprisonment for a period of six months for the offence punishable under Section 489C IPC. Since no appeal has been preferred by Jainul, this Court is only concerned with the appeal of Tazir Ahmed. Further co-accused Shamim Ahmad and Gulzar Ahmad were declared proclaimed offenders during trial and Noor Alam was acquitted by the learned Trial Court.

2. Learned counsel for the appellant contends that Ct. Naresh (PW-3), who is one of the recovery witnesses, admitted in his cross-examination that he did not witness the recovery as he remained seated in the car all the time

and did not go to the tea stall. No public witness has been examined even though it was a crowded place and the same has been admitted by SI Harpal Singh (PW-6) in his cross-examination that some other persons were also taking tea at that time. Recovery memo Ex.PW-3/C was signed by Ct. Naresh though he was sitting in the car. Since there is absence of mens rea, offence punishable under Section 489C IPC is not made out. To buttress this argument, reliance is placed upon the decision of this Court reported as 2013 Cri L.J. 3032 *Raghubir Singh v. State of Delhi*.

3. Per contra, Learned APP for the State submits that non-joining of public witnesses cannot be fatal to the prosecution case. Testimony of police witnesses cannot be discarded. Lastly, Anil (PW-1), who made the call to the police in a way, is a public witness thus the learned Trial Court rightly convicted the appellant based on the prosecution evidence.

4. Process of law was set into motion on 5th June, 2006 at 3:00 P.M. when a telephonic call was received from Anil from his tea stall near Shiv Mandir, Pahar Ganj stating that a person has been apprehended with counterfeit currency. Aforesaid information was recorded vide DD No. 25A (Ex. PW-6/A) and assigned to SI Harpal Singh. SI Harpal Singh along with Ct. Harender (PW-4) and Ct. Naresh reached the tea stall and met Anil who produced one person namely Shamim along with one fake currency note of ₹100/-.

5. Statement of Anil was recorded wherein he stated that he runs a tea shop in the name of Anil Tea Stall. On 5th June, 2006 at around 2:50 P.M., one person whose name was revealed as Shamim Ahmed on enquiry, had come to his stall to have a cup of tea and two matthis. After having it, Shamim gave him a ₹100 note. On checking the note, he felt suspicious. He

told Shamim that it was a counterfeit note, on which Shamim got annoyed and said that they have the old habit of harassing the customers. Shamim said that he should keep the note and he was leaving. On this, his doubt got confirmed because no person would leave a ₹100/- note against a payment of ₹5/-. He, along with the help of other customers at the shop, made Shamim sit there and called the police. His statement was recorded vide Ex. PW-1/A.

6. On the basis of the aforesaid statement, FIR No. 262/2006 (Ex.PW-2/A) was registered as PS Pandav Nagar for the offences punishable under Section 489B/489C IPC.

7. Fake currency note of ₹100/- bearing no. 1EE977553 was seized vide seizure memo Ex. PW-1/C. On search of Shamim, 30 fake currency notes of ₹50/- and 19 fake currency notes of ₹100/- were recovered. Aforestated 49 fake currency notes were seized vide seizure memo Ex.PW-1/D. SI Harpal Singh prepared the site plan (Ex. PW-1/B). Shamim was arrested vide arrest memo Ex.PW-1/E, his personal search was conducted vide memo Ex. PW-1/F and his disclosure statement was recorded vide Ex.PW-1/G. In his disclosure statement, he disclosed that he used to bring the fake currency notes from Gulzar r/o City Kotwali, Muzaffarnagar, Uttar Pradesh. Efforts were made to trace Gulzar, however, in vain. Shamim also disclosed about Zainul, Tazir (appellant herein) and Noor Alam to whom he used to hand over fake currency notes after procuring the same from Gulzar for further distribution.

8. Consequently, on 7th June, 2006, Zainul was apprehended and on his personal search, 20 fake currency notes of ₹100/- were recovered. On the same day, Tazir Ahmed was also apprehended from Lakkad Mandi, Kirti

Nagar. On personal search of Tazir Ahmed, three bundles of fake currency notes of ₹100/- were recovered which were seized vide seizure memo Ex.PW-3/C. Tazir Ahmed was arrested vide arrest memo Ex.PW-3/D, his personal search was conducted vide memo Ex.PW-3/E and his disclosure statement was recorded vide Ex. PW-4/C.

9. Noor Alam was apprehended on the pointing out of Shamim. On his personal search, four fake currency notes of ₹50/- and three fake currency notes of ₹100/- were recovered. The same were seized vide seizure memo Ex. PW-3/F. Noor Alam was arrested vide arrest memo Ex.PW-3/G, his personal search was conducted vide memo Ex.PW-3/H and his disclosure statement was recorded vide Ex. PW-4/D. Non-bailable warrants were issued against Gulzar however he could not be apprehended.

10. After completion of investigation, charge sheet was filed against Shamim Ahmed, Zainul, Noor Alam and Tazir Ahmed and Gulzar was kept in column No.2. Gulzar was declared proclaimed offender vide order dated 3rd September, 2007.

11. Anil Kumar was examined as PW-1 in Court. He deposed in sync with his statement made before the police.

12. Amilal Daksh, retired Senior Scientific Assistant (Documents), FSL Rohini proved the FSL report Ex.PW-7/A as per which all currency notes were fake.

13. Learned counsel for the appellant relies upon the decision of this Court in *Raghubir Singh* (supra) wherein the accused was acquitted by granting benefit of doubt for the reason the prosecution was relying upon the purported admission of the accused in the bail application which this Court held that the bail application was neither signed by the appellant therein nor

the parokar nor the counsel. Thus the same could not be treated as a confession and the alleged fake currency notes recovered were also not sealed nor their identification numbers noted down, hence the prosecution did not prove the link evidence. This Court following the decision of the Supreme Court reported as AIR 2001 SC 3074 *Umshanker vs. State of Chhattisgarh* held that no material was brought on record by the prosecution to show that the appellant therein had the requisite mens rea as the counterfeiting in the notes was to the extent that no ordinary prudent person could detect it. In the said case the accused gave 12 notes of ₹100/- denomination for purchasing ticket from Delhi to Bandra which were found to be counterfeited.

14. In the present case, the appellant was apprehended pursuant to the disclosure statement of Shamim who stated that he used to hand over fake currency procured from Gulzar for further distribution to other accused including the appellant herein and the appellant was found in possession of the three bundles of fake currency notes of ₹100/-. The said quantity of notes cannot be said to have aroused no suspicion in the mind of the appellant and it cannot be held that the appellant had no requisite mens rea.

15. From the testimony of HC Naresh Kumar, Ct. Harender, Inspector Harpal Singh it is clear that after the recovery of three bundles of ₹100/- notes seized vide seizure memo Ex.PW-3/C, they were kept in an envelope and sealed with the seal of HPS. In the cross-examination of these three witnesses nothing has been elicited to challenge their veracity or to show that there was some enmity to implicate the appellant falsely. The seizure memo Ex.PW-3/C also notes the numbers noted on the fake currency. It would be relevant to note that in the three bundles 118, 117 and 65 notes

respectively were found and each note had the same serial number, that is, Sr.No. OMM 094669 on 118 notes, Sr.No.2AQ 627498 on 117 notes and Sr.No.1LG 761725 on 65 notes were found. The numbers being the same on the notes it is thus apparent that it was clear case of conscious possession by the appellant.

16. In his statement under Section 313 Cr.P.C. the appellant only stated that the witnesses have deposed falsely, they are the interested police witnesses who have deposed at the instance of the Investigating Officer and that he was innocent and has been falsely implicated. He led no defence evidence.

17. Considering the fact that the appellant was in conscious possession of 300 fake currency notes, this Court finds no error in the impugned judgment of conviction or the order on sentence.

18. Appeal is dismissed.

19. Copy of this order be sent to Superintendent, Mandoli Jail Tihar for updation of the Jail record and intimation to the appellant.

20. TCR be returned.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 13, 2018
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